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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the Financial Regulation applicable to the general budget of the European Union

(Recast)

{SEC(2010) 639}

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Budget is one of the key instruments to deliver EU policies. In 2011 more than EUR 130 billion is planned for allocation to EU policies benefitting the Union and its citizens. In the current economic context it is even more important that the delivery mechanisms of the budget operate in the most efficient way and facilitate the implementation of EU policies, while securing sound treatment of European taxpayers' money. In particular, it is important that these mechanisms are simple and transparent (especially to final recipients of EU funds), provide the possibility for leverage of non-EU budget resources and at the same time strengthen the Commission's accountability for implementation of the budget as set in Article 317 TFEU.

The Financial Regulation (hereinafter FR¹) contains all the principles and rules which govern the implementation of the Union's Budget. It has a horizontal character, being applicable to all areas of expenditure and all revenue. The FR is subject to revision every three years, or whenever it proves necessary and the present proposal represents such a triennial revision. It also reflects the genuine necessity of revisiting budget delivery mechanisms in the current economic context and in view of the future policy challenges².

For the first time this triennial revision is handled in accordance with the ordinary legislative procedure foreseen in Article 322 TFEU. It is presented as a recast in accordance with the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts³. In order to allow the legislative authority to have a global view of the proposed modifications, the Implementing Rules of the FR (hereinafter IR⁴) are presented, in a Commission Staff working document, together with the FR in a single package. The Implementing Rules, which contain more detailed provisions complementing the FR, will be adopted under the delegated powers of the Commission according to Article 290 TFEU.

The present revision does not cover the changes stemming from the entry into force of the Lisbon Treaty, except for the obligations of Member States concerning internal control and audit and their resulting responsibilities in shared management which are included in the present revision. The Commission has treated other Lisbon-related changes, due to their very specific nature, in two separate ad hoc proposals: one related to the creation of the European External Action Service⁵, and the other related to the new budgetary rules⁶ (introduction of the multiannual financial framework in the Treaty and new annual budgetary procedure in particular).

¹ Council Regulation N°1605/2002 of 26.06.2002.

² Commission Communication COM(2010) 2020, point 3.2.

³ OJ C 77, 28.3.2002, p. 1.

⁴ Commission Regulation N° 2342/2002 of 23 December 2002.

⁵ COM (2010) 85, 24.03.2010.

⁶ COM(2010)71, 3.03.2010.

This proposal builds on the results of the public consultation of 19 October 2009⁷, which resulted in a total of 235 contributions of stakeholders who implement or receive Union funds: from citizens to public and private operators, regional and national administrations. The Commission has adopted its proposal on the basis of the results of that consultation, as well as the experience of its operational services and lessons learned from previous revisions.

2. CALENDAR

The FR revision will be negotiated while preparation for the post-2013 programmes will also be under way, and should be considered in this wider context. For this reason, it is important that all the actors concerned in the legislative process, in particular the European Parliament and the Council, agree on an ambitious timetable for the present revision and on the need to ensure coherence between the financial rules enshrined in the FR and on the content of sectoral basic acts. For this to be effective, they should aim at an agreement on the package (FR + IR) that could enter into application by the end of 2011, which is a very ambitious timetable given the inherent constraints of the ordinary legislative procedure.

3. BASIS FOR UNDERTAKING THE PRESENT REVISION

The FR should only contain the fundamental principles (FR, Title II) and the basic rules of budgetary and financial management, leaving the details to be specified in the IR and soft law such as internal guidelines. These principles must be respected in all legislative acts⁸ and by all institutions; they should be kept stable and derogations to them limited to a strict minimum.

In terms of content, the key elements of the financial reforms should be preserved, in particular: the role of financial actors, the importance of the financing decision adopted by the College for operational expenditure, the integration of controls with operational services, the internal audit function, activity-based budgeting, and modernisation of accounting principles and basic rules applicable to grants. Procurement rules should be preserved in line with the procurement Directives.

Moreover, it should be borne in mind that not all problems encountered with the application of the rules require modifications of the FR. In the vast majority of cases, the difficulties raised during the public consultation do not find their source in the Financial Regulation or could be solved by interpretation of the rules. Difficulties also stem from sector-based regulations, whose level of detail and complexity increase significantly the risk of error or misinterpretation.

In terms of method, any modification of substance has been assessed against the following benchmarks:

- reduce the administrative burden for beneficiaries, contractors and implementing partners;

⁷

http://ec.europa.eu/budget/library/consultations/FRconsult2009/draft_report_en.pdf

⁸

Article 2 FR.

- facilitate, whenever possible, the leveraging of budget appropriations;
- facilitate the Commission’s obligation under Article 317 of the Treaty to implement the budget and accomplish the policy objectives by improving delivery instruments and simplifying the rules and procedures;
- ensure sound financial management and protect the financial interests of the Union against fraud and other illegal activities⁹.

4. NEED FOR A REFORM

Reform is necessary with a view to adapting the financial rules to the new requirements of budget implementation (co-financing with other donors, specific financial instruments, PPPs) or where the basic principles create disproportionate workload (interests on pre-financing) or may unduly impede efficiency (prohibition of budget implementation through private sector bodies). The award of small grants and contracts also needs to be facilitated.

Furthermore, the new procedure applicable to the IR, as set out in the Lisbon Treaty, should lead to a new articulation between the FR and the IR, imposing a complete review of the whole set of financial rules. In this regard, some IR provisions which currently define exceptions or derogations to FR provisions should be introduced in the FR itself, while the IR should be limited to technical details and implementing modalities¹⁰.

In this context, the Commission has based its proposal on the following objectives:

- to introduce more flexibility in the application of budgetary principles, which should better suit operational needs and alleviate unnecessary administrative burden for recipients of Union funds;
- to streamline relations with implementing partners to which the Commission entrusts the management of programmes or part of programming actions (projects), in particular taking account of the nature of the implementing partner (Member States, agencies, EIB, public and private operators, etc.) and the financial risks entailed (proportionality);
- to shift the regime of grants from a real-cost based management (inputs) towards a performance-based scheme (outputs), in order to better target policy objectives and achieve significant simplification of procedural and documentary requirements for the benefit of beneficiaries, and facilitate the use of lump sums;
- to ensure sound financial management while leaving significant room for manoeuvre for Authorising Officers so that they can adapt the means to their operational constraints and the financial risks they are faced with;
- to modernise the system of risk management and control measures so as to make them more proportional to the probability of errors and to the cost involved.

⁹ Article 310 (6) TFEU.

¹⁰ Article 290 TFEU foresees that the legislative authority may entrust delegated powers to the Commission only "[...] to supplement or amend certain non-essential elements of the [concerned] legislative act", i.e. the FR.

5. MODIFICATIONS PROPOSED BY THE COMMISSION

5.1. Exceptions to budgetary principles

Regarding the principle of **unity of the budget**, the rules governing **interests generated by prefinancing** should be simplified (Articles 5, 5a FR) as they generate excessive administrative burden on both sides and misunderstandings with operators and partners (particularly in the current period of low interest rates). These interests are collected in accordance with the principle of sound financial management and represent non negligible revenue of the Union Budget (+/- EUR50 M per year). Therefore, the changes proposed focus on grant beneficiaries and the obligation to generate pre-financing interest and to recover such interest is suppressed except otherwise foreseen in a delegation agreement. This means that national agencies will be allowed to re-use interest generated for the programmes they manage, and interests generated by EU bodies will continue to be recovered annually. This measure will entail a limited loss for the Union miscellaneous revenue (+/- EUR 15 M).

Regarding the **principle of universality**, a dual regime for **assigned revenue** is proposed (Article 18 FR) with the distinction between: 1. the re-use for the same purpose of funds initially assigned by the Budget Authority (internal assigned revenue), for which the current regime is maintained (carry over only for one year and once carried over it has to be used first before fresh appropriations) and; 2. revenue collected from and assigned by various donors to a specific programme or action (external assigned revenue: contribution of EFTA and third countries to a Union programme, co-financing of external actions from Member States and other donors...), for which the carry over regime should be more flexible in order to guarantee the purpose assigned by the donor. An appropriate regime of reporting to the Budget Authority is provided.

In relation to the **principle of specification of the budget**, the rules governing transfers of appropriations should be clarified and more flexibility allowed in the adoption procedure of some transfers decided by the Commission (Articles 21, 23, 26 FR), to respond to the needs of better budget implementation, especially in relation to payments appropriations, assigned revenues and administrative appropriations which are common to several titles. It is also proposed to simplify the rules concerning transfers which require the budgetary authority to be informed in order to avoid recurrent delays in their carrying out.

Regarding the principle of **sound financial management** which includes the concept of proportionality, the FR should introduce the notion of **tolerable risk** (Article 28b FR). The objective of this proposal, made during the last revision but now backed-up by solid analysis of the costs and benefits of control, is to decide on a level of tolerable risk of error **per policy area**, taking into account the costs of control, the risk or error and the benefits of the policy. This will mean in some areas fixing a tolerable risk level above the 2% materiality threshold used by the Court of Auditors across all policy areas to conclude on the legality and regularity of the underlying transactions. The tolerable risk levels would be decided by the Legislative Authority and would set a cost-effective level of control to provide a more appropriate basis for

the Discharge Authority (i.e. the EP) to judge the quality of the Commission's management of risk.

Regarding the **principle of annuality**, no amendment to the FR is proposed except for carry over rules for external assigned revenue (Article 10 FR), in order to take into account the dual regime proposed for assigned revenue. However, the Commission is fully aware of the concerns expressed by some of its implementing partners in multi-annual programmes (EIB, ITER, Galileo, research programmes managed by Joint Technological Initiatives, etc) who request, before signing a contract or agreement with the Commission, assurance regarding the duration of the commitment of the Union budget towards a specific project sometimes going even beyond the current Multiannual Financial Framework. It should be noted that such assurance currently exists through annual instalments where the basic act fixes the annual amounts throughout the duration of the Multiannual Financial Framework (e.g. Structural Funds), or even beyond (e.g. ITER), in accordance with Article 76(3) FR. Although such financial programming¹¹ is indicative, it gives appropriate information on the annual amounts foreseen for important programmes, e.g. for the Joint Technological Initiatives and, most importantly, it gives the medium term perspective of Union funding that some of the Union's implementing partners are looking for. Moreover, the degree of certainty provided by annual amounts which are enshrined in legal bases has increased with the extension of legislative codecision, which is now the ordinary legislative procedure.

Finally, no amendment is proposed regarding the principle of **transparency**.

5.2. Implementation of the budget

5.2.1. Streamline methods of implementation from 5 to 2 modes (Article 53 FR)

Provisions concerning methods of implementation are a key element of the 2001 Reform and govern the conditions of **externalisation of budgetary tasks to third parties**. Their objective is to ensure that, whatever the mode chosen, expenditure is executed with a level of control and transparency equivalent to that expected from Commission services as set out in the FR.

However, these provisions have become so complex over the years that their underlying rationale is lost. The Commission proposal therefore aims at establishing a **clear distinction between:**

- situations where the budget is implemented **directly** (by the Commission or executive agencies – Article 53(1) point (1));
- and situations where the budget is implemented **indirectly** in shared management with Member States or through other entities or persons (Articles 53 (1) point (2)).

¹¹ Financial programming is transmitted twice a year to the budget authority, in accordance with Point 20 of the interinstitutional Agreement (IIA) between the European Parliament, the Council and the Commission on cooperation in budgetary matters. Cf COM(2010)73, 3.3.2010. This provision corresponds to Point 46 of the IIA currently into force.

The proposal sets out common requirements **for all types of indirect management** with specific provisions foreseen for indirect management with Member States (Article 53a FR).

The proposal aims in particular at **finding the right balance** between, on the one hand, facilitating the task of the authorising officer to determine the mode of budget implementation appropriate for the specific action, and, on the other hand, providing the AO with a more secure environment. This balance is established by the following two elements:

- operational needs of services are taken into account by introducing more proportionality in ex-ante controls, depending on the specific risks of the action and its overall control environment including the measures by the Commission to supervise and support the implementation. Furthermore, provisions are proposed to accommodate the needs of newly developing financial instruments such as those with the EIB and Private and Public Partnerships;
- the responsibility of Member States and entrusted entities or persons under indirect management is strengthened, and control and audit obligations of the Commission across all budget management types are streamlined.

At the same time, provisions are proposed to strengthen **sound financial management** in order to ensure the Commission accountability for the implementation of the budget. They concern:

- control and audit obligations, which Member States and entrusted entities have to comply with in order to provide for a sufficient level of protection of the Union's financial interests;
- **management declarations of assurance** for all indirect budget management types not subject to a separate discharge from the budgetary authority, which should strengthen the responsibility of Member States and the entrusted entities and give more assurance to the Authorising Officer, notably in his reporting duties;
- control and audit obligations for the Commission, including clearance of accounts procedures and the possibility to suspend or interrupt payments .

5.2.2. *Control and audit obligations of Member States (Article 53a FR)*

New provisions based on Article 317 TFEU are introduced in the present proposal and contain the following elements: a harmonised administrative structure in the Member States; common management and control obligations for these structures; annual management declaration of assurance with independent audit opinion thereon by which the accredited national body assumes responsibility for the management of Union funds it has been entrusted with; financial clearance, suspension and correction mechanisms operated by the Commission.

These provisions should apply only to the next generation of sector-specific regulations, i.e. post-2013 (Article 187 FR).

5.2.3. *Payments and fiduciary accounts (Article 61(4) FR)*

FR provisions only cover bank accounts opened for cash management under the responsibility of the Accountant. The creation of **fiduciary accounts**, dedicated to the implementation of a programme under indirect management by financial institutions, should be allowed. These fiduciary accounts would be opened under the responsibility of Authorising Officers with the agreement of the Accounting Officer.

Furthermore, the rules related to pre-financing have been reviewed (Article 81 FR) to allow a single pre-financing payment, which will have to be cleared in line with the progress of the action. This should provide recipients of EU grants with more security on the amount they receive, as the Commission would approve the eligibility of costs on a regular basis through interim payments.

5.2.4. *Revenue operations (Article 73b, 74 FR)*

The rules on **recovery** should be strengthened in order to bring more efficiency to safeguarding the financial interests of the Union. In particular, recoveries should be treated by Member States in the same way as they treat their own claims on their territory.

It is also proposed to simplify the regime of **forecasts of revenue** in line with budgetary needs. Registration should be required when the revenue is expected with a certain degree of probability and can be reasonably translated into figures.

5.2.5. *Procurement (Articles 88-107 FR)*

Within the limits authorised by the 2004 procurement Directive¹², provisions concerning procurement are reviewed in order to **simplify the rules** (thresholds, bank guarantees) take into account the specific status of the EIB in the Treaty and **define the scope** of some provisions more precisely, notably for the selection of experts. In addition, a vendor database should enable more efficient communication with potential tenderers for such contract values below the thresholds laid down in the procurement directive.

Concerning the rules on exclusion, derogation from the obligation of exclusion is introduced in Article 93 FR for overriding requirements of general interest, in particular to preserve service continuity of institutions. This provision aims at aligning FR rules with the relevant Directive. A provision is introduced in Articles 95 FR for the ECB and EIB to give them access to the central exclusion database on the same footing as EU institutions.

Finally a provision is inserted in Article 96(2) FR to provide for a sound legal basis for the publication of administrative decisions of exclusion and financial penalties, in line with data protection requirements.

¹²

Directive N°2004/18/EC.

5.2.6. Grants (Articles 108-120 FR)

Rules for grants were first introduced in the FR and IR in the 2002 recast. The 2006 revision made only limited modifications, which have proved insufficient to alleviate administrative burden imposed on operational services and beneficiaries.

This administrative burden prevents services from using their resources on policy objectives and on timely delivery, while it implies excessive red tape for beneficiaries. It has two direct causes: excessive similarity between procurement and grant rules/procedures, although the objectives are different (acquisition vs. support); and the fact that controls for grants focus on real costs (real-cost based grant) rather than on expected results (deliverables) of projects.

It is therefore proposed to shift the Union scheme towards a **performance-based system**, based on the definition of agreed indicators and objectives (outputs and outcomes), and to proceed to a robust simplification of lump sums (lump sums, standard scale of unit costs and flat rates), clearly disconnected from any verification of actual costs of implementation (Article 109 FR). This new approach should be essentially enshrined in the Implementing Rules and would encompass the methods of control (including operational audits), while ensuring the respect of common principles applicable to grants. For these reasons, the maximum threshold per lump sum (EUR 25,000) should be deleted and be left to the College to decide when adopting a specific lump sum framework.

To ensure that the recourse to lump sums is part of a risk assessment made by the Authorising Officer and to safeguard equal treatment between beneficiaries, the framework to be used for the determination of lump sums (consistency with the funded activities, maximum amount, basis and methods of calculation) should be adopted by the Commission, except for schemes of low value grants (\leq EUR 50,000). The Authorising Officer would then be able, within the programme duration, to establish lump sums, scales of unit costs and flat rates on the basis of a provisional budget submitted by the applicant taking into account its internal accounting practices, including only acceptable cost categories, which are consistently applied to similar operations by the applicant (no bias detrimental to EU Funds).

In parallel, the **real-cost regime**, maintained as the default regime, **should be reviewed** (clarification of various types of costs, costs actually incurred, in kind contributions, profit) and the possible profit of an action should be recovered on a prorata basis (where EU funds 50% of the costs, only 50% of the profit should be recovered).

Concerning the **gradual decrease** of operating grants (Article 113(2) FR), it is proposed to review the application of this rule over four years, rather than completely abandoning it, because it is justified in principle.

Procedures for the award of grants in the IR are reviewed to leave the choice of modalities as much as possible to the Authorising Officer (decision vs. agreement, bank guarantees and documents serving to assess operational and financial capacity). Furthermore, the award of **low value grants** should be made easier, by removing excessive administrative requirements in line with the principle of proportionality and increasing the current threshold (from EUR 25,000 to EUR 50,000). This follows the trend started in 2006.

Rules authorising exceptionally cascading grants have proven too strict and should be eased (Article 120(2) FR) in order to allow a beneficiary to redistribute its grant by way of subsidies to third parties. This should improve the implementation of programmes targeting a large group of physical persons which can only be reached through two levels of dispatch (Universities for Erasmus, NGOs for cash transfer programmes in external actions). The Commission proposes to facilitate cascading grants by removing or relaxing some of the current restrictions where the redistribution of funds is the primary aim of the action, and, if appropriate guarantees are presented by the first ranking beneficiary as regards the recovery of the amounts. The principle which limits discretion in the redistribution of grants by the primary beneficiary is preserved.

Furthermore, flexibility should be given to Authorising Officers to consider as a sole beneficiary a group of implementing partners such as a consortium being part of a network. Procedural flexibility is also given, in Article 109(6) FR when awarding grants to the EIB reflecting its special position under the Treaty.

Finally, provisions are proposed for the extension of findings for systemic errors within the **real-costs regime** when such errors have been detected during an ex-post audit. In these cases, the responsible Authorising Officer should be entitled to apply the same proportion of financial correction to other non audited projects implemented by the same beneficiary and recover the relevant amounts if the beneficiary cannot demonstrate that the error does not affect non audited projects.

5.2.7. *Prizes (New Title VIa , Article 120a FR)*

Prizes are given as a reward after a contest and constitute a different instrument of Union contribution than grants. It is therefore proposed to introduce provisions related to prizes in a separate Title of the FR. The Union contribution in this context would be completely disconnected from any reference to predictable costs.

5.2.8. *Financial instruments managed by IFIs (New Title VIb, Articles 120b, 120c FR)*

Financial instruments are increasingly identified as an adequate means of leverage of EU funds, in particular when they are pooled with others funds (guarantee funds, risk capital, blended instruments mixing a Community grant with a loan or a guarantee).

It is proposed to **provide for a new type of financial contribution** because these financial instruments, currently mostly implemented by EIB and EIF, cannot be assimilated to services or grants. They should be subject to specific provisions to take into account the specificities of their implementation (revolving funds, cascade of contributions through banking networks) while respecting the principles of responsibility (such as the share of risks or co-financing, and penalties for non-performance) and sound financial management (limitation of the risks incurred by public funds).

5.2.9. *Court of Auditors' reports and statements of preliminary findings. (Articles 143 and 144)*

A series of amendments is proposed concerning the annual and special reports of the Court of Auditors, in order to reflect the current practices (the contradictory procedure, the publication of the replies of each Institution next to or after the observations of the ECA, the transmission of the Member States replies) or aimed at

streamlining the timetable. Finally, a new provision formalises the practice of the statement of preliminary findings sent by the ECA to Commissioners, bodies and Member States.

5.2.10. *Union trust funds (Article 164 FR)*

It is proposed to authorise the Commission to set up and manage Union trust funds for external actions, which would intervene in emergency, post-emergency crisis operations (e.g. Haiti), or for thematic actions, and would pool the contribution of the Union budget with funds from other donors.

The main objective of such delivery instrument is to allow the Union to act as a major and more visible player in the field of development aid.

5.2.11. *Possibility to raise loans to finance the acquisitions of buildings (Article 179(3)b FR)*

For both transparency and cost-efficiency reasons, the Commission proposes to introduce the possibility to raise loans, in the sole case where institutions envisage buying their premises. This would considerably simplify the current system, be more cost-efficient as institutions could profit from lower interest rates due to the Union AAA rating in the financial market and would allow institutions to develop a long term real estate policy (in particular for delegations, OIB and OIL).

In practice, only annual loan instalments (reimbursement of the loan) would appear in the budget, but the "building" loans themselves are to be considered outside the budget since they do not finance the budget but the acquisition of assets. For this reason, the modification is introduced in Article 179 FR instead of Article 14 FR. Article 96 IR, which defines administrative expenditure covered by provisional commitments, is also modified, as the payment of each annual (or periodic) instalment is to be treated as recurring administrative expenditure, similar to a rent payment.

5.2.12. *A flexible approach for Public and Private Partnerships (PPPs)*

The Commission proposal aims at facilitating a wider use of PPPs, notably in the research field, which is a strong request of most operators concerned. The flexibility proposed should accommodate a vast range of PPPs, depending on their structure and on the precise definition of the funded activity (clearly identified projects or R&D themes). It is thus proposed to add to the existing two possibilities of structure (community bodies under **Article 185 FR**, as the Joint Technological Initiatives are today, consortium of partners structured under a private legal entity or purely contractual network, which receive a **grant-Art.108 FR**) two new ones. In particular, it is foreseen to:

- allow private bodies to be entrusted with the implementation of a PPP and to manage EU funds (e.g. awarding grants) to that effect in the framework of indirect management (**Article 53(1) 2(g) FR**);
- provide for the adoption under delegated powers of a separate light model financial regulation applicable to bodies created in a basic act and charged with the implementation of a PPP (**Article 185a FR**). Such model financial regulation will comprise a common set of principles which will be mandatory in order to ensure

sound management of EU funds and adequate protection of the Union's financial interests. However, PPPs would be able to apply their own rules (accounting, internal and external audit, procurement...) within the framework of applicable national law and the basic act.

It would thus be possible to choose the structure best adapted to the objectives and nature of the activities to be implemented, in a range varying from contractual to institutionalised ("incorporated") arrangements, the latter including a Union body (Article 185 FR), a private sector body (Article 53(1) 2(g) FR) and a mixed body (Article 185a and 53(1) 2(e) FR).

5.3. Final provisions (Articles 182-187 FR)

The regular triennial revision of the FR as currently foreseen does not ensure enough legal security and stability of the financial rules. Additionally, the revision mechanism is very rigid and does not take into account the multiannual programming cycle of the EU budget and related sector legislation. As a consequence, it is proposed that future revisions of the Financial Regulation are made whenever it proves necessary without resorting to specific time frames.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the Financial Regulation applicable to ~~the general budget of the European Communities~~ ⇨ the general budget of the European Union ⇐

(Recast)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the Court of Auditors¹³,

After transmission of the draft legislative act to the Court of Justice of the European Union, the European Economic and Social Committee, the Committee of the Regions, the Ombudsman and the Data Protection Officer,

After transmission of the draft legislative act for information to the national Parliaments,

After transmission of the draft legislative act for information to the European Central Bank and the European Investment Bank,

¹³ OJ C 162, 5.6.2001, p. 1 and OJ C 92, 17.4.2002, p. 1.

Acting in accordance with the ordinary legislative procedure¹⁴,

Whereas:

↓ new

- (1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹⁵ has been substantially amended several times. Since further amendments are to be made, it should be recast in the interests of clarity.

↓ 1605/2002 recital 1 (adapted)

- (2) ~~Since times have changed considerably since the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities¹⁶ was adopted, in particular as a result of a financial perspective forming a framework for the development of the budget, developments in the institutional structure and a series of enlargements, that Financial Regulation has been substantially amended several times. In order to take account, in particular, of the requirements of simplification in legislative and administrative matters and the tightening up of management of Community finances, the Financial Regulation of 21 December 1977 should be recast in the interests of clarity.~~

↓ new

- (3) Regulation (EC, Euratom) No 1605/2002 laid down the budgetary principles and financial rules to be respected in all legislative acts and by all institutions. The fundamental principles, the concept and the structure of that Regulation and the basic rules of budgetary and financial management need to be maintained. Derogations to those fundamental principles should be reviewed and simplified as far as possible, taking into account their continuing relevance, their added-value for the Union's annual budget, hereinafter “the budget”, and the burden they impose on stakeholders. It is necessary to maintain and strengthen the key elements of the financial reform - the role of the financial actors, the integration of controls in operational services, the internal auditors, the Activity Based Budgeting (ABB), the modernisation of accounting principles and rules and the basic principles for grants.

↓ 1995/2006 Recital 4 (adapted)

- (4) Account should be taken of provisions implementing the revenue and expenditure of the budget, contained in the basic legal acts adopted for the period 2007 to 2013, in order to ensure coherence between those acts and ~~the~~ this ~~the~~ Financial Regulation.

¹⁴ OJ C [...], [...], p. [...].

¹⁵ OJ L 248, 16.9.2002, p. 1.

¹⁶ ~~OJ L 356, 31.12.1977, p. 1. Regulation as last amended by Regulation (EC, ECSC, Euratom) No 762/2001 (OJ L 111, 20.4.2001, p. 1).~~

↓ new

- (5) In the light of practical experience, some amendments should be made to the Financial Regulation in order to adapt it to evolving requirements of budget implementation such as co-financing with other donors, to increase the efficiency of external aid and to facilitate the use of specific financial instruments like those concluded with the European Investment Bank or implementation through public and private partnerships.
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↓ 1605/2002 Recital 2 (adapted)

⇒ new

- (6) ~~This Regulation~~ (EC, Euratom) No 1605/2002 ~~should be~~ was confined to stating the broad principles and basic rules governing the whole budgetary sector covered by the ~~Treaty~~ Treaties, while the implementing provisions ~~should be moved to a Regulation on rules for the implementation of this Regulation~~ were laid down 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 Communities¹⁷ in order to produce a better hierarchy of rules and make the Financial Regulation (EC, Euratom) No 1605/2002 easier to read. ~~The Commission should therefore be authorised to adopt the implementing rules.~~
⇒ However, the Treaty on the Functioning of the European Union limits the possibility to delegate to the Commission the power to adopt implementing measures only for the purposes of supplementation or amendment of non-essential elements of legislative acts. As a consequence, some provisions laid down in Regulation (EC, Euratom) No 2342/2002, should be incorporated into this Regulation. The implementing measures adopted by the Commission should be confined to technical details and implementing modalities. ↵
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↓ 1605/2002 recital 3

- (7) The establishment and implementation of the budget should respect the four fundamental principles of budgetary law (unity, universality, specification, annuality), and the principles of budget accuracy, equilibrium, unit of account, sound financial management and transparency.
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↓ 1605/2002 recital 4

- (8) This Regulation should reassert those principles and keep exceptions to a strict minimum subject to strict conditions.
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↓ 1605/2002 recital 5 (adapted)

⇒ new

- (9) As regards the principle of unity, this Regulation should specify that it also applies to operational expenditure on implementing the European Union Treaty provisions on the
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¹⁷ (EC) OJ L 357, 31.12.2002, p. 1.

common foreign and security policy ~~and on police and judicial cooperation in criminal matters~~, where this is charged to the budget. The principle of unity and budget accuracy implies ~~means~~ that all ~~Community~~ revenue and expenditure, ~~and that~~ of the Union, when this is charged to the budget, are entered in the budget.

- (10) ⇒ The rules governing interest generated by pre-financing should be simplified as they generate excessive administrative burden on both recipients of Union funds and Commission services and create misunderstandings between the Commission services and operators and partners. For reasons of simplification, in particular in respect of grant beneficiaries, and in line with the principle of sound financial management, there should no longer be an obligation to generate interest on pre-financing and to recover such interest. However, it should be possible to include such obligation in a delegation agreement in order to allow the re-use of interests generated by pre-financing for the programmes managed by some delegates, or its recovery.

