

COMMISSION REGULATION (EC, EURATOM) No 478/2007

of 23 April 2007

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

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ and in particular Article 183 thereof,

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

Whereas:

(1) Regulation (EC, Euratom) No 1605/2002 (hereinafter 'the Financial Regulation') was amended by Regulation (EC, Euratom) No 1995/2006. These changes should be reflected in the implementing rules established in Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾.

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

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

(4) As regards the implementation of the budget, a definition should be provided in respect of the standard for effective and efficient internal control which should apply to each management mode, in accordance with the principle of sound financial management and, where appropriate, with the relevant sector-specific regulations.

(5) Article 49(6)(c) of the Financial Regulation expressly provides for the financing of preparatory measures in the field of the Common Foreign and Security Policy (CFSP), in particular as regards envisaged EU crisis management operations. The rapid financing of such measures corresponds to an operational necessity: in most crisis situations, a number of measures for the setting up of a crisis management operation on the ground need to be taken rapidly before the adoption by the Council of a Joint Action on the basis of Article 14 of the EU Treaty or another necessary legal instrument. It is appropriate to clarify that the financing of such measures includes incremental costs such as high-risk insurance, travel and accommodation costs and per diem payments, directly arising from a specific field deployment of a mission or team involving personnel from the institutions to the extent that similar types of expenditure incurred in relation to crisis management operations covered by a Joint Action are generally imputed to the operational CFSP budget line.

(6) In respect of methods of implementing the budget, in particular indirect centralised management, it has to be specified that the persons entrusted with the management of specific actions pursuant to Title V of the EU Treaty should be required to put in place the appropriate structures and procedures in order to assume responsibility for the funds that they will manage. At the same time, since the requirement for prior authorisation in the basic act for recourse to national bodies entrusted with public tasks has been removed from the Financial Regulation, it is necessary to remove the corresponding provisions from the implementing rules.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

⁽²⁾ OJ L 357, 31.12.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1248/2006 (OJ L 227, 19.8.2006, p. 3).

- (7) As regards shared management, the content of the annual summary of available audits and declarations referred to in Article 53b of the Financial Regulation should be specified.
- (8) As regards joint management, it is necessary to insert specific provisions detailing the content of the arrangements to be concluded by the Commission in its cooperation with international organisations and the obligation of publication of beneficiaries of funds deriving from the budget.
- (9) As regards the liability of the financial actors, it has to be clarified that the appointing authority may request the opinion of the financial irregularities panel on a case, based on information provided by a member of staff in accordance with the relevant provision of the Financial Regulation. In addition, the authorising officer by delegation should be entitled to refer a matter to the financial irregularities panel if he considers that a financial irregularity has occurred.
- (10) As regards the recovery of debts, given the general limitation period of five years established in the Financial Regulation for Community debts and entitlements, it is necessary to specify the rules regarding the starting dates and the grounds for interruption of the limitation period, both for the institutions and for third parties who have an enforceable claim against the institutions.
- (11) In order to strengthen the protection of the financial interests of the Communities, the Commission should establish a list of amounts receivable within the meaning of Article 73 of the Financial Regulation, stating the names of the debtors and the amount of the debt where the debtor has been ordered to pay by a Court decision that has the force of *res judicata* and where no or no significant payment has been made for one year after its pronouncement. This list should be published, taking into account the legislation applicable to data protection.
- (12) The rules governing payments due by the Communities should be strengthened in order to ensure that contractors and beneficiaries are fully and completely informed of the procedural requirements and automatically compensated with default interest in case of late payment whenever the interest due exceeds EUR 200. Each institution should submit to the budgetary authority a report concerning compliance with the established time limits.
- (13) As regards procurement, framework contracts without a re-opening of competition in sectors subject to a rapidly rising trend in prices and technological development should be subject to a mid-term review or a benchmarking system and the contracting authority should take appropriate measures, including termination of the framework contract.
- (14) In accordance with the principle of proportionality, for contracts with a value of not more than EUR 5 000, and in the case of contracts for external aid with a value of not more than EUR 10 000, the contracting authority should be able, depending on its risk analysis, to refrain from requiring the candidates or tenderers to give a declaration that they are not in one of the situations giving rise to exclusion.
- (15) For simplification reasons, payments against invoices without prior acceptance of a tender should be possible for amounts less than or equal to EUR 500, and for external aid the competitive negotiated procedure for awarding supply contract should be possible for contracts with a value of less than EUR 60 000.
- (16) Whenever appropriate, technically feasible and cost efficient, procurement contracts with a value equal to or greater than the thresholds laid down in Article 158 of Regulation (EC, Euratom) No 2342/2002 should be awarded at the same time in the form of separate lots.
- (17) Information on available legal remedies should be indicated by the contracting authority to rejected tenderers.
- (18) Given the possibility for an institution to carry out a procurement procedure jointly with a contracting authority from a Member State, it should be specified which procurement procedure should apply to those cases and how it should be managed.
- (19) Further details should be set out in the practical modalities for the management of procurement procedures launched on an interinstitutional basis. In particular, provisions on evaluation of tenders and award decisions should be laid down.
- (20) In order to ensure proper management of the central data-base on exclusions, further details should be provided concerning the information to be transmitted to the Commission. The procedure for transmission and reception of information contained in the database should be laid down, taking due account of the protection of personal data.

