



COMMISSION OF THE EUROPEAN COMMUNITIES

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2005/0090 (CNS)

Modified proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation  
applicable to the general budget of the European Communities**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. BACKGROUND

The recast Financial Regulation ('FR') was adopted by the Council, acting unanimously, in June 2002, after recourse to a successful conciliation procedure with the European Parliament and after significant input from the Court of Auditors. In December 2002 the Commission adopted the implementing rules ('IR') of the recast FR after extensive consultation of the institutions. Both regulations, which apply to all institutions, entered into force on 1 January 2003.

According to its Article 184, the FR is subject to review every three years, or whenever it proves necessary to do so. In compliance with this obligation, on 3 May 2005 the Commission adopted a proposal for revising the FR.

As provided for in Article 279 of the Treaty establishing the European Community, the Commission's proposal was submitted to the European Parliament for consultation and to the Court of Auditors for an opinion. The other institutions were also informed.

The results of the inter-institutional consultations are as follows:

- a) The European Economic and Social Committee ("EESC"), whose opinion is not required under Article 279 TCE, delivered a broadly favourable opinion in October 2005.
- b) The Court of Auditors ("ECA") delivered a broadly favourable opinion in December 2005, while considering that the extent of the revision is too wide and expressing some concern in specific areas.
- c) The European Parliament voted its amendments during the plenary session of 15 March 2006. Parliament presented 134 amendments which represents by far the most substantial contribution to the Commission's proposal.
- d) The Council completed its first reading of the Commission proposal in March 2006.

The Commission also had extensive consultations with the representatives of civil society and in particular NGOs on the difficulties perceived by them in the implementation of the FR. (hearings in the ECOSOC and EP as well as meetings with Commission services).

The Commission is now taking the initiative of presenting a modified proposal for revising the FR, incorporating to a large extent the opinions of the other institutions and taking account of the concerns expressed by the representatives of civil society. This modified proposal should help to build inter-institutional consensus by accepting the most important requests of the institution and reducing the areas of disagreement, notably between Council and Parliament.

It is recalled that in accordance with Article 184 of the FR a conciliation procedure (within the meaning of the Joint Declaration of 4 March 1975) between Council and Parliament, if the European Parliament so requests, with the active assistance of the Commission, must take place before the Council adopts the revision of the FR. The objective is to reach agreement on

the modified proposal during the first half of 2006. This would leave the Commission the second half of the year to prepare the IR linked to the revision of the FR, so that both regulations can enter into force on 1 January 2007.

## **2. THE COMMISSION'S MODIFIED PROPOSAL FOR REVISING THE FR**

The Commission is proposing amendments to its initial proposal in order to take account of the opinions of the other institutions and of comments made during the first reading in the Council. These amendments do not change the basic structure of the Commission's initial proposal and its key elements. They preserve the "*acquis*" of the financial reform, and strike a better balance between the protection of the financial interests and the proportionality of administrative costs and user-friendly procedures.

In compliance with the "presentation rules for amended and re-examined proposals"<sup>1</sup>, the amendments to the Commission's first proposal (COM (2005)181 final) have been highlighted using *strikethrough* for deleted text and *bold* and *underlined* for new or amended text.

## **3. EXPLANATION OF THE MAIN AMENDMENTS**

### **3.1. Budgetary principles**

- a) The proposed modification in Article 8, specifying that own resources paid in advance should be treated as revenue in the following financial year, is deleted as the Council expressed a negative view on this change.
- b) The possibility to commit expenditure in advance is maintained as an exceptional measure for crisis management aid and humanitarian aid, but it is specified that the budgetary authority should be informed ex-post of such commitments (amendment No 30 of the Parliament).
- c) Cross-references are updated in Articles 11 and 18 to ensure internal consistency within the text.
- d) In Article 19, the requirement for authorisation by the budgetary authority is limited to donations involving a financial charge exceeding 10% of the donation made, in compliance with the view expressed by the Council on this Article. Thus, the rights of the budgetary authority are preserved whilst respecting the principle of proportionality as requested by the Parliament.
- e) As regards the transfers of appropriations by the institutions other than the Commission, the Parliament asked for the status quo to be maintained (amendments No 34 to 38). Article 22 has been amended accordingly. However, certain provisions on the transfers of the other Institutions have been transferred from the IR to the FR for reasons of legal certainty and better legibility of the texts.

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<sup>1</sup> SEC (1999)1224 of 23 July 1999.

- f) As regards the transfers of the Commission, it is necessary to provide for some flexibility for transfers regarding staff expenditure during the last three months of the financial year. To this end, the Commission should decide autonomously on these transfers within the limit of 10 % of the appropriations and inform the budgetary authority in the following month (Article 23(1), second subparagraph). This proposal partially integrates Parliament's amendments Nos 39, 41 and 42. At the same time, for reasons of efficiency (to avoid delays) the Commission should be allowed, after the adoption of the legal basis, to decide autonomously on purely mechanical transfers of appropriations placed in reserve when the budget is adopted for lack of legal basis (Article 23(1)(d); but the Commission should inform ex-post the budgetary authority of these transfers (Parliament's amendment No 40). Cross-references are updated in paragraph 2.
- g) An editorial correction is proposed in Article 26, taking into account changes of terminology in Part II of the FR.
- h) In line with Parliament's amendment No 50, the scope of Article 28 on financial statements is extended in order to cover legislative proposals presented by Member States in accordance with the Treaty on European Union, and substantial amendments to a legislative proposal which have an impact on the budget.
- i) In accordance with Parliament's amendments Nos 45 to 48, the principle of proportionality laid down in Article 5(3) of the Treaty establishing the European Community is properly reflected in the new Chapter 7a of the FR.
- j) In line with Parliament recommendation No 52 of the report on the discharge for 2004, transparency has to be reinforced by providing for information on beneficiaries of Community funds, irrespective of the mode of the implementation of the budget.
- k) In line with the ECA opinion No 2/2004<sup>2</sup>, the support of the European Parliament<sup>3</sup> and Council<sup>4</sup> towards an effective and efficient integrated internal control framework and the Commission's commitment in its Action Plan<sup>5</sup>, a new budgetary principle is added in Chapter 9 of the Title II. This new principle is designed to improve the implementation of the budget, the effectiveness and efficiency of the operations, the reliability of financial reporting, the protection of the financial interests of the Communities and the management of the risks relating to the legality and regularity of the underlying transactions. in such a way as to reach a tolerable level of risk. The terminology used in Articles 60, 66 and 86 is modified accordingly.

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<sup>2</sup> OJ C107/1 of 30.4.2004 ("Single Audit" opinion).

<sup>3</sup> Points 8, 20, 83, 86 and 87 of the European Parliament's Discharge Resolution for 2004 and Parliament's amendment N° 52.

<sup>4</sup> ECOFIN Conclusions of 8 November 2005 – SI(2005)1015, annex 8, esp. paragraphs 4, 6, 15 and 17.

<sup>5</sup> Action Plan towards an integrated internal control framework of 17 January 2006 (COM(2006)0009, action 2 and 4.

- l) Concerning Parliament's amendment No 51 on the follow-up given to the budgetary remarks, the Commission confirms its willingness to supply the Parliament with any information it may consider appropriate to request pursuant to Article 182.

### **3.2. Establishment and structure of the budget**

- a) In compliance with the new budgetary principle on effective and efficient internal control, information on the tolerable risk of errors should be included in the Activity Statement (Article 33).
- b) In line with the opinion of the Court of Auditors, the summary statement of the schedules of payments is included in the list of working documents attached to the preliminary draft budget (Article 33).
- c) The amendments to Articles 26, 45 and 46 are maintained in line with the proposed adoption of a new provisioning mechanism for the Guarantee Fund for external actions<sup>6</sup>. Their final outcome will depend on the legislator's stand on the proposed mechanism.

### **3.3. Implementation of the budget – Methods of management (Articles 48-57)**

- a) In line with the request of the Council, for reasons of legal clarity, some adjustments have been made in Article 49 in order to better reflect the specificities of the Common Foreign Security Policy (CFSP) and to provide for more rapid financing of EU crisis response actions. As the basis for the implementation of expenditure is a basic act adopted by the Council, it appears more appropriate to identify the respective basic acts under the EC Treaty and Title V and VI of the TEU in Article 49 FR instead of in the IR (as is currently the case). In addition, a specific provision is added in order to properly reflect the types of preparatory measures that may be undertaken in the field of the CFSP.
- b) In line with Parliament's amendment No 59, it is specified in Article 50 that the institutions implement their sections of the budget within the limits of the appropriations authorised.
- c) For the purpose of clarity, Article 53 is restructured and split into several articles: one general Article and four Articles corresponding to the different methods of implementation. The modifications introduced take account of amendments No 60 and 61 of the Parliament. Also in line with amendment No 62 of the Parliament and requests by several delegations in the Council, the use of bodies, including "national agencies", is authorised in decentralised management.
- d) Following the new inter institutional agreement (point 44) in order to strengthen an integrated internal control of Community funds under shared management, Member States shall submit to the Commission an annual

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<sup>6</sup> COM (2005)130 final of 5 April 2005.

summary at the appropriate national level of the available audits and declarations.

- e) In order to enlarge the possibilities of delegation of tasks to Community bodies, Article 54(2)(b) is completed to include in particular the European Investment Bank and the European Investment Fund in order to allow them to carry out specific tasks requiring a high degree of specialisation and expertise notably for the management of instrument referred to in Article 108(2)(c).

#### **3.4. Financial Actors (Articles 58-68)**

- a) Article 60(7), which specifies the content of the annual activity report of the authorising officers, has been modified in accordance with Parliament's amendment No 66.
- b) In line with Parliament's amendment No 68, the accounting officer, when certifying the accounts, is empowered to make such checks as he considers necessary to the accounts and to make reservations.
- c) A small editorial correction is proposed in Article 63, in line with the Council's initial reaction on this issue.
- d) As requested by the Parliament (amendment No 69), the application of the financial liability of authorising officers is clarified and, in cases of gross negligence, limited to one year's salary. For the sake of consistency and equal treatment, the same conditions and limitations should apply to all financial actors and any other persons involved in budget implementation
- e) In line with comments during the Council discussions, the possibility introduced in Article 66(2a) for the authorising officer to refer a matter to the financial irregularities panel is withdrawn, but will be introduced in the implementing rules.
- f) In line with Parliament's amendment No 70 and the Court of Auditor's opinion, the establishment by several institutions of joint financial irregularities panels is made possible.

#### **3.5. Revenue and expenditure operations (Articles 69-83)**

- a) In accordance with the Protocol on the position of Denmark and the Protocol on the position of the United Kingdom and Ireland annexed to the Treaty on European Union and the Treaty establishing the European Community, Article 72 has been amended in order to properly reflect the special position of these Member States with respect to Title IV of the EC Treaty.
- b) In accordance with Parliament's amendment No 75, the direct debit system is authorised for periodic payments of administration or running costs.

#### **3.6. Public procurement and contracts**

- a) The FR should provide the possibility of framework contracts pursuant to EP amendments Nos 14 and 80 and, in line with Parliament's amendments Nos 13

and 78 and a comment from the Court of Auditors, the possibility of carrying out procurement procedures on an interinstitutional basis. The FR should also contain the principle of the prior information procedure before a contract awarded by the institutions on their own account can be signed, in accordance with EP amendment No 93.

- b) In line with the Court of Auditors' reaction and comments in the Council, the distinction between obligatory and optional grounds of exclusion is deleted. Pursuant to the EC Public Procurement Directive<sup>7</sup>, a specific rule should nevertheless be laid down for the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, in the case of an arrangement with creditors or a similar procedure under national law. According to amendments No 15 and 82, the maximum duration of legal exclusion should also be fixed in the FR.
- c) In line with the remarks of the ESC, the suggestion from the Court of Auditors and amendment No 88 of the EP, a central database for the purposes of exclusion of economic operators from a procurement or grant procedure should be set up and operated by the Commission. The database should be common to the institutions, executive agencies and bodies referred to in Article 185. Member States, third countries and other bodies participating in the implementation of the budget, should communicate to the competent authorising officer information on the most relevant cases of exclusion under the FR and take into account the information in the database when awarding grants and contracts financed from the Communities' budget.
- d) Under EP amendments Nos 84 and 86, participation in a procurement procedure for the award of low value contracts with a single tender and for payments against invoices should be possible without requiring certificates from national authorities certifying that the tenderer is not in a situation giving rise to exclusion.
- e) Securities in the context of procurement should be required only when deemed appropriate and proportionate, as requested by the EP in amendments Nos 19 and 96.

