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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

This issue closes the L series for 2012.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) No 1268/2012

of 29 October 2012

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [1], and in particular Articles 8, 11, 13, 19, 21, 22, 23, 25, 26, 29, 30, 31, 34, 35, 38, 41, 44, 49, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 137, 138, 139, 140, 142, 144, 145, 146, 148, 151, 154, 156, 157, 181, 183, 184, 186, 187, 188, 190, 191, 192, 195, 196, 199, 201, 203, 204, 205, 208 and 209 thereof,

Whereas:

(1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [2] has been substantially amended and replaced by Regulation (EU, Euratom) No 966/2012 (hereinafter 'Financial Regulation'). It is therefore necessary to align Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities [3] to the Financial Regulation. In the interests of clarity, it is necessary to replace Regulation (EC, Euratom) No 2342/2002.

(2) Under Article 290 of the Treaty on the Functioning of the European Union (hereinafter 'TFEU') a legislative act may delegate to the Commission the power to adopt non-legislative acts only to supplement or amend certain non-essential elements of the legislative act. Therefore, some provisions laid down in Regulation (EC, Euratom) No 2342/2002 have been incorporated in the Financial Regulation. Thus those provisions should not be included in this Regulation.

(3) During its preparatory work, the Commission has carried out appropriate consultations, including at expert level and ensured a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(4) As regards the budgetary principles, in particular the principle of unity, the simplification of the rules governing the generation and recovery of interest yielded on pre-financing, and in particular the waiver of the obligation for grant recipients to generate such interest, render obsolete the provisions on the scope and conditions for the recovery of the interest. Where such obligation would still be imposed on entities entrusted with budget implementation tasks, the rules governing the identification, use and accounting for the interest generated should be included in the delegation agreements with those entities. In those cases where the interest yielded on pre-financing is due to the Union on the basis of those agreements that interest should be paid to the budget as assigned revenue.

(5) For the principle of annuality, it is important to clarify the meaning of annual appropriations and the preparatory stages of the commitment procedure which, if completed by 31 December, may allow the carryover of commitment appropriations.

[1] OJ L 298, 26.10.2012, p. 1.
[2] OJ L 248, 16.9.2002, p. 1.
[3] OJ L 357, 31.12.2002, p. 1.

(6) As regards the principle of the unit of account, the rates to be used for conversion between the euro and the other currencies for the requirements of the management of the cash flow and the accounts should be specified. In addition, the transparency in the accounting for the results of such currency conversion operations should be further enhanced. Following the introduction of the euro, the obligation on the Commission to provide information to the Member States on cash transfers carried out between different currencies should be removed.

(7) As regards the derogations from the principle of universality, the budget treatment to be given to assigned revenue, in particular to contributions by Member States or third countries to certain Union programmes, should be specified, as well as the limits on the netting of expenditure and revenue. In particular, having regard to the current practice, for reasons of legal certainty, it is necessary to clarify that as a general rule assigned revenue should generate commitment and payments appropriations automatically, as soon as the revenue has been received by the institution. It is also necessary to specify the cases where, by way of exception, assigned revenue can be made available before the revenue has actually been received by the institution.

(8) As regards the principle of specification, a precise definition should be given of the calculation of the percentage of appropriations which the institutions are authorised to transfer by virtue of their autonomy. The European Parliament and the Council should receive full information through a detailed explanation of the requests for transfers which have to be submitted to them.

(9) As for sound financial management, it is necessary to specify the objectives of the *ex ante*, interim and *ex post* evaluations of the programmes and activities, the minimum frequency with which they are to be carried out and the information to be given in the legislative financial statement.

(10) As for the principle of transparency, publication of data by name relating to the recipients concerned and the precise amounts received by them increases transparency with respect to the use of the funds concerned. Such information made available to citizens reinforces public control of the use to which that money is put and contributes to the best use of public funds. At the same time, where recipients are natural persons, such publication is subject to the rules on protection of personal data. Therefore personal data should be published only if it is necessary and proportionate with respect to the legitimate aim pursued.

(11) The information on the use of Union funds should be published on an internet website of the institutions and should include at least the name, the locality, the amount and the purpose of the funds. That information should take into account the criteria laid down in Article 35(3) of the Financial Regulation, in particular the type and the importance of the award.

(12) The name and locality of the recipients of Union funds should be published for prizes, grants and contracts awarded following the opening-up of a public procedure to competition, as it is the case in particular for contests, call for proposals and call for tenders, in the respect the principles of the TFEU and in particular the principles of transparency, proportionality, equal treatment and non-discrimination. Moreover such publication should contribute to the control of the public selection procedures by the rejected applicants of the competition.

(13) The publication of personal data referring to natural persons should not exceed the duration during which the funds are being used by the recipient and should therefore be removed after two years. The same should apply to personal data referring to legal persons for whom the official title identifies one or more natural persons.

(14) In most of the cases covered by this Regulation, the publication concerns legal persons.

(15) When natural persons are concerned, such publication should only be envisaged respecting the principle of proportionality between the importance of the amount granted and the need to control the best use of the funds. Where natural persons are concerned, the publication of the region on NUTS 2 level is consistent with the objective of publication of recipients, ensures equal treatment between Member States of different sizes while respecting the recipients' right to private life and in particular the protection of their personal data.

(16) Information on scholarships, and other direct support paid to natural persons in most need should remain exempt from publication.

(17) In order to ensure the respect of the principle of equal treatment between recipients, the publication of information related to natural persons should also be ensured in line with the obligation for the Member States to establish a large transparency of the contracts above the amount laid down in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([1]).

(18) The name and the locality of the recipient and the amount and the purpose of the funds should not be published if it risks endangering the integrity of the recipient as protected by the Charter of Fundamental Rights of the European Union or would harm the legitimate commercial interests of the recipient.

(19) The budgetary nomenclature should provide clarity and transparency necessary for the budgetary process.

(20) Acts likely to constitute a conflict of interests should also be defined.

(21) In respect of indirect management, it is necessary to lay down the framework of such delegation of powers and the content of the delegation agreement. Any entity or person entrusted with budget implementation tasks should guarantee a level of protection of the financial interests of the Union which is equivalent to that required under the Financial Regulation. The conditions under which the Commission may accept that the systems, rules and procedures of these entities or persons are equivalent to its own should be laid down in order to ensure sound financial management of Union funds by the entrusted entities.

(22) The executive agencies, which remain under Commission control, should be recognised as authorising officers by delegation of that institution for implementation of the Union budget.

(23) In the case of indirect management with international organisations, the organisations eligible for this kind of management should be identified.

(24) Where budget implementation tasks are entrusted to public bodies or bodies governed by private law with a public service mission, the conditions of their designation should be set out.

([1]) OJ L 134, 30.4.2004, p. 114.

(25) For indirect management it is necessary to establish detailed rules for the procedures for the examination and acceptance of accounts and for the exclusion from Union financing of expenditure for which disbursements have been made in breach of applicable rules.

(26) Private-law entities performing preparatory or ancillary tasks on the Commission's behalf should be selected in accordance with procurement procedures.

(27) As regards the role of the financial actors, the reform of financial management, together with the abolition of centralised *ex ante* controls, increases the responsibilities of the authorising officers in all revenue and expenditure operations, including in terms of internal control systems. The European Parliament and Council should in future be informed of the appointment or termination of duties of an authorising officer by delegation. Consequently, the tasks, responsibilities and principles of the procedures to be observed should also be laid down. The internalisation of *ex ante* controls requires, in particular, a clear distinction between tasks relating to the initiation of operations in implementation of the budget and tasks relating to the verification of such operations. Moreover, each institution should adopt a code of professional standards applicable to the staff responsible for *ex ante* and *ex post* verifications. It is also necessary to provide that the responsibilities assumed are accounted for in an annual report to the institution which is in charge of, inter alia, the *ex post* verifications. The supporting documents relating to the operations carried out should be kept. Finally, all the various forms of negotiated procedure for the award of public contracts should, since those contracts represent derogations from the usual award procedures, be the subject of a special report to the institution and of a communication to the European Parliament and Council.

(28) Regulation (EC, Euratom) No 2342/2002 should be adapted to take into account the double role of the head of delegation as authorising officer by subdelegation for the European External Action Service (hereinafter 'EEAS') and, as regards operational appropriations, for the Commission.

(29) In order to clarify responsibilities, a precise definition should also be given of the tasks and responsibilities of the accounting officer in connection with the accounting systems, treasury management, the management of bank accounts and third-party files. The arrangements for the termination of the accounting officer's duties should also be established.

(30) The conditions for the use of imprest accounts, a system of management which constitutes an exception to normal budgetary procedures, should also be laid down, and the tasks and responsibilities of the imprest administrators, as well as those of the authorising officer and accounting officer in connection with the control of imprest accounts, should be set out. The European Parliament and Council should be informed of any appointment or termination of duties. For reasons of efficiency, only one imprest account should be set up in delegations, for appropriations from both the Commission and EEAS sections of the Budget. It has proven necessary to introduce the possibility to use debit cards linked to imprest accounts in order to facilitate payments in particular in the Union delegations and representations, and avoid the risks associated with handling cash.

(31) Once the tasks and responsibilities of each financial actor have been defined, they may be held liable only under the conditions laid down in the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union. The specialised financial irregularities panel set up in each institution have proven to be an efficient mechanism to determine whether irregularities of a financial nature have occurred and should therefore be maintained. It is necessary to lay down the procedure by which an authorising officer may seek confirmation of an instruction which that officer considers to be irregular or contrary to the principle of sound financial management, and thus be released from any liability.

(32) As regards revenue, except for the special case of own resources covered by Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the Communities' own resources [1] it is necessary to specify the tasks and controls falling within the responsibility of the authorising officers at the different stages of the procedure: establishment of the estimate of amounts receivable, recovery order, dispatch of the debit note informing the debtor that the amount receivable has been established, calculation of any default interest due, and the decision, where necessary, to waive an entitlement subject to criteria guaranteeing compliance with sound financial management in order to ensure a efficient collection of revenues.

(33) It is necessary to specify the role of the accounting officer in the collection of revenue and in allowing any additional time for payment of expenditures. The accounting officer should also have a flexibility in the recovery of payments such as the possibility to offset debts directly, or in exceptional circumstances to waive the requirement of lodging a guarantee to repay a debt, when the debtor is willing and able to make the payment in the additional time period but is not able to lodge such guarantee taking due account of the principle of proportionality.

(34) In order to secure the management of assets whilst also yielding financial remuneration, it is necessary to have the amounts provisionally cashed, such as competitions fines which are being contested, invested in financial assets, and to determine the assignment of the interests yielded by those investments.

(35) In order to ensure that the Commission has all the necessary information for the adoption of the financing decisions, it is necessary to lay down the minimum requirements for the contents of financing decisions on grants, procurement, trust funds, prizes and financial instruments.

(36) As regards expenditure, the relationship between financing decisions, global commitments and individual commitments as well as characteristics of those different stages should be defined in order to establish a clear framework for the different stages of budget implementation.

(37) It is necessary to clarify the relationship between validation, authorisation and payment operations and the controls to be carried out by the authorising officer when validating expenditure, with the endorsement 'passed for payment'. The documents to be produced in support of payments should be specified and rules laid down for the clearing of pre-financing and interim payments.

(38) Detailed rules for the application of time limits applicable for validation and payment operations should be laid down, taking into account Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions [2] in order to ensure there is no undue delay for payments to recipients.

(39) For the internal audit, it is necessary to lay down the procedure for appointing the auditor and to guarantee his independence within the institution which has appointed him and to which he must report on his activities. The European Parliament and Council should be informed of any appointment or termination of duties in order to ensure transparency towards the European Parliament and the Council.

[1] OJ L 163, 23.6.2007, p. 17.

[2] OJ L 48, 23.2.2011, p. 1.

(40) Rules on procurement should be based on Directive 2004/18/EC. It is necessary to define the various types of procurement procedures, the advertising and publication measures applicable, the conditions in which use may be made of a particular type of procedure and the main features of the existing procedures, the specification of selection and award criteria, rules for access to tender documents and for communication with tenderers or candidates and, for cases where the Commission awards contracts on its own account, the thresholds applicable and the rules for estimating the value of the contracts to be awarded.

(41) The purpose of the procedures for the award of contracts is to satisfy the needs of the institutions on the best possible terms while guaranteeing equal access to public contracts and complying with the principles of transparency and non-discrimination. With a view to ensuring transparency and the equal treatment of candidates and tenderers, as well as the full responsibility of authorising officers in the final choice, it is necessary to lay down the procedure for opening and then evaluating tenders and requests to participate, from the appointment of a committee up to the substantiated and documented award decision, which ultimately rests with the contracting authority.

(42) On the basis of past experience, it is necessary to establish a new procurement procedure for middle value contracts. It is necessary to allow the use of the 'vendors' list' under the same conditions as the existing 'call for expression of interest' as that list provides for less administrative burden for potential tenderers.

(43) In order to protect the Union financial interests during contract execution, it is necessary to provide for a possibility to require the entities providing financial capacity in procurement to be jointly liable for the execution of the corresponding contract.

(44) In order to protect the Union financial interests and to guarantee control over the contract execution, it is necessary to provide for a possibility to require the contractor to perform himself directly certain critical tasks.

(45) In order to guarantee execution of a contract to the highest professional standard, it is necessary to provide for a possibility to reject the tenderers who have potential conflicts of interest.

(46) Given that the request for financial guarantees is no longer automatic, it is necessary to lay down the criteria according to which they may be requested.

(47) It is necessary to clarify the scope of the Title on grants, particularly with regard to the type of action or body of general European interest eligible for a grant as well as with regard to the types of legal commitments that may be used to cover grants. For those legal commitments, the criteria for choosing between agreements and decisions, their minimum content and the possibility to conclude specific grant agreement or decision under framework partnerships should be specified, so as to ensure equal treatment and avoid restricting access to Union funding.

(48) The scope of the Title on grants should also take account of the introduction in the Financial Regulation of, on the one hand, specific titles on prizes and financial instruments and, on the other hand, of the key rules applicable to grants, eligible costs, deletion of the degressivity principle, use of simplified forms of grants (lump sums, unit costs and flat rates) and removal of compulsory submission of pre-financing guarantees.

(49) Progress towards electronic exchange of information and electronic submission of documents, which constitute a major simplification measure, should be accompanied by clear conditions for the acceptance of the systems to be used, so as to establish a legally sound environment.

(50) The no-profit and co-financing principles should be revised in line with the clarifications and simplification measures introduced in the Financial Regulation. In particular, for the sake of clarity, it is necessary to establish detailed rules on the types of receipts to be retained for the no-profit principle as well as the forms of external co-financing and in kind contributions.

(51) With regard to the transparency principle, adoption and publication of multiannual work programmes should be authorised, since they have an added value for applicants, which can more easily anticipate and better prepare for calls for proposals. In this context, the conditions under which work programmes may be considered as the financing decisions should be specified. To ensure transparency, it is also necessary to publish calls for proposals, except in cases of urgency or where the action may only be implemented by one entity. It is necessary to specify the minimum content of such publication.

(52) As the eligibility conditions for value added tax (VAT) paid by beneficiaries is prone to errors and discrepancies, there is a need to ensure that the notions of non-recoverable VAT and non-taxable persons within the meaning of Article 13(1) of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] are consistently understood and applied, by reference to the activities that those notions encompass.

(53) In order to ensure transparency, equal treatment for applicants and the enhancement of the accountability of authorising officers, it is necessary to lay down the award procedure, from the application for the grant, for which the Commission should have provided minimum information for applicants, to its evaluation in the light of previously specified eligibility, selection and award criteria before the authorising officer responsible takes his final, appropriately documented decision. It is necessary to established detailed rules on the composition and tasks of the committee in charge of assessing the proposals against the selection and award criteria, as well as the possibilities to contact applicants during the award procedure or to invite them to adjust their proposals. Those possibilities should properly reflect the requirements in terms of good administration introduced in the Financial Regulation and should include the conditions under which proposals may be adjusted before signature of the grant agreements or notification of the grant decisions, while ensuring equal treatment of applicants and compliance with the principle according to which initiative for the actions lies solely with the applicants.

(54) The use of lump sums, unit costs and flat rates being facilitated and broadened under the Financial Regulation, the definitions of those simplified forms of grants should be clarified. It is in particular necessary to clarify that they are meant, as any form of grant, to cover categories of eligible costs and indicate that their amounts should not necessarily be fixed *ex ante*, which is particularly relevant where they are determined on the basis of the beneficiary's usual cost accounting practices. There is also a need to ensure stability in the rules of funding under a specific programme. For that purpose, it should be allowed to use the simplified forms of grants for its full duration. For statistical, methodological or fraud-prevention and detection purposes, it is necessary to have access to general accounting information from a beneficiary, even where those are financed by way of lump sums, unit costs or flat rates. Those verifications, however, should not be used for questioning the unit values of the lump sums, unit costs or flat rates already agreed on.

(55) Sound financial management requires that the Commission protect itself with guarantees. At the stage of grant applications, by arranging financial audits for applications involving larger amounts, at the time of paying pre-financing, where the risks as assessed by the authorising officer justify, by requiring advance financial guarantees and at the stage of interim payment or payment of the balance, by arranging submission of certificates established by auditors for the payment requests which involve the largest amounts and which present most risk.

(56) The conditions and procedures for suspending and reducing grants should be clarified, so as to better define the grounds for such suspension or reduction, provide adequate information to beneficiaries and ensure that the beneficiaries have the possibility to exercise their right of defence at any stage.

(57) Sound management of Union funds also means that the grant beneficiaries themselves use Union grants with economy and efficiency. In particular, the costs of contracts awarded by beneficiaries to implement the action should be eligible provided those implementation contracts are awarded to the tender offering best value for money.

(58) As the restrictions on recourse to financial support to third parties are softened in the Financial Regulation, it is necessary to lay down the minimum provisions to be agreed on at the level of the grant agreement or to be inserted in the grant decision in order to clearly differentiate the award of financial support to third parties by a beneficiary from the implementation of budget tasks by a delegatee under indirect management.

(59) Powers for imposing penalties on grant beneficiaries should be aligned with those conferred in the context of procurement considering that they are of the same nature and should be subject to the same rules in terms of effectiveness and proportionality.

(60) Prizes should be subject to the principles of transparency and equal treatment, in the same was as grants. In that context, the minimum characteristics of work programmes and of contests should also be laid down, taking account of the corresponding requirements for grants. In particular, the conditions under which the work programmes may be considered as financing decisions, as well as the minimum content of rules of contest, notably the conditions for paying the prize to the winners in case of award, and the appropriate publication means should be specified.

[1] OJ L 347, 11.12.2006, p. 1.

(61) Compliance with the transparency and equal treatment principles also requires the establishment of a clearly defined award procedure, from submission of the entries to information of applicants and notification to the winning participant. That procedure should include evaluation of the entries by a panel of experts appointed by the authorising officer responsible, using the award criteria announced in the rules of the contest in order to ensure competence and neutrality in the assessment of entries. Based on their recommendations, the authorising officer responsible should take the final decision on the award of the prize since the responsibility for budget implementation always lies with the Commission.

(62) In order to ensure a harmonised implementation of the various financial instruments within the Commission, the general framework included in Title VIII of the Financial Regulation should be complemented by detailed rules for the management of financial instruments, including provisions for the selection of entrusted entities, content of delegation agreements, management costs and fees and for fiduciary accounts.

(63) Rules for the selection of financial intermediaries and final recipients should be defined in particular where financial instruments are managed directly in exceptional cases, either through dedicated investment vehicles or other delivery mechanisms, thereby ensuring efficient spending of Union funds.

(64) It is necessary to determine the conditions for the use of financial instruments, including the leverage effect, and the monitoring framework. It is also necessary to ensure that financial instruments are implemented on the basis of a robust *ex ante* evaluation, which allows the Commission to design them specifically to respond to market failures and suboptimal investment situations.

(65) As regards the keeping and presentation of the accounts, the generally accepted accounting principles on which the financial statements must be based are defined in the Union accounting rules. These accounting rules also specify the conditions for entering a transaction in the accounts and the rules for valuing assets and liabilities and for the constitution of provisions in order to ensure that information is properly presented, complete and accurate.

(66) On accounting matters, it should be specified that the accounting officer of each institution must produce documents describing the organisation of the accounts and the accounting procedures of that institution and define the conditions to be respected by the computerised accounting systems, in particular in order to ensure security of access and the audit trail for any changes made to the systems.

(67) As regards the keeping of the accounts, it is necessary to specify the principles applicable to the accounting ledgers, the trial balance, the periodical reconciliation of the totals in that balance and the inventory, and to specify the components of the chart of accounts adopted by the Commission's accounting officer. The rules applicable to the registration of operations, in particular the double-entry method, the rules for the conversion of operations which are not denominated in euro and the supporting documents for accounting entries, should be laid down. The content of the accounting records should also be specified.

(68) It is necessary to lay down the rules relating to the property inventory and to clarify the respective responsibilities in this field of the accounting officers and authorising officers, as well as the rules applicable to the resale of property entered in the inventory with the view to an efficient asset management.

(69) For external actions, this Regulation, in line with the Financial Regulation, should provide for exceptions which reflect the specific operational features of that sector, mainly as regards procurement and the award of grants, notably because these procedures are carried out by the authorities of third countries receiving Union financial support. As regards procurement, such differences should mainly pertain to types of procedures and thresholds from which they apply. As regards grants, full financing should be allowed in certain cases, mainly to take the reduced co-financing capacity of the beneficiaries into account.

(70) It is necessary to establish detailed provisions concerning the use of budget support, specifying the conditions under which budget support may be used and the obligation of the partner to provide the Commission with timely and reliable information to evaluate the fulfilment of those conditions.

(71) In regard to Union Trust Funds, it is necessary to specify the principles applicable to the Union contribution to Union Trust Funds as well as to the contributions of the other donors, to lay down the accounting and reporting rules of the Union Trust Fund, in particular for the interest matured in the bank account of the trust fund, to clarify the respective responsibilities of the financial actors and of the Board of the Trust Fund, as well as to define external audit obligations. It is also necessary to ensure a fair representation of the participating donors in the Board of the Trust Fund and to ensure a mandatory positive vote of the Commission for the use of the funds.

(72) In order to simplify procurement procedures under external actions, some thresholds have been modified and other thresholds and management procedures coming from the common provisions have been added and adapted.

(73) As for grants, the conditions for derogating from the principle of co-financing should be streamlined in line with the Financial Regulation.

(74) To guarantee the sound management of Union appropriations, it is also necessary to specify the pre-conditions and the rules to be included in the agreements when the management of appropriations is decentralised or if imprest accounts are used.

(75) It is appropriate to define the European Offices and to set out specific rules for the Publications Office and provisions authorising the Commission's accounting officer to delegate some of his tasks to staff in those Offices. Operating procedures should also be laid down for the bank accounts which the European Offices may be authorised to open in the Commission's name.

(76) By analogy with the publication of information on recipients of Union's funds, the list of experts referred to in Article 204 of the Financial Regulation selected through a call for expressions of interest and the subject of their tasks should be published. Their remuneration should also be published when it exceeds EUR 15 000.

(77) The new procedure introduced in Article 203 of the Financial Regulation should be complemented, in particular regarding the type of costs to be included in the thresholds established therein. It is necessary to establish detailed rules on the building projects in Union delegations given their specificities, in particular in cases of urgency. It is appropriate to provide that residential buildings, namely in delegations, which need to be rented or purchased within a short period of time, should be excluded from the procedure laid down in Article 203 of the Financial Regulation. The acquisition of land for free or for a symbolic amount should not fall within the procedure laid down in Article 203 of the Financial Regulation as it does not impose in itself an additional burden to the budget.

(78) To ensure the coherence with the provisions of the Financial Regulation it is necessary to establish transitional provisions. Moreover, in order to ensure coherence with the sectorial legal basis, it is appropriate to defer application of the provisions on the management modes and financial instruments to 1 January 2014,

HAS ADOPTED THIS REGULATION:

PART ONE

COMMON PROVISIONS

TITLE I

SUBJECT MATTER

Article 1

Subject matter

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

TITLE II

BUDGETARY PRINCIPLES

CHAPTER 1

Principles of unity and budgetary accuracy

Article 2

Accounting for interest yielded on pre-financing

(Article 8(4) of the Financial Regulation)

Where interest is due to the budget, the agreement concluded with the entities or persons listed in points (ii) to (viii) of Article 58(1)(c) of the Financial Regulation shall stipulate that pre-financing is paid to bank accounts or sub-accounts which allow the funds and related interest to be identified. Otherwise, the accounting methods of the recipients or intermediaries must make it possible to identify the funds paid by the Union and the interest or other benefits yielded by those funds.

Provisions of this Regulation concerning interest on pre-financing shall be without prejudice to the entry of pre-financing on the assets side of financial statements, as laid down in the accounting rules referred to in Article 143 of the Financial Regulation.

CHAPTER 2

Principle of annuality

Article 3

Appropriations for the financial year

(Article 11(3) of the Financial Regulation)

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

(a) appropriations provided in the budget, including by amending budgets;

(b) appropriations carried over;

(c) appropriations made available again in accordance with Articles 178 and 182 of the Financial Regulation;

(d) appropriations arising from pre-financing payments which have been repaid in accordance with Article 177(3) of the Financial Regulation;

(e) appropriations provided following the receipt of revenue assigned during the financial year or during previous financial years and not used.

Article 4

Cancellation and carryover of appropriations

(Article 13(2) of the Financial Regulation)

1. The commitment appropriations and the non-differentiated appropriations relating to building projects referred to in Article 13(2)(a) of the Financial Regulation may be carried over only if the commitments could not be made before 31 December of the financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to surmise that the commitment will be made by no later than 31 March of the following year, or 31 December for building projects.

2. The preparatory stages referred to in Article 13(2)(a) of the Financial Regulation, which should be completed by 31 December of the financial year in order to allow a carryover to the following year, are in particular:

(a) for global commitments within the meaning of Article 85 of the Financial Regulation, the adoption of a financing decision or the closing by that date of the consultation of the departments concerned within each institution for the adoption of the decision;

(b) for individual commitments within the meaning of Article 85 of the Financial Regulation, the completion of the selection of potential contractors, beneficiaries, prize winners or delegatees.

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

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

4. Appropriations carried over in accordance with Article 13(2)(b) of the Financial Regulation may be used until 31 December of the following financial year.