- (21) In accordance with the principle of proportionality, economic operators that are in any of the situations of legal exclusion mentioned in the Financial Regulation should not be excluded indefinitely from participating in a procurement procedure. Accordingly, the criteria for determining the duration of exclusion and the procedure to be followed should be specified.
- (22) As a result of the revision of the Financial Regulation, the provisions on penalties need to be adapted accordingly.
- (23) In the interest of legal certainty, the modalities and exceptions to the standstill procedure before the signature of a contract should be specified.
- (24) It is appropriate to have a provision which determines to what extent the particular forms of financing laid down in Article 108(3) of the Financial Regulation should be treated in the same way as grants under Title VI of Part One of that Regulation.
- (25) In order to ensure consistency, the annual work programme shall determine whether a decision or written agreement should be used for awarding grants. It is necessary to adapt some articles in order to take account of the introduction of the decisions in the grant award procedure.
- (26) In order to ensure that Community law is applicable to all legal relationships to which institutions are party, it should be made compulsory for the authorising officers to insert in all their contracts and grant agreements a specific clause on the applicability of Community law, complemented as appropriate by the national law agreed by the parties.
- (27) In respect of the award of grants, the exceptions to the requirement for a call for proposals should be extended in order to cover the possibility which exists under the current regulations in the field of research and development to award grants directly to beneficiaries identified by the Commission for proposals of high quality which do not fall within the ambit of programmed calls for proposals for the financial year concerned. Furthermore, an additional derogation should be introduced to cover actions with specific characteristics that require an implementing body with particular expertise or administrative power without this necessarily qualifying as a monopoly.
- (28) In order to protect the financial interests of the Communities, it has to be specified that the representatives of beneficiaries who do not have legal personality should prove that they have the capacity to act on behalf of the beneficiaries and that they can offer financial guarantees equivalent to those provided by legal persons.
- (29) In order to facilitate the management of the award procedure, and in accordance with the principle of sound financial management, the possibility to restrict a call for proposals to a targeted category of beneficiaries should be provided for. The Commission would thus be able, while duly respecting the principles of equal treatment and non-discrimination, to reject applications from entities not concerned by the programme in question.
- (30) In order to help the applicants, and to increase the efficiency of the calls for proposals, certain procedural steps should be improved. The Commission should provide information and guidance to the applicants about the rules applicable to the award of grants and it should inform them as soon as possible of the possibility of success of their applications. It should be possible to divide the procedure of submission and the procedure of evaluation in different stages, and thus allow rejecting at an early stage the proposals which cannot have any prospect of success at later stage. In order to clarify which costs may be eligible for Community financing, criteria should be laid down and an indicative list should be provided for. It is also appropriate to determine the conditions for submission of the applications, especially for applications submitted by electronic means. Furthermore, it should be possible to ask for additional information from the applicants during the award procedure, in particular in the case of obvious clerical errors in applications.
- (31) The possibility of adoption of the annual work programme before the year to which it relates should be provided for, in order to allow the launching of the calls for proposals at an early stage, including before the beginning of the year which they are related to.
- (32) For reasons of transparency, the Commission, when requested, should annually inform the budgetary authority about the management of the grant award procedures and about exceptions applied to the publication of beneficiaries of funds deriving from the budget.
- (33) In order to protect the interests of the beneficiaries and to increase legal certainty, modifications of the content of the call for proposals should remain exceptional, and applicants should benefit from a supplementary deadline if these modifications are substantial. They should be subject to the same conditions of publication as the call itself.

- (34) Concerning lump sums, it has to be specified that the unit amounts of lump sums below a threshold of EUR 25 000 and the amounts of flat rates is fixed by the Commission on the basis of objective elements, such as statistical data where available. These amounts should be reassessed regularly and updated by the Commission on the same basis. On the other hand, lump sums above a threshold of EUR 25 000 are determined in the basic act. In addition, the authorising officer responsible should be required to carry out appropriate ex post controls in order to ascertain that the conditions for their award have been respected. These controls are independent of the controls to be carried out for grants intended for the reimbursement of the eligible costs actually incurred. The non-profit rule and the co-financing rule should be specified.
- (35) With regard to contracts necessary to implement a Community grant, it should be specified that, whenever these contracts are of low value, the rules to be followed by the beneficiary should be limited to what is strictly necessary, that is to say the principle of sound management and the absence of conflicts of interests. For contracts with a higher value, the authorising officer should be able to determine additional specific requirements, based on those applicable to the institutions for equivalent contracts.
- (36) The financial support to third parties which may be awarded by a beneficiary of a Community grant should be organised in a way that does not leave scope for discretion and is limited to a total amount of EUR 100 000 as required by Article 120 of the Financial Regulation.
- (37) As regards the keeping and presentation of accounts, it should be clarified that the report on budgetary and financial management which accompanies the accounts in accordance with Article 122 of the Financial Regulation is separate from the report on the implementation of the budget referred to in Article 121 of the Financial Regulation. At the same time, following the modifications to the scope of consolidation established in the Financial Regulation, all previous references to the bodies referred to in Article 185 of the Financial Regulation should be replaced by a reference to the bodies referred to in Article 121 of the Financial Regulation.
- (38) As regards some components of Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA)⁽¹⁾ and the Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument⁽²⁾, in the event of multi-annual programmes using split commitments, the Financial Regulation introduced a 'n+3' decommitment rule in Article 166(3)(a) of the Financial Regulation. It is therefore necessary to provide for specific detailed provisions, in particular concerning the procedure and the consequences of the automatic decommitment.
- (39) As for external actions, further measures of simplification are needed. In particular, the threshold for the negotiated procedure on the basis of a single tender should be raised. In addition, the possibility of secret procurement procedures for security reasons, which is already possible for procurement on behalf of the institutions, has to be extended to operational procurement in the field of external relations. In order to implement the obligations provided for in the Financial Regulation concerning the publication of beneficiaries of funds deriving from the budget, adequate provisions should be laid down in the financing agreements with third countries.
- (40) As regards interinstitutional European offices, the specific rules for the Office for Official Publications of the European Communities (Publications Office) need to be amended following the new possibility introduced in the Financial Regulation for interinstitutional delegation to the directors of interinstitutional European offices. In this respect, the budgetary commitment should remain the responsibility of each institution, which decides on the publication of its documents, whereas all subsequent acts could be delegated to the director of Publications Office.
- (41) Regarding external individual experts needed for the evaluation of proposals and other forms of technical assistance, it should be possible to select these experts from a list drawn up on the basis of their technical capacity, after publishing a call for expressions of interest.
- (42) Since the Financial Regulation, as amended by Regulation (EC, Euratom) No 1995/2006, will apply from 1 May 2007 at the latest, this Regulation should enter into force as a matter of urgency and apply from 1 May 2007.
- (43) Regulation (EC, Euratom) No 2342/2002 should therefore be amended accordingly,

⁽¹⁾ OJ L 210, 31.7.2006, p. 82.

⁽²⁾ OJ L 310, 9.11.2006, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

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

- Articles 2, 3 and 4 are replaced by the following:

'Article 2

Legislative acts concerning the implementation of the budget

(Articles 2 and 49 of the Financial Regulation)

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

Any proposal or amendment to a proposal submitted to the legislative authority shall clearly indicate the provisions containing derogations from the Financial Regulation or from this Regulation and state the specific reasons justifying such derogations in the relevant Explanatory Memorandum.

Article 3

Scope of pre-financing

(Article 5a of the Financial Regulation)

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

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

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

Article 4

Recovery of interest yielded by pre-financing

(Article 5a of the Financial Regulation)

1. The authorising officer responsible shall recover for each reporting period following the implementation of the

decision or agreement the amount of interest generated by pre-financing payments which exceed EUR 750 000 per agreement at the end of each financial year.

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

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

- The following Article 4a is inserted:

'Article 4a

Accounting for interest yielded on pre-financing

(Article 5a of the Financial Regulation)

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

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

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

3. Articles 3 and 4 and paragraphs 1 and 2 of this Article shall be without prejudice to the entry of pre-financing on the assets side of financial statements, as laid down in the accounting rules referred to in Article 133 of the Financial Regulation.'