### **3.7. Grants**

- a) As suggested by the Parliament (amendment No 98), and following the conclusions of a Commission working group set up to that end, Article 108 is modified to introduce the option for grants to be awarded by means of Commission decisions, instead of using only agreements. Articles 96, 112, 114, 120, 166 and 167 are amended accordingly.
- b) As suggested by the Parliament (amendment No 99), provision is made for grants to be awarded by the institutions for information, publicity and communication activities.

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<sup>7</sup> OJ L 134, 30.04.2004, p. 114. Directive as amended by Commission Regulation (EC) No 1874/2004 (OJ L 326, 29.10.2004, p. 17).

- c) As required by the Parliament (amendment No 99), social measures in favour of members, staff, former members and former staff of the institutions shall not be considered as grants, but shall constitute administrative allocations.
- d) Some clarifications are introduced in relation to the financial instruments which are not considered as grants.
- e) It is also clarified that expenditure relating to fisheries markets are not governed by the provisions concerning grants of this Regulation.
- f) Following the observations of the Court of Auditors, the principle of appreciation of the non profit at the level of “the beneficiary” is reinstated in Article 109..
- g) As suggested by both the Court of Auditors and the Parliament (amendment No 108), provisions are reinforced to avoid multiple financing of the same costs.
- h) As requested by the Parliament (amendment No 109), the obligation to gradually decrease operating grants shall not apply to lump sums or flat-rate financing.
- i) As suggested by the Parliament (amendment No 112), applicants shall certify that they are not in a situation of exclusion only for grants exceeding a certain value.
- j) Article 118 is amended to limit the ability of the authorising officers to require beneficiaries to lodge a guarantee when deemed appropriate and proportionate only, in accordance with the Parliament’s request (amendment No 120).

### **3.8. Accounting**

- a) In line with Parliament's amendment No 123, the content of the report on budgetary and financial management is specified in Article 122.
- b) A small editorial correction is proposed in Article 128 to clarify the deadline for transmission of the Commission's report on budgetary and financial management during the year.
- c) In accordance with Parliament's amendment No 124, Article 139 is amended to ensure that the budgetary authority is duly informed of any internal rules adopted by the institutions in financial matters.

### **3.9. Administrative appropriations**

In line with Parliament’s amendment No 130, a three-week period is laid down for the building procedure (i.e. one week for the notification of the intention to issue an opinion plus the existing two-week period for the transmission of the opinion).



### **3.10. Recruitment of experts for evaluation of proposals and follow-up and evaluation of projects**

Following a comment of the Court of Auditors, the specific procedure for selection of experts should be clearly distinguished from procurement procedures.

### **3.11. Transitional and Final Provisions**

- a) A transitional provision should be added in Article 181a to deal with expenditure from Community Initiatives and Technical Assistance and Innovative Measures provided for in Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds and for which payments still have to be made.
- b) It appears appropriate to define how the audit function of each Community body can be exercised (either by an internal or by an external auditor).
- c) As suggested by the Parliament (amendment No 134), in the light of the content of Article 133, paragraph 4 of Article 185 appears superfluous and can be deleted.

Finally, it is worth mentioning that the implementation measures for the control linked with the concept of the tolerable risk introduced in Article 30a will be subject to a transitional period (as from 1 January 2009) to be specified in relation to the specific provisions which will be included in the implementing rules of the FR.

Modified proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 279 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Having regard to the opinion of the Court of Auditors<sup>3</sup>,

Whereas:

- (1) Council Regulation (EC, Euratom) No 1605/2002<sup>4</sup>, hereinafter “the Financial Regulation”, lays down the legal foundations of the financial management reform. As such, its essential elements should be maintained and strengthened. **Transparency, in particular, has to be reinforced by providing for information on beneficiaries of Community funds.** Moreover, it establishes budgetary principles which should be respected by all legislative acts and from which derogations should be kept to a strict minimum.
- (2) Certain amendments are justified in light of practical experience in order to facilitate budget implementation and the realisation of the underlying policy objectives and to adjust some procedural and documentary requirements so as to make them more proportionate to the risks and cost involved, **in accordance with the principle of proportionality as set out in the third paragraph of Article 5 of the EC Treaty.**
- (3) All amendments must contribute to achieving the objectives of the Commission's reforms, should help improve or ensure sound financial management, and should enhance the protection of the Communities' financial interests against fraud and illegal

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<sup>1</sup> OJ C [...], [...], p. [...].

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> OJ C 13, 18.1.2006, p. 1.

<sup>4</sup> OJ L 248, 16.9.2002, p. 1.

activities, thus contributing to obtaining a reasonable assurance of the legality and regularity of financial operations.

(4) Some amendments are necessary to take account of provisions implementing the revenue and expenditure of the budget, contained in the legislative acts due to be adopted for the period 2007 to 2013, in order to ensure coherence between those acts and the Financial Regulation

~~(5) The principle that other legislative acts concerning budget implementation must comply with the Financial Regulation should be reinforced.~~

**(5) Pursuant to Article 1 of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Treaty establishing the European Community and appended to the Treaty of Amsterdam amending the Treaty on European Union, each institution, in exercising the powers conferred on it, is required to comply with the principle of proportionality, according to which any action by the Community must not go beyond what is necessary to achieve the objectives of the Treaty.**

**(6) A new budgetary principle on effective and efficient internal control needs to be established in order to define the main principles of internal control systems for the implementation of the budget in order to obtain a level of tolerable risk when controlling the legality and regularity of the underlying transactions.**

~~(76)~~ On certain points, more efficiency and transparency is needed with regard to the application of budgetary principles, in order better to suit operational needs.

~~(87)~~ As regards the principle of unity of the budget, the rule governing interest generated by pre-financing should be simplified. The administrative burden involved in the recovery of that interest is disproportionate to the objective pursued and it would be more efficient to allow interest to be set off against the final payment to the beneficiary.

~~(98)~~ With regard to the principle of annuality, more flexibility and transparency should be introduced to respond to functional needs. The carry-over of appropriations should exceptionally be permitted in the case of expenditure on direct payments to farmers under the new European Agricultural Guarantee Fund (EAGF). Commitment of expenditure in advance should be authorised for crisis management aid and humanitarian aid so that the Community can respond adequately if an international disaster occurs at the end of the budget year.

~~(109)~~ Payment requests from the Member States under the new agricultural regulations will be concentrated overwhelmingly at the beginning of the budget year n. Therefore, the maximum threshold for advance commitments against the EAGF (from 15 November of year n-1) to cover routine management expenditure (charged to the budget of year n) should be removed with regard to the last adopted agricultural budget. As regards the limit on advance commitment of administrative expenditure, the text should be amended so that it refers to appropriations decided by the budget authority.

~~(1140)~~ The use of non-differentiated appropriations for veterinary measures, charged against the EAGF, unduly hampers the implementation of such actions, especially in respect

of the limits placed on the possibilities for carry-overs. The use of differentiated appropriations for such expenditure should therefore be permitted, as this is more in keeping with the multi-annual nature of the actions.

- (1244) As regards the principle of universality, two points should be added to the list of assigned revenue. First, as is currently possible under specific research programmes, it should be possible for the Member States to make ad hoc contributions, as assigned revenue, for projects under external relations programmes managed by the Commission. Secondly, proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped should be treated as assigned revenue, as an encouragement to authorising officers to obtain the best prices for their disposal.
- (1342) At present, the Commission must be authorised by the budgetary authority before accepting donations, such as gifts or bequests, which involve a charge. To avoid unnecessary and cumbersome procedures, authorisations should be made compulsory only in the case of significant charges **exceeding 10 % of the value of the donation made.**
- (1413) In relation to the principle of specification of the budget, the rules governing transfers of appropriations should be simplified and clarified on certain points because in practice they have proved cumbersome or unclear. The intention was for Article 22 of the Financial Regulation to apply to institutions other than the Commission, since the Commission has its own regime. That provision should therefore be amended accordingly.
- ~~(14) As regards the "notification procedure", the Commission and the other institutions notify their transfer proposals to the budgetary authority, which may invoke the normal procedure if it wishes to raise objections. In such cases, in theory, the normal deadlines apply for the decision of the budgetary authority on the transfer. However, the text does not state when time for the purposes of the deadline is to be deemed to start running, and that omission should be remedied.~~
- ~~(15) As a measure of simplification for the management of their budget, the institutions other than the Commission should be enabled to make transfers of appropriations from article to article within the same chapter without prior notification to the budgetary authority.~~
- (1546) For reasons of efficiency, the Commission should be allowed to decide autonomously on transfers from the reserve in cases where no basic act, within the meaning of Article 49 of the Financial Regulation, exists for the action concerned at the time when the budget is established, but where the basic act is adopted in the course of the year. **In those cases, however, the Commission should inform the budgetary authority in the month following its decision.**
- (1647) The rules on the Commission's administrative transfers should be adapted to the new Activity-Based Budgeting (ABB) structure. Thus, **an exemption from the "notification procedure" should be provided for the Commission during the last three months of the financial year. In those cases, the Commission should be allowed to decide autonomously on transfers of appropriations concerning staff expenditure, within the limit of 10 % of the appropriations of the year. The**

Commission should inform the budgetary authority in the month following its decision, limited to transfers between articles, within the administrative chapter of each title, which exceed 10% of the appropriations of the year. On the other hand, transfers between articles of different titles financing expenditure of identical nature should be decided autonomously by the Commission

(1748) Articles 26, 45 and 46 of the Financial Regulation should be amended because of the abolition of the reserve relating to Community loans and loan guarantees to third countries and the adoption of a new provisioning mechanism for the Guarantee Fund for external actions.

(1849) As regards the budget procedure, the requirement laid down in Article 29 of the Financial Regulation that the budget be published within two months of adoption has proven unrealistic: three months would be more practicable. The concept of "Activity Statement" should be inserted in Article 33 of the Financial Regulation in order to render official one of the key elements of ABB. ~~In Article 46~~ Concerning the content of the budget, the payment schedules should be included in the working documents accompanying the preliminary draft budget listed in Article 33 of the Financial Regulation instead of in the budget itself, as they are not relevant to the budgetary procedure and are unnecessarily burdensome.

(19) As regards the implementation of the budget, some adjustments appear necessary in order to better reflect the specific features of the Common Foreign and Security Policy (CFSP). For reasons of legal clarity, the types of basic acts applicable under the EC Treaty and under Title V and VI of the TEU should be identified in Article 49 of the Financial Regulation instead of in the implementing rules. In addition, a specific provision should be added in order to properly reflect the types of preparatory measures that may be undertaken in the field of the CFSP.

(2020) As regards methods of management, Article 53 of the Financial Regulation should be restructured for the purpose of clarity. It is also necessary ~~in Article 53(3) of the Financial Regulation~~ to remove the limitation of shared management to the European Agricultural Guidance and Guarantee Fund (EAGGF) and Structural Funds, because additional programmes will now operate under shared management. The requirements for joint management need to be made clearer. Article 54(2)(b) is completed to include in particular the European Investment Bank and the European Investment Fund as Community bodies to which tasks are entrusted by the Commission. The criteria set out in Article 54 of the Financial Regulation for using national public-sector bodies should be simplified in order to facilitate their use and to respond to growing operational needs, and the scope of the provision should be extended to international public bodies. Article 54 should also clarify the position as regards the special case of special advisors or heads of mission appointed by the Council to manage certain actions in the context of the common foreign and security policy.

(2124) The responsibilities of the Member States under shared management should be set out in more detail, to take account of the ongoing discussions between the institutions concerning the discharge procedure and the appropriate control systems to put in place, reflecting the mutual responsibilities of the Member States and the Commission Taking account of the need for a common control framework, controls carried out by

the Commission in decentralised or indirect centralised management and, where appropriate, in shared management should be reinforced. **To this end, following the new inter institutional agreement (point 44), Member States shall submit to the Commission an annual summary of the available audits and declarations in relation with funds under shared management.**

~~(2222)~~ The prohibition on delegating implementation tasks to private bodies should be modified in Article 57 of the Financial Regulation because the terms of that prohibition have turned out to be unnecessarily strict. It should be possible, for example, for the Commission to engage the services of a travel agency or a conference organiser to take charge of reimbursing the costs of participants at conferences, provided that care is taken to ensure that no discretionary powers are exercised by the private company.