↓ 1605/2002 recital 8 (adapted)

- (11) As regards the principle of annuality, the distinction between differentiated appropriations and non-differentiated appropriations should be retained. ~~Decisions on carryovers of commitment and payment appropriations should be taken by each institution. The additional periods should be confined exclusively to the cases where they are absolutely necessary, namely EAGGF payments. With regard to the principle of annuality, in~~ More The current level of flexibility and transparency should be maintained introduced to respond to functional needs. The carry-over of appropriations should exceptionally be permitted in the case of expenditure on direct payments to farmers under the European Agricultural Guarantee Fund (EAGF) set up by Council Regulation (EC) No 1290/2005 of 21 June 2005, on the financing of the common agricultural policy¹⁸.

↓ 1995/2006 Recitals 9 and 10
(adapted)
⇒ new

- (12) Payment requests from the Member States under the ~~agricultural~~ Regulations in the area of agriculture tend to ~~will~~ be concentrated overwhelmingly at the beginning of the budget year n . Therefore, the maximum threshold for advance commitments against the EAGF (from 15 November of year $n-1$) to cover routine management expenditure (charged to the budget of year n) should be increased to three quarters of corresponding appropriations in the last adopted agricultural budget. ~~As regards~~ The provisions concerning the limit on advance commitment of administrative expenditure, ~~the text should be amended so that it refers~~ should refer to appropriations decided by the budgetary authority, therefore excluding transfers of appropriations.
- (13) The use of non-differentiated appropriations for veterinary measures, charged against the EAGF, unduly hampers the implementation of such measures, especially in respect of the limits placed on the possibilities for carry-overs. The use of differentiated

¹⁸ OJ L 209, 11.8.2005, p. 1.

appropriations for such expenditure should therefore be permitted, as this is more in keeping with the multi-annual nature of the actions.

↓ new

- (14) Carry over rules for assigned revenue should take into account the distinction between external and internal assigned revenue. In order to respect the purpose assigned by the donor, external assigned revenues should be carried over automatically and used until all the operations relating to the programme or action to which it is assigned have been carried out. Where the external assigned revenue is received during the last year of the programme or action, it should also be possible to use it in the first year of the succeeding programme or action. Internal assigned revenue may be carried over for one year only, unless specified otherwise in the basic act applicable or in duly justified circumstances.
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↓ 1605/2002 recital 9 (adapted)

- (15) The principle of equilibrium constitutes a basic budgetary rule. In this connection, it should be emphasised that recourse to loans is not compatible with the system of ~~Community~~ Union's own resources. However, the principle of equilibrium should not be interpreted ~~is not such~~ as to hinder the borrowing and lending operations guaranteed by the general budget of the Union.
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↓ 1605/2002 recital 10 (adapted)

- (16) In accordance with Article ~~320~~ ~~277, first paragraph,~~ of the ~~EC~~ Treaty on the Functioning of the European Union, ~~and Article 181, first paragraph, of the Euratom Treaty~~ the unit of account in which the budget is drawn up, and which is also used for purposes of implementation and for presentation of the accounts, should be determined.
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↓ 1605/2002 recital 6 (adapted)

⇒ new

- (17) As regards the principle of universality, the practices of repayment of payments on account and reuse ~~was~~ ~~should be discontinued,~~ and ~~in some cases they should be~~ replaced by assigned revenue and ways of reconstituting decommitted appropriations. ~~These amendments do not affect the~~ The special rules applicable to the Structural Funds ~~were not affected~~.

- (18) ⇒ The derogation concerning assigned revenue should be modified to take into account the specificities of, on the one hand, "Internal assigned revenue" arising from appropriations authorised by the budgetary authority and, on the other hand, "external assigned revenue" collected from and assigned by various donors to a specific programme or action. Furthermore, external donors should continue to be allowed to co-finance external actions, in particular humanitarian actions, even in cases where the basic act does not expressly provide therefore. To facilitate the management of real estate stock, the list of internal assigned revenue should include revenue from the sale of buildings or assimilated operations. ⇐

↓ new

- (19) As regards the presentation of assigned revenues in the draft budget, more transparency should be introduced by providing that amounts of assigned revenue shall be included in the draft budget for the amounts which are certain at the date of its establishment.
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↓ 1995/2006 Recital 12 (adapted)

- (20) ~~At present, the Commission must be authorised by the budgetary authority before accepting any donations, such as gifts or bequests, which involve a charge.~~ To avoid unnecessary and cumbersome procedures before the Commission ~~is~~ allowed to ~~can~~ accept any donations, such as gifts or bequests, which involve a charge, authorisations by the budgetary authority should be made compulsory only in the case of donations exceeding a certain value and involving significant charges.
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↓ 1605/2002 recital 7

- (21) As regards the principle of specification, the institutions need to have some degree of management flexibility for transfers of appropriations. This Regulation should allow integrated presentation of the allocation of financial and administrative resources by purpose. The procedures for transferring appropriations should also be harmonised for all the other institutions so that transfers of staff and operating appropriations are a matter for each institution. As regards transfers of appropriations concerning operational expenditure, the Commission may make transfers between chapters within one and the same title within a total limit of 10 % of the appropriations for the financial year which appear on the line from which the transfer is made. The budgetary authority should be allowed to constitute reserves in only two cases: where there is no basic act or where it is not certain that appropriations are adequate.
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↓ 1995/2006 Recitals 13 and 14

⇒ new

- (22) The rules governing transfers of appropriations should be simplified and clarified on certain points because they have proved cumbersome or unclear in practice. ⇒ It is necessary to ensure better budget implementation, especially in relation to payments appropriations, assigned revenues and administrative appropriations which are common to several titles. Therefore more flexibility should be allowed in the adoption procedure of some transfers. ⇐
- (23) For reasons of efficiency, the Commission should be allowed to decide autonomously on transfers from the reserve in cases where no basic act exists for the action concerned at the time when the budget is established, but where the basic act is adopted in the course of the year. ⇒ Moreover, in order to avoid recurrent delays in carrying out of transfers, information on which needs to be transferred to the budgetary authority, it is necessary to simplify procedure and typology of those transfers. In particular, the possibility for the Commission to decide on transfers of unused budgetary appropriations in cases of international humanitarian disasters and crisis has proved to be relevant and efficient. That possibility should therefore be

extended to similar events occurring after 1st December. In those cases, for reasons of transparency, the Commission should inform immediately the budgetary authority of its decision. The Commission should also decide autonomously, within certain limits, on transfers from the emergency aid reserve. ↩

↓ 1995/2006 Recitals 15 (adapted)

- (24) The rules on the Commission's administrative transfers should be ~~adapted to the new Activity-Based Budgeting (ABB)~~ ☒ coherent with the ABB ☒ structure. Thus, provision should be made for an exemption from the 'notification procedure'. During the last month of the financial year, the Commission should be allowed to decide autonomously on transfers of appropriations concerning staff expenditure, within certain limits.
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↓ 1605/2002 recital 11 (adapted)

- (25) The principle of sound financial management should be defined by reference to the principles of economy, efficiency and effectiveness, and compliance with those principles checked by means of performance indicators established per activity and measurable in such a way that results can be assessed. The institutions should carry out ex ante and ex post evaluation, in accordance with the ~~guidelines~~ ☒ guidance ☒ determined by the Commission.
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↓ 1995/2006 Recital 5 (adapted)

⇒ new

- (26) It should ☒ also ☒ be clarified that sound financial management requires effective and efficient internal control, and the main features and objectives of internal control systems should be defined.

- (27) ⇒ Concerning provisions on proportionality, the notion of tolerable risk of error should be introduced as part of the risk assessment made by the Authorising Officer. The institutions should be able to move away from the general 2% materiality threshold used by the Court of Auditors to conclude on the legality and regularity of the underlying transactions. Tolerable risk levels would be a more appropriate basis for the Discharge Authority to judge the quality of the management of risk by the Commission. The legislative authority should therefore determine the level of tolerable risk of error per policy area, taking into account the costs and benefits of controls. ↩
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↓ 1605/2002 recital 12 (adapted)

- (28) ~~Finally, As~~ regards the principle of transparency, information on implementation of the budget and the accounts should be improved. A strict deadline should also be set for the publication of the budget without prejudice to provisional publication by the Commission between the declaration of definitive adoption by the President of the European Parliament and publication in the Official Journal of the European ☒ Union ☒ ~~Communities~~. The possibility of a negative reserve ☒ should ☒ ~~is also to~~ be retained.

↓ 1995/2006 Recital 6

- (29) In order to ensure the transparency of the use of funds deriving from the budget, it is necessary to make available information on the beneficiaries of these funds within certain limits necessary to protect legitimate public and private interests and taking into account the particular accounting period for the European Agricultural Guarantee Fund.
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↓ 1605/2002 recital 13 (adapted)

⇒ new

- (30) ~~As regards the establishment and presentation of the budget, the current provisions should be harmonised and simplified by eliminating the distinction, which has no practical impact, between supplementary budgets and amending budgets.~~

- (31) ⇒ With regard to the establishment of the budget, it is important to clearly define the structure and the presentation of the draft budget drawn up by the Commission. The content of the general introduction preceding the draft budget should be described more precisely. It is also necessary to include a provision on financial programming for the years to come as well as on a possibility for a Commission to submit any working paper to support budget requests. ⇐
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↓ 1605/2002 recital 14

- (32) The Commission section of the budget should present appropriations and resources by purpose, i.e. activity-based budgeting, with a view to enhancing transparency in the management of the budget with reference to the objectives of sound financial management and in particular efficiency and effectiveness.
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↓ 1605/2002 recital 15 (adapted)

- (33) The institutions should enjoy a measure of flexibility in the management of statutory posts in relation to what is authorised in the budget, especially as the emphasis in management is now to be on results and not on means. This ☒ flexibility should ☒ ~~freedom will~~, however, continue to be restricted by the dual limit of budget appropriations for a financial year and the total number of posts allocated. In addition there ☒ should ☒ ~~will~~ be no latitude as regards grades ☒ AD 16, AD 15 and AD 14 ☒ ~~A 1, A 2 and A 3 posts~~.
-

↓ 1995/2006 Recital 19 (adapted)

- (34) ~~As regards the implementation of the budget, some adjustments are necessary in order to better reflect~~ the specific features of the Common Foreign and Security Policy (CFSP) ☒ should be reflected ☒ . For reasons of legal clarity, the forms basic acts can take under the ~~EC~~ Treaty ☒ on the Functioning of the European Union ☒ and under Title V and VI of the Treaty on European Union should be identified in the Financial Regulation instead of in the implementing rules. In addition, a specific provision should be ☒ made ☒ ~~added~~ in order to properly reflect the types of preparatory measures that may be undertaken in the field of the CFSP.

↓ 1605/2002 recital 16 (adapted)
⇒ new

- (35) ~~As regards implementation of the budget, there should be clarification of the various possible methods of implementing the budget, either on a centralised basis by the Commission or on a shared basis with the Member States or on a decentralised basis with third countries receiving external aid or jointly with international organisations. It should be possible for centralised management either to be performed directly by Commission departments or indirectly by delegation to bodies governed by Community law or by national public law. The implementation methods should guarantee that the procedures for protecting Community funds are complied with, whatever the entity responsible for all or part of this implementation and must confirm that final responsibility for budgetary implementation lies with the Commission in accordance with Article 274 of the Treaty.~~
- (36) ⇒ As regards methods of implementation, which govern in particular the conditions of externalisation of implementing powers to third parties, the rules have become too complex over the years and should be simplified. At the same time, the initial objective of externalisation – to ensure that whatever the method of implementation, expenditure should be implemented with a level of control and transparency equivalent to that expected from the Commission services - should be maintained. Therefore, a clear distinction should be made between situations where the budget is implemented directly, by the Commission or its executive agencies and situations where the budget is implemented indirectly through third parties. This should allow establishment of a common regime for indirect management with the possibility to adapt it in accordance with sector specific rules, in particular where the budget is implemented indirectly by Member States under shared management. Such common regime should include in particular the basic principles to be respected by the Commission where it decides to implement the budget indirectly and the basic principles to be respected by entrusted parties. The Commission should be able to apply Union rules and procedures or to accept the application of the rules and procedures of the entrusted entity, provided the latter guarantees an equivalent protection of the financial interests of the Union. ⇐

↓ 1605/2002 recitals 17 and 18
(adapted)
⇒ new

- (37) ~~As the Commission is responsible for implementation of the budget, it may not delegate any tasks of public authority involving the use of discretionary powers. This Regulation should restate this principle and specify the scope of the tasks that may be delegated. It should also be stipulated that private sector bodies, other than those which have a public service mission and under specific conditions, should not be able to undertake any budgetary implementation measure but only provide specialist technical or administrative services or perform preparatory or ancillary tasks.~~
- (38) ~~For the sake of compliance with the principles of transparency and sound financial management, the public sector bodies or bodies with a public service mission to which implementing tasks are delegated on behalf of the Commission should have transparent procurement procedures, effective internal controls, a system for~~

~~presentation of the accounts which is separate from their other activities and an external audit.~~

- (39) ⇒ Rules on 'ex ante assessment' of entities -other than Member States which are not subject to ex-ante assessment- should be adapted to ensure that all entrusted entities and persons provide a level of protection of the financial interests of the Union equivalent to that required under this Regulation. As part of the supervision tasks of the Commission, a set of control and audit obligations, including clearance of accounts procedures for all budget management types should be provided for. ⇐
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↓ new

- (40) In order to take account of operational needs and to facilitate implementation by potential beneficiaries or implementing partners, requirements should remain proportionate to the specific risks of the action and its overall control environment. The nature of the tasks and the measures carried out by the Commission as part of the supervision and support of the implementation of the action should be taken into account when assessing the capacity of the third party or entity to comply with such requirements. Furthermore, this Regulation should accommodate new financial instruments such as financial instruments and Private and Public Partnerships in order to improve budget and policy delivery.
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↓ new

- (41) The experience with Public Private Partnerships (PPPs) institutionalised as Union bodies under Article 185 of Regulation (EC, Euratom) No 1605/2002 demonstrates that further alternatives should be added in order to increase the choice of instruments to include bodies whose rules are more flexible and accessible to the private partners than those applicable to the Union institutions. Such alternatives should operate under indirect management. An alternative should be a body established by a basic act and endowed with financial rules which should take into account the principles necessary to ensure sound financial management of Union funds. These principles should be adopted in a delegated regulation and should be based on those with which third entities entrusted with budget implementation tasks have to comply. Another alternative should be the implementation of PPPs by bodies governed by private law of a Member State.
-

↓ new

- (42) Basic control and audit obligations of Member States where they implement the budget indirectly in shared management, which currently exist only in sector specific Regulations, should be, in accordance with Article 317 of the Treaty, introduced in this Regulation. Therefore it is necessary to include provisions, setting out a coherent framework for all policy areas concerned, on a harmonised administrative structure at national level, common management and control obligations for those structures, annual management declaration of assurance with independent audit opinion thereon and an annual declaration by Member States by which they assume the responsibility for the management of Union funds they are entrusted with, financial clearance, suspension and correction mechanisms operated by the Commission. Detailed provisions should remain in sector specific Regulations.

↓ 1605/2002 recital 19 (adapted)

- (43) In accordance with Article ~~322~~ ~~279(e)~~ of the Treaty, this Regulation should define ~~defines~~ the powers and responsibilities of financial actors, in particular ~~authorising officers, the accounting officers and the internal auditor.~~

Authorising officers should be ~~are made~~ fully responsible for all revenue and expenditure operations executed under their authority and should ~~must~~ be held accountable for their actions, including, where necessary, through disciplinary proceedings. ~~This empowerment should therefore be strengthened by the removal of centralised prior controls and in particular ending the advance approval of revenue and expenditure operations by the financial controller and the check by the accounting officer that payment constitutes valid discharge.~~

The accounting officer should continue ~~continues~~ to be responsible for the proper execution of payments, the collection of revenue and the recovery of receivables. ~~He/She manages~~ should manage the treasury, keep the accounts and ~~is~~ be responsible for drawing up the institution's financial statements.

The internal auditor should perform ~~performs~~ his duties in accordance with international audit standards. His role ~~is~~ should be to verify the proper functioning of the management and control systems put in place by the authorising officers.

~~The internal auditor is not an actor involved in the financial operations and does not have the role of exercising control over these operations ahead of the decisions by the authorising officers; the authorising officers should now assume full responsibility for these decisions.~~

↓ new

- (44) With regard to the duties of the authorising officer by delegation, some provisions should be clarified, in particular concerning the internal control procedures that he puts into place *ex ante* and *ex post* and his reporting duties. In this respect, the content of his annual activity report should be updated in line with practice which consists in including the required financial and management information to support his declaration of assurance on the performance of his duties.

↓ 1995/2006 Recital 24

⇒ new

- (45) ⇒ The responsibilities of the Accounting Officer of the Commission should be clarified, in particular it should be specified that he is the only person who is entitled to define the accounting rules and harmonised charts of accounts, while Accounting Officers of all other institutions define accounting procedures applicable in their institutions. ⇐ Accounting officers' responsibility for certifying the accounts on the basis of the financial information supplied to them by the authorising officers should be clarified. To this end, accounting officers should be empowered to check the information received by the authorising officer by delegation and to enter reservations, if necessary.

↓ new

- (46) In order to facilitate the implementation of certain programmes or actions entrusted to financial institutions, the possibility to open fiduciary accounts should be introduced in this Regulation. Such bank accounts should be opened in the name or on behalf of the Commission in the books of a financial institution. They should be managed by that financial institution under the responsibility of the authorising officer and it should be possible to open them in other currencies than Euro.
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↓ 1605/2002 Recital 20 (adapted)

- (47) The liability of authorising officers, accounting officers and imprest administrators ~~is~~ should ~~be~~ ~~is not~~ ~~be~~ ~~different~~ from that of other officials and staff and should be subject, under the Staff Regulations ~~of officials of the European Communities, and the Conditions of employment of other servants of the European Communities,~~ to the application of the existing disciplinary and financial compensation measures. ~~However~~ ~~On the other hand,~~ certain specific provisions identifying cases of misconduct of accounting officers and imprest administrators, given the special nature of their duties, should be retained ~~they will no longer have any special allowance or insurance.~~ Furthermore, the liability of the authorising officer should be clarified. In cases not involving fraud, in order to provide the appointing authority with the necessary expertise, each institution ~~will~~ should ~~set up a specialised financial irregularities panel which~~ ~~will~~ determine whether or not an irregularity has occurred which could make the official or other servant liable to disciplinary action or payment of compensation and, if it has detected problems with systems, to report to the authorising officer and the internal auditor. For cases of fraud, however, this Regulation should refer to the provisions in force on the protection of the ~~European Communities'~~ financial interests ~~of the Union~~ ~~and on the fight against corruption involving officials of the~~ ~~European Communities~~ or officials of Member States ~~of the European Union.~~
-

↓ 1995/2006 Recital 23

- (48) The establishment by several institutions of joint financial irregularities panels should be made possible.
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↓ new

- (49) Concerning revenue operations, it is necessary to streamline the rules on estimates of receivable amounts in order to take into account budgetary needs. Registration should be required when expectation of revenue has a certain degree of probability and can be translated into figures with a reasonable degree of approximation. Simplification should be achieved by introducing some specific provisions on procedures of adjustment or cancellation of an estimate of amount receivable.

↓ 1995/2006 Recital 26 (adapted)
⇒ new

- (50) A period of limitation on the validity of claims should be ~~introduced~~ ~~the~~ ~~Union~~ ~~Community~~, unlike many of its Member States, is not subject to a period of limitation under which financial claims are extinguished after a certain period of time. Nor is the ~~Union~~ ~~Community~~ restricted by a period of limitation in the pursuit of its claims against third persons. The introduction of such a period of limitation corresponds to sound financial management.
- (51) ⇒ The rules on recovery should both be clarified and strengthened. In particular, clarification is needed in order to specify that the cancellation of an established amount receivable does not imply a waiver of a European Union's established entitlement. Moreover, in order to reinforce the safeguarding of the financial interests of the Union, Union funds claimed for reimbursement should be treated by Member States in the same way as claims of public companies on their territory. ←
- (52) Taking into account Commission Communication on the management of fines temporarily collected¹⁹, fines, penalties and sanctions and any income generated by them should be recorded as budget revenue in the year following the exhaustion of all remedies against the decisions imposing them. As an exception to this rule, a portion limited to 2% of the total amounts of fines or penalties to be entered in the budget should be withheld to supply the Fund created by that Communication.

↓ 1605/2002 recital 21 (adapted)

- (53) The concepts of budgetary and legal commitment of expenditure and the conditions for applying them should be defined. In order to restrict the volume of dormant commitments, the period during which individual legal commitments may be made on the basis of overall budget commitments should be limited. Moreover, a decommitment provision ~~must~~ ~~be~~ ~~made~~ ~~provided~~ for individual commitments which have not given rise to any payment over a three-year period.

↓ new

- (54) As regards payments and in line with the principle of sound financial management, clarification of the various types of payments should be provided. Moreover, prefinancing payments should be cleared regularly by the responsible authorising officer in accordance with the accounting rules defined by the Accounting Officer of the Commission. To this effect, appropriate provisions should be included in contracts, grant decisions, grant agreements as well as in delegation agreements with third parties.

¹⁹ C(2009) 4264 of [date].

↓ 1605/2002 recital 22 (adapted)

- (55) This Regulation should define the typology of payments which may be made by authorising officers. Such payments ~~must~~ ☒ should ☒ be made principally as a function of the effectiveness of the action and the results which flow from it. ~~The rather vague concepts of advance and payment on account should be removed;~~ Payments should be made in the form of pre-financing, interim payments and payments of the final balance, when the entire amount is not paid in one instalment.
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↓ 1605/2002 recital 23 (adapted)

- (56) ~~This Regulation should stipulate that~~ The operations of validation, authorisation and payment ☒ should ☒ ~~must~~ be completed within a time limit ~~which will be~~ set in the implementing rules and that in the event of failure to respect ~~that~~ is time limit creditors ☒ should ☒ ~~will~~ be entitled to default interest to be charged to the budget.
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↓ new

- (57) Institutions should be allowed to give their prior agreement in order to officially accept the transmission of documents by electronic procedure. Moreover, in accordance with Commission decisions on electronic and digitised documents, financial provisions on verifications applicable to commitments should be updated and recognise explicitly the legal value of electronic order forms and invoices for the registration of legal commitments.
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↓ 1995/2006 Recital 25

- (58) The relationship between the Commission's internal auditor and bodies set up by the Communities should be clarified. Those bodies should have their own internal audit function reporting to their own management boards, whereas the Commission's internal auditor reports to the College of Commissioners on the procedures and systems of the Commission. It should be necessary for the Commission's internal auditor only to confirm that the bodies' internal audit functions meet international standards, and for that purpose he should be able to conduct assessments of the quality of the internal audit activity.
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↓ 1995/2006 Recital 27 (adapted)

- (59) ~~This Financial~~ Regulation should reflect the importance of framework contracts in the management of public procurement. It should encourage the use of interinstitutional procurement procedures and allow for the possibility of joint procurement procedures between an institution and a contracting authority from a Member State.
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↓ 1605/2002 recital 24 (adapted)

- (60) ~~As regards contracts awarded by the institutions of the Communities on their own account, provision should be made for the rules contained in the Directives of the~~

~~European Parliament and of the Council coordinating the procedures for the award of public works, service and supply contracts to apply: the rules applicable to contracts awarded on behalf of third parties should also be consistent with the principles posited by those Directives.~~

↓ 1995/2006 Recital 28 (adapted)
⇒ new

- (61) ☒ With regard to the rules on public procurement, ☒ certain adjustments should be made to ensure that this Regulation ~~is~~ ☒ should be ☒ in line with the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts²⁰. The possibility, open to Member States under that Directive, to determine specific procedures for contracts declared secret when their performance must be accompanied by special security measures or when the protection of the Member State so requires, should be made available to ☒ Union ☒ Community institutions.
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↓ 1605/2002 recital 25

- (62) In order to prevent irregularities and to combat fraud and corruption and promote sound and efficient management, candidates or tenderers who are guilty of such acts or have conflicting interests should be excluded from the award of contracts.
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↓ 1995/2006 Recital 29 (adapted)
⇒ new

- (63) ~~In line with Directive 2004/18/EC, the rules on exclusion from a procurement procedure need to be clarified. In addition,~~ For reasons of legal certainty and proportionality, a maximum period of exclusion should be specified in ~~this~~ Financial Regulation. ☒ Moreover, ☒ in the light of Directive 2004/18/EC, an exception to the rules on exclusion should be made for the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

- (64) ⇒ The rules for exclusion should also be improved in order to strengthen the protection of financial interests of the Union. The reference to money laundering should be added, as provided for in the Directive 2004/18/EC. Moreover, situations of exclusion concerning candidates or tenderers convicted by a judgment having the force of res judicata for an offence concerning their professional conduct, or for fraud, corruption, involvement in a criminal organisation, money laundering or similar criminal infringements detrimental to the financial interests of the Union, should be extended to persons having powers of representation, decision making or control over these candidates and tenderers. However, for reasons of proportionality, exclusion should not apply to candidates and tenderers who can demonstrate that they have taken adequate measures against the concerned persons having powers of representation.

²⁰ OJ L 134, 30.4.2004, p.114.

Finally, in order to ensure the continuity of service of the institution, derogation from the obligation of exclusion based on the grounds of bankruptcy or analogous situations, grave professional misconduct and non compliance with social obligations should be introduced in case of negotiated procedures where, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator. ↩

↓ 1995/2006 Recital 30 (adapted)

- (65) ~~It should be made obligatory under the Financial Regulation for e~~Candidates or tenderers in procurement procedures ☒ should be obliged ☒ to certify, if so requested, the ownership or the management, control and power of representation of the legal entity submitting a tender and that this ownership, or their subcontractors, are not in one of the situations ☒ giving rise to exclusion from participation in tenders ☒ ~~referred to in Article 93 of the Financial Regulation~~. Tenderers should not be required to certify that they are not in one of the situations giving rise to exclusion when they participate in a procurement procedure for the award of very low-value contracts.
-

↓ 1995/2006 Recital 31 (adapted)

⇒ new

- (66) In order to enhance the effectiveness of procurement procedures, the database of candidates or tenderers in situations of exclusion should be common to the institutions, executive agencies and bodies referred to in ~~the Financial~~ ☒ this ☒ Regulation.
- (67) ⇒ Although the European Central Bank (ECB) and the European Investment Bank (EIB) have their own specific status within the Union framework, the use of their own resources is of financial interest to the Union. Therefore, they should have access to the information contained in the central exclusion database, which was created to protect the financial interests of the Union, and should take it into account under their responsibility for the award of contracts under their procurement rules. The ECB and the EIB should also communicate to the Commission information on tenderers which are subject to a definitive judgment for fraud or similar criminal infringements detrimental to the financial interests of the Union. ↩
-

↓ 1605/2002 Recitals 26 and 27 (adapted)

- (68) For the sake of transparency, candidates and tenderers should be informed in an appropriate manner about the award of contracts.
- (69) ~~Finally, as part of the process of empowerment of authorising officers, prior checking by the current Advisory Committee on Procurement and Contracts should be dispensed with.~~

↓ 1995/2006 Recitals 32 and 33
(adapted)

- (70) In order to take account of the interests of unsuccessful tenderers, it is appropriate to provide that a contract covered by Directive 2004/18/EC cannot be signed before the end of a reasonable standstill period.
- (71) The obligations of the institutions to suspend a procurement procedure or a contract under ~~the Financial~~ this Regulation in cases of fraud and irregularities should be clarified in order to enhance the application operation of other ~~the relevant provisions of that Regulation.~~
-

↓ new

- (72) Concerning administrative and financial penalties, a sound legal basis for the publication of decisions applying such penalties should be introduced, in line with data protection requirements. Such publication should remain facultative for reasons of data protection and legal security.
-

↓ 1605/2002 recital 28 (adapted)
⇒ new

- (73) As regards grants, a framework for the award and monitoring of Union ~~Community~~ grants involving specific provisions for implementing the principles of transparency, equal treatment, co-financing, non-profit, degressive award for operating grants, prohibition of retrospective awards and control should be put in place.
-

↓ 1605/2002 recital 29 (adapted)

- (74) ~~In order to avoid any cumulation, it should not be possible for grants to be awarded to finance twice the same action or for operating expenditure for the same year.~~
-

↓ 1605/2002 recital 30 (adapted)

- (75) ~~In a similar manner to the rules concerning the award of public contracts, grounds for excluding certain parties from the award of grants should be laid down in order to give the institutions appropriate means of combating fraud and corruption.~~
-

↓ 1605/2002 recital 31 (adapted)

- (76) ~~To ensure that the rights and obligations of the institution and of the beneficiary are clear and are observed, the grant award should be the subject of a written agreement.~~
-

↓ 1995/2006 Recitals 34, 35 and 36 (adapted)

- (77) ~~⊗~~ However, for reasons of simplicity, ~~⊗~~ ~~As regards grants, simplification of the rules is needed.~~ The requirements for checks and guarantees should be more proportionate to the financial risks involved. The definition of grants ~~needs to~~ ~~⊗~~ should ~~⊗~~ be clarified, in particular as regards financing related to loan activities or shareholdings and expenditure relating to fisheries markets. To ~~⊗~~ ensure the sound ~~⊗~~ ~~improve the~~ management of grants and to simplify procedures, it should be possible to award grants either by a decision of the institution or by a written agreement with the beneficiary.
- (78) For reasons of clarity and transparency, the use of lump-sum and flat-rate payments should be authorised alongside the more traditional method of reimbursing costs actually incurred.
- (79) For reasons of legal clarity, the exceptions to the non-profit rule which are currently provided for in the implementing rules should be included in the Financial Regulation. Furthermore, it should be made clear that the purpose of awarding grants to certain actions is to help reinforce financial capacity or generate an income.