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

4. In Article 7, the following paragraph 1a is inserted:

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

5. Article 10 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in the first subparagraph, point (b) is replaced by the following:

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

(ii) the second subparagraph is replaced by the following:

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

(b) in the first sentence of paragraph 2, 'Article 161(2) of the Financial Regulation' is replaced by 'Articles 160(1a) and 161(2) of the Financial Regulation.'

6. The following Article 13a is inserted:

'Article 13a

Charges entailed by acceptance of donations to the Communities

(Article 19(2) of the Financial Regulation)

For the purposes of the authorisation of the European Parliament and of the Council referred to in Article

19(2) of the Financial Regulation, the Commission shall estimate and duly explain the financial charges, including follow-up costs, entailed by the acceptance of donations made to the Communities.'

7. Article 14 is replaced by the following:

'Article 14

Passing for payment of the net amount

(Article 20(1) of the Financial Regulation)

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

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

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

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

8. Article 16 is deleted.

9. Article 17 is replaced by the following:

'Article 17

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

(Article 22 of the Financial Regulation)

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

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

The amount corresponding to the transfers which can be carried out autonomously by the institution concerned without a decision of the budgetary authority shall not be taken into consideration.'

10. The following Article 17a is inserted:

'Article 17a

Rules concerning the calculation of percentages of transfers of the Commission

(Article 23 of the Financial Regulation)

1. The percentages referred to in Article 23(1) of the Financial Regulation shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget, including amending budgets.

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

The amount corresponding to the transfers which can be carried out autonomously by the Commission without a decision of the budgetary authority shall not be taken into consideration.'

11. In the introductory phrase of Article 20, 'the first subparagraph of Article 26(2) of the Financial Regulation' is replaced by 'Article 26 of the Financial Regulation'.

12. In Article 22(1), the first subparagraph is deleted.

13. The following Article 22a is inserted:

'Article 22a

Effective and efficient internal control

(Article 28a(1) of the Financial Regulation)

1. Effective internal control shall be based on best international practices and include in particular the following:

- (a) segregation of tasks;
- (b) an appropriate risk management and control strategy including controls at beneficiary level;
- (c) avoidance of conflicts of interests;

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

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

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

2. Efficient internal control shall be based on the following elements:

(a) the implementation of an appropriate risk management and control strategy coordinated among appropriate actors involved in the control chain;

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

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

(d) clear and unambiguous legislation underlying the policies;

(e) the elimination of multiple controls;

(f) the principle of improving the cost-benefit ratio of controls.'

14. Article 23 is replaced by the following:

'Article 23

Provisional publication of the budget

(Article 29 of the Financial Regulation)

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

15. In Article 25, point (a)(ii) is replaced by the following:

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

16. Article 31 is deleted.

in the procedure has been authorised in advance by his superior.'

17. Article 32 is amended as follows:

(a) in the title, 'Article 49(2)(a) and (b)' is replaced by 'Article 49(6)(a) and (b)';

(b) paragraph 1 is amended as follows:

(i) 'Article 49(2)(a)' is replaced by 'Article 49(6)(a)';

(ii) 'EUR 32 million' is replaced by 'EUR 40 million';

(c) paragraph 2 is amended as follows:

(i) 'Article 49(2)(b)' is replaced by 'Article 49(6)(b)';

(ii) 'EUR 30 million' is replaced by 'EUR 50 million';

(iii) 'EUR 75 million' is replaced by 'EUR 100 million'.

18. The following Article 32a is inserted:

'Article 32a

Preparatory measures in the field of the Common Foreign and Security Policy

(Article 49(6)(c) of the Financial Regulation)

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

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

20. In Article 34, the following paragraph 3 is added:

'3. A conflict of interests shall be presumed to exist if an applicant, candidate or tenderer is a member of staff covered by the Staff Regulations, unless his participation

21. Article 35 is replaced by the following:

'Article 35

Checks to be carried out by the Commission

(Articles 53d, 54(2)(c) and 56 of the Financial Regulation)

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

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

2. The entities or persons concerned shall provide the Commission, within a specified time limit, with any information it requests and shall inform it without delay of any substantial changes in their procedures or systems.

The Commission shall, as appropriate, set out the obligations in the decisions referred to in paragraph 1, or in the agreements concluded with those entities or persons.

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

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

5. The independent external audit referred to in Article 56(1)(d) of the Financial Regulation shall be at least performed by an audit service functionally independent of the entity to which the Commission entrusts implementation tasks and shall perform its duties in accordance with internationally accepted auditing standards.'

22. The following Article 35a is inserted:

'Article 35a

Measures to promote best practices

(Article 53b of the Financial Regulation)

The Commission shall compile a register of bodies responsible for management, certification and audit activities under the sector-specific regulations. In order to promote best practices in the implementation of the Structural Funds and the European Fisheries Fund, the Commission shall make available for information purposes to those responsible for management and control activities a methodological guide setting out its own control strategy and approach, including checklists, and best practice examples which have been identified.'

23. In Article 36, 'Article 53' is replaced by 'Article 53a'.

24. In Article 37, paragraph 2 is deleted.

25. Article 38 is replaced by the following:

'Article 38

Eligibility of national or international public sector bodies or private law entities with a public service mission for the delegation of powers and conditions relating thereto

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

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

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

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

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

26. Article 39 is amended as follows:

(a) the title is replaced by the following:

'Article 39

Designation of national or international public sector bodies or private law entities with a public service mission

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

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

'The bodies or entities referred to in paragraph 1 or international public sector bodies shall be chosen in an objective and transparent manner, in accordance with the principle of sound financial management, to match the implementation requirements identified by the Commission.'

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

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

(d) the following paragraph 4 is added:

'4. Where the Commission entrusts implementing tasks to bodies referred to in point (c) of Article 54(2) of the Financial Regulation, it shall inform annually the legislative authority of the cases and bodies concerned by providing commensurate justification of the use of such bodies.'

27. The following Article 39a is inserted:

'Article 39a

Persons entrusted with the management of specific actions pursuant to Title V of the Treaty on European Union

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

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

28. Article 41 is amended as follows:

(a) the title is replaced by the following:

'Article 41

Detailed arrangements for indirect centralised management

(Articles 54(2)(b), (c) and (d) of the Financial Regulation)

(b) paragraph 1 is replaced by the following:

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

(c) paragraph 3 is replaced by the following:

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

29. Article 42 is amended as follows:

(a) in the title, 'Article 53(5)' is replaced by 'Articles 53b and 53c'.

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

30. The following Article 42a is inserted:

'Article 42a

Summary of audits and declarations

(Article 53b(3) of the Financial Regulation)

1. The summary shall be provided by the appropriate authority or body designated by the Member State for the area of expenditure concerned in accordance with the sector-specific rules.