**(23) The conditions and limitations regarding financial liability of all financial actors and any other person involved in budget implementation should be clarified. In particular, such liability should be limited in cases of gross negligence to a maximum of 12 months' salary.**

**(24) The establishment by several institutions of joint financial irregularities panels should be made possible.**

~~(23) The authorising officer by delegation should be entitled to refer a matter to the financial irregularities panel if he considers that a financial irregularity has occurred.~~

~~(2524)~~ As regards the accounting officer, his responsibility for certifying the accounts on the basis of the financial information supplied to him by the authorising officers has to be clarified. **To this end, the accounting officer should be empowered to check the information received by the authorising officer by delegation and to enter reservations, if necessary.**

~~(2625)~~ As regards the internal auditor, the relationship between the Commission's internal auditor and bodies set up by the Communities should be clarified. Those bodies should have their own internal audit function reporting to their own management boards, whereas the Commission's internal auditor reports to the College on the procedures and systems of the Commission. It should be necessary for the Commission's internal auditor only to certify that the bodies' internal audit functions meet international standards, and for that purpose he should be able to conduct quality audits.

~~(2726)~~ The rules on recovery of amounts receivable should be clarified and strengthened in order to ~~take account of recent case-law and~~ better to safeguard the financial interests of the Communities. Enforced recovery should be assisted by ensuring in Article 72 of the Financial Regulation that the Community's claims may also benefit from the instruments adopted under the EC Treaty provisions on judicial cooperation in civil law matters having cross-border implications, which notably means that an entitlement established by the courts in one jurisdiction would be recognised in the others under a simplified procedure. **The relevant agreements between the European Community and the Member States having a special position with respect to Title IV of the EC Treaty should apply in the relations with those Members States when they do not participate in a specific measure.**

- (28) In order to improve the effectiveness of recoveries, a provision should be introduced under which the Member States should be required to treat Community claims in the same way as claims of a fiscal nature within their own jurisdiction
- (2927) A period of limitation on the validity of claims should be introduced. The Community, unlike many of its Member States, is not subject to a period of limitation under which financial claims are extinguished after a certain period of time. Nor is the Community restricted by a period of limitation in the pursuit of its claims against third persons. The introduction of such a period of limitation should correspond to sound financial management.
- (3028) As regards the rules on public procurement contracts, **the Financial Regulation should reflect the importance of framework contracts in the management of public procurement and encourage the use of interinstitutional procurement procedures and allow for the possibility of joint procurement procedures between an institution and a contracting authority from a Member State.**
- (31) Certain technical adjustments should be made to ensure that the terminology of the Financial Regulation is fully in line with that of 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<sup>5</sup>. The possibility open to Member States under that Directive **to determine specific procedures for contracts declared secret, when their performance must be accompanied by special security measures, or when the protection of the Member State so requires** of declaring procurement procedures to be secret should be made available *mutatis mutandis* to the Community institutions in Article 91 of the Financial Regulation.
- ~~(29) The Financial Regulation rules on the exclusion of tenderers impose a stricter regime for the Community institutions than that provided for in Directive 2004/18/EC. The Financial Regulation makes no distinction between the most serious grounds for exclusion and other grounds. Directive 2004/18/EC, on the other hand, does make such a distinction and that distinction should be made available for the Community institutions. Articles 93 and 94 of the Financial Regulation should provide for mandatory exclusion in the most serious cases, while allowing the possibility for the contracting authority, on the basis of a risk assessment, to add other cases of exclusion. The same distinction should be made in Article 114 of the Financial Regulation, as regards grants. The rules on penalties, laid down in Article 96 of that Regulation, should be adjusted accordingly.~~
- (32) In line with Directive 2004/18/EC, the rules on exclusion from a procurement procedure need to be clarified in Articles 93 and 96 of the Financial Regulation. A clear distinction should be made between mandatory exclusion and exclusion on the basis of an administrative penalty. In addition, for reasons of legal certainty and proportionality, a maximum period of exclusion should be specified in the Financial Regulation. In light of Directive 2004/18/EC, an exception to the rules on exclusion should be made for the purchase of supplies on particularly**

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<sup>5</sup> OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 2083/2005 (OJ L 333, 20.12.2005, p. 28).

**advantageous terms from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law.**

(3430) It should be made obligatory under Article 93 of the Financial Regulation for candidates or tenderers in procurement procedures to certify, if so requested, the ownership or the management, control and power of representation of the legal entity submitting a tender **or that their subcontractors are not in one of the situations referred to in Article 93 of the Financial Regulation. Taking into account the principle of proportionality, tenderers should not be required to certify that they are not in one of the situations giving rise to exclusion when they participate in a procurement procedure for the award of very low-value contracts.**

(3534) Article 95 of the Financial Regulation requires all institutions to keep databases of those candidates or tenderers in situations of exclusion under Article 93 or 94 and to have access to each other's databases. **In order to enhance the effectiveness and improve the protection of the financial interests of the Communities, the database should be common to the institutions, executive agencies and bodies referred to in Article 185. In addition, the Member States, third countries and other bodies participating in the implementation of the budget, should communicate to the competent authorising officer information associated with certain situations of exclusion under the FR and take into account the information in the database when awarding grants and contracts financed from the Communities' budget.** ~~It would be more cost-effective but still consistent with that principle, to allow small institutions with only a few procurement procedures to meet that obligation by sharing a database.~~

~~(32) Successive framework research programmes have facilitated the work of the Commission by laying down specific simplified rules to govern the awarding of contracts to external experts for evaluation and technical assistance. Articles 91 and 97 of the Financial Regulation should make similar provision in respect of all other programmes where there is a need for such a procedure.~~

**(36) In order to take account of the interests of unsuccessful tenderers, it is appropriate to provide that, as a matter of principle, they must be informed after a contract, tendered by the institutions on their own account and covered by Directive 2004/18/EC, has been awarded and that such a contract cannot be signed before the end of a reasonable standstill period.**

(3733) The obligations of the institutions to suspend a procurement procedure or a contract under Article 103 of the Financial Regulation in cases of fraud and irregularities need to be clarified, so that the obligations are understandable and capable of being applied.

(3834) As regards grants, simplification of the rules is needed. Requirements for checks and guarantees should be more proportionate to the financial risks involved. Some essential changes need to be made first in the Financial Regulation, so that detailed provision can later be made in the implementing rules. The scope of grants needs to be clarified in Article 108 of the Financial Regulation, in particular as regards financing related to loan activities ~~and~~ **or shareholdings and social policy measures vis-à-vis members of the institutions or their staff and expenditure relating to fisheries markets.** The principle of proportionality has to be added. **The possibility for the**



**institutions to use grants for the purpose of communication activities should be clearly recognised. Finally, to improve the management of grants and to simplify procedures, it should be possible to award grants either by decisions of the institution or by written agreements with beneficiaries.**

**(39) For reasons of clarity and transparency, the use of lump sum and flat-rate payments should be authorised alongside the more traditional method of reimbursing costs actually incurred.**

(4035) It is appropriate that the exceptions to the non-profit rule, provided for in the implementing rules, be included in the Financial Regulation. Furthermore, Article 109 of the Financial Regulation should make it quite clear that the whole purpose of awarding grants to certain actions is to help reinforce financial capacity or generate an income.

(4136) The rule that grants should be awarded on the basis of calls for proposals has proved its worth. Experience has shown, however, that in certain situations the nature of the action leaves no choice in the selection of beneficiaries, and Article 110 of the Financial Regulation should expressly recognise that such exceptional cases arise.

(4237) The rule that the same action should not give rise to more than one grant to any one beneficiary should be adjusted because some basic acts do permit Community funding to be combined and such cases may increase in future in order to ensure the effectiveness of expenditure. However, the opportunity should be taken **to strengthen the rule and** to make clear in Article 111 of the Financial Regulation that the same costs can never be financed twice by the Community budget.

(4338) Where grants are given for running costs, the rule that the necessary agreement may not be signed more than four months after the start of the beneficiary's financial year has proven unnecessarily rigid and Article 112 of the Financial Regulation could safely fix that deadline at 6 months.

**(44) For reasons of simplification, in the case of operating grants taking the form of lump-sums or flat-rate financing, the rule that grants shall gradually decrease should be removed.**

~~(39) For reasons of clarity and transparency, the use of flat-rate payments should be authorised in a new Article 113a of the Financial Regulation, to co-exist with the more traditional method of reimbursing costs actually incurred.~~

(4540) In Article 114 of the Financial Regulation, certain restrictions on the eligibility of beneficiaries should be removed in order to allow for grants to natural persons and certain types of entity which lack legal personality. **According to the principle of proportionality, for very low-value grants, the authorising officer may refrain from requesting applicants to certify that they are not in one of the situations of exclusion under Articles 93, 94 or 96 of the Financial Regulation.**

(4644) While grants will continue to be awarded on the basis of selection and award criteria, there is no need in practice to have those criteria evaluated by one and the same committee, and that requirement should therefore be removed from Article 116 of the Financial Regulation

- (4742) As regards the procurement standards to be applied by beneficiaries of grants, the current rule in Article 120 of the Financial Regulation is unclear and needs to be simplified. Moreover, the case in which the implementation of an action necessitates financial support to third parties has to be expressly provided for.
- (4843) As regards the rules on accounting and the accounts, Article 121 of the Financial Regulation should make it possible for the Commission's accounting officer to determine, in compliance with international standards, which other bodies in addition to those receiving Community subsidies fall within the scope of the consolidation.
- (4944) In view of the coming into existence of the EAGF, which replaces the EAGGF from 2007, terminology needs to be adjusted in the title of Title I of Part Two, and in Articles 26 and 148 to 151, of the Financial Regulation. Clarification is required in Article 151 to the effect that provisional commitments may be made after the normal two-month deadline following receipt of the Member States' statements of expenditure in cases where a decision on a transfer of appropriations is expected. Article 153 concerning transfers needs clarification.
- (5045) As well as in the title of Title II of Part Two, terminology should be adjusted in Article 155(1) and (3) of the Financial Regulation so that reference is made only to the structural funds, the cohesion fund, the fisheries fund and the rural development fund. References to pre-accession structural measures (ISPA) and agricultural measures (SAPARD) should be removed, since they involve management by third countries on a decentralised basis in accordance with Article 164 and will continue to be implemented largely in the same way as at present. As regards the making available again of decommitted appropriations, in line with the new basic acts for structural actions in the period 2007 to 2013 which cover the case of *force majeure*, provision should be maintained in the Financial Regulation only for cases where "manifest error" is attributable to the Commission.
- (5146) In Article 160 of the Financial Regulation, a provision needs to be added to cover the assigned revenue generated by the winding-up of the European Coal and Steel Community and the making available of the corresponding appropriations.
- (5247) It is necessary to allow appropriations which have been decommitted as a result of total or partial non-implementation of the projects for which they were earmarked to be made available again. However, that should be possible only under strict conditions, and only in the area of research, since research projects present a higher financial risk than those in other policy areas.
- (5348) As regards external actions, it should be clarified that the grant procedures to be applied by third countries in the case of decentralised management have to be specified in the financing agreements concluded with those countries. That would amount to a codification of existing practice. **It should be specified that the "n+3 rule" according to which individual contracts and agreements which implement such financing agreements have to be concluded no later than three years following the date of conclusion of the financing agreement, shall not apply in the case of decentralised management of multi-annual programmes under Council Regulations (EC) ..... (IPA and ENPI). A "n + 4" decommitment rule will apply in this case.**

(5449) As regards the European Offices, it should be made possible for the institutions to delegate authorising officer power to directors of inter-institutional European Offices for the management of appropriations entered in their respective sections of the budget, in order to facilitate management. Whilst the content should remain unchanged, Articles 171, 173 and 176 of the Financial Regulation should be slightly re-structured in order to clarify the sub-delegation of authorising powers by the directors of Offices.

**(55) A period of one week for the notification of the intention of the two branches of the budgetary authority to issue an opinion in the framework of a building procedure should be provided for.**

**(56) Successive framework research programmes have facilitated the work of the Commission by laying down simplified rules for the selection of external experts for evaluation of proposals or grant applications and technical assistance for the follow-up and evaluation of projects funded. This procedure should be made available in respect of all other programmes.**

**(57) Transitional provisions should be added to deal with expenditure from Community initiatives and technical assistance and innovative measures as provided for in Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds<sup>6</sup> and for which payments still have to be made, as the implementation of the provisions on the central data base for exclusion from participation in procurement and grant procedures.**

(5850) Regulation (EC, Euratom) No 1605/2002 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC, Euratom) No 1605/2002 is amended as follows:

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

"This Regulation lays down the rules for the establishment and implementation of the general budget of the European Communities, hereinafter "the budget", and the presentation and auditing of the accounts."

~~(2) Article 2 is replaced by the following:~~

~~*“Article 2*~~

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

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<sup>6</sup> OJ L 161, 26.06.1999, p. 1. Regulation as last amended by Regulation (EC) No 173/2005 (OJ L 29, 2.2.2005, p. 3).