5. The accounts shall identify appropriations carried over in accordance with paragraphs 1 to 4.

CHAPTER 3

Principle of unit of account

Article 5

Rate of conversion between the euro and other currencies

(Article 19 of the Financial Regulation)

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

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

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

3. If no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, the responsible authorising officer shall use the accounting rate referred to in paragraph 4.

4. For the purposes of the accounts provided for in Articles 151 to 156 of the Financial Regulation and subject to Article 240 of this Regulation, conversion between the euro and another currency shall be made using the monthly accounting rate of the euro. That accounting exchange rate shall be established by the Commission's accounting officer by means of any source of information he regards as reliable, on the basis of the exchange rate on the penultimate working day of the month preceding that for which the rate is established.

5. The results of the currency operations referred to in paragraph 4 of this Article shall be shown under a separate heading in the respective institution's accounts.

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

Article 6

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

(Article 19 of the Financial Regulation)

1. Without prejudice to specific provisions deriving from the application of sector-specific regulations, or from specific procurement contracts, grant agreements or grant decisions and financing agreements, the rate to be used for conversion between the euro and other currencies shall, in cases where the conversion is carried out by the responsible authorising officer, be that of the day on which the payment order or recovery order is drawn up by the authorising department.

2. In case of euro imprest accounts, the rate to be used for the conversion between the euro and other currencies shall be determined by the date of the payment by the bank.

3. For the regularisation of imprest accounts in national currencies, as referred to in Article 19 of the Financial Regulation, the rate to be used for the conversion between the euro and other currencies shall be that of the month of the expenditure from the imprest account concerned.

4. For the reimbursement of flat-rate expenditure, or expenditure arising from the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (hereinafter 'Staff Regulations') which is fixed at a ceiling, and which is paid in a currency other than the euro, the rate to be used shall be that which is in force when the entitlement arises.

CHAPTER 4

Principle of universality

Article 7

Structure to accommodate assigned revenue and provision of corresponding appropriations

(Article 21 of the Financial Regulation)

1. Without prejudice to Articles 9 and 10, the structure to accommodate assigned revenue in the budget shall comprise:

(a) in the statement of revenue of each institution's section, a budget line to receive the revenue;

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

In the case referred to in point (a) of the first subparagraph, a token entry '*pro memoria*' shall be made and the estimated revenue shall be shown for information in the remarks.

2. The appropriations corresponding to assigned revenue shall be made available automatically, both as commitment appropriations and as payment appropriations, when the revenue has been received by the institution, save in any of the following cases:

(a) in cases provided for in Article 181(2) and 183(2) of the Financial Regulation;

(b) in the case provided for in Article 21(2)(b) of the Financial Regulation for Member States where the contribution agreement is expressed in euro.

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

Article 8

Contributions from Member States to research programmes

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

1. The Member States' contributions to the financing of certain supplementary research programmes, provided for in Article 5 of Council Regulation (EC, Euratom) No 1150/2000 ([1]) shall be paid as follows:

(a) seven twelfths of the sum entered in the budget shall be paid by no later than 31 January of the current financial year;

(b) the remaining five twelfths shall be paid by no later than 15 July of the current financial year.

([1]) OJ L 130, 31.5.2000, p. 1.

2. Where the budget has not been finally adopted before the start of a financial year, the contributions provided for in paragraph 1 shall be based on the sum entered in the budget for the previous financial year.

3. Any contribution or additional payment owed by the Member States to the budget shall be entered in the Commission's account or accounts within 30 calendar days of the call for funds.

4. Payments made shall be entered in the account provided for in Regulation (EC, Euratom) No 1150/2000 and shall be subject to the conditions laid down by that Regulation.

Article 9

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

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

1. The budget structure to accommodate the participation of the Member States of the European Free Trade Association (hereinafter 'EFTA States') in certain Union programmes shall be as follows:

(a) in the statement of revenue, a line with a token entry '*pro memoria*' shall be entered to accommodate the full amount of the EFTA States' contribution for the financial year in question.

(b) in the statement of expenditure:

(i) the remarks for each line relating to the Union activities in which the EFTA States participate shall show 'for information' the estimated amount of the participation;

(ii) an annex, forming an integral part of the budget, shall set out all the lines covering the Union activities in which the EFTA States participate.

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

The annex referred to in point (b)(ii) of the first subparagraph reflects and is part of the structure to accommodate the appropriations corresponding to such participation, as provided for in paragraph 2, and to allow the expenditure to be implemented.

2. Under Article 82 of the Agreement on the European Economic Area (hereinafter 'EEA Agreement') the amounts of the annual participation of the EFTA States, as confirmed to the Commission by the Joint Committee of the European Economic Area in accordance with Article 1(5) of Protocol 32 annexed to the EEA Agreement, shall give rise to the provision, at the start of the financial year, of the full amounts of the corresponding commitment appropriations and payment appropriations.

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

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

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

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

Article 10

Proceeds of sanctions imposed on Member States declared to have an excessive deficit

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

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

(a) in the statement of revenue, a line carrying a token entry '*pro memoria*' shall be entered to accommodate the interest on such amounts;

(b) at the same time, and without prejudice to Article 77 of the Financial Regulation, entry of those amounts in the statement of revenue shall give rise to the provision, in the statement of expenditure, of commitment appropriations and payment appropriations.

[1] OJ L 209, 2.8.1997, p. 6.

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

Article 11

Charges entailed by acceptance of donations to the Union

(Article 22 of the Financial Regulation)

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

Article 12

Accounts for recoverable taxes

(Article 23(3) of the Financial Regulation)

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

CHAPTER 5

Principle of specification

Article 13

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

(Article 25 of the Financial Regulation)

1. The percentages referred to in Article 25 of the Financial Regulation shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget, including amending budgets.

2. The amount to be taken into consideration shall be the sum of the transfers to be made on the line from which transfers are being made, after adjustment for earlier transfers made.

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

Article 14

Rules concerning the calculation of percentages of transfers of the Commission

(Article 26 of the Financial Regulation)

1. The percentages referred to in Article 26(1) of the Financial Regulation shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget, including amending budgets.

2. The amount to be taken into consideration shall be the sum of the transfers to be made on the line from which or to which transfers are being made, after adjustment for earlier transfers made.

The amount corresponding to the transfers which can be carried out autonomously by the Commission without a decision of the European Parliament and the Council shall not be taken into consideration.

Article 15

Administrative expenditure

(Article 26 of the Financial Regulation)

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

Article 16

Grounds for requests for transfers of appropriations

(Articles 25 and 26 of the Financial Regulation)

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

Article 17

Grounds for requests for transfers from the emergency aid reserve

(Article 29 of the Financial Regulation)

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

(a) for the line to which the transfer is to be made, the most recent information available for the implementation of appropriations and the estimate of requirements up to the end of the financial year;

(b) for all lines relating to external action, the implementation of appropriations up to the end of the month preceding the request for transfer and an estimate of requirements up to the end of the financial year, including a comparison with the initial estimate;

(c) an analysis of the possibilities of reallocating appropriations.

CHAPTER 6

Principle of sound financial management

Article 18

Evaluation

(Article 30 of the Financial Regulation)

1. All proposals for programmes or activities occasioning budget expenditure shall be the subject of an *ex ante* evaluation, which shall address:

(a) the need to be met in the short or long term;

(b) the added value of Union involvement;

(c) the policy and management objectives to be achieved, which include measures necessary to safeguard the financial interests of the Union in the field of fraud prevention, detection, investigation, reparation and sanctions;

(d) the policy options available, including the risks associated with them;

(e) the results and impacts expected, in particular economic, social and environmental impacts, and the indicators and evaluation arrangement needed to measure them;

(f) the most appropriate method of implementation for the preferred option(s);

(g) the internal coherence of the proposed programme or activity and its relations with other relevant instruments;

(h) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle;

(i) the lessons learned from similar experiences in the past.

2. The proposal shall set out the arrangements for monitoring, reporting and evaluation, taking due account of the respective responsibilities of all levels of government that will be involved in the implementation of the proposed programme or activity.

3. All programmes or activities, including pilot projects and preparatory actions, where the resources mobilised exceed EUR 5 000 000 shall be the subject of an interim and/or *ex post* evaluation in terms of the human and financial resources allocated and the results obtained in order to verify that they were consistent with the objectives set, as follows:

(a) the results obtained in carrying out a multiannual programme shall be periodically evaluated in accordance with a timetable which enables the findings of that evaluation to be taken into account for any decision on the renewal, modification or suspension of the programme;

(b) activities financed on an annual basis shall have their results evaluated at least every six years.

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

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

Article 19

Financial statement

(Article 31 of the Financial Regulation)

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

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

CHAPTER 7

Principle of transparency

Article 20

Provisional publication of the budget

(Article 34 of the Financial Regulation)

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

Article 21

Publication of information on value and recipients of Union funds

(Article 35 of the Financial Regulation)

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

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

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

(a) the name of the recipient;

(b) the locality of the recipient;

(c) the amount awarded;

(d) the nature and purpose of the measure.

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

(i) the address of the recipient when the latter is a legal person;

(ii) the Region on NUTS 2 level when the recipient is a natural person.

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

3. The information referred to in paragraph 2 shall only be published for prizes, grants and contracts which have been awarded as a result of contests or grant award procedures or public procurement procedures. The information shall not be published for:

(a) scholarships paid to natural persons and other direct support paid to natural persons in most need, referred to in Article 125(4)(c) of the Financial Regulation;

(b) contracts below the amount referred to in Article 137(2) of this Regulation.

4. The publication shall be waived if such disclosure risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of the recipients.

Article 22

Link to the publication of information on recipients of Union funds awarded under indirect management

(Article 35 of the Financial Regulation)

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

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

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

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

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

Article 23

Financial programming

(Article 38 of the Financial Regulation)

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

Article 24

Draft amending budgets

(Article 41(1) of the Financial Regulation)

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

Article 25

Budget nomenclature

(Article 44 of the Financial Regulation)

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

Article 26

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

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

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

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

(b) in payments: payments made during the financial year, that is to say, for which a payment order has been sent to the bank, against appropriations for that financial year as defined in Article 3.

Article 27

Budget remarks

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

The budget remarks shall include:

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

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

Article 28

Establishment plan

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

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

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1

General provisions

Article 29

Information on transfers of personal data for audit purposes

(Article 53 of the Financial Regulation)

In any call made in the context of grants, procurement or prizes implemented in direct management, potential beneficiaries, candidates, tenderers and participants shall, in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council [1] be informed that, for the purposes of safeguarding the financial interests of the Union, their personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office (hereinafter 'OLAF') and between authorising officers of the Commission and the executive agencies.

Article 30

Preparatory measures in the field of the common foreign and security policy

(Article 54(2)(c)of the Financial Regulation)

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

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

Article 31

Specific powers of the Commission under the Treaties

(Article 54(2)(d) of the Financial Regulation)

1. The articles of the Treaty on the Functioning of the European Union (hereinafter 'TFEU') which directly confer specific powers on the Commission are as follows:

(a) Article 154 (social dialogue);

(b) Article 156 (studies, opinions and consultations on social matters);

(c) Articles 159 and 161 (special reports on social matters);

(d) Article 168(2) (initiatives to promote coordination on health protection matters);

(e) Article 171(2) (initiatives to promote coordination on trans-European networks);

(f) Article 173(2) (initiatives to promote coordination on matters relating to industry);

(g) Article 175, second subparagraph (report on progress made towards achieving economic, social and territorial cohesion);

(h) Article 181(2) (initiatives to promote coordination on research and technological development);

(i) Article 190 (report on research and technological development);

(j) Article 210(2) (initiatives to promote coordination of development cooperation policies);

(k) Article 214(6) (initiatives to promote coordination on humanitarian aid measures).

2. The articles of the Treaty Establishing the European Atomic Energy Community (hereinafter 'Euratom Treaty') which directly confer specific powers on the Commission are as follows:

(a) Article 70 (financial support, within the limits set by the budget, for prospecting programmes in the territories of the Member States);

(b) Articles 77 to 85.

3. In the presentation of the draft budget, further detail may be added to the lists set out in paragraphs 1 and 2, with an indication of the articles in question and the amounts involved.

Article 32

Acts likely to constitute a conflict of interests and procedure

(Article 57 of the Financial Regulation)

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

(a) granting oneself or others unjustified direct or indirect advantages;

(b) refusing to grant a beneficiary the rights or advantages to which that beneficiary is entitled;

(c) committing undue or wrongful acts or failing to carry out acts that are mandatory.

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

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

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

CHAPTER 2

Methods of implementation

Section 1

General provisions

Article 33

Management mode

(Article 58 of the Financial Regulation)

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

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

(a) departments of the Commission;

(b) executive agencies;

(c) heads of Union delegations;

(d) trust funds referred to in Article 187 of the Financial Regulation.

Section 2

Direct Management

Article 34

Direct management

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

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

Article 35

Exercise of powers delegated to executive agencies

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

1. Decisions to delegate powers to executive agencies shall authorise them, as authorising officers by delegation, to implement appropriations relating to the Union programme the management of which is entrusted to them.

2. The Commission's instrument of delegation shall contain at least the provisions as provided for in points (a) to (d) and (h) of Article 40. It shall be formally accepted in writing by the director on behalf of the executive agency.

Article 36

Compliance with the procurement rules

(Article 63 of the Financial Regulation)

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

Section 3

Shared management with Member States

Article 37

Specific provisions for shared management with Member States measures to promote best practices

(Article 59 of the Financial Regulation)

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

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

Section 4

Indirect management

Article 38

Equivalence of systems, rules and procedures in indirect management

(Article 60 of the Financial Regulation)

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

(a) they comply with the principle of broad competition of tenderers to obtain the best value for money, and negotiated procedures are limited to reasonable amounts or are duly justified;

(b) they ensure transparency with adequate *ex ante* publication, in particular of calls for tenders, and adequate *ex post* publication of contractors;

(c) they ensure equal treatment, proportionality and non-discrimination;

(d) they prevent conflicts of interests throughout the entire procurement procedure.

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

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

(a) they comply with the principles of proportionality, sound financial management, equal treatment and non-discrimination;

(b) they ensure transparency with adequate publication of calls for proposals, direct award procedures being limited to reasonable amounts or being duly justified, and adequate *ex post* publication of beneficiaries taking account of the principle of proportionality;

(c) they prevent conflicts of interests throughout the entire grant award procedure;

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

3. The Commission may accept that the accounting systems and the internal control systems used by entities and persons to be entrusted with budget implementation tasks on behalf of the Commission are providing equivalent levels of protection of the financial interests of the Union and of reasonable assurance of achieving the management objectives if they comply with the principles laid down in Article 32 of the Financial Regulation.

Article 39

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

(Article 61(1) of the Financial Regulation)

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

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

Article 40

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

(Articles 61(3) of the Financial Regulation)

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

(a) a clear definition of the tasks assigned and the limits thereof, concerning in particular the modification of the tasks entrusted, the waiving of debts, the use of funds reimbursed or unused;

(b) conditions and detailed arrangements for performing the tasks, responsibilities and organising the controls to be carried out, including the evaluation of the programmes;

(c) conditions for payments of the Union contribution, including the reimbursement of costs incurred in respect of implementation as well as the remuneration of the entrusted entity, together with rules on which supporting documents are required to justify the payments;

(d) rules on reporting to the Commission on how the tasks are performed, the results expected, irregularities which occurred and the measures taken, the conditions under which payments may be suspended or interrupted as well as the conditions under which performance of the tasks terminates;

(e) the date, by which individual contracts and agreements which implement the delegation agreement shall be concluded, which shall be commensurate with the nature of the tasks entrusted;

(f) exclusion rules which allow the entity or person to exclude entities which are in a situation referred to in points (a), (b) and (e) of Article 106(1) and in points (a) and (b) of Article 107 of the Financial Regulation from participating in procurement, grant or prize award procedures or from being awarded procurement contracts, grants or prizes;

(g) detailed arrangements for Commission scrutiny as well as provisions granting the Commission, OLAF and the Court of Auditors access to the information that is required for them to perform their duties, as well as the power to conduct audits and investigations including on the spot-checks;

(h) arrangements providing for:

(i) an undertaking of the entrusted entity to inform the Commission without delay of any fraud occurring in the management of Union funds and the measures taken;

(ii) the designation of a contact point which shall have the appropriate powers to cooperate directly with OLAF in order to facilitate the latter's operational activities;

(i) conditions governing the use of bank accounts and of the interest yielded as provided for in Article 8(4) of the Financial Regulation;

(j) provisions guaranteeing the visibility of Union action in relation to the other activities of the body.

Article 41

Management declaration and compliance statement

(Article 60(5) of the Financial Regulation)

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

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

Article 42

Procedures for the examination and acceptance of the accounts and exclusion from Union financing of expenditure made in breach of applicable rules under indirect management

(Article 60(6)(b) and (c) of the Financial Regulation)

1. Without prejudice to specific provisions contained in sector specific rules, the procedures referred to in points (b) and (c) of Article 60(6) of the Financial Regulation shall include:

(a) desk reviews and, where appropriate, on-the-spot checks by the Commission;

(b) the establishment by the Commission of the amount of expenditure recognised as accepted, following, where necessary, a contradictory procedure with the authorities and bodies and after these authorities and bodies have been informed;

(c) where appropriate, calculation by the Commission of financial corrections;

(d) recovery or payment by the Commission of the balance arising from the difference between accepted expenditure and the sums already paid to the authorities or bodies.

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

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

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

Article 43

Specific provisions for indirect management with international organisations

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

1. The international organisations referred to in point (ii) of Article 58(1)(c) of the Financial Regulation shall be:

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

(b) the International Committee of the Red Cross;

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

(d) other non-profit organisations assimilated to international organisations by a Commission decision.

2. Where the Commission implements the budget under indirect management with international organisations, the verification agreements concluded with them shall apply.

Article 44

Designation of public law bodies or bodies governed by private law with a public-service mission

(Article 58(1)(c)(v) and (vi) of the Financial Regulation)

1. The public law bodies or bodies governed by private law with a public-service mission shall be subject to the law of the Member State or the country in which they have been set up.

2. In cases of management by a network, requiring the designation of at least one body or entity by Member State or by country concerned, the body or entity shall be designated by the Member State or the country concerned in accordance with the basic act.

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

CHAPTER 3

Financial actors

Section 1

Rights and obligations of the financial actors

Article 45

Rights and obligations of the financial actors

(Article 64 of the Financial Regulation)

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

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

Section 2

Authorising officer

Article 46

Assistance for authorising officers by delegation and subdelegation

(Article 65 of the Financial Regulation)

The authorising officer responsible may be assisted in his duties by staff entrusted, under his responsibility, with certain operations required for the implementation of the budget and production of the financial and management information. In order to prevent any conflict of interests, staff assisting authorising officers by delegation or subdelegation shall be subject to the obligations referred to in Article 57 of the Financial Regulation.

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

Article 47

Internal provisions governing delegations

(Article 65 of the Financial Regulation)

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

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

Article 48

Keeping of supporting documents by authorising officers

(Article 66(2) of the Financial Regulation)

The authorising officer shall set up paper based or electronic systems for the keeping of original supporting documents relating to and subsequent to budget implementation and budget implementation measures. The systems shall provide for:

(a) such documents to be numbered;

(b) such documents to be dated;

(c) registers, which may be computerised, to be kept identifying the exact location of such documents;

(d) such documents to be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate;

(e) keeping of documents relating to pre-financing guarantees for the institution and of a log to enable such guarantees to be adequately monitored.

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

Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. Article 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

Article 49

Ex ante and ex post controls

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

1. Initiation of an operation shall be understood as all the operations which are normally carried out by the staff referred to in Article 46 and which are preparatory to the adoption of the acts implementing the budget by the authorising officer responsible.

2. *Ex ante* verification of an operation shall be understood as all the *ex ante* checks put in place by the authorising officer responsible in order to verify its operational and financial aspects.

3. *Ex ante* controls shall verify the coherence among supporting documents requested and any other information available.

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

The purpose of the *ex ante* controls shall be to ascertain that:

(a) the expenditure and revenue are in order and comply with the provisions applicable, in particular those of the budget and the relevant regulations and of any acts adopted in implementation of the Treaties or regulations and, where appropriate, the terms of contracts;

(b) the principle of sound financial management referred to in Chapter 7 of Title II of Part One of the Financial Regulation is applied.

For the purpose of controls, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising officer responsible to constitute a single operation.

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

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

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

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

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

Article 50

Code of professional standards

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

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

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

(a) the level of technical and financial competence required of the staff referred to in paragraph 1;

(b) the obligation for such staff to undergo continuous training;

(c) the mission, role and tasks allocated to them;

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

3. Heads of Union delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 56(2) of the Financial Regulation shall be subject to the Commission code of professional standards referred to in paragraph 2 of this Article for the implementation of the financial management tasks subdelegated to them.

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

Article 51

Failure of the authorising officer by delegation to take action

(Article 66(8) of the Financial Regulation)

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

Article 52

Transmission of financial and management information to the accounting officer

(Article 66 of the Financial Regulation)

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

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

Article 53

Report on negotiated procedures

(Article 66 of the Financial Regulation)

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

Section 3

Accounting officer

Article 54

Appointment of the accounting officer

(Article 68 of the Financial Regulation)

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

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

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

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

Article 55

Termination of duties of the accounting officer

(Article 68 of the Financial Regulation)

1. A trial balance shall be drawn up without delay in the event of termination of the duties of the accounting officer.

2. The trial balance accompanied by a handing over report shall be transmitted by the accounting officer who is terminating his duties or, if it is not possible, by an official in his department to the new accounting officer.

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

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

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

Article 56

Validation of accounting and inventory systems

(Article 68 of the Financial Regulation)

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

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

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

Article 57

Treasury management

(Article 68 of the Financial Regulation)

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

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

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

Article 58

Management of bank accounts

(Article 68 of the Financial Regulation)

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

2. The accounting officer shall be responsible for closing accounts referred to in the paragraph 1 or for ensuring that such accounts are closed.

3. The accounting officer shall set the operating terms for accounts referred to in paragraph 1 with financial institutions, in accordance with the principles of sound financial management, efficiency and competitive tendering.

4. At least every five years the accounting officer shall relaunch competitive tendering between financial institutions with which accounts could be opened in accordance with paragraph 1.

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

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

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

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

Article 59

Signatures on accounts

(Article 68 of the Financial Regulation)

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

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

Article 60

Management of account balances

(Article 68 of the Financial Regulation)

1. The accounting officer shall ensure that the balance on the bank accounts provided for in Article 58 does not deviate significantly from the cash-flow forecasts referred to in Article 57(2) and in any event:

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

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

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

Article 61

Transfers and conversion operations

(Article 68 of the Financial Regulation)

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

Article 62

Methods of payment

(Article 68 of the Financial Regulation)

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

Article 63

Legal entities files

(Article 68 of the Financial Regulation)

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

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

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

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

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

Article 64

Keeping of supporting documents by the accounting officer

(Article 68 of the Financial Regulation)

Supporting documents for the accounting system and for the preparation of the accounts referred to in Article 141 of the Financial Regulation shall be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate.

However, documents relating to operations not definitively closed shall be kept for longer, that is to say, until the end of the year following that in which the operations are closed. Article 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

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

Article 65

Persons empowered to administer accounts

(Article 69 of the Financial Regulation)

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

Section 4

Imprest administrator

Article 66

Conditions of use of imprest accounts

(Article 70 of the Financial Regulation)

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

2. The imprest administrator may provisionally validate and pay expenditure, on the basis of a detailed framework set out in the instructions from the authorising officer responsible. Those instructions shall specify the rules and conditions under which the provisional validation and payments shall be carried out and, where appropriate, the terms for signing legal commitments within the meaning of Article 97(1)(e).

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

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

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

Article 67

Conditions governing creation and payment

(Article 70 of the Financial Regulation)

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

(a) the maximum amount which may be initially provided as an imprest, and its purpose;

(b) whether a bank account or post office giro account is to be opened in the name of the institution;

(c) the nature and maximum amount of each item of expenditure which may be paid by the imprest administrator to third parties or collected from them;

(d) the frequency with which supporting documents must be produced, the procedure for producing them and the arrangements for transmitting them to the authorising officer for settlement;

(e) the procedure to be followed if the imprest has to be replenished;

(f) that imprest transactions will be settled by the authorising officer by no later than the end of the following month, so that the accounting balance and the bank balance can be reconciled;

(g) the period of validity of the authorisation given to the imprest administrator by the accounting officer;

(h) the identity of the appointed imprest administrator.

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

(a) priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;

(b) imprest accounts are used only in substantiated cases.

The maximum amount which may be paid by the imprest administrator where it is materially impossible or inefficient to carry out payment operations by budgetary procedures shall not exceed EUR 60 000 for each item of expenditure.

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

(a) prior budgetary and legal commitments signed by the authorising officer responsible;

(b) the positive residual balance of the imprest account, in cash or at the bank.

4. Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 89 of the Financial Regulation, cheque or other means of payment, including debit cards, in accordance with the instructions laid down by the accounting officer.

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

Article 68

Choice of imprest administrators

(Article 70 of the Financial Regulation)

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

Article 69

Endowment of imprest accounts

(Article 70 of the Financial Regulation)

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

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

(a) sales of equipment;

(b) publications;

(c) miscellaneous repayments;

(d) interest.

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

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

Article 70

Checks by authorising officers and accounting officers

(Article 70 of the Financial Regulation)

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

2. The accounting officer shall carry out, or have carried out by a staff member in his own department or in the authorising department specially empowered for that purpose, checks, which must as a general rule be effected on the spot and without warning, to verify the existence of the funds allocated to the 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 71

Procurement procedure

(Article 70 of the Financial Regulation)

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

Article 72

Creation of imprest accounts

(Article 70 of the Financial Regulation)

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

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

Article 73

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

(Article 70 of the Financial Regulation)

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

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

CHAPTER 4

Liability of the financial actors

Section 1

General rules

Article 74

Bodies responsible in matters of fraud

(Articles 66(8) and 72(2) of the Financial Regulation)

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

of the Union institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Union's interests.

Section 2

Rules applicable to authorising officers by delegation and subdelegation

Article 75

Financial irregularities

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

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

Article 76

Financial Irregularities Panel

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

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

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

An authorising officer by delegation may refer a matter to the panel if he considers that a financial irregularity has occurred. The Panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 75 have occurred, how serious they are and what their consequences might be. Where the Panel's analysis suggests that the case referred to it is a matter for OLAF, it shall transmit the file to the appointing authority without delay and shall inform OLAF at once.