2. The part related to audits shall:

(a) include, as concerns agriculture, the certificates established by the certification bodies, and, as concerns

structural and other similar measures, the audit opinions provided by the audit authorities;

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

3. The part related to declarations shall:

(a) include, as concerns agriculture, the statements of assurance provided by the paying agencies, and, as concerns structural and other similar measures, certifications by the certifying authorities;

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

31. Article 43 is replaced by the following:

'Article 43

Joint management

(Articles 53d, 108a and 165 of the Financial Regulation)

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

2. The international organisations referred to in Article 53d of the Financial Regulation shall be:

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

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

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

For the purposes of Article 53d of the Financial Regulation, the European Investment Bank and the European Investment Fund shall be assimilated to international organisations.

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

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

- (a) a definition of the action, the project or the programme to be implemented under joint management;
- (b) the conditions and the detailed arrangements for their implementation, including in particular the principles for the award of procurement contracts and grants;
- (c) the rules on reporting to the Commission on implementation;
- (d) provisions obliging the organisation to which implementation tasks are entrusted to exclude from participation in a procurement or grant award procedure candidates or applicants who are in the situations referred to in points (a), (b) and (e) of Article 93(1) and in points (a) and (b) of Article 94 of the Financial Regulation;
- (e) the conditions for payments of the Community contribution, and the supporting documents required to justify the payments;
- (f) the conditions under which this implementation terminates;
- (g) the detailed arrangements for Commission scrutiny;
- (h) provisions granting the Court of Auditors access to the information required to perform its duties, if necessary on the spot, in accordance with the verification agreements concluded with the international organisations concerned;
- (i) provisions regarding the use of any interest yielded;
- (j) provisions guaranteeing the visibility of the Community action, project or programme in relation to the other activities of the organisation;
- (k) provisions on the publication of the beneficiaries of funds deriving from the budget, which require the international organisations to publish the information in accordance with Article 169 of this Regulation.

5. A project or programme shall be considered to be jointly elaborated when the Commission and the inter-

national public sector body jointly assess the feasibility and define the implementation agreements.

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

- (a) procurement and grant award procedures shall comply with the principles of transparency, proportionality, sound financial management, equal treatment and non-discrimination, lack of conflicts of interests and respect of internationally accepted standards;
- (b) grants may not be cumulative or awarded retrospectively;
- (c) grants must involve co-financing, save as otherwise provided in Article 253;
- (d) grants may not have the purpose or effect of producing a profit for the beneficiary.

Those requirements shall be expressly established in the agreements concluded with the international organisations.'

32. The following Article 43a is inserted:

'Article 43a

Information on transfers of personal data for audit purposes

(Article 48 of the Financial Regulation)

In any call made in the context of grants or procurements implemented in direct centralised management, potential beneficiaries, candidates and tenderers shall, in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council (*) be informed that, for the purposes of safeguarding the financial interests of the Communities, their personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office (hereinafter "OLAF").

(*) OJ L 8, 12.1.2001, p. 1.'

33. In Article 48, point (e) is replaced by the following:

- '(e) identify and prevent management risks and manage them effectively;'

34. In Article 49, the following paragraph is added:

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

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

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

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

37. Articles 74 and 75 are replaced by the following:

Article 74

Financial irregularities

(Articles 60(6) and 66(4) of the Financial Regulation)

Without prejudice to the powers of OLAF, the Panel referred to in Article 43a (hereinafter "the Panel") shall be competent in respect of any infringement of a provision of the Financial Regulation or of a provision relating to financial management or the checking of operations resulting from an act or omission of a member of staff.

Article 75

Financial irregularities panel

(Articles 60(6) and 66(4) of the Financial Regulation)

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

An authorising officer by delegation may refer a matter to the panel if he considers that a financial irregularity has occurred. The Panel shall deliver an opinion evaluating

whether irregularities within the meaning of Article 74 have occurred, how serious they are and what their consequences might be. Where the Panel's analysis suggests that the case referred to it is a matter for OLAF, it shall transmit the file to the appointing authority without delay and shall inform OLAF at once.

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

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

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

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

39. In Article 81, the following paragraphs 3 and 4 are added:

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

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

4. The Commission shall establish a list of Community entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision that has the force of res judicata and where no or no significant payment has been made for one year following its pronouncement. The list shall be published, taking account of the relevant legislation on data protection.'

40. The following Article 85b is inserted:

'Article 85b

Rules for limitation periods

(Article 73a of the Financial Regulation)

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

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

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

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

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

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

5. Where the accounting officer allows the debtor additional time for payment in accordance with Article 85, this shall be considered as an interruption of the limitation period. The new limitation period of five years shall begin to run on the day following the expiry of the extended time for payment.

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

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

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

42. Article 93 is deleted.

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

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

44. In Article 104, paragraph 1 is replaced by the following:

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

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

45. Article 106 is amended as follows:

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

'Where the payment request is not admissible, the authorising officer shall inform the contractor or beneficiary within 30 calendar days from the date on which the payment request was initially received. That information shall include a description of all deficiencies.'

(b) paragraph 3 is replaced by the following:

'3. For contracts, grant agreements and decisions under which payment depends on the approval of a report or a certificate, the timelimit for the purposes of the payment periods referred to in paragraphs 1 and 2 shall not begin to run until the report or certificate in question has been approved. The beneficiary shall be informed without delay.'

The time allowed for approval may not exceed:

- (a) 20 calendar days for straightforward contracts relating to the supply of goods and services;
- (b) 45 calendar days for other contracts and grant agreements and decisions;
- (c) 60 calendar days for contracts and grant agreements and decisions involving technical services or actions which are particularly complex to evaluate.

In any case, the contractor or beneficiary shall be informed in advance of the possibility that payments might be delayed for the purpose of approval of a report.

The authorising officer responsible shall inform the beneficiary by means of a formal document of any suspension of the period allowed for approval of the report or certificate.

The authorising officer responsible may decide that a single time limit for the approval of the report or the certificate, and for payment shall apply. This single time limit may not exceed the aggregated maximum applicable periods for approval of the report or certificate and for payment.'

- (c) in paragraph 4, the third sentence of the first subparagraph is replaced by the following:

'The authorising officer shall inform the contractor or beneficiary in question as soon as possible and set out the reasons for the suspension.'

- (d) paragraph 5 is replaced by the following:

'5. On expiry of the time limits laid down in paragraphs 1, 2 and 3, the creditor shall be entitled to interest in accordance with the following provisions:

- (a) the interest rates shall be those referred to in the first subparagraph of Article 86(2);
- (b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment.

By way of exception, when the interest calculated in accordance with the provisions of the first sub-

paragraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment.

The first and the second subparagraphs shall not apply to Member States.'

- (e) the following paragraph 6 is added:

'6. Each institution shall submit to the budgetary authority a report on the compliance with the time limits and on the suspension of the time limits laid down in paragraphs 1 to 5. The report of the Commission shall be annexed to the summary of the annual activity reports referred to in Article 60(7) of the Financial Regulation.'