- (2) **Article 3 is replaced by the following:**

**"Article 3**

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

- (3) In Article 5, paragraph 4 is replaced by the following:

"4. Subject to Articles 5a, 18 and 74, interest yielded by the funds which are the property of the Communities shall be entered in the budget as miscellaneous revenue."

- (4) The following Article 5a is added in Chapter 1 of Title II of Part One:

*"Article 5a*

1. Interest generated by pre-financing payments shall be assigned to the programme or the action concerned and deducted from the payment of the balance of the amounts due to the beneficiary.

The Regulation laying down the rules for implementing this Regulation, hereinafter 'the implementing rules', shall specify the cases in which the authorising officer responsible shall, by way of exception, recover annually such interest ~~by means of a recovery order~~. That interest shall be entered in the budget as miscellaneous revenue.

2. Interest shall not be due to the Communities in the following cases:
  - (a) pre-financing which does not represent a significant amount, as determined in the implementing rules;
  - (b) pre-financing paid under a procurement contract within the meaning of Article 88;
  - (c) pre-financing paid to Member States;
  - (d) pre-financing paid under the pre-accession aid;
  - (e) advances paid to members of the institutions and to staff in accordance with the Staff Regulations of Officials of the European Communities and the Conditions of employment of other servants of the European Communities, hereinafter 'the Staff Regulations';
  - (f) pre-financing paid in the framework of joint management as referred to in point (c) of Article 53(1)."

~~(6) In Article 8(1), the following sentence is added:~~

~~“The amounts paid in advance shall be treated as revenue of the next financial year.”~~

**(5) In Article 11, “Article 157” is replaced by “Articles 157 and 160a”.**

(6) In Article 12, the following paragraph is added:

"However, in duly substantiated exceptional cases, the appropriations for the purposes of crisis management aid and humanitarian aid operations may be committed as from 15 December of each year against the appropriations provided for the following financial year. Such commitments may not exceed one quarter of the appropriations on the corresponding budget line for the last adopted budget. **The budgetary authority shall be informed *ex post* of these commitments**".

(7) In Article 16, the second paragraph is replaced by the following:

"However, for the cash-flow purposes referred to in Article 61, the accounting officer and, in the case of imprest accounts, the imprest administrators, and, for the needs of the administrative management of the Commission's External Service, the authorising officer responsible shall be authorised to carry out operations in national currencies as laid down in the implementing rules."

(8) ~~In Article 18(1) paragraph 1,~~ is amended as follows:

(a) **the introductory phrase is replaced by the following:**

**“Without prejudice to Article 160(1)(a) and Article 161(2), the following items of revenue shall be used to finance specific items of expenditure:”**

(b) the following point (aa) is inserted:

"(aa) financial contributions from Member States **and** other donor countries, **including in both cases their public and parastatal agencies, or from** international organisations to certain external aid projects or programmes financed by the Community and managed by the Commission on their behalf, pursuant to the relevant basic act;"

(c) the following point (ea) is inserted:

"(ea) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped;"

(9) In Article 19(2), the first sentence is replaced by the following:

“Acceptance of donations which involve a ~~significant~~ financial charge **exceeding 10 % of the value of the donation made** shall be subject to the authorisation of the European Parliament and the Council, both of which shall act on the matter within two months of the date of receipt of the request from the Commission.”

(10) Article 22 is replaced by the following:

*“Article 22*

1. Any institution other than the Commission may, within its own section of the budget, make transfers:
  - (a) from one title to another within a total limit of 10% of the appropriations for the financial year on the line from which the transfer is to be made;
  - (b) from one chapter to another **and from one article to another** without limit.
2. Three weeks before making the transfers referred to in paragraph 1, the institutions shall inform the budgetary authority ~~and the Commission~~ of their intentions. In the event of duly substantiated reasons being raised within this period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply.

~~The budgetary authority shall take decisions on these transfers within the time limits laid down in Article 24, which shall be deemed to begin on the date on which the budgetary authority was informed by the institution of the intended transfer.~~
3. Any institution other than the Commission may propose to the budgetary authority, within its own section of the budget, transfers from one title to another exceeding the limit of 10% of the appropriations for the financial year on the line from which the transfer is to be made. ~~The budgetary authority shall inform the Commission accordingly.~~ Those transfers shall be subject to the procedure laid down in Article 24.
4. Any institution other than the Commission may, within its own section of the budget, make transfers within ~~chapters~~ **articles** without prior information of the budgetary authority.”

(11) Article 23 is amended as follows:

- (a) paragraph 1 is amended as follows:
  - (i) point (b) is replaced by the following:
    - "(b) as regards staff and operating expenditure, transfer appropriations from one title to another ~~only between articles financing expenditure of identical nature~~ **up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made.**";
  - (ii) the following point (d) is added:
    - "(d) transfer appropriations from the "provisions" title referred to in Article 43 for the cases where no basic act exists for the action concerned when the budget is established but is adopted during the course of the financial year."

(iii) the second subparagraph is replaced by the following:~~deleted~~

“Three weeks before making the transfers referred to in points (b) and (c) of the first subparagraph, the Commission shall inform the budgetary authority of its decision. In the event of duly substantiated reasons being raised within that three-week period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply.”

(iv) the following third and fourth subparagraphs are added:

“However, during the last three months of the financial year, the Commission may autonomously transfer appropriations concerning expenditure on staff, external staff and other agents from one title to another within the total limit of 10 % of the appropriations of the financial year. The Commission shall inform the budgetary authority in the month following its decision on those transfers.”

The Commission shall inform the budgetary authority in the month following its decision on transfers referred to in point (d) of the first subparagraph.”

~~(b) the following paragraph 1a is inserted:~~

~~“1a. The Commission shall inform the budgetary authority three weeks before making the following:~~

~~(a) transfers between articles within the chapter corresponding to administrative appropriations of the same title which exceed 10% of the appropriations of the year shown on the article from which the transfer is made;~~

~~(b) transfers referred to in point (c) of paragraph 1.~~

~~— In the event of duly substantiated reasons being raised within that three-week period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply. The budgetary authority shall take decisions on these transfers within the time limits laid down in Article 24, which shall be deemed to begin on the date on which the budgetary authority was informed by the Commission of the intended transfer.”;~~

~~(e-b) in paragraph 2, "paragraph 1(c)" is replaced by "paragraph 1 and 1a".~~

(12) ~~in~~ Article 26(2) is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Transfers within the titles of the budget devoted to the European Agricultural Guarantee Fund (EAGF), the Structural Funds, Cohesion Fund, Fisheries Fund, the European Agricultural Fund for

**Rural Development (EAFRD) and Research shall be the subject of special provisions under Titles I, II and III of Part Two.**

**(b) in** paragraph 2, the first subparagraph is replaced by the following:

"Decisions on transfers to allow the utilisation of the reserve for emergency aid shall be taken by the budgetary authority on a proposal from the Commission. A separate proposal must be submitted for each individual operation."

**(13) Article 28 is amended as follows:**

**(a) paragraph 1 is replaced by the following:**

**“1. Any proposal submitted to the legislative authority by the Commission, by a Member State in compliance with the relevant provisions of the Treaty on European Union (TEU), which may have an impact on the budget, including changes in the number of posts, must be accompanied by a financial statement and the evaluation provided for in Article 27(4) of this Regulation.**

**Any substantial amendment to a proposal submitted to the legislative authority which may have an impact on the budget, including changes in the number of posts, must be accompanied by a financial statement prepared by the institution proposing the amendment”.**

**(b) paragraph 3 is replaced by the following:**

**“3. In order to prevent the risk of fraud and irregularities, the financial statement referred to in paragraph 1 shall record any information regarding existing and planned fraud prevention and protection measures.”**

**(14) After Article 28, the following Chapter 7a is inserted:**

**“CHAPTER 7a  
Principle of proportionality**

**Article 28a**

**Budget appropriations shall be implemented in accordance with the principle of proportionality laid down in the third paragraph of Article 5 EC Treaty. The procedures used for carrying out programmes and activities shall be determined on the basis of their objectives, and take account of the amounts and risks involved.**

**(15) In Article 29, paragraph 2 is replaced by the following:**



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

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

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

(16) **In Article 30, the following paragraph 3 is added:**

**"3. Information on the beneficiaries of funds deriving from the budget is ensured in the most appropriate manner taking into account the specificities of each management mode referred to under Article 53."**

(17) **After Article 30, the following Chapter 9 is added:**

## **“CHAPTER 9 Principle of effective and efficient internal control**

### **Article 30a**

- 1. The budget shall be implemented in compliance with effective and efficient internal control as appropriate in each management mode, subject to the principle of proportionality.**
- 2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels in the chain of management and designed to provide reasonable assurance on the achievement of the following objectives:**
  - (a) effectiveness and efficiency of operations;**
  - (b) reliability of financial reporting;**
  - (c) safeguarding of assets and information;**
  - (d) prevention and detection of fraud and irregularities;**
  - (e) adequate management of the risks relating to the legality and regularity of the underlying transactions.**
- 3. The risk of irregularity or illegality in the underlying transactions, inherent to the implementation of a basic act, will be addressed by an adequate level of control, in order to reach a tolerable level of risk, taking into account the multi-annual character of programmes as well as the nature of the payments concerned.**

(18) ~~In Article 33(2), point (d) is replaced by the following~~ **is amended as follows:**

**(a) point (d) is replaced by the following:**

"(d) the activity statements containing the information:

- on the achievement of all previously set objectives for the various activities as well as new objectives measured by indicators;
- **on the management in previous years of the tolerable risk on legality and regularity in underlying transactions as well as additional measures needed in this context.**

Evaluation results shall be consulted and referred to as evidence of the likely merits of a proposed budget amendment."

**(b) the following point (e) is added:**

**“(e) a summary statement of the schedule of payments due in subsequent financial years to meet budgetary commitments entered into in earlier financial years.”**

(19) In Article 40, point (a) is replaced by the following:

“(a) a general statement of revenue and expenditure;”

(20) **In the second subparagraph of** Article 43(1), ~~is amended as follows:~~

~~(a) in the of paragraph 1, "Article 24" is replaced by "Articles 23 and 24".~~

~~(b) in paragraph 2, "Article 24" is replaced by "Articles 23 and 24".~~

(21) In the second paragraph of Article 44, "Articles 22, 23 and 25" is replaced by "Articles 23 and 25".

(22) Article 45 is replaced by the following:

*"Article 45*

1. The Commission section of the budget shall include a reserve for emergency aid for third countries.
2. The reserve referred to in paragraph 1 shall be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 24 and 26."

(23) Article 46(1) is amended as follows:

(a) point (1) is amended as follows:

(i) the introductory phrase is replaced by the following:

“in the general statement of revenue and expenditure.”;

(ii) point (f) is deleted;

(iii) point (g) is replaced by the following:

“(g) appropriate remarks on each subdivision, as set out in Article 41(1)”;

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

"(2) in the section for each institution, the revenue and expenditure shall be shown in the same structure as in point (1)";

(c) in point (3), point (c) is replaced by the following:

“(c) as regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget; the establishment plan must specify the number of highly qualified technical or scientific personnel who are accorded special advantages under the specific provisions of the Staff Regulations;”

(d) point (5) is replaced by the following:

"(5) the budget lines under revenue and expenditure necessary for implementing the Guarantee Fund for external actions."

(24) In the second subparagraph of Article 47(1), "grades A1, A2 and A3" is replaced by "grades AD 16, AD 15 and AD 14".