When the Panel is directly informed of a matter by a member of staff in accordance with Article 66(8) of the Financial Regulation, it shall transmit the file to the appointing authority and shall inform the member of staff accordingly. The appointing authority may request the Panel's opinion on the case.

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

Article 77

Confirmation of instructions

(Article 73(3) of the Financial Regulation)

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

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

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

CHAPTER 5

Revenue operations

Section 1

Own resources

Article 78

Rules applying to own resources

(Article 76 of the Financial Regulation)

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

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

Section 2

Estimate of amounts receivable

Article 79

Estimate of amounts receivable

(Article 77 of the Financial Regulation)

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

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

(a) the revenue is booked to the correct budget item;

(b) the estimate is in order and complies with the provisions applicable and the principle of sound financial management.

2. Subject to Articles 181(2) and 183(2) of the Financial Regulation and Article 7(2) of this Regulation, an estimate of amounts receivable shall not have the effect of making commitment appropriations available. In the cases referred to in Article 21 of the Financial Regulation, appropriations may be made available only after the sums due have actually been recovered by the Union.

Section 3

Establishment of amounts receivable

Article 80

Procedure

(Article 78 of the Financial Regulation)

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

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

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

(a) the Union has established the amount receivable;

(b) if payment of the debt is made before the deadline, no default interest will be due;

(c) failing reimbursement by the deadline referred to in point (b) the debt shall bear interest at the rate referred to in Article 83, without any prejudice to any specific regulations applicable;

(d) failing reimbursement by the deadline referred to in point (b) the institution shall effect recovery either by offsetting or by enforcement of any guarantee lodged in advance;

(e) the accounting officer may effect recovery by offsetting before the deadline referred to in point b), where it is necessary to protect the Union's financial interests when he has justified grounds to believe that the amount due to the Commission would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting;

(f) if, after taking all the steps set out in points (a) to (e) of this subparagraph, the amount has not been recovered in full, the institution shall effect recovery by enforcement of a decision secured either in accordance with Article 79(2) of the Financial Regulation or by legal action.

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

Article 81

Establishment of amounts receivable

(Article 78 of the Financial Regulation)

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

(a) the receivable is certain, meaning that it is not subject to any condition;

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

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

(d) the particulars of the debtor are correct;

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

(f) the supporting documents are in order; and

(g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) of Article 91(1).

Article 82

Supporting documents for the establishment of amounts receivable

(Article 78 of the Financial Regulation)

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

2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or, on his own responsibility, shall ascertain that this has been done.

3. The supporting documents shall be kept by the authorising officer in accordance with Article 48.

Article 83

Default interest

(Article 78 of the Financial Regulation)

1. Without prejudice to any specific provisions deriving from the application of sector-specific regulations, any amount receivable not repaid on the deadline referred to in Article 80(3)(b) shall bear interest in accordance with paragraphs 2 and 3 of this Article.

2. The interest rate for amounts receivable not repaid on the deadline referred to in Article 80(3)(b) shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by:

(a) eight percentage points where the obligating event is a public supply and service contract referred to in Title V;

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

3. Interest shall be calculated from the calendar day following the deadline referred to in Article 80(3)(b) and specified in the debit note up to the calendar day on which the debt is repaid in full.

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

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

Section 4

Authorisation of recovery

Article 84

Establishment of the recovery order

(Article 79 of the Financial Regulation)

1. The recovery order shall specify:

(a) the financial year to which the revenue is to be booked;

(b) the references of the act or legal commitment which is the source of the debt and gives rise to the entitlement to recovery;

(c) the budget article and any other subdivision that may apply, including, where appropriate, the references of the corresponding budget commitment;

(d) the amount to be recovered, expressed in euro;

(e) the name and address of the debtor;

(f) the deadline referred to in Article 80(3)(b);

(g) the possible method of recovery, including in particular recovery by offsetting or enforcement of any guarantee lodged.

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

3. The accounting officer of each institution shall keep a list of amounts due to be recovered. Union entitlements shall be grouped in the list according to the date of issue of the recovery order. He shall transfer this list to the accounting officer of the Commission.

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

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

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

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

Article 85

Enforceable decision for the benefit of other institutions

(Article 79(2) of the Financial Regulation)

1. The exceptional circumstances referred to in article 79(2) of the Financial Regulation are met when the possibility to have a voluntary payment and to recover the debt by offsetting as provided for in Article 80(1) of the Financial Regulation have been exhausted by the institution concerned and the debt represents a significant amount.

2. In the case referred to in paragraph 1, the institutions concerned other than those mentioned under Article 299 of the TFEU may request the Commission to adopt an enforceable decision.

3. In all cases, the enforceable decision shall specify that the amounts claimed shall be entered in the section of the budget corresponding to the institution concerned, which shall act as Authorising officer. The revenue shall be entered as general revenue except if it falls within the specified cases of assigned revenues as provided for in Article 21(3) of the Financial Regulation.

4. The requesting institution shall inform the Commission of any event likely to alter the recovery and shall intervene in support of the Commission in case of appeal against the enforceable decision.

5. The Commission and the institution concerned shall agree on the practical modalities for the implementation of this Article.

Section 5

Recovery

Article 86

Collection formalities

(Article 80 of the Financial Regulation)

1. Upon the recovery of an amount receivable, the accounting officer shall make an entry in the accounts and shall inform the authorising officer responsible.

2. A receipt shall be issued in respect of any cash payments made to the accounting officer or imprest administrator.

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

Any partial payments shall first cover the interest.

Article 87

Recovery by offsetting

(Article 80 of the Financial Regulation)

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

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

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

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

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

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

Article 88

Recovery procedure failing voluntary payment

(Articles 79 and 80 of the Financial Regulation)

1. Without prejudice to Article 87, if the full amount has not been recovered by the deadline referred to in Article 80(3)(b) and specified in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.

2. Without prejudice to Article 87, where the recovery method referred to in paragraph 1 of this Article cannot be used and the debtor has failed to pay in response to the letter of formal notice sent by the accounting officer, the accounting officer shall enforce a recovery decision secured either in accordance with Article 79(2) of the Financial Regulation or by legal action.

Article 89

Additional time for payment

(Article 80 of the Financial Regulation)

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

(a) the debtor undertakes to pay interest at the rate specified in Article 83 for the entire additional period allowed, starting from the deadline referred to in Article 80(3)(b);

(b) in order to safeguard the rights of the Union, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the institution's accounting officer.

The guarantee referred to in point (b) of the first paragraph may be replaced by a joint and several guarantee by a third party approved by the institution's accounting officer.

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

Article 90

Recovery of fines or other penalties

(Articles 80 and 83 of the Financial Regulation)

1. Where an action is brought before the Court of Justice of the European Union against a Commission decision imposing a fine or other penalties under the TFEU or Euratom Treaty and until such time as all legal remedies have been exhausted, the debtor shall either provisionally pay the amounts concerned on the bank account designated by the accounting officer or provide a financial guarantee acceptable to the accounting officer. The guarantee shall be independent of the obligation to pay the fine or penalty payment or other penalties and shall be enforceable upon first call. It shall cover the claim as to principal and the interest due as specified in Article 83(4).

2. The Commission shall secure the provisionally cashed amounts by having them invested in financial assets thus ensuring the security and liquidity of the monies whilst also aiming at yielding a positive return.

3. After the exhaustion of all legal remedies and where the fine or penalty has been confirmed any of the following measures shall be taken:

(a) the provisionally collected amounts and the interest and other amounts they have yielded shall be entered into the budget in accordance with Article 83 of the Financial Regulation at the latest during the financial year following the year in which all legal remedies have been exhausted;

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

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

4. After all legal remedies have been exhausted and where the fine or penalty has been cancelled or reduced any of the following measures shall be taken:

(a) the amounts unduly collected together with the interest yielded shall be repaid to the third party concerned. In cases where the overall return yielded for the relevant period has been negative, the nominal value of the amounts unduly collected shall be repaid;

(b) where a financial guarantee has been lodged, the latter shall be released accordingly.

Article 91

Waiving of recovery of an established amount receivable

(Article 80 of the Financial Regulation)

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

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

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

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

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

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

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

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

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

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

3. The waiver decision referred to in Article 80(2) of the Financial Regulation shall be substantiated and shall refer to the diligence exercised to secure recovery and the points of law and fact on which the waiver is based. The authorising officer responsible shall waive recovery in accordance with Article 84.

4. The waiving of recovery of an established amount receivable may not be delegated by the institution in any of the following cases:

(a) where the amount to be waived is EUR 1 000 000 or more;

(b) where the amount to be waived is EUR 100 000 or more, where this represents 25 % or more of the established amount receivable.

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

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

Article 92

Cancellation of an established amount receivable

(Article 80 of the Financial Regulation)

1. In the event of a mistake, the authorising officer responsible shall cancel totally or partially the established amount receivable in accordance with Articles 82 and 84 and include adequate reasons.

2. Each institution shall lay down in its internal rules the conditions and procedure for delegating the power to cancel an established amount receivable.

Article 93

Rules for limitation periods

(Article 81 of the Financial Regulation)

1. The limitation period for entitlements of the Union in respect of third parties shall begin to run on the expiry of the deadline communicated to the debtor in the debit note as specified in Article 80(3)(b).

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

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

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

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

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

5. Where the accounting officer allows the debtor additional time for payment in accordance with Article 89, this shall be considered as an interruption of the limitation period. The new limitation period of five years shall begin to run on the day following the expiry of the extended time for payment.

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

CHAPTER 6

Expenditure operations

Article 94

Financing decision

(Article 84 of the Financial Regulation)

1. The financing decision shall set out the essential elements of an action involving expenditure from the budget.

2. The financing decision shall in particular set out the following:

(a) for grants:

(i) the reference to the basic act and the budgetary line;

(ii) the priorities of the year, the objectives to be fulfilled and the foreseen results with the appropriations authorised for the financial year;

(iii) the essential eligibility, selection and award criteria to be used to select the proposals;

(iv) the maximum possible rate of co-financing and if different rates are envisaged the criteria to be followed for each rate;

(v) the timetable and the indicative amount of the calls for proposals;

(b) for procurement:

(i) the global budgetary envelope reserved for the procurements during the year;

(ii) the indicative number and type of contracts envisaged and if possible their subject in generic terms;

(iii) the indicative time-frame for launching the procurement procedures;

(c) for trust funds referred to in Article 187 of the Financial Regulation:

(i) the reference to the basic act and the budgetary line;

(ii) the appropriations reserved to the trust fund for the year together with the amounts planned over its duration;

(iii) the objectives of the trust fund and its duration;

(iv) the rules of governance of the trust fund;

(v) the possibility to entrust budget implementation tasks to the entities and persons referred to in Article 187(2) of the Financial Regulation;

(d) for prizes:

(i) the reference to the basic act and the budgetary line;

(ii) the objectives to be fulfilled and the foreseen results;

(iii) the essential conditions for participation and award criteria;

(iv) the timetable of the contest and the amount of the prize or prizes;

(e) for financial instruments:

(i) the reference to the basic act and the budgetary line;

(ii) the objectives to be fulfilled and the foreseen results;

(iii) the amount allocated to the financial instrument;

(iv) the indicative implementation timetable.

3. Where the work programme referred to in Article 128 of the Financial Regulation contains the information set out in point (a) of paragraph 2 of this Article for the grants financed from appropriations authorised for the financial year, the decision adopting it shall be considered to be the financing decision for those grants.

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

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

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

Section 1

Commitment of expenditure

Article 95

Global and provisional commitments

(Article 85 of the Financial Regulation)

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

Financing agreements in the field of direct financial assistance to third countries, including budget support, which constitute legal commitments may give rise to payments without the conclusion of other legal commitments.

2. The provisional budgetary commitment shall be implemented either by the conclusion of one or more legal commitments giving rise to an entitlement to subsequent payments or, in cases relating to expenditure on staff management or relating to communication expenditures engaged in by the institutions for the coverage of Union events, directly by payments.

Article 96

Adoption of a global commitment

(Article 85 of the Financial Regulation)

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

The global commitment shall be made at the latest before the decision on the selection of recipients is taken and, where implementation of the appropriations concerned involves the adoption of a work programme within the meaning of Article 188, at the earliest after that programme has been adopted.

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

Article 97

Single signature

(Article 85 of the Financial Regulation)

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

(a) where the commitments are provisional;

(b) where global commitments relate to financing agreements with third countries;

(c) where the institution's decision constitutes the legal commitment;

(d) where the global commitment is implemented by a number of legal commitments, for which different authorising officers are responsible;

(e) where, in connection with imprest accounts available for external action, legal commitments must be signed by members of staff of the local units referred to in Article 72 on the instruction of the authorising officer responsible, who remains, however, fully responsible for the underlying transaction.

(f) where an institution has delegated authorising officer powers to the director of an interinstitutional European office pursuant to Article 199(1) of the Financial Regulation.

2. If the authorising officer responsible who signed the budget commitment is not available and remains unavailable for a period incompatible with the time limits for concluding the legal commitment, that legal commitment shall be concluded by the person designated under the deputisation rules adopted by each institution, provided that that person has the status of authorising officer in accordance with Article 65(3) of the Financial Regulation.

Article 98

Administrative expenditure covered by provisional commitments

(Article 85 of the Financial Regulation)

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

(a) expenditure on staff, whether or not covered by the Staff Regulations, on other human resources and pensions and on the remuneration of experts;

(b) expenditure relating to members of the institution;

(c) training expenditure;

(d) expenditure on competitions, selection and recruitment;

(e) mission expenses;

(f) representation expenses;

(g) meeting expenses;

(h) freelance interpreters and translators;

(i) exchanges of officials;

(j) recurring rentals of movable and immovable property or recurring payments relating to building contracts within the meaning of Article 121 of this Regulation or loan instalments pursuant to Article 203(8) of the Financial Regulation;

(k) miscellaneous insurance;

(l) cleaning, maintenance and security;

(m) welfare and medical expenditure;

(n) the use of telecommunications services;

(o) financial charges;

(p) legal expenses;

(q) damages, including interest;

(r) work equipment;

(s) water, gas and electricity;

(t) publications on paper or in electronic versions;

(u) communications activities engaged in by the institutions for the coverage of Union events.

Article 99

Registration of individual legal commitments

(Article 86 of the Financial Regulation)

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

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

The authorising officer responsible shall register the amounts in the accounts before signing the corresponding individual legal commitment, except in the cases referred to in the fourth subparagraph of Article 86(4) of the Financial Regulation.

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

Section 2

Validation of expenditure

Article 100

Validation and 'passing for payment'

(Article 88 of the Financial Regulation)

1. Validation of any expenditure shall be based on supporting documents within the meaning of Article 110 attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment, including recurring payments of subscriptions or training courses.

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

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

Article 101

Certified correct for pre-financing payments

(Article 88 of the Financial Regulation)

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

Article 102

Passing for payment of procurement contracts for interim and balance payments

(Article 88 of the Financial Regulation)

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

(a) the institution has received and formally registered an invoice drawn up by the contractor;

(b) the invoice itself, or an internal document accompanying the invoice received, has been endorsed 'certified correct' and signed by the authorising officer responsible or by a technically competent member of staff, duly empowered by the authorising officer responsible;

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

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

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

Article 103

Passing for payment of grants for interim and balance payments

(Article 88 of the Financial Regulation)

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

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

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

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

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

Article 104

Passing for payment of staff expenditure

(Article 88 of the Financial Regulation)

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

(a) in respect of monthly salary:

(i) the complete list of staff, giving all the components of remuneration;

(ii) a form (personal information sheet) based on decisions taken in each individual case, showing, whenever such change occurs, any change in any component of remuneration;

(iii) in the case of recruitments or appointments, a certified true copy of the recruitment or appointment decision which accompanies the validation of the first salary payment;

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

(c) in respect of overtime: a statement signed by the authorised member of staff certifying the amount of overtime worked;

(d) in respect of mission expenses:

(i) the travel order signed by the competent authority;

(ii) the statement of mission expenses, signed by the member of staff on mission and by the administrative superior to whom the appropriate powers have been delegated, if the mission expenses differ from the mission order;

(e) in respect of some other administrative expenditure related to staff including subscriptions or training courses which, according to the contract, are to be paid in advance: the supporting documents referring to the decision on which the expenditure is based and giving all the components of the calculation.

The statement of mission expenses referred to in point (d)(ii) of the first subparagraph shall indicate the place of mission, the dates and times of departure and arrival at the place of mission, travel expenses, subsistence expenses, and other expenses duly authorised on production of supporting documents.

Article 105

Material form of 'passed for payment'

(Article 88 of the Financial Regulation)

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

Article 106

Material form of 'certified correct'

(Article 88 of the Financial Regulation)

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

Section 3

Authorisation of payments

Article 107

Checks on payments by the authorising officer

(Article 89 of the Financial Regulation)

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

(a) the payment order has been properly issued, meaning that a corresponding validation decision has been taken previously in the form of 'passed for payment', that the particulars of the payee are correct and that the amount is due;

(b) the payment order corresponds to the budgetary commitment against which it is booked;

(c) the expenditure is charged to the correct item in the budget;

(d) appropriations are available.

Article 108

Mandatory details on payment orders and transmission to the accounting officer

(Article 89 of the Financial Regulation)

1. The payment order shall state:

(a) the financial year to which the expenditure is to be booked;

(b) the budget article and any other subdivision that may apply;

(c) the references of the legal commitment giving rise to an entitlement to payment;

(d) the references of the budgetary commitment against which it is to be booked;

(e) the amount to be paid, expressed in euro;

(f) the name, address and bank account details of the payee;

(g) the object of the expenditure;

(h) the means of payment;

(i) the entry of items in the inventory in accordance with Article 248.

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

Section 4

Payment of expenditure

Article 109

Types of payment

(Article 90 of the Financial Regulation)

1. Pre-financing shall provide a float. It may be split into a number of payments in accordance with sound financial management.

2. An interim payment, which may be repeated, may cover expenditure incurred for the implementation of the decision or agreement or to pay for services, supplies or works completed and/or delivered at interim stages of the contract. It may clear pre-financing in whole or in part, without prejudice to the provisions of the basic act.

3. The closure of the expenditure shall take the form of the payment of the balance which may not be repeated and which clears all preceding expenditure, or a recovery order.

Article 110

Supporting documents

(Article 90 of the Financial Regulation)

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

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

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

4. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 48.

Section 5

Time limits for expenditure operations

Article 111

Payment time limits and default interest

(Article 92 of the Financial Regulation)

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

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

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

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

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

(a) creditor's identification;

(b) amount;

(c) currency;

(d) date.

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

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

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

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

(a) the interest rates shall be those referred to in Article 83(2) of this Regulation;

(b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment laid down in Article 92(1) of the Financial Regulation up to the day of payment.

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

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

CHAPTER 7

IT systems

Article 112

Description of IT systems

(Article 93 of the Financial Regulation)

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

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

Article 113

Periodical save

(Article 93 of the Financial Regulation)

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

CHAPTER 8

Internal auditor

Article 114

Appointment of the internal auditor

(Article 98 of the Financial Regulation)

1. Each institution shall appoint its internal auditor in accordance with arrangements adapted to its specific features and requirements. The institution shall inform the European Parliament and Council of the appointment of the internal auditor.

2. Each institution shall determine, in accordance with its specific features and its requirements, the scope of the mission of the internal auditor and shall lay down in detail the objectives and procedures for the exercise of the internal audit function with due respect for international internal audit standards.

3. The institution may appoint as internal auditor, by virtue of their particular competence, an official or other servant covered by the Staff Regulations chosen from nationals of the Member States.

4. If two or more institutions appoint the same internal auditor they shall make the necessary arrangements for him to be declared liable for his actions as laid down in Article 119.

5. The institution shall inform the European Parliament and Council when the duties of the internal auditor are terminated.

Article 115

Resources for the internal auditor

(Article 99 of the Financial Regulation)

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

Article 116

Work programme

(Article 99 of the Financial Regulation)

1. The internal auditor shall adopt his work programme and shall submit it to the institution.

2. The institution may ask the internal auditor to carry out audits not included in the work programme referred to in paragraph 1.

Article 117

Reports of the internal auditor

(Article 99 of the Financial Regulation)

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

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

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

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

Article 118

Independence

(Article 100 of the Financial Regulation)

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

Article 119

Liability of the internal auditor

(Article 100 of the Financial Regulation)

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

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

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

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

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

Article 120

Action before the Court of Justice of the European Union

(Article 100 of the Financial Regulation)

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

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

TITLE V

PROCUREMENT

CHAPTER 1

General provisions

Section 1

Scope and award principles

Article 121

Definitions and scope

(Article 101 of the Financial Regulation)

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

2. Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract.

3. Works contracts cover either the execution, or both the execution and design, of works or a work related to one of the activities referred to in Annex I to Directive 2004/18/EC or the

realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' shall mean the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

4. Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts.

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

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

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

5. The terms 'work contractor', 'supplier' and 'service provider' covers any natural or legal person or public entity or consortium of such persons and/or bodies which offers to execute works, supply products and provide services. The term 'economic operator' shall mean 'work contractors', 'suppliers' and 'service providers'. 'Tenderers' shall mean economic operators who have submitted a tender. 'Candidates' shall mean those who have asked to be allowed to take part in a restricted procedure, a competitive dialogue, or a negotiated procedure. 'Vendors' shall mean economic operators registered in a list of vendors according to Article 136(1)(b).

Consortia of economic operators shall be authorised to submit tenders or to be candidates. Contracting authorities may not demand that consortia must have a given legal form in order to be allowed to submit a tender or request to take part, but the consortium selected may be required to adopt a given legal form after it has been awarded the contract if this change is necessary for proper performance of the contract.

6. Departments of the Union institutions shall be considered to be contracting authorities, save where they conclude between themselves administrative arrangements for the provision of services, the supply of products, for the execution of works or for the implementation of building contracts.

7. Technical assistance shall mean support and capacity-building activities necessary for the implementation of a programme or an action, in particular preparatory, management, monitoring, evaluation, audit and control activities.

8. All exchanges with contractors, including the conclusion of contracts and any amendments thereto, may be done through electronic exchange systems set up by the contracting authority.

9. These systems shall meet the following requirements:

(a) only authorised persons may have access to the system and to documents transmitted through it;

(b) only authorised persons may electronically sign or transmit a document through the system;

(c) authorised persons must be identified through the system by established means;

(d) the time and date of the electronic transaction must be determined precisely;

(e) the integrity of documents must be preserved;

(f) the availability of documents must be preserved;

(g) where appropriate, the confidentiality of documents must be preserved;

(h) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 must be ensured.

10. Data sent or received through such a system shall enjoy legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed original and shall enjoy legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of paragraph 9 shall have the equivalent legal effect of handwritten signatures.

[1] OJ L 340, 16.12.2002, p. 1.

Article 122

Framework contracts and specific contracts

(Article 101 of the Financial Regulation)

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

Specific contracts based on framework contracts shall be awarded in accordance with the terms of the framework contract, only between the contracting authorities and the contractors of the framework contract.

When awarding specific contracts, the parties may not make substantial changes to the framework contract.

2. Where a framework contract is concluded with a single economic operator, the specific contracts shall be awarded within the limits of the terms laid down in the framework contract.

In duly justified circumstances, contracting authorities may consult in writing the contractor, requesting it to supplement its tender if necessary.

3. Where a framework contract is to be concluded with several economic operators, it shall be concluded with at least three operators, provided that there is a sufficient number of economic operators who satisfy the selection criteria or a sufficient number of admissible tenders which meet the award criteria.

A framework contract with several economic operators may take the form of separate contracts which contain identical terms.

Specific contracts based on framework contracts concluded with several economic operators shall be awarded in accordance with the following arrangements:

(a) in case of framework contracts without reopening of competition by application of the terms laid down in the framework contract;

(b) in case of framework contracts with reopening of competition, after the parties have again competed on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, on the basis of other terms referred to in the specification for the framework contract.

For every specific contract to be awarded in accordance with the arrangements in point (b) of the third subparagraph, contracting authorities shall consult in writing the contractors of the framework contract, fixing a time limit which is sufficiently long to allow tenders to be submitted. Tenders shall be submitted in writing. Contracting authorities shall award each specific contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specification for the framework contract.

4. In sectors subject to a rapid price and technological evolution, framework contracts without reopening of competition shall contain a clause either on a mid-term review or on a benchmarking system. After the mid-term review, if the conditions initially laid down are no longer adapted to the price or technological evolution, the contracting authority may not use the framework contract concerned and shall take appropriate measures to terminate it.

5. Only specific contracts based on framework contracts shall be preceded by a budgetary commitment.

Section 2

Publication

Article 123

Advertising of contracts covered by Directive 2004/18/EC

(Article 103 of the Financial Regulation)

1. Publication for contracts with a value equal to or above the thresholds laid down in Article 170(1) shall consist in a contract notice, without prejudice to Article 134, and an award notice. A prior information notice shall be compulsory only where the contracting authority intends to make use of the possibility of shortening time limits for receipt of tenders in accordance with Article 152(4).

2. The prior information notice is the notice by which the contracting authorities make known, by way of indication, the estimated total value and subject of contracts and framework contracts which they intend to award during a financial year, but excluding contracts under the negotiated procedure without prior publication of a contract notice.

The prior information notice shall be published either by the Publications Office of the European Union (hereinafter 'Publications Office') or by the contracting authorities themselves on their buyer profile.

The compulsory prior information notice shall be sent to the Publications Office or published on the buyer profile as soon as possible and in any event by no later than 31 March of each financial year.

Contracting authorities which publish the prior information notice on their buyer profile shall send to the Publications Office, electronically and using the format and transmission procedures specified in point (3) of Annex VIII to Directive 2004/18/EC, a notice announcing the publication of a prior information notice on a buyer profile.

3. The contract notice is the means by which the contracting authorities make known their intention to launch a procedure for the award of a contract or framework contract or to set up a dynamic purchasing system in accordance with Article 131. Without prejudice to contracts concluded after a negotiated procedure as referred to in Article 134, the contract notice shall be compulsory for the contracts with an estimated value equal to or above the thresholds laid down in Article 170(1).

It shall not be compulsory for specific contracts based on framework contracts.