- 46. In Article 112, the following paragraph 3 is added:

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

- 47. In the second paragraph of Article 115, 'Staff Regulations' is replaced by 'Staff Regulations of Officials of the European Communities'.

- 48. In Article 116(6), the fourth sentence of the first subparagraph is replaced by the following:

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

- 49. In Article 117, paragraph 1 is replaced by the following:

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

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

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

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

50. Article 118 is amended as follows:

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

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

(b) in paragraph 4 is amended as follows:

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

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

(ii) the following subparagraphs are added:

'The award notice shall also be sent to the Publications Office in the case of a contract or a framework contract with a value equal to or above the thresholds laid down in Article 158 and awarded pursuant to a negotiated procedure without prior publication of a contract notice, in sufficient time for the publication to occur before the signature of the contract, in accordance with the terms and conditions set out in Article 158a(1).

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

51. Article 119 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in point (a), 'equal to or' is deleted.

(ii) in point (b), 'equal to or' is deleted.

(iii) the second subparagraph is deleted.

(b) in the first subparagraph of paragraph 3, first sentence, 'equal to or' is deleted.

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

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

53. The following Article 125c is inserted:

'Article 125c

Joint procurement procedure with a Member State

(Article 91 of the Financial Regulation)

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

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

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

54. In Article 129, paragraphs (3) and (4) are replaced by the following:

'3. Contracts with a value less than or equal to EUR 5 000 may be awarded on the basis of a single tender.

4. Payments of amounts less than or equal to EUR 500 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender.'

55. Article 130 is amended as follows:

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

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

- (b) paragraph 4 is amended as follows:

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

'(c) state that, when the institutions are contracting authorities, Community law is the law which applies to the contract, complemented, where necessary, by national law as specified in the contract;'

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

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

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

'In addition to the information referred to in Article 134, the contracting authority may also require the candidate or tenderer to submit information on the financial, economic, technical and professional capacities, as referred to in Articles 135, 136 and 137, of the envisaged subcontractor, in particular when

subcontracting represents a significant part of the contract.'

56. Article 133 is replaced by the following:

'Article 133

Illegal activities giving rise to exclusion

(Article 93 and 114 of the Financial Regulation)

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

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

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

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

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

(*) OJ C 316, 27.11.1995, p. 48.

(**) OJ C 195, 25.6.1997, p. 1.

(***) OJ L 351, 29.12.1998, p. 1.

(****) OJ L 166, 28.6.1991, p. 77.'

57. The following Article 133a is inserted:

'Article 133a

Application of exclusion criteria and duration of exclusion

(Articles 93, 94, 95 and 96 of the Financial Regulation)

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

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express their views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 95(2) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 93(3) of the Financial Regulation.

2. The period referred to in Article 93(3) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:

- (a) from the date of the judgment having the force of res judicata in the cases referred to in points (b) and (e) of Article 93(1) of the Financial Regulation;
- (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 93(1)(c) of the Financial Regulation.

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

3. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 93(1) of the Financial Regulation.'

58. Article 134 is amended as follows:

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

'Depending on its risk assessment, the contracting authority may refrain from requiring the declaration referred to in the first subparagraph for contracts with a value less than or equal to EUR 5 000. However, for contracts referred to in Articles 241(1), 243(1), and 245(1), the contracting authority may refrain from requiring that declaration for contracts with a value less than or equal to EUR 10 000.'

- (b) the following paragraph 7 is added:

'7. When requested by the contracting authority, the candidate or tenderer shall submit a declaration on honour from the intended subcontractor that he is not in one of the situations referred to in Articles 93 and 94 of the Financial Regulation.

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

59. The following Article 134a is inserted:

'Article 134a

Central database

(Article 95 of the Financial Regulation)

1. The institutions, executive agencies and bodies referred to in Article 95(1) of the Financial Regulation shall transmit to the Commission, in the format established by the Commission, information identifying the economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation, the grounds for exclusion and the duration of the period of exclusion.

They shall also transmit information concerning persons with powers of representation, decision making or control over economic operators which are legal entities, when these persons have found themselves in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation.

The authorities and bodies referred to in Article 95(2) of the Financial Regulation shall transmit to the Commission, in the format established by the Commission:

- (a) information identifying the following persons who are in one of the situations referred to in Article 93(1)(e) of the Financial Regulation, where their conduct was detrimental to the Communities' financial interests:

- (i) the economic operators;

- (ii) persons with powers of representation, decision-making or control over economic operators which are legal entities;

- (b) the type of their conviction;

- (c) the duration of the period of exclusion from procurement procedures, where applicable.

2. The institutions, agencies, authorities and bodies referred to in paragraph 1 shall designate the persons authorised to communicate to and receive from the Commission the information contained in the database.

In the case of the institutions, agencies, authorities and bodies referred to in Article 95(1) of the Financial Regulation, the designated persons shall address the information as soon as possible to the accounting officer of the Commission, and request, as appropriate, entry, modification or removal of data in the database.

In the case of the authorities and bodies referred to in Article 95(2) of the Financial Regulation, the designated persons shall address the requisite information to the Commission authorising officer responsible for the programme or action concerned, within three months of the issue of the relevant judgement.

The accounting officer of the Commission shall enter, modify or remove data in the database. He shall, via a secured protocol, provide on a monthly basis validated data contained in the database to the designated persons.

3. The institutions, agencies, authorities and bodies referred to in paragraph 1 shall certify to the Commission that the information communicated by them was established and transmitted in accordance with the principles set out in Regulation (EC) No 45/2001 and in Directive 95/46/EC of the European Parliament and of the Council (*) concerning the protection of personal data.

In particular, they shall inform in advance all economic operators or persons referred to in paragraph 1 that their data may be included in the database and communicated by the Commission to the designated persons referred to in paragraph 2. They shall update, where appropriate, the information transmitted, following rectification or erasure or any modification of data.

Any party entered in the database shall have the right to be informed of the data stored concerning that party, upon request to the accounting officer of the Commission.

4. Member States shall take appropriate measures to assist the Commission in order to manage the database efficiently, in compliance with Directive 95/46/EC.

Appropriate arrangements shall be laid down in the agreements with the authorities of third countries and all bodies referred to in Article 95(2) of the Financial Regulation, in order to ensure compliance with these provisions and with the principles concerning the protection of personal data.

60. The following Article 134b is inserted:

'Article 134b

Administrative and financial penalties

(Articles 96 and 114 of the Financial Regulation)

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

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

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

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

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

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

61. In Article 140(3), the first subparagraph is replaced by the following:

'In restricted procedures, in cases of use of the competitive dialogue referred to in Article 125b and in negotiated procedures with publication of a contract notice for contracts above the thresholds set in Article 158, the time limit for receipt of requests to participate shall be no less than 37 days from the date on which the contract notice is dispatched.'