↓ 1525/2007 Recitals 1, 4 and 5 (adapted)

- (80) Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding²¹ lays down, *inter alia*, rules governing the financing of political parties at European level from the Union budget. These ~~rules governing the financing of political parties at European level~~ should be adapted to take better account of the special conditions under which political parties operate, including shifting political challenges and agendas creating budgetary impacts that political parties cannot predict when drawing up their annual work programmes and budgets. To that end limited possibilities to carry over funding from one year to the first quarter of the following year should be introduced.
- (81) In order to enhance parties' long-term financial planning capabilities, to take account of funding needs that vary from one year to another, and to strengthen the incentives for parties not to rely on public funding alone, political parties at European level should be allowed to establish limited financial reserves based on own resources generated from sources other than the Union budget. The abovementioned derogations from the non-profit rule should be exceptional and should not constitute a precedent.

²¹ OJ L 297, 15.11.2003, p. 1. Regulation as last amended by Regulation (EC) No 1524/2007 (See page 5 of this Official Journal).

↓ 1995/2006 Recitals 37, 38, 41
(adapted)

- (82) The rule that grants should be awarded on the basis of calls for proposals has proved its worth. Experience has shown, however, that in certain cases the nature of the action leaves no choice in the selection of beneficiaries; such cases should thus be exempted from ~~the~~ that ~~the~~ rule.
- (83) The rule that the same action should not give rise to more than one grant to any one beneficiary should be adjusted. Some basic legal acts do permit ~~Community~~ ~~the~~ Union ~~the~~ funding from different sources to be combined, and such cases may ~~become~~ become more common ~~in~~ increase in ~~the~~ the ~~future~~ future ~~with~~ with the view ~~in~~ ~~order~~ order to ensure the effectiveness of expenditure. However, it should be made clear in ~~this~~ ~~the~~ ~~Financial~~ Regulation that the same costs cannot be financed twice by the Union budget.
- (84) Certain restrictions on the eligibility of beneficiaries should ~~be~~ not apply in certain cases ~~be removed~~ in order to allow for grants to natural persons and certain types of entity which lack legal personality. In line with the principle of proportionality, for very low-value grants, the authorising officer ~~should~~ should be allowed to ~~may~~ refrain from requesting applicants to certify that they are not in one of the situations of exclusion under ~~the relevant provisions of the Financial~~ ~~the~~ this ~~the~~ Regulation.
- (85) As regards the procurement standards to be applied by beneficiaries of grants, the current rule in ~~this~~ ~~the~~ ~~Financial~~ Regulation is unclear and should be simplified. Moreover, express provision should be made for the case in which the implementation of an action necessitates financial support to third parties.

↓ new

- (86) In the light of practical experience, the lump sums regime should be clarified (lump sums, standard scale of unit costs and flat rates) and clearly distinguished from any ex-post verification of real costs. Control measures should be adjusted to this new approach with the possibility to request operational audits and to extend findings to non audited projects of same beneficiary where recurrent errors have been detected in similar projects. Finally, the possibility for a beneficiary to redistribute its grant by way of subsidies to third parties should be extended under certain conditions in order to facilitate the correct implementation of programmes dedicated to numerous physical persons who can only be reached through two levels of dispatch. This redistribution should be authorised as long as appropriate guarantees are presented by the first rank beneficiary and adequate clauses to limit the margin of appreciation for the choice of sub-beneficiaries and the amount of the award are introduced in the grant agreement.

↓ new

- (87) As a new type of financial support, prizes should be regulated separately from the grant regime with specific rules not containing any reference to predictable costs. Prizes should be part of the annual work programme and, above a certain threshold,

should be awarded by a beneficiary or by a contractor after their award conditions and criteria have been approved by the Commission.

↓ new

- (88) Financial instruments are increasingly valuable to multiply the effect of Union funds when those funds are pooled with others funds or include a leverage effect. Since such financial instruments cannot be assimilated to services or grants, a new type of financial support should be established.
-

↓ 1605/2002 recital 32

- (89) As regards accounting and the presentation of accounts, it should be stipulated that the accounts comprise general accounts and budget accounts and it should be added that the general accounts are based on a system of accrual accounting whereas the budget accounts are intended to draw up the budget outturn account and the reports on implementation of the budget.
-

↓ 1995/2006 Recital 44 (adapted)
⇒ new

- (54) As regards the rules on accounting and the accounts, ⇒ the presentation of accounts should be simplified by providing that Union's accounts comprise only the consolidated financial statements and the aggregated budgetary accounts. It should also be clarified that the consolidation process only concerns the institutions financed by the Union's budget, in order to take into account the specific independent status of the ECB. Finally, ⇐ ~~the Financial Regulation should make it~~ ☒ It should be ☒ possible for the Commission's accounting officer to determine, in compliance with international standards, which other bodies in addition to those receiving Community ☒ Union ☒ subsidies fall within the scope of the consolidation of the accounts, it being understood that the consolidation of accounts neither entails any transfer of funds from self-financed bodies to the general budget of the European Union nor influences their financial and operational autonomy and the discharge procedures for their accounts.
-

↓ new

- (55) In order to clearly separate the duties and responsibilities of the Commission's Accounting officer from those of the accounting officers of institutions or bodies whose accounts are consolidated, it should be provided that the report on budgetary and financial management of the financial year has to be prepared by each institution or body and then sent to the budgetary authority and the Court of Auditors by 31 March of the following financial year.
-

↓ 1605/2002 recital 33 (adapted)

- (90) The principles on which the general accounts are based and the financial statements are presented should be defined by reference to internationally accepted accounting principles and the ☒ Fourth Council Directive 78/660/EEC of 25 July 1978 based on

Article 54 (3) (g) of the Treaty ~~of the European Parliament and of the Council~~ on the annual accounts of certain types of companies ²², where they are relevant in the context of the public service.

↓ 1605/2002 recital 34 (adapted)

- (91) The provisions on the supply of information concerning implementation of the budget should be adapted to ~~include~~ ~~extend this information to~~ the use of appropriations carried over, made available again and reused and to the various ~~Union~~ ~~Community~~-law bodies, to improve the arrangements for providing monthly figures and the report on implementation, which ~~should~~ ~~will~~ be sent three times a year to the budgetary authority.
-

↓ 1605/2002 recital 35

- (92) The accounting methods employed by the institutions should be harmonised and, in this field, the Commission's accounting officer should have the right of initiative.
-

↓ 1605/2002 recital 36 (adapted)

- (93) ~~It should be specified that the use of computerised financial management systems should in no way restrict the Court of Auditors' rights of access to supporting documents.~~
-

↓ new

- (94) It is necessary to update the Union rules and principles on accounting in order to ensure their coherence with the International Public Sector Accounting Standard (IPSAS) rules.
-

↓ new

- (95) The provisions concerning provisional and final accounts should be updated, in particular in order to provide for the reporting information that should accompany the accounts sent to the Commission's Accounting officer for the purpose of consolidation. Reference should also be made to the representation letter accompanying the transmission, by the institutions and bodies financed by the budget, to the Court of Auditors of their final accounts, as well as to the representation letter accompanying the transmission of the Union's final consolidated accounts. Finally, an earlier deadline should be set out for the Court of Auditors to make its observations on the provisional accounts of institutions other than the Commission and bodies financed by the budget in order to allow them to draw up their final accounts taking into account the Court's remarks.

²² ~~of~~ OJ L 222, 14.8.1978, p. 11. ~~of~~

↓ 1605/2002 recital 37

- (96) As regards external audit and discharge, although the Commission is fully responsible for implementation of the budget, the importance of management shared with the Member States involves their cooperation in the audit procedure by the Court of Auditors and the discharge by the budgetary authority.
-

↓ 1605/2002 recital 38 (adapted)

- (97) ~~In order to~~ ☒ The timetable leading up to discharge should ☒ provide optimum conditions for the presentation of the accounts and the discharge procedure, ~~the timetable leading up to discharge should be amended.~~
-

↓ 1605/2002 recital 39 (adapted)

- (98) The Commission should submit to the European Parliament, at its request, any information required for the smooth application of the discharge procedure for the ☒ relevant ☒ financial year ~~in question~~, in accordance with Article ☒ 319 ☒ ~~276~~ of the ~~EC~~ Treaty.
-

↓ 1605/2002 recital 40 (adapted)

- (99) Special provisions should be laid down for certain ☒ Union ☒ ~~Community~~ policies. Such provisions should comply with the basic principles of this Regulation.
-

↓ 1605/2002 recital 41 (adapted)

- (100) ~~It seems necessary to make provision for the possibility of advance commitments against EAGGF and administrative appropriations from 15 November preceding the financial year in question.~~
-

↓ 1995/2006 Recitals 45 and 46
(adapted)
⇒ new

- (101) ~~In view of the coming into existence of the EAGF, which has replaced the European Agricultural Guidance and Guarantee Fund (EAGGF) with respect to financing of market measures from 1 January 2007, certain terminology in this Financial Regulation should be adjusted. Clarification is also required in~~ ☒ to ☒ the effect that provisional commitments may be made after the normal two-month deadline following receipt of the Member States' statements of expenditure in cases where a decision on a transfer of appropriations is expected. The special provisions of the Financial Regulation concerning transfers should be clarified.

- (102) (59) The terminology should also be adjusted so that reference is made only to the Structural Funds, the Cohesion Fund, the European Fisheries Fund, the European Agricultural Fund for Rural Development and funds in the area of Freedom, Security and Justice managed under shared management. References to pre-accession structural measures (ISPA) and agricultural measures (Sapard) should be removed, since they

involve ⇒ indirect ⇐ management by third countries ⇒ and not shared management with Member States ⇐ . As regards the making available again of decommitted appropriations, in line with the new basic acts for structural actions in the period 2007 to 2013 which cover the case of *force majeure*, provision should be maintained in ⊗ this ⊗ ~~the Financial~~ Regulation only for cases where a manifest error is attributable to the Commission.

↓ 1605/2002 recital 42 (adapted)
⇒ new

- (103) As regards ⇒ the specific provisions of this Regulation concerning the structural funds, cohesion funds, European fisheries fund, the European Agricultural Fund for Rural Development and funds in the area of Freedom, Security and Justice managed under shared management ⇐ ~~the Structural Funds~~, the provision for repayment of payments on account and making appropriations available again contained in the Commission declaration annexed to Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds²³, ~~as last amended by Regulation (EC) No 1447/2001²⁴~~, should be retained. ⇒ Moreover, by way of derogation from the rule of carry over, it should be allowed to carry over commitment appropriations available at the end of the financial year, arising from repayments of payment on account, until the closure of the programme, and to use those commitment appropriations when other commitment appropriations are not longer available. ⇐
-

↓ 1995/2006 Recitals 47 and 48
(adapted)

- (61) ~~⊗~~ The ⊗ provision ⊗ concerning ⊗ ~~should be added to the Financial Regulation to cover~~ the assigned revenue generated by the winding-up of the European Coal and Steel Community and the making available of the corresponding appropriations ⊗ should be maintained ⊗ .
- (62) It is necessary to allow appropriations, which have been decommitted as a result of total or partial non-implementation of the projects for which they were earmarked, to be made available again. However, that should be possible only under strict conditions, and only in the area of research, since research projects present a higher financial risk than those in other policy areas.
-

↓ 1605/2002 recital 43 (adapted)
⇒ new

- (104) As regards research, the presentation of the budget should be ⊗ coherent ⊗ ~~harmonised~~ with the provisions concerning activity-based budgeting, ~~whilst preserving the~~ ⊗ The ⊗ flexibility of management which the Joint Research Centre (JRC) currently enjoys ⊗ should be preserved ⊗ .

²³ OJ L 161, 26.6.1999, p. 1.

²⁴ ~~OJ L 198, 21.7.2001, p. 1.~~

- (105) ⇒ Furthermore, clarification is needed for the participation of the JRC in procurement and grant procedures when it carries out activities financed in whole or in part by the general budget outside the budget lines usually dedicated to the JRC in the research funds. When participating in grant and public procurement procedures as a third party, the JRC should be exempted from the application of the provisions concerning exclusion criteria, administrative and financial penalties, economic and financial capacity and the lodging of guarantees. Moreover, it is necessary to take into account the technical-scientific services provided by the JRC to other Institutions or Commission services through internal administrative arrangements, which fall outside public procurement rules. Finally, in order to carry out these tasks effectively, that revenue stemming from the activities linked to those tasks should exceptionally be considered external assigned revenue. ⇐
-

↓ 1605/2002 recital 44 (adapted)

- (106) ~~As regards external action, decentralisation of management of external aid should be authorised provided that the Commission is given guarantees of sound financial management and the beneficiary State is accountable to the Commission for the funds paid to it.~~
-

↓ 1605/2002 recital 45 (adapted)

- (107) ~~Financing agreements or contracts signed with the beneficiary State or a national, Community or international public sector body and natural or legal persons governed by private law must include the general procurement principles laid down in Title V of part one and Title IV of part two of this Regulation as regards external actions.~~
-

↓ new

- (108) As regards the specific provisions relating to the implementation of external actions, it is necessary to take into account the changes and simplification proposed concerning the various management modes.
-

↓ new

- (109) In order to strengthen the international role of the Union in external actions and development, increase its visibility and efficiency, the Commission should be authorised to create and manage European trust funds for emergency, post-emergency or thematic actions. Although not integrated in the budget those trust funds should be managed under the financial rules laid down in this Regulation to the extent necessary for the security and transparency of the use of Union funds. For that purpose, the Commission should chair the governing board established for each trust fund to ensure the representation of donors and to decide for the use of the funds. Moreover, the accounting officer of each trust fund should be the accounting officer of the Commission.

↓ new

- (110) As regards entities entrusted under indirect management to implement external actions, the period for the conclusion of contracts and grants by these entities should be limited to three years following the signature of the delegation agreement with the Commission, unless specific exceptional and external circumstances prevail. However, that deadline should not apply to multi-annual programmes implemented under the structural funds procedures. Detailed rules for de-commitment of appropriations in the latter case should be laid down in sector-specific rules.

↓ new

- (111) With regard to specific rules on procurement applicable to external actions, it is necessary to allow third country nationals to participate in tender procedures, in the case of implementation without a basic act and where duly justified exceptional circumstances prevail.

↓ 1605/2002 recital 46

- (112) A special title should be included containing the general provisions for the management of European offices.

↓ 1995/2006 Recital 50 (adapted)

- (113) In order to facilitate management, it should be ~~made~~ possible for the institutions to delegate the powers of authorising officers to Directors of inter-institutional European Offices for the management of appropriations entered in their respective sections of the budget. ~~While their content should remain unchanged, the relevant Articles of the Financial Regulation should be slightly re-structured in order~~ ☒ For that purpose, it is appropriate ☒ to clarify the sub-delegation of authorising powers by the Directors of Offices.

↓ 1605/2002 recital 47 (adapted)

- (114) ~~A~~ ☒ It is appropriate to maintain a ☒ separate title ~~should also contain~~ ☒ containing ☒ the special rules applicable to administrative appropriations. Provision should also be made to enable each of the two branches of the budgetary authority to issue an opinion in good time on building projects likely to have significant financial implications for the budget.

↓ 1605/2002 recital 48 (adapted)

~~The change in the timetable for the consolidation of the institutions' accounts should be deferred until the financial year 2005 in order to allow the necessary time to put in place the essential internal procedures involved.~~

↓ 1995/2006 Recital 51
⇒ new

(115) The procedure under which the budgetary authority may issue an opinion on a building project should be clarified. Moreover, ⇒ in order to allow institutions to develop a long term real estate policy and profit from lower interest rates thanks to the Union favourable credit rating on the financial market, they should be authorised to raise loans outside the budget to acquire real estate assets. This would provide the possibility to address the complexity of the current system, while saving costs and introducing more transparency. ⇐

↓ 1995/2006 Recital 52 (adapted)
⇒ new

(116) Successive framework research programmes have facilitated the work of the Commission by laying down simplified rules for the selection of external experts for evaluation of proposals or grant applications and technical assistance for the follow-up and evaluation of ☒ funded ☒ projects funded. This procedure ☒ was ☒ should be made available in respect of all other programmes. Moreover, ⇒ In the light of practical experience, the scope of the special selection procedure of natural persons as experts should be clarified as their assistance is required in the evaluation of project proposals, grant applications, projects and tenders and for providing expert opinion and advice. ⇐

↓ new

(117) As regards final provisions, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty for the implementation of this Regulation.

(118) The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission²⁵.

(119) The revision of the Financial Regulation should be made only when necessary. Too frequent revisions of the FR generate disproportionate cost of adjusting administrative structures and procedures to the new rules. Furthermore, time may be too short to allow for valid conclusion to be drawn from the application of the rules in force.

↓ 1605/2002 recital 49 (adapted)

(120) A suitable framework, tailored to the specific management needs, should be provided for the financial rules to apply to bodies set up by the ☒ Union ☒ Communities and having legal personality, which receive a subsidy from the general budget of the ☒ Union ☒ European Communities. At the same time, and without in any way impairing the organic autonomy required by these bodies for the performance of their

²⁵ OJ L 184, 17.7.1999, p. 23.

tasks, the substance of the rules governing certain matters, and in particular discharge and accounting, needs to be harmonised. The Commission's internal auditor should ~~will~~ exercise the same powers over these bodies as over Commission departments. The financial rules internal to these bodies should ~~will have to~~ be adapted accordingly to be compatible with this Financial Regulation. The Commission should accordingly be empowered to draw up a model financial regulation, which Union ~~Community~~ bodies should be able to ~~can~~ depart from only with the ~~Commission's~~ agreement of the Commission.

- (121) Some modifications are necessary to identify precisely which bodies are covered by the Framework financial regulation. Furthermore a new provision should be introduced to take into account the situation of public-private partnerships for which a model financial regulation should be adopted by the Commission in order to lay out the necessary principles to ensure sound financial management.
- (122) In order to ensure continuity in the implementation of the current programmes, the provisions concerning control and audit obligations of Member States when they implement the budget indirectly under shared management should apply only to the next generation of sector-specific regulations.
-

HAVE ADOPTED THIS REGULATION:

PART ONE

COMMON PROVISIONS

TITLE I

SCOPE

Article 1

Subject matter

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

↓ 1605/2002 (adapted)

For the purposes of this Regulation, the Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Data-Protection Supervisor shall be treated as Community institutions.

Article 2

⊗ **Scope** ⊗

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

TITLE II

BUDGETARY PRINCIPLES

↓ 1995/2006 Art. 1.2 (adapted)

Article 3

⊗ **Budgetary principles** ⊗

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

↓ 1605/2002 (adapted)
→₁ Corrigendum, OJ L 099,
14.4.2007, p. 18

CHAPTER 1

PRINCIPLES OF UNITY AND OF BUDGET ACCURACY

Article 4

⊗ **Definition of the budget** ⊗

1. The budget is the instrument which, for each financial year, forecasts and authorises all revenue and expenditure considered necessary for the European Community and the European Atomic Energy Community.

2. The revenue and expenditure of the Union shall comprise:

(a) the revenue and expenditure of the European Community, including administrative expenditure occasioned for the institutions by the provisions of the Treaty on European Union relating to the common foreign and security policy and police and judicial cooperation in criminal matters, and the →₁ operational expenditure ← occasioned by implementation of those provisions where this is charged to the budget;

(b) the expenditure and revenue of the European Atomic Energy Community.

3. The budget shall record the guarantee for borrowing-and-lending operations entered into by the Union and payments to the Guarantee Fund for external actions.

Article 5

⊗ Rules governing the principles of unity and budgetary accuracy ⊗

1. Subject to Article 74, no revenue shall be collected and no expenditure effected unless booked to a line in the budget.

2. No expenditure may be committed or authorised in excess of the authorised appropriations.

3. An appropriation may not be entered in the budget if it is not for an item of expenditure considered necessary.

↓ 1995/2006 Art. 1.3
⇒ new

4. ~~Subject to Articles 5a, 18 and 74, interest yielded by the funds which are the property of the Union shall be entered in the budget as miscellaneous revenue~~ ⇒ not be due to the Union save otherwise provided for in the agreements concluded with the entrusted entities listed in Article 53(1) point (2) (b) to (h), and in grant decisions or agreements concluded with beneficiaries.

In these cases, such interest shall be re-used for the corresponding programme or recovered.
⇐

↓ 1995/2006 Art. 1.4

Article 5a

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

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

~~2. Interest shall not be due to the Communities in the following cases:~~

~~(a) pre-financing which does not represent a significant amount, as determined in the implementing rules;~~

~~(b) pre-financing paid under a procurement contract within the meaning of Article 88;~~

~~(c) pre-financing paid to Member States;~~

~~(d) pre-financing paid under the pre-accession aid;~~

~~(e) advances paid to members of the institutions and to staff in accordance with the Staff Regulations of officials of the European Communities and the Conditions of employment of other servants of the European Communities, hereinafter 'the Staff Regulations';~~

~~(f) pre-financing paid in the framework of joint management as referred to in point (e) of Article 53(1).~~

↓ 1605/2002 (adapted)
→₁ Corrigendum, OJ L 099,
14.4.2007, p. 18
→₂ 1995/2006 Art. 1.5(b)

CHAPTER 2

PRINCIPLE OF ANNUALITY

Article 6

⊗ **Definition** ⊗

The appropriations entered in the budget shall be authorised for one financial year which shall run from 1 January to 31 December.

Article 7

⊗ **Type of appropriations** ⊗

1. The budget shall contain differentiated appropriations, which shall consist of commitment appropriations and payment appropriations, and non-differentiated appropriations.
2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year, subject to Articles 77(2) and 166(2).
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.

4. Paragraphs 1 and 2 shall be without prejudice to the special provisions of Titles I, IV and VI of part two. They shall not prevent appropriations being committed globally nor budgetary commitments being made in annual instalments.

Article 8

⊗ Accounting rules for the revenue and appropriations ⊗

1. The revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year. However, the own resources for the month of January of the next financial year may be paid in advance pursuant to the Council Regulation implementing the Decision on the system of the Union' own resources.

2. The entries in respect of value added tax own resources, the additional GNP-based resource and any financial contributions may be adjusted in accordance with the Regulation referred to in paragraph 1.

3. The appropriations authorised for a given financial year may be used solely to cover expenditure committed and paid in that financial year and to cover amounts due against commitments from earlier financial years.

4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December, subject to the global commitments referred to in Article 77(2) and the agreements referred to in Article 166(2) and concluded with third countries, which shall be entered in the accounts on the basis of the budget commitments up to 31 December.

5. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year at the latest.

6. By way of derogation from paragraphs 3, 4 and 5, the expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) shall be entered in the accounts for a financial year in accordance with the rules laid down in Title I of part two.

Article 9

⊗ Cancellation and carry over of appropriations ⊗

1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled.

However, they may be carried over to the following financial year only, by a decision taken by the institution concerned by 15 February at the latest, in accordance with paragraphs 2 and 3 or be carried over automatically in accordance with paragraph 4.

→₁ 2. Differentiated commitment appropriations ← and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of:

(a) amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure have been completed by 31

December. These amounts may then be committed up to 31 March of the following year;

(b) amounts which are necessary when the legislative authority has adopted a basic act in the final quarter of the financial year and the Commission has been unable to commit the appropriations provided for this purpose by 31 December.

3. →₂ Payment appropriations ← may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements. The institution concerned shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.

4. Non-differentiated appropriations corresponding to obligations duly contracted at the close of the financial year shall be carried over automatically to the following financial year only.

5. The institution concerned shall inform the European Parliament and the Council (hereinafter ‘the budgetary authority’) by 15 March at the latest of the carry-over decision it has taken and shall state, for each budget line, how the criteria in paragraphs 2 and 3 have been applied to each carry-over.

↓ 1605/2002 (adapted)
⇒ new

6. ⇒ Without prejudice to Article 10, ⇐ ~~A~~ appropriations placed in reserve and appropriations for staff expenditure may not be carried over.

Article 10

⊗ Carry over rules for assigned revenue ⊗

Revenue not used and appropriations available at 31 December arising from the assigned revenue referred to in Article 18 shall be carried over ~~automatically. The appropriations available corresponding to assigned revenue carried over must be used first.~~ ⇒ as follows: ⇐

⇒ - external assigned revenue shall be carried over automatically and must be fully used until all the operations relating to the programme or action to which they are assigned have been carried out. External assigned revenue received during the last year of the programme or action may be used in the first year of the succeeding programme or action; ⇐

⇒ - internal assigned revenue shall be carried over for one year only, unless specified otherwise in the basic act applicable, or in duly justified exceptional circumstances. The corresponding appropriations available must be used first. ⇐

↓ 1605/2002 (adapted) → ₁ 1995/2006 Art. 1.6
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Article 11

⊗ Decommittment of appropriations ⊗

Without prejudice to →₁ Articles 157 and 160a ←, where amounts are decommitted as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were entered in the budget, the appropriations concerned shall be cancelled.

Article 12

⊗ Commitment of appropriations ⊗

The appropriations entered in the budget may be committed with effect from 1 January, once the budget has been finally adopted, save as otherwise provided in Title I and Title VI of part two.

Article 13

⊗ Rules applicable in case of late adoption of the budget ⊗

1. If the budget has not been finally adopted at the beginning of the financial year, the first paragraph of Article 273 of the EC Treaty and the first paragraph of Article 178 of the Euratom Treaty shall apply to commitment and payment of expenditure which it has been possible to book to a specific line in the budget as part of implementation of the last budget duly adopted.

2. Commitments may be made per chapter to a maximum of one quarter of the total allotted appropriations in the chapter in question of the previous financial year plus one twelfth for each month which has elapsed.

Payments may be made monthly per chapter to a maximum of one twelfth of the allotted appropriations in the chapter in question of the preceding financial year.

The limit of the appropriations provided for in the draft budget in preparation may not be exceeded.

3. If the continuity of action by the Union and management needs so require:

(a) the Council, acting by a qualified majority at the request of the Commission and after consulting the European Parliament, may simultaneously authorise two or more provisional twelfths both for commitments and for payments over and above those automatically made available by the provisions of paragraphs 1 and 2;

(b) for expenditure other than that necessarily resulting from the Treaties or acts adopted pursuant thereto, the third paragraph of Article 273 of the EC Treaty and the third paragraph of Article 178 of the Euratom Treaty shall apply.

The additional twelfths shall be authorised in full and shall not be divisible.

4. If, for a given chapter, the authorisation of two or more provisional twelfths granted in the circumstances and under the procedures provided for in paragraph 3 is not sufficient to cover the expenditure necessary to avoid a break in continuity of the Union' activity in the area covered by the chapter in question, authorisation may exceptionally be given to exceed the amount of the appropriations entered in the corresponding chapter of the budget of the preceding financial year. The budgetary authority shall act under the procedures provided for in paragraph 3. However, the available overall total of the appropriations in the budget of the preceding financial year may in no circumstances be exceeded.

CHAPTER 3

PRINCIPLE OF EQUILIBRIUM

↓ 1605/2002 (adapted)
⇒ new

Article 14

⊗ Definition and scope ⊗

1. Budget revenue and payment appropriations must be in balance.
2. ~~Without prejudice to Article 46(1)(4)~~ ⇒ Within the framework of the general budget ⇔, the European Community and the European Atomic Energy Community, as well as the bodies set up by the Union as referred to in Article 185, may not raise loans.

