



Implementing Rules to the European Aviation Safety Agency (EASA) Financial Regulation

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TITLE I SUBJECT

Article 1

Subject

(Article 1 of the Financial Regulation)

1. This Regulation sets out the Implementing Rules to Financial Regulation of the European Aviation Safety Agency (hereinafter called the “Agency”).
2. These Implementing Rules were adopted by the Management Board of the Agency on XX of April, 2005.

TITLE II BUDGETARY PRINCIPLES

CHAPTER 1

Principles of unity and budget accuracy

Article 2

Scope of pre-financing remaining the property of the Agency

1. Pre-financing within the meaning of Article 72 shall remain the property of the Agency, unless provided otherwise. That provision shall not concern pre-financing paid under a contract within the meaning of Article 88 of the Financial Regulation applicable to the general budget of the Communities, or the advances paid to staff of the Agency in accordance with the conditions laid down in the Staff Regulations. It shall not apply to joint management within the meaning of Article 19.
2. In the case of indirect centralised management within the meaning of Article 53 of the Financial Regulation applicable to the general budget of the Communities, the rule referred to in paragraph 1 of this Article applies only to the entity receiving pre-financing directly from the Agency.
3. The rule referred to in paragraph 1 shall apply to pre-financing paid under contracts or agreements concluded after the entry into force of this Regulation.
4. Paragraphs 1 to 3 shall be without prejudice to the entry of pre-financing on the assets side of the financial statements, as will be laid down in the accounting rules provided for in Article 85 of the Financial Regulation.

The authorising officers shall provide the accounting officer with details enabling him to identify pre-financing which remains the property of the Agency.

Article 3

Entry in the budget of interest yielded by Agency funds

(Article 5(4) of the Financial Regulation applicable to the general budget of the Communities)

1. Where pre-financing which remains the property of the Agency in accordance with Article 2 yields interest or equivalent benefits, these shall be paid to the Agency as miscellaneous revenue.
2. Authorising officers shall ensure that, under contracts and agreements concluded with beneficiaries:
 - (a) such pre-financing is paid to accounts which allow the funds paid by the Agency to be identified; and
 - (b) the beneficiaries inform the authorising officer responsible of the amount of any interest or equivalent benefits yielded by those funds at least once a year if such interest represents significant amounts and in any event whenever requests are made for interim payments or payments of balances that clear the pre-financing.
3. In accordance with Chapter 5 of Title IV, the authorising officer responsible shall, upon payment of the pre-financing, draw up an estimate of amounts receivable covering any interest or equivalent benefits yielded by the pre-financing. The authorising officer responsible shall, in accordance with the timetable referred to in point (b) of paragraph 2, draw up a recovery order for the amount of interest referred to in paragraph 1.
4. Where pre-financing is paid from the same budget line, under the same basic act or agreement 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.

CHAPTER 2
Principle of annuality

Article 4

Appropriations for the financial year

(Article 7 of the Financial Regulation)

1. The commitment appropriations and payment appropriations entered in the budget for a financial year and which have to be used during that year shall consist of the appropriations authorised for that financial year. The appropriations authorised for the financial year are:
 - (a) appropriations provided in the budget, including by amending budgets;
 - (b) appropriations carried over;
 - (c) appropriations provided following the receipt of revenue assigned during the financial year or during previous financial years and not used.
2. The Agency shall inform the two branches of the budgetary authority as soon as possible of any building project likely to have significant implications for the budget. Before concluding contracts on buildings the Agency shall submit a communication to the budget authority presenting all relevant information on the operation planned, the cost to the budget for the current financial year and future years, its justification as regards the principle of sound financial management and its impact on the financial perspective.

Article 5

Carryover of appropriations

(Article 10(3) of the Financial Regulation)

1. The commitment appropriations referred to in Article 10(3)(a) of the Financial Regulation may be carried over only if the commitments could not be made before 31 December of the financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to surmise that the commitment will be made by no later than 31 March of the following year.
2. The preparatory stages referred to in Article 10(3) of the Financial Regulation, which should be completed by 31 December of the financial year in order to allow a carryover to the following year, are in particular:
 - (a) for global commitments within the meaning of Article 61 (4) of the Financial Regulation, the adoption of a financing decision or the closing by that date of the consultation of the departments concerned within the Agency for the adoption of the decision;
 - (b) for individual commitments within the meaning of Article 61 (3) of the Financial Regulation, the advanced stage of preparation of the contracts or agreements. This advanced stage of preparation of the contracts or agreements shall mean the completion of the selection of potential contractors or beneficiaries.
3. Appropriations carried over in accordance with Article 10(3) of the Financial Regulation, which have not been committed by 31 March of the following financial year, shall be automatically cancelled. The Agency shall inform the budgetary authority by 15 April of the appropriations cancelled in this way.
4. Appropriations carried over in accordance with Article 10(5) of the Financial Regulation may be used until 31 December of the following financial year.
5. The accounts shall identify appropriations carried over in this way.
6. The appropriations for staff expenditure referred to in Article 10(2) of the Financial Regulation are those for remuneration and allowances for staff of the Agency.

CHAPTER 3

Principle of unit of account

(Chapter 4 of the Financial Regulation)

Article 6

Rate of conversion between the euro and other currencies

(Article 17 of the Financial Regulation)

1. Without prejudice to specific provisions deriving from the application of sectoral regulations, conversion between the euro and another currency shall be made using the daily euro rate published in the C series of the Official Journal of the European Communities.
2. If no daily euro rate is published in the Official Journal of the European Communities for the currency in question, the Agency shall use the accounting rate referred to in paragraph 3.
3. For the purposes of the accounts provided for in Articles 84 to 89 of the Financial Regulation and subject to Article 172, conversion between the euro and another currency

shall be made using the monthly accounting rate of the euro. That accounting rate shall be established by the Agency by means of any source of information it regards as reliable, on the basis of the rate on the penultimate working day of the month preceding that for which the rate is established.

4. Without prejudice to specific provisions deriving from the application of sectoral regulations, the rate to be used for conversion between the euro and other currencies shall be that of the day on which the payment order or recovery order is drawn up by the authorising department.

5. In the case of euro imprest accounts, the rate to be used shall be determined by the date of the payment by the bank.

CHAPTER 4

Principle of universality

(Chapter 5 of the Financial Regulation)

Article 7

Structure to accommodate assigned revenue and provision of corresponding appropriations

(Article 18 of the Financial Regulation)

1. The structure to accommodate assigned revenue in the budget shall comprise:

(a) in the statement of revenue , a budget line to receive the revenue;

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

In the case referred to in point (a) of the first subparagraph, if the amount of such revenue is foreseeable, it shall be entered on the line. If it is not foreseeable, a token entry (p.m.) shall be made and the estimated revenue shall be shown for information in the remarks.

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

Article 8

Passing for payment of the net amount

(Article 21 of the Financial Regulation)

Pursuant to Article 21(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 contracts, including procurement contracts;

(b) adjustments for amounts paid unduly, which can be made by means of direct deduction against a new payment of the same type to the same payee under the chapter, article and financial year in respect of which the excess payment was made, and which give rise to interim payments or payments of balances.

Article 9

Accounts for recoverable taxes

(Article 20 (2) of the Financial Regulation)

1. Any taxes borne by the Agency under Article 20(2) of the Financial Regulation shall be entered in a suspense account until they are refunded by the States concerned.
2. In cases the refund is not effected by force of national tax laws of the Member States, the corresponding entries in the suspense accounts will be cleared appropriately.

CHAPTER 5

Principle of specification

(Chapter 6 of the Financial Regulation)

Article 10

Rules concerning the calculation of limits on transfers

(Article 23 of the Financial Regulation)

1. The percentages referred to in Article 23(2) of the Financial Regulation shall be calculated at the time the request for transfer is made.
2. For the purposes of the limit referred to in Article 23(2) of the Financial Regulation, the amount to be taken into consideration shall be the sum of the transfers to be made on the title or chapter from which the transfer is being made after adjustment for earlier transfers made.

CHAPTER 6

Principle of sound financial management

(Chapter 7 of the Financial Regulation)

The Agency shall follow Article 25 of the Financial Regulation.

CHAPTER 7

Principle of transparency

(Chapter 8 of the Financial Regulation)

Article 11

Provisional publication of a summary of the budget

(Article 26 of the Financial Regulation)

As soon as possible after the final adoption of the budget and within no more than four weeks, a summary of the budget figures shall be published on the Internet site of the Agency pending official publication in the Official Journal of the European Communities.

TITLE III ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1 *Establishment of the budget*

Article 12

Working documents in support of the preliminary draft budget (Articles 27 and 32 of the Financial Regulation)

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

- (a) in respect of Agency's staff, a statement of the policy for permanent and temporary staff;
- (b) a list of posts broken down by area of activity; and
- (c) an explanatory memorandum accompanying the estimate of revenue and expenditure.

Article 13

Preliminary draft amending budgets (Article 28 of the Financial Regulation)

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

CHAPTER 2 *Structure and presentation of the budget*

Article 14

Administrative appropriations (Article 30 of the Financial Regulation)

Where the statement of expenditure of a section of the budget is presented in a nomenclature based on a classification by purpose, administrative appropriations shall be divided into separate headings by title according to the following classification:

- (a) expenditure on staff authorised in the establishment plan: there shall be an amount of appropriations and a number of employment posts corresponding to this expenditure;
- (b) expenditure on external staff (including auxiliary staff) and other management expenditure (including representation expenses and meeting expenses);

(c) expenditure on buildings and other related expenditure, including cleaning and maintenance, rental and hiring, telecommunications, water, gas and electricity; and

(d) support expenditure.

The Agency's administrative expenditure of a type common to all titles shall also be set out in a separate summary statement classified by type.

Article 15

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

(Article 31 of the Financial Regulation)

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

(a) in commitments: commitments entered in the accounts during the financial year against appropriations for that financial year as defined in Article 7;

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

Article 16

Budget remarks

(Article 31(2d) of the Financial Regulation)

The budget remarks shall include:

(a) the references to the basic act, where one exists;

(b) all appropriate explanations concerning the nature and purpose of the appropriations.

TITLE IV IMPLEMENTATION OF THE BUDGET

CHAPTER 1 General provisions

Article 17

Definition of conflict of interest

(Article 35 of the Financial Regulation)

1. Acts likely to be vitiated by a conflict of interest within the meaning of Article 35 of the Financial Regulation may, *inter alia*, take one of the following forms:

- (a) granting oneself or others unjustified direct or indirect advantages;
- (b) refusing to grant a beneficiary the rights or advantages to which the beneficiary is entitled;
or
- (c) committing undue or wrongful acts or failing to carry out acts that are mandatory.

CHAPTER 2 Methods of implementation

Article 18

Detailed arrangements for indirect centralised management

(Articles 54(2)(b) and (c) of the Financial Regulation applicable to the general budget of the Communities)

1. Where the Agency is entrusted implementing specific additional tasks by the Commission, it shall conclude a specific agreement with the Agency. Such an agreement will be funded with funds additional to the annual Communities' subsidy. Income from fees and charges received by the Agency may not be used to fund activities implemented under such agreement.

2. The agreement referred to in paragraph 1 shall include the following provisions:

- (a) a definition of the tasks assigned;
- (b) the conditions and detailed arrangements for performing the tasks, including appropriate provisions for demarcating responsibilities and organising the controls to be carried out;
- (c) the rules on reporting to the Commission on how the tasks are performed;
- (d) the conditions under which performance of the tasks terminates;
- (e) the detailed arrangements for Commission scrutiny;

(f) the conditions governing the use of separate bank accounts, the beneficiary of the interest yielded and the use made of it;

(g) the provisions guaranteeing the visibility of Community action in relation to the other activities of the Agency; and

(h) an undertaking to refrain from any act which may give rise to a conflict of interests within the meaning of Article 35 of the Financial Regulation.

3. The Agency shall not have the status of authorising officer by delegation.

Article 19

Joint management

(Articles 53 and 165 of the Financial Regulation applicable to the general budget of the Communities)

1. The Agency may decide to implement activities in joint management with international organisations.

2. The appropriations used in joint management with international organisations shall finance actions, performance of which requires the pooling of resources from a number of donors, where it is not reasonably possible or appropriate to assign the share contributed by each donor to each type of expenditure.

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

3. The international organisations referred to in paragraph 1 are international public-sector organisations set up by intergovernmental agreements and specialised agencies set up by such organisations.

CHAPTER 3 ***Financial actors***

Section 1

Rights and obligations of the financial actors

Article 20

Rights and obligations of the financial actors

(Article 37 - 44 of the Financial Regulation)

The Agency shall provide each financial actor with the resources required to perform his duties and a charter describing in detail his tasks, rights and obligations.

Section 2

Authorising officer

Article 21

Assistance for authorising officers by delegation and subdelegation

(Article 34 and 38 of the Financial Regulation)

The authorising officer responsible may be assisted in his duties by officials or other servants (hereinafter "staff") entrusted, under his responsibility, with certain operations required for the implementation of the budget and production of the financial and management information. In order to prevent any conflict of interests, staff assisting authorising officers by delegation or sub-delegation shall be subject to the obligations referred to in Article 35 of the Financial Regulation.

Article 22

Internal provisions governing delegations

(Article 34 of the Financial Regulation)

In accordance with the Financial Regulation and this Regulation, the Agency shall lay down in its internal rules such measures for the management of appropriations as it considers necessary for proper implementation of its budget.

Article 23

Management and internal control procedures

(Article 38(4) of the Financial Regulation)

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

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

Article 24

Keeping of supporting documents by authorising officers

(Article 38(6) of the Financial Regulation)

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

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

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

Article 25

Code of professional standards

(Article 39(6) of the Financial Regulation)

1. The staff designated by the authorising officer responsible to verify financial operations shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.

2. The Agency shall draw up a code of professional standards which determine, on matters of internal control:

- (a) the level of technical and financial competence required of the staff referred to in paragraph 1;
- (b) the obligation for such staff to undergo continuing training;
- (c) the mission, role and tasks allocated to them;
- (d) the rules of conduct, in particular the standards of ethics and integrity that they must comply with and the rights they enjoy.