(25) **Article 49 is replaced by the following:**

#### **“Article 49**

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

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

**2. In application of the EC Treaty and the Euratom Treaty, a basic act is an act adopted by the legislative authority and may take the form of a regulation, a directive, a decision within the meaning of Article 249 of the EC Treaty or a decision *sui generis*<sup>7</sup>.**

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<sup>7</sup>

**Beschluss**

- 3. In application of Title V of the TEU (concerning Common Foreign and Security Policy - CFSP), a basic act may take one of the forms specified in Articles 13(2) and (3), 14, 18(5), 23(1) and (2) and 24 of the TEU.**
- 4. In application of Title VI of the TEU (concerning Police and Judicial Cooperation in Criminal Matters), a basic act may take one of the forms referred to in Article 34(2) of the TEU.**
- 5. Recommendations and opinions do not constitute basic acts within the meaning of this article, nor do resolutions, conclusions, declarations or other acts which have no legal effects.**
- 6. By way derogation of paragraphs 1 to 4, the following may be implemented without a basic act as long as the actions which they are intended to finance fall within the competence of the Communities or the European Union:**
  - (a) appropriations for pilot schemes of an experimental nature designed to test the feasibility of an action and its usefulness. The relevant commitment appropriations may be entered in the budget for only two successive financial years;**
  - (b) appropriations for preparatory actions in the fields of application of the EC Treaty and the Euratom Treaty and of Title VI of the TEU, designed to prepare proposals with a view to the adoption of future actions. The preparatory actions are to follow a coherent approach and may take various forms. The relevant commitment appropriations may be entered in the budget for only three successive financial years at most. The legislative procedure must be concluded before the end of the third financial year. In the course of the legislative procedure, the commitment of appropriations must correspond to the particular features of the preparatory action as regards the activities envisaged, the aims pursued and the persons benefited. Consequently, the means implemented cannot correspond in volume to those envisaged for financing the definitive action itself;**

**When the preliminary draft budget is presented, the Commission shall submit a report to the budgetary authority on the actions referred to in points (a) and (b) which shall also cover an assessment of results and the follow-up envisaged;**
  - (c) appropriations for preparatory measures in the field of Title V of the TEU (concerning CFSP). These measures shall be limited to a short period of time and shall be designed to establish the conditions for European Union action in fulfilment of the objectives of the CFSP and for the adoption of the necessary legal instruments; For the purpose of EU crisis management operations, preparatory measures are designed inter alia to assess the operational requirements, to provide for a rapid initial deployment of resources, or to establish the conditions on the ground for the launching of the operation.**

**The Secretary-General of the Council/High Representative for the CFSP, assisting the Presidency, shall associate the Commission as early as possible on the Council's intention to decide a preparatory measure and on the estimated resources required for this purpose. In conformity with the provisions of this Regulation, the Commission shall take all the necessary measures to ensure a rapid disbursement of the funds;**

**(d) appropriations for one-off actions, or even actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level pursuant to the EC Treaty and the Euratom Treaty other than its right of legislative initiative referred to in point (b) and under specific powers directly conferred on it by those Treaties, a list of which is given in the implementing rules;**

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

**(26) In Article 50, the following second paragraph is added:**

**“Each institution shall exercise these powers in accordance with this Regulation and within the limits of the appropriations authorised.”**

**(27) Article 52 is replaced by the following:**

*“Article 52*

1. All financial actors and any other person involved in budget implementation, management, audit or **internal** control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities. Should such a case arise, the person in question must refrain from such actions and refer the matter to the competent authority.
2. There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.”

**(28) Article 53 is replaced by the following: amended as follows:**

**“Article 53**

**The Commission shall implement the budget in any of the following ways:**

**(a) on a centralised basis;**

**(b) by shared or decentralised management;**

**(c) by joint management with international organisations.”**

**(29) The following Articles 53a to 53d are inserted:**

**“Article 53a**

**Where the Commission implements the budget on a centralised basis, implementation tasks shall be performed either directly by its departments or indirectly, in accordance with Articles 54 to 57.**

(a) — paragraphs 3 and 4 are replaced by the following:

**Article 53b**

**1.** Where the Commission implements the budget by shared management, implementation tasks shall be delegated to Member States. That method shall apply in particular to the actions referred to in Titles I and II of Part Two.

**2.** **Without prejudice to more specific provisions included in relevant sector-specific regulations, and** in order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the **legislative, regulatory and administrative or other** measures necessary **for protecting the Communities’ financial interests in order** to:

(a) satisfy themselves that actions financed from the budget are actually carried out and to ensure that they are implemented correctly;

(b) prevent and deal with irregularities, **mismanagement** and fraud;

(c) recover funds wrongly paid or incorrectly used or funds lost as a result of irregularities or errors;

**(d) ensure, with due observance of the requirements of confidentiality and security, adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.**

To that effect, the Member States shall conduct regular checks and shall put in place an effective **and efficient** internal control system, **according to the principles laid down in Article 30a**. They shall bring **legal** judicial proceedings **as are necessary and appropriate**, ~~for the purposes of points (b) and (c).~~

**3.** **Member States shall submit to the Commission an annual summary at the appropriate national level of the available audits and declarations.**

**4.** **In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.**

### Article 53c

41. Where the Commission implements the budget by decentralised management, implementation tasks shall be delegated to third countries in accordance with Article 56 and Title IV of Part Two, **without prejudice to delegation of tasks to bodies referred in Article 54(2).**
  2. **In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.**
  3. **Third countries to which implementation tasks are delegated shall ensure, with due observance of the requirements of confidentiality and security, adequate annual ex post publication of beneficiaries of funds deriving from the budget.**
- (b) — paragraph 6 is deleted;
- (c) — paragraph 7 is replaced by the following:

### Article 53d

71. Where the Commission implements the budget by joint management, certain implementation tasks shall be entrusted to international organisations, in accordance with the implementing rules, in the following cases:
    - (a) wherever the Commission and the international organisation are bound by a long-term framework agreement laying down the administrative and financial arrangements for their cooperation;
    - (b) wherever the Commission and the international organisation elaborate a joint project or programme;
    - (c) where the funds of several donors are pooled and are not earmarked for specific items or categories of expenditure, that is to say, in the case of multi-donor actions.
- These organisations shall, in their accounting, audit, **internal** control and procurement procedures, apply standards which offer guarantees equivalent to internationally accepted standards.
2. The individual agreement concluded with the international organisation for the award of the financing shall contain detailed provisions for the implementation of the tasks entrusted to the international organisation.
  3. **International organisations to which implementation tasks are delegated shall ensure, with due observance of the requirements of confidentiality and security, adequate annual ex post publication of beneficiaries of funds deriving from the budget.”**

(30) Article 54 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

“The delegation of budget-implementation tasks shall comply with the requirements of sound financial management **and effective and efficient internal control** and shall ensure compliance with the principle of non-discrimination, and the visibility of Community action. No implementing tasks entrusted in this way may give rise to conflicts of interests.”

(b) paragraph 2 is amended as follows:

**(i) in the first sentence, “Article 53(2)” is replaced by “Articles 53a and 53c”.**

**(ii) point (b) is replaced by the following:**

**“(b) bodies set up by the Communities as referred to in Article 185 and other specialised Community bodies, such as the European Investment Bank or the European Investment Fund, provided that to do so is compatible with the tasks of each body as defined in the basic act.”**

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

“(c) national or international public-sector bodies or bodies governed by private law with a public-service mission providing adequate financial guarantees and complying with the conditions provided for in the implementing rules.”

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

“(d) persons entrusted with the implementation of specific actions pursuant to Title V of the TEU, and identified in the relevant basic act within the meaning of Article 49.”

(c) in paragraph 3, the second subparagraph is replaced by the following:

“Such bodies or persons shall take appropriate measures to prevent irregularities and fraud and if necessary bring ~~judicial~~ **legal** proceedings to recover funds wrongly paid or incorrectly used.”

(31) Articles 55 and 56 are replaced by the following:

*“Article 55*

1. The executive agencies shall be legal persons under Community law created by Commission Decision to which powers may be delegated to implement all or part of a Community programme or project on behalf of the Commission and under its responsibility in accordance with Council Regulation (EC) No 58/2003<sup>(\*)</sup>.



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

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(\*) OJ L 11, 16.1.2003, p. 1.”

*Article 56*

1. Where the Commission implements the budget by indirect centralised management, it shall first obtain evidence of the existence, relevance and proper operation within the entities to which it entrusts implementation, ~~in accordance with the rules of sound financial management,~~ of the following:

- (a) transparent procurement and grant-award procedures which are non-discriminatory and exclude any conflict of interest and which are in accordance with the relevant provisions of this Regulation;
- (b) an effective **and efficient** internal control system for the management of operations, which includes effective segregation of the duties of authorising officer and accounting officer or of the equivalent functions;
- ~~(c) accounting arrangements for the operations and procedures for the presentation of the accounts which will enable the correct use of the Community funds to be ascertained and the true extent of this use to be reflected in the Community accounts;~~**an accounting system that enables the correct use of Community funds to be verified and the use of funds to be reflected in Community accounts;**
- (d) an independent external audit;
- (e) public access to information at the level provided for in Community Regulations;
- (f) adequate annual ex post publication of beneficiaries of funds deriving from the budget, with due observance of the requirements of confidentiality and security.**

**The Commission may accept that the audit, accounting and procurement systems of the entities referred to in Paragraphs 1 and 2 are equivalent to its own, with due account for internationally accepted standards.**

2. In the case of decentralised management, the criteria laid down in paragraph 1 **with the exception of the criterion provided in point (e),** shall apply, in full or in part, depending on the degree of decentralisation, agreed between the Commission and the third country concerned.

**Notwithstanding paragraph (1)(a) and Article 169a the Commission may decide, in the case of pooling of funds, and under the conditions provided in the basic act, to use the procurement or grant procedures of the beneficiary partner country or as agreed among donors, after first having obtained evidence on a case by case basis that such procedures satisfy the**

**principles of transparency, equal treatment and non—discrimination, prevent any conflict of interest, offer guarantees equivalent to internationally accepted standards and ensure adequate protection of the financial interests of the Community.**

The third country concerned shall undertake to fulfil the following obligations:

- (a) to comply, subject to the first subparagraph of this paragraph, with the criteria laid down in paragraph 1;
  - (b) to ensure that the audit referred to in point (d) of paragraph 1 is exercised by a national institution for independent external auditing;
  - (c) to conduct regular checks to ensure that the actions to be financed from the budget have been implemented correctly;
  - (d) to take appropriate measures to prevent irregularities and fraud and, if necessary, to bring ~~judicial~~ **legal** proceedings to recover funds wrongly paid.
3. The Commission shall ensure supervision, evaluation and **internal** control of the implementation of the tasks entrusted. It shall take the equivalence of control systems into account when it carries out controls using its own control systems.
- (32) In Article 57, paragraph 1 is replaced by the following:
- "1. The Commission may not entrust measures of implementation of funds deriving from the budget, including payment and recovery, to external private-sector entities or bodies, except in the case referred to in Article 54(2)(c) or in specific cases where the payments involved are to be made to beneficiaries determined by the Commission, are subject to conditions and amounts fixed by the Commission and do not involve the exercise of discretion by the entity or body making the payments."
- (33) Article 59 is amended as follows:
- (a) the following paragraph 1a is inserted:

"1a. For the purposes of this Title, the term "staff" refers to persons covered by the Staff Regulations."
  - (b) paragraph 3 is replaced by the following:

"3. The powers of authorising officer shall be delegated or subdelegated only to staff."
- (34) In Article 60, ~~the first sentence of~~ paragraph 7 is replaced by the following:
- "7.** The authorising officer by delegation shall report to his institution on the performance of his duties in the form of an annual activity report, together with financial and management information and **any reservations in relation**

thereto, and accompanied by a declaration of assurance certifying that the information contained in the report presents a true and fair view.

That report shall indicate the results of the operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. The internal auditor shall take note of the annual report and any other pieces of information identified. No later than 15 June each year, the Commission shall send to the budgetary authority a summary of the annual reports for the previous year. These reports shall set out details of the measures taken to limit the risk of irregularity or illegality in connection with the operations dealt with in the report and an assessment of the effectiveness of those measures.”

(35) Article 61 is amended as follows:

(a) in paragraph 1, point (e), the following sentence is added:

“the accounting officer shall be empowered to verify the respect of validation criteria;”

(b) the following paragraphs 2a, 2b and 2c are inserted:

"2a. Before the adoption of the accounts by the institution, the accounting officer shall sign them off, certifying that they present a reasonable true and fair view of the financial situation of the institution.

For that purpose the accounting officer shall satisfy himself that the accounts have been prepared in accordance with the accounting rules, methods and accounting systems established under his responsibility as laid down in this Regulation for the accounts of his institution, and that all revenue and expenditure is entered in the accounts.

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

The authorising officers shall remain fully responsible for the proper use of the funds they manage as well as the legality and regularity of the expenditure under their control.

2b. The accounting officer shall be empowered to check the information received as well as to carry out any further checks he deems necessary in order to sign off the accounts.

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

2c. The accounting officers of the other institutions and agencies shall sign off their annual accounts and send them to the Commission’s accounting officer.”

~~The accounting officer shall prepare the accounts on the basis of the information presented under paragraph 2. The final accounts drawn up under Article 129(2) and (3) shall be accompanied by a certificate established by the accounting officer, by which he declares that they were prepared in accordance with Title VII and with the accounting principles, rules and methods set out in annex to the financial statements.~~

(b) paragraph 3 is replaced by the following:

"3. Save as otherwise provided in this Regulation, the accounting officer is alone empowered to manage cash and cash equivalents. He shall be responsible for their safekeeping."

(36) In Article 62, the first paragraph is replaced by the following:

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

(37) Article 63 is replaced by the following:

*"Article 63*

1. Imprest accounts may be set up for the collection of revenue other than own resources and for the payment of small sums as defined in the implementing rules.