(*) OJ L 281, 23.11.1995, p. 3.'

62. In Article 145(2), the following subparagraph is added:

'In the case of a procurement procedure launched on an interinstitutional basis, the opening committee shall be appointed by the competent authorising officer from the institution responsible for the procurement procedure. The composition of the opening committee shall reflect, insofar as possible, the interinstitutional character of the procurement procedure.'

63. Article 146 is amended as follows:

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

'However, the authorising officer responsible may decide that the evaluation committee is to evaluate and rank the tenders on the basis of the award criteria only and that the exclusion and selection criteria are to be evaluated by other appropriate means guaranteeing the absence of conflicts of interests.'

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

'In the case of a procurement procedure launched on an interinstitutional basis, the evaluation committee shall be appointed by the competent authorising officer from the institution responsible for the procurement procedure. The composition of the evaluation committee shall reflect, insofar as possible, the interinstitutional character of the procurement procedure.'

64. Article 147 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

The written record shall be signed by all the members of the evaluation committee.

If the evaluation committee was not given responsibility for the evaluation and ranking of the tenders on the basis of the exclusion and selection criteria, the written record shall also be signed by the persons who were given that responsibility by the authorising officer responsible. The written record shall be kept for future reference.'

(b) in paragraph 3, the following subparagraph is added:

'In the case of a procurement procedure launched on an interinstitutional basis, the decision referred to in the first subparagraph shall be taken by the

contracting authority responsible for the procurement procedure.'

65. Article 149 is amended as follows:

(a) the title is replaced by the following:

'Article 149

Information for candidates and tenderers

(Articles 100(2), 101 and 105 of the Financial Regulation)'

(b) paragraph 3 is amended as follows:

(i) the first subparagraph is replaced by the following:

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

(a) shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in procurement procedures organised in two separate stages,

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

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

(ii) the fourth subparagraph is deleted.

66. The following Article 149a is inserted:

'Article 149a

Signature of the contract

(Articles 100 and 105 of the Financial Regulation)

Implementation of a contract may not start before the contract is signed.'

67. Article 155 is amended as follows:

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

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

(b) the following paragraph 4 is added:

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

68. The following Article 158a is inserted:

‘Article 158a

Standstill period before signature of the contract

(Article 105 of the Financial Regulation)

1. The contracting authority shall not sign the contract or framework contract, covered by Directive 2004/18/EC, with the successful tenderer until 14 calendar days have elapsed.

That period shall run from either of the following dates:

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

If necessary, the contracting authority may suspend the signing of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved tenderers or candidates or by any other relevant information received. The requests, comments or information must be received during the period set in the first subparagraph. In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

Except in the cases provided for in paragraph 2, any contract signed before the expiry of the period set in the first subparagraph shall be null and void.

Where the contract or framework contract cannot be awarded to the successful envisaged tenderer, the contracting authority may award it to the following best tenderer.

2. The period set in the first subparagraph of paragraph 1 shall not apply in the following cases:

- (a) open procedures where only one tender has been submitted;
- (b) restricted or negotiated procedures after prior publication of a contract notice where the tenderer to whom the contract is to be awarded was the only one who satisfies the exclusion and selection criteria, provided that, in accordance with point (a) of the first subparagraph of Article 149(3), the other candidates or tenderers have been informed of the grounds of their exclusion or rejection shortly after the relevant decisions have been taken on the basis of the exclusion and selection criteria;
- (c) specific contracts based on a framework contract and by applying the terms set out in such a framework contract, without reopening the competition.
- (d) extreme urgency referred to in Article 126(1)(c).’

69. Article 160 is amended as follows:

- (a) in paragraph 1, the second subparagraph is deleted;
- (b) paragraphs 2 and 3 are deleted.

70. The following Articles 160a to 160f are inserted:

‘Article 160a

Subscriptions

(Article 108 of the Financial Regulation)

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

*Article 160b***Participations**

(Article 108 of the Financial Regulation)

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

- (a) "equity participation" means an ownership position in an organisation or venture taken through an investment, in which returns on the investment are dependent on the profitability of the organisation or venture;
- (b) "share holding" means an equity participation in the form of shares in an organisation or venture;
- (c) "equity investment" means the provision of capital to a firm by an investor in return for partial ownership of that firm where, in addition, this investor may assume some management control of the firm and may share in future profits;
- (d) "quasi-equity financing" means a type of financing that involves a mix of equity and debt, where the equity allows investors to achieve a high rate of return upon the success of the company or where the debt component entails a premium price contributing to the return of the investor;
- (e) "risk-bearing instrument" means a financial instrument which guarantees the total or partial coverage of a defined risk, if possible in exchange for an agreed remuneration.

*Article 160c***Specific rules**

(Article 108(3) of the Financial Regulation)

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

- (a) the no-profit rule as referred to in Article 165 of this Regulation;
- (b) the co-financing requirement as referred to in Article 172 of this Regulation;
- (c) for actions where the objective is to reinforce the financial capacity of a beneficiary or to generate an income, the assessment of the financial viability of the

applicant as referred to in Article 173(4) of this Regulation;

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

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

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

*Article 160d***Prizes**

(Article 109(3)(b) of the Financial Regulation)

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

They shall be awarded by a panel of judges who are free to decide whether or not to award prizes depending on their appraisal of the quality of the entries by reference to the rules of the contest.

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

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

*Article 160e***Agreement and decision for grants**

(Article 108(1) of the Financial Regulation)

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

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

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

(b) coherence of that instrument with other instruments used within the same Community programme or action;

(c) complexity and standardisation of the content of the actions or work programmes funded.

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

Article 160f

Expenditure on the members of the institutions

(Article 108(2)(a) of the Financial Regulation)

Expenditure on the members of the institutions as referred to in Article 108(2)(a) of the Financial Regulation shall include contributions to associations of current and former members of the European Parliament. These contributions shall be implemented in accordance with the internal administrative rules of the European Parliament.'

71. Article 163 is replaced by the following:

Article 163

Partnerships

(Article 108 of the Financial Regulation)

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

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

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

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

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

3. Framework partnership agreements or decisions shall be treated as grants for the purposes of the award procedure. They shall be subject to the ex ante publication procedures referred to in Article 167.

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

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

72. Article 164 is amended as follows:

(a) paragraph 1 is amended as follows:

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

'The grant agreement shall at least lay down the following:'

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

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

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

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

(iii) the elements set out in points (i) and (ii) of this point in the cases referred to in point (d) of Article 108a(1) of the Financial Regulation.'

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

'(f) the general terms and conditions applicable to all agreements of this type, such as the acceptance by the beneficiary of audits by the Commission, OLAF and the Court of Auditors and of the ex post publication rules referred to in Article 169, in accordance with Regulation (EC) No 45/2001; these general terms shall at least:

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

(ii) specify the competent court to hear disputes.