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

Article 26

Failure of the Director to take action

(Article 41 of the Financial Regulation)

Failure by the Executive Director to take action, as referred to in Article 41 of the Financial Regulation, shall mean the absence of any reply within a reasonable time given the circumstances of the case and, at all events, within a month at most.

Article 27

Ex post verification and annual activity report
(Articles 38(5) and 39(4) of the Financial Regulation)

The result of the ex post verifications shall, with other matters, be set out in the annual statement submitted by the Executive Director to the Management Board.

Article 28

Transmission of financial and management information to the accounting officer
(Article 38 of the Financial Regulation)

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

Article 29

Report on negotiated procedures
(Article 40 of the Financial Regulation)

Authorising officers by delegation shall record, for each financial year, contracts concluded by the negotiated procedures referred to in Articles 86 and 87. If the proportion of negotiated procedures in relation to the number of contracts awarded by the same authorising officer by delegation increases appreciably in relation to earlier years or if that proportion is distinctly higher than the average recorded for the Agency, the authorising officer responsible shall take measures to reverse that trend. The Agency shall report on negotiated procedures in its annual report.

Section 3
Accounting officer

Article 30

Appointment of the accounting officer
(Article 43 (1) of the Financial Regulation)

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

Article 31

Termination of duties of the accounting officer
(Article 43 of the Financial Regulation)

1. An interim statement of accounts shall be drawn up without delay in the event of termination of the duties of the accounting officer.

That statement shall be made up of the accounts provided for in Title VII of the Financial Regulation, closed on the last day of the month in which the accounting officer terminates his duties.

2. No interim statement of accounts shall be required where the accounting officer terminates his duties at the end of a financial year.

3. The interim statement or, in the circumstances referred to in paragraph 2, the provisional accounts referred to in Article 82 of the Financial Regulation shall be transmitted by the accounting officer who is terminating his duties or, if this is not possible, by an official in his department to the new accounting officer, who, within no more than one month from the date of transmission, must sign in acceptance and may make reservations.

4. The Agency shall inform the budgetary authority of the appointment or termination of duties of its accounting officer.

Article 32

Opinion on accounting and inventory systems

(Article 43 1. (e) of the Financial Regulation)

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

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

Article 33

Treasury management

(Article 43 1. (f) of the Financial Regulation)

1. The accounting officer shall ensure that the Agency has at its disposal sufficient funds to cover the cash requirements arising from budgetary implementation.

2. For the purposes of paragraph 1, the accounting officer shall set up cash management systems enabling him to draw up cash-flow forecasts.

Article 34

Management of bank accounts

(Article 43 1. (f) of the Financial Regulation)

1. For the requirements of treasury management, the accounting officer may open accounts in the name of the Agency with financial institutions or national central banks or cause such accounts to be opened. In duly warranted circumstances, he/she may open accounts in currencies other than the euro.

2. The accounting officer shall negotiate the operating terms for accounts with financial institutions, in accordance with the principles of sound financial management, efficiency and competitive tendering.

3. At least every five years the Agency's accounting officer shall re-launch competitive tendering between financial institutions with which accounts have been opened.

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

Article 35

Signatures on accounts

(Article 43 (f) of the Financial Regulation)

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

To that end the Agency shall communicate to all financial institutions with which it has opened accounts the names and specimen signatures of the authorised officials.

Article 36

Management of account balances

(Article 43 (f) of the Financial Regulation)

1. The accounting officer shall ensure that the balance on the bank accounts provided for in Article 34 does not deviate significantly from the cash-flow forecasts referred to in Article 33(2) and in any event:

(a) that none of those accounts is in debit;

(b) that the balance of accounts held in other currencies is periodically converted into euro.

2. The accounting officer may not maintain balances in foreign currency accounts, which might cause excessive losses to the Agency as a result of exchange rate fluctuations.

Article 37

Transfers and conversion operations

(Article 43 (f) of the Financial Regulation)

The accounting officer shall conduct transfers between accounts opened in the name of the Agency with financial institutions, and conduct currency conversion operations.

Article 38

Methods of payment

(Article 43 (f) of the Financial Regulation)

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

Article 39

Third-party files

(Article 43 (f) of the Financial Regulation)

1. The accounting officer may make payments by bank credit transfer only if the bank account details of the payee have first been entered in a common file by the Agency.

Entry in the file of the payee's bank account details or modification of those details shall be based on a document, in paper or electronic form, certified by the payee's bank.

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

Authorising officers shall check that the bank account details communicated by the payee are still valid when each payment order is drawn up.

Article 40

Keeping of supporting documents by the accounting officer

(Article 43 (f) of the Financial Regulation)

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

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

The supporting documents are to be kept by each delegated or sub-delegated authorizing officer responsible for the budget line concerned.

Section 4

Imprest administrator

Article 41

Conditions of use of imprest accounts

(Article 44 of the Financial Regulation)

1. Where, owing to the limited amounts involved, it is materially impossible or inefficient to carry out payment operations by budgetary procedures, imprest accounts may be set up for the payment of such expenditure.

2. The imprest administrator may provisionally validate and pay expenditure, on the instructions of the authorising officer responsible.

3. The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer, on a duly substantiated proposal from the authorising officer responsible. That decision shall set out the respective responsibilities and obligations of the imprest administrator and the authorising officer.

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

Article 42

Conditions governing creation and payment

(Article 44 of the Financial Regulation)

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

- (a) the maximum amount which may be initially provided as an imprest, and its purpose;
- (b) whether a bank account or post office giro account is to be opened in the name of the Agency;
- (c) the nature and maximum amount of each item of expenditure which may be paid by the imprest administrator to third parties or collected from them;
- (d) the frequency with which supporting documents must be produced, the procedure for producing them and the arrangements for transmitting them to the authorising officer for settlement;
- (e) the procedure to be followed if the imprest has to be replenished;
- (f) that imprest transactions will be settled by the authorising officer by no later than the end of the following month, so that the accounting balance and the bank balance can be reconciled;
- (g) the period of validity of the authorisation given to the imprest administrator by the accounting officer;
- (h) the identity of the appointed imprest administrator.

2. In proposals for decisions setting up imprest accounts the authorising officer responsible shall ensure that:

- (a) priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;
- (b) imprest accounts are used only in substantiated cases.

The maximum amount referred to in point (c) of paragraph 1 may not exceed EUR 30 000 for each item of expenditure.

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

- (a) prior budget and legal commitments signed by the authorising officer responsible;
- (b) the positive residual balance of the imprest account, in cash or at the bank.

4. Payments from imprest accounts may be made by bank credit transfer, cheque or other means of payment.

5. Payments made shall be followed by formal final validation decisions and/or payment orders signed by the authorising officer responsible

Article 43

Choice of imprest administrators (Article 44 of the Financial Regulation)

Imprest administrators shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.

Article 44

Endowment of imprest accounts
(Article 44 of the Financial Regulation)

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

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

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

The imprest shall be settled, in terms of expenditure or miscellaneous or assigned revenue, in accordance with the decision setting up the imprest account referred to in Article 42 and the provisions of the Financial Regulation. The amounts in question shall be deducted by the authorising officer when he subsequently replenishes the imprest accounts concerned.

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

Article 45

Checks by authorising officers and accounting officers
(Article 44 of the Financial Regulation)

1. The imprest administrator shall keep an account of the funds at his disposal, in cash and at the bank, and of payments made and amounts received, in accordance with the rules and on the instructions given by the accounting officer. Statements of that account shall be accessible at all times to the authorising officer responsible and a monthly list of transactions together with supporting documents shall be sent in the following month by the imprest administrator to the authorising officer for settlement of the imprest operations.

2. The accounting officer shall carry out, or have carried out by an official or other servant in his own department or in the authorising department specially empowered for that purpose, checks, which should normally be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time-limit set. The accounting officer shall communicate the findings of those checks to the authorising officer responsible.

Article 46

Procurement procedure
(Article 44 of the Financial Regulation)

Payments made from imprest accounts may, within the limits laid down in Article 89 (4), consist simply in the payment of costs against invoices, without prior acceptance of a tender.

CHAPTER 4

Liability of the financial actors

Section 1

General rules

Article 47

Bodies responsible in matters of fraud

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

The authorities and bodies referred to in Articles 41, 46 and 47(4) of the Financial Regulation shall be understood to mean the bodies designated by the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter "the Staff Regulations") and the decisions of the Community institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Communities' interests.

Section 2

Rules applicable to authorising officers by delegation and subdelegation

Article 48

Confirmation of instructions

(Article 47(2) of the Financial Regulation)

1. An authorising officer by delegation or subdelegation who receives a binding instruction which he considers to be irregular or contrary to the principle of sound financial management, in particular because the instruction cannot be carried out with the resources allocated to him, shall, in writing, so inform the authority from which he received the delegation or subdelegation. If the instruction is confirmed in writing and that confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer by delegation or sub delegation has challenged, he may not be held liable; he shall carry out the instruction, unless it constitutes a breach of criminal law or of the relevant safety standards.

2. Paragraph 1 shall also apply in cases where an authorising officer learns, in the course of acting on a binding instruction, that the circumstances of the case may give rise to an irregular situation.

3. Any instructions confirmed in the circumstances described in Article 47(2) of the Financial Regulation shall be recorded by the authorising officer by delegation responsible and mentioned in his annual activity report.

Article 49

Financial irregularities

(Articles 41 and 47 of the Financial Regulation)

Without prejudice to the powers of the European Anti-Fraud Office (OLAF), the specialised financial irregularities 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 an official or other servant.

Article 50

Financial irregularities panel

(Articles 41 and 47 of the Financial Regulation)

1. Cases of financial irregularities, as referred to in Article 41 and 47 of the Financial Regulation shall be referred by the Executive Director to the panel referred to in Article 47(4) of the Financial Regulation for an opinion.

Where a case is referred to it by the Executive Director (appointing authority or the authority authorised to conclude contracts of employment), the panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 47 of the Financial Regulation 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 without delay return the case-file to the Director and shall inform OLAF at once.

When the panel referred to in the first subparagraph is directly informed of a matter by a member of staff in accordance with Article 41 of the Financial Regulation, it shall transmit the file to the Executive Director and shall inform the member of staff accordingly.

2. Should the Agency decide to set up its own panel for financial irregularities referred to in Article 47(4) of the Financial Regulation, it shall specify the operating arrangements of the panel and its composition, which shall include an outside personality with the required qualifications and expertise.

CHAPTER 5
Revenue operations

Section 1
Estimate of amounts receivable

Article 51

Estimate of amounts receivable

(Article 53 of the Financial Regulation)

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

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

- (a) the revenue is booked to the correct budget item;
- (b) the estimate is in order and complies with the provisions applicable and the principle of sound financial management.

2. In the cases referred to in Article 19 of the Financial Regulation, appropriations may be made available only after the sums due have actually been recovered by the Agency.

Section 2

Establishment of amounts receivable

Article 52

Procedure

(Article 53 of the Financial Regulation)

1. The establishment by the authorising officer responsible of an amount receivable shall constitute recognition of the right of the Agency in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.

2. The recovery order shall be the operation by which the authorising officer responsible instructs the accounting officer to recover the amount established.

3. The debit note shall be to inform the debtor that:

(a) the Agency have established the amount receivable;

(b) payment of the debt to the Agency is due on a certain date (hereinafter "the due date");

(c) failing payment by the due date the debt shall bear interest at the rate referred to in Article 57, without prejudice to any specific regulations applicable;

(d) wherever possible the Agency shall effect recovery by offsetting after the debtor has been informed;

(e) failing payment by the due date the institution shall effect recovery by enforcement of any guarantee lodged in advance;

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

Article 53

Establishment of amounts receivable

(Article 53 of the Financial Regulation)

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

(a) the receivable is certain and not subject to any condition;

(b) the receivable is of fixed amount, expressed precisely in cash terms;

(c) the receivable is due and is not subject to any payment time;

(d) the particulars of the debtor are correct;

(e) the amount to be recovered is booked to the correct budget item;

(f) the supporting documents are in order; and

(g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in Article 60 (1).

Article 54

Supporting documents for the establishment of amounts receivable

(Article 53 of the Financial Regulation)

1. The establishment of an amount receivable shall be based on supporting documents certifying the Agency's entitlement.
2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or, on his own responsibility, shall ascertain that this has been done.
3. The supporting documents shall be kept by the authorising officer in accordance with Articles 23 and 24.

Section 3

Authorisation of recovery

Article 55

Establishment of the recovery order

(Article 54 of the Financial Regulation)

1. The recovery order shall specify:
 - (a) the financial year to which the revenue is to be booked;
 - (b) the references of the act or legal commitment which is the source of the debt and gives rise to the entitlement to recovery;
 - (c) the budget article and any other subdivision that may apply, including, where appropriate, the references of the corresponding budget commitment;
 - (d) the amount to be recovered, expressed in euro;
 - (e) the name and address of the debtor;
 - (f) the due date; and
 - (g) the possible method of recovery, including in particular recovery by offsetting or enforcement of any guarantee lodged.
2. The recovery order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

Section 4 Recovery

Article 56

Additional time for payment

(Article 58 of the Financial Regulation)

The interest rate referred to in article 58 (a) of the Financial Regulation is specified in Article 57 of this Regulation.

The guarantee referred to in point (b) of article 58 of the Financial Regulation may be replaced by a joint and several guarantee by a third party approved by the Agency's accounting officer.

Article 57

Default interest

(Article 53(3) of the Financial Regulation)

1. Without prejudice to any specific provisions deriving from the application of sectoral rules, any amount receivable not repaid on the due date shall bear interest in accordance with paragraphs 2 and 3.

2. The interest rate for amounts receivable not repaid on the due date shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Communities, in force on the first calendar day of the month in which the due date falls, increased by:

(a) seven percentage points where the obligating event is a public supply and service contract referred to in Title V of the Financial regulation applicable to the general budget of the European Communities;

(b) three and a half percentage points in all other cases.