However, in the field of crisis management aid and humanitarian aid operations within the meaning of Article 110, imprest accounts may be used ~~for larger payments~~ **without any limitation on the amount**.

2. Imprest accounts shall be endowed by the institution's accounting officer and shall be placed under the responsibility of imprest administrators designated by the institution's accounting officer."

(38) In Article 65, paragraph 1 is replaced by the following:

"1. The provisions of this Chapter are without prejudice to the criminal-law liability which the financial actors referred to in Article 64 may incur as provided in the applicable national law and in the provisions in force on the protection of the Communities' financial interests and on the fight against corruption involving officials of the Communities or officials of Member States."

(39) Article 66 is amended as follows:

(a) ~~in paragraph 1, the first sentence~~ is replaced by the following:

"**1.** The authorising officer shall be liable for payment of compensation as laid down in the Staff Regulations."

(b) the following paragraphs 1a to 1d are inserted:

**“1a. The obligation to pay compensation shall apply in particular if in the following cases:**

- **(a) the authorising officer, whether intentionally or through gross negligence on his part,** ~~which specify that a member of staff covered by the relevant provisions may be required to make good, in whole or in part, any damage suffered by the Communities as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties, in particular if he/she determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and the implementing rules;~~
- **(b) the authorising officer, whether intentionally or through gross negligence on his part, omits to draw up a document establishing a debt, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the institution liable to civil action by third parties.**

**1b. When the case and the degree of misconduct are considered, all circumstances, in particular the resources made available to the authorising officer to enable him to perform his duties, must be taken into account.**

**1c. In keeping with the principle of proportionality, the level of liability of the authorising officer shall be assessed primarily on the basis of the degree of his serious misconduct. If the authorising officer acts intentionally he shall be liable for the entire loss suffered. If the authorising officer has committed gross negligence, the liability shall be limited to a maximum of 12 months’ basic salary.**

**1d. The conditions and limitations regarding liability to payment of compensation laid down in paragraphs 1 to 1c shall apply *mutatis mutandis* to the members of staff referred to in the second sentence of Article 59(4).”**

~~(b) the following paragraph 2a is inserted:~~

~~“2a. An authorising officer by delegation may refer a matter to the panel referred to in paragraph 4 if he/she considers that a financial irregularity has occurred.”~~

**(c) paragraph 3 is replaced by the following:**

**“3. In the event of subdelegation within his services, the authorising officer by delegation continues to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation.”**

**(d) in paragraph 4, the first subparagraph is replaced by the following:**

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

**(40) In Article 67, the following paragraph is added:**

**“The conditions and limitations regarding liability to payment of compensation laid down in Article 66(1b) and (1c) shall apply *mutatis mutandis* to the accounting officer and the staff referred to in Article 62.”**

**(41) In Article 68, the following paragraph is added:**

**“The conditions and limitations regarding liability to payment of compensation laid down in Article 66(1b) and (1c) shall apply *mutatis mutandis* to imprest officers.”**

**(42) In Article 72(2), the following subparagraph is added**

**“The institution may also obtain an enforcement order from the competent authority by ordinary judicial procedure. For such purposes its receivable amounts are assimilated to receivable amounts under civil and commercial law within the meaning of the instruments adopted on the basis of Article 65 of the EC Treaty **and, where appropriate, the agreements applicable between the Community and the Member States having a special position with respect to Title IV of the EC Treaty.**”**

**(43) In Article 73(2), the following subparagraph is added:**

**“The responsible authorising officer may furthermore cancel or adjust an established amount receivable, in accordance with the conditions set out in the implementing rules.”**

**(44) The following Articles 73a and 73b are inserted:**

*“Article 73a*

In order to protect their financial interests, amounts receivable by the Communities shall enjoy the same privileges in national legal systems as entitlements of a fiscal nature which belong to public bodies in the Member States.

*Article 73b*

Without prejudice to the provisions of specific regulations and the application of the Council Decision relating to the Communities' own resources system, entitlements of the Communities in respect of third parties and entitlements of third parties in respect of the Communities shall be subject to a limitation period of five years.

The date for calculating the limitation period and the conditions for interrupting this period shall be laid down in the implementing rules."

(45) In Article 75(2), "Article 49(2)" is replaced by "Article 49(~~62~~)(~~de~~)"

(46) In Article 77(3), the third subparagraph is replaced by the following:

"The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 81 has been made in a period of three years following the signing of the legal commitment shall be decommitted."

(47) **In Article 80, the following paragraph is added:**

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

(48) **In Article 86(1), point (b) is replaced by the following:**

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

(49) In Article 87, the second paragraph is replaced by the following:

"If the internal auditor is a member of staff, he shall assume responsibility as laid down in the Staff Regulations and spelt out in the implementing rules."

(50) Article 88 is **replaced by the following** amended as follows:

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

### **"Article 88**

1. Public contracts are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities within the meaning of Articles 104 and 167, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.

#### **These contracts comprise:**

**(a) contracts for the purchase or rental of a building;**

**(b) supply contracts;**

**(c) works contracts;**

**(d) service contracts.**

**2. Framework contracts are contracts concluded between one or more contracting authorities and one or more economic operators, the purpose**

**of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. They shall be governed by the provisions of this Title concerning the award procedure, including advertising.**

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

**3.** This Title does not relate to grants, without prejudice to Articles 93 to 96."

(51) **In Article 89 (2), the following subparagraph is added:**

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

(52) In Article 90(1), the second subparagraph is replaced by the following:

“Contract notices shall be published in advance except in the cases referred to in Article 91(2) of this Regulation, **as specified in the implementing rules**, and for the service contracts covered by Annex IIB to Directive 2004/18/EC of the European Parliament and of the Council<sup>(\*\*)</sup>.”

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<sup>(\*\*)</sup> OJ L 134, 30.4.2004, p. 114.”

(53) Article 91 is amended as follows:

(a) paragraph 1 is replaced by the following:

“1. Procurement procedures shall take one of the following forms:

- (a) the open procedure;
- (b) the restricted procedure;
- (c) contests;
- (d) the negotiated procedure;
- (e) the competitive dialogue.

**Where a public contract or a framework contract is likely to be of interest to two or more institutions, executive agencies or bodies referred to in Article 185, the contracting authorities concerned shall seek, whenever appropriate, to carry out the procurement procedure on an interinstitutional basis.**

**Where a public contract or framework contract is necessary for the implementation of a joint action between one institution and a contracting authority from a Member State, the procurement procedure may be**



**carried out jointly by the institution and this contracting authority, as specified in the implementing rules.”**

(b) in paragraph 2, the second subparagraph is deleted;

(c) the following paragraph 4 is added:

“4. The implementing rules shall define the procurement procedure, referred to in paragraph 1, applicable to service contracts covered by Annex IIB to Directive 2004/18/EC and to contracts **which are declared to be secret, whose performance must be accompanied by special security measures, or when the protection of essential interests of the Communities or the European Union so requires.**”~~and shall include specific rules for the awarding of contracts to external experts to provide evaluation or technical assistance.”~~

(54) **Article 92 is replaced by the following:**

**“Article 92**

**“The documents relating to the call for tenders shall give a full, clear and precise description of the subject of the contract and specify the exclusion, selection and award criteria applicable to the contract.”**

(55) Article 93 **is amended as follows:** and 94 are replaced by the following:

**“Article 93**

1. ~~Subject to paragraph 5, candidates or tenderers who are in any of the following situations shall be excluded from participation in a procurement procedure:~~

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

~~(b) they are currently subject to an administrative penalty, referred to in Article 96.~~

2. ~~Subject to paragraph 5, and on the basis of the analysis of risks, the contracting authority may decide to exclude from participation in a procurement procedure candidates and tenderers who are in any of the following situations:~~

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

- ~~(b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;~~
  - ~~(c) they have been guilty of serious professional misconduct proven by any means which the contracting authority can justify;~~
  - ~~(d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed.~~
3. ~~The situations of exclusion shall be defined in advance and communicated to candidates or tenderers.~~

**(a) Paragraph 1 is amended as follows:**

**(i) point (f) is replaced by the following:**

**“(f) they are currently subject to an administrative penalty referred to in Article 96(1).”**

**(ii) the following subparagraph is added:**

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

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

“42. Candidates or tenderers shall certify that they are not in one of the situations listed in paragraph 1. **However, the contracting authority may refrain from requiring such certification for very low value contracts, as specified in the implementing rules.** ~~and, as appropriate, that they are not in one of the situations listed in paragraph 2.~~”

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

- a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity,
- b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.”

**(c) the following paragraph 3 is added:**

~~5.~~<sup>3.</sup> The implementing rules shall determine the maximum period during which the situations referred to in paragraph 1(a) ~~and 2~~ give rise to the exclusion of candidates or tenderers from participation in a procurement procedure. **The maximum period shall not exceed ten years.**

(56) **Articles 94, 95 and 96 are replaced by the following:**

*“Article 94*

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

- (a) are subject to a conflict of interest;
- (b) have made false declarations in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;
- (c) find themselves in one of the situations of exclusion, **referred to in Article 93(1)**, for this procurement procedure;
- (d) make substantial errors or commit irregularities or fraud.

*Article 95*

**1. For the purposes of ensuring the protection of the Communities’ financial interests a central database shall be set up and operated by the Commission in compliance with Community rules on the processing of personal data. The database contains details of candidates and tenderers which is in one of the situation referred to in Articles 93, 94, 96 (1) (b) and (2) (a). It is common to the institutions, executive agencies and the bodies referred to in Article 185.**

**2. The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 53 and 54, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in Article 93 (1) points (a) (b), (c) and (e), where the conduct of the operator concerned was detrimental to the Communities’ financial interests. They are fully responsible for the veracity and legality of the information transmitted. The authorising officer shall validate this information and request the accounting officer to enter it into the database.**

**The authorities and bodies mentioned in the first indent of this paragraph shall have access to the information contained in the database and take it into account, as appropriate and on their own responsibility, for the award of contracts associated with the implementation of the budget.**

**3. In addition to access associated with the implementation of the budget, the Commission may authorise access to the information contained in the database at the request of the authorities of Member States, third countries and international organisations justified by them on grounds of important public interests.**

**4. Transparent and coherent criteria to ensure proportionate application of the exclusion criteria shall be laid down in the implementing rules. The Commission shall define standardised procedures and technical specifications for the operation of the database.**

~~“However, for cost-effectiveness reasons, two or more institutions may agree to use a common database.”~~

#### *Article 96*

1. The contracting authority may impose administrative or financial penalties on the following:
  - (a) candidates or tenderers in the cases referred to in points (b) and (d) of Article 94;
  - (b) contractors who have been declared to be in serious breach of their ~~contractual~~ obligations under contracts or ~~grants agreements~~ covered by the budget.

In all cases, however, the contracting authority must first give the person concerned an opportunity to present his observations.

2. The penalties referred to in paragraph 1 shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist in:
  - (a) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the budget, for a maximum period of ten years;
  - (b) the payment of financial penalties by the candidate or tenderer in the cases referred to in point (a) of paragraph 1 or by the contractor or ~~beneficiary~~ in the case referred to in point (b) of paragraph 1, where the case is really serious and without exceeding the value of the contract in question.”

(57) In Article 97, paragraph 1~~2~~ is replaced by the following:

**“1. Contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under Articles 93, 94 and 96(2)(a) has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders.”**

~~"2. Contracts may be awarded by the automatic award procedure, or by the best-value-for-money procedure or, in the case of contracts to external experts for evaluation or technical assistance, on the basis of the capability of the candidates."~~

(58) Article 98 is amended as follows:

(a) paragraphs 1 **and 2 are** replaced by the following:

"1. The arrangements for submitting tenders or ~~applications~~ **requests to participate** shall be such as to ensure that there is genuine competition and that the contents of tenders remain confidential until they are all opened simultaneously.

**2. If deemed appropriate and proportionate, the contracting authority may require tenderers, as provided in the implementing rules, to lodge a security in advance as a guarantee that the bids made will not be withdrawn."**

(b) paragraph 4 is replaced by the following:

"4. All ~~applications~~ **requests to participate** or tenders declared by the opening board to satisfy the conditions laid down shall be evaluated, on the basis of the ~~selection and award~~ criteria laid down in the documents relating to the call for tenders, with a view to proposing to the contracting authority to whom the contract should be awarded or before proceeding with an electronic auction."