Article 15

⊗ Balance from financial year ⊗

1. The balance from each financial year shall be entered in the budget for the following financial year as revenue in the case of a surplus or as a payment appropriation in the case of a deficit.
2. The estimates of such revenue or payment appropriations shall be entered in the budget during the budgetary procedure and in a letter of amendment presented pursuant to Article 34. They shall be drawn up in accordance with the Council Regulation implementing the Decision on the system of the Union' own resources.
3. After the presentation of the accounts for each financial year, any discrepancy with the estimates shall be entered in the budget for the following financial year through an amending budget devoted solely to that discrepancy. In such a case, the draft amending budget must be

submitted by the Commission within 15 days following the submission of the provisional accounts.

CHAPTER 4

PRINCIPLE OF UNIT OF ACCOUNT

Article 16

⊗ Use of Euro ⊗

The budget shall be drawn up and implemented in euro and the accounts shall be presented in euro.

↓ 1995/2006 Art. 1.7
⇒ new

However, for the cash-flow purposes referred to in Article 61, the accounting officer and, in the case of imprest accounts, the imprest administrators, and, for the needs of the administrative management of the Commission's External Service, the authorising officer responsible shall be authorised to carry out operations in national currencies as laid down in the ⇒ delegated Regulation laying down the rules for implementing this Regulation referred to in Article 183, ⇐ hereinafter 'implementing rules'.

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.8(a)
⇒ new

CHAPTER 5

PRINCIPLE OF UNIVERSALITY

Article 17

⊗ Definition and scope ⊗

Total revenue shall cover total payment appropriations, subject to Article 18. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to Article 20.

Article 18

⊗ Assigned revenue ⊗

1. →₁ Without prejudice to Article 160(1a) and Article 161(2), the following items of revenue
⇒ External assigned revenue and internal assigned revenue ⇐ shall be used to finance
specific items of expenditure. ⇐

⇒ 2. The following shall constitute external assigned revenue: ⇐

(a) financial contributions from Member States to certain research programmes pursuant to the Council Regulation implementing the Decision on the system of the Union' own resources;

↓ 1995/2006 Art. 1.8(b) (adapted)
⇒ new

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

↓ 1605/2002
⇒ new

~~(bc)~~ interest on deposits and the fines provided for in the Regulation on speeding up and clarifying the implementation of the excessive deficit procedure;

~~(ed)~~ revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests, including the earmarked revenue specific to each institution;

~~(de)~~ contributions to Community activities from third countries or various bodies;

⇒ (f) assigned revenue referred to in Article 160(1) a and Article 161(2). ⇐

⇒ 3. The following shall constitute internal assigned revenue: ⇐

~~(ea)~~ revenue from third parties in respect of goods, services or work supplied at their request;

↓ 1995/2006 Art. 1.8(c)

~~(eab)~~ proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped when the book value is fully depreciated;

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.9
⇒ new

~~(fc)~~ revenue arising from the repayment of amounts wrongly paid;

(~~g~~) proceeds from the supply of goods, services and works for other departments, institutions or bodies, including refunds by other institutions or bodies of mission allowances paid on their behalf;

(~~h~~) insurance payments received;

(~~f~~) revenue from ~~payments connected with lettings~~ the sale, letting or any other contract concerning rights connected with real estate;

(~~g~~) revenue from the sale of publications and films, including those on an electronic medium.

24. The basic act applicable may also assign the revenue for which it provides to specific items of expenditure. Unless specified otherwise in the basic act applicable, such revenue shall constitute internal assigned revenue.

25. The budget shall include lines to accommodate external assigned revenue and internal assigned revenue and wherever possible shall indicate the amount.

Assigned revenue may be included in the draft budget only for the amounts which are certain at the date of the establishment of the draft budget.

Article 19

⊗ Donations ⊗

1. The Commission may accept any donation made to the Union, such as foundations, subsidies, gifts and bequests.

2. →₁ Acceptance of donations of a value of EUR 50000 or more which involve a financial charge, including follow-up costs, exceeding 10 % of the value of the donation made, shall be subject to the authorisation of the European Parliament and of the Council, both of which shall act on the matter within two months of the date of receipt of the request from the Commission. ← If no objection has been made within that period, the Commission shall take a final decision in respect of acceptance.

Article 20

⊗ Rules on deductions and exchange rates adjustments ⊗

1. The implementing rules may specify the cases where certain revenue may be deducted from ~~invoices or~~ requests for payment, which shall then be passed for payment of the net amount.

2. The cost of products or services provided to the Union incorporating taxes refunded by ~~the Member States pursuant to the Protocol on the Privileges and Immunities of the European Communities or by~~ third countries on the basis of the relevant agreements shall be charged to the budget for the ~~ex-tax~~ inclusive amount. ⇒ Subsequent reimbursement of taxes shall be treated as assigned revenue in accordance with Article 18. ←

3. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the year.

CHAPTER 6

PRINCIPLE OF SPECIFICATION

Article 21

⊗ **General provisions** ⊗

1. Appropriations shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.

⇒ 2. The Commission may, within its own section of the budget, transfer appropriations autonomously as detailed in Article 23 or shall request the budget authority's approval for the transfer of appropriations in the cases detailed in Article 24. ⇐

↓ 1605/2002 Art. 25

13. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry (p.m.).

24. Appropriations corresponding to assigned revenue may be transferred only if such revenue is used for the purpose to which it is assigned.

↓ 1995/2006 Art. 1.10 (adapted)

Article 22

⊗ **Transfers by institutions other than the Commission** ⊗

1. Any institution other than the Commission may, within its own section of the budget, transfer appropriations:

(a) from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made;

(b) from one chapter to another and from one article to another without limit.

2. Three weeks before making the transfers referred to in paragraph 1, the institutions shall inform the budgetary authority of their intentions. In the event of duly substantiated reasons being raised within this period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply.

3. Any institution other than the Commission may propose to the budgetary authority, within its own section of the budget, transfers from one title to another exceeding the limit of 10 %

of the appropriations for the financial year on the line from which the transfer is to be made. Those transfers shall be subject to the procedure laid down in Article 24.

4. Any institution other than the Commission may, within its own section of the budget, make transfers within articles without informing the budgetary authority beforehand.

↓ 1605/2002 (adapted)
⇒ new

Article 23

⊗ **Internal transfers by the Commission** ⊗

1. The Commission may, within its own section of the budget ⇒ , autonomously ⇐:

(a) transfer ⇒ commitment ⇐ appropriations ~~within articles and transfers between articles~~ within each chapter;

⇒ (b) transfer payment appropriations within each title; ⇐

↓ 1995/2006 Art. 1.11(a)
⇒ new

~~(bc)~~ as regards expenditure on staff and administration ⇒ which is common to several titles ⇐ , transfer appropriations from one title to another ~~up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made, and up to a maximum of 30 % of the appropriations for the year shown on the line to which the transfer is made;~~

↓ 1605/2002

~~(ed)~~ as regards operational expenditure, transfer appropriations between chapters within the same title, up to a maximum total of 10 % of the appropriations for the year shown on the line from which the transfer is made; ⇐

↓ 1995/2006 Art. 1.11(a)

~~(d) transfer appropriations, as soon as the basic act is adopted pursuant to the procedure laid down in Article 251 of the Treaty, from the 'provisions' title referred to in Article 43 for the cases where no basic act existed for the action concerned when the budget was established.~~

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

~~However, during the last two months of the financial year, the Commission may autonomously transfer appropriations concerning expenditure on staff, external staff and other~~

~~agents from one title to another within the total limit of 5 % of the appropriations of the financial year. The Commission shall inform the budgetary authority within two weeks after its decision on those transfers.~~

~~The Commission shall inform the budgetary authority within two weeks after its decision on transfers referred to in point (d) of the first subparagraph.~~

↓ new

2. The Commission may, within its own section of the budget, decide on the following transfer appropriations from one title to another, provided it informs immediately the budgetary authority of its decision:

(a) transfer appropriations from the "provisions" title referred to in Article 43, where the only condition to lift the reserve lies in the adoption of a basic act in accordance with the ordinary legislative procedure foreseen in Article 294 TFEU.

↓ 1995/2006 Art. 1.12(c)
(adapted)

~~3(b). In duly substantiated exceptional cases of international humanitarian disasters and crises, occurring after ~~15~~ 1 December of the budgetary year, the Commission may transfer unused budgetary appropriations for the current budgetary year still available in the budget titles falling under heading 4 of the multiannual financial framework to the budget titles concerning the crisis management aid and humanitarian aid operations. The Commission shall inform the two branches of the budgetary authority immediately after making such transfers.~~

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.11(b)

~~2. The Commission may propose to the budgetary authority, within its own section of the budget, transfers other than those referred to in ~~paragraph 1~~.~~

Article 24

⊗ Transfers by the Commission submitted to the budgetary authority ⊗

↓ 1605/2002 Article 23(2)
⇒ new

~~21. The Commission may propose to the budgetary authority, within its own section of the budget, transfers other than those referred to in ~~paragraph 1~~. It shall submit its proposal simultaneously to the European Parliament and the Council.~~

↓ 1605/2002

~~12. The budgetary authority shall take decisions on transfers of appropriations as provided for in paragraphs ~~2, 3 and 4~~ 3, 4 and 5, save as otherwise provided in Title I of part two.~~

23. In the case of proposals for transfers of appropriations relating to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council shall, after consulting the European Parliament, act by a qualified majority within six weeks, except in urgent cases. The European Parliament shall deliver its opinion within such time as will permit the Council to take note of it and to act within the stipulated time limit. Where the Council does not act within this time limit, the proposals for transfers shall be deemed to be approved.

34. In the case of proposals for transfers relating to expenditure other than that necessarily resulting from the Treaties or from acts adopted in accordance therewith, the European Parliament shall, after consulting the Council, act within six weeks, except in urgent cases. The Council shall deliver its opinion, by a qualified majority, within such time as will permit the European Parliament to take note of it and to act within the stipulated time limit. Where no decision is taken within this time limit, the proposals for transfers shall be deemed to be approved.

45. Proposals for transfers relating both to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith and to other expenditure shall be deemed to be approved if neither the European Parliament nor the Council has decided otherwise within six weeks of the date on which the two institutions received the proposals. If, in the case of such proposals for transfers, the European Parliament and the Council reduce the proposed transfer by different amounts, whichever is the smaller of the amounts accepted by one of the two institutions shall be deemed to be approved. Where one of the institutions rejects the principle of the transfer, the transfer shall not be made.

↓ 1605/2002

Article 25

~~1. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry (p.m.).~~

~~2. Appropriations corresponding to assigned revenue may be transferred only if such revenue is used for the purpose to which it is assigned.~~

↓ 1605/2002 (adapted)

Article 26

⊗ **Transfer subject to special provisions** ⊗

↓ 1995/2006 Art. 1.12(a)

1. Transfers within the titles of the budget devoted to the European Agricultural Guarantee Fund (EAGF), the Structural Funds, the Cohesion Fund, the European Fisheries Fund, the European Agricultural Fund for Rural Development (EAFRD) and Research shall be the subject of special provisions under Titles I, II and III of Part Two.

↓ 1605/2002
→₁ 1995/2006 Art. 1.12(b)
⇒ new

2. →₁ Decisions on transfers to allow the ⇒ use ⇐ utilisation of the reserve for emergency aid reserve shall be taken by the budgetary authority on a proposal from the Commission ⇒ , or by the Commission for a maximum of 10% of the appropriations for the year shown on the line from which the transfer is made ⇐ ~~A separate proposal must be submitted for each individual operation~~ ←.

↓ 1995/2006 Art. 1.12(b)
amended by Corrigendum, OJ L
048, 22.2.2008, p. 88

The procedure provided for in Article 24(~~23~~) and (~~24~~) shall apply. If the Commission proposal is not agreed to by both arms of the budgetary authority and there is a failure to arrive at a common position on the utilisation of this reserve, the European Parliament and the Council shall refrain from acting on the Commission's proposal for a transfer.

↓ 1995/2006 Art. 1.12(c)

~~3. In duly substantiated exceptional cases of international humanitarian disasters and crises, occurring after 15 December of the budgetary year, the Commission may transfer unused budgetary appropriations for the current budgetary year still available in the budget titles falling under heading 4 of the multiannual financial framework to the budget titles concerning the crisis management aid and humanitarian aid operations. The Commission shall inform the two branches of the budgetary authority immediately after making such transfers.~~

↓ 1605/2002 (adapted)

CHAPTER 7

PRINCIPLE OF SOUND FINANCIAL MANAGEMENT

Article 27

⊗ Principles of economy, efficiency and effectiveness ⊗

1. Budget appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.

2. The principle of economy requires that the resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency is concerned with the best relationship between resources employed and results achieved.

The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

↓ 1605/2002

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget. Achievement of those objectives shall be monitored by performance indicators for each activity and information shall be provided by the spending authorities to the budgetary authority. Such information, ~~as referred to in Article 33(2)(d),~~ shall be provided annually and at the latest in the documents accompanying the draft budget.

↓ 1605/2002 (adapted)

4. In order to improve decision-making, institutions shall undertake both *ex ante* and *ex post* evaluations in line with guidance provided by the Commission. Such evaluations shall be applied to all programmes and activities which entail significant spending and evaluation results disseminated to spending, legislative and budgetary authorities.

Article 28

☒ **Compulsory financial statement** ☒

↓ 1995/2006 Art. 1.13(a)

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

Any amendment to a proposal or initiative submitted to the legislative authority which may have appreciable implications for the budget, including changes in the number of posts, must be accompanied by a financial statement prepared by the institution proposing the amendment.

↓ 1605/2002

~~2. During the budgetary procedure, the Commission shall provide the necessary information for a comparison between changes in the appropriations required and the initial forecasts made in the financial statements. This information shall include progress made and the stage reached by the legislative authority in its consideration of proposals presented. The appropriations required shall, where appropriate, be revised in the light of the progress of deliberations on the basic act.~~

↓ 1995/2006 Art. 1.13(b)
⇒ new

32. In order to ~~prevent~~ ⇒ reduce ⇐ the risk of fraud and irregularities, the financial statement referred to in paragraph 1 shall ~~record any information regarding~~ ⇒ provide information on the internal control system set up, an assessment of the risk involved, as well as ⇐ existing and planned fraud prevention and protection measures.

↓ 1995/2006 Art. 1.14 (adapted)
⇒ new

Article 28a

⊗ **Internal control of budget implementation** ⊗

1. The budget shall be implemented in compliance with effective and efficient internal control as appropriate in each management mode, and in accordance with the relevant sector-specific regulations.
 2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance of achieving the following objectives:
 - (a) effectiveness, efficiency and economy of operations;
 - (b) reliability of reporting;
 - (c) safeguarding of assets and information;
 - (d) prevention, ~~and~~ detection ⇒ and correction ⇐ of fraud and irregularities;
 - (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multi-annual character of programmes as well as the nature of the payments concerned.
-

↓ new

Article 28b

Tolerable risk of error

The Legislative authority shall, in accordance with the procedure laid down in Article 322 of the Treaty on the Functioning of the European Union, decide on a level of tolerable risk of error at an appropriate aggregation of the budget. That decision shall be taken into account during the annual discharge procedure, in accordance with Article 146(2).

The level of tolerable risk of error shall be based on an analysis of the costs and benefits of controls. Member States and entities and persons referred to in Article 53 shall on request

report to the Commission on the costs of controls borne by them as well as the number and size of activities financed by the Union budget.

The level of tolerable risk of error shall be closely monitored and shall be reviewed in case of major changes in the control environment.

↓ 1605/2002 (adapted)

CHAPTER 8

PRINCIPLE OF TRANSPARENCY

Article 29

⊗ Publication of accounts, budgets and reports ⊗

1. The budget shall be established and implemented and the accounts presented in compliance with the principle of transparency.

↓ 1995/2006 Art. 1.15

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

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

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

↓ 1605/2002 (adapted)

Article 30

⊗ Publication of EU funds recipients and other information ⊗

1. Information on borrowing-and-lending operations contracted by the Union for third parties shall appear in an Annex to the budget.

2. Information on the operations of the Guarantee Fund for external actions shall appear in the financial statements.

↓ 1995/2006 Art. 1.16
⇒ new

3. The Commission shall make available, in an appropriate manner, information on the ~~beneficiaries~~ ⇒ recipients ⇐ of funds deriving from the budget held by it when the budget is

implemented on a centralised basis and directly by its departments, and information on the beneficiaries ⇒ recipients ⇐ of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.

4. This information shall be made available with due observance of the requirements of confidentiality, in particular the protection of personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data²⁶ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data²⁷, and of the requirements of security, taking into account the specificities of each management mode referred to in Article 53 and where applicable in conformity with the relevant sector-specific rules.

↓ 1605/2002 (adapted)
⇒ new

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

ESTABLISHMENT OF THE BUDGET

Article 31

⊗ Estimates of revenue and expenditure ⊗

The European Parliament, the Council, the Court of Justice of the European Union, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Data-Protection Supervisor shall draw up an estimate of their revenue and expenditure, which they shall send to the Commission before 1 July each year.

These estimates shall also be sent by these institutions to the budgetary authority for information by no later than 1 July each year. The Commission shall draw up its own estimates, which it shall also send to the budgetary authority by the same date.

In preparing its own estimates the Commission shall use the information referred to in Article 32.

²⁶ OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1)

²⁷ OJ L 8, 12.1.2001, p. 1.

Article 32

⊗ Estimated budget of the bodies referred to in Article 185 ⊗

Each body referred to in Article 185 shall, in accordance with the instrument establishing it, send to the Commission ~~⇒ and the Budgetary Authority ⇐~~ by ~~1 April~~ ⇒ 31 March ⇐ each year an estimate of its revenue and expenditure, including the establishment plan, and its ~~⇒ draft ⇐~~ work programme.

~~The Commission shall forward these documents to the budgetary authority for information, except in the case provided for in point (3)(d) of Article 46(1).~~

Article 33

⊗ Draft budget ⊗

1. The Commission shall place a ~~preliminary~~ draft budget before the Council by 1 September each year at the latest. It shall at the same time transmit the ~~preliminary~~ draft budget to the European Parliament.

The ~~preliminary~~ draft budget shall contain a summary general statement of the expenditure and revenue of the Union and consolidate the estimates referred to in Article 31.

↓ new

The draft budget shall follow the structure and presentation set out in Articles 41 to 46.

Each of the sections of the draft budget shall be preceded by an introduction drawn up by the institution concerned.

The Commission shall draw up the general introduction to the draft budget. The general introduction shall comprise financial tables covering the main data by titles and justifications for the changes in the appropriations from one financial year to the next by categories of expenditure of the multi-annual financial framework.

2. Where relevant, the Commission shall attach to the draft budget a financial programming for the following years.

The financial programming shall be updated after the adoption of the budget, to incorporate the results of the budgetary procedure and any other relevant decisions.

↓ 1605/2002

⇒ new

23. The Commission shall ⇒ also ⇐ attach to the ~~preliminary~~ draft budget ⇒ any working paper it considers useful to support its budget requests ⇐ .

~~(a) an analysis of financial management in the previous year and the commitments outstanding;~~

~~(b) where appropriate, an opinion on the estimates of the other institutions which may contain different estimates, accompanied by the reasons therefor;~~

~~(c) any working paper it considers useful in connection with the establishment plans of the institutions and the grants which the Commission awards to the bodies referred to in Article 185 and to the European Schools;~~

↓ 1995/2006 Art. 1.17(a)

~~(d) the activity statements containing the following:~~

~~– information on the achievement of all previously set specific, measurable, achievable, relevant and timed objectives for the various activities as well as new objectives measured by indicators;~~

~~– full justification and cost-benefit approach for proposed changes in the level of appropriations;~~

~~– clear rationale for intervention at the EU level in keeping, inter alia, with the principle of subsidiarity;~~

~~– information on the implementation rates of the previous year's activity and implementation rates for the current year.~~

~~Evaluation results shall be consulted and referred to as evidence of the likely merits of proposed budget changes;~~

↓ 1995/2006 Art. 1.17(b)

~~(e) a summary statement of the schedule of payments due in subsequent financial years to meet budgetary commitments entered into in earlier financial years;~~

↓ 1605/2002 (adapted)

Article 34

⊗ Letter of amendment to the draft budget ⊗

1. The Commission may, on its own initiative or if requested by the other institutions, each in respect of its own section, present to the Council a letter of amendment to the ~~preliminary~~ draft budget on the basis of new information which was not available at the time the ~~preliminary~~ draft was established.

2. However, save as otherwise agreed by the institutions or in exceptional circumstances, the Commission shall put such letter of amendment to the Council at least 30 days before the ~~first~~ reading of the draft budget by the European Parliament. The Council must put the letter of amendment to the European Parliament at least 15 days before the said first reading.

Article 35

⊗ Establishment of the draft budget ⊗

1. The Council shall establish the draft budget in accordance with the procedure laid down in Article 314(3) of the Treaty on the Functioning of the European Union and Article 177(3) of the Euratom Treaty.
2. The Council shall place the draft budget before the European Parliament by 5 October of the year preceding that of implementation of the budget at the latest. The Council shall attach to that draft budget an explanatory memorandum defining its reasons for departing from the ~~preliminary~~ draft budget.

Article 36

⊗ Adoption of the budget ⊗

1. The President of the European Parliament shall declare the budget finally adopted in accordance with the procedure provided for in Article 314(9) of the Treaty on the Functioning of the European Union and Article 177(7) of the Euratom Treaty.
2. Once the budget has been declared finally adopted, each Member State shall, from 1 January of the following financial year or from the date of the declaration of final adoption of the budget if that is after 1 January, be bound to make over to the Community the payments due as specified in the Council Regulation implementing the Decision on the system of the Union's own resources.

Article 37

⊗ Draft amending budgets ⊗

1. If there are unavoidable, exceptional or unforeseen circumstances, the Commission may present ~~preliminary~~ draft amending budgets.

Requests for amending budgets, in the same circumstances as referred to in the preceding paragraph, from institutions other than the Commission shall be sent to the Commission.

↓ 1995/2006 Art. 1.18 (adapted)

Before presenting a ~~preliminary~~ draft amending budget, the Commission and institutions other than the Commission shall examine the scope for reallocation of the relevant appropriations, taking into account any expected under-implementation of appropriations.

↓ 1605/2002 (adapted)

2. The Commission shall, save in exceptional circumstances, submit any ~~preliminary~~ draft amending budget to the Council by 1 September each year at the latest. It may attach an opinion to the requests for amending budgets from the other institutions.
3. The budgetary authority shall discuss them with due account for their urgency.

Article 38

1. Where the Council receives a ~~preliminary~~ draft amending budget, it shall draw up a draft amending budget in accordance with Articles 35 and 37.
2. Except for the timetable, Articles 35 and 36 shall apply to amending budgets. They must be substantiated by reference to the budget whose estimates they are amending.

Article 39

⊗ Early transmission of estimates and draft budgets ⊗

The Commission and the budgetary authority may agree to bring forward certain dates for the transmission of the estimates, and for the adoption and transmission of the ~~preliminary draft and~~ draft budgets. This arrangement may not, however, have the effect of shortening or prolonging the periods allowed for consideration of these texts under 314 of the Treaty on the Functioning of the European Union and Article 177 of the Euratom Treaty.

CHAPTER 2

STRUCTURE AND PRESENTATION OF THE BUDGET

Article 40

⊗ Structure of the budget ⊗

The budget shall consist of:

↓ 1995/2006 Art. 1.19

(a) a general statement of revenue and expenditure;

↓ 1605/2002 (adapted) → ₁ Corrigendum, OJ L 099, 14.4.2007, p. 18
--

(b) separate sections subdivided into statements of revenue and expenditure for each institution.

Article 41

⊗ Classification of the budget ⊗

1. Commission revenue and the revenue and expenditure of the other institutions shall be classified by the budgetary authority according to their type or the use to which they are assigned under titles, chapters, articles and items.

2. The statement of expenditure for the Commission section shall be set out on the basis of a nomenclature adopted by the budgetary authority and classified according to purpose.

A title shall correspond to a policy area and a chapter shall, as a rule, correspond to an activity.

Each title may include →₁ operational appropriations ← and administrative appropriations.

The administrative appropriations for a title shall be grouped in a single chapter.

Article 42

⊗ **Prohibition of negative revenue** ⊗

The budget may not contain negative revenue.

The own resources paid under the Council Decision on the system of the Union' own resources shall be net amounts and shall be shown as such in the summary statement of revenue in the budget.

Article 43

⊗ **Provisions** ⊗

1. Each section of the budget may include a 'provisions' title. Appropriations shall be entered in this title in the following two circumstances:

- (a) where no basic act exists for the action concerned when the budget is established;
- (b) where there are serious grounds for doubting the adequacy of the appropriations or the possibility of implementing, under conditions consonant with sound financial management, the appropriations entered on the lines concerned.

↓ 1995/2006 Art. 1.20

The appropriations in this title may be used only after transfer in accordance with the procedure laid down in Article 23(1)(d), where the adoption of the basic act is subject to the procedure laid down in Article 294 of the Treaty on the Functioning of the European Union, and that of Article 24, for all other cases.

↓ 1605/2002 (adapted)
→₁ Corrigendum, OJ L 099,
14.4.2007, p. 18
→₂ 1995/2006 Art. 1.21

2. In the event of serious implementation difficulties, the Commission may propose, in the course of a financial year, that appropriations be transferred to the 'provisions' title. The budgetary authority shall take a decision on these transfers as provided in Article 24.

Article 44

⊗ Negative reserve ⊗

The Commission section of the budget may include a 'negative reserve' limited to a maximum amount of EUR 200 million. This reserve, which shall be →₁ entered in a separate title ←, may comprise both commitment appropriations and payment appropriations.

This reserve must be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in →₂ Articles 23 and 25 ←.

↓ 1995/2006 Art. 1.22 (adapted)

Article 45

⊗ Reserve for emergency aid ⊗

1. The Commission section of the budget shall include a reserve for emergency aid for third countries.

2. The reserve referred to in paragraph 1 shall be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 24 and 26.

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.23(a)

Article 46

⊗ Presentation of the budget ⊗

1. The budget shall show:

(1)→₁ in the general statement of revenue and expenditure: ←

- (a) the estimated revenue of the Union for the financial year in question;
 - (b) the estimated revenue for the preceding financial year and the revenue for year $n - 2$;
 - (c) the commitment and payment appropriations for the financial year in question;
 - (d) the commitment and payment appropriations for the preceding financial year;
 - (e) the expenditure committed and the expenditure paid in year $n - 2$,
-

↓ 1995/2006 Art. 1.23(a)

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

↓ 1995/2006 Art. 1.23(b)

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

↓ 1605/2002

(3) as regards staff:

(a) for each section of the budget, an establishment plan setting the number of posts for each grade in each category and in each service and the number of permanent and temporary posts authorised within the limits of the budget appropriations;

(b) an establishment plan for staff paid from the research and technological development appropriations for direct action and an establishment plan for staff paid from the same appropriations for indirect action; the establishment plans shall be classified by category and grade and shall distinguish between permanent and temporary posts, authorised within the limits of the budget appropriations;

↓ 1995/2006 Art. 1.23(c)

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

↓ 1605/2002

(d) an establishment plan setting the number of posts by grade and by category for each body referred to in Article 185 which receives a grant charged to the budget. The establishment plans shall show next to the number of posts authorised for the financial year the number authorised for the preceding year;

(4) as regards borrowing-and-lending operations:

(a) in the general statement of revenue, the budget lines corresponding to the relevant operations and intended to record any reimbursements received from beneficiaries who initially defaulted, leading to activation of the performance guarantee. These lines shall carry a token entry (p.m.) and be accompanied by appropriate remarks;

(b) in the Commission section:

(i) the budget lines containing the Union' performance guarantees in respect of the operations in question. These lines shall carry a token entry (p.m.), so long as no effective charge which has to be covered by definitive resources has arisen;

(ii) remarks giving the reference to the basic act and the volume of the operations envisaged, the duration and the financial guarantee given by the Union in respect of these operations;

(c) in a document annexed to the Commission section, as an indication:

(i) ongoing capital operations and debt management;

(ii) the capital operations and debt management for the financial year in question;

↓ 1995/2006 Art. 1.23(d)

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

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.24

2. In addition to the documents referred to in paragraph 1 the budgetary authority may attach any other relevant documents to the budget.

Article 47

⊗ Rules on the Establishment Plan for staff ⊗

1. The establishment plan described in point 3 of Article 46(1) shall constitute an absolute limit for each institution or body; no appointment may be made in excess of the limit set.

However, save in the case of →₁ grades AD 16, AD 15 and AD 14 ←, each institution or body may modify establishment plans by up to 10 % of posts authorised, subject to two conditions:

(a) that the volume of staff appropriations corresponding to a full financial year is not affected, and

(b) that the limit of the total number of posts authorised by each establishment plan is not exceeded.