3. Interest shall be calculated from the calendar day following the due date specified in the debit note up to the calendar day on which the debt is repaid in full.

4. Any partial payments shall first cover the interest determined in accordance with paragraphs 2 and 3.

5. In the case of fines, where the debtor provides a financial guarantee which is accepted by the accounting officer in lieu of provisional payment, the interest rate applicable from the due date shall be the rate referred to in paragraph 2 increased by only one and a half percentage points.

Article 58

Waiving of recovery of an established amount receivable

(Article 55(3) of the Financial Regulation)

1. The authorising officer responsible may waive recovery of all or part of an established amount receivable only in the following cases:

(a) where the foreseeable cost of recovery would exceed the amount to be recovered and the waiver would not harm the Agency's image;

(b) where the amount receivable cannot be recovered in view of its age or the insolvency of the debtor;

(c) where recovery is inconsistent with the principle of proportionality.

2. In the case referred to in point (c) of paragraph 1, the authorising officer responsible shall act in accordance with predetermined procedures established within the Agency and shall apply the following criteria which are compulsory and applicable in all circumstances:

(a) the facts, having regard to the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeat offence, intent, diligence, good faith, manifest error);

(b) the impact that waiving recovery would have on the operation of the Agency and its financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law).

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

(a) any distortion of competition that would be caused by the waiving of recovery;

(b) the economic and social damage that would be caused were the debt to be recovered in full.

4. The waiver decision referred to in Article 55(3) of the Financial Regulation shall be substantiated and shall refer to the diligence exercised to secure recovery and the points of law and fact on which the waiver is based. The authorising officer responsible shall waive recovery in accordance with the procedure provided for in Article 55 of the Financial Regulation.

5. The waiving of recovery of an established amount receivable may not be delegated by the authorizing officer responsible.

6. The Agency shall send to the Management Board each year a report on the waivers referred to in paragraphs 1 to 4 involving EUR 100 000 or more. That report shall be annexed to the annual activity report referred to in Article 40 of the Financial Regulation.

Article 59

Cancellation of an established amount receivable

(Article 55 (4) of the Financial Regulation)

In the event of a mistake as to a point of law, the authorising officer responsible shall cancel the established amount receivable in accordance with Articles 54 and 55; cancellation shall be suitably substantiated.

Article 60

Technical and accounting adjustment of an established amount receivable

(Article 55 (5) of the Financial Regulation)

1. The authorising officer responsible shall adjust the established amount receivable upwards or downwards if the discovery of an error of fact necessitates the alteration of the amount, provided that the correction does not imply relinquishment of the Agency' established

entitlement. Such adjustment shall be made in accordance with Articles 51 and 52 and shall be suitably substantiated.

2. The Agency shall lay down in its internal rules the conditions and procedure for delegating the power to make a technical and accounting adjustment of an established amount receivable.

CHAPTER 6

Expenditure operations

Section 1

Commitment of expenditure

Article 61

Single signature

(Article 61 of the Financial Regulation)

1. There should be a single signatory for the budget commitment and the corresponding legal commitment. This rule may be departed from in the following cases alone:

- (a) where the commitments are provisional;
- (b) where global commitments relate to financing agreements with third countries;
- (c) where the Agency's decision constitutes the legal commitment;
- (d) where the global commitment is implemented by a number of legal commitments, for which different authorising officers by delegation are responsible;

2. If the authorising officer responsible who signed the budget commitment is not available and remains unavailable for a period incompatible with the time-limits for concluding the legal commitment, that legal commitment shall be concluded by the person designated under the deputation rules adopted by the Agency, provided that that person has the status of authorising officer in accordance with Article 34 of the Financial Regulation.

Article 62

Registration of individual legal commitments

(Article 61 of the Financial Regulation)

In the case of a global budget commitment followed by several individual legal commitments, the authorising officer responsible shall register in the central accounts the amounts of these successive individual legal commitments. The authorising officer responsible shall check that the aggregate amount does not exceed the amount of the global commitment covering them.

The registration in the accounts shall indicate the references of the global commitment against which the individual commitments are being booked.

The authorising officer responsible shall register the amounts in the accounts before signing the corresponding individual legal commitment.

Article 63

Administrative expenditure covered by provisional commitments

(Article 61 (5) of the Financial Regulation)

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

- (a) expenditure on staff, whether or not covered by the Staff Regulations, on other human resources and pensions and on the remuneration of experts;
- (b) expenditure relating to Members of the Management Board, the EASA Advisory Board, the Safety Standards Consultative Committee, the Advisory Group of National Authorities and any other consultative or advisory body of the Agency;
- (c) training expenditure;
- (d) expenditure on competitions, selection and recruitment;
- (e) mission expenses;
- (f) representation expenses;
- (g) meeting expenses;
- (h) freelance interpreters and/or translators;
- (i) exchanges of officials;
- (j) recurring rentals of movable and immovable property;
- (k) miscellaneous insurance;
- (l) cleaning and maintenance;
- (m) welfare expenditure;
- (n) the use of telecommunications services;
- (o) financial charges;
- (p) legal expenses;
- (q) damages, including interest;
- (r) work equipment;
- (s) water, gas and electricity;
- (t) periodical publications on paper or in electronic versions.

Section 2

Validation of expenditure

Article 64

Validation and "passed for payment"

(Article 64 and 65 of the Financial Regulation)

1. The authorising officer responsible shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done, before taking the decision validating the expenditure.

2. The validation decision shall be expressed by the signing of a "passed for payment" voucher by the authorising officer responsible or by an official or other servant technically competent, empowered by formal decision of the authorising officer. Such empowerment decisions shall be kept for future reference.

Article 65

Passing for payment of procurement contracts

(Article 65 of the Financial Regulation)

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

- (a) the Agency has received and formally registered an invoice drawn up by the contractor;
- (b) the invoice itself, or an internal document accompanying the invoice received, has been endorsed "certified correct" and signed by an official or other servant technically competent and duly empowered by the authorising officer responsible;
- (c) all aspects of the invoice have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

The endorsement "certified correct", referred to in point (b) of the first paragraph shall certify that the services provided for in the contract have been properly provided, or that the supplies provided for in the contract have been properly delivered, or that the work provided for in the contract has been properly carried out. For supplies and work, the official or other servant technically competent shall draw up a provisional acceptance certificate, then a final acceptance certificate at the end of the guarantee period laid down in the contract. Those two certificates shall count as the "certified correct" endorsement.

Article 66

Passing for payment of grants

(Article 65 of the Financial Regulation)

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

- (a) the Agency has received and formally registered a payment request drawn up by the beneficiary;

(b) the payment request itself, or an internal document accompanying the payment request received, has been endorsed "certified correct" and signed by an official or other servant technically competent, empowered by the authorising officer responsible; by such endorsement, he certifies that the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement;

(c) all aspects of the payment request have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

Article 67

Passing for payment of staff expenditure

(Article 65 of the Financial Regulation)

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

(a) in respect of monthly salary:

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

(b) in respect of other remunerations (staff paid on an hourly or daily basis): a statement signed by the authorised official or other servant showing the days and hours worked;

(c) in respect of overtime: a statement signed by the authorised official or other servant certifying the amount of overtime worked;

(d) in respect of mission expenses:

- (i) the travel order signed by the competent authority;
- (ii) the statement of mission expenses, signed by the official on mission and by the administrative superior to whom the appropriate powers have been delegated, and showing, in particular, the place of mission, the dates and times of departure and arrival at the place of mission, travel expenses, subsistence expenses, and other expenses duly authorised on production of supporting documents;

(e) in respect of other staff expenditure: the supporting documents referring to the decision on which the expenditure is based and giving all the components of the calculation.

Article 68

Material form of "passed for payment"

(Article 65 of the Financial Regulation)

In a non-computerised system, "passed for payment" shall take the form of a stamp incorporating the signature of the authorising officer responsible or of an official or other servant technically competent, empowered by the authorising officer responsible in accordance with Article 64. In a computerised system, "passed for payment" shall take the form of validation using the personal password of the authorising officer responsible or of an official or other servant technically competent, empowered by the authorising officer responsible.

Section 3

Authorisation of payments

Article 69

Checks on payments by the authorising officer

(Article 66 of the Financial Regulation)

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

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

Article 70

Mandatory details on payment orders and transmission to the accounting officer

(Article 66 of the Financial Regulation)

1. The payment order shall state:

- (a) the financial year to which the expenditure is to be booked;
- (b) the budget article and any other subdivision that may apply;
- (c) the references of the legal commitment giving rise to an entitlement to payment;
- (d) the references of the budget commitment against which it is to be booked;
- (e) the amount to be paid, expressed in euro;
- (f) the name, address and bank account details of the payee;
- (g) the object of the expenditure;
- (h) the means of payment;
- (i) the entry of items in the inventory in accordance with Article 181.

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

Section 4

Payment of expenditure

Article 71

Supporting documents

(Article 67 of the Financial Regulation)

1. Pre-financing, including in cases where it is split into a number of payments, shall be paid either on the basis of the contract, the agreement or the basic act, or on the basis of supporting documents, which make it possible to check the conformity of the actions financed with the terms of the contract or agreement in question. Interim payments and payments of balances shall be based on supporting documents which make it possible to check that the action financed has been carried out in accordance with the terms of the contract or agreement concluded with the beneficiary or of the basic act.
2. The authorising officer responsible shall lay down, in compliance with the principle of sound financial management, the nature of the supporting documents referred to in paragraph 1 in accordance with the basic act, where one exists, and the contracts and agreements concluded with the beneficiary. Interim and final technical and financial implementation reports, shall constitute supporting documents for the purposes of paragraph 1.
3. The supporting documents shall be kept by the authorising officer responsible in accordance with Articles 23 and 24.

Article 72

Booking of pre-financing and interim payments

(Article 67 of the Financial Regulation)

1. Pre-financing is intended to provide the beneficiary with a float. It may be split into a number of payments.
2. An interim payment, which may be repeated, is intended to reimburse expenditure incurred by the beneficiary on the basis of a statement of expenditure when the action is in progress. It may clear pre-financing in whole or in part, without prejudice to the provisions of the basic act, contract or agreement.
3. The closure of the expenditure shall take the form of the payment of the balance, which may not be repeated and clears all preceding payments, or a recovery order.

Section 5

Time limits for expenditure operations

Article 73

Payment time limits and default interest

(Article 69 of the Financial Regulation)

1. Sums due shall be paid within no more than forty-five calendar days from the date on which an admissible payment request is registered by the authorised department of the

authorising officer responsible; the date of payment shall be understood to mean the date on which the institution's account is debited.

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

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

3. For contracts or agreements under which payment depends on approval of a report, time for the purposes of the payment periods referred to in paragraphs 1 and 2 shall not begin to run until the report in question has been approved, either explicitly with the beneficiary being informed, or implicitly because the time allowed by the contract for approval has expired without being suspended by means of a formal document sent to the beneficiary.

The time allowed for approval may not exceed:

(a) 20 calendar days for straightforward contracts relating to the supply of goods and services;

(b) 45 calendar days for other contracts and grant agreements;

(c) 60 calendar days for contracts involving technical services which are particularly complex to evaluate.

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

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

5. On expiry of the time limits laid down in paragraphs 1 and 2, the creditor may, within two months of receiving late payment, demand interest in accordance with the following provisions:

(a) the interest rates shall be those referred to in the first subparagraph of Article 57 (2);

(b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment up to the day of payment.

The first subparagraph shall not apply to Member States.

CHAPTER 7

IT Systems

Article 74

Description of IT systems

(Article 70 of the Financial Regulation)

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

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

Article 75

Periodical save

(Article 70 of the Financial Regulation)

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

TITLE V PROCUREMENT

CHAPTER 1 General provisions

Section 1 Scope and award principles

Article 76

Definitions and scope

(Article 88 of the Financial Regulation applicable to the general budget of the Communities)

1. Building contracts cover the purchase, long lease, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.
2. Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. The delivery of products may in addition include siting, installation and maintenance.
3. Works contracts cover either the execution, or both the execution and design, of works or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.
4. Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts. These services are listed in Annexes IA and IB to Council Directive 92/50/EEC.
5. A contract covering both products and services shall be considered a service contract where the value of the services in question exceeds that of the products included in the contract.
6. The terms "supplier", "contractor" and "service provider" refer to three categories of economic operator, natural or legal persons, who supply products, execute works and provide services respectively. Economic operators who have submitted a tender are referred to as "tenderers". Those who have asked to be allowed to take part in a restricted or negotiated procedure are referred to as "candidates".
7. Departments of the Community institutions shall be considered to be contracting authorities.

Article 77

Framework contracts and specific contracts

(Article 88 of the Financial Regulation applicable to the general budget of the Communities)

1. A framework contract is a contract concluded between a contracting authority and an economic operator for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular as regards the duration, subject, prices, conditions of performance and the quantities envisaged.

The contracting authority may also conclude multiple framework contracts, which are separate contracts with identical terms awarded to a number of suppliers or service providers. The specifications referred to in Article 91 shall then specify the maximum number of operators with whom the contracting authority will conclude contracts.

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

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

2. Specific contracts based on the framework contracts referred to in paragraph 1 shall be awarded in accordance with the terms laid down in the framework contract.

3. Only specific contracts concluded under framework contracts shall be preceded by a budget commitment.

Section 2 Publication

Article 78

Advertising of contracts covered by the public procurement directives

(Article 90 of the Financial Regulation applicable to the general budget of the Communities)

1. Publication shall consist in a pre-information notice, a contract notice and an award notice.

2. The pre-information notice shall be the notice by which the contracting authorities make known, by way of indication, the estimated total value of contracts, by category of service or groups of products, and the essential characteristics of works contracts which they intend to award during a budgetary year, where the estimated total value is equal to or greater than the thresholds laid down in Article 117.

The pre-information notice shall be sent to the Office for Official Publications of the European Communities as soon as possible and by no later than 31 March of each budgetary year in the case of supply and service contracts and, in the case of works contracts, as soon as possible after the decision approving the programme for those contracts.