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

Contracting authorities shall state whether or not they authorise variants and shall specify the minimum capacity levels they demand if they make use of the possibility provided for in the second subparagraph of Article 146(2). They shall set out the selection criteria referred to in Article 146 that they intend to use, the minimum number of candidates they plan to invite to tender and, where appropriate, the maximum number, and the objective and non-discriminatory criteria they intend to apply in order to limit the number, in accordance with the second subparagraph of Article 128(1).

Where there is unrestricted, direct and full access to the call for tenders by electronic means, in particular in the dynamic purchasing systems referred to in Article 131, the internet address at which these documents can be consulted shall appear in the contract notice.

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

Where appropriate, contracting authorities shall specify in the contract notice that the procurement procedure is an interinstitutional procurement procedure. In such cases, the contract notice shall indicate the institutions, executive agencies or bodies referred to in Article 208 of the Financial Regulation which are involved in the procurement procedure, the institution responsible for the procurement procedure and the global volume of the contracts for all those institutions, executive agencies or bodies.

4. The award notice shall give the outcome of the procedure for the award of contracts, framework contracts or contracts based on a dynamic purchasing system. In the case of contracts with a value equal to or above the thresholds laid down in Article 170(1), the award notice shall be compulsory. It shall not be compulsory for specific contracts based on framework contracts.

The award notice shall be sent to the Publications Office no later than 48 calendar days from the date on which the contract or framework contract is signed. However, notices relating to contracts based on a dynamic purchasing system may be grouped together on a quarterly basis. In such cases, they shall be sent to the Publications Office no later than 48 days after the end of each quarter.

Contracting authorities which have held a design contest shall send the Publications Office a notice of the results of the contest.

In case of interinstitutional procedures, the award notice shall be sent by the contracting authority responsible for the procedure.

The award notice shall also be sent to the Publications Office in the case of a contract or a framework contract with a value equal to or above the thresholds laid down in Article 170(1) and awarded pursuant to a negotiated procedure without prior publication of a contract notice, in sufficient time for the publication to occur before the signature of the contract, in accordance with the terms and conditions set out in Article 171(1).

Without prejudice to Article 21, information relating to the value and contractors of specific contracts based on a framework contract during a financial year shall be published on the internet website of the contracting authority no later than 30 June following the end of that financial year if, as a result of the conclusion of a specific contract or of the aggregate volume of the specific contracts, the thresholds referred to in Article 170(1) are exceeded.

5. The notices shall be drawn up in accordance with the standard forms adopted by the Commission pursuant to Directive 2004/18/EC.

Article 124

Advertising of contracts not covered by Directive 2004/18/EC

(Article 103 of the Financial Regulation)

1. Contracts with a value below the thresholds laid down in Article 170(1) shall be advertised by appropriate means in order to ensure competitive tendering and impartiality of the procurement procedure. Such advertising shall involve:

(a) a contract notice as referred to in Article 123(3), or a notice of a call for expressions of interest for contracts covering a similar subject with a value greater than the amount referred to in Article 137(1);

(b) appropriate *ex ante* publicity on internet for contracts with a value greater than the amount referred to in Article 137(2).

2. A list of contractors to whom building contracts and contracts declared secret in accordance with Article 134(1)(j) of this Regulation are awarded shall be published only once a year, with an indication of the subject and value of the contracts awarded. That list shall be sent to the European Parliament and Council. In the case of the Commission, it shall be annexed to the summary of the annual activity reports referred to in Article 66(9) of the Financial Regulation.

3. Information relating to contracts with a value greater than the amount referred to in Article 137(1) that have not been the subject of an individual award notice shall be sent to the Publications Office. The annual lists of contractors shall be sent by no later than 30 June of the following financial year.

4. Information relating to contracts with a value greater than the amount referred to in Article 137(2) shall be published on the internet site of the institution no later than 30 June of the following financial year.

Article 125

Publication of notices

(Article 103 of the Financial Regulation)

1. The Publications Office shall publish the notices referred to in Articles 123 and 124 in the *Official Journal of the European Union* no later than 12 calendar days after their dispatch.

The period specified in the first subparagraph shall be reduced to five calendar days in the case of the fast-track procedures referred to in Article 154.

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

Article 126

Other forms of advertising

(Article 103 of the Financial Regulation)

In addition to the advertising provided for in Articles 123, 124 and 125, contracts may be advertised in any other way, notably in electronic form. Any such advertising shall refer to the notice published in the *Official Journal of the European Union*, as provided for in Article 125, if one has been published, and may not precede the publication of that notice, which alone is authentic.

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

Section 3

Procurement procedures

Article 127

Types of procurement procedure

(Article 104 of the Financial Regulation)

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

2. Procurement procedures are open where all interested economic operators may submit a tender. That applies also in the case of the dynamic purchasing systems referred to in Article 131.

Procurement procedures are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria referred to in Article 146 and invited simultaneously and in writing by the contracting authorities may submit a tender or a solution under the competitive dialogue procedure referred to in Article 132.

The selection phase may be repeated for each individual contract, also in the case of a competitive dialogue, or may involve drawing up a list of potential candidates under the procedure referred to in Article 136(1)(a).

3. In a negotiated procedure, the contracting authorities shall consult tenderers of their choice who satisfy the selection criteria laid down in Article 146, and negotiate the terms of their tenders with one or more of them.

In negotiated procedures where a contract notice is published, as referred to in Article 135, the contracting authorities shall simultaneously and in writing invite the selected candidates to negotiate.

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

Article 128

Number of candidates in restricted or negotiated procedures

(Article 104 of the Financial Regulation)

1. In a restricted procedure and the procedures referred to in points (a) and (b) of Article 136(1), the number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria.

The contracting authority may also provide for a maximum number of candidates, depending on the subject of the contract and on the basis of objective and non-discriminatory selection criteria. In such cases, the range and criteria shall be indicated in the contract notice or the call for expressions of interest referred to in Articles 123 and 124.

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

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

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

The first and second subparagraphs shall not apply to the following:

(a) contracts involving very low values, as referred to in Article 137(2);

(b) contracts for legal services according to the CPV nomenclature;

(c) contracts declared secret, as referred to in Article 134(1)(j).

3. Where the number of candidates meeting the selection criteria and the minimum levels is below the minimum number specified in paragraphs 1 and 2, the contracting authority may continue the procedure by inviting the candidate or candidates with the required capacities. However, the contracting authority may not include other economic operators who were not initially invited to be part of the procedure, or candidates who do not have the required capacities.

Article 129

Arrangements for negotiated procedures

(Article 104 of the Financial Regulation)

Contracting authorities shall negotiate with tenderers the tenders they have submitted in order to adapt them to the requirements set out in the contract notice referred to in Article 123 or in the specifications and in any additional documents and in order to find the tender offering best value for money.

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

Where contracting authorities may, in accordance with Article 135, award contracts using a negotiated procedure after publishing a contract notice, they may arrange for the negotiated procedure to be conducted in stages so as to reduce the number of tenders to be negotiated, while applying the award criteria set out in the contract notice or specification. The contract notice or specification shall state that use is to be made of this possibility.

Article 130

Contests

(Article 104 of the Financial Regulation)

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

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

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

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

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

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

Candidates may be asked by the selection board to answer the questions recorded in the report in order to clarify a project. A full report of the resulting dialogue shall be drawn up.

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

Article 131

Dynamic purchasing system

(Article 104 of the Financial Regulation)

1. The dynamic purchasing system is a completely electronic process for making commonly used purchases, which is open throughout its duration to any economic operator who satisfies the selection criteria and has submitted an indicative tender that complies with the specification and any additional documents. The indicative tenders may be improved at any time provided that they continue to comply with the specification.

2. For the purposes of setting up the dynamic purchasing system, contracting authorities shall publish a contract notice stating that a dynamic purchasing system is being used and containing a reference to the internet address offering unrestricted, direct and full access to the specification and to any additional documents from the time of publication of the notice up to the expiry of the system.

They shall indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, and all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

3. Contracting authorities shall give any economic operator, throughout the duration of the dynamic purchasing system, the possibility of submitting an indicative tender with a view to being admitted to the system under the conditions referred to in paragraph 1. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform tenderers at the earliest possible opportunity that they have been admitted to the dynamic purchasing system or that their tender has been rejected.

4. Each specific contract shall be the subject of an invitation to tender. Before issuing this invitation, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, within a time limit that may not be less than 15 days from the date on which the simplified notice is sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

Contracting authorities shall invite all tenderers admitted to the system to submit a tender within a reasonable time. They shall award the contract to the tenderer who has submitted the tender offering best value for money on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation to tender.

5. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

Contracting authorities may not resort to this system to prevent, restrict or distort competition.

No charges may be billed to the interested economic operators or to parties to the system.

Article 132

Competitive dialogue

(Article 104 of the Financial Regulation)

1. In the case of particularly complex contracts, where the contracting authority considers that direct use of the open procedure or the existing arrangements governing the restricted procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of the competitive dialogue referred to in Article 29 of Directive 2004/18/EC.

A contract is considered to be 'particularly complex' where the contracting authority is not objectively able to define the technical means capable of satisfying the needs or objectives or able to specify the legal or financial make-up of the project.

2. Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document.

3. Contracting authorities shall open a dialogue with the candidates satisfying the selection criteria set out in Article 146 in order to identify and define the means best suited to satisfying their needs.

During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers and confidentiality of the solutions proposed or other information communicated by a candidate participating in the dialogue unless the candidate agrees to its disclosure.

Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or the descriptive document if provision is made for this possibility in the contract notice or the descriptive document.

4. After informing the participants that the dialogue is concluded, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project.

At the request of the contracting authority, these tenders may be clarified, specified and fine-tuned provided this does not have the effect of changing basic aspects of the tender or of the invitation to tender, variations in which could distort competition or have a discriminatory effect.

At the request of the contracting authority, the tenderer identified as having submitted the tender offering best value for money may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tenders and does not risk distorting competition or causing discrimination.

5. The contracting authorities may specify prices or payments to the participants in the dialogue.

Article 133

Joint procurement

(Article 104 of the Financial Regulation)

In the case of a joint procurement procedure between one institution and the contracting authority from one or more Member States, EFTA States or Union candidate countries, the procedural provisions applicable to the institution shall apply.

Where the share pertaining to or managed by the contracting authority of a Member State in the total estimated value of the contract is equal to or above 50 %, or in other duly justified cases, the institution may decide that the procedural rules applicable to the contracting authority from a Member State shall apply, provided that they can be considered as equivalent to those of the institution.

The institution and the contracting authority from Member States, EFTA States or Union candidate countries, concerned by the joint procurement procedure shall agree in particular upon the practical modalities for the evaluation of the requests for participation or the tenders, the award of the contract, the law applicable to the contract and the competent court for hearing disputes.

Article 134

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

(Article 104 of the Financial Regulation)

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

(a) where no tenders, or no suitable tenders, or no request to participate have been submitted in response to an open procedure or restricted procedure after the initial procedure has been completed, provided that the original terms of the contract as specified in the tender documents referred to in Article 138 are not substantially altered;

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

(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the contracting authorities, it is impossible to comply with the time limits set for the other procedures and laid down in Articles 152, 153 and 154;

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

(e) for additional services and works not included in the project initially envisaged or in the initial contract but which, through unforeseen circumstances, have become necessary for the performance of the services or works, subject to the conditions set out in paragraph 2;

(f) for new services or works consisting in the repetition of similar services or works entrusted to the economic operator awarded the initial contract by the same contracting authority, provided that these services or works conform to a basic project and that this project was the subject of an initial contract awarded under the open or restricted procedure, subject to the conditions set out in paragraph 3;

(g) for supply contracts:

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

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

(iii) in respect of supplies quoted and purchased on a commodity market;

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

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

(i) for contracts for legal services according to the CPV nomenclature, provided that such contracts are appropriately advertised;

(j) for contracts declared to be secret by the institution or by the authorities delegated by the institution, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the Union so requires.

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

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

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

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

3. In the cases referred to in point (f) of paragraph 1 of this Article, the option of using the negotiated procedure shall be pointed out as soon as the first operation is put out to competitive tender, and the total estimated amount for the subsequent services or work shall be taken into consideration in calculating the thresholds referred to in Article 170(1). That procedure may be used only during the execution of the original contract and at the latest during the three years following its signing.

Article 135

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

(Article 104 of the Financial Regulation)

1. Contracting authorities may use the negotiated procedure after having published a contract notice, whatever the estimated value of the contract, in the following cases:

(a) where tenders which are irregular or unacceptable, by reference in particular to the selection or award criteria, are submitted in response to an open or restricted procedure, or a competitive dialogue, which has been completed provided that the original terms of the contract as specified in the call for tenders referred to in Article 138 are not substantially altered, without prejudice to the application of paragraph 2 of this Article;

(b) in exceptional cases involving work, supplies or services where the nature or the risks do not permit prior overall pricing by the tenderer;

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

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

(e) for the service contracts referred to in Annex IIB to Directive 2004/18/EC, subject to points (i) and (j) of Article 134(1) of this Regulation and the second paragraph thereof.

(f) for research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

(g) for service contracts for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time.

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

Article 136

Procedure involving a call for expressions of interest

(Article 104 of the Financial Regulation)

1. For contracts with a value not exceeding that referred to in Article 170(1) and without prejudice to Articles 134 and 135, contracting authorities may use a call for expressions of interest to do either of the following:

(a) to pre-select candidates to be invited to submit tenders in response to future restricted invitations to tender;

(b) to collect a list of vendors to be invited to submit requests to participate or tenders.

2. The list drawn up following a call for expressions of interest shall be valid for the following period:

(a) not more than three years from the date on which the notice referred to in point (a) of Article 124(1) is sent to the Publications Office in the case referred to in point (a) of paragraph 1 of this Article;

(b) not more than five years from the date on which the notice referred to in point (a) of Article 124(1) is sent to the Publications Office in the case of vendors' list referred to in point (b) of paragraph 1 of this Article.

The list referred to in the first subparagraph may include sub-lists.

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

3. Where a contract is to be awarded, the contracting authority shall invite all candidates or vendors entered on the relevant list or sub-list to do either of the following:

(a) to submit a tender in the case referred to in point (a) of paragraph 1;

(b) to submit, in case of the list referred to in point (b) of paragraph 1, either of the following:

(i) tenders including documents relating to exclusion and selection criteria;

(ii) documents relating to exclusion and selection criteria and, in a second step, tenders, for those fulfilling these criteria.

Article 137

Low-value contracts

(Article 104 of the Financial Regulation)

1. A negotiated procedure without prior publication of a contract notice with consultation of at least three candidates may be used for contracts with a low value not exceeding EUR 60 000.

If, following consultation of the candidates, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

2. Contracts with a very low value not exceeding EUR 15 000 may be awarded on the basis of a single tender following a negotiated procedure without prior publication of a contract notice.

3. Payments of amounts not exceeding EUR 1 000 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender.

Article 138

Tender documents

(Article 105 of the Financial Regulation)

1. The tender documents shall include at least:

(a) the invitation to tender or to negotiate or to take part in the dialogue under the procedure referred to in Article 132;

(b) the attached specification or, in the case of a competitive dialogue as referred to in Article 132, a document describing the needs and requirements of the contracting authority, or the reference for the internet address at which such specification or document can be consulted;

(c) the draft contract based on the model contract.

Point (c) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

The tender documents shall contain a reference to the advertising measures taken under Articles 123 to 126.

2. The invitation to tender or to negotiate or to take part in the dialogue shall at least:

(a) specify the rules governing the lodging and presentation of tenders, including in particular the closing date and time for submission, any requirement as to the use of a standard reply form, the documents to be attached, including those in evidence of financial, economic, technical and professional capacity referred to in Article 146 if they are not specified in the contract notice, and the address to which they must be sent;

(b) state that submission of a tender implies acceptance of the specification referred to in paragraph 1 to which the tender relates and that this submission binds the contractor to whom the contract is awarded during performance of the contract;

(c) specify the period during which a tender will remain valid and may not be varied in any respect;

(d) forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 160, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;

(e) specify, in the case of a competitive dialogue, the date set and the address for the start of the consultation phase.

3. The specifications shall at least:

(a) specify the exclusion and selection criteria applying to the contract, save in a competitive dialogue, in the restricted procedure and in the negotiated procedure following publication of a notice as referred to in Article 135; in such cases those criteria shall appear solely in the contract notice or the call for expressions of interest;

(b) specify the award criteria and their relative weighting or, where appropriate, the decreasing order of importance, if this is not specified in the contract notice;

(c) set out the technical specifications referred to in Article 139;

(d) state the minimum requirements which variants must meet in the procedures referred to in Article 149(2) under which the contract is awarded to the tender offering best value for money, where the contracting authority has stated in the contract notice that such variants are permitted;

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

(f) specify the evidence of access to contracts, as set out in Article 172;

(g) specify, in the dynamic purchasing systems referred to in Article 131, the nature of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

4. The model contract shall in particular:

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

(b) specify the details which must be contained in invoices or in the relevant supporting documents in accordance with Article 102;

(c) state that, when the institutions are contracting authorities, Union law is the law which applies to the contract, complemented, where necessary, by a national law as specified in the contract.

(d) specify the competent court for hearing disputes.

For the purposes of point (c) of the first subparagraph of this paragraph, in case of contracts referred to in Article 121(1), the draft contract may refer exclusively to national law.

5. The contracting authorities may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors. In addition to the information referred to in Article 143, the contracting authority may also require the candidate or tenderer to submit information on the financial, economic, technical and professional capacities, as referred to in Articles 146, 147 and 148, of the envisaged subcontractor, in particular when subcontracting represents a significant part of the contract.

Article 139

Technical specifications

(Article 105 of the Financial Regulation)

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

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

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

(a) the quality levels;

(b) environmental performance;

(c) wherever possible, the accessibility criteria for people with disabilities or the design for all users;

(d) the levels and procedures of conformity assessment;

(e) fitness for use;

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

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

3. The technical specifications shall be formulated in any of the following ways:

(a) by reference to European standards, or to European technical approvals or common technical specifications, where such exist, to international standards, to other technical reference systems established by European standardisation bodies or, failing this, their national equivalents; every reference shall be followed by the expression 'or equivalent';

(b) in terms of performance or of functional requirements, which may include environmental characteristics and shall be sufficiently detailed to enable tenderers to determine the purpose of the contract and the contracting authorities to award the contract;

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

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

An appropriate means may take the form of a technical dossier of the manufacturer or a test report from a recognised body.

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

The tenderer must prove to the satisfaction of the contracting authority and by any appropriate means that the tender meets the performance or functional requirements set by the contracting authority. An appropriate means may take the form of a technical dossier of the manufacturer or a test report from a recognised body.

6. Where contracting authorities lay down environmental characteristics in terms of performance or of functional requirements, they may use the detailed specifications, or, if necessary, parts thereof, as defined by European, multinational or national eco-labels, or by any other eco-label, provided that the following conditions are satisfied:

(a) the specifications used are appropriate to define the characteristics of the supplies or services that are the object of the contract;

(b) the requirements for the label are drawn up on the basis of scientific information;

(c) the eco-labels are adopted using a procedure in which all the parties concerned, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate;

(d) the eco-labels are accessible to all interested parties.

7. Contracting authorities may indicate that the products or services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents. They shall accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body. A recognised body for the purposes of paragraphs 4, 5 and 6 is a test and calibration laboratory or a certification and inspection body which complies with applicable European standards.

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

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

Article 140

Price revision

(Article 105 of the Financial Regulation)

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

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

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

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

(c) its financial interests.

Article 141

Illegal activities giving rise to exclusion

(Article 106 of the Financial Regulation)

The cases referred to in Article 106(1)(e) of the Financial Regulation shall include all illegal activities detrimental to the Union's financial interests and in particular the following:

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

(b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997 ([2]);

(c) cases of participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA ([3]);

(d) cases of money laundering as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council ([4]);

(e) cases of terrorist offences, offences linked to terrorist activities, and inciting, aiding, abetting or attempting to commit such offences, as defined in Articles 1, 3 and 4 of Council Framework Decision 2002/475/JHA ([5]).

Article 142

Application of exclusion criteria and duration of exclusion

(Articles 106, 107, 108 and 109 of the Financial Regulation)

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

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express its views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 108(2) and (3) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 106(4) of the Financial Regulation. The period referred to in Article 106(4) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:

(a) from the date of the judgment having the force of *res judicata* in the cases referred to in points (b) and (e) of Article 106(1) of the Financial Regulation;

([1]) OJ C 316, 27.11.1995, p. 48.
([2]) OJ C 195, 25.6.1997, p. 1.
([3]) OJ L 300, 11.11.2008, p. 42
([4]) OJ L 309, 25.11.2005, p. 15.
([5]) OJ L 164, 22.6.2002, p. 3.

(b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 106(1)(c) of the Financial Regulation where the misconduct relates to contracts with the institution concerned.

For the purposes of point (b) of the third subparagraph, if the grave professional misconduct was established by a decision of a public authority or an international organisation, the date of the decision shall prevail.

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

2. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 106(1) of the Financial Regulation.

Article 143

Evidence

(Articles 106 and 107 of the Financial Regulation)

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation.

However, in case of restricted procedure, competitive dialogue and negotiated procedure after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.

Depending on its risk assessment, the contracting authority may refrain from requiring the declaration referred to in the first subparagraph for contracts referred to in Article 137(2). However, for contracts referred to in Articles 265(1), 267(1), and 269(1), the contracting authority may refrain from requiring that declaration for contracts with a value less than or equal to EUR 20 000.

2. The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3 of this Article, confirming the declaration referred to in paragraph 1 of this Article in the following cases:

(a) for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 170(1);

(b) for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in Article 265(1)(a), Article 267(1)(a), or Article 269(1)(a).

For contracts with a value less than the thresholds referred to in points (a) and (b) of the first subparagraph of this paragraph, the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.

3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in points (a), (b) or (e) of Article 106(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (a) or (d) of Article 106(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in paragraph 1 of this Article is not issued in the country concerned and for the other cases of exclusion referred to in Article 106 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

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

5. Where they have doubts as to whether candidates or tenderers are in one of the situation of exclusion, contracting authorities may themselves apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.

6. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 3 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid.

In such a case, the candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

7. When requested by the contracting authority, the candidate or tenderer shall submit a declaration on honour from the intended subcontractor that he is not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation.

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

Article 144

Central database

(Article 108 of the Financial Regulation)

1. The institutions, executive agencies and bodies referred to in Article 108(1) of the Financial Regulation shall transmit to the Commission, in the format established by the Commission, information identifying third parties which are in one of the situations referred to in Articles 106, 107, 109(1)(b) and 109(2)(a) of the Financial Regulation, the grounds for exclusion and the duration of the period of exclusion.

They shall also transmit information concerning persons with powers of representation, decision making or control over third parties which are legal entities, when these persons have found themselves in one of the situations referred to in Articles 106, 107, 109(1)(b) and 109(2)(a) of the Financial Regulation.

The authorities and bodies referred to in paragraphs 2 and 3 of Article 108 of the Financial Regulation shall transmit to the Commission, in the format established by the Commission, information identifying third parties who are in one of the situations referred to in Article 106(1)(e) of the Financial Regulation, where their conduct was detrimental to the Union's financial interests and persons with powers of representation, decision making or control over third parties which are legal entities, such as:

(a) the type of their conviction;

(b) the duration of the period of exclusion from procurement procedures, where applicable.

2. The institutions, agencies, authorities and bodies referred to in paragraph 1 shall designate the persons authorised to communicate to and receive from the Commission the information contained in the database.

In the case of the institutions, agencies, authorities and bodies referred to in Article 108(1) of the Financial Regulation, the designated persons shall address the information as soon as possible to the accounting officer of the Commission, and request, as appropriate, entry, modification or removal of data in the database.

In the case of the authorities and bodies referred to in Article 108(2) of the Financial Regulation, the designated persons shall address the requisite information to the Commission authorising officer responsible for the programme or action concerned, within three months of the issue of the relevant judgement.

The accounting officer of the Commission shall enter, modify or remove data in the database. He shall, via a secured protocol, provide on a monthly basis validated data contained in the database to the designated persons.

3. The institutions, agencies, authorities and bodies referred to in paragraph 1 shall certify to the Commission that the information communicated by them was established and transmitted in accordance with the principles set out in Regulation (EC) No 45/2001 and in Directive 95/46/EC of the European Parliament and of the Council [1] concerning the protection of personal data.

In particular, they shall inform in advance all third parties or persons referred to in paragraph 1 that their data may be included in the database and communicated by the Commission to the designated persons referred to in paragraph 2. They shall update, where appropriate, the information transmitted, following rectification or erasure or any modification of data.

Any party entered in the database shall have the right to be informed of the data stored concerning that party, upon request to the accounting officer of the Commission.

4. Member States shall take appropriate measures to assist the Commission in order to manage the database efficiently, in compliance with Directive 95/46/EC.

Appropriate arrangements shall be laid down in the agreements with the authorities of third countries and all bodies referred to in paragraphs 2 and 3 of Article 108 of the Financial Regulation, in order to ensure compliance with these provisions and with the principles concerning the protection of personal data.

Article 145

Administrative and financial penalties

(Articles 109 and 131 of the Financial Regulation)

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors

[1] OJ L 281, 23.11.1995, p. 31.

who have made false declarations, have made substantial errors or committed irregularities or fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the Union budget for a maximum of five years from the date on which the infringement is established as confirmed following a contradictory procedure with the candidate, tenderer or the contractor.

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

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

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

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

3. The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in Article 142(1).

Article 146

Selection criteria

(Article 110(1) of the Financial Regulation)

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

2. The selection criteria shall be applied in every procurement procedure for the purposes of assessing the financial, economic, technical and professional capacity of the candidate or the tenderer.

The contracting authority may lay down minimum capacity levels below which candidates may not be selected.

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

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

5. The information requested by the contracting authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer and the minimum capacity levels required in accordance with paragraph 2 may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

6. The contracting authority may, depending on his assessment of risks, decide not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers in the case of the following contracts:

(a) contracts awarded by the institutions on their own account, with a value not exceeding the value referred to in Article 137(1);

(b) contracts awarded in the field of external actions, with a value below the thresholds referred to in Article 265(1)(a), Article 267(1)(a) or Article 269(1)(a).

Where the contracting authority decides not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers, no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided.

Article 147

Economic and financial capacity

(Article 110(1) of the Financial Regulation)

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

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

(b) financial statements for at most the last three years for which accounts have been closed;

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

2. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 1 if such evidence has already been submitted to it for the purposes of another procurement procedure and still complies with paragraph 1.