Three weeks before making the modifications referred to in the second subparagraph, the institutions shall inform the budgetary authority of their intentions. In the event of duly justified reasons being raised within this period by either branch of the budgetary authority, the institutions shall refrain from making the modifications and the normal procedure shall apply.

2. By way of derogation from the first subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments.

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1

GENERAL PROVISIONS

↓ 1605/2002 (adapted)

Article 48

⊗ Budget implementation according to sound financial management ⊗

1. The Commission shall implement the revenue and expenditure of the budget in accordance with this Regulation, on its own responsibility and within the limits of the appropriations authorised.
 2. The Member States shall cooperate with the Commission so that the appropriations are used in accordance with the principle of sound financial management.
-

↓ 1995/2006 Art. 1.25 (adapted)

Article 49

⊗ Basic act and exceptions ⊗

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

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

2. In application of the Treaty on the Functioning of the European Union and the Euratom Treaty, a basic act is an act adopted by the legislative authority and may take the form of a regulation, a directive, a decision within the meaning of Article 288 of the Treaty on the Functioning of the European Union or a decision *sui generis*.

3. In application of Title V of the Treaty on European Union (concerning Common Foreign and Security Policy — CFSP), a basic act may take one of the forms specified in Articles 13(2) and (3), 14, 18(5), 23(1) and (2) and 24 of the Treaty on European Union.

4. In application of Title VI of the Treaty on European Union (concerning Police and Judicial Cooperation in Criminal Matters), a basic act may take one of the forms referred to in Article 34(2) of the Treaty on European Union.

5. Recommendations and opinions do not constitute basic acts within the meaning of this Article, nor do resolutions, conclusions, declarations or other acts which have no legal effects.

6. By way of derogation from paragraphs 1 to 4, the following may be implemented without a basic act provided the actions which they are intended to finance fall within the powers of the Union or the European Union:

(a) appropriations for pilot projects of an experimental nature designed to test the feasibility of an action and its usefulness. The relevant commitment appropriations may be entered in the budget for not more than two successive financial years;

(b) appropriations for preparatory actions in the fields of application of the Treaty on the Functioning of the European Union and the Euratom Treaty and of Title VI of the TEU, designed to prepare proposals with a view to the adoption of future actions. The preparatory actions are to follow a coherent approach and may take various forms. The relevant commitment appropriations may be entered in the budget for not more than three successive financial years. The legislative procedure must be concluded before the end of the third financial year. In the course of the legislative procedure, the commitment of appropriations must correspond to the particular features of the preparatory action as regards the activities envisaged, the aims pursued and the persons benefited. Consequently, the means implemented cannot correspond in volume to those envisaged for financing the definitive action itself.

When the draft budget is presented, the Commission shall submit a report to the budgetary authority on the actions referred to in points (a) and (b) which shall also contain an assessment of results and the follow-up envisaged;

(c) appropriations for preparatory measures in the field of Title V of the Treaty on European Union (concerning CFSP). These measures shall be limited to a short period of time and shall be designed to establish the conditions for European Union action in fulfilment of the objectives of the CFSP and for the adoption of the necessary legal instruments.

For the purpose of EU crisis management operations, preparatory measures are designed *inter alia* to assess the operational requirements, to provide for a rapid initial deployment of resources, or to establish the conditions on the ground for the launching of the operation.

Preparatory measures shall be agreed by the Council, in full association with the Commission. To this end, the Presidency, assisted by the Secretary-General of the Council/High Representative for the CFSP, shall inform the Commission as early as possible of the Council's intention to launch a preparatory measure and in particular of the estimated resources required for this purpose. In conformity with the provisions of this Regulation, the Commission shall take all the necessary measures to ensure a rapid disbursement of the funds;

(d) appropriations for one-off actions, or even actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level pursuant to the Treaty on the Functioning of the European Union and the Euratom Treaty other than its right of legislative initiative referred to in

point (b) and under specific powers directly conferred on it by those Treaties, a list of which is given in the implementing rules;

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

↓ 1605/2002 (adapted)

Article 50

⊗ **Implementation of the budget by other Institutions** ⊗

The Commission shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them.

↓ 1995/2006 Art. 1.26 (adapted)

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

↓ 1605/2002 (adapted)

Article 51

⊗ **Delegation of budget implementation powers** ⊗

The Commission and each of the other institutions may, within their departments, delegate their powers of budget implementation in accordance with the conditions laid down by this Regulation and by their internal rules and within the limits which they lay down in the instrument of delegation. Those so empowered may act only within the limits of the powers expressly conferred upon them.

↓ 1995/2006 Art. 1.27 (adapted)

Article 52

⊗ **Conflict of interests** ⊗

1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Union. Should such a case arise, the person in question must refrain from such actions and refer the matter to the competent authority.

2. There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.

CHAPTER 2

METHODS OF IMPLEMENTATION

Article 53

⊠ Management modes of the general budget ⊠

1. The Commission shall implement the budget ~~in accordance with the provisions set out in Articles 53a to 53d~~ in any of the following ways:

~~(a1) on a centralised basis~~ ⇒ by its departments, or through executive agencies referred to in Article 55 ⇐;

~~(b2) by shared or decentralised management;~~ ⇒ indirectly, in shared management with Member States or by entrusting budget implementation tasks to: ⇐

(a) third countries or the bodies they have designated;

(b) international organisations and their agencies;

(c) financial institutions entrusted with the implementation of Financial Instruments pursuant to Title VIb;

(d) the European Investment Bank and the European Investment Fund or any other subsidiary of the Bank;

(e) bodies referred to in Articles 185 and 185a;

(f) public law bodies or bodies governed by private law with a public service mission as far as these latter provide adequate financial guarantees;

(g) bodies governed by private law of a Member State, entrusted with the implementation of a public and private partnership and providing adequate financial guarantees;

(h) persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on the European Union, and identified in the relevant basic act within the meaning of Article 49 of this Regulation.

2. Member States and entities and persons listed under point (2) of paragraph 1 shall not have the status of authorising officer by delegation.

3. The Commission may not entrust third parties with executive powers it enjoys under the Treaties where they involve a large measure of discretion implying political choices.

↓ 1995/2006 Art. 1.28

~~(e) by joint management with international organisations.~~

↓ 1995/2006 Art. 1.29 (adapted)

Article 53a

⊗ Shared management with Member States ⊗

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

↓ new

1. Member States shall respect the principles of sound financial management, transparency and non-discrimination and ensure the visibility of Union action when they manage Union funds. To this end, Member States shall fulfil the control and audit obligations and assume the resulting responsibilities laid down in this Regulation. Complementary provisions may be laid down in sector-specific rules.

↓ new

2. Member States shall prevent, detect and correct irregularities and fraud when executing tasks related to the implementation of the Union budget. To this end they shall carry out ex ante and ex post controls including, where appropriate, on the spot checks, to ensure that the actions financed from the budget are effectively carried out and implemented correctly, recover funds unduly paid and bring legal proceedings as necessary.

Member States shall impose effective, dissuasive and proportionate penalties on recipients as provided for in sector-specific rules and in national legislation.

3. In accordance with the sector-specific rules, Member States shall accredit one or more public sector bodies which shall be solely responsible for the proper management and control of the funds, for which accreditation has been granted. This shall be without prejudice to the possibility for these bodies to carry out tasks not related to the management of Union funds or to entrust certain of their tasks to other bodies.

The accreditation shall be given by a Member State authority in accordance with sector-specific rules ensuring that the body is capable of properly managing the funds. The sector-specific rules may also define a role of the Commission in the accreditation process.

The accrediting authority shall be responsible for supervising the body and for taking all necessary measures to remedy any deficiency in its operation, including the suspension and withdrawal of the accreditation.

4. Bodies accredited pursuant to paragraph 3 of this Article shall:

(a) set up and ensure the functioning of an effective and efficient internal control system;

(b) use an annual accounting system providing accurate, complete and reliable information in a timely manner;

(c) be subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit service functionally independent of the accredited body;

(d) ensure, in conformity with Article 30(3), annual ex post publication of recipients of Union funds;

(f) ensure a protection of personal data which satisfies the principles laid down in Directive 95/46/EC.

5. Bodies accredited pursuant to paragraph 3 of this Article shall provide the Commission by 1 February of the following financial year with:

(a) their accounts drawn up for the expenditure made in the execution of the tasks entrusted;

(b) a summary of the results of all available audits and controls carried out, including an analysis of systematic or recurrent weaknesses as well as corrective actions taken or planned;

(c) a management declaration of assurance as to the completeness, accuracy and veracity of the accounts, the proper functioning of the internal control systems as well as to the legality and regularity of the underlying transactions and the respect of the principle of sound financial management;

(d) the opinion of an independent audit body on the management declaration of assurance mentioned in point (c) of this paragraph, covering all its elements.

If a Member State has accredited more than one body per policy area, it shall by 15 February of the following financial year provide the Commission with a synthesis report consisting of an overview at national level of all management declarations of assurance and the independent audit opinions thereon, prepared for the policy area concerned.

6. The Commission shall:

(a) apply procedures for a timely financial clearance of the accounts of the accredited bodies, ensuring that the accounts are complete, accurate and true and allowing for a timely clearance of irregularity cases;

(b) exclude from Union financing expenditure the disbursements which have been made in breach of Union law.

Sector-specific rules shall govern the conditions under which payments to Member States may be suspended by the Commission or interrupted by the authorising officer by delegation.

↓ 1995/2006 Art. 1.29 (adapted)

Article 53b

⊗ Indirect management with entities and persons other than Member States ⊗

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

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

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

~~(b) prevent and deal with irregularities and fraud;~~

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

~~(d) ensure, by means of relevant sector-specific regulations and in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.~~

~~To that effect, the Member States shall conduct checks and shall put in place an effective and efficient internal control system, according to the provisions laid down in Article 28a. They shall bring legal proceedings as necessary and appropriate.~~

~~3. Member States shall produce an annual summary at the appropriate national level of the available audits and declarations.~~

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

↓ new

1. Entities and persons entrusted with budget implementation tasks pursuant to Article 53(1) point (2) (a) to (h) shall respect the principles of sound financial management, transparency and non-discrimination and ensure the visibility of Union action when they manage Union funds. They shall guarantee a level of protection of the financial interests of the Union equivalent to that required under this Regulation when they manage Union funds, with due consideration to:

- the nature of the tasks entrusted and the amounts involved;
- the financial risks involved;
- the level of assurance stemming from their systems, rules and procedures together with the measures taken by the Commission to supervise and support the implementation of the tasks entrusted.

2. To this effect, the entities and persons referred to in paragraph 1 shall:

- (a) set up and ensure the functioning of an effective and efficient internal control system;
- (b) use an annual accounting system providing accurate, complete and reliable information in a timely manner;
- (c) be subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit service functionally independent of the entity or person concerned;
- (d) apply appropriate rules and procedures for providing financing from Union funds through grants, procurement and financial instruments;
- (e) ensure, in conformity with Article 30(3), annual ex post publication of recipients of Union funds ;
- (f) ensure a reasonable protection of personal data.

Persons referred to in Article 53(1) point (2)(h) may satisfy these requirements progressively. They shall adopt their financial rules with the Commission's prior consent.

3. The entities and persons referred to in paragraph 1 shall prevent, detect and correct irregularities and fraud when executing tasks related to the implementation of the Union budget. To this end they shall carry out ex ante and ex post controls including, where appropriate, on the spot checks, to ensure that the actions financed from the budget are effectively carried out and implemented correctly, recover funds unduly paid and bring legal proceedings as necessary.

4. The Commission may suspend payments to entities and persons referred to in paragraph 1, in particular when systemic errors which question the reliability of the internal control systems of the entity or person concerned or the legality and regularity of the underlying transactions are detected.

The authorising officer by delegation may interrupt payments to such entities or persons fully or partially for the purpose of further verifications when information comes to his notice indicating a significant deficiency in the functioning of the internal control system or that the expenditure certified by the entity or person concerned is linked to a serious irregularity and has not been corrected, provided the interruption is necessary to prevent significant damage to the financial interests of the Union.

5. The entities and persons referred to in paragraph 1 shall provide the Commission with:

- (a) a report on the implementation of the tasks entrusted;

(b) their accounts drawn up for the expenditure made in the execution of the tasks entrusted;

(c) a summary of the results of all available audits and controls carried out, including an analysis of systematic or recurrent weaknesses as well as corrective actions taken or planned;

(d) a management declaration of assurance as to the completeness, accuracy and veracity of the accounts, the proper functioning of the internal control systems as well as to the legality and regularity of the underlying transactions and the respect of the principle of sound financial management;

(e) the opinion of an independent audit body on the management declaration of assurance mentioned in point (d) of this paragraph, covering all its elements.

These elements shall be provided to the Commission by 1 February of the following financial year with the exception of the audit opinion referred to in point e). The latter shall be provided at the latest by 15 March.

These obligations shall be without prejudice to the provisions made in agreements concluded with international organisations and third countries. These provisions shall include at least the obligation of such entities to provide the Commission annually with a statement that, during the financial year concerned, the Union contribution has been used and accounted for in compliance with the requirements set out in paragraph 2 of this Article and the obligations laid down in the agreement concluded with the relevant international organisations or third country.

6. The Commission shall:

(a) ensure supervision and evaluation of the implementation of the tasks entrusted;

(b) apply procedures for a timely financial clearance of the accounts of the entrusted entities and persons, ensuring that the accounts are complete, accurate and true and allowing for a timely clearance of irregularity cases;

(c) exclude from Union financing expenditure the disbursements which have been made in breach of the applicable rules.

7. Paragraphs 5 and 6 of this Article shall not apply to entities and persons which are subject to a separate procedure of discharge from the Budget Authority.

↓ 1995/2006 Art. 1.29 (adapted)

Article 53c

⊗ Ex ante controls and agreements under indirect management ⊗

~~1. Where the Commission implements the budget by decentralised management, implementation tasks shall be delegated to third countries in accordance with Article 56 and Title IV of Part Two, without prejudice to delegation of residual tasks to bodies referred to in Article 54(2).~~

~~2. In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance of accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.~~

~~3. Third countries to which implementation tasks are delegated shall ensure, in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.~~

↓ new

1. Before the Commission entrusts tasks of budget implementation to entities or persons listed under Article 53(1) point (2) (a) to (h), it shall obtain evidence that the requirements of Article 53b(2)(a) to (d) are fulfilled.

The entity or person concerned shall inform the Commission without delay of any substantial change in its systems, rules and procedures that relate to the management of the Union funds entrusted. Where such a change occurs, the Commission shall review the agreements concluded with the entity or person concerned in order to ensure continued compliance with the conditions set out in Article 53b(2)(a) to (d).

2. When choosing an entity from within a category listed in Article 53(1) point (2)(b), (c), (f) and (g) the Commission shall take due account of the nature of the tasks to be entrusted as well as the experience and the operational and financial capacity of the entities concerned. The choice shall be justified on objective grounds and may not give rise to a conflict of interest.

3. Agreements concluded under indirect management shall stipulate the requirements laid down in Article 53b(2)(a) to (d). They shall clearly define the tasks entrusted and contain an undertaking of the entities or persons concerned to fulfil the obligations laid down in Article 53b(2)(e) and (f), and to refrain from any act which may give rise to a conflict of interests.

↓ 1995/2006 Art. 1.29

~~Article 53d~~

~~1. Where the Commission implements the budget by joint management, certain implementation tasks shall be delegated to international organisations, in accordance with the implementing rules, in the following cases:~~

~~(a) wherever the Commission and the international organisation are bound by a long-term framework agreement laying down the administrative and financial arrangements for their cooperation;~~

~~(b) wherever the Commission and the international organisation elaborate a joint project or programme;~~

~~(c) where the funds of several donors are pooled and are not earmarked for specific items or categories of expenditure, that is to say, in the case of multi-donor actions.~~

~~These organisations shall, in their accounting, audit, internal control and procurement procedures, apply standards which offer guarantees equivalent to internationally accepted standards.~~

~~2. Individual agreements concluded with international organisations for the award of financing shall contain detailed provisions for the implementation of the tasks entrusted to such international organisations.~~

~~3. International organisations to which implementation tasks are delegated shall ensure, in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.~~

↓ 1605/2002

~~Article 54~~

↓ 1995/2006 Art. 1.30(a)

~~1. The Commission may not delegate to third parties the executive powers it enjoys under the Treaties where they involve a large measure of discretion implying political choices. The implementing tasks delegated must be clearly defined and fully supervised as to the use made of them.~~

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

↓ 1605/2002
→₁ 1995/2006 Art. 1.30(b)

~~2. →₁ Within the limits laid down in paragraph 1, the Commission may, when implementing the budget by indirect centralised management or by decentralised management under Articles 53a or 53c, delegate tasks of public authority and in particular budget implementation tasks to: ←~~

~~(a) agencies governed by Community law, referred to in Article 55, hereinafter: 'executive agencies';~~

↓ 1995/2006 Art. 1.30(b)

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

↓ 1995/2006 Art. 1.30(b)

~~(e) national or international public sector bodies or bodies governed by private law with a public service mission providing adequate financial guarantees and complying with the conditions provided for in the implementing rules;~~

↓ 1995/2006 Art. 1.30(b)

~~(d) persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union, and identified in the relevant basic act within the meaning of Article 49 of this Regulation.~~

↓ 1605/2002

~~3. Where the bodies referred to in paragraph 2 perform implementation tasks, they shall conduct regular checks to ensure that the actions to be financed from the budget have been implemented correctly.~~

↓ 1995/2006 Art. 1.30(c)

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

↓ 1995/2006 Art. 1.31 (adapted)
⇒ new

Article 55

⊠ Executive agencies ⊠

1. The executive agencies shall be legal persons under Community law created by Commission Decision to which powers may be delegated to implement all or part of a Community programme or project on behalf of the Commission and under its responsibility in accordance with Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes²⁸.

2. Implementation of the corresponding operational appropriations shall be carried out by the director of the agency ⇒ in direct management ⇐.

²⁸ OJ L 11, 16.1.2003, p. 1.

~~Article 56~~

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

~~(a) transparent procurement and grant award procedures which are non-discriminatory and exclude any conflict of interest and which are in accordance with the provisions of Titles V and VI respectively;~~

~~(b) an effective and efficient internal control system for the management of operations, which includes effective segregation of the duties of authorising officer and accounting officer or of the equivalent functions;~~

~~(c) an accounting system that enables the correct use of Community funds to be verified and the use of funds to be reflected in Community accounts;~~

~~(d) an independent external audit;~~

~~(e) public access to information at the level provided for in Community Regulations;~~

~~(f) adequate annual *ex post* publication of beneficiaries of funds deriving from the budget in conformity with Article 30(3).~~

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

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

~~Notwithstanding paragraph (1)(a) and Article 169a, the Commission may decide:~~

~~in the case of pooling of funds, and~~

~~under the conditions provided in the basic act,~~

~~to use the procurement or grant procedures of the beneficiary partner country or as agreed among donors.~~

~~Before taking such a decision, the Commission shall first obtain evidence on a case-by-case basis that such procedures satisfy the principles of transparency, equal treatment and non-discrimination, prevent any conflict of interest, offer guarantees equivalent to internationally accepted standards and ensure compliance with the provisions of sound financial management which requires effective and efficient internal control.~~

~~The third country, national or international public sector bodies concerned shall undertake to fulfil the following obligations:~~

~~(a) to comply, subject to the first subparagraph of this paragraph, with the criteria laid down in paragraph 1;~~

~~(b) to ensure that the audit referred to in point (d) of paragraph 1 is exercised by a national institution for independent external auditing;~~

~~(c) to conduct regular checks to ensure that the actions to be financed from the budget have been implemented correctly;~~

~~(d) to take appropriate measures to prevent irregularities and fraud and, if necessary, to bring legal proceedings to recover funds wrongly paid.~~

~~3. The Commission shall ensure supervision, evaluation and control of the implementation of the tasks entrusted. It shall take the equivalence of control systems into account when it carries out controls using its own control systems.~~

↓ 1605/2002 (adapted)

Article 57

⊗ Limits to delegation of powers ⊗

↓ 1995/2006 Art. 1.32 (adapted)

1. The Commission may not entrust measures of implementation of funds deriving from the budget, including payment and recovery, to external private-sector entities or bodies, except in the case referred to in Article ~~54(2)(e)~~ ⊗ 53(1) point (2)(f) and (g), ⊗ or in specific cases where the payments involved are to be made to beneficiaries determined by the Commission, are subject to conditions and amounts fixed by the Commission and do not involve the exercise of discretion by the entity or body making the payments.

↓ 1605/2002 (adapted)

2. The tasks which may be entrusted by contract to external private-sector entities or bodies other than those which have a public-service mission are technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgment.

CHAPTER 3

FINANCIAL ACTORS

SECTION 1

PRINCIPLE OF SEGREGATION OF DUTIES

Article 58

⊠ Segregation of duties ⊠

The duties of authorising officer and accounting officer shall be segregated and mutually incompatible.

SECTION 2

AUTHORISING OFFICER

Article 59

⊠ The authorising officer ⊠

1. The institution shall perform the duties of authorising officer.

↓ 1995/2006 Art. 1.33(a)

1a. For the purposes of this Title, the term ‘staff’ refers to persons covered by the Staff Regulations.

↓ 1995/2006 Art. 1.33(b)

2. Each institution shall lay down in its internal administrative rules the staff of an appropriate level to whom it delegates in compliance with the conditions in its rules of procedure the duties of the authorising officer, the scope of the powers delegated and the possibility for the persons to whom these powers are delegated to subdelegate them.

↓ 1995/2006 Art. 1.33(c)

3. The powers of authorising officer shall be delegated or subdelegated only to staff.

↓ 1605/2002 (adapted)

4. Authorising officers by delegation or subdelegation may act only within the limits set by the instrument of delegation or subdelegation. The responsible authorising officer by delegation or subdelegation may be assisted in his/her task by one or more members of staff entrusted, under his/her responsibility, to carry out certain operations necessary for implementation of the budget and presentation of the accounts.

Article 60

⊗ Powers and duties of the authorising officer ⊗

1. The authorising officer shall be responsible in each institution for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with.

↓ 1605/2002 Art. 60(4) (adapted)
⇒ new

42. ⊗ For the purposes of paragraph 1 of this Article ⊗ ~~the~~ authorising officer by delegation shall put in place, in ⇒ accordance ⇐ compliance with ⇒ Article 28a and ⇐ the minimum standards adopted by each institution and having due regard to the risks associated with the management environment and the nature of the actions financed, the organisational structure and the internal ~~management and control procedures~~ ⊗ systems ⊗ suited to the performance of his/her duties ⇒ ;the establishment of such structure and systems shall be supported by a comprehensive risk analysis, ⇐ including where appropriate *ex post* verifications. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. The initiation and the *ex ante* and *ex post* verification of an operation shall be separate functions.

↓ 1605/2002

2. To implement expenditure, the authorising officer by delegation and by subdelegation shall make budgetary commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminaries for the implementation of appropriations.

3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.

~~4. The authorising officer by delegation shall put in place, in compliance with the minimum standards adopted by each institution and having due regard to the risks associated with the management environment and the nature of the actions financed, the organisational structure and the internal management and control procedures suited to the performance of his/her duties, including where appropriate *ex post* verifications. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. The initiation and the *ex ante* and *ex post* verification of an operation shall be separate functions.~~

↓ new

4. Each operation shall be subject at least to an ex ante control based on a desk review of documents and on the available results of controls already carried out, relating to the operational and financial aspects of the operation.

Ex ante controls shall comprise the initiation and the verification of an operation.

For a given transaction, members of staff who carry out the verification shall be other than, and not subordinate to, those who initiated the operation.

5. The authorising officer by delegation may put in place ex post controls to verify operations already approved following ex ante controls. Such controls may be organised on a sample basis according to risk.

The ex ante controls shall be carried by the members of staff other than those responsible for the ex post controls. The members of staff responsible for the ex post controls shall not be subordinate to the members of staff responsible for the ex ante controls.

↓ 1605/2002

56. All staff responsible for controlling the management of financial operations must have the necessary professional skills. They shall respect a specific code of professional standards established by each institution.

67. Any member of staff involved in the financial management and control of transactions who considers that a decision he/she is required by his/her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he/she is required to observe shall inform the authorising officer by delegation in writing and, if the latter fails to take action, the panel referred to in Article 66(4). In the event of any illegal activity, fraud or corruption which may harm the interests of the Community, he/she shall inform the authorities and bodies designated by the applicable legislation.

↓ 1995/2006 Art. 1.34

⇒ new

78. The authorising officer by delegation shall report to his institution on the performance of his duties in the form of an annual activity report ~~together with financial and management information confirming that~~ ⇒ , containing financial and management information, including the results of controls, declaring that, ⇐ ~~the information contained in the report presents a true and fair view~~ except as otherwise specified in any reservations related to defined areas of revenue and expenditure ⇒ , he has reasonable assurance that ⇐.

(a) the information contained in the report presents a true and fair view;

↓ new

b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;

c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

↓ 1995/2006 Art. 1.34

That report shall indicate the results of the operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. ~~The internal auditor shall take note of the annual report and any other pieces of information identified.~~ No later than 15 June each year, the Commission shall send to the budgetary authority a summary of the annual reports for the previous year.

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.35(a)
⇒ new

SECTION 3

ACCOUNTING OFFICER

Article 61

⊗ Powers and duties of the accounting officer ⊗

1. Each institution shall appoint an accounting officer who shall be responsible in each institution for:

- (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
 - (b) preparing and presenting the accounts in accordance with Title VII;
 - (c) keeping the accounts in accordance with Title VII;
 - (d) laying down, in accordance with Title VII, the accounting ~~rules and methods~~ ⇒ procedures ⇐ and the chart of accounts;
 - (e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information; →₁ the accounting officer shall be empowered to verify ⇒ at any time ⇐ the respect of validation criteria; ←
 - (f) treasury management.
-

↓ new

1a. The accounting officer of the Commission shall be responsible for laying down the accounting rules and the harmonised charts of accounts in accordance with Title VII.

↓ 1605/2002 (adapted)

2. The accounting officer shall obtain from authorising officers, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the ~~Communities' assets~~ ☒ Institutions' financial situation ☒ and of budgetary implementation.

↓ 1995/2006 Art. 1.35(b)
(adapted)
⇒ new

2a. Before the adoption of the accounts by the institution ☒ or the body referred to in Article 185 ☒, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the institution ☒ or body referred to in Article 185 ☒.

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

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

The authorising officers shall remain fully responsible for the proper use of the funds they manage, ~~as well as~~ the legality and regularity of the expenditure under their control ⇒ and the completeness and accuracy of the information forwarded to the accounting officer ⇐.

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

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

↓ 1995/2006 Art. 1.35(c)

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

↓ new

4. Within the implementation of a programme or an action, fiduciary accounts may be opened in the name of the Commission and on its behalf in order to allow their management by a entity listed in the first paragraph of Article 53, point 2 (c) and (d).

These accounts shall be opened under the responsibility of the authorising officer in charge of the implementation of the programme or action in agreement with the accounting officer of the Commission.

That bank account is managed under the responsibility of the authorising officer.

↓ 1605/2002 (adapted)

Article 62

⊗ Powers which may be delegated by the accounting officer ⊗

↓ 1995/2006 Art. 1.36

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

↓ 1605/2002

The instrument of delegation shall lay down the tasks entrusted to the delegates.

SECTION 4

IMPREST ADMINISTRATOR

↓ 1995/2006 Art. 1.37 (adapted)

Article 63

⊗ Imprest accounts ⊗

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

However, in the field of crisis management aid and humanitarian aid operations within the meaning of Article 110, imprest accounts may be used without any limitation on the amount while respecting the level of appropriations decided by the budgetary authority on the corresponding budget line for the current financial year.

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

CHAPTER 4

LIABILITY OF THE FINANCIAL ACTORS

SECTION 1

GENERAL RULES

Article 64

⊗ Suspension and withdrawal of delegations given to authorising officers ⊗

1. Without prejudice to any disciplinary action, authorising officers by delegation and subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.
2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his/her duties by the authority which appointed him/her.
3. Without prejudice to any disciplinary action, imprest administrators may at any time be suspended temporarily or definitively from their duties by the authority which appointed them.

Article 65

⊗ Liability of the authorising officer for illegal activity, fraud or corruption ⊗

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

2. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, without prejudice to Articles 66, 67 and 68. In the event of illegal activity, fraud or corruption

which may harm the interests of the Community, the matter will be submitted to the authorities and bodies designated by the applicable legislation.