3. The contract notice shall be the means by which the contracting authorities make known their intention to launch a procurement procedure. It shall be compulsory for contracts of an estimated value equal to or greater than the thresholds laid down in points (a) and (c) of Article 118 (1).

In an open procedure the contract notice shall specify the date, time and place of the meeting of the opening committee, which shall be open to the tenderers.

Contracting authorities wishing to organise a contest shall issue a notice announcing their intention.

4. The award notice shall give the outcome of the procurement procedure. In the case of contracts the value of which is equal to or greater than the thresholds laid down in Article

118, the award notice shall be compulsory. It shall not be compulsory for specific contracts awarded under a framework contract.

The award notice shall be sent to the Office for Official Publications of the European Communities no later than forty-eight calendar days after the procedure is closed, that is to say, from the date on which the contract is signed.

5. The notices shall be drawn up in accordance with the models annexed to Directive 2001/78/EC.

Article 79

Advertising of contracts not covered by the public procurement directives

(Article 90 of the Financial Regulation applicable to the general budget of the Communities)

1. Contracts with a value below the thresholds provided for in Articles 117 and 118 and the service contracts referred to in Annex IB to Council Directive 92/50/EEC shall be advertised by appropriate means in order to ensure competitive tendering and impartiality of the procurement procedure. Such advertising shall involve:

(a) if no contract notice as referred to in Article 78 (3) has been published, notice of a call for expressions of interest for contracts covering a similar subject with a value equal to or greater than the amount referred to in Article 88 (1);

(b) the annual publication of a list of contractors, specifying the subject and the value of the contract awarded.

2. A list of contractors to whom building contracts are awarded shall be published annually, with an indication of the subject and value of the contracts awarded. That list shall be sent to the budgetary authority..

3. Information relating to contracts with a value equal to or greater than the amount referred to in Article 88 (1) shall be sent to the Office for Official Publications of the European Communities; the annual lists of contractors shall be sent by no later than 31 March following the end of the financial year.

Ex ante advertising and the annual publication of the list of contractors for the other contracts shall be on the Internet site of the institutions; ex post publication shall take place by no later than 31 March of the following financial year. Publication may also be in the Official Journal of the European Communities.

Article 80

Publication of notices

(Article 90 of the Financial Regulation applicable to the general budget of the Communities)

1. The Office for Official Publications of the European Communities shall publish the notices referred to in Articles 78 and 79 in the Official Journal of the European Communities no later than twelve calendar days after their dispatch.

That period shall be reduced to five calendar days in the case of the fast-track procedures referred to in Article 102 and if the notices have been prepared and sent electronically.

2. The contracting authorities must be able to provide evidence of the date of dispatch.

Article 81

Other forms of advertising

(Article 90 of the Financial Regulation applicable to the general budget of the Communities)

In addition to the advertising provided for in Articles 78, 79 and 80, contracts may be advertised in any other way, notably in electronic form. Any such advertising shall refer to the notice published in the Official Journal of the European Communities, as provided for in Article 80, if one has been published, and may not precede the publication of that notice, which alone is authentic.

Such advertising may not introduce any discrimination between candidates or tenderers nor contain details other than those contained in the contract notice, if one has been published.

Section 3 Procurement procedures

Article 82

Types of procurement procedure

(Article 91 of the Financial Regulation applicable to the general budget of the Communities)

1. Contracts shall be awarded by call for tender, using the open, restricted or negotiated procedure after publication of a contract notice or by negotiated procedure without prior publication of a contract notice, where appropriate following a contest.

2. Calls for tender shall be open where all interested economic operators may submit a tender.

Calls for tender are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria referred to in Article 95 and invited simultaneously and in writing by the contracting authorities may submit a tender.

The selection phase may be repeated for each individual contract or may involve drawing up a list of potential candidates under the procedure referred to in Article 88.

3. In a negotiated procedure, the contracting authorities shall consult tenderers of their choice who satisfy the selection criteria laid down in Article 95, and negotiate the terms of the contract with one or more of them.

In negotiated procedures where a contract notice is published, as referred to in Article 87, the contracting authorities shall simultaneously and in writing invite the selected candidates to negotiate.

4. Contests are procedures, which enable the contracting authority to acquire, mainly in the fields of architecture and civil engineering or data processing, a plan or design proposed by a selection board after being put out to competitive tender with or without the award of prizes.

5. Notwithstanding paragraphs 1) to 4), public service contracts concluded between National Aviation Authorities and the Agency shall not be subject to Article 74 of the Financial Regulation of the Agency.

Article 83

Number of candidates in restricted or negotiated procedures

(Article 91 of the Financial Regulation applicable to the general budget of the Communities)

1. In a restricted procedure, including the procedure referred to in Article 88, the number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria.

The contracting authority may also provide for a maximum number of twenty candidates, depending on the subject of the contract and on the basis of objective and non-discriminatory selection criteria. In such cases, the range and criteria shall be indicated in the contract notice or the call for expressions of interest referred to in Articles 78 and 79.

In any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.

2. In negotiated procedures the number of candidates invited to negotiate may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria.

In any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.

The second subparagraph shall not apply to contracts involving very small amounts, as referred to in Article 89 (3).

Article 84

Arrangements for negotiated procedures

(Article 91 of the Financial Regulation applicable to the general budget of the Communities)

Contracting authorities shall negotiate with tenderers the tenders they have submitted in order to adapt them to the requirements set out in the contract notice referred to in Article 78 or in the specifications and in any additional documents and in order to find the tender offering best value for money.

During the negotiation, the contracting authorities shall ensure equal treatment for all tenderers.

Article 85

Contests

(Article 91 of the Financial Regulation applicable to the general budget of the Communities)

1. The rules for the organisation of a contest shall be communicated to those interested in taking part.

The number of candidates invited to take part must be sufficient to ensure genuine competition.

2. The selection board shall be appointed by the authorising officer responsible. It shall be made up exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required for participation in a contest, at least one third of the members of the selection board must have the same or an equivalent qualification.

The selection board shall be autonomous in its opinions. Its opinions shall be adopted on the basis of projects submitted to it anonymously by the candidates and solely in the light of the criteria set out in the contest notice.

3. The proposals of the selection board, based on the merits of each project, and its observations, shall be recorded in a report signed by its members.

Candidates shall remain anonymous until the selection board has given its opinion.

4. The contracting authority shall then take a decision giving the name and address of the candidate selected and the reasons for the choice by reference to the criteria announced in the contest notice, especially if it departs from the proposals made in the selection board's opinion.

Article 86

Use of a negotiated procedure without prior publication of a contract notice

(Article 91 of the Financial Regulation applicable to the general budget of the Communities)

1. Contracting authorities may use the negotiated procedure without prior publication of a contract notice in the following cases:

(a) where no tenders or no suitable tenders have been submitted in response to an open procedure or restricted procedure after the initial procedure has been completed, provided that the original terms of the contract as specified in the documents relating to the invitation to tender referred to in Article 90 are not substantially altered;

(b) where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator;

(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the contracting authorities and likely to jeopardise the Communities' interests, it is impossible to comply with the time-limits set for the other procedures and laid down in Articles 100, 101 and 102;

(d) where a service contract follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates; in the latter case, all successful candidates shall be invited to participate in the negotiations;

(e) for additional services and works not included in the project initially considered nor in the contract first concluded but which, through unforeseen circumstances independent of the contracting authority, have become necessary for the performance of the services or works, subject to the conditions set out in paragraph 2;

(f) for additional contracts consisting in the repetition of similar services or works entrusted to the contractor awarded an earlier contract by the same contracting authorities, provided that

the subject of the contract conforms to a basic project and that the first contract was awarded under the open or restricted procedure;

(g) for supply contracts:

(i) in the case of additional deliveries which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts may not exceed three years;

(ii) where the products are manufactured purely for the purpose of research, experiment, study or development, with the exception of commercial viability tests and large-scale production aimed at recovering research and development costs;

(h) for building contracts, after prospecting the local market;

(i) for contracts with a value below the threshold laid down in Article 89 (2).

2. For the additional services and works referred to in point (e) of paragraph 1, the contracting authority may make use of the negotiated procedure without prior publication of a contract notice on condition that the award is made to the contractor performing the contract:

(a) where such additional contracts cannot be technically or economically separated from the main contract without serious inconvenience for the contracting authority; or

(b) where such services or works, although separable from the performance of the original contract, are strictly necessary for its completion.

The aggregate value of additional contracts may not exceed 50 % of the amount of the initial contract.

3. In the cases referred to in point (f) of paragraph 1, the option of using the negotiated procedure shall be pointed out as soon as the first contract is put out to competitive tender, and the total estimated cost of the additional contracts shall be taken into consideration in calculating the thresholds referred to in Article 118. That procedure may be used only during the three years following conclusion of the original contract.

Article 87

Use of a negotiated procedure after prior publication of a contract notice

(Article 91 of the Financial Regulation applicable to the general budget of the Communities)

1. Contracting authorities may use the negotiated procedure after having published a contract notice in the following cases:

(a) in the event of the submission of tenders which are irregular or unacceptable, by reference in particular to the selection or award criteria, in response to an open or restricted procedure which has been completed, provided that the original terms of the contract as specified in the documents relating to the invitation to tender referred to in Article 90 are not substantially altered;

(b) for service and works contracts, in exceptional cases where the nature of the services or works or the risks attaching thereto do not permit prior overall pricing by the tenderer;

(c) where the nature of the service to be procured, in particular in the case of financial services and intellectual services, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender in accordance with the rules governing open or restricted procedures;

(d) for works contracts, where the works are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs;

(e) for the service contracts referred to in Annex 1B to Council Directive 92/50/EEC, subject to point (i) of Article 86 (1).

2. In the cases referred to in point (a) of paragraph 1, contracting authorities may refrain from publishing a contract notice if they include in the negotiated procedure all the tenderers who satisfy the selection criteria and who, during the previous procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

Article 88

Restricted procedure involving a call for expressions of interest

(Article 91 of the Financial Regulation applicable to the general budget of the Communities)

1. A call for expressions of interest shall constitute a means of pre-selecting candidates who will be invited to submit tenders in response to future restricted invitations to tender for contracts of a value of EUR 50 000 or more, subject to Articles 86 and 87.

2. The list drawn up following a call for expressions of interest shall be valid for no more than three years from the date on which the notice referred to in point (a) of Article 79 (1) is sent to the Office for Official Publications of the European Communities.

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

3. Where a specific contract is to be awarded, the contracting authority shall invite either all candidates entered on the list or only some of them, on the basis of objective and non-discriminatory selection criteria specific to that contract, to submit a tender.

Article 89

Low-value contracts

(Article 91 of the Financial Regulation applicable to the general budget of the Communities)

1. A restricted procedure with at least five candidates being consulted but without a call for expressions of interest may be used for contracts with a value of less than EUR 50 000, subject to Articles 86 and 87.

2. The negotiated procedure with at least three candidates may be used for contracts with a value of less than EUR 13 800.

3. Contracts with a value of less than EUR 1 050 may be awarded on the basis of a single tender by a negotiated procedure.

4. Payments made from imprest accounts or for expenditure related to communications activities engaged in by the Agency for the coverage of Agency events may consist simply in the payment of costs against invoices, without prior acceptance of a tender, where the expenditure is equal or less than EUR 500.

Article 90

Documents relating to the invitation to tender

(Article 92 of the Financial Regulation applicable to the general budget of the Communities)

1. The documents relating to the invitation to tender shall include at least:

- (a) the invitation to submit a tender or to negotiate;
- (b) the attached specifications, to which shall be annexed the general terms and conditions applicable to contracts;
- (c) the model contract.

The documents relating to the invitation to tender shall contain a reference to the advertising measures taken under Articles 78 to 81.

2. The invitation to tender shall at least:

- (a) specify the rules governing the lodging and presentation of tenders, including in particular the closing date and time for submission, any requirement as to the use of a standard reply form, the documents to be attached, including those in evidence of financial, economic, technical and professional capacity referred to in Article 95, and the address to which they must be sent;
- (b) state that submission of the tender implies acceptance of the specifications and of the general terms and conditions referred to in paragraph 1 to which the tender relates and that this submission binds the contractor to whom the contract is awarded during performance of the contract;
- (c) specify the period during which a tender will remain valid and may not be varied in any respect;
- (d) forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 108, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit.

3. The specifications shall at least:

- (a) specify the exclusion and selection criteria applying to the contract, save in the restricted procedure and in the negotiated procedures following publication of a notice referred to in Article 87; in such cases those criteria shall appear solely in the contract notice or the call for expressions of interest;
- (b) specify the award criteria and their relative weighting, if this is not specified in the contract notice;
- (c) set out the technical specifications referred to in Article 91;
- (d) state the minimum requirements which variants must meet in the procedures provided for in Article 109(2) under which the contract is awarded to the tender offering best value for

money, where the contracting authority has not stated in the contract notice that such variants are not permitted;

(e) state that the Protocol on Privileges and Immunities or, where appropriate, the Vienna Convention on Diplomatic Relations or Consular Relations applies;

(f) specify the evidence of access to contracts, as set out in Article 119.

4. The model contract shall in particular:

(a) specify the penalties for failure to comply with its clauses;

(b) specify the details which must be contained in invoices or in the relevant supporting documents in accordance with Article 65;

(c) specify the law applicable to the contract and the competent court for hearing disputes.

5. The contracting authorities may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors.

Article 91

Technical specifications

(Article 92 of the Financial Regulation applicable to the general budget of the Communities)

1. Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering.

They shall define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the contracting authority.

2. The characteristics referred to in paragraph 1 shall include:

(a) the quality levels;

(b) environmental performance;

(c) design for all requirements (including accessibility for disabled people);

(d) the levels and procedures of conformity assessment;

(e) fitness for use;

(f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;

(g) for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve.