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

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

The contracting authority may require that the economic operator and the entities referred to in the first subparagraph are jointly liable for the execution of the contract.

Under the same conditions, a consortium of economic operators as referred to in Article 121(5) may rely on the capacities of members of the consortium or of other entities.

Article 148

Technical and professional capacity

(Article 110(1) of the Financial Regulation)

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

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

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

(b) a list:

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

(ii) of the works carried out in the last five years, with the sums, dates and place;

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

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

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

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

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

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

(i) for public works contracts and public service contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

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

For the purposes of point (b)(ii) of the first subparagraph the list of the most important works shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed.

3. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in

which the service provider or supplier is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

4. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. However, contracting authorities shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

5. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme or to other environmental management schemes as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council [1] or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

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

Under the same conditions, a consortium of economic operators as referred to in Article 121(5) may rely on the capacities of members of the consortium or of other entities.

7. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, the contracting authority may require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a consortium of economic operators as referred to in Article 121(6), a participant in the consortium.

8. Contracting authorities may conclude that economic operators will not perform the contract to an appropriate quality standard where the contracting authority establishes that they have conflicting interests which may negatively affect the performance of the contract.

[1] OJ L 342, 22.12.2009, p. 1.

Article 149

Award arrangements and criteria

(Article 110(2) of the Financial Regulation)

1. Without prejudice to Article 107 of the Financial Regulation, contracts shall be awarded in one of the following two ways:

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

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

2. To determine which tender offers the best value for money the contracting authority shall take into account the price quoted and other quality criteria justified by the subject of the contract such as, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, profitability completion or delivery times, after-sales service and technical assistance. The contracting authority may lay down minimum levels of quality. Tenders below those levels of quality shall be rejected.

3. The contracting authority shall specify, in the contract notice or in the specification or in the descriptive document, the weighting it will apply to each of the criteria for determining best value for money. That weighting may be expressed as a range with an appropriate maximum spread.

The weighting applied to price in relation to the other criteria must not result in the neutralisation of price in the choice of contractor, without prejudice to the scales laid down by the institution for the remuneration of certain services, such as those provided by experts for evaluation purposes.

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

Article 150

Use of electronic auctions

(Article 110(2) of the Financial Regulation)

1. Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.

For the purpose of the first subparagraph, contracting authorities shall use a repetitive electronic process (electronic auction), which shall be held after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

2. In open, restricted or negotiated procedures in the case referred to in Article 135(1)(a), the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the tender specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework contract as referred to in Article 122(3)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 131.

The electronic auction shall be based either solely on prices, in which case the contract is awarded to the lowest price, or on the prices and/or the values of the features of the tenders indicated in the specification, in which case the contract is awarded to the tender offering best value for money.

3. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice.

The specification shall include the following details:

(a) the features, the values for which will be the subject of electronic auction, provided that those features are quantifiable and can be expressed in figures or percentages;

(b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;

(c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

(d) the relevant information concerning the electronic auction process;

(e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;

(f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

4. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

5. When the contract is to be awarded on the basis of the tender offering best value for money, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in the first subparagraph of Article 149(3).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the tender offering best value for money, as indicated in the contract notice or in the specification. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

6. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specification. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

7. Contracting authorities shall close an electronic auction in one or more of the following ways:

(a) in the invitation to take part in the auction, they shall indicate the date and time fixed in advance;

(b) when they receive no more new prices or new values which meet the requirements concerning minimum differences;

(c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

For the purposes of point (b) of the first subparagraph, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction.

When the contracting authorities have decided to close an electronic auction in accordance with point (c) of the first subparagraph, possibly in combination with the arrangements laid down in point (b) of the first subparagraph, the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

8. After closing an electronic auction, contracting authorities shall award the contract in accordance with Article 149 on the basis of the results of the electronic auction.

Contracting authorities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject matter of the contract, as put up for tender in the published contract notice and defined in the specification.

Article 151

Abnormally low tenders

(Article 110(2) of the Financial Regulation)

1. If, for a given contract, tenders appear to be abnormally low, the contracting authority shall, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements, after due hearing of the parties, taking account of the explanations received. These details may relate in particular to compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed.

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

(a) the economics of the manufacturing process, of the provision of services or of the construction method;

(b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;

(c) the originality of the tender.

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

Article 152

Time limits for receipt of tenders and requests to participate

(Article 111(1) of the Financial Regulation)

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

2. In open procedures for contracts with a value equal to or above the thresholds set in Article 170(1), the time limit for receipt of tenders shall be no less than 52 days from the date on which the contract notice is dispatched.

3. In restricted procedures, in cases of use of the competitive dialogue referred to in Article 132 and in negotiated procedures with publication of a contract notice for contracts above the thresholds set in Article 170(1), the time limit for receipt of requests to participate shall be no less than 37 days from the date on which the contract notice is dispatched.

In restricted procedures for contracts with a value equal to or above the thresholds set in Article 170(1), the time limit for receipt of tenders shall be no less than 40 days from the date on which the invitation to tender is dispatched.

However, in the procedures after a call for expressions of interest referred to in Article 136(1), the time limit shall be:

(a) no less than 21 days from the date on which the invitation to tender is dispatched for receipt of tenders in the case of the procedure referred to in Article 136(1)(a) and Article 136(3)(b)(i);

(b) no less than 10 days for receipt of requests to participate and no less than 21 days for receipt of tenders in the case of the two-step procedure referred to in Article 136(3)(b)(ii).

4. Where the contracting authorities, in accordance with Article 123(2), have sent a pre-information notice for publication or have themselves published a prior information notice on their buyer profile for contracts above the thresholds set in Article 170(1), the time limit for the receipt of tenders may generally be reduced to 36 days but shall in no circumstances be less than 22 days from the date of dispatch of the contract notice or the invitation to tender.

The shortened time limits referred to in the first subparagraph shall be permitted only if the prior information notice satisfies the following conditions:

(a) it contains all the information required for the contract notice, in so far as that information is available at the time the notice is published;

(b) it was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.

5. The time limits for receipt of tenders may be shortened by five days if unrestricted and direct access is available by electronic means to all documents constituting the call for tenders from the date of publication of the contract notice or the call for expressions of interest.

Article 153

Time allowed for access to tender documents

(Article 111(1) of the Financial Regulation)

1. Provided that the request was made in good time before the deadline for submission of tenders, the specification or descriptive documents in the procedure referred to in Article 132 and additional documents shall be sent, within five working days of the receipt of the request, to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a tender, subject to paragraph 4. Contracting authorities are not bound to reply to requests for documents made less than five working days before the deadline for submission of tenders.

2. Provided that the request was made in good time before the deadline for submission of tenders, additional information relating to the specification or the descriptive documents or additional documents shall be supplied simultaneously to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a tender as soon as possible and no later than six calendar days before the deadline for the receipt of tenders or, in the case of requests for information received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request. Contracting authorities are not bound to reply to requests for additional information made less than five working days before the deadline for submission of tenders.

3. If, for whatever reason, the specifications and the additional documents or information cannot be supplied within the time limits set in paragraphs 1 and 2 of this Article, or where tenders can be made only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time limits for receipt of tenders referred to in Article 152 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. That extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 123 to 126.

4. In the open procedure, including the dynamic purchasing systems referred to in Article 131, if there is unrestricted and full direct access by electronic means to the entire call for tenders and any additional documents, paragraph 1 of this Article shall not apply. The contract notice referred to in Article 123(3) shall give the internet address at which those documents can be consulted.

Article 154

Time limits in urgent cases

(Article 111(1) of the Financial Regulation)

1. Where duly substantiated urgency renders impracticable the minimum time limits laid down in Article 152(3) for restricted procedures and negotiated procedures where a contract notice is published, contracting authorities may set the following time limits, expressed in calendar days:

(a) a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice is dispatched or 10 days if the notice is sent to the Publications Office electronically;

(b) a time limit for the receipt of tenders which may not be less than 10 days from the date of dispatch of the invitation to tender.

2. In restricted procedures and fast-track negotiated procedures, additional information on the specifications shall, provided it has been requested in good time, be communicated to all candidates or tenderers no later than four calendar days before the deadline for receipt of tenders.

Article 155

Methods of communication

(Article 111(1) of the Financial Regulation)

1. The arrangements for the submission of tenders and requests to participate shall be determined by the contracting authority, which may choose an exclusive method of submission. Tenders and requests to participate may be submitted by letter or by electronic means. Requests to participate may also be submitted by fax.

The means of communication chosen shall be generally available and shall not restrict the access of economic operators to the procurement procedure.

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

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

(b) the integrity of data is preserved;

(c) the confidentiality of tenders and requests to participate is preserved and the contracting authorities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired;

(d) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001.

Where necessary for the purposes of legal proof, the contracting authorities may decide that requests to participate submitted by fax must be confirmed by letter or electronically as soon as possible and at all events before the final date set in Articles 152.

2. Where the contracting authority authorises submission of tenders and requests to participate by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure.

3. Except for contracts below the threshold laid down in Article 170(1), devices for the electronic receipt of tenders and requests to participate shall guarantee, through technical means and appropriate procedures, that:

(a) the economic operator can be authenticated with certainty;

(b) the exact time and date of the receipt of tenders and requests to participate can be determined precisely;

(c) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;

(d) where that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;

(e) only authorised persons may set or change the dates for opening data received;

(f) during the different stages of the procurement procedure access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;

(g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;

(h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.

4. Where the contracting authority authorises submission of tenders and requests to participate by electronic means, the electronic documents submitted by means of such systems shall be deemed to be the originals and to be signed by an authorised representative of the economic operator.

5. Where submission is by letter, tenderers or candidates may choose to submit tenders or requests to participate:

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

(b) by hand-delivery to the premises of the institution by the tenderer or candidate in person or by an agent; for which purposes the call for tenders shall specify, in addition to the information referred to in Article 138(2)(a), the department to which tenders or requests to participate are to be delivered against a signed and dated receipt.

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

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

Article 156

Tender guarantees

(Article 111(3) of the Financial Regulation)

The contracting authority may require a tender guarantee, lodged in accordance with Article 163, representing 1 % to 2 % of the total value of the contract.

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

Article 157

Opening of tenders and requests to participate

(Article 111(4) of the Financial Regulation)

1. All requests to participate and tenders that satisfy the requirements of Article 155 shall be opened.

2. Where the value of a contract exceeds the threshold laid down in Article 137(1), the authorising officer responsible shall appoint a committee to open the tenders.

The opening committee shall be made up of at least three persons representing at least two organisational entities of the institution concerned with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 57 of the Financial Regulation. In the representations or local units referred to in Article 72 of this Regulation or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

In the case of a procurement procedure launched on an inter-institutional basis, the opening committee shall be appointed by the responsible authorising officer from the institution responsible for the procurement procedure. The composition of the opening committee shall reflect, in so far as possible, the interinstitutional character of the procurement procedure.

3. Where tenders are submitted by post, one or more members of the opening committee shall initial the documents proving the date and time of dispatch of each tender.

They shall also initial either of the following:

(a) each page of each tender;

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

Where the contract is awarded under the automatic award procedure in accordance with point (a) of Article 149(1), the prices quoted in tenders satisfying the requirements shall be made public.

The members of the committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which comply with the requirements of Article 155 and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 155. That record may be signed in an electronic system providing sufficient identification of the signatory.

Article 158

Committee for the evaluation of tenders and requests to participate

(Article 111(5) of the Financial Regulation)

1. All requests to participate and tenders declared as complying with the requirements of Article 155 shall be evaluated and ranked by an evaluation committee set up for each of the two stages on the basis of the pre-announced exclusion and selection criteria and the award criteria respectively.

That committee shall be appointed by the authorising officer responsible to give an advisory opinion on contracts with a value above the threshold referred to in Article 137(1).

However, the authorising officer responsible may decide that the evaluation committee is to evaluate and rank the tenders on the basis of the award criteria only and that the exclusion and selection criteria are to be evaluated by other appropriate means guaranteeing the absence of conflicts of interests.

2. The evaluation committee shall be made up of at least three persons representing at least two organisational entities of the institutions or bodies referred to in Article 208 of the Financial Regulation with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. The authorising officer responsible shall ensure that these persons satisfy the obligations laid down in Article 57 of the Financial Regulation.

In the representations and local units referred to in Article 72 or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

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

Outside experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 57 of the Financial Regulation.

In the case of a procurement procedure launched on an interinstitutional basis, the evaluation committee shall be appointed by the responsible authorising officer from the institution responsible for the procurement procedure. The composition of the evaluation committee shall reflect, in so far as possible, the interinstitutional character of the procurement procedure.

3. Requests to participate and tenders which do not satisfy all the essential requirements set out in the tender documents shall be eliminated.

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

Requests to participate and tenders which are not excluded and which meet the selection criteria shall be considered admissible.

4. In the case of abnormally low tenders as referred to in Article 151, the evaluation committee shall request any relevant information concerning the composition of the tender.

Article 159

Results of the evaluation

(Article 112 of the Financial Regulation)

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

The written record shall be signed by all the members of the evaluation committee. That record may be signed in an electronic system providing sufficient identification of the signatory.

If the evaluation committee was not given responsibility to verify the tenders against the exclusion and selection criteria, the written record shall also be signed by the persons who were given that responsibility by the authorising officer responsible. The written record shall be kept for future reference.

2. The written record referred to in paragraph 1 shall contain at least the following:

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

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

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

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

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

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

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

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

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

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

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

(f) in the case of negotiated procedures and competitive dialogue, the circumstances referred to in Articles 132, 134, 135, 266, 268, 270 and 271 which justify their use;

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

In the case of a procurement procedure launched on an interinstitutional basis, the decision referred to in the first subparagraph shall be taken by the contracting authority responsible for the procurement procedure.

Article 160

Contacts between contracting authorities and tenderers

(Article 112 of the Financial Regulation)

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

2. Before the closing date for the submission of tenders, in respect of the additional documents and information referred to in Article 153, the contracting authority may:

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

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

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

4. In every case where contact has been made, and in the duly justified cases where contact has not been made as referred to in Article 96 of the Financial Regulation, a record shall be kept in the procurement file.

Article 161

Information for candidates and tenderers

(Articles 113, 114 and 118 of the Financial Regulation)

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract or admission to a dynamic purchasing system, including the grounds for any decision not to award a contract or framework contract, or set up a dynamic purchasing system, for which there has been competitive tendering or to recommence the procedure.

2. The contracting authority shall, within not more than 15 calendar days from the date on which a written request is received, communicate the information provided for in Article 113(2) of the Financial Regulation.

3. In the case of contracts awarded by the Union institutions on their own account, with a value equal to or more than the thresholds referred to in Article 170(1) and which are not excluded from the scope of Directive 2004/18/EC, the contracting authority shall inform all unsuccessful tenderers or candidates, simultaneously and individually, by electronic means, that their application or tender has not been accepted at either of the following stages:

(a) shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in procurement procedures organised in two separate stages;

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

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

Unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email, and all selected tenderers whose tenders are not eliminated may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer, without prejudice to the second subparagraph of Article 113(2) of the Financial Regulation. The contracting authority shall reply within no more than 15 calendar days from receipt of the request.

Article 162

Signature of the contract

(Articles 113 and 118 of the Financial Regulation)

Performance of the contract may not start before the contract is signed.

Section 4

Guarantees and corrective action

Article 163

Guarantees

(Article 115 of the Financial Regulation)

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

2. The guarantee shall be supplied by a bank or an authorised financial institution. It may be replaced by a joint and several guarantee by a third party, after acceptance by the contracting authority.

The guarantee shall be denominated in euro.

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

Article 164

Performance guarantee

(Article 115 of the Financial Regulation)

1. In order to ensure that the works, supplies or services have been fully delivered and when final acceptance according to the terms of the contract cannot be given upon final payment, the authorising officer may demand a performance guarantee on a case-by-case basis and subject to a preliminary risk analysis.

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

It may be replaced by an amount withheld from the final payment in order to constitute a guarantee until final acceptance of the services, supplies or works. The amount shall be determined by the authorising officer and shall be proportionate to the risks identified in relation to the performance of the contract, taking into account its subject matter, as well as the usual commercial terms applicable to the sector.

Conditions for such a guarantee shall be announced in the tender documents.

3. After final acceptance of the works, services or supplies, guarantees shall be released in accordance with the terms of the contract.

Article 165

Guarantee for pre-financing

(Article 115 of the Financial Regulation)

1. Once the contracting authority has established the need for a pre-financing, it shall assess the risks associated with pre-financing payments, before launching the procurement procedure, taking into account in particular the following criteria:

(a) the estimated value of the contract;

(b) its subject matter;

(c) its duration and pace;

(d) the structure of the market.

2. A guarantee shall be required in return for the payment of pre-financing in the case referred to in the second subparagraph of Article 146(6), or when the authorising officer decides to do so pursuant to paragraph 1 of this Article.

No guarantee shall be required for low value contracts as referred to in Article 137(1).

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

Article 166

Suspension in the event of errors or irregularities

(Article 116 of the Financial Regulation)

1. Contracts may be suspended under Article 116 of the Financial Regulation in order to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible.

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

CHAPTER 2

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

Article 167

Identification of the appropriate level for the calculation of thresholds

(Articles 117 and 118 of the Financial Regulation)

It shall be for each authorising officer by delegation or subdelegation within each institution to assess whether the thresholds laid down in Article 118 of the Financial Regulation have been reached.

Article 168

Separate contracts and contracts with lots

(Article 104 and 118 of the Financial Regulation)

1. The estimated value of a contract may not be determined with a view to evading the requirements laid down in this Regulation, nor may a contract be split up for that purpose.

Whenever appropriate, technically feasible, and cost efficient, contracts with a value equal to or greater than the thresholds laid down in Article 170(1) shall be awarded at the same time in the form of separate lots.

2. Where the subject of a supply, service or works contract is subdivided into several lots, each one the subject of an individual contract, the total value of all the lots shall be taken into account for the overall evaluation of the applicable threshold.

Where the total value of all the lots is equal to or exceeds the thresholds laid down in Article 170(1), Article 97(1) and paragraphs 1 and 2 of Article 104 of the Financial Regulation shall apply to each of the lots.

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

Article 169

Arrangements for estimating the value of certain contracts

(Article 118 of the Financial Regulation)

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

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

This estimate shall be made when the contract notice is sent or, where there is no such publicity, when the contracting authority initiates the award procedure.

2. For framework contracts and dynamic purchasing systems the value to be taken into account shall be the maximum value of all the contracts envisaged during the total lifetime of the framework contract or dynamic purchasing system.

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

(a) in the case of insurance services, the premium payable and other forms of remuneration;

(b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;

(c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.

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

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

(i) where their term is 48 months or less in the case of services or 12 months or less in the case of supplies, the total contract value for their duration;

(ii) where their term is more than 12 months in the case of supplies, the total value including the estimated residual value;

(b) in the case of contracts for an indefinite period or, in the case of services, for a period exceeding 48 months, the monthly value multiplied by forty-eight.

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

(a) either the actual aggregate cost of similar contracts for the same types of services or products awarded over the previous financial year or 12 months, adjusted, where possible, for anticipated changes in quantity or value over the 12 months following the initial contract;

(b) or the estimated aggregate cost of successive contracts awarded during the 12 months following the first service performed or first delivery or during the term of the contract, where this is greater than 12 months.

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

Article 170

Thresholds for application of the procedures under Directive 2004/18/EC

(Article 118 of the Financial Regulation)

1. The thresholds referred to in Article 118 of the Financial Regulation shall be those set out in Directive 2004/18/EC respectively for supply, service and works contracts.

2. The time limits referred to in Article 118 of the Financial Regulation shall be those specified in Articles 152, 153 and 154.

Article 171

Standstill period before signature of the contract

(Article 118 of the Financial Regulation)

1. The contracting authority shall not sign the contract or framework contract, covered by Directive 2004/18/EC, with the successful tenderer until 14 calendar days have elapsed.

That period shall run from either of the following dates:

(a) the day after the simultaneous dispatch of the notifications to successful and unsuccessful tenderers;

(b) where the contract or framework contract is awarded pursuant to a negotiated procedure without prior publication of a contract notice, the day after the contract award notice referred to in Article 123 has been published in the *Official Journal of the European Union*.

Where a fax or electronic means are used for the dispatch referred to in point (a) of the second subparagraph, the standstill period shall be 10 calendar days.

If necessary, the contracting authority may suspend the signing of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved tenderers or candidates or by any other relevant information received. The requests, comments or information must be received during the period set in the first subparagraph. In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

Except in the cases provided for in paragraph 2, any contract signed before the expiry of the period set in the first subparagraph shall be null and void.

Where the contract or framework contract cannot be awarded to the successful envisaged tenderer, the contracting authority may award it to the following best tenderer.

2. The period set in paragraph 1 shall not apply in the following cases:

(a) open, restricted or negotiated procedures after publication of a contract notice where only one tender has been submitted;

(b) specific contracts based on a framework contract;

(c) negotiated procedures referred to in Articles 134(1)(c), 134(1)(g)(iii), 134(1)(h) and 134(1)(j).

Article 172

Evidence of access to contracts

(Article 119 of the Financial Regulation)

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

TITLE VI

GRANTS

CHAPTER 1

Scope and form of grants

Article 173

Subscriptions

(Article 121 of the Financial Regulation)

The subscriptions referred to in Article 121(2)(d) of the Financial Regulation shall be sums paid to bodies of which the Union is member, in accordance with the budgetary decisions and the conditions of payment established by the body concerned.

Article 174

Agreement and decision for grants

(Article 121(1) of the Financial Regulation)

1. Grants shall be covered by a decision or by a written agreement.

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

(a) location of the beneficiary, within or outside the Union;

(b) complexity and standardisation of the content of the actions or work programmes funded.

Article 175

Expenditure on the members of the institutions

(Article 121 of the Financial Regulation)

Expenditure on the members of the institutions as referred to in Article 121(2)(a) of the Financial Regulation shall include contributions to associations of current and former members of the European Parliament. These contributions shall be implemented in accordance with the internal administrative rules of the European Parliament.

Article 176

Actions which may receive grants

(Article 121 of the Financial Regulation)

An action which may receive a grant within the meaning of Article 121 of the Financial Regulation must be clearly defined.

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

Article 177

Bodies pursuing an aim of general Union interest

(Article 121 of the Financial Regulation)

A body pursuing an aim of general Union interest is:

(a) a body involved in education, training, information, innovation or research and study in European policies, any activities contributing to the promotion of citizenship or human rights, or an European standards body;

(b) an entity representing non-profit bodies active in the Member States, in the candidate countries or in the potential candidate countries and promoting principles and policies consistent with the objectives of the Treaties.

Article 178

Partnerships

(Article 121 of the Financial Regulation)

1. Specific grants for actions and operating grants may form part of a framework partnership.

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

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

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

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

3. Framework partnerships shall be treated as grants with regard to programming, *ex ante* publication and award.

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

They shall be subject to the *ex post* publication procedures laid down in Article 191.

Article 179

Electronic exchange systems

(Article 121(1) of the Financial Regulation)

1. All exchanges with beneficiaries, including the conclusion of grant agreements, the notification of grant decisions and any amendments thereto, may be done through electronic exchange systems set up by the Commission.

2. These systems shall meet the following requirements:

(a) only authorised persons may have access to the system and to documents transmitted through it;

(b) only authorised persons may electronically sign or transmit a document through the system;

(c) authorised persons must be identified through the system by established means;

(d) the time and date of the electronic transaction must be determined precisely;

(e) the integrity of documents must be preserved;

(f) the availability of documents must be preserved;

(g) where appropriate, the confidentiality of documents must be preserved;

(h) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 must be ensured.

3. Data sent or received through such a system shall enjoy legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed original and shall enjoy legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of paragraph 2 shall have the equivalent legal effect of handwritten signatures.

Article 180

Content of grant agreements and decisions

(Article 122 of the Financial Regulation)

1. The grant agreement shall at least lay down the following:

(a) the subject;

(b) the beneficiary;

(c) the duration, namely:

(i) the date of its entry into force;

(ii) the starting date and the duration of the action or financial year being funded;

(d) the maximum amount of Union funding expressed in euro and the form of the grant supplemented, as appropriate, by:

(i) the total estimated eligible costs of the action or work programme and the financing rate of the eligible costs;

(ii) the unit cost, lump sum or flat rate referred to in points (b), (c) and (d) of Article 123 of the Financial Regulation where determined;

(iii) a combination of the elements set out in points (i) and (ii) of this point;

(e) a description of the action or, for an operating grant, of the work programme approved for that financial year by the authorising officer together with a description of the results expected from the implementation of the action or of the work programme;

(f) the general terms and conditions applicable to all agreements of this type, such as the acceptance by the beneficiary of checks and audits by the Commission, OLAF and the Court of Auditors;

(g) the estimated overall budget of the action or work programme;

(h) where implementation of the action involves procurement, the principles referred to in Article 209 or the procurement rules which the beneficiary must comply with;

(i) the responsibilities of the beneficiary, in particular:

(i) in terms of sound financial management and submission of activity and financial reports; whenever appropriate, intermediate targets shall be established, upon which those reports become due;

(ii) in the case of an agreement between the Commission and a number of beneficiaries, the specific obligations of the coordinator, if any, and of the other beneficiaries towards the coordinator as well as the financial responsibility of the beneficiaries for amounts due to the Commission;

(j) the arrangements and time limits for approving those reports and for payment by the Commission;

(k) as appropriate, details of the eligible costs of the action or approved work programme, or of the unit costs, lump sums or flat rates referred to in Article 123 of the Financial Regulation;

(l) provisions governing the visibility of the Union financial support, except in duly justified cases, where public display is not possible or appropriate.

The general terms and conditions referred to in point (f) of the first subparagraph shall at least:

(i) state that Union law is the law which applies to the grant agreement, complemented, where necessary, by national law as specified in the grant agreement. Derogation may be made in the agreements concluded with international organisations;

(ii) specify the competent court or arbitration tribunal to hear disputes.

2. The grant agreement may lay down the arrangements and time limits for suspension or termination in accordance with Article 135 of the Financial Regulation.

3. In the cases referred to in Article 178, the framework partnership decision or framework partnership agreement shall specify the information referred to in points (a), (b), (c)(i), (f), and (h) to (j) and (l) of the first subparagraph of paragraph 1 of this Article.

The specific grant decision or agreement shall contain the information referred to in points (a) to (e), (g) and (k) of the first subparagraph of paragraph 1 and, where necessary, point (i) of the first subparagraph of paragraph 1.