(59) **Articles 102 and 103 are replaced by the following:**

*"Article 102*

**1. The contracting authority may if deemed appropriate and proportionate require contractors to lodge a guarantee in advance in order to:**

**(a) ensure full performance of the contract;**

**(b) limit the financial risks connected with payment of pre-financing."**

**2. The contracting authority shall require contractors to lodge such a guarantee in the cases specified in the implementing rules."**

*Article 103*

Where the award procedure is ~~subject to~~ **initiated** by substantial errors, or irregularities or by fraud, the institutions shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

Where, after the award of the contract, the award procedure proves to have been ~~subject to~~ **initiated** by substantial errors, or irregularities or by fraud, or the

performance of the contract is ~~subject to~~ subject to ~~initiated~~, the institutions shall **at their own discretion and**, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract **or, where appropriate, terminate the contract**.

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

(60) In Article 104, the following sentence is added:

"They shall delegate, in accordance with Article 59, the necessary powers for the exercise of the function of contracting authority."

(61) Article 105 is replaced by the following:

*"Article 105*

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

- (a) the publication arrangements referred to in Article 90;
- (b) the choice of procedures referred to in Article 91(1);
- (c) the corresponding time limits."

**2.** **Subject to exceptions and conditions specified in the implementing rules, the contracting authority shall not, in the case of contracts covered by Directive 2004/18/EC, sign the contract or framework contract with the successful tenderer until a period of standstill has elapsed.**"

(62) **The title of Chapter 1 of Title VI of Part One is replaced by the following:**

**“CHAPTER 1**  
**Scope and form of grants”**

(63) Article 108 is amended as follows:

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

**«Grants shall be awarded either by a Commission decision notified to the successful applicant or by a written agreement concluded with him.»**

(b) Paragraph 2 is replaced by the following:

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

- (a) expenditure on the members and staff of the institutions, including social policy measures to support associations of former or current members or staff and contributions to the European schools;
  - (b) loans, risk-bearing instruments of the Community or Community financial contributions to such instruments, loan guarantees, the public contracts referred to in Article 88 and aid paid as macro financial assistance and budgetary support;
  - (c) equity investments on the basis of the private investor principle, quasi-equity financing and shareholdings or equity participations in international financial institutions such as the European Bank for Reconstruction and Development (EBRD) or specialised Community bodies such as the European Investment Fund (EIF);
  - (d) contributions paid by the Communities as subscriptions to bodies of which they are members;
  - (e) expenditure implemented as part of shared, decentralised or joint management within the meaning of Articles 53 to 53d;
  - (f) payments made to ~~the delegated bodies of the Commission referred to in Articles 54 and 55 and the Community bodies referred to in Article 185~~ bodies to which implementation tasks are delegated in accordance with Article 54(2) and payments made by virtue of their constitutive basic act to bodies set up by the legislative authority;
  - (g) expenditure relating to fisheries markets referred to in Article 3(2) point (f) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy<sup>8</sup>;
  - (h) repayment of travel and subsistence expenses incurred by, or where appropriate any other indemnities paid to persons invited or mandated by the institutions."
- (c) the following paragraphs 3 and 4 are added:
- “3. The following shall be assimilated to grants and shall be governed, as appropriate, by this Title:
- (a) the benefit deriving from an interest subsidy on certain loans;
  - (b) equity investments or participations other than those referred to in point (c) of paragraph 2.

**4. Each institution may award grants for communication activities where, for duly justified reasons, the use of public procurement procedures is not appropriate.**

(64) **The following Article 108a is inserted:**

**“Article 108a**

**1. Grants may take any of the following forms:**

**(a) reimbursement of a specified proportion of the eligible costs actually incurred;**

**(b) lump sums;**

**(c) flat-rate financing;**

**(d) a combination of the forms referred to in points (a), (b) and (c);**

**2. Grants shall respect an overall ceiling expressed in terms of absolute value. Articles 109 and 111 shall apply.”**

(65) The title of Chapter 2 of Title VI of Part One is replaced by the following:

**“CHAPTER 2  
Principles”**

(66) Article 109 is replaced by the following:

***“Article 109***

1. Grants shall be subject to the principles of transparency, proportionality, and equal treatment.

They may not be cumulative or awarded retrospectively. ~~and~~—They must involve co-financing **with the exception of grants referred to in Article 169.**

**On no account may the combined total costs eligible for financing be exceeded.**

2. Grants may not have the purpose or effect of producing a profit **for the beneficiary.**

3. Paragraph 2 shall not apply to the following:

(a) study, research or training scholarships paid to natural persons;

(b) prizes awarded following contests;



(c) actions the objective of which is the reinforcement of the financial capacity of a beneficiary or the generation of an income **in the framework of external actions**;

~~(d) low value grants taking one of the forms provided for in points (b) or (c) of Article 113a(1), or a combination thereof, in accordance with the implementing rules.~~

(67) In Article 110(1), the second subparagraph **paragraph 1** is replaced by the following:

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

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

The first subparagraph shall not apply to crisis management aid and humanitarian aid operations.”

(68) Articles 111 and 112 are replaced by the following:

#### *Article 111*

One action may give rise to the award of only one grant from the budget to any one beneficiary, except where otherwise authorised by the basic acts concerned.

A beneficiary may be awarded only one operating grant from the budget per financial year.

**The applicant shall immediately inform the authorising officers of any multiple applications and multiple grants relating to the same action or to the same work programme.**

In any case, the same costs shall not be financed twice by the budget.”

~~(a) in paragraph 1, the second subparagraph is replaced by the following:~~

#### **Article 112**

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

In such cases, costs eligible for financing may not have been incurred prior to the date of submission of the grant application, save in duly substantiated exceptional cases as provided for in the basic act or in the case of expenditure

necessary for the proper implementation of crisis management aid or humanitarian aid operations as provided for in the implementing rules.

**No grant may be awarded retrospectively for actions already completed.**

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

2. ~~**An**~~ The agreement on an operating grant **shall** be **awarded** ~~signed more than~~ **within** six months after the start of the beneficiary's budgetary year. Costs eligible for financing may not have been incurred before the grant application was lodged nor before the start of the beneficiary's budgetary year."

**(69) In Article 113, paragraph 2 is replaced by the following:**

**"2. Unless otherwise specified in the basic act with regard to bodies pursuing an objective of general European interest, when operating grants are renewed, they shall be gradually decreased. This provision shall not apply to grants taking one of the form referred to in points (b) and (c) of Article 108a(1)."**

~~(70) The following Article 113a is inserted:~~

*"Article 113a*

1. ~~Grants may take any of the following forms:~~
  - ~~(a) reimbursement of a specified proportion of the eligible costs actually incurred;~~
  - ~~(b) lump sums;~~
  - ~~(c) flat rate financing ;~~
  - ~~(d) a combination of the forms referred to in points (a), (b) and (c).~~
2. ~~Grants shall respect an overall ceiling expressed in terms of absolute value. In any event, Articles 109 and 111 shall apply."~~

**(71) Article 114 is replaced by the following:**

*"Article 114*

1. Grant applications shall be submitted in writing.
2. Grant applications shall be eligible if submitted by the following:
  - (a) legal persons; exceptionally, grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on their behalf and assume financial liability.

- (b) natural persons in so far as this is required by the **nature or** characteristics of the action or the objective pursued by the applicant. ~~exceptionally, grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on their behalf and assume financial liability.~~
3. Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 93(1), ~~and 94~~ **and 96(2)(a)** ~~or, where appropriate, in one of the situations referred to in Article 93(2).~~

Applicants must certify that they are not in one of the situations referred to in the first subparagraph. **However, the authorising officer may refrain from requiring such certification for very low value grants, as specified in the implementing rules.**

4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 96.

Such penalties may also be imposed on beneficiaries who **at the moment of the submission of the application or** during the implementation of the grant agreement, have made false declarations in supplying the information required by the authorising officer or fail to supply this information."

(72) In Article 116, paragraph 1 is replaced by the following:

- "1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed."

(73) **Article 118 is replaced by the following:**

**"Article 118**

- 1. The authorising officer responsible may if deemed appropriate and proportionate require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.**
- 2. The authorising officer shall require the beneficiary to lodge such a guarantee in advance in the cases specified in the implementing rules."**

(74) **In Article 119, paragraph 2 is replaced by the following:**

- "2. Should the beneficiary fail to comply with his obligations, the grant shall be suspended and reduced or terminated in the cases provided for by the implementing rules after the beneficiary has been given the opportunity to make his observations."**

(75) Article 120 is replaced by the following:

*"Article 120*

1. Where implementation of the action requires the award of procurement contracts by the beneficiary, the relevant procedures shall be as set out in the implementing rules.
2. Where implementation of the action requires financial support to be given to third parties, the beneficiary of a Community grant may give such financial support provided that the following conditions are met:
  - (a) the financial support is not the primary aim of the action;
  - (b) the conditions for the giving of such support are strictly defined in the grant **decision or agreement** between the beneficiary and the Commission, with no margin for discretion;
  - (c) the amounts concerned are small.

**For the purpose of point (c), the maximum amount of financial support that can be paid to a third party by a beneficiary shall be determined in the implementing rules.**

3. Each grant **decision or agreement** shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all contractors and subcontractors who have received Community funds."

(76) Article 121 is amended as follows:

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

"(a) the financial statements of the institutions as set out in Article 126, those of the bodies referred to in Article 185 and of other bodies whose accounts need to be consolidated in accordance with Community accounting rules;"

- (b) point (d) is replaced by the following:

"(d) the aggregated reports on implementation of the budget which present the information contained in the reports referred to in point (c)."

(77) ~~Article 122~~ **is amended as follows:**

- (a)** "Article 185" is replaced by "Article 121".

- (b) the following second paragraph is added:**

**«The report referred to in the first paragraph shall give an account, inter alia, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.»**

(78) Article 128 is replaced by the following:

*"Article 128*

The accounting officers of the other institutions and bodies referred to in Article 121 shall send to the Commission's accounting officer and to the Court of Auditors by 1 March of the following year at the latest their provisional accounts together with the report on budgetary and financial management during the year.

The Commission's accounting officer shall consolidate these provisional accounts with the Commission's provisional accounts and shall send to the Court of Auditors, by 31 March of the following year at the latest, the Commission's provisional accounts **accompanied by its report on budgetary and financial management during the year** together with the provisional consolidated accounts.

The accounting officer of each institution and body referred to in Article 121 shall also send the report on budgetary and financial management to the European Parliament and the Council by the date specified in the second paragraph."

(79) Article 129 is amended as follows:

(a) in paragraph 1, "Article 185" is replaced by "Article 121";

(b) paragraph 2 is replaced by the following:

"2. The institutions other than the Commission, and each of the bodies referred to in Article 121, shall draw up their final accounts in accordance with Article 61 and send them to the Commission's accounting officer and the Court of Auditors by 1 July of the following year at the latest with a view to drawing up the final consolidated accounts.";

(c) the following paragraph 2a is inserted:

"2a. The Commission's accounting officer shall prepare the final consolidated accounts on the basis of the information presented by the other institutions under paragraph 2. The final consolidated accounts shall be accompanied by a certificate established by the Commission's accounting officer, by which he/she declares that they were prepared in accordance with Title VII and with the accounting principles, rules and methods set out in annex to the financial statements."

(d) paragraph 3 is replaced by the following:

"3. After approving the final consolidated accounts and its own final accounts, the Commission shall send them both to the European Parliament, the Council and the Court of Auditors before 31 July of the following financial year."

(80) In Article 130, the first paragraph is replaced by the following:

“In addition to the statements provided for in Articles 126 and 127, the Commission shall report to the European Parliament and to the Council annually on budgetary guarantees and the corresponding risks.”

(81) Article 131 is amended as follows:

- (a) in paragraph 1, "the Commission" is replaced by "the Commission's accounting officer";
- (b) in paragraph 2, "the Commission" is replaced by "the Commission's accounting officer".

(82) In Article 133(1), "Article 185" is replaced by "Article 121".

(83) In Article 134, "Article 185" is replaced by "Article 121".

(84) In Article 138(1), "Article 185" is replaced by "Article 121".

**(85) In Article 139, paragraph 2 is replaced by the following:**

**“2. Each institution shall notify the Court of Auditors and informs the two arms of the budgetary authority of any internal rules they adopt in respect of financial matters.”**

(86) In Title I of Part Two, the title is replaced by the following:

**"TITLE I  
EUROPEAN AGRICULTURAL GUARANTEE FUND"**

(87) In Article 148, paragraph 1 is replaced by the following:

- "1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules relating to the EAGF, and to revenue, save as otherwise provided in this Title."

(88) Article 149 is amended as follows:

(a) paragraph 1 is replaced by the following:

- "1. For each financial year, the EAGF shall include non-differentiated appropriations, with the exception of the expenditure related to the measures referred to in Article 3(2) of Council Regulation (EC) No **1290/2005**<sup>(\*\*\*)</sup>, which shall be covered by differentiated appropriations.