3. The technical specifications shall be formulated as follows:

(a) by reference to European standards, or to European technical approvals or common technical specifications, where such exist, to international standards or to other technical reference material produced by European standards bodies or, failing this, their national equivalents. Every reference shall be followed by the expression "or equivalent"; or

(b) in terms of performance or of functional requirements; they shall be sufficiently detailed to enable tenderers to determine the purpose of the contract and the contracting authorities to award the contract; or

(c) by a mixture of those two formulation methods.

4. Where the contracting authorities make use of the possibility of referring to the specifications referred to in point (a) of paragraph 3, they may not reject a tender on the grounds that it does not comply with those specifications if the tenderer or candidate proves, to the satisfaction of the contracting authority, by any appropriate means, that the tender meets in equivalent manner the requirements set.

5. Where the contracting authorities make use of the possibility provided for in point (b) of paragraph 3, of prescribing specifications in terms of performance or of functional requirements, they may not reject a tender which complies with a national standard transposing a European standard, a European technical approval or common technical specifications, an international standard or technical reference material produced by a European standards body, if those specifications relate to the necessary performance or functional requirements.

6. Save in exceptional cases, duly warranted by the subject of the contract, those specifications may not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production which would have the effect of favouring or eliminating certain products or economic operators.

Where it is not possible to provide a sufficiently detailed and intelligible description of the subject of the contract, the reference shall be followed by the expression "or equivalent".

Article 92 **Price revision**

(Article 92 of the Financial Regulation applicable to the general budget of the Communities)

1. The documents relating to the invitation to tender shall clearly state whether a firm, non-revisable price must be quoted.

2. If that is not the case, the documents relating to the invitation to tender shall lay down the conditions and/or formulas for revision of prices during the lifetime of the contract. In such cases the contracting authority shall take particular account of:

(a) the object of the procurement procedure and the economic situation in which it is taking place;

(b) the type of tasks and contract and their duration;

(c) its financial interests.

Article 93

Administrative and financial penalties

(Article 93 to 96 and 114 of the Financial Regulation applicable to the general budget of the Communities)

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure shall be excluded from all contracts and grants financed by the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

That period may be extended to three years in the event of a repeat offence within five years of the first infringement.

Tenderers or candidates who have been guilty of making false declarations shall also receive financial penalties representing 2 % to 10 % of the total value of the contract being awarded. Contractors who have been found to have seriously failed to meet their contractual obligations shall receive 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 offence within five years of the first infringement.

2. Candidates or tenderers shall be excluded from all contracts and grants for a maximum of two years in the following cases:

(a) In case they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) In case they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

(c) In case they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

The two years of exclusion from contracts and grants are calculated starting from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

Candidates or tenderers shall be excluded from all contracts and grants for a minimum of one year and a maximum of four years in the following cases:

(d) In case they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;

(e) In case they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

The two years of exclusion from contracts and grants are calculated starting from the date of notification of the judgment.

Those periods may be extended to five years in the event of a repeat offence within five years of the first infringement or the first judgment.

3. In particular, the cases referred to in point (e) above 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(14);

(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(15);

(c) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council(16);

(d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC(17).

4. Candidates or tenderers shall also be excluded from participation in a procurement procedure if following another procurement procedure or grant award procedure financed by the Agency budget, they have been declared to be in serious breach of contract for failure to comply with the contractual obligations.

5. Candidates or tenderers must certify that they are not in one of the situations listed in paragraphs 2, 3 and 4.

6. Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:

(a) are subject to a conflict of interest;

(b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

Article 94

Evidence

(Article 96 of the Financial Regulation applicable to the general budget of the Communities)

1. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in one of the situations described in point (a), (d) or (e) of Article 93 (2), production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.

2. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (c) of Article 93 (2), a recent certificate issued by the competent authority of the State concerned.

Where no such certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or

administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3. Depending on the national legislation of the country in which the tenderer or candidate is established, the documents referred to in paragraphs 1 and 2 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

Article 95

Selection criteria

(Article 97 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. The contracting authorities shall draw up clear and non-discriminatory selection criteria.

2. The following selection criteria shall apply in every procurement procedure:

(a) the eligibility of the tenderer or candidate to take part in the procedure, checks having been carried out on the possible grounds for exclusion referred to in Article 93;

(b) criteria for assessing his financial, economic, technical and professional capacity.

The contracting authority may lay down minimum capacity levels below which it cannot select candidates.

3. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.

4. The contracting authorities shall specify in the contract notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.

5. The information requested by the contracting authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

Article 96

Economic and financial capacity

(Article 97 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. Proof of economic and financial capacity may be furnished by one or more of the following documents:

(a) appropriate statements from banks or evidence of professional risk indemnity insurance;

(b) the presentation of balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established;

(c) a statement of overall turnover and turnover concerning the works, supplies or services covered by the contract during a period which may be no more than the last three financial years.

2. If, for some exceptional reason which the contracting authority considers justified, the tenderer or candidate is unable to provide the references requested by the contracting authority, he may prove his economic and financial capacity by any other means which the contracting authority considers appropriate.

3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links, which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Article 97

Technical and professional capacity

(Article 97 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraphs 2 and 3. In procurement procedures for supplies requiring siting or installation operations, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.

2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of the following documents:

(a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;

(b) a list:

(i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;

(ii) of the works carried out in the last five years, with the sums, dates and place. The list of the most important works shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;

(c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;

(d) a description of the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;

(e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;

(f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;

(g) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;

(h) an indication of the proportion of the contract which the service provider may intend to subcontract.

Where the services or supplies referred to in point (b)(i) of the first subparagraph are provided to contracting authorities, evidence of performance shall be in the form of certificates issued or countersigned by the competent authority.

3. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

4. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Article 98

Award arrangements and criteria

(Article 97 (2) of the Financial Regulation applicable to the general budget of the Communities)

1. Contracts shall be awarded in one of the following two ways:

(a) under the automatic award procedure, in which case the contract is awarded to the tender which, while being in order and satisfying the conditions laid down, quotes the lowest price;

(b) under the best-value-for-money procedure.

2. The tender offering the best value for money shall be the one with the best price-quality ratio, taking into account criteria justified by the subject of the contract such as the price quoted, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, profitability completion or delivery times, after-sales service and technical assistance.

3. The contracting authority shall specify, in the contract notice or in the specifications, the weighting it will apply to each of the criteria for determining best value for money.

The weighting applied to price in relation to the other criteria must not result in the neutralisation of price in the choice of contractor.

If, in exceptional cases, weighting is technically impossible, particularly on account of the subject of the contract, the contracting authority shall merely specify the decreasing order of importance in which the criteria are to be applied.

Article 99

Abnormally low tenders

(Article 97 (2) of the Financial Regulation applicable to the general budget of the Communities)

1. If, for a given contract, tenders appear to be abnormally low, the contracting authority shall, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements, after due hearing of the parties, taking account of the explanations received.

The contracting authority may, in particular, take into consideration explanations relating to:

- (a) the economics of the manufacturing process, of the provision of services or of the construction method;
- (b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
- (c) the originality of the tender.

2. Where the contracting authority establishes that a tender is abnormally low as a result of State aid provided, it may reject the tender on that ground alone only if the tenderer is unable to prove, within a reasonable time determined by the contracting authority, that the aid in question has been awarded definitively and in accordance with the procedures and decisions specified in the Community rules on State aid.

Article 100

Time limits for receipt of tenders and requests to participate

(Article 98 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. The time limits for the receipt of tenders and requests to participate, laid down in calendar days by the contracting authorities, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders, taking particular account of the complexity of the contract or the need to visit the site or consult on the spot the documents annexed to the specifications.

2. In open procedures, the time limit for the submission of tenders shall be no less than fifty-two days from the date on which the contract notice is dispatched.

3. In restricted and negotiated procedures where a contract notice is published, 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.

In restricted procedures for contracts above the thresholds set in Article 118, the time limit for the submission of tenders shall be no less than forty days from the date on which the invitation to tender is dispatched.

In the restricted procedures referred to in Article 88, the time-limit for the submission of tenders shall be no less than twenty-one days from the date on which the invitation to tender is dispatched.

4. Where the contracting authorities, in accordance with Article 78, have sent for publication a pre-information notice containing all the information required in the contract notice no less than fifty-two days and no more than twelve months before the date on which the contract notice is dispatched, the time-limit for the submission of tenders may generally be reduced to thirty-six days but shall in no circumstances be less than twenty-two days from the date of dispatch of the contract notice, in the case of open procedures, or may be reduced to twenty-six days from the date of dispatch of the invitation to submit a tender, in the case of restricted procedures.

Article 101

Time allowed for access to invitation to tender documents

(Article 98 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. Provided that the request was made in good time before the deadline for submission of tenders, the specifications and additional documents shall be sent, within six calendar days of the receipt of the request, to all economic operators who have requested the specifications or expressed interest in submitting a tender.

2. Provided it has been requested in good time, additional information relating to the specifications shall be supplied simultaneously to all economic operators who have requested the specifications or expressed interest in submitting a tender no later than six days before the deadline set for the submission of tenders or, in the case of requests for information received less than eight calendar days before the deadline set for the submission of tenders, as soon as possible after receipt of the request.

3. If, for whatever reason, the specifications and the additional documents or information cannot be supplied within the time-limits set in paragraphs 1 and 2, or where tenders can be made only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time-limits for the receipt of tenders referred to in Article 100 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. That extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 78 to 81.

4. If all the invitation to tender documents are freely, fully and directly accessible by electronic means, the contract notice referred to in Article 78 (3) shall give the Internet address at which those documents can be consulted.

In such cases any additional documents and information shall also be made freely, fully and directly accessible as soon as they are supplied to all the economic operators who have requested the specifications or expressed interest in submitting a tender.

Article 102

Time limits in urgent cases

(Article 98 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. Where duly substantiated urgency renders impracticable the time-limits laid down in Article 100 (3), contracting authorities may set the following time limits, expressed in calendar days:

(a) a time limit for the receipt of requests to participate which may not be less than fifteen days from the date on which the contract notice was dispatched;

(b) a time limit for the receipt of tenders which may not be less than ten days from the date of the invitation to tender.

2. Provided it has been requested in good time, additional information on the specifications shall be communicated to all candidates no later than four calendar days before the deadline for receipt of tenders.

Article 103

Methods of communication

(Article 98 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. Requests to participate shall be submitted by letter, fax or electronic mail; requests submitted by fax or electronic mail shall be confirmed by letter before expiry of the time-limits set in Article 100.

2. Tenderers may submit tenders:

(a) by post, for which purposes the invitation to tender documents shall specify that the relevant date is to be the date of dispatch by registered post, as evidenced by the postmark; or

(b) by hand-delivery to the premises of the institution, at the latest on the date and time indicated as submission deadline in the tender documents by the tenderer in person or by an agent, including courier service for which purposes the invitation to tender documents shall specify, in addition to the information referred to in point (a) of Article 90 (2), the department to which tenders are to be delivered against a signed and dated receipt.

3. In order to maintain secrecy and to avoid any difficulties where tenders are sent by letter, the invitation to tender must include the following provision:

"Tenders must be submitted in a sealed envelope itself enclosed within a second sealed envelope. The inner envelope must bear, in addition to the name of the department to which it is addressed, as indicated in the invitation to tender, the words Invitation to tender - Not to be opened by the mail service. If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across that tape."

Article 104

Tender guarantees

(Article 98 (2) of the Financial Regulation applicable to the general budget of the Communities)

The contracting authority may require a tender guarantee, lodged in accordance with Article 110, representing 1 % to 2 % of the total value of the contract.

A tender guarantee shall be released when the contract is awarded. If no tender is submitted by the deadline set or if the tender is subsequently withdrawn, the guarantee shall be retained.

Article 105

Opening of tenders and requests to participate

(Article 98 (3) of the Financial Regulation applicable to the general budget of the Communities)

1. All requests to participate and tenders that satisfy the requirements of Article 103 (1) and (2), shall be opened.

2. Where the value of a contract exceeds the threshold laid down in Article 89 (2), the authorising officer responsible shall appoint a committee to open the tenders.

The committee shall be made up of at least three persons representing at least two organisational entities of the Agency with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down below:

(a) All financial actors shall be prohibited from taking any measures of budgetary implementation which may bring their own interests into conflict with those of the Communities. Should such a case arise, the actor in question must refrain from such measures and refer the matter to the competent authority.

(b) There is a conflict of interests where the impartial and objective exercise of the functions of a player in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary

3. One or more members of the opening committee shall initial the documents proving the date and time of dispatch of each tender.

They shall also initial:

(a) either each page of each tender; or

(b) the cover page and the pages containing the financial details of each tender, the integrity of the initial tender being guaranteed by any appropriate technique employed by a department that is independent of the authorising department, save in the cases referred to in the third subparagraph of paragraph 2.

Where the contract is awarded under the automatic award procedure in accordance with point (a) of Article 98 (1), the prices quoted in tenders satisfying the requirements shall be made public.

The members of the committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which satisfy the requirements and those which

do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 103.

Article 106

Committee for the evaluation of tenders and requests to participate

(Article 98 (4) of the Financial Regulation applicable to the general budget of the Communities)

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance.

That committee shall be appointed by the authorising officer responsible to give an advisory opinion for contracts with a value above the threshold referred to in Article 89 (2).

2. The evaluation committee shall be made up of at least three persons representing at least two organisational entities of the Agency with no hierarchical link between them. To avoid any conflict of interests the provisions of Article 105 (2), shall apply.

The evaluation committee may be composed of the same members as the committee opening the tenders.

3. Requests to participate and tenders which do not satisfy all the essential requirements set out in the supporting documentation for invitations to tender or the specific requirements laid down therein shall be eliminated.

However, the evaluation committee may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within a specified time-limit.

4. In the case of abnormally low tenders as referred to in Article 99, the evaluation committee shall request any relevant information concerning the composition of the tender.

Article 107

Results of the evaluation

(Article 99 and 100 of the Financial Regulation applicable to the general budget of the Communities)

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. It shall be signed by all the members of the evaluation committee. It shall be kept for future reference.