4. Grant agreements may be amended only in writing. Such amendments, including those aiming at adding or removing a beneficiary, shall not have the purpose or the effect of making such changes to agreements as would call into question the grant award decision or be contrary to the equal treatment of applicants.

5. Paragraphs 1, 2, 3 and 4 shall apply *mutatis mutandis* to grant decisions.

Part of the information referred to in paragraph 1 may be provided in the call for proposals or any related document, instead of the grant decision.

Article 181

Forms of grants

(Article 123 of the Financial Regulation)

1. Grants in the form referred to in point (a) of Article 123(1) of the Financial Regulation shall be calculated on the basis of the eligible costs actually incurred by the beneficiary, subject to a preliminary budget estimate as submitted with the proposal and included in the grant decision or agreement.

2. Unit costs as referred to in point (b) of Article 123(1) of the Financial Regulation shall cover all or certain specific categories of eligible costs which are clearly identified in advance by reference to an amount per unit.

3. Lump sums as referred to in point (c) of Article 123(1) of the Financial Regulation shall cover in global terms all or certain specific categories of eligible costs which are clearly identified in advance.

4. Flat-rate financing as referred to in point (d) of Article 123(1) of the Financial Regulation shall cover specific categories of eligible costs which are clearly identified in advance by applying a percentage.

Article 182

Lump sums, unit costs and flat-rate financing

(Article 124 of the Financial Regulation)

1. The authorisation to use lump sums, unit costs or flat-rate financing referred to in Article 124(1) of the Financial Regulation shall apply for the duration of the programme. This authorisation may be reviewed if substantial changes are needed. Data and amounts shall be assessed periodically and, where appropriate, lump sums, unit costs or flat-rate financing shall be adjusted.

In the case of an agreement between the Commission and a number of beneficiaries, the ceiling referred to in the second subparagraph of Article 124(1) of the Financial Regulation shall apply to each beneficiary.

2. The grant decision or agreement shall contain all necessary provisions in order to verify that the conditions for the payment of the grant on the basis of lump sums, unit costs or flat-rate financing have been respected.

3. Payment of the grant on the basis of lump sums, unit costs or flat-rate financing shall be without prejudice to the right of access to the beneficiaries' statutory records for the purposes intended by the first subparagraph of paragraph 1 and Article 137(2) of the Financial Regulation.

4. Where an *ex post* control reveals that the generating event has not occurred and an undue payment has been made to the beneficiary on a grant based on lump sums, unit costs or flat-rate financing, the Commission shall be entitled to recover up to the amount of the grant without prejudice to the penalties referred to in Article 109 of the Financial Regulation.

CHAPTER 2

Principles

Article 183

Co-financing principle

(Article 125(3) of the Financial Regulation)

1. Under the co-financing principle, the resources which are necessary to carry out the action or the work programme shall not be provided entirely by the Union contribution.

Co-financing may take the form of the beneficiary's own resources, income generated by the action or work programme or financial or in-kind contributions from third parties.

2. In-kind contributions shall mean non-financial resources made available free of charge by third parties to the beneficiary.

Article 184

No-profit principle

(Article 125(5) of the Financial Regulation)

Financial contributions from third parties that may be used by the beneficiary to cover other costs than those eligible under the Union grant or that are not due to the third party where they are not used at the end of the action or work programme, shall not be considered as financial contributions specifically assigned by the donors to the financing of the eligible costs within the meaning of Article 125(5) of the Financial Regulation.

Article 185

Low value grants

(Article 125(4) of the Financial Regulation)

Low value grants shall be considered to be those grants which are lower than or equal to EUR 60 000.

Article 186

Technical assistance

(Articles 101 and 125 of the Financial Regulation)

'Technical assistance' shall mean support and capacity-building activities necessary for the implementation of a programme or an action, in particular preparatory, management, monitoring, evaluation, audit and control activities.

Article 187

Eligible costs

(Article 126(3)(c) of the Financial Regulation)

VAT shall be considered as not recoverable under the applicable national VAT legislation, if according to national law it is attributable to any of the following activities:

(a) exempt activities without right of deduction;

(b) activities which fall outside the scope of VAT;

(c) activities, as referred to in points (a) or (b), in respect of which VAT is not deductible but refunded by means of specific refund schemes or compensation funds not foreseen by Directive 2006/112/EC, even if that scheme or fund is established by national VAT legislation.

VAT relating to the activities listed in Article 13(2) of Directive 2006/112/EC shall be regarded as paid by a beneficiary other than a non-taxable person as defined in the first subparagraph of Article 13(1) of that Directive, regardless of whether those activities are regarded by the Member State concerned as activities engaged in by bodies governed by public law acting as public authorities.

Article 188

Programming

(Article 128 of the Financial Regulation)

1. An annual or multiannual work programme for grants shall be prepared by each authorising officer responsible. The work programme shall be adopted by the institution and published on the grants internet site of the institution concerned as soon as possible, and no later than 31 March of the year of implementation.

The work programme shall specify the period it covers, the basic act, if any, the objectives pursued, the expected results, the indicative timetable of calls for proposals with the indicative amount and the maximum rate of co-financing.

The work programme shall in addition contain the information set out in Article 94 for the decision adopting it to be considered as the financing decision for the grants of the year concerned.

2. Any substantial change in the work programme shall also be adopted and published as provided for in paragraph 1.

Article 189

Content of calls for proposals

(Article 128 of the Financial Regulation)

1. Calls for proposals shall specify:

(a) the objectives pursued;

(b) the eligibility, exclusion, selection and award criteria as referred to in Articles 131 and 132 of the Financial Regulation and the relevant supporting documents;

(c) the arrangements for Union financing;

(d) the arrangements and final date for the submission of proposals and the planned date by which all applicants are to be informed of the outcome of the evaluation of their application and the indicative date for the signature of grant agreements or notification of grant decisions.

2. Calls for proposals shall be published on the internet site of the Union institutions and in addition to publication on the internet site by any other appropriate means, including the *Official Journal of the European Union*, where it is necessary to provide additional publicity among potential beneficiaries. They may be published as from the adoption of the financing decision referred to in Article 84 of the Financial Regulation, including during the year preceding budget implementation. Any modification of the content of the calls for proposals shall be subject to publication under the same conditions as those for the calls for proposals.

Article 190

Exceptions to calls for proposals

(Article 128 of the Financial Regulation)

1. Grants may be awarded without a call for proposals only in the following cases:

(a) for the purposes of humanitarian aid and civil protection operations or for crisis management aid within the meaning of paragraph 2;

(b) in other exceptional and duly substantiated emergencies;

(c) to bodies with a *de jure* or *de facto* monopoly, duly substantiated in the award decision;

(d) to bodies identified by a basic act, within the meaning of Article 54 of the Financial Regulation, as beneficiaries of a grant or to bodies designated by the Member States, under their responsibility, where those Member States are identified by a basic act as beneficiaries of a grant;

(e) in the case of research and technological development, to bodies identified in the work programme referred to in Article 128 of the Financial Regulation, where the basic act expressly provides for that possibility, and on condition that the project does not fall under the scope of a call for proposals;

(f) for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals.

The cases referred to in point (f) of the first subparagraph shall be duly substantiated in the award decision.

2. Crisis situations in third countries shall be understood as situations of immediate or imminent danger threatening to escalate into armed conflict or to destabilise the country. Crisis situations shall also be understood as situations caused by natural disasters, manmade crisis such as wars and other conflicts or extraordinary circumstances having comparable effects related inter alia to climate change, environmental degradation, privation of access to energy and natural resources or extreme poverty.

Article 191

Ex *post* publication

(Article 128 of the Financial Regulation)

1. Information relating to grants awarded in the course of a financial year shall be published in accordance with Article 21.

2. Following the publication referred to in paragraph 1, when requested by the European Parliament and the Council, the Commission shall forward them a report on:

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

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

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

(d) the number and amount of grants where the *ex post* publication obligation was waived in the past year in accordance with Article 21(4).

Article 192

Information for applicants

(Article 128 of the Financial Regulation)

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

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

(b) supplying information to potential applicants in particular through seminars and the provision of handbooks;

(c) maintaining permanent data for beneficiaries in the legal entity file referred to in Article 63.

Article 193

Financing from separate budget lines

(Article 129 of the Financial Regulation)

An action may be financed jointly from separate budget lines by different authorising officers responsible.

Article 194

Retroactive effect of funding in cases of extreme urgency and conflict prevention

(Article 130 of the Financial Regulation)

Within the scope of Article 130(1) of the Financial Regulation, the expenditure incurred by a beneficiary before the date of submission of the application shall be eligible for Union financing under the following conditions:

(a) the reasons for such derogation have been properly substantiated in the financing decision;

(b) the financing decision and the grant agreement or decision set explicitly the eligibility date earlier than the date for submission of applications.

Article 195

Submission of grant applications

(Article 131 of the Financial Regulation)

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

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

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

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

(b) the integrity of data must be preserved;

(c) the confidentiality of proposals must be preserved;

(d) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 is ensured.

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

The authorising officer responsible may require that electronic submission be accompanied by an advanced electronic signature within the meaning of Directive 1999/93/EC of the European Parliament and of the Council [1].

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

Moreover, the devices for the electronic receipt of applications shall guarantee security and confidentiality. They shall also guarantee that the exact time and date of receipt of applications can be determined precisely.

3. Where submission is by letter, applicants may choose to submit applications in one of the following ways:

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

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

CHAPTER 3

Award procedure

Article 196

Content of grant applications

(Article 131 of the Financial Regulation)

1. Applications shall be made on the form established in accordance with the joint standards laid down pursuant to Article 192(a) and made available by the authorising officers responsible, and in accordance with the criteria laid down in the basic act and the call for proposals.

The supporting documents referred to in the second subparagraph of Article 131(3) of the Financial Regulation may consist in particular in the profit and loss account and the balance sheet for the last financial year for which the accounts were closed.

2. The estimated budget for the action or work programme attached to the application shall have revenue and expenditure in balance, subject to provisions for contingencies or possible variations in exchange rates which may be authorised in duly justified cases, and shall indicate the estimated eligible costs of the action or work programme.

3. Where the application concerns grants for an action for which the amount exceeds EUR 750 000 or operating grants which exceed EUR 100 000, an audit report produced by an approved external auditor shall be submitted. That report shall certify the accounts for the last financial year available.

The first subparagraph of this paragraph shall apply only to the first application made by a beneficiary to an authorising officer responsible in any one financial year.

In the case of agreements between the Commission and a number of beneficiaries, the thresholds set in the first subparagraph shall apply to each beneficiary.

[1] OJ L 13, 19.1.2000, p. 12.

In case of partnerships referred to in Article 178, the audit report referred to in the first subparagraph of this paragraph, covering the last two financial years available must be produced before signature of the framework partnership agreement or notification of the framework partnership decision.

The authorising officer responsible may, depending on a risk assessment, waive the obligation of audit report referred to in the first subparagraph for education and training establishments and, in case of agreements with a number of beneficiaries, beneficiaries who have accepted joint and several liabilities or who do not bear any financial responsibility.

The first subparagraph of this paragraph shall not apply to public bodies and the international organisations referred to in Article 43.

4. The applicant shall indicate the sources and amounts of Union funding received or applied for the same action or part of the action or for its functioning during the same financial year as well as any other funding received or applied for the same action.

Article 197

Evidence of non-exclusion

(Article 131 of the Financial Regulation)

Applicants shall declare on their honour that they are not in one of the situations listed in Articles 106(1) and 107 of the Financial Regulation, except in the cases provided for in points (a) and (b) of Article 131(4) of the Financial Regulation. The authorising officer responsible may, depending on a risk assessment, request that successful applicants provide the evidence referred to in Article 143. Where requested by the authorising officer responsible, successful applicants shall supply such evidence, unless there is a material impossibility recognised by the authorising officer responsible or such evidence has already been submitted for the purposes of another grant or procurement procedure, provided that the documents are not more than one year old counting from their date of issue and that they are still valid.

Article 198

Applicants without legal personality

(Article 131 of the Financial Regulation)

When an application for a grant is submitted by an applicant which does not have legal personality, in accordance with Article 131(2) of the Financial Regulation, the representatives of that applicant shall prove that they have the capacity to undertake legal obligations on behalf of the applicant and that the applicant has financial and operational capacity equivalent to that of legal persons.

Article 199

Entities forming one applicant

(Article 131 of the Financial Regulation)

Where several entities satisfy the criteria for applying for a grant and together form one entity, that entity may be treated by the authorising officer responsible as the sole applicant, provided that the application identifies the entities involved in the proposed action or work programme as part of the applicant.

Article 200

Financial and administrative penalties

(Article 131 of the Financial Regulation)

Financial or administrative penalties, or both, may be imposed on applicants who have made false declarations or substantial errors, or committed irregularities or fraud, in accordance with the conditions laid down in Article 145.

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

Article 201

Eligibility criteria

(Article 131 of the Financial Regulation)

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

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

Article 202

Selection criteria

(Article 132(1) of the Financial Regulation)

1. The selection criteria shall be published in the call for proposals and shall be such as to make it possible to assess the applicant's financial and operational capacity to complete the proposed action or work programme.

2. The applicant must have stable and sufficient sources of funding to maintain his activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. The applicant must have the professional competencies and qualifications required to complete the proposed action or work programme unless specifically provided otherwise in the basic act.

3. Financial and operational capacity shall be verified in particular on the basis of an analysis of any of the supporting documents referred to in Article 196 and requested by the authorising officer responsible in the call for proposals.

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

In the case of the partnerships referred to in Article 178, that verification shall be performed before signature of the framework partnership agreement or notification of the framework partnership decision.

Article 203

Award criteria

(Article 132(2) of the Financial Regulation)

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

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

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

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

Article 204

Evaluation of applications and award

(Article 133 of the Financial Regulation)

1. The authorising officer responsible shall appoint a committee to evaluate the proposals, unless the Commission decides otherwise in the framework of a specific sectorial programme.

The committee shall be made up of at least three persons representing at least two organisational entities of the institutions or bodies referred to in Articles 62 and 208 of the Financial Regulation with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 57 of the Financial Regulation.

In the representations and local units referred to in Article 72 of this Regulation and the delegated bodies referred to in Articles 62 and 208 of the Financial Regulation, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

Outside experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 57 of the Financial Regulation.

2. The authorising officer responsible shall, where appropriate, divide the process into several procedural stages. The rules governing the process shall be announced in the call for proposals.

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

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

The applicants whose proposals are rejected at any stage shall be informed in accordance with Article 133(3) of the Financial Regulation.

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

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

3. The evaluation committee or, where appropriate, the authorising officer responsible may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, provided that such information or clarification does not substantially change the proposal. In accordance with Article 96 of the Financial Regulation, in the case of obvious clerical errors, the evaluation committee or the authorising officer may refrain from doing so only in duly justified cases. The authorising officer shall keep appropriate records of contacts with applicants during the procedure.

4. Upon completion of its work, the members of the evaluation committee shall sign a record of all the proposals examined, containing an assessment of their quality and identifying those which may receive funding. Those records may be signed in an electronic system providing sufficient authentication of the signatory.

Where necessary that record shall rank the proposals examined, provide recommendations on the maximum amount to award and possible non-substantial adjustments to the grant application.

The record shall be kept for future reference.

5. The authorising officer responsible may invite an applicant to adjust its proposal in the light of the recommendations of the evaluation committee. The authorising officer responsible shall keep appropriate records of contacts with applicants during the procedure.

The authorising officer responsible shall, after evaluation, take his decision giving at least:

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

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

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

6. Paragraphs 1, 2 and 4 of this Article are not compulsory for the award of grants pursuant to Article 190 of this Regulation and to Article 125(7) of the Financial Regulation.

Article 205

Information for applicants

(Article 133 of the Financial Regulation)

Rejected applicants shall be informed as soon as possible of the outcome of the evaluation of their application and in any case within 15 calendar days after information has been sent to the successful applicants.

CHAPTER 4

Payment and control

Article 206

Pre-financing guarantee

(Article 134 of the Financial Regulation)

1. In order to limit the financial risks connected with the payment of pre-financing, the authorising officer responsible may, on the basis of a risk assessment require the beneficiary to lodge a guarantee in advance, for up to the same amount as the pre-financing, except for low value grants, or split the payment into several instalments.

2. Whenever a guarantee is required, it is subject to the assessment and acceptance of the authorising officer responsible.

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

3. The guarantee shall be provided by an approved bank or financial institution established in one of the Member States. When the beneficiary is established in a third country, the authorising officer responsible may agree that a bank or financial institution established in that third country may provide the guarantee if he considers that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or financial institution established in a Member State.

At the request of the beneficiary, the guarantee referred to in the first subparagraph may be replaced by a joint and several guarantee by a third party or by the irrevocable and unconditional joint guarantee of the beneficiaries of an action who are parties to the same grant agreement or decision, after acceptance by the authorising officer responsible.

The guarantee shall be denominated in euro.

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

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

Article 207

Supporting documents for payment requests

(Article 135 of the Financial Regulation)

1. For each grant, pre-financing may be split into several instalments in accordance with sound financial management.

The payment in full of the new pre-financing payment shall be subject to the consumption of at least 70 % of the total amount of any earlier pre-financing.

Where the consumption of the previous pre-financing is less than 70 %, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing.

The statement of the beneficiary's outlay shall be produced in support of any request for a new payment.

2. The beneficiary shall, without prejudice to Article 110, certify on his honour that information contained in payment requests is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the grant agreement or decision and that payment requests are substantiated by adequate supporting documents that can be checked.

3. A certificate on the financial statements of the action or the work programme and underlying accounts, produced by an approved external auditor or in case of public bodies, by a competent and independent public officer, may be demanded by the authorising officer responsible in support of any payment, on the basis of a risk assessment. The certificate shall be attached to the payment request. The certificate shall certify, in accordance with a methodology approved by the authorising officer responsible and on the basis of agreed-upon procedures compliant with international standards, that the costs declared by the beneficiary in the financial statements on which the payment request is based are real, accurately recorded and eligible in accordance with the grant agreement or decision.

In specific and duly justified cases, the authorising officer responsible may request the certificate in the form of an opinion or other format in accordance with international standards.

The certificate on the financial statements and underlying accounts shall be compulsory for interim payments and for payments of balances in the following cases:

(a) grants for an action for which the amount awarded in the form referred to in Article 123(1)(a) of the Financial Regulation is EUR 750 000 or more, when the cumulative amounts of payment requests under that form is at least EUR 325 000;

(b) operating grants for which the amount awarded in the form referred to in Article 123(1)(a) of the Financial Regulation is EUR 100 000 or more.

Depending on a risk assessment, the authorising officer responsible may also waive the obligation to provide such certificate on the financial statements and underlying accounts in the case of:

(a) public bodies and the international organisations referred to in Article 43;

(b) the beneficiaries of grants in connection with humanitarian aid, civil protection emergency operations and the management of crisis situations, save in respect of payments of balances;

(c) for payments of balances, beneficiaries of grants in connection with humanitarian aid who have signed a framework partnership agreement or have been notified a framework partnership decision, as referred to in Article 178, and who have in place a system of control offering equivalent guarantees for such payments;

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

The authorising officer responsible may also waive the obligation to provide a certificate on the financial statements and underlying accounts where an audit has been or will be directly done by the Commission's own staff or by a body authorised to do so on its behalf, which provides equivalent assurances about the costs declared.

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

4. An operational verification report, produced by an independent third party approved by the authorising officer responsible, may be requested by the authorising officer responsible in support of any payment, on the basis of a risk assessment. Where requested by the authorising officer responsible, the verification report shall be attached to the payment request and the corresponding costs are eligible under the same conditions as the costs relating to audit certificates as laid down in Article 126 of the Financial Regulation. The verification report shall state that the operational verification was done in accordance with a methodology approved by the authorising officer responsible and whether the action or work programme was actually implemented in accordance with the conditions set out in the grant agreement or grant decision.

Article 208

Suspension and reduction of grants

(Article 135 of the Financial Regulation)

1. The implementation of the grant agreement or decision, the participation of a beneficiary in its implementation or payments may be suspended in order to verify whether presumed substantial errors or irregularities or fraud or breach of obligations have actually occurred. If they are not confirmed, implementation shall resume as soon as possible.

2. Where the agreed action or work programme is not carried out or is not carried out properly, in full or on time, the authorising officer responsible shall, provided that the beneficiary has been given the opportunity to make observations, either reduce or recover the grant in proportion, depending on the stage of the procedure.

CHAPTER 5

Implementation

Article 209

Implementation contracts

(Article 137 of the Financial Regulation)

1. Without prejudice to the application of the Directive 2004/18/EC, where implementation of the action or work programme requires the award of a procurement contract, the beneficiary shall award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests.

2. Where implementation of the actions or work programme requires the award of a procurement contract with a value of more than EUR 60 000, the authorising officer responsible may require the beneficiary to abide by special rules in addition to those referred to in paragraph 1.

Those special rules shall be based on rules contained in the Financial Regulation and determined with due regard for the value of the contracts concerned, the relative size of the Union contribution in relation to the total cost of the action and the risk. Such special rules shall be included in the grant decision or agreement.

Article 210

Financial support to third parties

(Article 137 of the Financial Regulation)

Provided the objectives or results to be obtained are sufficiently detailed in the conditions referred to in Article 137(1) of the Financial Regulation, the margin of discretion may only be considered to be exhausted if the grant decision or agreement also specifies the following:

(a) the maximum amount of financial support that can be paid to a third party which shall not exceed EUR 60 000, save where the financial support is the primary aim of the action, and the criteria for determining the exact amount;

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

(c) the definition of the persons or categories of persons which may receive such financial support and the criteria to give it.

TITLE VII

PRIZES

Article 211

Programming

(Article 138(2) of the Financial Regulation)

1. An annual or multiannual work programme for prizes shall be prepared by each authorising officer responsible. The work programme shall be adopted by the institution and published on the internet site of the institution concerned as soon as possible, and no later than 31 March of the year of implementation.

The work programme shall specify the period it covers, the basic act, if any, the objectives pursued, the expected results, the indicative timetable of contests with the indicative amount of the prizes.

The work programme shall in addition contain the information set out in Article 94 for the decision adopting it to be considered as the financing decision for the prizes of the year concerned.

2. Any substantial change in the work programme shall also be adopted and published as provided for in paragraph 1.

Article 212

Rules of contests

(Article 138(2) of the Financial Regulation)

1. Rules of contests shall lay down the following:

(a) the conditions for participation, which shall at least:

(i) specify the eligibility criteria;

(ii) specify the arrangements and final date for the registration of participants, if required, and for the submission of entries, under the conditions set out in paragraph 2;

(iii) provide for exclusion of participants which are in one of the situations referred to in Article 106(1) and Articles 107, 108 and 109 of the Financial Regulation;

(iv) provide for the sole liability of participants in case of claim relating to the activities carried out in the framework of the contest;

(v) provide for acceptance by the winners of checks and audits by the Commission, OLAF and the Court of Auditors and of the publicity obligations as specified in the rules of the contest;

(vi) state that Union law is the law which applies to the contest, complemented, where necessary, by national law as specified in the rules of contest;

(vii) specify the competent court or arbitration tribunal to hear disputes;

(viii) state that financial or administrative penalties, or both, may be imposed on participants who have made false declarations, or committed irregularities or fraud, in accordance with the conditions laid down in Article 145 and in proportion to the value of the prizes in question;

(b) the award criteria, which shall be such as to make possible to assess the quality of the entries with regard to the objectives pursued and the expected results and to determine objectively whether entries qualify as the winners;

(c) the amount of the prize or prizes;

(d) the arrangements for the payment of prizes to the winners after their award.

For the purposes of point (a)(i) of the first subparagraph, beneficiaries of Union grants shall be eligible, unless stated otherwise in the rules of contest.

For the purposes of point (a)(vi) of the first subparagraph, derogation may be made in the case of participation of international organisations.

2. The authorising officer responsible shall choose means of communication which are non-discriminatory in nature for the submission of entries and which have no effect of restricting the access of participants to the contest.

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

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

(b) the integrity of data is preserved;

(c) the confidentiality of entries is preserved;

(d) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 is ensured.

3. Rules of contests may set the conditions for cancelling the contest, in particular where its objectives cannot be fulfilled or where a legal or natural person who does not comply with the conditions for participation would qualify as the winner.

4. Rules of contests shall be published on the internet site of the Union institutions. In addition to the publication on the internet site, rules of contests may also be published by any other appropriate means, including the *Official Journal of the European Union*, where it is necessary to provide additional publicity among potential participants. They may be published as from the adoption of the financing decision referred to in Article 84 of the Financial Regulation, including during the year preceding budget implementation. Any modification of the content of the rules of contests shall be also subject to publication under the same conditions.

Article 213

Ex post publication

(Article 138(2) of the Financial Regulation)

1. Information relating to prizes awarded in the course of a financial year shall be published in accordance with Article 21.

2. Following the publication referred to in paragraph 1, when requested by the European Parliament and the Council the Commission shall forward them a report on:

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

(b) the number of participants and the percentage of successful entries per contest;

(c) a list of the experts having taken part in panels in the past year, together with a reference to the procedure for their selection.

Article 214

Evaluation

(Article 138(3) of the Financial Regulation)

1. For the purpose of evaluating the entries, the authorising officer responsible shall appoint a panel of at least three experts, who may be outside experts or persons representing at least two organisational entities of the institutions or bodies referred to in Articles 62 and 208 of the Financial Regulation with no hierarchical link between them, except in the representations or local bodies referred to in Article 72 of this Regulation and the delegated bodies referred to in article 62 and 208 of the Financial Regulation, if there are no separate entities.

The experts referred to in the first subparagraph shall be subject to the requirements on conflict of interests laid down in Article 57 of the Financial Regulation.

Outside experts shall declare that they are not in a situation of conflict of interests at the time of appointment and that they undertake to inform the authorising officer if any conflict of interests should arise in the course of the evaluation procedure.

2. Upon completion of their work, the members of the panel shall sign a record of all the entries examined, containing an assessment of their quality and identifying those to which the prizes may be awarded. That record may be signed in an electronic system providing sufficient authentication of the signatory.

The record referred to in the first subparagraph shall be kept for future reference.