(g) the estimated overall budget;'

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

'(i) the responsibilities of the beneficiary, at least in terms of sound financial management and submission of activity and financial reports; whenever appropriate, intermediate targets shall be established, upon which those reports become due;'

(v) the following points (k) and (l) are added:

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

(l) provisions governing the public display of references to the European Communities Budget Support, unless it is not possible or appropriate according to a substantiated decision of the authorising officer.'

(b) paragraph 2 is replaced by the following:

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

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

(c) the following paragraph 4 is added:

'4. Paragraphs 1 to 3 shall apply mutatis mutandis to grant decisions.

Some of the information referred to in paragraph 1 may be provided in the call for proposals or any related document, instead of the grant decision.'

73. In Article 165, paragraphs 1 and 2 are replaced by the following:

'1. For the purposes of this Title, profit shall be defined as follows:

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

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

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

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

Where the ex post control on the generating event reveals that the event has not occurred and an undue payment has been made to the beneficiary on a lump sum or flat-rate financing, the Commission shall be entitled to recover up to the amount of the lump sum or flat-rate financing and, in the case of a false declaration regarding the lump sum or flat-rate financing, impose financial penalties up to 50 % of the total amount of the lump sum or flat-rate financing.

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

74. The following Article 165a is inserted:

'Article 165a

Co-financing principle

(Article 109 of the Financial Regulation)

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

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

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

'An annual work programme for grants shall be prepared by each authorising officer responsible. This work programme shall be adopted by the institution and published on the grants internet site of the institution concerned as soon as possible, if necessary during the year preceding budget implementation, and no later than 31 March of the year of implementation.'

76. Article 167 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

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

(b) paragraph 2 is replaced by the following:

'2. Calls for proposals shall be published on the internet site of the Community institutions and possibly by any other appropriate means, including the *Official Journal of the European Union*, in order to provide maximum publicity among potential beneficiaries. They may be published during the year preceding budget implementation. Any modification of the content of the calls for proposals shall be also subject to publication under the same conditions.'

77. In Article 168, paragraph 1 is amended as follows:

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

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

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

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

(f) for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals.'

(c) the following subparagraph is added:

'The cases referred to in point (f) of the first subparagraph shall be duly substantiated in the award decision.'

78. Article 169 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. All grants awarded in the course of a financial year, except scholarships paid to natural persons, shall be published, according to a standard presentation, in a dedicated and easily accessible place of the internet site of the Community institution concerned during the first half of the year following the closure of the budget year in respect of which they were awarded.'

In cases where management is delegated to the bodies referred to in Article 54 of the Financial Regulation, reference shall be made at least to the address of the website where this information can be found if it is not published directly in the dedicated place of the internet site of the Community institutions.

The information may also be published, according to a standard presentation, by any other appropriate means, including the *Official Journal of the European Union*.'

(b) in paragraph 2, point (c) is replaced by the following:

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

(c) the following paragraph 3 is added:

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

- (a) the number of applicants in the past year;
- (b) the number and percentage of successful applications per call for proposals;
- (c) the mean duration of the procedure from date of closure of the call for proposals to the award of a grant;
- (d) the number and amount of grants where the ex post publication obligation was waived in the past year for reasons of safety of the beneficiaries or protection of their business interest.’

79. The following Article 169a is inserted:

‘Article 169a

Information for applicants

(Article 110 of the Financial Regulation)

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

- (a) laying down joint standards for application forms for similar grants and monitoring the size and readability of the application forms;
- (b) supplying information to potential applicants in particular through seminars and the provision of handbooks;
- (c) maintaining permanent data for beneficiaries in the Legal Entity File referred to in Article 64.’

80. In Article 172, the following paragraph 4 is added:

‘4. The co-financing principle shall be considered to be respected where the Community contribution is designed

to cover certain administrative costs of a financial institution, including, where appropriate, a variable fee constituting a performance-related incentive in relation to the management of a project or programme forming an indivisible whole.’

81. The following Articles 172a, 172b and 172c are inserted:

‘Article 172a

Eligible costs

(Article 113 of the Financial Regulation)

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

- (a) they are incurred during the duration of the action or of the work programme, with the exception of costs relating to final reports and audit certificates;
- (b) they are indicated in the estimated overall budget of the action or work programme;
- (c) they are necessary for the implementation of the action or of the work programme which is the subject of the grant;
- (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost-accounting practices of the beneficiary;
- (e) they comply with the requirements of applicable tax and social legislation;
- (f) they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

2. Without prejudice to paragraph 1 and to the basic act, the following costs may be considered as eligible by the authorising officer responsible:

- (a) costs relating to a bank guarantee or comparable surety to be lodged by the beneficiary of the grant pursuant to Article 118 of the Financial Regulation;
- (b) costs relating to external audits required by the responsible authorising officer either upon the request for financing or upon the request for payment;

- (c) value added tax paid, and which cannot be refunded to the beneficiary according to the applicable national legislation;
- (d) depreciation costs, provided they are actually incurred by the beneficiary;
- (e) administrative expenditure, staff and equipment costs, including the salary costs of personnel of national administrations to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken.

Article 172b

Principle of gradual decrease of operating grants

(Article 113(2) of the Financial Regulation)

Where operating grants are decreased, they shall be decreased in a proportionate and equitable manner.

Article 172c

Financing applications

(Article 114 of the Financial Regulation)

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

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

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

- (a) each submission must contain all the information required for its evaluation;
- (b) the integrity of data must be preserved;
- (c) the confidentiality of proposals must be preserved.

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

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

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

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

3. Where submission is by letter, applicants may choose to submit applications in one of the following ways:

- (a) by post or by courier service, in which case the call for proposals shall specify that the evidence shall be constituted by the date of dispatch, the postmark or the date of the deposit slip;
- (b) by hand delivery to the premises of the institution by the applicant in person or by an agent, in which case the call for proposals shall specify the department to which applications are to be delivered against a signed and dated receipt.

82. Article 173 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Applications shall be made on the form established in accordance with the joint standards laid down pursuant to Article 169a(a) and made available by the authorising officers responsible, and in accordance with the criteria laid down in the basic act and the call for proposals.'

(b) paragraph 3 is replaced by the following:

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

83. Article 174 is replaced by the following:

'Article 174

Evidence of non-exclusion

(Article 114 of the Financial Regulation)

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

84. The following Article 174a is inserted:

'Article 174a

Applicants without legal personality

(Article 114 of the Financial Regulation)

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

85. Article 175 is replaced by the following:

'Article 175

Financial and administrative penalties

(Article 114 of the Financial Regulation)

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

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

86. The following Articles 175a and 175b are inserted:

'Article 175a

Eligibility criteria

(Article 114 of the Financial Regulation)

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

Article 175b

Very low value grants

(Article 114(3) of the Financial Regulation)

Very low value grants shall be considered to be those grants which are lower than or equal to EUR 5 000.'