2. That written record shall contain at least the following:

(a) the name and address of the contracting authority, and the subject and value of the contract or of the framework contract;

(b) the names of the candidates or tenderers rejected and the reasons for their rejection;

(c) the names of the candidates or tenderers to be examined and the reasons for their selection;

(d) the reasons for the rejection of tenders found to be abnormally low;

(e) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.

3. The contracting authority shall then take its decision giving at least the following:

(a) the name and address of the contracting authority, and the subject and value of the contract or of the framework contract;

(b) the names of the candidates or tenderers rejected and the reasons for their rejection;

(c) the names of the candidates or tenderers to be examined and the reasons for their selection;

(d) the reasons for the rejection of tenders found to be abnormally low;

(e) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;

(f) in the case of negotiated procedures, the circumstances referred to in Articles 86 and 87 which justify their use;

(g) where appropriate, the reasons why the contracting authority has decided not to award a contract.

Article 108

Contacts between contracting authorities and tenderers

(Article 99 of the Financial Regulation applicable to the general budget of the Communities)

1. Contact between the contracting authority and tenderers during the contract award procedure may take place, by way of exception, under the conditions set out in paragraphs 2 and 3.

2. Before the closing date for the submission of tenders, in respect of the additional documents and information referred to in Article 101, the contracting authority may:

(a) at the instance of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract, such information to be communicated on the same date to all tenderers who have asked for the specifications;

(b) at its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the contract notice, invitation to tender or specifications, inform the persons concerned on the same date and in a manner identical with that applicable in respect of the original invitation to tender.

3. If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the tender must be corrected, the contracting authority may contact the tenderer, although such contact may not lead to any alteration of the terms of the tender.

4. In every case where contact has been made, a "note for the file" shall be drawn up.

Article 109

Information for candidates and tenderers

(Article 100 (2) and 101 of the Financial Regulation applicable to the general budget of the Communities)

1. The Agency shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.

2. The Agency shall, within not more than fifteen calendar days from the date on which a written request is received, notify all candidates or tenderers whose applications or tenders are rejected of the grounds on which the decision was taken, and all tenderers whose tenders are admissible and who make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

Section 4
Guarantees and control

Article 110

Advance guarantee

(Article 102 of the Financial Regulation applicable to the general budget of the Communities)

1. Where suppliers, contractors or service providers are required to lodge a guarantee in advance, it must be for an amount and a period that are sufficient for it to be activated.

2. The guarantee shall be supplied by a bank or an authorised financial institution. It may be replaced by a joint and several guarantee by a third party.

The guarantee shall be denominated in euro.

It shall have the effect of making the bank or financial institution or the third party stand as irrevocable collateral security, or first-call guarantor of the contractor's obligations.

Article 111

Performance guarantee

(Article 102 of the Financial Regulation applicable to the general budget of the Communities)

1. A performance guarantee may be demanded by the authorising officer in accordance with the usual commercial terms for supply and service contracts and in accordance with the special specifications for works contracts.

This guarantee shall be mandatory above EUR 345 000 for works contracts.

2. A guarantee corresponding to 10 % of the total value of the contract may be constituted by deductions from payments as and when they are made.

It may be replaced by an amount withheld from the final payment in order to constitute a guarantee until final acceptance of the services, supplies or works.

3. Guarantees shall be released in accordance with the terms of the contract, save where the contract has not been performed or has been performed incorrectly or completion is late. In such cases a proportion of the guarantee shall be retained in proportion to the seriousness of the damage suffered.

Article 112

Guarantee for pre-financing

(Article 102 of the Financial Regulation applicable to the general budget of the Communities)

A guarantee shall be required in return for the payment of pre-financing exceeding EUR 150 000.

The guarantee shall be released as and when the pre-financing is deducted from interim payments or payments of balances to the contractor in accordance with the terms of the contract.

Article 113

Suspension in the event of errors or irregularities

(Article 103 of the Financial Regulation applicable to the general budget of the Communities)

1. Where the award procedure or performance of the contract is vitiated by substantial errors or irregularities or by fraud, the institutions shall suspend performance of the contract in order to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible.

Where such errors, irregularities or fraud are attributable to the contractor, the institutions may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.

2. A substantial error or irregularity shall be any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the Agency budget.

CHAPTER 2

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

Article 114

Identification of the appropriate level for the calculation of thresholds

(Article 104 of the Financial Regulation applicable to the general budget of the Communities)

It shall be for each authorising officer by delegation or sub-delegation within each institution to assess whether the following thresholds have been reached:

- (a) the publication arrangements referred to in Article 78;
- (b) the choice of procedures referred to in Article 82;
- (c) the corresponding time limits.

Article 115

Separate contracts and contracts with lots

(Article 105 of the Financial Regulation applicable to the general budget of the Communities)

1. The estimated value of a contract may not be determined with a view to evading the requirements laid down in this Regulation, nor may a contract be split up for that purpose.
2. Where the subject of a service or works contract is subdivided into several lots, each one the subject of an individual contract, the value of each lot shall be taken into account for the overall evaluation of the applicable threshold.

Where the overall value of lots is equal to or exceeds the thresholds laid down in Article 118, the provisions of the Financial regulation applicable to the general budget of the European Communities shall apply to each of the lots, save those with an estimated value of less than EUR 80 000 in the case of service contracts, or less than EUR 1 000 000 in the case of works contracts, provided that the aggregate amount of those lots does not exceed 20 % of the aggregate value of all the lots making up the contract in question.

3. Where the planned purchase of standard supplies may give rise to simultaneous contracts in separate lots, the estimated value of all those lots shall be taken as the basis for determining the applicable threshold.

Article 116

Arrangements for estimating the value of certain contracts

(Article 105 of the Financial Regulation applicable to the general budget of the Communities)

1. For the purposes of calculating the estimated amount of a contract, the contracting authority shall include the contractor's total estimated remuneration.

Where a contract provides for options, the basis for calculation shall be the maximum amount authorised, including the use of option clauses.

2. For service contracts, account shall be taken of:

- (a) in the case of insurance services, the premium payable;
- (b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;
- (c) in the case of design contracts, the fees, prizes or commissions payable.

3. In the case of service contracts which do not specify a total price or of supply contracts for leasing, rental or hire purchase of products, the value to be taken as the basis for calculating the estimated value shall be:

- (a) in the case of fixed-term contracts:

- (i) where their term is forty-eight months or less in the case of services or twelve months or less in the case of supplies, the total contract value for their duration;

(ii) where their term is more than twelve months in the case of supplies, the total value including the estimated residual value;

(b) in the case of contracts for an indefinite period or, in the case of services, for a period exceeding forty-eight months, the monthly value multiplied by forty-eight.

4. In the case of service or supply contracts which are awarded regularly or are to be renewed within a given time, the contract value shall be established on the basis of:

(a) either the actual aggregate cost of similar contracts for the same categories of services or products awarded over the previous financial year or twelve months, adjusted, where possible, for anticipated changes in quantity or value over the twelve months following the initial contract;

(b) or the estimated aggregate cost of successive contracts during the twelve months following the first service performed or first delivery or during the term of the contract, where this is greater than twelve months.

5. In the case of works contracts, account shall be taken not only of the value of the works but also of the estimated total value of the supplies needed to carry out the works and made available to the contractor by the contracting authority.

Article 117

Thresholds for pre-information notices

(Article 105 of the Financial Regulation applicable to the general budget of the Communities)

The thresholds provided for in Article 78 for publication of a pre-information notice shall be:

(a) EUR 750 000 for the supply and service contracts listed in Annex IA to Directive 92/50/EEC;

(b) EUR 6 242 028 for works contracts.

Article 118

Thresholds for application of the procedures under the public procurement directives

(Article 105 of the Financial Regulation applicable to the general budget of the Communities)

1. The thresholds referred to in Article 105 of the Financial regulation applicable to the general budget of the European Communities shall be:

(a) EUR 162 293 for the supply and service contracts listed in Annex IA to Directive 92/50/EEC, with the exception of the research and development contracts listed in category 8 of that Annex;

(b) EUR 200 000 for the service contracts listed in Annex IB to Directive 92/50/EEC and for the research and development service contracts listed in category 8 of Annex IA to that Regulation;

(c) EUR 6 242 028 for works contracts.

2. The time limits referred to in Article 105 of the Financial regulation applicable to the general budget of the European Communities shall be those specified in Articles 100, 101 and 102.

Article 119

Evidence of access to contracts

(Article 106 and 107 of the Financial Regulation applicable to the general budget of the Communities)

The specifications shall require tenderers to indicate in which State they have their headquarters or domicile and to present the supporting evidence normally acceptable under their own law.

TITLE VI GRANTS

CHAPTER 1 Scope

Article 120

Scope

(Article 108 of the Financial Regulation applicable to the general budget of the Communities)

1. Grants are direct financial contributions, by way of donation, from the budget in order to finance:

(a) either an action intended to help achieve an objective forming part of a European Union policy (grants for an action);

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

They shall be covered by a written agreement.

2. The following shall not constitute grants within the meaning of this Title:

(a) expenditure on the institutions' staff, loans and shareholdings, the public contracts referred to in Article 88 of the Financial regulation applicable to the general budget of the Communities and aid paid as macrofinancial assistance;

(b) expenditure implemented as part of shared, decentralised or joint management within the meaning of Article 53 of the Financial regulation applicable to the general budget of the Communities;

(c) payments made to the delegate bodies of the Agency referred to in Articles 54 and 55 of the Financial regulation applicable to the general budget of the European Communities and the other Community bodies referred to in Article 185 of the Financial regulation applicable to the general budget of the Communities.

(d) the procedure for the award of grants and the conclusion of agreements by the Agency with the bodies referred to in Article 54 of the Financial regulation applicable to the general budget of the Communities, in respect of the co-financing of their administrative expenditure and for the purposes of making available the operating appropriations which they are delegated to manage, and with the beneficiaries of financing agreements as referred to in Article 166 of that Regulation.

3. Contributions paid by the Agency, as subscriptions to bodies of which it is a member are not governed by the provisions of this Title.

Article 121

Actions which may receive grants

(Article 108 of the Financial Regulation applicable to the general budget of the Communities)

An action which may receive a grant within the meaning of paragraphs 1 above must be clearly identified.

No action may be split for the purpose of evading the financing rules laid down in this Regulation.

Article 122

Bodies pursuing an aim of general European interest

(Article 108 of the Financial Regulation applicable to the general budget of the Communities)

A body pursuing an aim of general European interest is:

- (a) European body involved in education, training, information or research and study in European policies or a European standards body; or
- (b) European network representing non-profit bodies active in the Member States or in the candidate countries and promoting principles and policies consistent with the objectives of the Treaties.

Article 123

Partnerships

(Article 108 of the Financial Regulation applicable to the general budget of the Communities)

1. Specific grant agreements may form part of framework partnership agreements.
2. A framework partnership agreement may be concluded with beneficiaries with a view to establishing long-term cooperation with the Agency.

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

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

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

3. Partnership framework agreements shall be treated as grants for the purposes of the award procedure; they shall be subject to the ex ante advertising procedures referred to in Article 127.

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

They shall be subject to the ex post publication procedures laid down in Article 129.

5. Only the specific agreements based on the framework agreements shall be preceded by a budget commitment.

Article 124

Content of grant agreements

(Article 108 of the Financial Regulation applicable to the general budget of the Communities)

1. The agreement shall in particular lay down:

- (a) the subject;
- (b) the beneficiary;
- (c) the duration, namely:
 - (i) the date of its entry into force and its termination;
 - (ii) the starting date and the duration of the action or financial year being funded;
- (d) the maximum possible funding, in the form of:
 - (i) the maximum amount of the grant; and
 - (ii) the maximum rate of funding of the eligible costs of the action or approved work programme, save in the case of the flat-rate amounts referred to in Article 141 (1);
- (e) a detailed description of the action or, for an operating grant, of the work programme approved for that financial year by the authorising officer;
- (f) the general terms and conditions applicable to all agreements of this type, such as determination of the applicable law, the court competent to hear disputes and acceptance by the beneficiary of audits by the Agency, OLAF and the Court of Auditors and of the ex post publication rules referred to in Article 129, in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽¹⁸⁾. The agreement may lay down the arrangements and time-limits for suspension in accordance with Article 143;
- (g) the estimated overall budget and details of the eligible costs of the action or approved work programme, save in the case of the flat-rate amounts referred to in Article 141 (1);
- (h) where implementation of the action involves procurement, the principles referred to in Article 115 or the procurement rules which the beneficiary must comply with;
- (i) the responsibilities of the beneficiary, in particular in terms of sound financial management and submission of activity and financial reports;
- (j) the arrangements and time-limits for approving those reports and for payment by the Commission.

2. In the cases referred to in Article 123, the framework 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 agreement shall contain the information referred to in points (a), (b) (c), (d), (e), and (g) of paragraph 1 and, where necessary, point (i) thereof.

3. Grant agreements may be amended only by written additional agreements. Such additional agreements shall not have the purpose or the effect of making such changes to

agreements as would call into question the grant award decision or be contrary to the equal treatment of applicants.

CHAPTER 2

Award principles

Article 125

No-profit rule

(Article 109 (2) of the Financial Regulation applicable to the general budget of the Communities)

1. The grant may not have the purpose or effect of producing a profit for the beneficiary. Profit shall be defined as:

(a) a surplus of receipts over the costs of the action in question when the request is made for final payment of a grant for an action, subject to the second subparagraph;

(b) a surplus balance on the operating budget of a body in receipt of an operating grant.

In the case of actions designed specifically to strengthen the financial capacity of a beneficiary, in the field of external action, the distribution to the members making up the beneficiary body of a grant for an action of the surplus revenue resulting from its activity, leading to their personal enrichment, shall also be considered as profit.

2. The provisions of paragraph 1 shall not apply to study, research or training scholarships paid to natural persons, nor to prizes awarded following contests, nor in the case of the flat-rate amounts referred to in Article 141 (1).