SECTION 2

RULES APPLICABLE TO AUTHORISING OFFICERS BY DELEGATION AND SUBDELEGATION

Article 66

⊗ Rules applicable to authorising officers ⊗

↓ 1995/2006 Art. 1.39(a)

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

↓ 1995/2006 Art. 1.39(b)

1a. The obligation to pay compensation shall apply in particular if:

(a) the authorising officer, whether intentionally or through gross negligence on his part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and the implementing rules;

(b) the authorising officer, whether intentionally or through gross negligence on his part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the institution liable to civil action by third parties.

↓ 1605/2002

2. An authorising officer by delegation or subdelegation who considers that a decision which it is his/her responsibility to take is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to take the decision in question, the authorising officer may not be held liable.

↓ 1995/2006 Art. 1.39(c)

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

↓ 1995/2006 Art. 1.39(d)

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

↓ 1605/2002 (adapted)

On the basis of the opinion of this panel, the institution shall decide whether to initiate proceedings entailing liability to disciplinary action or to payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the authorising officer by delegation, provided the latter is not the person involved, as well as to the internal auditor.

SECTION 3

RULES APPLICABLE TO ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS

Article 67

⊗ Rules applicable to accounting officers ⊗

An accounting officer shall be liable to disciplinary action and payment of compensation, as laid down and in accordance with the procedures in the Staff Regulations. He/She may in particular render himself liable by any of the following forms of misconduct:

- (a) he/she loses or damages monies, assets and documents in his/her keeping;
- (b) he/she wrongly alters bank accounts or postal giro accounts;
- (c) he/she recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- (d) he/she fails to collect revenue due.

Article 68

⊗ Rules applicable to imprest officers ⊗

An imprest officer shall be liable to disciplinary action and payment of compensation, as laid down and in accordance with the procedures in the Staff Regulations. He/She may in particular render himself liable by any of the following forms of misconduct:

- (a) he/she loses or damages monies, assets and documents in his/her keeping;

(b) he/she cannot provide proper supporting documents for the payments he/she has made;

(c) he/she makes payments to persons other than those entitled;

(d) he/she fails to collect revenue due.

CHAPTER 5

REVENUE OPERATIONS

SECTION 1

MAKING AVAILABLE OF OWN RESOURCES

Article 69

⊗ Own resources ⊗

An estimate of revenue constituted by own resources, as referred to in the Council Decision on the system of the Union' own resources, shall be entered in the budget in euro. It shall be made available in accordance with the Council Regulation implementing that Decision.

SECTION 2

ESTIMATE OF AMOUNTS RECEIVABLE

↓ 1605/2002 (adapted) ⇒ new

Article 70

⊗ Estimate of the amount receivable ⊗

1. ⇒ When the authorising officer responsible has sufficient and reliable information in respect of any measure or situation which may give rise to an amount owing to the Union, the authorising officer responsible shall first make an estimate of the amount receivable. ⇐

↓ new

1bis. The estimate of the amount receivable is adjusted by the authorising officer responsible as soon as he/she is aware of an event modifying the measure or the situation which has generated its drawing up.

When establishing the recovery order on a measure or situation that had previously resulted in an estimate of amounts receivable, the amounts thereof shall be adjusted accordingly by the authorising officer responsible.

When the recovery order is drawn up for the same amount, the estimate of amounts receivable shall be reduced to zero.

↓ 1605/2002

2. By way of derogation from paragraph 1, no estimate of the amount receivable shall be made before Member States make available to the Commission the amounts of own resources defined in the Council Decision on the system of the Union' own resources which are paid at fixed intervals by the Member States. The authorising officer responsible shall issue a recovery order in respect of these amounts.

↓ 1605/2002 (adapted)

SECTION 3

ESTABLISHMENT OF AMOUNTS RECEIVABLE

Article 71

⊗ Establishment of amounts receivable ⊗

1. Establishment of an amount receivable is the act by which the authorising officer by delegation or subdelegation:

- (a) verifies that the debt exists;
- (b) determines or verifies the reality and the amount of the debt;
- (c) verifies the conditions in which the debt is due.

2. The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.

3. Amounts wrongly paid shall be recovered.

4. The conditions in which interest on late payment is due to the Union shall be laid down in the implementing rules.

SECTION 4

AUTHORISATION OF RECOVERY

Article 72

⊗ Authorisation of recovery ⊗

1. The authorisation of recovery is the act whereby the authorising officer by delegation or subdelegation responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he/she has established.
2. The institution may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable within the meaning of Article 299 of the Treaty on the Functioning of the European Union.

SECTION 5

RECOVERY

Article 73

⊗ Rules on recovery ⊗

1. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. He/She shall exercise due diligence to ensure that the Union receive their revenue and shall see that their rights are safeguarded.

The accounting officer shall recover amounts by offsetting them against equivalent claims that the Union have on any debtor who himself/herself has a claim on the Union that is certain, of a fixed amount and due.

↓ 1995/2006 Art. 1.40 (adapted)
⇒ new

2. Where the responsible authorising officer by delegation is planning to waive or partially waive recovery of an established amount receivable, he/she shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality in accordance with the procedures and the criteria laid down in the implementing rules. The waiver decision must be substantiated. The authorising officer may delegate the decision only as laid down in the implementing rules.

The responsible authorising officer may ~~furthermore~~ cancel ~~or adjust~~ an established amount receivable ⇒ in full or in part ⇐, in accordance with the conditions set out in the implementing rules. ⇒ The partial cancellation of an established amount receivable does not imply a waiver of a European Union's established entitlement. ⇐

↓ 1995/2006 Art. 1.41 (adapted)

Article 73a

⊗ **Limitation period** ⊗

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

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

↓ new

Article 73b

National treatment for Union entitlements

Amounts receivable by the Union shall not be treated less favourably than entitlements belonging to public bodies in the Member States where the recovery proceeding has been conducted.

↓ 1605/2002 (adapted)

⇒ new

Article 74

⊗ **Fines, penalties and accrued interest imposed by the Commission** ⊗

~~Revenue~~ ⊗ Amounts ⊗ received by way of fines, ~~periodic penalty payments and other penalties and any accrued interest~~ ⇒ penalties and sanctions, and any accrued interest or other income generated by them ⇐ shall not be ~~finally~~ recorded as budgetary revenue as long as the decisions imposing them may be ~~annulled~~ ⊗ overruled ⊗ by the Court of Justice.

↓ new

The amount referred to in the first paragraph shall be recorded as budget revenue at the latest in the year following the exhaustion of all legal remedies to the extent that they are not returned to the entity that paid them in accordance with a judgment of the Court of Justice.

However, a portion not exceeding 2% of the total amounts referred to in the first paragraph may be withheld as a guarantee to ensure a minimum return on funds if the decision imposing the fine is overruled by the Court of Justice. This portion shall be recorded as budget revenue in following years.

↓ 1605/2002 (adapted) → ₁ 1995/2006 Art. 1.42 ⇒ new
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The first paragraph shall not apply to decisions on clearance of accounts or financial corrections.

CHAPTER 6

EXPENDITURE OPERATIONS

Article 75

⊗ **The financing decision** ⊗

1. Every item of expenditure shall be committed, validated, authorised and paid.
2. Except in the case of appropriations which can be implemented without a basic act in accordance with →₁ Article 49(6)(e) ←, the commitment of the expenditure shall be preceded by a financing decision adopted by the institution or the authorities to which powers have been delegated by the institution.

SECTION 1

COMMITMENT OF EXPENDITURE

Article 76

⊗ **Types of commitments** ⊗

1. The budgetary commitment is the operation reserving the appropriation necessary to cover subsequent payments to honour a legal commitment ⊗ commitments ⊗.

The legal commitment is the act whereby the authorising officer enters into or establishes an obligation which results in a charge.

The budgetary commitment and the legal commitment shall be adopted by the same authorising officer, save in duly substantiated cases as provided for in the implementing rules.

2. The budgetary commitment is individual when the beneficiary and the amount of the expenditure are known.

The budgetary commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

The budgetary commitment is provisional when it is intended to cover the expenditure referred to in Article 150 or routine administrative expenditure and either the amount or the final beneficiaries are not definitively known.

3. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the basic act so provides and ⇒ or ⇐ for administrative expenditure. ~~Where the budgetary commitment is thus divided into annual instalments, the legal commitment shall stipulate this, except in the case of expenditure on staff.~~

Article 77

⊗ Rules applicable to commitments ⊗

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budgetary commitment before entering into a legal obligation with third parties ⇒ or transferring funds to a Trust Fund on the basis of Article 164 ⇐.

↓ new

1bis. The obligation for a budgetary commitment before entering into a legal commitment as stipulated in paragraph 1, is not applicable to legal commitments concluded following a declaration of a crisis situation in the framework of the Business Continuity Plan, in accordance with the procedures adopted by the Commission under its administrative autonomy.

↓ 1605/2002
⇒ new

2. Subject to the special provisions of Title IV of part two, global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year $n + 1$.

Subject to Article 76(3) and Article 179(2), individual legal commitments relating to individual or provisional budgetary commitments shall be concluded by 31 December of year n .

At the end of the periods referred to in the first and second subparagraphs, the unused balance of these budgetary commitments shall be decommitted by the authorising officer responsible.

The amount of each individual legal commitment adopted following a global commitment shall, prior to signature, be registered by the authorising officer responsible in the budgetary accounts and booked to the global commitment. ⇒ In case of humanitarian aid operations, civil protection operations and crisis management aid, and when the urgency justifies it, the registration of the amounts may be done immediately after the signature of the corresponding individual legal commitment. ⇐

↓ 1605/2002 (adapted)

3. The ☒ budgetary and ☒ legal commitments entered into for actions extending over more than one financial year ~~and the corresponding budgetary commitments~~ shall, save in the case of staff expenditure, have a final date for implementation set in compliance with the principle of sound financial management.

Any parts of such commitments which have not been executed six months after that date shall be decommitted in accordance with Article 11.

↓ 1995/2006 Art. 1.43

⇒ new

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 81 has been made in a period of three years following the signing of the legal commitment shall be decommitted ⇒ , exception made for cases under litigation before judicial courts or arbitral bodies ⇐.

↓ 1605/2002 (adapted)

⇒ new

Article 78

☒ Verifications applicable to commitments ☒

1. When adopting a budgetary commitment, the authorising officer responsible shall ensure that:

- (a) the expenditure has been charged to the correct item in the budget;
- (b) the appropriations are available;
- (c) the expenditure conforms to the provisions of the Treaties, of the budget, of this Regulation, of the implementing rules and of all acts adopted in accordance with the Treaties and regulations;
- (d) the principle of sound financial management is complied with. ⇒ The opportunity of prefinancing payments, its amount and the overall payment schedule shall be commensurate with the planned duration, the progress in implementation and the financial risks such prefinancing entails. ⇐

2. When registering a legal commitment ⇒ by physical or electronic signature ⇐, the authorising officer shall ensure that:

- (a) the commitment is covered by the corresponding budgetary commitment;
- (b) the expenditure is regular and conforms to the provisions of the Treaties, of the budget, of this Regulation, of the implementing rules and of all acts adopted in accordance with the Treaties and the regulations;

(c) the principle of sound financial management is respected.

SECTION 2

VALIDATION OF EXPENDITURE

Article 79

⊗ Validation of expenditure ⊗

Validation of expenditure is the act whereby the authorising officer responsible:

- (a) verifies the existence of the creditor's entitlement;
- (b) determines or verifies the reality and the amount of the claim;
- (c) verifies the conditions in which payment is due.

SECTION 3

AUTHORISATION OF EXPENDITURE

Article 80

⊗ Authorisation of expenditure ⊗

Authorisation of expenditure is the act whereby the authorising officer responsible, having verified that the appropriations are available and by issuing a payment order, instructs the accounting officer to pay an amount of expenditure which he/she has validated.

↓ 1995/2006 Art. 1.44

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

↓ 1605/2002 (adapted) → ₁ 1605/2002 ⇒ new
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SECTION 4

PAYMENT OF EXPENDITURE

Article 81

⊠ Types of payments ⊠

1. Payment shall be made on production of proof that the relevant action is in accordance with the provisions of the basic act or the contract and shall cover one or more of the following operations:

(a) payment of the entire amount due;

(b) payment of the amount due in any of the following ways:

(i) pre-financing, which may be divided into a number of payments ⇒ after the signature of the delegation agreement, the contract or grant agreement or after the reception of the grant decision ⇐ ;

(ii) one or more interim payments ⇒ as a counterpart of a partial execution of the action ⇐ ;

(iii) payment of the balance of the amounts due ⇒ where the action is completely executed ⇐.

2. A distinction shall be made in the ~~accounts~~ ⊠ budgetary accounting ⊠ between the different types of payment referred to in paragraph 1 at the time they are made.

↓ new

3. The accounting rules referred to in Article 133 shall include the rules for clearing the pre-financing in the accounts and for the acknowledgment of the eligibility of costs.

4. Pre-financing payments shall be cleared regularly by the responsible authorising officer. To this effect appropriate provisions shall be included in the contracts, grant decisions and agreements as well as the delegation agreements entrusting implementation tasks to the entities and persons referred to in points (a) to (h) of point (2) of the first paragraph of Article 53.

5. Further instalments made to beneficiaries of grants which take the form of a lump sum shall be treated as interim payments.

Article 82

⊗ **Payment limited to funds available** ⊗

Payment of expenditure shall be made by the accounting officer within the limits of the funds available.

SECTION 5

TIME LIMITS FOR EXPENDITURE OPERATIONS

Article 83

⊗ **Time limits for expenditure** ⊗

The validation, authorisation and payment of expenditure must be completed within the time limits laid down in the implementing rules, which shall also specify the circumstances in which creditors paid late are entitled to receive default interest charged to the line from which the principal was paid.

CHAPTER 7

IT SYSTEMS

Article 84

⊗ **Electronic management of operations** ⊗

Where revenue and expenditure operations are managed by means of computer systems, documents may be signed by a computerised or electronic procedure.

Article 84a

Subject to the prior agreement of the institutions concerned, any transmission of documents between institutions may be done by electronic means.

CHAPTER 8

INTERNAL AUDITOR

Article 85

⊗ Appointment of the internal auditor ⊗

Each institution shall establish an internal auditing function which must be performed in compliance with the relevant international standards. The internal auditor appointed by the institution shall be answerable to the latter for verifying the proper operation of budgetary implementation systems and procedures. The internal auditor may not be either authorising officer or accounting officer.

Article 86

⊗ Powers and duties of the internal auditor ⊗

1. The internal auditor shall advise his/her institution on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

He/She shall be responsible in particular:

(a) for assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them;

↓ 1995/2006 Art. 1.45

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

↓ 1605/2002

2. The internal auditor shall perform his/her duties on all the institution's activities and departments. He/She shall enjoy full and unlimited access to all information required to perform his duties, if necessary on the spot, including in the Member States and in third countries.

↓ 1605/2002 Art. 60(7), 2nd subparagraph, 2nd sentence (adapted)

The internal auditor shall take note of the annual report of the authorising officers and any other pieces of information identified.

↓ 1605/2002 (adapted)

3. The internal auditor shall report to the institution on his/her findings and recommendations. The institution shall ensure that action is taken on recommendations resulting from audits. The internal auditor shall also submit to the institution an annual internal audit report indicating the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.

4. Each year the institution shall forward a report to the discharge authority ~~summarising~~ a summary the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.

Article 87

Independence of the internal auditor

Special rules applicable to the internal auditor shall be laid down by the institution and shall be such as to guarantee that he/she is totally independent in the performance of his/her duties and to establish his responsibility.

↓ 1995/2006 Art. 1.46

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

TITLE V

PROCUREMENT

CHAPTER 1

GENERAL PROVISIONS

SECTION 1

SCOPE AND AWARD PRINCIPLES

Article 88

⊗ **Definition of public contracts** ⊗

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

These contracts comprise:

- (a) ~~contracts for the purchase or rental of a~~ building ⇒ contracts ⇐;
- (b) supply contracts;
- (c) works contracts;
- (d) service contracts.

2. Framework contracts are contracts concluded between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. They shall be governed by the provisions of this Title concerning the award procedure, including advertising.

3. This Title does not relate apply to grants, without prejudice to Articles 93 to 96 , or to service contracts concluded between the Commission, on the one hand, and the European Investment Bank, the European Investment Fund or any other subsidiary of the European Investment Bank, on the other hand .

↓ 1605/2002 (adapted)

Article 89

Principles applicable to public contracts

1. All public contracts financed in whole or in part by the budget shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination.
 2. All procurement contracts shall be put out to tender on the broadest possible base, except when use is made of the negotiated procedure referred to in Article 91(1)(d).
-

↓ 1995/2006 Art. 1.48

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

↓ 1605/2002 (adapted)

SECTION 2

PUBLICATION

Article 90

Publication of public contracts

↓ 1995/2006 Art. 1.49(a)

1. All contracts exceeding the thresholds provided for in Article 105 or Article 167 shall be published in the *Official Journal of the European Union*.
-

↓ 1995/2006 Art. 1.49(a)

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

Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts²⁹.

↓ 1605/2002

Publication of certain information after the contract has been awarded may be dropped where it would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between them.

↓ 1995/2006 Art. 1.49(b)

2. Contracts with a value below the thresholds provided for in Article 105 or Article 167 and the service contracts referred to in Annex IIB to Directive 2004/18/EC shall be advertised by appropriate means, as specified in the implementing rules.

↓ 1605/2002 (adapted)

SECTION 3

PROCUREMENT PROCEDURES

Article 91

⊗ Procurement procedures ⊗

↓ 1995/2006 Art. 1.50(a)

⇒ new

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

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

Where a public contract or a framework contract is of interest to two or more institutions, executive agencies or bodies referred to in Article 185 ⇒ and 185a ⇐, and whenever there is

²⁹ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 2083/2005 (OJ L 333, 20.12.2005, p. 28).

a possibility for realising efficiency gains, the contracting authorities concerned shall seek to carry out the procurement procedure on an interinstitutional basis.

Where a public contract or framework contract is necessary for the implementation of a joint action between ~~one~~ an institution and a contracting authority from a Member State, the procurement procedure may be carried out jointly by the institution and this contracting authority, as specified in the implementing rules.

↓ 1605/2002

2. For contracts where the value exceeds the thresholds provided for in Article 105 or Article 167, use of the negotiated procedure shall be authorised only in the cases provided for in the implementing rules.

↓ 1605/2002

3. The thresholds below which the contracting authority may either use a negotiated procedure or, by way of derogation from the first subparagraph of Article 88(1), simply pay costs against invoices shall be determined in the implementing rules.

↓ 1995/2006 Art. 1.50(c)
(adapted)

4. The implementing rules shall define the procurement procedure, referred to in paragraph 1, applicable to service contracts covered by Annex IIB to Directive 2004/18/EC and to contracts which are declared to be secret, whose performance must be accompanied by special security measures, or when the protection of essential interests of the Union ~~or the European Union~~ so requires.

↓ 1995/2006 Art. 1.51 (adapted)

Article 92

⊗ Content of tender documents ⊗

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

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.52(a)
⇒ new

Article 93

⊗ Exclusion criteria applicable for participation in tenders ⊗

1. →₁ Candidates or tenderers shall be excluded from participation in procurement procedures if ←:

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

(b) they ⇨ or persons having powers of representation, decision making or control over them ⇨ have been convicted of an offence concerning their professional conduct by a judgment ⇨ of a competent authority of a Member State ⇨ which has the force of *res judicata*;

(c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify ⇨ including by decisions of the EIB and international organisations ⇨;

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

(e) they ⇨ or persons having powers of representation, decision making or control over them ⇨ have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation ⇨, money laundering ⇨ or any other illegal activity, where such an illegal activity is detrimental to the Union's financial interests;

↓ 1995/2006 Art. 1.52(a)

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

↓ 1995/2006 Art. 1.52(a)
(adapted)

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

Points (b) and (e) shall not apply when the candidates or tenderers can demonstrate that adequate measures have been adopted against the persons having powers of representation, decision making or control over them who are subject to the judgement referred to in points (b) or (e).

↓ new

2. In case of a negotiated procedure where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator, the institution may decide not to exclude the economic operator at stake on the grounds referred to in paragraph 1, points (a), (c) and (d) if this is indispensable in order to ensure the continuity of service of the institution. In this case, it shall motivate its decision.

↓ 1995/2006 Art. 1.52(b)
⇒ new

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

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

(a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity ⇒ and certify that they are not in one of the situations referred to in paragraph 1 ⇐ ;

(b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.

↓ 1995/2006 Art. 1.52(c)

34. The implementing rules shall determine the maximum period during which the situations referred to in paragraph 1 give rise to the exclusion of candidates or tenderers from participation in a procurement procedure. The maximum period shall not exceed 10 years.

↓ 1995/2006 Art. 1.53 (adapted)

Article 94

⊗ **Exclusion criteria applicable during procurement procedure** ⊗

A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for this contract:

(a) are subject to a conflict of interest;

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

(c) find themselves in one of the situations of exclusion, referred to in Article 93(1), for this procurement procedure.

Article 95

☒ Central database of exclusions ☒

1. A central database shall be set up and operated by the Commission in compliance with Community rules on the protection of personal data. The database shall contain details of candidates and tenderers which is in one of the situations referred to in Articles 93, ~~94~~, 96(1)(b) and (2)(a). It shall be common to the institutions, executive agencies and the bodies referred to in Article 185.

2. The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 53 and 54, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in Article 93(1) (e), where the conduct of the operator concerned was detrimental to the Union's financial interest. The authorising officer shall receive this information and request the accounting officer to enter it into the database.

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

↓ new

3. The European Central Bank, the European Investment Bank and the European Investment Fund shall have access to the information contained in the database for the purpose of protecting their own funds and may take it into account, as appropriate and on their own responsibility for the award of contracts in accordance with their procurement rules.

They shall communicate to the Commission information on candidates and tenderers which are in one of the situations referred to in Article 93(1)(c), where the conduct of the operators concerned was detrimental to the Union' financial interests.

↓ 1995/2006 Art. 1.53

~~34~~. Transparent and coherent criteria to ensure proportionate application of the exclusion criteria shall be laid down in the implementing rules. The Commission shall define standardised procedures and technical specifications for the operation of the database.

↓ 1995/2006 Art. 1.53 (adapted)
⇒ new

Article 96

☒ Administrative and financial penalties ☒

1. The contracting authority may impose administrative or financial penalties on the following:

(a) ⇨ contractors ⇩ candidates or tenderers in the cases referred to in point (b) of Article 94;

(b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

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

2. The penalties referred to in paragraph 1 shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist in:

(a) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the budget, for a maximum period of ten years; and/or

(b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of the contract in question.

⇩ new

3. Decisions or summary of decisions indicating the name of the economic operator, a short description of the facts, the duration of the exclusion or the amount of the financial penalties may be published by the institution.

⇩ 1995/2006 Art. 1.54 (adapted)

Article 97

⊗ **Award criteria for contracts** ⊗

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

2. Contracts shall be awarded by the automatic award procedure or by the best-value-for-money procedure.

⇩ 1605/2002 (adapted)

Article 98

⊗ **Submission of tenders** ⊗

↓ 1995/2006 Art. 1.55(a)

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

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

↓ 1605/2002 (adapted)

3. With the exception of the low value contracts ~~involving small amounts~~ referred to in Article 91(3), applications and tenders shall be opened by an opening board appointed for this purpose. Any tender or application declared by the board not to satisfy the conditions laid down shall be rejected.

↓ 1995/2006 Art. 1.55(b)

4. All requests to participate or tenders declared by the opening board as satisfying the conditions laid down shall be evaluated, on the basis of the criteria provided in the documents relating to the call for tenders, in order to propose to the contracting authority the award of the contract or to proceed with an electronic auction.

↓ 1605/2002 (adapted)

⇒ new

Article 99

Principles of equal treatment and transparency

While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers must satisfy conditions ensuring transparency and equal treatment. They may not lead to amendment of the conditions of the contract or the terms of the original tender.

Article 100

The award decision

1. The authorising officer shall decide to whom the contract is to be awarded, in compliance with the selection and award criteria laid down in advance in the documents relating to the call for tenders and the procurement rules.

2. The contracting authority shall notify all candidates or tenderers whose applications or tenders are rejected of the grounds on which the decision was taken, and all tenderers ~~whose tenders are admissible~~ ⇒ who meet the exclusion and the selection criteria ⇐ and who make a

request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

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

Article 101

⊗ Cancellation of the procurement procedure ⊗

The contracting authority may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

The decision must be substantiated and be brought to the attention of the candidates or tenderers.

SECTION 4

GUARANTEES AND CONTROL

↓ 1995/2006 Art. 1.56 (adapted)
⇒ new

Article 102

⊗ Guarantees ⊗

1. The contracting authority shall require contractors to lodge a guarantee in advance in the cases specified in the implementing rules.

2. The contracting authority may, if it deems it appropriate and proportionate, require contractors to lodge such a guarantee in order to:

- (a) ensure full performance of the contract₂ ⇒ or ⇐
- (b) limit the financial risks connected with payment of pre-financing.

Article 103

⊗ Errors, irregularities and fraud in the procedure ⊗

Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the ~~institutions~~ ⇒ contracting authority ⇐ shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the institutions ⇒ contracting authority ⇐ may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract.

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

↓ 1605/2002 (adapted) → ₁ 1995/2006 Art. 1.57

CHAPTER 2

PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY THE COMMUNITY INSTITUTIONS ON THEIR OWN ACCOUNT

Article 104

⊗ **The contracting authority** ⊗

The Community institutions shall be deemed to be contracting authorities in the case of contracts awarded on their own account. →₁ They shall delegate, in accordance with Article 59, the necessary powers for the exercise of the function of contracting authority ←.

↓ 1995/2006 Art. 1.58 (adapted)

Article 105

⊗ **Thresholds applicable** ⊗

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

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

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

↓ 1605/2002 (adapted)

Article 106

⊗ **Rules on tender participation** ⊗

Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has with the European Union a special agreement in the field of public procurement under the conditions laid down in that agreement.

Article 107

⊗ **WTO procurement rules** ⊗

Where the Multilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the contracts shall also be open to nationals of the States which have ratified this agreement, under the conditions laid down in that agreement.

TITLE VI

GRANTS

↓ 1995/2006 Art. 1.59

CHAPTER 1

SCOPE AND FORM OF GRANTS

↓ 1605/2002 (adapted)

Article 108

⊗ **Scope of grants** ⊗

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

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

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

↓ 1995/2006 Art. 1.60(a)

They shall be covered either by a written agreement or by a Commission decision notified to the successful applicant.

↓ 1995/2006 Art. 1.60(b)
(adapted)
⇒ new

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

- (a) expenditure on the members and staff of the institutions and contributions to the European schools;
- (b) ~~loans, risk-bearing instruments of the Community or Community financial contributions to such instruments, the~~ public contracts referred to in Article 88 and aid paid as macro financial assistance and budgetary support;
- (c) ~~equity investments on the basis of the private investor principle, quasi-equity financing and~~ ⇒ financial instruments as referred to in Title VIb of Part One, as well as ⇐ shareholdings or equity participations in international financial institutions such as the European Bank for Reconstruction and Development (EBRD) or specialised Community bodies such as the European Investment Fund (EIF);
- (d) contributions paid by the Union as subscriptions to bodies of which they are members;
- (e) expenditure implemented ~~as part of shared, decentralised or joint~~ ⇒ under indirect ⇐ management within the meaning of Articles 53 to 53a ~~⊗ c ⊗~~;
- (f) ~~payments made to bodies to which implementation tasks are delegated in accordance with Article 54(2) and~~ contributions made by virtue of their constitutive basic act to bodies set up ~~by the legislative authority~~ ⇒ under Articles 55 ⇐;
- (g) expenditure relating to fisheries markets referred to in Article 3(2) (f) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy³⁰;
- (h) repayment of travel and subsistence expenses incurred by, or where appropriate any other indemnities paid to, persons invited or mandated by the institutions.
- ⇒ (i) prizes given as rewards for a contest, to which Title VIa of Part One applies. ⇐

↓ 1995/2006 Art. 1.60(c)

~~3. The following shall be assimilated to grants and shall be governed, as appropriate, by this Title:~~

³⁰ OJ L 209, 11.08.2005, p. 1. Regulation as amended by Regulation (EC) No 320/2006 (OJ L 58, 28.2.2006, p. 42).

~~(a) the benefit deriving from an interest subsidy on certain loans;~~

~~(b) equity investments or participations other than those referred to in point (c) of paragraph 2.~~

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

↓ 1995/2006 Art. 1.61 (adapted)
⇒ new

Article 108a

⊗ Forms of grants ⊗

1. Grants may take any of the following forms:

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

(b) lump sums;

⇒ (bb) standard scale of unit costs; ⇐

(c) flat-rate financing;

(d) a combination of the forms referred to in points (a), (b), ⇒ (bb) ⇐ and (c).