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(\*\*\*) OJ L 209, 11.8.2005, p. 1”

(b) paragraph 3 is replaced by the following:

- "3. Non-committed appropriations relating to the actions referred to in Article 3(1) of Regulation (EC) No **1290/2005** may be carried over to the next financial year only.

Such carryover shall not exceed, within the limit of 3 % of the initial appropriations referred to in the first subparagraph, the amount of the adjustment of direct payments referred to in Article 11 of Council Regulation (EC) No 1782/2003<sup>(\*\*\*\*)</sup> and which was applied during the last financial year.

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

Such carryover may lead to an additional payment only to the final beneficiaries who have been subject, in the last financial year, to the adjustment of direct payments in accordance with Article 11 of Regulation (EC) No 1782/2003.

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

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(\*\*\*\*) OJ L 270, 21.10.2003, p. 1.”

(89) In Article 150, paragraphs 2 and 3 are replaced by the following:

- "2. The Commission decisions fixing the amounts of these payments shall constitute global provisional commitments, which may not exceed the total appropriations entered for the EAGF.
3. As from 15 November, routine management expenditure for the EAGF may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed the corresponding appropriations decided by the budgetary authority for the last adopted budget. They may apply only to expenditure for which the principle is laid down in an existing basic act."

(90) In Article 151(1), the first subparagraph is replaced by the following:

"Expenditure effected by the authorities and bodies referred to in the rules relating to the EAGF shall, within two months following receipt of the statements sent in by Member States, be the subject of a commitment by chapter, article and item. Such commitment may be made after the elapse of that two-month period whenever a procedure for a transfer of appropriations concerning the budget lines in question is necessary. Save where payment has not yet been made by the Member States or where eligibility is in doubt, the amounts shall be charged as payments within the same two-month period."

(91) Article 152 is replaced by the following:

*"Article 152*

In budgetary accounting, expenditure shall be booked to the accounts for a financial year on the basis of the repayments made by the Commission to the Member States by 31 December of the year concerned at the latest, provided that the payment order has reached the accounting officer by 31 January of the following financial year at the latest."

(92) In Article 153, paragraph 1 is replaced by the following:

"1. Where the Commission may transfer appropriations pursuant to Article 23(1), it shall take its decision by 31 January of the following financial year at the latest and shall inform the budgetary authority **as provided for in** ~~three weeks before making the transfers referred to in point (a) of Article 23(1).~~"

(93) Article 154 is replaced by the following:

*"Article 154*

1. Assigned revenue under this Title shall be assigned according to origin in accordance with Article 18(2).
2. The result of decisions on clearance of accounts, as referred to in Article 30 of Council Regulation (EC) No **1290/2005** shall be entered in a single Article."

(94) The title of Title II of Part Two is replaced by the following:

**"TITLE II  
STRUCTURAL FUNDS, COHESION FUND, FISHERIES FUND, AND  
AGRICULTURAL FUND FOR RURAL DEVELOPMENT"**

(95) Article 155 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the Regulations governing the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Fisheries Fund (EFF), and the EAFRD, hereinafter 'the Funds', and to their revenue, save as otherwise provided in this Title.";

(b) paragraph 3 is deleted.

(96) In Article 157, the second paragraph is replaced by the following:

"The decommitted appropriations may be made available again in the event of a manifest error attributable solely to the Commission."

(97) Article 158 is replaced by the following:



*"Article 158*

With regard to the operational expenditure referred to in this Title, the Commission may, except in the case of the EAFRD, make transfers from one title to another, provided that the appropriations in question are for the same objective within the meaning of the Regulations governing the Funds referred to in Article 155, or **are Technical Assistance expenditure.** ~~the same category of expenditure from among the following:~~

- ~~(a) Community Initiatives;~~
- ~~(b) Technical Assistance and Innovative Measures."~~

(98) In Article 160, the following paragraph 1a is inserted:

"1a. The appropriations relating to the revenue generated by the Research Fund for Coal and Steel established by the Protocol annexed to the EC Treaty on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel shall be treated as assigned revenue within the meaning of Article 18. The commitment appropriations generated by this revenue shall be made available as soon as the amount receivable has been estimated and the payment appropriations as soon as the revenue has been received."

(99) The following Article 160a is inserted:

*"Article 160a*

1. The commitment appropriations corresponding to the amount of the commitment decommitted as a result of total or partial non-implementation of the projects relating to research for which they were earmarked may, exceptionally and in duly substantiated cases, be made available again where it is essential to carry out the programme originally planned, unless the budget for the current financial year contains funds for this purpose.
2. For the purposes of paragraph 1, the Commission shall, at the beginning of each financial year, examine decommitments made during the previous financial year and assess, in the light of the requirements, the need for making the appropriations available again.

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

3. The budgetary authority shall decide on the Commission's proposals within six weeks. Where no decision is taken within this time limit, the proposals shall be deemed to be approved.

The amount of commitment appropriations to be made available again in year n shall in no case exceed 50% of the total amount decommitted on the same budget line in year n-1.

4. Commitment appropriations made available again shall not be carried over.

Legal commitments relating to the commitment appropriations which have been made available again shall be concluded by 31 December of year n.

At the end of year n, the unused balance of the commitment appropriations made available again shall be definitively decommitted by the authorising officer responsible."

**(100) In Article 163, the first sentence is replaced by the following:**

**"The actions referred to in this Title may be implemented on a centralised basis by the Commission, by shared management with Member States, on a decentralised basis by the beneficiary third country or countries, or jointly with international organisations."**

- (101) Article 164 is deleted.

**(102) Article 166 is amended as follows:**

**(a) point (b) of the first subparagraph is replaced by the following:-**

**"(b) a contract or a grant to national or international public-sector bodies or natural or legal persons responsible for carrying out the actions."**

- (b) the second subparagraph is replaced by the following:

**"The terms on which the external aid is given shall be laid down in the instrument by which the contracts or the grants provided for in points (a) and (b) of this paragraph shall be managed."**~~The contracts and agreements provided for in points (a) and (b) of the first subparagraph shall lay down the terms on which the external aid shall be managed by the beneficiaries or by the contractors."~~

**(c) Paragraph 2 is replaced by the following:**

**2. Financing agreements with the beneficiary third countries referred to in paragraph 1(a) shall be concluded by 31 December of year n + 1 at the latest, year n being the one in which the budgetary commitment was made.**

**The individual contracts, grant decisions and agreements which implement such financing agreements shall be concluded or adopted no later than three years following the date of conclusion of the financing agreement. However, in the case of long-term and multi-phase infrastructure and rural development projects, the Commission may exceptionally fix an extension of this deadline up to 5 years in the financing decision on the project concerned.**

**Individual contracts and agreements relating to audit and evaluation may be concluded later.”**

**(d) the following paragraph 3 is added:**

**“3. The provision under paragraph 2 shall not apply in the following cases:**

- **the cross-border cooperation, regional development, human resources development and rural development components of Regulation xxxx/2006 establishing an Instrument for Pre-Accession Assistance;**
- **the cross border cooperation component of Regulation xxxx/2006 establishing a European Neighbourhood and Partnership Instrument.**

**In these cases, the following rules shall apply:**

**a) Any portion of a budget commitment for such a multi-annual programme shall be automatically decommitted where, by 31 December of the fourth year following year n being the one in which the budget commitment was made:**

- (i) it has not been used for the purpose of pre-financing; or**
- (ii) it has not been used for making intermediate payments;**  
**or**
- (iii) no declaration of expenditure meeting the conditions laid down in Article ... of the IPA Regulation or Article ... of the ENPI Regulation has been presented in relation to it.**

**b) That part of budget commitments still open on 31 December 2017 for which a declaration of expenditure has not been made by 31 December 2018 shall be automatically decommitted.”**

(103) ~~Article~~ **Article 167 is amended as follows:**

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

“(c) a national or international public-sector body or natural or legal persons who are **beneficiaries of** ~~who have signed with the Commission a grant agreement for the implementation of an external action.”~~

**(b) Paragraph 2 is replaced by the following:**

**“2. The procurement procedures must be laid down in the financing agreements or in the grant decision or grant agreement provided for in Article 166.”**

(104) In Title IV of Part Two, the title of Chapter 4 is replaced by the following:

## **“Chapter 4 GRANTS”**

(105) The following Article 169a is inserted:

### *“Article 169a*

Grant procedures to be applied in decentralised management by beneficiary third countries shall be laid down in the financing agreements referred to in Article 166. They ~~provisions~~ shall be based on the rules laid down in Title VI of Part One.”

(106) In Article 171, paragraph 2 is replaced by the following:

"2. This Title shall apply to the operation of the European Anti-fraud Office (OLAF), with the exception of Articles 174, 174a and 175(2)."

(107) Article 173 is replaced by the following:

### *“Article 173*

The Commission shall, in respect of the appropriations entered in the Annex for each European office, delegate the powers of authorising officer to the Director of the European office concerned, in accordance with Article 59."

(108) In Article 174(1), the second sentence is replaced by the following:

"The Director of the European office concerned shall adopt, after approval by its Management Committee, the criteria on which the accounting system shall be based."

(109) The following Article 174a is inserted:

### *"Article 174a*

1. Each institution may delegate authorising officer powers to the director of an interinstitutional European office for the management of appropriations entered in its section and shall set the limits and conditions for this delegation of powers.
2. The internal auditor of the Commission shall exercise all responsibilities laid down in Title IV, Chapter 8 of Part One."

(110) Article 175 is amended as follows:

- (a) paragraph 1 is deleted;
- (b) paragraph 2 is replaced by the following:

"2. Should the remit of a European office involve supplies to third parties for pecuniary interest, its Director shall, after approval of the Management Committee, lay down the specific provisions governing how these supplies are to be made and the keeping of the corresponding accounts."

(111) Article 176 is deleted.

(112) Article 178 is amended as follows:

(a) in paragraph 1, the second sentence is replaced by the following:

"Such commitments may not, however, exceed one quarter of the appropriations decided by the budgetary authority on the corresponding budget line for the current financial year.";

(b) in paragraph 2, the following sentence is added:

"In this case, the limit referred to in paragraph 1 shall not apply."

(113) **In Article 179(3), the second subparagraph is replaced by the following:**

**"The two branches of the budgetary authority shall, within one week, notify the institution concerned of their intention to issue an opinion to the latter. Failing a reply, the institution concerned may proceed with the planned operation under its administrative autonomy, subject to Article 282 of the EC Treaty and Article 185 of the Euratom Treaty with regard to Community representation."**

(114) **After Article 179 the following Title VII is inserted:**

## **TITLE VII EXPERTS**

### **Article 179a**

**The implementing rules shall include a specific procedure for the selection of experts, to be paid on the basis of a fixed amount, for assisting the institutions in particular in evaluating proposals and grant applications or tenders for procurement and for providing technical assistance in the follow-up and final evaluation of projects financed by the budget."**

(115) **In Article 181, a new paragraph 6 is added:**

**"6. The central database referred to in Article 95 shall be set up by 1 January 2009."**

(116) **The following Article 181a is inserted:**

“Article 181a

With regard to the operational expenditure referred to in Title II of Part Two of this Regulation, the Commission may make transfers from one title to another or within the same title, provided that the appropriations concerned are for the same objective, or the same category of expenditure from among the following measures, provided for in Council Regulation (EC) No 1260/1999 (\*\*\*\*), for which payments still have to be made:

- (a) Community initiatives;
- (b) technical assistance and innovative measures.

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(\*\*\*\*) OJ L 161, 26.6.1999, p. 1.”

(117) In Article 183, the following second paragraph is added:

“It shall seek the opinion of the other institutions referred to in Article 1 and take due account thereof, where appropriate. The institutions shall give their opinion within two months of receiving the draft of the Commission.”

(118) ~~In Article 185 is amended as follows, paragraphs 3 and 4 are replaced by the following:~~

(a) paragraph 3 is replaced by the following:

"3. Each body referred to in paragraph 1 shall establish an internal audit function which must be performed in compliance with the relevant international standards.

The audit function shall be performed either by designating internally an auditor, or by entrusting an external auditor for that purpose. The results of the audits performed by those bodies shall be transmitted to the Commission’s internal auditor, who shall inform the Commission.

The Commission's internal auditor shall **certify** that the operation of the audit function respects international audit standards and, for that purpose, may conduct quality audits.”

(b) paragraph 4 is deleted:

~~4. The bodies referred to in Article 121 shall apply the accounting rules set out in Article 133 so that their accounts can be consolidated with the Commission's accounts."~~

*Article 2*

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

It shall apply from 1 January 2007.

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

Done at Brussels, [...]

*For the Council*  
*The President*  
[...]