Article 126

Annual programming

(Article 110 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. The annual work programme for grants shall be adopted by the Agency. It shall be published on the grants Internet site of the Commission by no later than 31 January each financial year.

The work programme shall specify the basic act, the objectives, the schedule of calls for proposals with the indicative amount and the results expected.

2. Any substantial change in the grants programme shall also be published as specified in paragraph 1.

Article 127

Content of calls for proposals

(Article 110 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. Calls for proposals shall specify:

- (a) the objectives pursued;
 - (b) the eligibility, selection and award criteria as referred to in Articles 114 and 115 of the Financial regulation applicable to the general budget of the European Communities, and the relevant supporting documents;
 - (c) the arrangements for the Agency financing;
 - (d) the arrangements and final date for the submission of proposals and the possible start-up date for the actions and the planned date for closing the award procedure.
2. Calls for proposals shall be published on the Internet site of the European institutions and by any other appropriate medium, including the Official Journal of the European Communities, in order to provide maximum publicity among potential beneficiaries.

Article 128

Exceptions to calls for proposals

(Article 110 (1) of the Financial Regulation applicable to the general budget of the Communities)

1. Grants may be awarded without a call for proposals only in the following cases:
- (a) in other exceptional and duly substantiated emergencies;
 - (b) to bodies with a de jure or de facto monopoly, duly substantiated in the Agency's award decision;
 - (c) to bodies identified by a basic act as recipients of a grant.

Article 129

Ex post publication

(Article 110 (2) of the Financial Regulation applicable to the general budget of the Communities)

1. All grants awarded in the course of a financial year, except scholarships paid to natural persons, shall be published on the Internet site of the Agency during the first half of the year following the closure of the budget year in respect of which they were awarded.

In cases where management is delegated to the bodies referred to in Article 54 of the Financial regulation applicable to the general budget of the European Communities, reference shall be made at least to the address of the website where this information can be found if it is not published directly on the Internet site of the Agency.

The information may also be published by any other appropriate medium, including the Official Journal of the European Communities.

2. The following shall be published with the agreement of the beneficiary in accordance with point (f) of Article 124 (1):

- (a) the name and address of the beneficiaries;
- (b) the subject of the grant;

(c) the amount awarded and, save in the case of the flat-rate amounts referred to in Article 141 (1), the rate of funding of the costs of the action or approved work programme.

The obligation laid down in the first subparagraph may be waived if publication of the information may threaten the safety of the beneficiaries or harm their business interests.

Article 130

Joint financing

(Article 111 of the Financial Regulation applicable to the general budget of the Communities)

An action may be financed jointly from separate budget lines by a number of authorising officers.

Article 131

External co-financing

(Article 113 of the Financial Regulation applicable to the general budget of the Communities)

1. The beneficiary shall supply evidence of the co-financing provided, either by way of own resources, or in the form of financial transfers from third parties, or in kind, save in the case of the flat-rate amounts referred to in Article 141 (1).

2. The authorising officer may, in duly substantiated exceptional cases, accept co-financing in kind. In such cases the value of such contributions must not exceed:

(a) either the costs actually borne and duly supported by accounting documents;

(b) or the costs generally accepted on the market in question.

Contributions involving real estate as referred to in Article 76 (1) shall be excluded from the calculation of the amount of co-financing.

CHAPTER 3 ***Award procedure***

Article 132

Financing applications

(Article 114 of the Financial Regulation applicable to the general budget of the Communities)

1. Applications shall be made on the form distributed by the authorising officers responsible and in accordance with the criteria laid down in the basic act and the call for proposals.

2. The application shall show that the applicant exists as a legal person and has the financial and operational capacity to complete the proposed action or work programme, subject to Article 136 (4).

For that purpose the authorising officer shall request a declaration from potential beneficiaries on their honour. The profit and loss account, the balance sheet for the last financial year for which the accounts have been closed and any other supporting document requested in the call for proposals shall, depending on the analysis of management risks

conducted by the authorising officer responsible on his own responsibility, also be attached to the application.

3. The budget for the action or the operating budget attached to the application must have revenue and expenditure in balance and show clearly the costs which are eligible for financing from the Agency budget, save in the case of the flat-rate amounts referred to in Article 141 (1).

4. For actions where the cost to be financed exceeds EUR 300 000 and for operating grants of over EUR 75 000, the application shall be accompanied by an external audit report produced by an approved auditor. That report shall certify the accounts for the last financial year available and give an assessment of the financial viability of the applicant within the meaning of Article 136 (2).

The provisions of the first subparagraph shall apply only to the first application made by a beneficiary to an authorising officer in any one budget year.

In the case of agreements linking the Agency and a number of beneficiaries, those thresholds shall apply to each beneficiary.

In the case of partnerships as referred to in Article 123, an external audit covering the last two financial years available must be produced before the framework agreement is concluded.

The authorising officer responsible may, depending on his analysis of management risks, waive that obligation for public bodies, secondary and higher education establishments, the international organisations referred to in Article 19, and beneficiaries who have accepted joint and several liability in the case of agreements with a number of beneficiaries.

5. The applicant shall indicate the sources and amounts of any other funding received or applied for in the same financial year for the same action or for any other action and for routine activities.

Article 133

Proof of applicants' eligibility

(Article 114 of the Financial Regulation applicable to the general budget of the Communities)

Applicants shall declare on their honour that they are not in one of the situations listed in Article 93 (2). The authorising officer responsible may, depending on the analysis of management risks, request the evidence referred to in Article 94. Applicants shall be bound to supply such proof, unless there is a material impossibility recognised by the authorising officer responsible.

Article 134

Financial and administrative penalties

(Article 114 of the Financial Regulation applicable to the general budget of the Communities)

1. Applicants who are found guilty of false declarations may receive financial penalties in accordance with the conditions laid down in Article 93 in proportion to the value of the grants in question.

Beneficiaries who have been found to have seriously failed to meet their contractual obligations may receive financial penalties in accordance with the same conditions.

2. Applicants and beneficiaries who are in one of the situations referred to in Articles 93 to 96 of the Financial regulation applicable to the general budget of the European Communities may also be excluded from Agency grants and contracts in accordance with the conditions laid down in Article 93.

Article 135

Selection criteria

(Article 115(1) of the Financial Regulation applicable to the general budget of the Communities)

1. The selection criteria shall be published in the call for proposals and shall be such as to make it possible to assess the applicant's financial and operational capacity to complete the proposed action or work programme.
2. The applicant must have stable and sufficient sources of funding to maintain his activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. The applicant must have the professional competencies and qualifications required to complete the proposed action or work programme unless specifically provided otherwise in the basic act.
3. Financial and operational capacity shall be verified in particular on the basis of an analysis of the supporting documents referred to in Article 133.
4. The verification of financial capacity shall not apply to natural persons in receipt of scholarships nor to public bodies, nor to the international organisations referred to in Article 19.

In the case of the partnerships referred to in Article 123, that verification shall be performed before the framework agreement is concluded.

Article 136

Award criteria

(Article 115(2) of the Financial Regulation applicable to the general budget of the Communities)

1. The award criteria shall be published in the call for proposals.
2. The award criteria shall be such as to enable grants to be awarded either to the actions which maximise the overall effectiveness of the programme which they implement or to the bodies whose work programme is designed to attain the same result. Those criteria shall be defined in such a way as to ensure also that the Agency funds are properly managed.

These criteria shall be applied in such a way as to enable the selection of planned actions or work programmes which the Agency can be confident will comply with its objectives and priorities and guarantee the visibility of its financing.

3. The award criteria shall be defined in such a way that it will be possible subsequently to carry out an evaluation.

Article 137

Evaluation of applications and award

(Article 116 of the Financial Regulation applicable to the general budget of the Communities)

1. The authorising officer responsible shall appoint a committee to evaluate the proposals, save in the case of a Agency decision on a specific sectoral programme.

The committee shall be made up of at least three persons representing at least two organisational entities of the Agency with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in points (a) and (b) of Article 105 (2).

In the delegated bodies referred to in Article 120 (1), if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

Outside experts may assist the committee by decision of the authorising officer responsible.

2. The evaluation committee may ask an applicant to provide additional proof or to clarify the supporting documents establishing financial and operational capacity, within a specified time limit.

3. Upon completion of its work, the members of the evaluation committee shall sign a record of all the proposals examined, containing an assessment of their quality and identifying those, which may receive funding. Where necessary that record shall rank the proposals examined.

The record shall be kept for future reference.

4. The authorising officer responsible shall then take his decision giving at least:

(a) the subject and the overall amount of the decision;

(b) the name of the beneficiaries, the title of the actions, the amounts accepted and the reasons for that choice, including where it is inconsistent with the opinion of the evaluation committee;

(c) the names of any applicants rejected and the reasons for that rejection.

5. The provisions of paragraphs 1 to 4 shall not apply to beneficiaries of grants who are identified in the basic act.

Article 138

Information for applicants

(Article 116 of the Financial Regulation applicable to the general budget of the Communities)

Applicants shall be informed within fifteen calendar days after the award decision has been sent to the beneficiaries.

CHAPTER 4

Payment and control

Article 139

Supporting documents for requests for payments

(Article 117 of the Financial Regulation applicable to the general budget of the Communities)

1. For each grant, where pre-financing is split, each new payment shall be subject to consumption of at least 70 % of the total amount of any earlier pre-financing. The statement of the beneficiary's outlay shall be produced in support of any request for a new payment.

2. An external audit of the accounts produced by an approved auditor may be demanded by the authorising officer responsible in support of any payment on the basis of his analysis of management risks. In the case of a grant for an action or of an operating grant, the audit report shall be attached to the request for payment. Its purpose is to certify that the submitted accounts are sincere, reliable and substantiated by adequate supporting documents.

An external audit shall be compulsory:

(a) in the case of grants for an action laid down by the art 160(1), in respect of the following payments:

(i) pre-financing or interim payments the sum of which exceeds EUR 750 000 per financial year and per agreement;

(ii) payments, of balances, which exceed EUR 150 000;

(b) in the case of operating grants laid down by the art 160 (1), in respect of payments which exceed EUR 750 00 per financial year.

However, in the cases referred to in points (a) and (b), an audit shall not be necessary in respect of the first pre-financing payment.

Depending on his analysis of management risks, the authorising officer responsible may waive the audit obligation in the case of:

(a) public bodies and the international organisations referred to in Article 19;

(b) the beneficiaries of grants in connection with humanitarian aid and the management of crisis situations, save in respect of payments of balances.

In the case of an agreement linking the Agency and a number of beneficiaries, the thresholds referred to in points (a) and (b) of the second subparagraph shall apply to each beneficiary.

Article 140

Flat-rate financing

(Article 117 of the Financial Regulation applicable to the general budget of the Communities)

1. In addition to cases of scholarships and prizes, the basic act may authorise flat-rate financing for contributions of less than EUR 5 000 or the use of scales of unit costs.

In order to ensure compliance with the principles of co-financing, no-profit and sound financial management, those flat-rate amounts and scales shall be reviewed at least every

two years by the authorising officer responsible. The amounts shall be approved by the Agency.

2. The grant agreement may authorise flat-rate cover:

(a) of the beneficiary's overheads up to a maximum of 7 % of total eligible costs for the action, save where the beneficiary is in receipt of an operating grant financed from the Agency budget;

(b) of certain mission expenses on the basis of a per diem scale approved annually by the Agency.

The ceiling provided for in point (a) of the first subparagraph may be exceeded by reasoned decision of the Agency.

Article 141

Advance guarantee

(Article 118 of the Financial Regulation applicable to the general budget of the Communities)

1. The authorising officer responsible may require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

2. Where pre-financing represents over 80 % of the total amount of the grant, payment may not be made until after the beneficiary has lodged a guarantee subject to the assessment and acceptance of the authorising officer responsible.

For NGOs operating in the field of external action, that guarantee shall be demanded in respect of pre-financing exceeding EUR 1 000 000 or representing over 90 % of the total amount of the grant.

The guarantee shall be valid for a period sufficiently long to allow it to be activated.

3. The guarantee shall be provided by an approved bank or financial institution established in one of the Member States.

The guarantee may be replaced by a joint and several guarantee by a third party or by the joint guarantee of the beneficiaries of an action who are parties to the same grant agreement.

The guarantee shall be denominated in euro.

It shall have the effect of making the bank or financial institution, third party or the other beneficiaries stand as irrevocable collateral security, or first-call guarantor of the grant beneficiary's obligations.

4. The guarantee shall be released as the pre-financing is gradually cleared against interim payments or payments of balances to the beneficiary in accordance with the conditions laid down in the grant agreement.

5. The authorising officer responsible may waive the obligation laid down in paragraph 2 for public-sector bodies and the international organisations referred to in Article 19.

The authorising officer responsible may also exempt from that obligation beneficiaries who have concluded a framework partnership agreement under Article 123.

Article 142

Suspension and reduction of grants

(Article 119 of the Financial Regulation applicable to the general budget of the Communities)

1. The authorising officer responsible shall suspend payments and, depending on the stage reached in the procedure, either reduce the grant or demand reimbursement pro rata by the beneficiary or beneficiaries:

(a) where the agreed action or work programme is not carried out at all, or is not carried out properly, in full or on time;

(b) where amounts exceeding the financing ceilings set in the agreement have been paid, in particular if the agreed action or work programme has been carried out at a lower cost than initially forecast;

(c) where the budget for the action or the operating budget reveals a surplus ex post.

2. Payments may also be suspended following presumed infringements of other clauses of the agreement. The purpose of such suspension shall be to give time to check whether the presumed infringements have in fact occurred and, where appropriate, to rectify them.

CHAPTER 5
Implementation

Article 143

Implementation contracts

(Article 120 of the Financial Regulation applicable to the general budget of the Communities)

1. 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, in compliance with the principles of transparency and equal treatment for potential contractors, care being taken to avoid any conflict of interests.

2. For the purposes of paragraph 1, the authorising officer responsible may require beneficiaries to abide by special rules, determined with due respect for the value of the contracts concerned. the relative size of the Agency contribution in relation to the total cost of the action and the management risk.