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

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

88. Article 178 is amended as follows:

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

'The authorising officer responsible shall appoint a committee to evaluate the proposals, unless the Commission decides otherwise in the framework of a specific sectoral programme. The authorising officer may appoint such a committee before the final date for the submission of proposals provided for in point (d) of Article 167.'

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

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

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

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

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

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

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

(c) paragraph 2 is replaced by the following:

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

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

89. Article 180(2) is amended as follows:

(a) in the second subparagraph, point (a) is replaced by the following:

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

(b) in the third subparagraph, the following point (d) is added:

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

90. The following Article 180a is inserted:

'Article 180a

Forms of grants

(Article 108a of the Financial Regulation)

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

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

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

91. Article 181 is replaced by the following:

'Article 181

Lump sums and flat-rate financing

(Article 108a of the Financial Regulation)

1. The Commission may, by way of decision, authorise the use of the following:

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

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

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

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

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

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

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

92. Article 184 is replaced by the following:

'Article 184

Implementation contracts

(Article 120 of the Financial Regulation)

1. Without prejudice to the application of Directive 2004/18/EC, where implementation of the assisted actions requires the award of procurement contracts, beneficiaries of grants shall award the contract to the tender offering best value for money, that is to say, to the tender offering the best price-quality ratio, while taking care to avoid any conflict of interests.

2. Where implementation of the assisted actions requires the award of a procurement contract with a value of more than EUR 60 000, the authorising officer responsible may require beneficiaries to abide by special rules in addition to those referred to in paragraph 1.

Those special rules shall be based on rules contained in the Financial Regulation and determined with due regard for the value of the contracts concerned, the relative size of the Community contribution in relation to the total cost of the action and the risk. Such special rules shall be included in the grant decision or agreement.'

93. The following Article 184a is inserted:

'Article 184a

Financial support to third parties

(Article 120(2) of the Financial Regulation)

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

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

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

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

94. In Article 185, the following paragraph is added:

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

95. In Article 187, 'Article 185' is replaced by 'Article 121'.

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

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

98. In Article 210, 'Article 185' is replaced by 'Article 121'.

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

100. In Article 225, 'Article 185' is replaced by 'Article 121'.

101. In Title I of Part Two, the title is replaced by the following:

'TITLE I

(TITLE II OF PART II OF THE FINANCIAL REGULATION)

STRUCTURAL FUNDS, COHESION FUND, EUROPEAN FISHERIES FUND AND EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT'

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

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

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

104. Article 232 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Before a financing agreement is concluded for an action which is to be the subject of decentralised management, the authorising officer responsible shall ensure, by means of document checks and on-the-spot checks, that the management and control system set up by the beneficiary third country to manage the Community funds complies with Article 56 of the Financial Regulation.'

(b) paragraph 2 is amended as follows:

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

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

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

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

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

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

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

'(e) provisions on the publication of the beneficiaries of funds deriving from the budget.'

(c) the following paragraph 3 is added:

'3. The provisions referred to in point (e) of paragraph 2 shall require the third country to publish the information referred to in Article 169(2), according to a standard presentation, in a dedicated and easily accessible place of its internet site. If such internet publication is impossible, the information shall be published by any other appropriate means, including the national official journal.

Publication shall take place during the first half of the year following the closure of the budget year in respect of which the funds were attributed to the third country.

The third country shall communicate to the Commission the address of the place of publication and reference shall be made to this address in the dedicated place of the internet site of the Community institutions referred to in Article 169(1). If the information is published otherwise, the third country shall give the Commission full details of the means used.'

105. The following Article 233a is inserted:

'Article 233a

Automatic decommitment of split commitments used in multi-annual programmes

(Article 166(3) of the Financial Regulation)

1. The following elements shall not be included in the calculation of the automatic decommitment provided for in Article 166(3)(a) of the Financial Regulation:

(a) that part of the budget commitments for which a declaration of expenditure has been made but reimbursement of which has been interrupted or suspended by the Commission at 31 December of year n+3;

- (b) that part of the budget commitments for which it has not been possible to make a disbursement or a declaration of expenditure for reasons of force majeure seriously affecting the implementation of the programme.

National authorities claiming force majeure pursuant to point (b) of the first subparagraph must demonstrate the direct consequences on the implementation of all or part of the programme.

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

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

106. Article 237 is amended as follows:

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

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

- (b) paragraph 3 is deleted.

107. In Article 240, paragraph 3 is replaced by the following:

'3. The award notice shall be sent when the contract is signed except where, if still necessary, the contract was declared secret or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the

European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.'

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

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

109. In Article 242(1), the following point (h) is added:

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

110. Article 243(1) is amended as follows:

- (a) point (b), 'EUR 30 000' is replaced by 'EUR 60 000'.

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

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

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

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

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

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

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

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

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

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

113. In the first subparagraph of Article 246(1), the following point (e) is added:

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

114. Article 253 is amended as follows:

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

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

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

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

115. Article 258 is replaced by the following:

‘Article 258

Delegations by the institutions to interinstitutional European offices

(Articles 171 and 174a of the Financial Regulation)

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

116. The following Article 258a is inserted:

‘Article 258a

Specific rules for the Office for Official Publications

(Articles 171 and 174a of the Financial Regulation)

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

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

117. Article 261 is deleted.

118. In Part Two, the following Title VI is inserted:

‘TITLE VI

(TITLE VII OF PART II OF THE FINANCIAL REGULATION)

EXPERTS’

119. The following Article 265a is inserted.

‘Article 265a

External experts

(Article 179a of the Financial Regulation)

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

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

The list drawn up following the call for expressions of interest shall be valid for no more than the duration of a multi-annual programme.

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

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

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

120. Article 269 is replaced by the following:

'Article 269

Decentralised management of pre-accession aid

(Article 53c of the Financial Regulation)

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

(*) OJ L 375, 23.12.1989, p. 11.

(**) OJ L 68, 16.3.2000, p. 3.'

121. In Article 271, paragraph 1 is replaced by the following:

'1. The thresholds and amounts laid down in Articles 54, 67, 119, 126, 128, 129, 130, 135, 151, 152, 164,

172, 173, 175b, 180, 181, 182, 226, 241, 243, 245 and 250 shall be updated every three years in line with movements in the consumer price index in the Community.'

Article 2

Public procurement and grant award procedures launched before 1 May 2007 shall continue to be subject to the rules applicable at the time when those procedures were launched.

Article 3

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

It shall apply from 1 May 2007.

However, point (45)(d) of Article 1 shall apply from 1 January 2008 and point (59) of Article 1 shall apply from 1 January 2009.

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

Done at Brussels, 23 April 2007.

For the Commission

Dalia GRYBAUSKAITĖ

Member of the Commission