~~2. Grants shall not exceed an overall ceiling expressed in terms of absolute value.~~

↓ 1995/2006 Art. 1.62

CHAPTER 2

PRINCIPLES

↓ 1995/2006 Art. 1.63 (adapted)

Article 109

⊗ General principles applicable to grants ⊗

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

⊗ 2. They may not be cumulative or awarded retrospectively ⊗ ~~and they must involve co-financing.~~

~~On no account may the combined total costs eligible, as specified in the implementing rules, for financing be exceeded.~~

☒ 3. Grants must involve co-financing without prejudice to the specific rules laid down in Title IV of Part Two. ☒

☒ Grants shall not exceed an overall ceiling expressed in terms of an absolute value which is established on the basis of estimated eligible costs. ☒

☒ ~~On no account may~~ The grant shall not exceed the eligible costs. ☒

~~3a.~~ Grants may not have the purpose or effect of producing a profit ~~for~~ ☒ within the framework of the action or the work programme of ☒ the beneficiary.

~~3. Paragraph 2~~ ☒ The first subparagraph ☒ shall not apply to the following:

☒ (a) actions the objective of which is the reinforcement of the financial capacity of a beneficiary or the generation of an income; ☒

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

~~(b)~~ prizes awarded following contests;

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

↓ 1525/2007 Art. 1

4. If a political party at European level realises a surplus of income over expenditure at the end of a financial year for which it received an operating grant, part of that surplus up to 25 % of the total income for that year may, by derogation from the no-profit rule laid down in paragraph 2, be carried over to the following year provided that it is used before the end of the first quarter of this following year.

For the purpose of verifying compliance with the no-profit rule, the own resources, in particular donations and membership fees, aggregated in the annual operations of a political party at European level, which exceed 15 % of the eligible costs to be borne by the beneficiary, shall not be taken into account.

The second subparagraph shall not apply if the financial reserves of a political party at European level exceed 100 % of its average annual income.

↓ new

5. For lumps sums, standard scale of unit costs and flat rate financing, the no-profit and the co-financing rules laid down in paragraphs (3) and (3a) shall be reasonably ensured at the time of their determination or at the stage of the evaluation of the grant application.

6. Articles 114, 115 and 116 shall not apply to grants awarded to the European Investment Bank, the European Investment Fund or any other subsidiary of the Bank.

↓ 1605/2002 (adapted)

Article 110

⊗ **Transparency** ⊗

↓ 1995/2006 Art. 1.64 (adapted)
⇒ new

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

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

The first subparagraph shall not apply to crisis management aid ⇒ , civil protection operations ⇐ and humanitarian aid operations.

↓ 1605/2002
⇒ new

2. All grants awarded in the course of a financial year shall be published annually ⇒ in accordance with Article 30 (3) and 30(4) ⇐ ~~with due observance of the requirements of confidentiality and security.~~

↓ 1995/2006 Art. 1.65 (adapted)
⇒ new

Article 111

⊗ **Principle of non-cumulative award** ⊗

Each action may give rise to the award of only one grant from the budget to any one beneficiary, except where the relevant basic acts authorise otherwise.

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

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

In no circumstances shall the same costs be financed twice by the budget.

Article 112

⊗ **Retroactive award** ⊗

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

In such cases, costs eligible for financing may not have been incurred prior to the date of submission of the grant application, save in duly substantiated exceptional cases as provided for in the basic act or in the case of ⇒ extreme urgency ⇐ expenditure necessary for the proper implementation of crisis management aid ⇒, civil protection operations ⇐ and humanitarian aid operations as provided for in the implementing rules.

No grant may be awarded retrospectively for actions already completed.

2. An operating grant shall be awarded within six months after the start of the beneficiary's budgetary year. Costs eligible for financing may neither have been incurred before the grant application was lodged nor before the start of the beneficiary's budgetary year.

↓ 1605/2002 (adapted)

Article 113

⊗ Principle of degressive award ⊗

~~1. The grant may not finance the entire costs of the action, subject to Title IV of part two.~~

~~The grant may not finance the entire operating expenditure of the beneficiary body.~~

↓ 1995/2006 Art. 1.66
⇒ new

2. Unless otherwise specified in the basic act ⇒ or in the financing decision for grants awarded under Article 49(6) point (d) ⇐ with regard to bodies pursuing an objective of general European interest, when operating grants are renewed for a period exceeding four years, they shall be gradually decreased after the fourth year. ~~not apply to grants taking one of the form referred to in points (b) and (c) of Article 108a(1).~~

↓ 1605/2002

CHAPTER 3

AWARD PROCEDURE

↓ 1995/2006 Art. 1.67 (adapted)
⇒ new

Article 114

⊗ Applications for grants ⊗

1. Grant applications shall be submitted in writing.
2. Grant applications shall be eligible if submitted by the following:

(a) legal persons; grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on ~~their~~ the behalf of the entity behalf and assume financial liability offer guarantee for the protection of the Union financial interests equivalent to that offered by legal persons ;

(b) natural persons in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant.

3. Articles 93 to 96 shall apply by analogy to grants Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 93(1), 94 and 96(2)(a).

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

new

(a) very low valued grants, or;

(b) when such certification has recently been provided in another award procedure, or;

(c) when there is a material impossibility to provide such certification.

1995/2006 Art. 1.67

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

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

1605/2002 (adapted)

Article 115

Selection and award criteria

1. The selection criteria shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.

2. The award criteria announced in advance in the call for proposals shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

Article 116

⊗ **Evaluation procedure** ⊗

↓ 1995/2006 Art. 1.68

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

↓ 1605/2002

2. The authorising officer responsible shall then, on the basis of the evaluation provided for in paragraph 1, draw up the list of beneficiaries and the amounts approved.

3. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the institution shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria already announced.

CHAPTER 4

PAYMENT AND CONTROL

~~*Article 117*~~

~~The pace of payments shall be determined by the financial risks involved, the duration and progress of the action or the costs incurred by the beneficiary.~~

↓ 1995/2006 Art. 1.69 (adapted)

Article 118

⊗ **Pre-financing guarantee** ⊗

1. The authorising officer responsible may, if he deems it appropriate and proportionate, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

~~2. The authorising officer shall require the beneficiary to lodge such a guarantee in advance in the cases specified in the implementing rules.~~

↓ 1605/2002 (adapted)
⇒ new

Article 119

⊗ **Payment of grants and controls** ⊗

1. The amount of the grant shall not become final until after the institution ⇒ authorising officer responsible ⇐ has accepted the final reports and accounts, without prejudice to subsequent checks by the institution.

↓ 1995/2006 Art. 1.70
⇒ new

~~2. Should the beneficiary fail to comply with his obligations, the grant shall be suspended or reduced or terminated in the cases provided for by the implementing rules~~ ⇒ Where substantial errors, irregularities or fraud are committed during the award procedure or the implementation of the grant and ⇐ after the beneficiary has been given the opportunity to make his observations ⇒ , the responsible authorising officer may take any of the measures referred to in Article 103 ⇐.

↓ new

3. Where controls or audits demonstrate that recurrent errors exist for one beneficiary which also have an impact on non-audited projects in which that beneficiary participates or has participated, the authorising officer may extend the findings to those non audited projects which may still be audited in accordance with the grant agreement and request the reimbursement of the related amount.

The beneficiary may, within an adversarial procedure, challenge the correction applied by demonstrating that the calculation of corrections is erroneous and submitting new calculation.

↓ 1605/2002

CHAPTER 5

IMPLEMENTATION

↓ 1995/2006 Art. 1.71 (adapted)
⇒ new

Article 120

⊗ **Subcontracting and grant redistribution** ⊗

1. Where implementation of the action \Rightarrow , or the work programme in case of operating grant, \Leftarrow requires the award of procurement contracts by the beneficiary, the relevant procedures shall be as set out in the implementing rules.

2. Where implementation of the action \Rightarrow or the work programme \Leftarrow requires financial support to be given to third parties, the beneficiary of a Community grant may give such financial support provided that the following conditions are met:

~~(a) the financial support is not the primary aim of the action;~~

\Downarrow new

(a) before awarding the grant, the responsible authorising officer has verified that the beneficiary offers adequate guarantees as regards the recovery of amounts due to the Commission;

\Downarrow 1995/2006 Art. 1.71 (adapted)
 \Rightarrow new

(b) the conditions for the giving of such support are strictly defined in the grant decision or agreement between the beneficiary and the Commission, ~~with no margin for \boxtimes~~ in order to avoid the exercise of $\langle \boxtimes \rangle$ discretion \boxtimes by the beneficiary $\langle \boxtimes \rangle$;

(c) the amounts concerned are small \boxtimes , as defined in the Implementing Rules $\langle \boxtimes \rangle$.

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

3. Each grant decision or agreement shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises \Rightarrow and on information, even stored on electronic media \Leftarrow , over all ~~contractors and subcontractors~~ \boxtimes third parties $\langle \boxtimes \rangle$ who have received ~~Community~~ \boxtimes Union $\langle \boxtimes \rangle$ funds.

\Downarrow new

TITLE VIA

PRIZES

Article 120a

Definition

For the purposes of this Regulation, "prizes" shall mean financial contributions awarded following contests.

Article 120a-i

General rules

1. Prizes are subject to the principles of transparency and equal treatment.
2. Prizes shall be part of the work programme referred to in Article 110 and adopted by the Commission. The provisions of Article 110(2) are applicable.

The rules of the contest shall at least establish the award conditions, the criteria, the amount of the prize and the modality of payment.

Prizes may not be awarded directly without a contest and shall be subject to publication in the same way as call for proposals.
3. Prizes shall be awarded by the responsible authorising officer or by a jury. They shall be 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.
4. The amount of the prize shall not be linked to the costs incurred by the recipient.
5. Where prizes exceeding 500.000 Euro are awarded by a beneficiary of a grant or by a contractor, their award conditions and criteria shall be approved by the Commission.

TITLE VI

FINANCIAL INSTRUMENTS

Article 120b

Definition and scope

1. For the purpose of this Regulation, "financial instruments" shall mean EU measures of financial support provided from the budget of the Union in order to address a specific policy objective by way of loans, guarantees, equity or quasi-equity investments or participations, or other risk-bearing instruments, possibly combined with grants.
2. The provisions of this Title shall also apply to elements directly related to financial instruments, including technical assistance.
3. The Commission may implement financial instruments in direct management mode, or in indirect management mode by entrusting tasks to the entities referred to in Article 53 (1) point 2 (c) and (d).

Article 120c

Principles applicable to financial instruments

1. Financial instruments shall be provided to final recipients of Union funds in accordance with sound financial management, transparency and equal treatment and in accordance with the objectives established in the basic act that applies to those financial instruments.

2. Without prejudice to points 4 and 5 of article 46 (1), the budgetary expenditure linked to a financial instrument shall be kept within the relevant budgetary commitment made for it.

3. Financial intermediaries involved in the execution of financial operations under a financial instrument shall comply with relevant standards on the prevention of money laundering and fight against terrorism. They shall not be established in territories whose jurisdictions do not co-operate with the Union in relation to the application of internationally agreed tax standards.

4. Each agreement between an entity referred to in Article 53(1) point 2 (c) and (d) and a financial intermediary referred to in paragraph 3 shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises and on information, even stored on electronic media, over all third parties who have received Union funds.

↓ 1605/2002 (adapted)

TITLE VII

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

PRESENTATION OF THE ACCOUNTS

Article 121

⊗ Structure of the Community accounts ⊗

The Community accounts shall comprise:

↓ 1995/2006 Art. 1.72(a)
(adapted)
⇒ new

- (a) ⇒ the consolidated financial statements, which present the consolidation of the financial information contained in ⇐ the financial statements of the institutions ~~as set out in Article 126~~ ⇒ financed by the Union's budget ⇐, those of the bodies referred to in Article 185 and of other bodies whose accounts must be consolidated in accordance with ~~Community~~ ⊗ Union ⊗ accounting rules;

↓ 1605/2002

⇒ new

(b) ~~the consolidated financial statements which present in aggregated form the financial information contained in the financial statements of the institutions and bodies referred to in point (a)~~ ⇒ the aggregated budgetary accounts which present the information contained in the budgetary accounts of the institutions financed by the Union's budget ⇐;

~~(c) the reports on implementation of the budget of the institutions and the budgets of the bodies referred to in Article 185;~~

↓ 1995/2006 Art. 1.72(b)

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

↓ 1995/2006 Art. 1.73 (adapted)

Article 122

⊗ Report on budgetary and financial management ⊗

1. ~~The accounts of the~~ ⊗ Each ⊗ institutions and ~~bodies~~ ⊗ body ⊗ referred to in Article 121 shall ~~be accompanied by~~ ⊗ prepare ⊗ a report on budgetary and financial management of the financial year.

↓ new

They shall send the report to the budget authority and the Court of Auditors, by 31 March following the financial year.

↓ 1995/2006 Art. 1.73 (adapted)

2. The report referred to in paragraph 1 shall give an account, ~~inter alia~~ ⊗ at least ⊗, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.

↓ 1605/2002 (adapted)

Article 123

⊗ Rules governing the accounts ⊗

↓ new

The financial statements referred to in Article 121 shall comply with the Union accounting rules as adopted by the Accounting Officer of the Commission and shall present a true and fair view of the assets and liabilities, charges, income and cash flow.

The budgetary accounts referred to in Article 121 shall comply with the budgetary principles laid out in this Regulation. They shall present a true and fair view of the budgetary revenue and expenditure operations.

↓ 1605/2002 (adapted)

⇒ new

~~The accounts must comply with the rules and be accurate and comprehensive and present a true and fair view:~~

~~(a) as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities and cash flow;~~

~~(b) as regards reports on budgetary implementation, of revenue and expenditure operations.~~

Article 124

⊗ Accounting principles ⊗

The financial statements ⇒ referred to in Article 121 shall present information, including accounting policies, in a manner that provides relevant, reliable, comparable and understandable information. They ⇐ shall be drawn up in accordance ⊗ compliance ⊗ with the generally accepted accounting principles as outlined in the Union's accounting rules, namely

↓ 1605/2002 (adapted)

⇒ new

Article 125

~~1. In accordance with the principle of accrual based accounting, the financial statements shall show the charges and income for the financial year, regardless of the date of payment or collection.~~

~~2. The value of assets and liabilities shall be determined in accordance with the valuation rules provided for in Article 133.~~

Article 126

⊗ Financial statements ⊗

1. The financial statements shall be presented in millions of euro and shall comprise:

(a) the balance sheet and the ~~economic outturn account~~ ⇒ statement of financial performance ⇐, which represent the assets and liabilities and financial situation and the economic ~~outturn~~ ⇒ result ⇐ at 31 December of the previous year; they shall be presented in accordance with ~~the structure laid down by the Directives of the European Parliament and of the Council on the annual accounts of certain types of companies, but with account being taken of the specific nature of the Communities' activities~~ ⇒ the relevant accounting rules adopted by the Accounting Officer of the Commission ⇐ ;

(b) the cash-flow ~~table~~ ⇒ statement ⇐ showing amounts collected and disbursed during the year and the final treasury position;

(c) the statement of changes in ⇒ net assets ⇐ ~~capital~~ presenting ~~in detail the increases and decreases during the year in each item of the capital accounts~~ ⇒ an overview of the movements during the year in reserves and accumulated results ⇐ .

2. The ~~Annex~~ ⇒ notes ⇐ to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed ~~by internationally accepted accounting practice where such information is relevant to the activities of the Communities~~ ⇒ by the relevant accounting rules adopted by the Accounting Officer of the Commission ⇐ .

Article 127

⊗ Budgetary implementation reports ⊗

The budgetary implementation reports shall be presented in millions of euro. They shall comprise:

(a) the ~~budgetary outturn account~~ ⇒ budget implementation reports ⇐, which ~~sets out~~ ⇒ aggregate ⇐ all budgetary operations for the year in terms of revenue and expenditure; the structure in which it is presented shall be the same as that of the budget itself;

(b) the ~~Annex~~ ⇒ notes ⇐ to the budget ~~outturn account~~ ⇒ implementation reports ⇐, which shall supplement and comment on the information given in ~~that account~~ ⇒ the reports ⇐ .

↓ new

The structure in which budget implementation reports are ~~it is~~ presented shall be the same as that of the budget itself.

↓ 1995/2006 Art. 1.74 (adapted)

Article 128

⊗ **Provisional accounts** ⊗

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

↓ new

~~The accounting officers of the other institutions and bodies referred to in article 121 shall also send by 1 March of following year at the latest a reporting package to the accounting officer of the Commission, in a standardized format as laid down by the accounting officer of the Commission for consolidation purposes.~~

↓ 1995/2006 Art. 1.74 (adapted)
⇒ new

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

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

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.75(a)
⇒ new

Article 129

⊗ **Approval of the final consolidated accounts** ⊗

1. The Court of Auditors shall, by ~~15~~ ⇒ the 1st of ⇐ June at the latest, make its observations on the provisional accounts of ~~each institution~~ ⊗ other institutions ⊗ and each body referred to in →₁ Article 121 ← ⇐ , and by 15 June at the latest, make its observations on the provisional accounts of the Commission and the consolidated Union provisional accounts ⇐ .

↓ 1995/2006 Art. 1.75(b)
(adapted)
⇒ new

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

↓ new

The accounting officers of the other institutions and bodies referred to in Article 121 shall also send by 1 July of the following year at the latest, a reporting package to the accounting officer of the Commission, in a standardized format as laid down by the accounting officer of the Commission for consolidation purposes.

2a. The accounting officer of each institution and body referred to in Article 121 shall also send to the Court of Auditors, with copy to the accounting officer of the Commission, at the same date as the transmission of his final accounts, a representation letter covering these final accounts.

The final accounts shall be accompanied by a note established by the accounting officer, by which he declares that they were prepared in accordance with this Title and with the applicable accounting principles, rules and methods.

↓ 1995/2006 Art. 1.75(c)
(adapted)
⇒ new

~~2a.~~ ~~The Commission's~~ accounting officer ☒ of the Commission ☒ shall prepare the final consolidated accounts on the basis of the information presented by the other institutions ⇒ and bodies referred to in Article 121 ⇐ under paragraph 2. The final consolidated accounts shall be accompanied by a note established by the Commission's accounting officer, by which he/she declares that they were prepared in accordance with Title VII and with the accounting principles, rules and methods set out in annex to the financial statements.

↓ 1995/2006 Art. 1.75(d)

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

↓ new

By the same date, the accounting officer of the Commission should transmit a representation letter covering the final consolidated accounts to the Court of Auditors.

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.75(e)
→₂ 1995/2006 Art. 1.76(a)
→₃ 1995/2006 Art. 1.76(b)
→₄ 1995/2006 Art. 1.77
→₅ 1995/2006 Art. 1.78
→₆ 1995/2006 Art. 1.79
⇒ new

4. The final consolidated accounts shall be published in the *Official Journal of the European Union* together with the statement of assurance given by the Court of Auditors in accordance with Article 287 of the Treaty on the Functioning of the European Union and Article 160c of the Euratom Treaty by →₁ 15 November ← of the following financial year.

CHAPTER 2

INFORMATION ON THE IMPLEMENTATION OF THE BUDGET

Article 130

⊗ **Report on the budgetary guarantees and risks** ⊗

In addition to the statements provided for in Articles 126 and 127, the Commission shall report to the European Parliament and to the Council ~~twice~~ ⇒ once ← a year on budgetary guarantees ⊗ referred to in Article 46(4) ⊗ and the corresponding risks.

This information shall be sent to the Court of Auditors at the same time.

Article 131

⊗ **Budget implementation report** ⊗

1. In addition to the statements provided for in Articles 126 and 127, →₂ the Commission's accounting officer ← shall send once a month to the European Parliament and to the Council figures, aggregated at chapter level at least, on the implementation of the budget, both for revenue and for expenditure against all appropriations.

These figures shall also provide details of the utilisation of appropriations carried over.

The figures shall be sent within 10 working days following the end of each month.

2. Three times a year, within the 30 working days following 31 May, 31 August and 31 December, →₃ the Commission's accounting officer ← shall send to the European Parliament and to the Council a report on the implementation of the budget, covering both revenue and expenditure broken down by chapter, article and item.

This report shall also provide details of the utilisation of appropriations carried over from previous financial years.

3. The figures and the report on implementation of the budget shall at the same time be sent to the Court of Auditors.

CHAPTER 3

ACCOUNTING

SECTION 1

COMMON PROVISIONS

Article 132

⊗ **The accounting system** ⊗

1. The institution's accounting system is the system serving to organise the budgetary and financial information in such a way that figures can be input, filed and registered.

2. The accounts shall consist of general accounts and budgetary accounts. These accounts shall be kept in euro on the basis of the calendar year.

~~3. The figures in the general accounts and the budgetary accounts shall be adopted at the close of the budgetary year so that the accounts referred to in Chapter 1 can be drawn up.~~

~~43.~~ Notwithstanding paragraphs 2 and 3, the authorising officer by delegation may keep analytical accounts.

Article 133

⊗ **Common provision to the institutions' accounting system** ⊗

1. The Commission's accounting officer shall, after consulting the accounting officers of the other institutions and bodies referred to in →₄ Article 121 ←, adopt the accounting rules and methods and the harmonised chart of accounts to be applied by all the institutions ⊗ financed by the Union's budget ⊗, the offices referred to in Title V of part two and all the bodies referred to in →₄ Article 121 ←.

2. When adopting the rules and methods referred to in paragraph 1, the Commission's accounting officer ⊗ of the Commission ⊗ shall be guided by the internationally accepted accounting standards for the public sector but may depart from them where justified by the specific nature of the Union's activities.

SECTION 2

GENERAL ACCOUNTS

Article 134

⊗ **The general accounts** ⊗

The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the institutions and bodies referred to in →₅ Article 121 ←.

Article 135

⊗ **Entries in the accounts** ⊗

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.
2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.
3. The accounting system must be such as to leave a trail for all accounting entries.

Article 136

⊗ **Accounting adjustments** ⊗

The accounting officer shall, after the close of the budgetary year and up to the date of presentation of the accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts which complies with the Union's accounting rules.

SECTION 3

BUDGETARY ACCOUNTS

Article 137

⊗ **Budgetary accounting** ⊗

1. The budgetary accounts provide a detailed record of budgetary implementation.
2. For the purposes of applying paragraph 1, the budgetary accounts shall record all budgetary revenue and expenditure operations provided for in Title IV of part one.

CHAPTER 4

PROPERTY INVENTORIES

Article 138

⊠ The inventory ⊠

1. Each institution and each body referred to in →₆ Article 121 ← shall keep inventories showing the quantity and value of all the Union's tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

Each institution and each body referred to in →₆ Article 121 ← shall check that entries in the inventory correspond to the actual situation.

2. The sale of ~~movable~~ property shall be suitably advertised.

TITLE VIII

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

EXTERNAL AUDIT

Article 139

⊠ External audit by the Court of Auditors ⊠

1. The European Parliament, the Council and the Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to Articles 9, 13, 18, 22, 23, 26 and 36.

↓ 1995/2006 Art. 1.80

2. Each institution shall inform the Court of Auditors and the budgetary authority of any internal rules it adopts in respect of financial matters.

↓ 1605/2002 (adapted) → ₁ 1995/2006 Art. 1.81(a) ⇒ new

3. The Court of Auditors shall be informed of the appointment of authorising officers, internal auditors, accounting officers and imprest administrators and of delegation decisions under Articles 51, 61, 62, 63 and 85.

Article 140

⊗ **Rules and procedure on the audit** ⊗

1. The examination by the Court of Auditors of whether all revenue has been received and all expenditure incurred in a lawful and proper manner shall have regard to the provisions of the Treaties, the budget, this Regulation, the implementing rules and all other acts adopted pursuant to the Treaties.

2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 142, all documents and information relating to the financial management of departments or bodies with regard to operations financed or co-financed by the Union. It shall have the power to make enquiries of any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to the aforementioned departments or bodies. The audit in the Member States shall be carried out in conjunction with the national audit institutions or, where they do not have the necessary powers, with the national departments responsible. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence.

In order to obtain all the necessary information for the performance of the task entrusted to it by the Treaties or the acts adopted pursuant to them, the Court of Auditors may be present, at its request, during the audit operations carried out within the framework of the implementation of the budget by, or on behalf of, any Community institution.

At the request of the Court of Auditors, each institution shall authorise financial institutions holding Community deposits to enable the Court of Auditors to ensure that external data tally with the accounts.

3. In order to perform its task, the Court of Auditors shall notify the institutions and authorities to which this Regulation applies of the names of the members of its staff who are empowered to audit them.

Article 141

⊗ **Controls regarding securities and cash** ⊗

The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositories or against official memoranda of cash and securities held. It may carry out such checks itself.

⊗ **Court of Auditors' right of access** ⊗

1. The Commission, the other institutions, the bodies administering revenue or expenditure on the Union's behalf and the final beneficiaries of payments from the budget shall afford the Court of Auditors all the facilities and give it all the information which the Court of Auditors considers necessary for the performance of its task. They shall place at the disposal of the Court of Auditors all documents concerning the award and performance of contracts financed by the Community budget and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts of departments, which the Court of Auditors considers necessary for auditing the budgetary and financial outturn report on the basis of records or on the spot and, for the same purposes, all documents and data created or stored on a magnetic medium.

The other services and internal audit bodies of the national administrations concerned shall afford the Court of Auditors all the facilities which it considers necessary for the performance of its task.

The first subparagraph shall also apply to natural or legal persons receiving payments from the Community budget.

2. The officials whose operations are checked by the Court of Auditors shall:

(a) show their records of cash in hand, any other cash, securities and materials of all kinds, and also the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto;

(b) present the correspondence and any other document required for the full implementation of the audit referred to in Article 140(1).

The information supplied under point (b) of the first subparagraph may be requested only by the Court of Auditors.

3. The Court of Auditors shall be empowered to audit the documents in respect of the revenue and expenditure of the Union which are held by the departments of the institutions and, in particular, by the departments responsible for decisions in respect of such revenue and expenditure, the bodies administering revenue or expenditure on the Union's behalf and the natural or legal persons receiving payments from the budget.

4. The task of establishing that the revenue has been received and the expenditure incurred in a lawful and proper manner and that the financial management has been sound shall extend to the utilisation, by bodies outside the institutions, of Community funds received by way of grants.

5. Community financing paid to beneficiaries outside the institutions shall be subject to the agreement in writing by the beneficiaries or, failing agreement on their part, by the contractors or subcontractors, to an audit by the Court of Auditors into the use made of the financing granted.

6. The Commission shall provide the Court of Auditors, at its request, with any information on borrowing-and-lending operations.

7. Use of integrated computer systems may not have the effect of reducing the access of the Court of Auditors to the supporting documents.

Article 143

⊗ Annual report of the Court of Auditors ⊗

~~1. The annual report of the Court of Auditors shall be governed by the provisions of paragraphs 2 to 6 of this Article.~~

21. The Court of Auditors shall transmit to the Commission ~~and the institutions concerned~~, by →₁ ~~30~~ ⇒ 15 ⇐ June ← ⇒ and to other institutions and bodies referred to in Article 121 by 1st of June ⇐ at the latest, any observations which are, in its opinion, such that they should appear in the annual report. These observations must remain confidential ⇒ and are subject to a contradictory procedure ⇐. Each institution shall address its reply to the Court of Auditors by →₁ 15 October ← at the latest. The replies of institutions other than the Commission shall be sent to the Commission at the same time.

↓ new

2. After completion of the contradictory procedure, each institution or body concerned shall address its reply to the Court of Auditors by 15 October at the latest. The replies of institutions other than the Commission and of the bodies shall be sent to the Commission at the same time.

↓ 1605/2002 (adapted)
⇒ new

3. The annual report shall contain an assessment of the soundness of financial management.

4. The annual report shall contain a section for each institution. The Court of Auditors may add any summary report or general observations which it sees fit to make.

The Court of Auditors shall take all necessary steps to ensure that the replies of each institution to its observations are published ~~immediately~~ ⇒ next to or ⇐ after ~~the~~ ⊗ each ⊗ observations to which they relate.

↓ 1995/2006 Art. 1.81(b)

5. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other institutions, by 15 November at the latest, its annual report accompanied by the replies of the institutions and shall ensure publication thereof in the Official Journal of the European Union.

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.81(c)
⇒ new

6. As soon as the Court of Auditors has transmitted the annual report, the Commission shall inform the Member States concerned immediately of ~~the details of that report~~ ⇒ Court's observations ⇐ which relate to management of the funds for which they are responsible under the rules applicable.