3. The authorising officer responsible shall then decide whether or not to award the prizes. That decision shall also specify the following:

(a) the subject and total amount of prizes awarded, if any;

(b) the names of the winning participants, if any, the amount of the prizes awarded to each wining participant and the reasons for that choice;

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

Article 215

Information and notification

(Article 138(3) of the Financial Regulation)

1. Participants shall be informed as soon as possible of the outcome of the evaluation of their entry and in any case within 15 calendar days after the award decision has been taken by the authorising officer.

2. The decision to award the prize shall be notified to the winning participant and shall serve as the legal commitment within the meaning of Article 86 of the Financial Regulation.

TITLE VIII

FINANCIAL INSTRUMENTS

Article 216

Selection of the entities entrusted with the implementation of financial instruments in indirect management

(Article 139 of the Financial Regulation)

1. For the implementation of financial instruments under indirect management, the Commission shall obtain evidence that the entrusted entity fulfils the requirements of Article 60(2) of the Financial Regulation. Once that evidence is obtained, it shall be valid for any future implementation of financial instruments by the relevant entity, unless substantial changes to the entrusted entities' systems, rules and procedures covered by those requirements have been made.

2. For the selection of entities entrusted with the implementation of financial instruments pursuant to Article 61(2) of the Financial Regulation, the Commission shall publish a call to potential entrusted entities. That call shall include the selection and award criteria.

The call referred to in the first subparagraph shall also indicate whether the entrusted entity is required to allocate its own financial resources to the specific financial instrument or share the risk. Where such indication is made and where it is necessary to mitigate a possible conflict of interest, the call shall also indicate that the entrusted entity is required to propose measures on alignment of interest, as set out in Article 140(2) of the Financial Regulation. The measures on alignment of interest shall be included in the agreement of the specific financial instrument.

The Commission shall open a dialogue with the entities that satisfy the selection criteria in a transparent and objective manner and without giving rise to a conflict of interest. After the dialogue the Commission shall sign delegation agreements with the entity or entities that have submitted the best value for money proposals including, where applicable, the allocation of their own financial resources or risk-sharing.

3. The Commission may enter into direct negotiations with potential entrusted entities before signing delegation agreements where the entrusted entity is identified in the relevant basic act or listed in Article 58(1)(c)(iii) of the Financial Regulation, or in duly justified and properly documented exceptional cases, in particular where:

(a) no suitable proposals were submitted following a call to potential entrusted entities;

(b) financial instruments with specific characteristics require a particular type of entrusted entity on account of its technical competence, its high degree of specialisation or its administrative power;

(c) for reasons of extreme urgency brought about by unforeseeable events not attributable to the Union, it is impossible to comply with the procedure referred to in paragraph 2.

Article 217

Content of the delegation agreement with entities entrusted with the implementation of financial instruments in indirect management

(Article 139 of the Financial Regulation)

In addition to the requirements listed in Article 40, delegation agreement with entities entrusted with the implementation of financial instruments shall include appropriate arrangements for ensuring compliance with the principles and conditions set out in Article 140 of the Financial Regulation. In particular, the delegation agreements shall contain:

(a) the description of the financial instrument, including its investment strategy or policy, the type of support provided, the criteria for eligibility for financial intermediaries and final recipients as well as additional operational requirements transposing the policy objectives of the instrument;

(b) the requirements for a target range of values for the leverage effect;

(c) a definition of non-eligible activities and exclusion criteria;

(d) provisions ensuring alignment of interest and addressing possible conflicts of interest;

(e) provisions for the selection of financial intermediaries pursuant to the second subparagraph of Article 139(4) of the Financial Regulation and for the establishment of dedicated investment vehicles, if applicable;

(f) provisions on the liability of the entrusted entity and of other entities involved in the implementation of the financial instrument;

(g) provisions on the settlement of disputes;

(h) provisions on the governance of the financial instrument;

(i) provisions regarding the use and reuse of the Union contribution in compliance with Article 140(6) of the Financial Regulation;

(j) provisions for the management of contributions from the Union and of fiduciary accounts, including counterparty risks, acceptable treasury operations, responsibilities of parties concerned, remedial actions in the event of excessive balances on fiduciary accounts, record keeping and reporting;

(k) provisions on the remuneration of the entrusted entity, including management fee rates and on the calculation and payment of management costs and fees to the entrusted entity in accordance with Article 218;

(l) where appropriate, provisions on a framework of conditions for the contributions from the funds referred to in Article 175 of the Financial Regulation, in particular the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural development and the Future Fisheries Fund (hereinafter 'CSF Funds');

(m) provisions on the duration, possibility of extension, and termination of the financial instrument, including the conditions for early termination and, where appropriate, exit strategies;

(n) provisions on the monitoring of the implementation of support to financial intermediaries and final recipients including reporting by the financial intermediaries;

(o) where applicable, type and nature of any hedging operations referred to in Article 219.

Article 218

Management costs and fees to entrusted entities

(Article 139 of the Financial Regulation)

1. The Commission shall remunerate the entrusted entities for the implementation of a financial instrument through performance based fees, reimbursement of exceptional expenses and, where the entrusted entity manages the treasury of the financial instrument, treasury management fees.

2. Performance based fees shall comprise administrative fees to remunerate the entrusted entity for the work carried out in the implementation of a financial instrument. Where appropriate, they may also comprise policy related incentives to promote the achievement of the policy objectives or incentivise the financial performance of the financial instrument.

Article 219

Specific rules for fiduciary accounts in indirect management

(Article 139 of the Financial Regulation)

1. Entities entrusted with the implementation of financial instruments may open fiduciary accounts within the meaning of Article 68(7) of the Financial Regulation, in their name and exclusively on behalf of the Commission. Those entrusted entities shall send the corresponding account statements to the Commission's responsible service.

2. The fiduciary accounts shall maintain appropriate liquidity and the assets held on such fiduciary accounts shall be managed in accordance with the principles of sound financial management and follow appropriate prudential rules in accordance with Article 140(7) of the Financial Regulation.

3. For the implementation of financial instruments, entrusted entities shall not carry out hedging operations for speculative purposes. The type and nature of any hedging operations shall be agreed *ex ante* by the Commission and included in the delegation agreements referred to in Article 217.

Article 220

Financial instruments implemented directly

(Article 139 of the Financial Regulation)

1. In exceptional cases, financial instruments may be implemented directly pursuant to Article 139(4) of the Financial Regulation through any of the following:

(a) a dedicated investment vehicle in which the Commission participates together with other public or private investors with a view to increasing the leverage effect of the Union contribution;

(b) loans, guarantees, equity participations and other risk-sharing instruments other than investments in dedicated investment vehicles, provided directly to final recipients or through financial intermediaries.

2. For the implementation of financial instruments, the Commission shall not carry out hedging operations for speculative purposes. The type and nature of any hedging operations shall be agreed *ex ante* by the Commission and included in the agreements with entities implementing the financial instrument.

Article 221

Selection of financial intermediaries, managers of dedicated investment vehicles and of final recipients

(Article 139 of the Financial Regulation)

1. Where the Commission implements financial instruments directly or indirectly through dedicated investment vehicles, such vehicles shall be established according to the laws of a Member State. They may also be established according to the laws of a country other than a Member State in the area of external action. The managers of such vehicles shall be obliged by law or contract to act with the diligence of a professional manager and in good faith.

2. The managers of the dedicated investment vehicles referred to in paragraph 1 and financial intermediaries or final recipients of the financial instruments shall be selected with due account of the nature of the financial instrument to be implemented, the experience and the operational and financial capacity of the entities concerned, and/or the economic viability of projects of final recipients. The choice shall be transparent, justified on objective grounds and shall not give rise to a conflict of interest.

3. No financial support shall be granted to managers of dedicated investment vehicles, to financial intermediaries and to final recipients which are in one of the situations referred to in Articles 106(1), 107, 108 and 109 of the Financial Regulation.

Article 222

Conditions for the use of financial instruments

(Article 140 of the Financial Regulation)

1. Financial instruments shall address market imperfections or failures or sub-optimal investment situations and provide support only to final recipients that are deemed potentially economically viable at the time of the Union support through a financial instrument.

2. Financial instruments shall provide support to final recipients in a proportionate manner. In particular, preferential treatment of investors providing co-investment or risk-sharing should be justified, proportionate to the risks taken by the investors in a financial instrument and limited to the minimum necessary to ensure their investment or risk-sharing.

Article 223

Leverage effect

(Article 140 of the Financial Regulation)

1. Financial instruments shall aim at achieving a leverage effect of the Union contribution by mobilising a global investment exceeding the size of the Union contribution.

The leverage effect of Union funds shall be equal to amount of finance to eligible final recipients divided by the amount of the Union contribution.

2. The target range of values for the leverage effect shall be based on an *ex ante* evaluation for the corresponding financial instrument.

Article 224

***Ex ante* evaluation of financial instruments**

(Article 140 of the Financial Regulation)

1. Financial instruments shall be based on *ex ante* evaluations identifying market imperfections or failures, or sub-optimal investment situations and assessing investment needs in view of the policy objectives.

2. The *ex ante* evaluation shall demonstrate that identified market needs cannot be addressed appropriately and in a timely manner through either market led activities or types of Union intervention other than funding by a financial instrument, such as regulation, liberalisation, reform or other policy action. It shall assess the likelihood and possible costs of market distortions and crowding-out of private funding through the financial instruments and shall identify means to minimise negative effects of such distortions.

3. In accordance with the principle of subsidiarity, the *ex ante* evaluation shall demonstrate that an Union-level financial instrument addresses identified market needs more appropriately than similar financial instruments at national or regional level, including those financed by CSF Funds. Factors such as difficult access to funding at national level, in particular for cross-border projects, economies of scale or strong demonstration effects linked to the diffusion of best practices to Member States shall be taken into account when assessing the added value of the Union contribution.

4. The *ex ante* evaluation shall determine the most efficient mode for delivering the financial instrument.

5. The *ex ante* evaluation shall also demonstrate that the planned financial instrument is consistent with:

(a) new and existing financial instruments, avoiding undesirable overlaps and achieving synergies and economies of scale;

(b) financial instruments and other forms of public intervention addressing the same market environment, avoiding inconsistencies and exploring potential synergies.

6. The *ex ante* evaluation shall assess proportionality of the envisaged intervention with regard to the size of the identified funding gap, the expected leverage effect of the planned financial instrument and also examine additional qualitative effects, such as the diffusion of best practices, the effective promotion of Union policy objectives throughout the implementation chain or the access to specific expertise available from actors involved in the implementation chain.

7. The *ex ante* evaluation shall establish a set of appropriate performance indicators for the proposed financial instruments and specify the expected output, results and impact.

8. A separate *ex ante* evaluation of financial instruments shall only be carried out where such evaluation complying in full with the criteria in paragraphs 1 to 7 is not included in the *ex ante* evaluation or an impact assessment of the programme or activity covered by a basic act.

Article 225

Monitoring of financial instruments

(Article 140 of the Financial Regulation)

1. In order to ensure the harmonised monitoring of financial instruments referred to in Article 140(12) of the Financial Regulation, a monitoring system shall be put in place by the authorising officer responsible to contribute to the provision of reasonable assurance that Union funds are used in accordance with Article 32(2) of the Financial Regulation.

2. The monitoring system shall be used to assess the progress of the implementation towards the achievement of the policy objectives reflected in the relevant output and result indicators established pursuant to the *ex ante* evaluation, and to analyse the compliance of the implementation with the defined requirements pursuant to Article 140(2) of the Financial Regulation and provide the basis for the Commission's reporting required under Articles 38(5) and 140(8) of the Financial Regulation.

3. In case of indirect management, the monitoring by the Commission shall build on the reporting and accounts provided by entrusted entities and on the audits available and controls carried out by the entrusted entity, taking due account of the management declaration of the entrusted entity and the opinion of the independent audit body referred to in Article 60(5) of the Financial Regulation. The Commission shall review the information provided by the entrusted entities and may carry out controls, including on a sample basis, at the appropriate implementation levels up to final recipients.

The monitoring by the entrusted entity shall build on the reporting and accounts provided by financial intermediaries and on the audits available and controls carried out by the financial intermediary, taking due account of the management declaration of the financial intermediary and the opinion of independent auditors.

Where, no financial intermediary exists, the entrusted entity shall directly monitor the use of the financial instrument based on the reporting and accounts provided by the final recipients.

The entrusted entity shall review, where appropriate on a sample basis, the information provided by the financial intermediaries or final recipients and shall carry out controls as set out in the agreement referred to in Article 217.

4. In case of direct management, the monitoring by the Commission shall build on the reporting and accounts provided by financial intermediaries and final recipients, subject to appropriate controls. The provisions under paragraph 3 shall apply to direct management mutatis mutandis.

5. The agreements implementing the financial instrument shall contain the provisions necessary for the application of paragraphs 1 to 4.

Article 226

Treatment of contributions from the CSF Funds

(Article 140 of the Financial Regulation)

1. Separate records shall be kept for contributions from CSF Funds to financial instruments established under Title VIII of the Financial Regulation and supported by CSF Funds pursuant to the sector specific rules.

2. Contributions from the CSF Funds shall be placed in separate accounts and used in accordance with the objectives of the respective CSF Funds to actions and final recipients consistent with the programme or programmes from which contributions are made.

3. As regards contributions from CSF Funds to financial instruments established under Title VIII of the Financial Regulation, the sector specific rules shall apply.

TITLE IX

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

Presentation of the accounts

Article 227

Report on budgetary and financial management during the year

(Article 142 of the Financial Regulation)

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

(a) the achievement of the objectives for the year, in accordance with the principle of sound financial management;

(b) the financial situation and the events which have had a significant influence on activities during the year.

The report on budgetary and financial management shall be separate from the reports on implementation of the budget.

Article 228

Exception to the accounting principles

(Article 144 of the Financial Regulation)

Where, in a specific case, the accounting officers consider that an exception should be made to the content of one of the accounting principles outlined in the Union accounting rules, that exception shall be duly substantiated and reported in the notes to the financial statements referred to in Article 232.

Article 229

Supporting documents

(Article 144 of the Financial Regulation)

1. Each entry shall be based on dated and numbered supporting documents, produced on paper or on a medium which guarantees the reliability and safeguarding of its content for the periods laid down in Article 48.

2. Operations of the same type, carried out in the same place and on the same day may be summarised in a single supporting document.

Article 230

Statement of financial performance

(Article 145 of the Financial Regulation)

The statement of financial performance shall show the income and charges for the year, classified according to their nature.

Article 231

Cash flow statement

(Article 145 of the Financial Regulation)

The cash flow statement shall report cash flows during the period showing the movement between opening and closing treasury amounts.

The treasury shall be made up of the following:

(a) cash in hand;

(b) bank accounts and deposits payable on demand;

(c) other disposable assets which can quickly be converted to cash and whose value is stable.

Article 232

Notes to the financial statements

(Article 145 of the Financial Regulation)

The notes referred to in article 145 of the Financial Regulation shall form an integral part of the financial statements. The notes shall contain at least the following information:

(a) accounting principles, rules and methods;

(b) explanatory notes, supplying additional information not contained in the body of the financial statements which is necessary for a true and fair view.

Article 233

Budgetary outturn accounts

(Article 146 of the Financial Regulation)

1. The budgetary outturn accounts shall contain:

(a) information on revenue comprising:

(i) changes in the revenue estimates in the budget;

(ii) the revenue outturn;

(iii) entitlements established;

(b) information showing changes in the total commitment and payment appropriations available;

(c) information showing the use made of the total commitment and payment appropriations available;

(d) information showing commitments outstanding, those carried over from the previous year and those made during the year.

2. As regards information on revenue, a statement shall also be attached showing, for each Member State, the breakdown of amounts of own resources still to be recovered at the end of the financial year and covered by a recovery order.

Article 234

Modalities of transmission of accounts

(Article 148 of the Financial Regulation)

Provisional accounts and the final accounts referred to in Articles 147 and 148 of the Financial Regulation may be sent by electronic means.

CHAPTER 2

Accounting

Section 1

Organisation of the accounts

Article 235

Organisation of the accounts

(Article 151 of the Financial Regulation)

1. The accounting officer of each institution and body referred to in Article 141 of the Financial Regulation shall draw up and keep updated documents describing the organisation of the accounts and accounting procedures of his institution and body.

2. Budget revenue and expenditure shall be recorded in the computerised system referred to in Article 236, according to the economic nature of the operation, as current revenue or expenditure or as capital.

Article 236

Computerised systems

(Article 151 of the Financial Regulation)

1. The accounts shall be kept with the help of an integrated computerised system.

2. Where accounts are kept using computerised systems and subsystems, such systems and subsystems shall be described in full.

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

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

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

Section 2

Accounting ledgers

Article 237

Accounting ledgers

(Article 154 of the Financial Regulation)

Each institution and each body referred to in Article 141 of the Financial Regulation shall keep a journal, a general ledger and at least sub-ledgers for debtors, creditors and fixed assets, unless it is not justified by cost-benefit considerations.

The accounting ledgers shall consist of electronic documents which are identified by the accounting officer and offer full guarantees for use as evidence.

Entries in the journal shall be transferred to the general ledger, itemised according to the chart of accounts referred to in Article 212.

The journal and the general ledger may be split into as many special journals and special ledgers are necessary to meet requirements.

Entries recorded in special journals and special ledgers shall be centralised at least every month in the journal and in the general ledger.

Article 238

Trial balance

(Article 154 of the Financial Regulation)

Each institution and body referred to in Article 141 of the Financial Regulation shall establish a trial balance covering all the accounts of the general accounts, including the accounts cleared during the year, with, in each case:

(a) account number;

(b) description;

(c) total debits;

(d) total credits;

(e) balance.

Article 239

Accounting reconciliations

(Article 154 of the Financial Regulation)

1. The data in the general ledger shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.

2. As regards the inventory of fixed assets, the provisions of Articles 246 to 253 shall apply.

Section 3

Registration

Article 240

Entries in the accounts

(Article 154 of the Financial Regulation)

1. Entries shall be made using the double entry method, whereby any movement or variation recorded in the accounts shall be represented by an entry establishing an equivalence between the amount debited and the amount credited in the various accounts affected by that entry.

2. The euro counterpart of a transaction denominated in a currency other than the euro shall be calculated and entered in the accounts.

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

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

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

3. The Union accounting rules adopted under Article 152 of the Financial Regulation shall specify the conversion and re-evaluation rules to be provided for the purposes of accrual accounting.

Article 241

Accounting records

(Article 154 of the Financial Regulation)

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

Article 242

Recording in the journal

(Article 154 of the Financial Regulation)

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

(a) day by day, operation by operation;

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

Article 243

Validation of entries

(Article 154 of the Financial Regulation)

1. Entries in the journal and in sub-ledgers shall be made final by means of a validation procedure prohibiting any change to or deletion of the entry.

2. A closure procedure designed to freeze the chronology of records and guarantee their inviolability shall be implemented at the latest before the final financial statements are presented.

Section 4

Reconciliation and verification

Article 244

Reconciliation of accounts

(Article 154 of the Financial Regulation)

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

2. Periodically, and at least whenever the accounts are closed, the accounting officer shall check that the bank balances correspond to the actual situation, in particular as regards:

(a) cash at bank, by reconciliation of the statements of account from financial institutions;

(b) cash in cash offices, by reconciliation with the data in the cash book.

The fixed assets accounts shall be reviewed in accordance with Article 250.

3. The interinstitutional liaison accounts shall be reconciled monthly.

4. The suspense accounts shall be opened and reviewed annually by the accounting officer. Those accounts shall be under the responsibility of the authorising officer and he shall clear them as soon as possible.

Section 5

Budget accounts

Article 245

Content and keeping of budget accounts

(Article 156 of the Financial Regulation)

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

(a) in the case of expenditure:

(i) the appropriations authorised in the initial budget, the appropriations entered in amending budgets, the appropriations carried over, the appropriations available following collection of assigned revenue, transfers of appropriations and the total appropriations thus available;

(ii) the commitments and payments in respect of the financial year;

(b) in the case of revenue:

(i) the estimates entered in the initial budget, the estimates entered in amending budgets, assigned revenue and the total amount of estimates thus determined;

(ii) the entitlements established and the amounts recovered in respect of the financial year in question;

(c) the commitments still to be paid and revenue still to be recovered carried forward from previous financial years.

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

The global provisional commitments relating to the European Agricultural Guarantee Fund (hereinafter 'EAGF') and the corresponding payments shall also be recorded in the budget accounts.

Those commitments shall be presented in respect of total EAGF appropriations.

2. The budget accounts shall show separately:

(a) the use of appropriations carried over and the appropriations for the year;

(b) the clearance of outstanding commitments.

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

3. The budget accounts may be organised in such a way as to develop a cost accounting system.

4. The budget accounts shall be kept using computer systems, in books or on file cards.

CHAPTER 3

Property inventories

Article 246

Property inventories

(Article 157 of the Financial Regulation)

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

Article 247

Safeguarding property

(Article 157 of the Financial Regulation)

Each of the institutions and bodies referred to in Article 141 of the Financial Regulation shall adopt provisions on safeguarding the assets included in their respective balance sheets and decide which administrative departments are responsible for the inventory system.

Article 248

Entry of items in the inventory

(Article 157 of the Financial Regulation)

All items acquired with a period of use greater than one year, which are not consumables, and whose purchase price or production cost is higher than that indicated in the Union accounting rules adopted under Article 152 of the Financial Regulation shall be entered in the inventory and recorded in the fixed assets accounts.

Article 249

Content of the inventory for each item

(Article 157 of the Financial Regulation)

The inventory shall contain an appropriate description of each item and specify its location, or for movable items, the service or person responsible, the date of acquisition and its unit cost.

Article 250

Inventory checks of movable property

(Article 157 of the Financial Regulation)

Inventory checks carried out by the institutions and bodies referred to in Article 141 of the Financial Regulation shall be performed in such a way as to ensure that each item physically exists and matches the relevant entry in the inventory. Such checks shall be carried out under an annual verification programme, save for fixed tangible assets and intangible assets, which shall be checked at least on a three-year basis.

Article 251

Resale of tangible assets

(Article 157 of the Financial Regulation)

Members, officials or other servants and any other staff of the institutions and bodies referred to in Article 141 of the Financial Regulation may not acquire items that are resold by these institutions and bodies, save where those items are resold by public tender procedure.

Article 252

Procedure for sale of tangible assets

(Article 157 of the Financial Regulation)

1. Sales of tangible assets shall be advertised locally in appropriate manner, if the unit purchase value is EUR 8 100 or more. The period between publication of the last announcement and conclusion of the sales contract shall be no less than 14 calendar days.

The sales referred to in the first subparagraph shall be the subject of a notice of sale published in the *Official Journal of the European Union*, if the unit purchase value is EUR 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 Union* and conclusion of the sales contract shall be no less than one month.

2. The institutions and bodies referred to in Article 141 of the Financial Regulation may forgo advertising where the cost of advertising exceeds the expected return from the operation.

3. The institutions and bodies referred to in Article 141 of the Financial Regulation shall always endeavour to obtain the best price for sales of tangible assets.

4. Paragraphs 1, 2 and 3 shall not apply to sales between Union institutions and their bodies referred to in Article 208 of the Financial Regulation.

Article 253

Procedure for disposing of tangible assets

(Article 157 of the Financial Regulation)

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

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

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

Members, officials or other servants and any other staff of the institutions and bodies referred to in Article 141 of the Financial Regulation may not be recipients of the property in the inventory given away free of charge or scrapped.

Article 254

Inventory and advertising of sales in Union delegations

(Article 157 of the Financial Regulation)

1. In the case of the Union delegations, the permanent inventories of movable property belonging to the Union shall be kept locally. They shall be sent regularly to the central departments in accordance with the rules adopted by each institution.

Movable property in transit to the Union delegations shall be entered on a provisional list before being recorded in the permanent inventories.

2. The advertising for sales of movable property of Union delegations shall be done in accordance with local usage.

PART TWO

SPECIAL PROVISIONS

TITLE I

RESEARCH

Article 255

Types of operations

(Article 181 of the Financial Regulation)

1. Direct action shall be carried out by the establishments of the Joint Research Centre (hereinafter 'JRC') and shall in principle be entirely financed from the budget. It shall consist of:

(a) research programmes;

(b) exploratory research activities;

(c) scientific and technical support activities of an institutional nature.

2. The JRC may participate in indirect actions under the conditions laid down in Article 183 of the Financial Regulation.

3. The estimate of amount receivable, as referred to in Article 181(2) of the Financial Regulation shall be sent to the accounting officer for registration.

Article 256

Additional rules applicable to the JRC

(Article 183 of the Financial Regulation)

1. The activities of a competitive nature conducted by the JRC shall consist of:

(a) activities carried out following grant or procurement procedures;

(b) activities on behalf of third parties;

(c) activities undertaken under an administrative agreement with other institutions or other Commission departments for the provision of technical-scientific services.

2. Where the activities conducted by the JRC for third parties involve procurement, the procurement procedure shall comply with the principles of transparency and equal treatment.

3. The estimates of amounts receivable referred to in Article 183(2) of the Financial Regulation shall be sent to the accounting officer for registration.

TITLE II

EXTERNAL ACTIONS

CHAPTER I

General provisions

Article 257

Actions which may be financed

(Article 184 of the Financial Regulation)

Appropriations for the actions referred to in Chapter 1 of Title IV of Part Two of the Financial Regulation may, in particular, finance procurement contracts, grants, including interest rate

subsidies, special loans, loan guarantees and financial assistance, budgetary support and other specific forms of budgetary aid.

CHAPTER II

Budget support and multi-donor trust funds

Article 258

Use of budget support

(Article 186 of the Financial Regulation)

1. Where provided for in the relevant basic acts, the Commission may use sectoral or general budget support within a third country if the following conditions are met:

(a) the partner country's management of public finances is sufficiently transparent, reliable and effective;

(b) the partner country has put in place sufficiently credible and relevant sectoral or national policies; and

(c) where the partner country has put in place stability oriented macroeconomic policies.

2. Agreements concluded with the partner country shall contain an obligation for that country to provide the Commission with reliable and timely information which allows the Commission to evaluate the fulfilment of the conditions set out in paragraph 1.

Article 259

Union trust funds for external actions

(Article 187 of the Financial Regulation)

The contributions of other donors shall be taken into account when cashed in the specific bank account of the trust fund and for the amount in euro resulting from the conversion at their reception on the specific bank account.

The Union contribution shall be transferred in due time to cover the legal commitments of the trust fund taking due account of available funds provided by the other donors.