In that case such rules shall be included in the grant agreement.

TITLE VII PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1 *Presentation of the accounts*

Article 144

Report on budgetary and financial management during the year

(Article 76 of the Financial Regulation)

The report on budgetary and financial management during the year shall give an accurate description of:

- (a) the achievement of the objectives for the year, in accordance with the principle of sound financial management;
- (b) the financial situation and the events which have had a significant influence on activities during the year.

Article 145

Exception to the accounting principles

(Article 78 of the Financial Regulation)

Where, in a specific case, the accounting officer considers that an exception should be made to the content of one of the accounting principles defined in Articles 146 to 153, that exception shall be duly substantiated and reported in the annex to the financial statements referred to in Article 162.

Article 146

Going-concern principle

(Article 78 of the Financial Regulation)

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

Article 147

Principle of prudence

(Article 78 of the Financial Regulation)

The principle of prudence means that assets and income shall not be overstated and liabilities and charges shall not be understated. However, the principle of prudence does not allow the creation of hidden reserves or undue provisions.

Article 148

Principle of consistent accounting methods

(Article 78 of the Financial Regulation)

1. The principle of consistent accounting methods means that the structure of the components of the financial statements and the accounting methods and valuation rules may not be changed from one year to the next.

2. The Agency's accounting officer may not depart from the principle of consistent accounting methods other than in exceptional circumstances, in particular:

(a) in the event of a significant change in the nature of the entity's operations;

(b) where the change made is for the sake of a more appropriate presentation of the accounting operations.

Article 149

Principle of comparability of information

(Article 78 of the Financial Regulation)

1. The principle of comparability of information means that for each item the financial statements shall also show the amount of the corresponding item the previous year.

2. Where, pursuant to paragraph 1, the presentation or the classification of one of the components of the financial statements is changed, the corresponding amounts for the previous year shall be made comparable and reclassified.

Where it is impossible to reclassify items, this shall be explained in the annex referred to Article 162.

Article 150

Materiality principle

(Article 78 of the Financial Regulation)

1. The materiality principle means that all operations which are of significance for the information sought shall be taken into account in the financial statements. Materiality shall be assessed in particular by reference to the nature of the transaction or the amount.

2. Transactions may be aggregated where:

(a) the transactions are identical in nature, even if the amounts are large;

- (b) the amounts are negligible;
- (c) aggregation makes for clarity in the financial statements.

Article 151

No-netting principle

(Article 78 of the Financial Regulation)

The no-netting principle means that receivables and debts may not be offset against each other, nor may charges and income, save where charges and income derive from the same transaction, from similar transactions or from hedging operations and provided that they are not individually material.

Article 152

Principle of reality over appearance

(Article 78 of the Financial Regulation)

The principle of reality over appearance means that accounting events recorded in the financial statements shall be presented by reference to their economic nature.

Article 153

Accrual-based accounting principle

(Article 78 of the Financial Regulation)

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

Article 154

Valuation of assets and liabilities

(Article 79 (2) of the Financial Regulation)

1. Assets and liabilities shall be valued at purchase price or production cost. However, the value of non-financial fixed assets and formation expenses shall be written down for depreciation. In addition a write-down may be applied where the value of an asset decreases and an increase in the value of a liability may be covered by a provision.
2. The accounting rules and methods referred to in Article 133 of the Financial Regulation applicable to the general budget of the Communities may lay down that all items or only some of them are to be valued at a value other than their purchase price.

Article 155

Provisions

(Article 79 of the Financial Regulation)

A provision shall be made only if the following conditions are satisfied:

- (a) a current obligation exists as a result of a past event;
- (b) resources representing economic benefits will probably have to be used to extinguish the obligation;
- (c) the amount of the obligation can be reliably estimated.

Article 156

Structure of the balance sheet

(Article 80 (1) (a) of the Financial Regulation)

1. The balance sheet shall be made up of the various items classified by titles and sub-titles.
2. Assets items shall be classified by increasing degree of liquidity, and liability items by increasing degree of callability.

Article 157

Presentation of the balance sheet

(Article 80 (1) (a) of the Financial Regulation)

For the presentation of the balance sheet, the accounting officer shall use at least the following headings:

Assets

- Formation expenses
- Intangible fixed assets
- Tangible fixed assets
- Financial fixed assets
- Debtors: due in over one year
- Stocks
- Debtors: due in one year or less
- Cash and cash equivalents
- Prepayments and accrued income

Liabilities

- Capital (made up of the economic result for the year, the result brought forward from earlier years and reserves)
- Provisions
- Creditors: due in over one year
- Creditors: due in one year or less
- Accruals and deferred income.

Article 158

Economic outturn account

(Article 80 (1)(a) of the Financial Regulation)

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

Article 159

Presentation of the economic outturn account

(Article 80 (1)(a) of the Financial Regulation)

For the presentation of the economic outturn account, the accounting officer shall apply the following minimum layout:

Operating income
- Operating charges
= Operating result
+/- Financial result
= Result from ordinary activities
+/- Exceptional result
= Result for the year

Article 160

Cash flow table

(Article 80 (1)(b) of the Financial Regulation)

The cash flow table shall show treasury movements.
The treasury shall be made up of the following:

- (a) cash in hand;
- (b) bank accounts and deposits payable on demand; and
- (c) other disposable assets which can quickly be converted to cash and whose value is stable.

Article 161

Cash flow classification

(Article 80 (1)(b) of the Financial Regulation)

1. The cash flow table shall show treasury movements broken down into operating flows, investment flows and financial flows.
2. The operating cash flow shall show treasury movements resulting from ordinary activities.
3. The investment cash flow shall show treasury movements resulting from the acquisition or sale of fixed assets.
4. The financial cash flow shall show the treasury movements resulting from borrowing and lending and any other financial source.

Article 162

Annex to the financial statements
(Article 80 (2) of the Financial Regulation)

The annex referred to in Article 80 (2) of the Financial Regulation shall form an integral part of the financial statements. It shall contain at least the following information:

- (a) accounting principles, rules and methods;
- (b) explanatory notes, supplying additional information not contained in the body of the financial statements which is necessary for an accurate picture;
- (c) off-balance-sheet commitments showing entitlements and obligations not included in the balance sheet which could have a material impact on the assets and liabilities, the financial situation or the result of the entity concerned.

Article 163

Explanatory notes
(Article 80 (2) of the Financial Regulation)

The explanatory notes shall be presented with cross references to the items in the financial statements to which they relate and in the same order of presentation.

Article 164

Budgetary outturn account
(Article 81 of the Financial Regulation)

1. The budgetary outturn account shall contain:

- (a) information on revenue comprising:
 - (i) changes in the revenue estimates in the budget;
 - (ii) the revenue outturn;
 - (iii) entitlements established;
- (b) information showing changes in the total commitment and payment appropriations available;
- (c) information showing the use made of the total commitment and payment appropriations available;
- (d) information showing commitments outstanding, those carried over from the previous year and those made during the year.

Article 165

Annex to the budgetary outturn account
(Article 81 of the Financial Regulation)

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

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

CHAPTER 2 **Accounting**

Section 1 **Organisation of the accounts**

Article 166

Organisation of the accounts

(Article 84 of the Financial Regulation)

1. The accounting officer of the Agency shall draw up and keep updated documents describing the organisation of the accounts and accounting procedures of his institution.
2. In drawing up the financial statements, as little use as possible shall be made of information from outside the accounts.
3. Budget revenue and expenditure shall be recorded in the computerised system referred to in Article 167, according to the economic nature of the operation, as current revenue or expenditure or as capital.

Article 167

Computerised systems

(Article 84 of the Financial Regulation)

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

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

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

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

Section 2

Accounting ledgers

Article 168

Accounting ledgers

(Article 87 of the Financial Regulation)

1. The Agency shall keep a journal, a general ledger and an inventory.
2. The accounting ledgers shall consist of electronic documents, which are identified by the accounting officer and offer full guarantees for use as evidence.
3. Entries in the journal shall be transferred to the general ledger, itemised according to the chart of accounts referred to in Article 171.
4. The journal and the general ledger may be split into as many special journals and special ledgers as are necessary to meet requirements.
5. Entries recorded in special journals and special ledgers shall be centralised at least every month in the journal and in the general ledger.

Article 169

Trial balance

(Article 87 of the Financial Regulation)

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

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

Article 170

Inventory

(Article 90 of the Financial Regulation)

1. The inventory is a statement of all assets and liabilities and commitments of all kinds, indicating for each item the quantity and value on the inventory date.
2. The data in the inventory shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.
3. As regards the inventory of fixed assets, the provisions of Articles 179 to 186 shall apply.

Section 3

Chart of accounts

Article 171

Chart of accounts

(Article 86 of the Financial Regulation)

1. The chart of accounts shall be adopted by the Commission's accounting officer.
2. The chart of accounts shall divide the accounts into classes. Each class may be subdivided into groups or subgroups, as required.
3. The chart of accounts must contain at least the following classes:
 - (a) for the balance-sheet accounts:
 - (i) class 1: accounts for capital, provisions and creditors due in over one year;
 - (ii) class 2: accounts for formation expenses, fixed assets and debtors due in over one year;
 - (iii) class 3: stock accounts;
 - (iv) class 4: accounts for debtors and creditors due in one year or less;
 - (v) class 5: financial accounts;
 - (b) for the revenue and expenditure accounts:
 - (i) class 6: charges accounts;
 - (ii) class 7: income accounts;
 - (c) for the special accounts:
classes 8 and 9: special accounts;
 - (d) for off-balance-sheet transactions:
class 0: off-balance-sheet transactions.
4. The contents of each account and class and its operation shall be laid down in the chart of accounts.

Section 4

Registration

Article 172

Entries in the accounts

(Article 87 of the Financial Regulation)

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

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

That revaluation shall be based on the rates laid down in accordance with Article 6.

The rate to be used for conversion between the euro and another currency to draw up the balance sheet at 31 December of year N shall be that of the last working day of year N-1.

Article 173

Accounting records

(Article 87 of the Financial Regulation)

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

Article 174

Supporting documents

(Article 87 of the Financial Regulation)

1. Each entry shall be based on a dated and numbered supporting document, produced on paper or on a medium which guarantees the reliability and safeguarding of its content for the periods laid down in Article 24.
2. Operations of the same type, carried out in the same place and on the same day may be summarised in a single supporting document.

Article 175

Recording in the journal

(Article 87 of the Financial Regulation)

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

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

Article 176

Validation of entries

(Article 87 of the Financial Regulation)

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

Section 5

Reconciliation and verification

Article 177

Reconciliation of accounts

(Article 87 of the Financial Regulation)

1. The balance of accounts in the trial balance shall be reconciled periodically, and at least at the annual closure, with the data from the management systems used by authorising officers for the management of assets and liabilities and for the daily input into the accounting system.

2. Periodically, and at least whenever the accounts are closed, the accounting officer shall check that the data in the inventory ledger referred to in Article 168 correspond to the actual situation, in particular as regards:

- (a) cash at bank, by reconciliation of the statements of account from financial institutions;
- (b) cash in cash offices, by reconciliation with the data in the cash book.

The fixed assets accounts shall be reviewed in accordance with Article 183.

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

Section 6

Budget accounts

Article 178

Content and keeping of budget accounts

(Article 89 of the Financial Regulation)

1. The budget accounts shall show, for each subdivision of the budget:

(a) in the case of expenditure:

- (i) the appropriations authorised in the initial budget, the appropriations entered in amending budgets, the appropriations carried over, the appropriations available following collection of assigned revenue, transfers of appropriations and the total appropriations thus available;
- (ii) the commitments and payments in respect of the financial year;

(b) in the case of revenue:

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

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

2. The budget accounts shall show separately:

- (a) the use of appropriations carried over and the appropriations for the year;
- (b) the clearance of outstanding commitments.

On the revenue side, amounts still to be recovered from previous financial years shall be shown separately.

- 3. The budget accounts may be organised in such a way as to develop a cost accounting system.
- 4. The budget accounts shall be kept using computer systems, in books or on file cards.

CHAPTER 3 **Property inventories** (Chapter 4 of the Financial Regulation)

Article 179 **Property inventories** (Article 90 of the Financial Regulation)

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

Article 180 **Safeguarding property** (Article 90 of the Financial Regulation)

The Agency shall adopt provisions on safeguarding the property included in its balance sheet and decide which administrative department are responsible for the inventory system.

Article 181 **Entry of items in the inventory** (Article 90 of the Financial Regulation)

All items acquired whose purchase price or production cost is EUR 420 or more, with a period of use greater than one year, and which are not consumables shall be entered in the inventory and recorded in the fixed assets accounts.

Article 182 **Content of the inventory for each item** (Article 90 of the Financial Regulation)

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

Article 183

Inventory checks

(Article 90 of the Financial Regulation)

Inventory checks shall be performed in such a way as to ensure that each item physically exists and matches the relevant entry in the inventory. Such checks shall be carried out under an annual verification programme, save for tangible and intangible fixed assets, which shall be checked at least on a three-year basis.

Article 184

Resale of property

(Article 90 of the Financial Regulation)

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

Article 185

Procedure for sale of fixed assets

(Article 90 of the Financial Regulation)

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

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

2. The Agency may forgo advertising where the cost of advertising exceeds the expected return from the operation.

3. The Agency shall always endeavour to obtain the best price for sales of fixed assets.

Article 186

Procedure for disposing of fixed assets

(Article 90 of the Financial Regulation)

A statement or record shall be drawn up by the authorising officer whenever any property in the inventory is sold, given away free of charge, scrapped, hired out or missing on account of loss, theft or any other reason.

The statement or record shall indicate in particular whether the item must be replaced at the expense of an official or other servant of the Communities or any other person.

Where immovable property or major installations are made available free of charge, a contract must be drawn up and the case notified in an annual report sent to the European Parliament and the Council when the preliminary draft budget is presented.

Article 187

Entry into force

This Regulation shall be binding in its entirety and shall enter into force on XX June, 2005.