Interests accumulated on the trust fund's specific bank account shall be invested in the trust fund except where otherwise provided for in the constitutive act of the trust fund.

All transactions made on the bank account referred to in the third paragraph during the year shall be properly accounted for in the accounts of the trust fund.

Financial reporting on the operations carried out by each trust fund shall be established twice every year by the authorising officer.

The trust funds shall be subject to an independent external audit every year.

The board of the trust fund shall approve the annual report of the trust fund drawn up by the authorising officer together with annual accounts drawn up by the accounting officer. Those reports shall be attached to the annual report of the authorising officer by delegation and presented to the European Parliament and Council within the discharge procedure of the Commission.

The rules for composition of the board and its internal rules shall be laid down in the constitutive act of the trust fund adopted by the Commission and adhered to by the donors. Those rules shall ensure a fair representation of the donors and include the requirement to have the positive vote of the Commission for the final decision on the use of the funds.

CHAPTER III

Procurement

Article 260

Renting of buildings

(Article 190 of the Financial Regulation)

The only buildings contracts which may be financed from operating appropriations for external action shall be those relating to the renting of buildings already constructed at the time the lease is signed. These contracts shall be published as laid down in Article 124.

Article 261

Definitions

(Article 190 of the Financial Regulation)

1. Service contracts shall comprise study and technical assistance contracts.

A study contract is a service contract concluded between a supplier and the contracting authority which includes studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies and audits.

A technical assistance contract is where the supplier is called on to play an advisory role, to manage or supervise a project or to provide the consultants specified in the contract.

2. Where a third country has qualified management staff in its departments or entities with public-sector participation, the contracts may be performed directly by these departments or entities by direct labour.

Article 262

Special provisions relating to thresholds and the arrangements for awarding external contracts

(Article 190 of the Financial Regulation)

1. Articles 123 to 126, with the exception of the definitions, paragraphs 3 and 4 of Article 127, Articles 128, 134 to 137, paragraphs 3 to 6 of Article 139, Articles 148(4), 151(2), 152 to 158, 160 and 164 of this Regulation shall not apply to procurement contracts concluded by the contracting authorities referred to in Article 190(2) of the Financial Regulation or on their behalf.

Implementation of the procurement provisions under this Chapter shall be decided by the Commission, including the appropriate controls to be applied by the responsible authorising officer where the Commission is not the contracting authority.

2. In the event of failure to comply with the procedures referred to in paragraph 1, expenditure on the operations in question shall not be eligible for Union financing.

3. This Chapter shall not apply to the contracting authorities referred to in Article 190(2)(b) of the Financial Regulation where, following the checks referred to in Article 61 of the Financial Regulation, the Commission has authorised them to use their own procurement procedures.

Article 263

Advertising and non-discrimination

(Articles 190 and 191 of the Financial Regulation)

1. The Commission shall take the necessary implementing measures to guarantee as wide a participation as possible, on equal terms, in competitive tendering for the award of contracts financed by the Union. To that end, care shall be taken in particular to:

(a) ensure adequate publication, in reasonable time, of the prior information notices, contract notices and award notices;

(b) eliminate any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons referred to in Article 182 of the Financial Regulation.

2. Articles 265(5), 267(3) and 269(4) shall be without prejudice to the use of e-procurement.

Article 264

Advertising

(Article 190 of the Financial Regulation)

1. The prior information notice for international calls for tender shall be sent to the Publications Office as early as possible for supply and service contracts and as quickly as possible after the decision authorising the programme for works contracts.

2. For the purposes of this Chapter, the contract notice shall be published:

(a) at least in the *Official Journal of the European Union* and on the internet for international calls for tender;

(b) at least in the official gazette of the recipient State or in any equivalent publication for local invitations to tender.

Where the contract notice is also published locally, it must be identical to the one published in the *Official Journal of the European Union* and on the internet and it must be published simultaneously. The Commission shall be responsible for publication in the *Official Journal of the European Union* and on the internet. If the notice is published locally, this may be done by the entities referred to in Article 190(2)(b) of the Financial Regulation.

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

Article 265

Thresholds and procedures for awarding service contracts

(Article 190 of the Financial Regulation)

1. The thresholds and procedures referred to in Article 190 of the Financial Regulation shall be as follows for service contracts:

(a) for contracts with a value of EUR 300 000 or more:

(i) an international restricted invitation to tender within the meaning of Article 127(2) and Article 264(2)(a);

(ii) an international open invitation to tender within the meaning of Article 127(2) and Article 264(2)(a);

(b) for contracts with a value of less than EUR 300 000: competitive negotiated procedure within the meaning of paragraph 3 of this Article, or a framework contract.

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

Payments for amounts less than or equal to EUR 2 500 in respect of item of expenditure may consist simply in payment against invoices without prior acceptance of a tender.

2. In the international restricted procedure referred to in point (a) of paragraph 1, the contract notice shall state the number of candidates who will be invited to submit tenders. For service contracts at least four candidates shall be invited. The number of candidates allowed to submit tenders must be sufficient to ensure genuine competition.

The list of selected candidates shall be published on the Commission's internet site.

If the number of candidates satisfying the selection criteria or the minimum capacity levels is less than the minimum number, the contracting authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.

3. Under the negotiated procedure referred to in point (b) of paragraph 1, the contracting authority shall draw up a list of at least three tenderers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 129.

Tenderers for the competitive negotiated procedure may be chosen from an appropriately advertised list of vendors as referred to in Article 136(1)(b). That list shall be drawn up following a call for expression of interest and shall be valid for no more than five years from the date of advertisement. That list may include sub-lists. Any interested person may submit an application at any time during the period of validity of the list, except for the last three months of that period. Where a contract is to be awarded the contracting authority shall invite all vendors entered on the relevant list or sub-list to submit a tender.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following consultation of the tenderers, the contracting authority receives only one tender that is administrative and technically valid, the contract may be awarded provided that the award criteria are met.

4. For legal services according to the CPV nomenclature, the contracting authorities may use the competitive negotiated procedure, whatever is the estimated value of the contract.

5. The bids shall be sent in a package or outer envelope containing two separate sealed envelopes, one bearing the words 'Envelope A — Technical bid' and the other the words 'Envelope B — Financial bid'. The outer envelope shall bear:

(a) the address indicated in the tender documents for the submission of tenders;

(b) the reference to the call for tenders to which the tenderer is responding;

(c) where appropriate, the numbers of the lots for which a tender is being submitted;

(d) the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

If interviews were envisaged in the tender documents, the evaluation committee may interview the principal members of the team of experts proposed in the technically acceptable bids, after establishing its written provisional conclusions and before definitively concluding the evaluation of the technical bids. In such cases the experts shall be interviewed by the evaluation committee, preferably collectively if they form a team, and at intervals close enough to allow comparisons to be made. Interviews shall be conducted in accordance with a standard model agreed in advance by the selection board and applied to all the experts or teams called for interview. The date and time of the interview must be communicated to the tenderers at least 10 calendar days in advance. In cases of *force majeure*, preventing the tenderer from attending the interview, a new date and time must be sent to the tenderer.

6. The contract award criteria shall serve to identify the tender offering best value for money.

The tender offering best value for money shall be selected using an 80/20 weighting distribution between technical quality and price. For that purpose:

(a) the score awarded to the technical bids shall be multiplied by 0,80;

(b) the score awarded to the price bids shall be multiplied by 0,20.

Article 266

Use of the negotiated procedure for service contracts

(Article 190 of the Financial Regulation)

1. For service contracts, contracting authorities may use the negotiated procedure with a single tender in the following cases:

(a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 104(1) of the Financial Regulation cannot be kept;

(b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;

(c) for services which are an extension of services already started, subject to the conditions laid down in paragraph 2;

(d) where the tender procedure or the attempt to use a framework contract has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;

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

(f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;

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

(h) where a new contract has to be concluded after early termination of an existing contract.

For the purposes of point (a) of the first subparagraph of this paragraph, operations carried out in crisis situations as referred to in Article 190(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

Activities of an institutional nature referred to in point (b) of the first subparagraph include services directly linked to the statutory mission of the public sector bodies.

2. Services which are an extension of services already started, as referred to in point (c) of paragraph 1, are as follows:

(a) additional services not covered by the principal contract but which, as a result of unforeseen circumstances, have become necessary for the performance of the contract, provided that the additional service cannot be technically and economically separated from the principal contract without serious inconvenience for the contracting authority and the aggregate amount of additional services does not exceed 50 % of the value of the principal contract;

(b) additional services consisting in the repetition of similar services entrusted to the contractor providing services under a first contract, provided that:

(i) a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the first service;

(ii) the extension of the contract is for a value and duration not exceeding the value and the duration of the initial contract.

Article 267

Thresholds and procedures for awarding supply contracts

(Article 190 of the Financial Regulation)

1. The thresholds and procedures referred to in Article 190 of the Financial Regulation shall be as follows for supply contracts:

(a) for contracts with a value of EUR 300 000 or more: an international open invitation to tender within the meaning of Article 127(2) and Article 264(2)(a);

(b) for contracts with a value of less than EUR 300 000: a framework contract or:

(i) for contracts of a value of EUR 100 000 or more but less than EUR 300 000: local open invitation to tender within the meaning of Article 127(2) and point (b) of Article 264(2);

(ii) for contracts with a value of less than EUR 100 000: competitive negotiated procedure within the meaning of paragraph 2.

(c) payments for amounts less than or equal to EUR 2 500 in respect of item of expenditure may consist simply in payment against invoices without prior acceptance of a tender.

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

2. Under the negotiated procedure referred to in point (b)(ii) of paragraph 1 of this Article, the contracting authority shall draw up a list of at least three suppliers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 129.

Tenders shall be opened and evaluated by an evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following the consultation of the suppliers, the contracting authority receives only one tender that is administrative and technically valid, the contract may be awarded provided that the award criteria are met.

3. Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:

(a) the address indicated in the tender documents for the submission of tenders;

(b) the reference to the call for tenders to which the tenderer is responding;

(c) where appropriate, the numbers of the lots for which a tender is being submitted;

(d) the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority considers appropriate must be announced.

4. In the case of a supply contract not involving after-sales service, the sole award criterion shall be price.

Where proposals for after-sales service or for training are particularly significant, the tender offering either the lowest price or best value for money shall be chosen, with due account for the technical quality of the service offered and the price quoted.

Article 268

Use of the negotiated procedure for supply contracts

(Article 190 of the Financial Regulation)

1. Supply contracts may be awarded by negotiated procedure with a single tender in the following cases:

(a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation cannot be kept;

(b) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;

(c) for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;

(d) where the tender procedure has been unsuccessful, that is where no qualitatively or financially worthwhile tender has been received;

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

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

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

(h) where a new contract has to be concluded after early termination of an existing contract.

In cases referred to in point (d) of the first subparagraph, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

2. For the purposes of point (a) of paragraph 1 of this Article, operations carried out in crisis situations as referred to in Article 190(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where

appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

Article 269

Thresholds and procedures for awarding works contracts

(Article 190 of the Financial Regulation)

1. The thresholds and procedures referred to in Article 190 of the Financial Regulation shall be as follows for works contracts:

(a) for contracts with a value of EUR 5 000 000 or more any of the following:

(i) an international open invitation to tender within the meaning of Article 127(2) and point (a) of Article 264(2);

(ii) in view of the characteristics of certain works, an international restricted invitation to tender within the meaning of Article 127(2) and point (a) of Article 264(2);

(b) for contracts with a value of EUR 300 000 or more but less than EUR 5 000 000: a local open invitation to tender within the meaning of Article 127(2) and Article 264(2)(b);

(c) for contracts with a value of less than EUR 300 000: a competitive negotiated procedure within the meaning of paragraph 2 of this Article;

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

2. Under the negotiated procedure referred to in point (c) of paragraph 1 of this Article, the contracting authority shall draw up a list of at least three contractors of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 129.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following the consultation of the contractors, the contracting authority receives only one tender that is administrative and technically valid, the contract may be awarded provided that the award criteria are met.

3. The selection criteria shall cover the capacity of the tenderer to carry out similar contracts, in particular by reference to works carried out in recent years. Once selection is made and since inadmissible tenders have already been eliminated, the only award criterion shall be the price.

4. Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:

(a) the address indicated in the tender documents for the submission of tenders;

(b) the reference to the call for tenders to which the tenderer is responding;

(c) where appropriate, the numbers of the lots for which a tender is being submitted;

(d) the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority thinks appropriate must be announced.

Article 270

Use of the negotiated procedure for works contracts

(Article 190 of the Financial Regulation)

1. Works contracts may be awarded by negotiated procedure with a single tender in the following cases:

(a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation cannot be kept;

(b) for additional works not included in the initial contract concluded but which have, through unforeseen circumstances, become necessary for carrying out the work described therein, subject to the conditions laid down in paragraph 2;

(c) where the tender procedure has been unsuccessful, that is where no qualitatively or financially worthwhile tender has been received;

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

(e) where a new contract has to be concluded after early termination of an existing contract.

For the purposes of point (a) of the first subparagraph of this paragraph, operations carried out in crisis situations as referred to in Article 190(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

In cases referred to in point (c) of the first subparagraph, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

2. The additional works referred to in point (b) of paragraph 1 shall be awarded to the work contractor already carrying out the work:

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

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

(c) where the aggregate value of contracts awarded for additional works does not exceed 50 % of the value of the principal contract.

Article 271

Use of the negotiated procedure for buildings contracts

(Article 190 of the Financial Regulation)

Buildings contracts as referred to in Article 260 may be awarded by negotiated procedure after the local market has been prospected.

Article 272

Choice of procurement procedure for mixed contracts

(Article 190 of the Financial Regulation)

In the case of contracts involving both supplies of services and supplies of goods or execution of works, the contracting authority, after the Commission has given its agreement if it is not the contracting authority, shall determine the thresholds and procedures applicable by reference to the predominant aspect assessed on the basis of the relative value and the operational significance of the various components of the contract.

Article 273

Tender documents

(Article 190 of the Financial Regulation)

1. The tender documents referred to in Article 138 shall be drawn up on the basis of best international practices and in accordance with the provisions of this Chapter regarding advertising and contacts between the contracting authority and tenderers.

2. For service contracts, the tender file must contain the following documents:

(a) instructions to tenderers, which must include:

(i) the type of contract;

(ii) the award criteria and their weightings;

(iii) the possibility of interviews and the timetable for them;

(iv) whether variants are permitted;

(v) the proportion of sub-contracting which may be authorised;

(vi) the maximum budget available for the contract;

(vii) the currency of tenders;

(b) shortlist of candidates selected (mentioning the ban on association);

(c) general conditions for service contracts;

(d) specific conditions which amplify, supplement or derogate from the general conditions;

(e) terms of reference indicating the planned timetable for the project and dates from which it is planned that the principal experts must be available;

(f) price schedule (for completion by the tenderer);

(g) tender form;

(h) contract form;

(i) if applicable, bank (or similar) guarantee forms for the payment of pre-financing.

Point (h) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

3. For supply contracts, the tender file must contain the following documents:

(a) instructions to tenderers, which must include:

(i) the selection and award criteria;

(ii) whether variants are authorised;

(iii) the currency of tenders;

(b) general conditions for supply contracts;

(c) specific conditions which amplify, supplement or derogate from the general conditions;

(d) technical annex containing any plans, technical specifications and the planned timetable for performance of the contract;

(e) price schedule (for completion by the tenderer) and the breakdown of prices;

(f) tender form;

(g) contract form;

(h) if applicable, bank (or similar) guarantee forms for:

(i) the tender;

(ii) payment of pre-financing;

(iii) proper performance.

Point (g) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

4. For works contracts, the tender file must contain the following documents:

(a) instructions to tenderers, which must include:

(i) the selection and award criteria;

(ii) whether variants are authorised;

(iii) the currency of tenders;

(b) general conditions for works contracts;

(c) specific conditions which amplify, supplement or derogate from the general conditions;

(d) technical annexes containing plans, technical specifications and the planned timetable for performance of the contract;

(e) price schedule (for completion by the tenderer) and the breakdown of prices;

(f) tender form;

(g) contract form;

(h) if applicable, bank (or similar) guarantee forms for:

(i) the tender;

(ii) payment of pre-financing;

(iii) proper performance.

Point (g) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

5. In the event of contradiction between the specific conditions referred to in point (d) of paragraph 2, point (c) of paragraph 3 and point (c) of paragraph 4 and the general conditions, those specific conditions shall apply.

6. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European or, where appropriate, international standards certified by bodies conforming to the European or international standards on certification. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

Article 274

Guarantees

(Article 190 of the Financial Regulation)

1. By way of derogation from Article 163, advance guarantees shall be denominated in euro or in the currency of the contract they cover.

2. The contracting authority may demand a tender guarantee, within the meaning of this Chapter, representing 1 % to 2 % of the overall value of the contract for supply and works contracts. It shall comply with Article 163. It shall be released when the contract is signed. It shall be retained if a tender submitted by the final date for submission is subsequently withdrawn.

3. A performance guarantee may be required by the contracting authority for an amount set in the tender file and corresponding to between 5 and 10 % of the total value of the contract for supply and works contracts. This guarantee shall be determined on the basis of objective criteria such as the type and value of the contract.

However, a performance guarantee shall be required where the following thresholds are exceeded:

(a) EUR 345 000 for works contracts,

(b) EUR 150 000 for supply contracts.

The guarantee shall remain valid at least until final acceptance of the supplies and works. If the contract is not properly performed the entire guarantee shall be retained.

Article 275

Time limits for procedures

(Article 190 of the Financial Regulation)

1. Tenders must reach the contracting authority at the address and by no later than the date and time shown in the invitation to tender. The time limit for receipt of tenders and requests to participate, laid down by the contracting authorities, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.

For service contracts, the minimum time between the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders shall be 50 days. However, in urgent cases other time limits may be authorised.

2. Tenderers may put questions in writing before the closing date for receipt of tenders. The contracting authority shall provide the answers to the questions before the closing date for receipt of tenders.

3. In international restricted procedures, the time limit for receipt of requests to participate shall be no less than 30 days from the date on which the contract notice is published. The period between the date on which the letter of invitation is sent and the final date for the receipt of tenders shall be no less than 50 days. However, in certain exceptional cases other time limits may be authorised.

4. In international open procedures, the time limits for receipt of tenders, running from the date on which the contract notice is sent, shall be at least:

(a) 90 days for works contracts;

(b) 60 days for supply contracts.

However, in certain exceptional cases other time limits may be authorised.

5. In local open procedures, the time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least:

(a) 60 days for works contracts;

(b) 30 days for supply contracts.

However, in certain exceptional cases other time limits may be authorised.

6. For the competitive negotiated procedures referred to in Articles 265(1)(b), 267(1)(c) and 269(1)(c), candidates shall be allowed at least 30 days from the date of dispatch of the letter of invitation to tender in which to submit their tenders.

7. The time limits specified in paragraphs 1 to 6 are expressed in calendar days.

Article 276

Evaluation committee

(Article 190 of the Financial Regulation)

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance. This committee shall have an odd number of members, at least three, with all the necessary technical and administrative expertise to assess the tenders.

2. If the Commission is not the contracting authority, it may request to receive a copy of tender documents, tenders, the evaluation of the tenders and the signed contracts. It may also participate as an observer to the opening and evaluation of tenders.

3. Tenders which do not contain all the essential items demanded in the tender documents or which do not correspond to the specific requirements laid down shall be eliminated.

However, the evaluation committee or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion, selection and award criteria, within the time limit they specify and having respect to the principle of equal treatment.

4. In the case of abnormally low tenders as referred to in Article 151, the committee shall ask for the necessary clarifications concerning the composition of the tender.

5. The obligation to establish an evaluation committee may be waived for procedures with a value less than or equal to EUR 20 000.

CHAPTER IV

Grants

Article 277

Financing in full

(Article 192 of the Financial Regulation)

In case of derogation from the co-financing requirement, grounds shall be provided in the award decision.

TITLE III

EUROPEAN OFFICES

Article 278

The European offices and setting up of additional offices

(Article 195 of the Financial Regulation)

The offices referred to in Article 195 of the Financial Regulation are as follows:

(a) the Publications Office;

(b) the European Anti-Fraud Office;

(c) The European Personnel Selection Office and the European Administrative School administratively attached to it;

(d) the Office for the Administration and Payment of Individual Entitlements;

(e) the Office for Infrastructure and Logistics in Brussels and the Office for Infrastructure and Logistics in Luxembourg.

One or more institutions may set up additional offices provided that this can be justified by a cost-benefit study and guarantees the visibility of the Union action.

Article 279

Delegations by the institutions to interinstitutional European offices

(Articles 195 and 199 of the Financial Regulation)

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

Article 280

Specific rules for the Publications Office

(Articles 195 and 199 of the Financial Regulation)

With regard to the Publications Office, each institution shall decide on its publication policy. The net proceeds from the sale of publications shall be reused as assigned revenue by the institution which is the author of those publications, in accordance with Article 21 of the Financial Regulation.

Article 281

Delegation of certain tasks by the accounting officer

(Article 196 of the Financial Regulation)

The Commission accounting officer, acting on a proposal from the management committee of the Office in question, may delegate to a member of the staff of the Office some of his tasks relating to the collection of revenue and the payment of expenditure made directly by the Office in question.

Article 282

Treasury — bank accounts

(Article 196 of the Financial Regulation)

To meet the cash requirements of an interinstitutional Office, bank accounts or post office giro accounts may be opened in its name by the Commission, acting on a proposal from the management committee. The final cash position for each year shall be reconciled and adjusted between the Office in question and the Commission at the end of the financial year.

TITLE IV

ADMINISTRATIVE APPROPRIATIONS

Article 283

General provisions

(Article 201 of the Financial Regulation)

The administrative appropriations covered by this Title shall be those set out in Article 41 of the Financial Regulation.

Budgetary commitments corresponding to administrative appropriations of a type common to several titles and which are managed globally may be recorded globally in the budgetary accounting following the summary classification by type as set out in Article 25.

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

Article 284

Rent guarantees

(Article 201 of the Financial Regulation)

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

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

Article 285

Advances to staff and members of the institutions

(Article 201 of the Financial Regulation)

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

Article 286

Buildings

(Article 203 of the Financial Regulation)

1. The expenditure referred to in Article 203(3)(a) of the Financial Regulation shall include the costs of the fitting out of buildings. It shall not include the charges.

2. The early information procedure set out in Article 203(4) of the Financial Regulation and the prior approval procedure set out in Article 203(5) of the Financial Regulation shall not apply to acquisition of land free of charge or for a symbolic amount.

3. The early information and prior approval procedure set out in points 3 to 7 of Article 203 of the Financial Regulation shall not apply to residential buildings. The European Parliament and the Council may request from the institution in charge any information related to residential buildings.

4. In exceptional or urgent political circumstances the early information referred to in Article 203(4) of the Financial Regulation concerning building projects relating to Union delegations or offices in third countries may be submitted jointly with the building project pursuant to Article 203(5) of the Financial Regulation. In such cases, the early information and prior approval procedures shall be conducted at the earliest possible opportunity.

5. The prior approval procedure set out in paragraphs 5 and 6 of Article 203 of the Financial Regulation shall not apply to preparatory contracts or studies necessary to evaluate the detailed cost and financing of the building project.

6. The thresholds of EUR 750 000 or EUR 3 000 000 referred to in points (ii), (iii) and (iv) of Article 203(7) of the Financial Regulation shall include the costs of fitting out of the building. For rents and usufruct contracts, those thresholds shall take into account the costs of the fitting out of the building but not the other charges.

7. One year after the date of entry into application of the Financial Regulation, the Commission shall report on the application of the procedures set out in paragraphs 3 to 8 of Article 203 of the Financial Regulation.

TITLE V

EXPERTS

Article 287

Remunerated external experts

(Article 204 of the Financial Regulation)

1. For values below the thresholds laid down in Article 170(1), remunerated external experts may be selected on the basis of the procedure laid down in paragraph 2.

2. A call for expressions of interest shall be published in the *Official Journal of the European Union* or where it is necessary to provide publicity among potential candidates, on the internet site of the institution concerned.

The call for expressions of interest shall include a description of the tasks, their duration and the fixed conditions of remuneration. Those conditions may be based on unit prices.

A list of experts shall be drawn up following the call for expressions of interest. It shall be valid for no more than five years from its publication or for the duration of a multiannual programme related to the tasks.

3. Any interested natural person may submit an application at any time during the period of its validity, with the exception of the last three months of that period. Remunerated external experts shall not be selected to perform the tasks referred to in Article 204 of the Financial Regulation if they are in one of the situations of exclusion referred to in Articles 106 and 107 of the Financial Regulation.

4. All exchanges with selected experts, including the conclusion of contracts and any amendments thereto, may be done through electronic exchange systems set up by the institution.

These systems shall meet the following requirements:

(a) only authorised persons may have access to the system and to documents transmitted through it;

(b) only authorised persons may electronically sign or transmit a document through the system;

(c) authorised persons must be identified through the system by established means;

(d) the time and date of the electronic transaction must be determined precisely;

(e) the integrity of documents must be preserved;

(f) the availability of documents must be preserved;

(g) where appropriate, the confidentiality of documents must be preserved;

(h) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 must be ensured.

Data sent or received through such a system shall enjoy legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed to be the original of the document and shall enjoy legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of the second subparagraph shall have the equivalent legal effect of handwritten signatures.

5. The list of experts and the subject of the tasks shall be published annually. The remuneration shall be published where it exceeds EUR 15 000 for the task performed.

6. Paragraph 5 shall not apply if such publication risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of experts.

PART THREE

FINAL AND TRANSITIONAL PROVISIONS

Article 288

Transitional provisions

Articles 35 to 43 of Regulation (EC, Euratom) No 2342/2002 shall continue to apply to commitments made up to 31 December 2013. Articles 33 to 44 of this Regulation shall apply only to commitments made as of 1 January 2014.

Title VI of part one of Regulation (EC, Euratom) No 2342/2002 may continue to apply to grant agreements signed and grant decisions notified by 31 December 2013 in the framework of global commitments under the budget 2012 or earlier years, should the authorising officer responsible so decide, with due regard for the principles of equal treatment and transparency.

Article 289

Repeal

Regulation (EC, Euratom) No 2342/2002 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

Article 290

Entry into force

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

It shall apply as of 1 January 2013.

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

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

Done at Brussels, 29 October 2012.

For the Commission
The President
José Manuel BARROSO

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