Following receipt of such information, the Member States shall ~~reply to~~ ⊗ inform ⊗ the Commission within ~~60~~ ⇒ 100 ⇐ days ⇒ of the measures taken to address the Court of Auditors' aforementioned observations which pertain to their respective country ⇐. The ~~latter~~ ⊗ Commission ⊗ shall ~~transmit a summary~~ ⇒ communicate this information ⇐ to the Court of Auditors, the Council and the European Parliament ~~before~~ →₁ 28 February ←.

Article 144

⊗ Special reports of the Court of Auditors ⊗

1. The Court of Auditors shall ~~notify~~ ⊗ transmit to ⊗ the institution ⇒ or the body ⇐ concerned ~~of all~~ ⊗ any ⊗ observations which are, in its opinion, such that they should appear in a special report. These observations must remain confidential ⇒ and are subject to a contradictory procedure ⇐.

The institution ⇒ or the body ⇐ concerned shall have two-and-a half months within which to inform the Court of Auditors of any ~~comments~~ ⊗ replies ⊗ it wishes to make on the observations in question.

The Court of Auditors shall adopt the definitive version of the special report in question the following month ⇒ upon the receipt of the replies made by the institution or the body concerned ⇐.

The special reports, together with the replies of the institutions ⇒ or bodies ⇐ concerned, shall be transmitted without delay to the European Parliament and the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.

↓ 1995/2006 Art. 1.82(a)

~~Should the Court of Auditors decide to have any such special reports published in the Official Journal of the European Union, they shall be accompanied by the replies of the institutions concerned.~~

↓ new

The Court of Auditors shall take all necessary steps to ensure that the replies of each institution or body concerned to its observations are published immediately next to or after each observation to which they relate.

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.82(b)

2. →₁ The opinions referred to in Article ~~248~~ ~~287~~ (4) of the ~~EC~~ Treaty on the functioning of the European Union ~~and Article 160e(4) of the Euratom Treaty~~ which do not relate to proposals or drafts covered by the legislative consultation procedure may be published by the Court of Auditors in the Official Journal of the European Union. ← The Court of Auditors shall take its decision on publication after consulting the institution which requested the opinion or which is concerned by it. Opinions published shall be accompanied by any remarks by the institutions concerned.

↓ new

Article 144a

Statements of preliminary findings

1. The Court of Auditors shall transmit to the institutions, bodies or Member States concerned the statements of preliminary findings resulting from its audits. Statement of preliminary findings which are, in the Court's opinion, such that they should appear in the annual report shall be transmitted no later than by 1st of June of the exercise following the one to which they refer. The statements of preliminary findings must remain confidential.

2. The institution, the body or the Member State concerned shall have two and a half months within which to inform the Court of Auditors of any comments it wishes to make on the statements of preliminary findings in question.

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.83

CHAPTER 2

DISCHARGE

Article 145

⊗ Timetable of the discharge procedure ⊗

1. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before →₁ 15 May ← of year $n + 2$ give a discharge to the Commission in respect of the implementation of the budget for year n .

2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Commission of the reasons for the postponement.

3. If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

Article 146

⊗ The discharge procedure ⊗

1. The discharge decision shall cover the accounts of all the Union's revenue and expenditure, the resulting balance and the assets and liabilities of the Union shown in the balance sheet.

2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements referred to in Article 318 of the Treaty on the Functioning of the European Union and Article 179a of the Euratom Treaty. It shall also examine the annual report made by the Court of Auditors together with the replies of the institutions under audit, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

3. The Commission shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 319 of the Treaty on the Functioning of the European Union.

Article 147

⊗ Follow-up measures ⊗

1. In accordance with Article 319 of the Treaty on the Functioning of the European Union and Article 180b of the Euratom Treaty, the Commission and the other institutions shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.

2. At the request of the European Parliament or the Council, the institutions shall report on the measures taken in the light of these observations and comments, and, in particular, on the instructions they have given to those of their departments which are responsible for the implementation of the budget. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on these observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions shall also be transmitted to the Court of Auditors.

PART TWO

SPECIAL PROVISIONS

↓ 1995/2006 Art. 1.84

TITLE I

EUROPEAN AGRICULTURAL GUARANTEE FUND

↓ 1605/2002 (adapted)

Article 148

⊗ Special provisions on the European Agricultural Guarantee Fund ⊗

↓ 1995/2006 Art. 1.85

1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules relating to the European Agricultural Guarantee Fund (EAGF), and to revenue, save as otherwise provided in this Title.

↓ 1605/2002 (adapted)

2. Operations managed directly by the Commission shall be implemented in accordance with the rules laid down in parts one and three.

Article 149

⊗ Commitments of EAGF funds ⊗

↓ 1995/2006 Art. 1.86(a)

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

↓ 1605/2002

2. Payment appropriations which have been carried over but which have not been used by the end of the financial year shall be cancelled.

↓ 1995/2006 Art. 1.86(b) adapted

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

Such carryover shall not exceed, within a limit of 2 % of the initial appropriations referred to in the first subparagraph, the amount of the adjustment of direct payments referred to in Article 11 of Council Regulation (EC) No 73/2009 ~~of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers~~³¹ and which was applied during the last financial year.

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

Such carryover may lead to an additional payment only to the final beneficiaries who have been subject, in the last financial year, to the adjustment of direct payments in accordance with Article 11 of Regulation (EC) No 73/2009.

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

↓ 1605/2002 (adapted)

Article 150

⊗ **Global provisional commitments of EAGF appropriations** ⊗

1. The Commission shall reimburse the expenditure incurred by the Member States.

↓ 1995/2006 Art. 1.87

2. The Commission decisions fixing the amounts of these payments shall constitute global provisional commitments, which may not exceed the total appropriations entered for the EAGF.

3. As from 15 November, routine management expenditure for the EAGF may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed three quarters of the total corresponding appropriations for the current financial year. They may apply only to expenditure for which the principle is laid down in an existing basic act.

³¹ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 1405/2006 (OJ L 265, 26.9.2006, p. 1).

↓ 1605/2002 (adapted) → ₁ 1995/2006 Art. 1.88

Article 151

⊗ Schedule and timing of budgetary commitments of EAGF funds ⊗

1. →₁ Expenditure effected by the authorities and bodies referred to in the rules relating to the EAGF shall, within two months following receipt of the statements sent in by Member States, be the subject of a commitment by chapter, article and item. Such commitment may be made after the elapse of that two-month period whenever a procedure for a transfer of appropriations concerning the budget lines in question is necessary. Save where payment has not yet been made by the Member States or where eligibility is in doubt, the amounts shall be charged as payments within the same two-month period ←.

This budgetary commitment shall be deducted from the global provisional commitment referred to in Article 150.

2. Global provisional commitments which have been made for a financial year and which have not given rise to commitment on specific lines in the budget nomenclature by 1 February of the following financial year shall be cancelled in respect of the original financial year.

3. Paragraphs 1 and 2 shall apply subject to the clearance of accounts.

↓ 1995/2006 Art. 1.89 (adapted)

Article 152

⊗ Accounting of EAGF funds ⊗

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

↓ 1605/2002 (adapted)

Article 153

⊗ Transfer of EAGF appropriations ⊗

↓ 1995/2006 Art. 1.90

1. Where the Commission may transfer appropriations pursuant to Article 23(1), it shall take its decision by 31 January of the following financial year at the latest and shall inform the budgetary authority as provided for in Article 23(1).

↓ 1605/2002

2. In cases other than those referred to in paragraph 1, the Commission shall submit transfer proposals to the budgetary authority by 10 January of the following financial year at the latest.

The budgetary authority shall take decisions on such transfers in accordance with the procedure provided for in Article 24, but within a time limit of three weeks.

↓ 1995/2006 Art. 1.91 (adapted)

Article 154

⊗ Assigned revenue of EAGF funds ⊗

1. Assigned revenue under this Title shall be assigned according to origin in accordance with Article 18(~~24~~).

2. The result of decisions on clearance of accounts, as referred to in Article 30 of Regulation (EC) No 1290/2005 shall be entered in a single Article.

↓ 1995/2006 Art. 1.92

TITLE II

STRUCTURAL FUNDS, COHESION FUND, EUROPEAN FISHERIES FUND, EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT AND FUNDS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE MANAGED IN SHARED MANAGEMENT

↓ 1605/2002 (adapted)

Article 155

⊗ Scope of special provisions on other Union funds ⊗

↓ 1995/2006 Art. 1.93(a)

1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the Regulations governing the European Agricultural Fund for Rural Development (EAFRD)³², the European Regional Development Fund (ERDF)³³, the European Social Fund (ESF)³⁴, the Cohesion Fund³⁵, the European Fisheries

³² Regulation (EC) No 1290/2005.

³³ Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund (OJ L 210, 31.7.2006, p. 1).

Fund (EFF)³⁶, and funds in the area of Freedom, Security and Justice managed in shared management pursuant to Article 53a, hereinafter ‘the Funds’, and to their revenue, save as otherwise provided in this Title.

↓ 1605/2002

2. Operations managed directly by the Commission shall also be implemented in accordance with the rules laid down in parts one and three of this Regulation.

↓ 1605/2002 (adapted)

Article 156

⊗ **Payments of contributions, interim payments and repayments regarding other Union funds** ⊗

1. Payment by the Commission of financial contributions from the Funds shall be made in accordance with the regulations referred to in Article 155.

2. The time limit for interim payments by the Commission shall be laid down in accordance with the regulations referred to in Article 155.

3. The treatment of repayments by the Member States and the implications for the amount of contributions from the Funds shall be governed by the regulations referred to in Article 155.

↓ new

4. By way of derogation from article 10, commitment appropriations available on 31 December arising from repayments of payments on account may be carried over until the closure of the programme and used when necessary under the condition that other commitment appropriations are not longer available.

↓ 1605/2002 (adapted)

Article 157

⊗ **Decommitment of appropriation of other Union funds** ⊗

The Commission shall automatically decommit appropriations that have been committed as provided for in the regulations referred to in Article 155.

³⁴ Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund (OJ L 210, 31.7.2006, p. 12).

³⁵ Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund (OJ L 210, 31.7.2006, p. 79).

³⁶ Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1)

↓ 1995/2006 Art. 1.94

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

↓ 1605/2002

To this end, the Commission shall examine decommitments made during the previous financial year and decide, by 15 February of the current year, on the basis of requirements, whether it is necessary to make the corresponding appropriations available again.

↓ 1995/2006 Art. 1.95 (adapted)

Article 158

⊗ Transfer of appropriation between other Union funds ⊗

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

↓ 1605/2002 (adapted)

Article 159

⊗ Management, selection and audit of other Union funds ⊗

Aspects concerning the management and selection of projects and audit shall be governed by the regulations referred to in Article 155.

TITLE III

RESEARCH

Article 160

⊗ Research funds ⊗

1. Parts one and three shall apply to the research and technological development appropriations, save as otherwise provided in this Title.

These appropriations shall be entered either in one of the titles of the budget relating to the policy area research by direct or indirect action or in a chapter relating to research activities in another title.

They shall be used by implementation of the actions listed in the implementing rules.

↓ 1995/2006 Art. 1.96

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

↓ 1605/2002

2. With regard to the operational expenditure referred to in this Title, the Commission may make transfers from one title to another, provided that the appropriations are used for the same purpose.

3. Experts paid from the research and technological development appropriations shall be recruited in accordance with the procedures laid down by the Council when it adopts each research framework programme.

↓ 1995/2006 Art. 1.97 (adapted)

Article 160a

⊗ **Commitments of Research Fund** ⊗

1. The commitment appropriations corresponding to the amount of the commitment decommitted as a result of total or partial non-implementation of the projects relating to research for which they were earmarked may, exceptionally and in duly substantiated cases, be made available again where it is essential to carry out the programme originally planned, unless the budget for the current financial year contains funds for this purpose.

2. For the purposes of paragraph 1, the Commission shall, at the beginning of each financial year, examine decommitments made during the previous financial year and assess, in the light of the requirements, the need for making the appropriations available again.

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

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

The amount of commitment appropriations to be made available again in year *n* shall in no case exceed 25 % of the total amount decommitted on the same budget line in year *n-1*.

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

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

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

↓ 1605/2002 (adapted)
⇒ new

Article 161

⊗ Participation of the JRC in non Research fund actions ⊗

1. The Joint Research Centre (JRC) may receive funding charged to appropriations entered outside the titles and the chapters referred to in Article 160(1) in respect of its participation ~~on a competitive or negotiated basis in Community activities~~ ⇒ to procurement and grant procedures following Titles V and VI of Part One, and ⇐ financed in whole or in part from the general budget.

↓ new

For the purposes of the participation in the procurement and grant procedures, the JRC shall be considered as a legal entity established in a Member State.

↓ 1605/2002 (adapted)

2. ~~The appropriations relating to the activities in which the JRC participates on a competitive basis~~ ⇒ Shall be treated as assigned revenue within the meaning of Article 18(2) ⇒ ⊗ the appropriations relating to: ⊗

↓ new

(a) grant and procurement procedures in which the JRC participates or;

(b) activities of the JRC on behalf of third parties or;

(c) activities undertaken under an administrative agreement with other institutions or other Commission's departments for the provision of technical-scientific services.

↓ 1605/2002 adapted

The commitment appropriations generated by ~~this~~ revenue referred to in points (a) and (c) shall be made available as soon as the amount receivable has been estimated.

↓ new

For activities referred to in point (c), appropriations not used within five years shall be cancelled.

↓ 1605/2002

The utilisation of these appropriations shall be shown in a set of analytical accounts in the budgetary outturn account for each category of action to which it relates; it shall be separate from revenue originating from financing by third parties (public or private) and from revenue from other services carried out by the Commission for third parties.

↓ new

3. When participating in grants or tender procedures in accordance with paragraph 1 of this Article, the JRC shall not be subject to the conditions laid in Articles 93, 94 b) and c), 95, 96, 114(3) and 114(4) regarding provisions on exclusion and sanctions in relation to procurements and grants.

The JRC shall also be presumed to meet the requirements on economic and financial capacity.

The JRC shall be exempted from lodging guarantees as provided for in Articles 102 and 118.

↓ 1605/2002 (adapted)
→ 1995/2006 Art. 1.98
⇒ new

34. The rules on procurement in Title V of part one shall not apply to the activities of the JRC on behalf of third parties.

45. By way of derogation from Article 23, the Commission may, within the title of the budget relating to the policy area 'Direct action research', make transfers between chapters of up to 15 % of the appropriation in the line from which the transfer is made.

TITLE IV

EXTERNAL ACTIONS

CHAPTER I

GENERAL PROVISIONS

Article 162

⊠ External actions ⊠

1. Parts one and three shall apply to external actions financed from the budget, save as otherwise provided in this Title.

2. The appropriations for the actions referred to in paragraph 1 shall be used by the Commission:

- (a) either within the framework of aid granted on an autonomous basis;
- (b) or \Rightarrow in partnership with a third country referred to in Article 53(1) point (2)(a), through the signature of a financing agreement \Leftarrow ~~under agreements concluded with one or more beneficiary third countries;~~
- ~~(c) or under agreements with the international organisations referred to in Article 53.~~

CHAPTER 2

IMPLEMENTATION OF ACTIONS

Article 163

\boxtimes Implementation of External Actions \boxtimes

\rightarrow ₁ The actions referred to in this Title may be implemented ~~on a centralised basis~~ \boxtimes directly \boxtimes by the Commission, ~~by shared management, on a decentralised basis by the beneficiary third country or countries, or jointly with international organisations~~ \Rightarrow or indirectly by any of the entities or persons listed in points (a) to (h) of point (2) the first paragraph of Article 53, \Leftarrow in accordance ~~compliance~~ with the relevant provisions of Articles 53 to 57 \Leftarrow . Appropriations for external actions may be combined with funds from other sources to achieve a joint objective.

\Downarrow new

Article 164

Trust funds for external actions

For emergency, post-emergency or thematic actions, the Commission may create trust funds following an agreement concluded with other donors. The constitutive act of each trust fund shall define the objectives of the trust fund.

The contributions of the Union and the donors shall be entered into a specific bank account. These contributions are not integrated in the Union budget and are managed by the Commission under the responsibility of the authorising officer by delegation. The entities and persons referred to in Article 53(1) point (2) (a) to (h) may be entrusted with budget implementation tasks in accordance with the relevant rules for indirect management.

The accounting officer of the trust fund is the accounting officer of the Commission. He is responsible for laying down the accounting procedures and chart of accounts.

The Commission's internal auditor and the Court of auditors shall exercise the same powers over the trust fund as they do in respect of other actions carried out by the Commission.

The specific bank account shall be opened and closed by the accounting officer.

The Commission shall ensure a strict separation of duties between accountant and authorising officers.

A board chaired by the Commission is established for each trust fund to ensure the representation of donors and to decide for the use of the funds.

The funds pooled into the trust funds are managed in conformity with sound financial management and transparency. Funds are committed and paid by financial agents of the Commission.

The Commission is authorised to withdraw a maximum of 7 % of the amounts pooled into the trust fund to cover its management costs. For the duration of the trust fund, these management fees are assimilated to assigned revenues within the meaning of Article 18(2)(b) of the Financial Regulation.

The accounting officer shall act on the recovery orders relating to actions funded by the trust fund. Revenue arising from the repayment of these recovery orders shall be returned to the specific bank account of the trust fund. Cancellation and waiving of recovery orders shall be made under the rules referred to in Article 73 of the Financial Regulation.

Trust funds are created for a limited duration determined in their constitutive agreement. This duration may be extended by a decision of the Commission upon request of the board.

The liquidation of the trust fund is decided by the Commission after expiration of the duration.

The modalities of management, reporting and governance of these trust funds are detailed in the Implementing Rules.

↓ 1605/2002 (adapted)
⇒ new

Article 165

⊗ Implementation of external actions through indirect management ⊗

The implementation of actions ~~by beneficiary third countries or international organisations~~ ⇒ implemented indirectly ⇐ is subject to scrutiny by the Commission. Such scrutiny shall be exercised either by prior approval, by *ex post* checks or by a combined procedure.

Article 166

⊗ Agreements on the implementation of external actions ⊗

1. Actions carried out shall give rise to ⊗ one or more of the following instruments ⊗ :

↓ 1995/2006 Art. 1.100(a)
(adapted)
⇒ new

- (a) ~~a financing~~ ⊗ an ⊗ agreement ~~drawn up~~ between the Commission, ~~acting for the Communities,~~ and ~~the beneficiary third country or countries or the bodies they have designated, hereinafter: 'the beneficiaries'~~ ⇒ an entity referred to in Article 163a ⊕ ;
- (b) a contract or a grant agreement between the Commission ~~and national or international public sector bodies or between the Commission~~ and natural or legal persons responsible for carrying out the actions.
-

↓ 1995/2006 Art. 1.100(b)
(adapted)

The terms on which the external aid is given shall be laid down in the instrument by which the ~~financing~~ agreements or the contracts or the grants provided for in points (a) and (b) shall be managed.

↓ 1995/2006 Art. 1.100(c)
(adapted)
⇒ new

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

⇒ The agreements shall lay down the period within which the entities referred to in paragraph 1a shall conclude all ⊕ ~~The individual contracts, grant decisions and agreements~~ ⊗ and grants ⊗ which implement ⇒ the action. Save for multi-donor actions, ⊕ such ~~financing agreements~~ ⊗ period ⊗ shall ~~be concluded or adopted no later~~ ⊗ not be longer ⊗ than three years following the date of conclusion of the ~~financing agreement~~ ⊗ , except: ⊗

⊗ (a) for ⊗ ~~individual contracts and agreements~~ relating to audit and evaluation ~~may be concluded later~~ ⊗ ;

↓ new

- (b) under exceptional circumstances in the following cases:
- riders to contracts already concluded;
 - (ii) individual contracts to be concluded after early termination of an existing contract;
 - (iii) changes of entity charged with the entrusted tasks.

↓ 1995/2006 Art. 1.100(d)
(adapted)
⇒ new

3. ~~The provision under p~~ Paragraph 2 shall not apply to the multi-annual programmes ~~⇒ that are implemented through split commitments~~ ⇐ in the following cases:

- ⇐ the transition assistance and institution building, ⇐ the cross-border cooperation, regional development, human resources development and rural development components of the Pre-Accession Assistance,
- the cross-border cooperation component of the European Neighbourhood and Partnership policy.

In these cases, ⇐ the appropriations shall be automatically de-committed by the Commission in accordance with ⇐ the following ⇐ sector-specific ⇐ rules ~~shall apply~~:

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

~~(i) it has not been used for the purpose of pre-financing; or~~

~~(ii) it has not been used for making intermediate payments; or~~

~~(iii) no declaration of expenditure has been presented in relation to it;~~

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

↓ 1605/2002 (adapted)

CHAPTER 3

PROCUREMENT

Article 167

⊗ External action procurement ⊗

1. The provisions of ~~Article 56 and~~ of Chapter 1 of Title V of part one relating to the general provisions on procurement shall be applicable to contracts covered by this Title subject to the special provisions relating to thresholds and the arrangements for awarding external contracts laid down in the implementing rules. The contracting authorities for the purposes of this chapter shall be:

(a) the Commission on behalf of and for the account of one or more beneficiaries
⊗ third countries ⊗ ;

~~(b) the beneficiary or beneficiaries;~~

↓ 1995/2006 Art. 1.101(a)
⇒ new

(c) ~~a national or international public sector body or natural or legal persons who are beneficiaries of a grant for the implementation of an external action~~ ⇒ entities referred to in Article 163 and entrusted with the corresponding budget implementation tasks ⇐ .

↓ 1995/2006 Art. 1.101(b)
(adapted)

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

↓ new

3. The provisions of this Chapter shall not apply to actions under sector-specific basic acts relating to crisis management aid, to civil protection operations and to humanitarian aid operations, as referred to in Article 110.

↓ 1605/2002 (adapted)
⇒ new

Article 168

⊗ Rules on participation in tender procedures ⊗

1. Participation in tendering procedures shall be open on equal terms to all persons coming within the scope of the Treaties and ~~⊗~~ to any other natural or legal person ⊗ in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned, ~~to all such natural and legal persons who are nationals of the beneficiary third countries or of any other third country as are expressly mentioned in those instruments.~~

2. In ~~duly substantiated exceptional cases~~ ⇐ cases referred to in Article 49 ⇐ , it may be decided, ~~on the basis of the specific conditions laid down in the basic acts governing cooperation~~ ⇐ under exceptional circumstances duly motivated by the authorizing officer ⇐ , to allow third-country nationals other than those referred to in paragraph 1 to tender for contracts.

3. Where an agreement on widening the market for procurement of goods or services to which the Community is party applies, the contracts for procurement financed by the budget shall also be open to third-country nationals other than those referred to in paragraphs 1 and 2, under the conditions laid down in this agreement.

↓ 1995/2006 Art. 1.102

CHAPTER 4

GRANTS

↓ 1605/2002 (adapted)

Article 169

⊗ Full financing of an external action ⊗

An action may be financed in full by the budget only if this proves essential for it to be carried out.

↓ 1995/2006 Art. 1.103 (adapted)
⇒ new

Article 169a

⊗ Applicable rules for external action grants ⊗

Grant procedures to be applied in ~~decentralised~~ ⊗ indirect ⊗ management by ~~beneficiary third countries~~ ⇒ the entities referred to in Article 163 ⇐ shall be laid down in the ~~financing agreements referred to in Article 166~~ ⊗ concluded between the Commission and ~~those~~ these entities ⊗.

↓ new

Article 169b

Income generated by an action

The responsible authorising officer may deduct the income generated by an action from the profit referred to in Article 109(4) where a generation of income was provided for in the grant agreement and where it is reinvested to ensure the sustainability of the action.

↓ 1605/2002

CHAPTER 5

AUDITING OF ACCOUNTS

↓ 1995/2006 Art. 1.104 (adapted)

Article 170

☒ EU Audit in external action grants ☒

Each agreement between the Commission and an entity referred to in Article 163, or grant agreement or grant decision must expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received ☒ Union ☒ ~~Community~~ funds.

↓ 1605/2002 (adapted)

TITLE V

EUROPEAN OFFICES

Article 171

☒ The European Offices ☒

1. 'European offices' for the purposes of applying this Title are the administrative structures set up by one or more institutions to perform specific cross-cutting tasks.

↓ 1995/2006 Art. 1.105

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

↓ 1605/2002 (adapted)

3. Parts one and three shall apply to the operation of the European offices, save as otherwise provided in this Title.

Article 172

☒ Appropriations regarding the Offices ☒

1. The appropriations for each European office, the total amount of which shall be entered in a specific budget line within the section of the budget relating to the Commission, shall be set out in detail in an Annex to that section.

The Annex shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.

The appropriations entered in that Annex shall cover all the financial requirements of each European office in the performance of its duties on behalf of the institutions.

2. Each European office's establishment plan shall be annexed to that of the Commission.

3. The Director of each European office shall take decisions on transfers within the Annex provided for in paragraph 1. The Commission shall inform the budgetary authority of such transfers.

4. Each European office's accounts shall form an integral part of the Union's accounts referred to in Article 121.

↓ 1995/2006 Art. 1.106 (adapted)

Article 173

⊗ **Authorising Officer of the Inter-institutional Offices** ⊗

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

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.107

Article 174

⊗ **The accounts of the Inter-institutional Offices** ⊗

1. Each interinstitutional European office shall draw up analytical accounts of its expenditure, enabling the proportion of its services supplied to each of the institutions to be determined.
→₁ The Director of the European office concerned shall adopt, after approval by its Management Committee, the criteria on which the accounting system shall be based ←.

2. The remarks concerning the specific budget line in which is entered the total appropriation for each interinstitutional European office shall show an estimate of the cost of services supplied by the office to each of the institutions. This shall be based on the analytical accounts provided for in paragraph 1.

3. Each interinstitutional European office shall notify the institutions concerned of the results of the analytical accounts.

↓ 1995/2006 Art. 1.108 (adapted)

Article 174a

⊗ Delegation of powers for Inter-institutional Offices ⊗

1. Each institution may delegate authorising officer powers to the director of an interinstitutional European office for the management of appropriations entered in its section and shall set the limits and conditions for this delegation of powers.

2. The internal auditor of the Commission shall exercise all responsibilities laid down in Title IV, Chapter 8 of Part One.

↓ 1995/2006 Art. 1.109 (adapted)

Article 175

⊗ Services to third parties ⊗

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

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.111(a)
→₂ 1995/2006 Art. 1.111(b)
⇒ new

TITLE VI

ADMINISTRATIVE APPROPRIATIONS

Article 177

⊗ General provisions ⊗

Parts one and three shall apply to administrative appropriations, save as otherwise provided in this Title.

Article 178

⊗ Commitments ⊗

1. As from 15 ~~November~~ ⇒ October ⇐ of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. →₁ Such commitments may not, however, exceed one quarter of the appropriations decided by the budgetary authority on the corresponding budget line for the current financial year ←. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.

2. Expenditure which must be paid in advance pursuant to legal or contractual provisions, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. →₂ In this case, the limit referred to in paragraph 1 shall not apply ←.

Article 179

⊗ Specific provisions regarding administrative appropriations ⊗

↓ Corrigendum, OJ L 025,
30.1.2003, p. 43

1. Administrative appropriations shall be non-differentiated appropriations.

↓ 1605/2002 (adapted)
→₁ Corrigendum, OJ L 099,
14.4.2007, p. 18

→₁ 2. ~~Operating~~ ⊗ Administrative ⊗ expenditure ← arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.

3. The institutions shall inform the two branches of the budgetary authority as soon as possible of any building project likely to have significant financial implications for the budget.

↓ 1995/2006 Art. 1.112

(a) If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify the institution concerned of its intention to issue such an opinion. Failing a reply, the institution concerned may proceed with the planned operation under its administrative autonomy, subject to Article 335 of the Treaty on the Functioning of the European Union and Article 185 of the Euratom Treaty with regard to Union representation.

This opinion shall be forwarded to the institution concerned within two weeks of such notification.

↓ new

(b) The institutions shall request the approval of the budgetary authority for the acquisition of real state assets or any other building project, financed through a loan.

↓ 1995/2006 Art. 1.113 (adapted)
⇒ new

TITLE VII

EXPERTS

Article 179a

⊗ Experts ⊗

The implementing rules shall include a specific procedure for the selection of ⇒ natural persons as ⇐ experts, ~~to be paid on the basis of a fixed amount,~~ for assisting the institutions, ~~in particular~~ in ⊗ the evaluation of ⊗ ~~evaluating proposals and~~ grant applications ⊗, projects and ⊗ ~~or tenders for procurement,~~ and for providing ~~technical assistance in the follow-up to, and final evaluation of, projects financed by the budget~~ ⇒ opinion and advice in specific cases ⇐. ⊗ These persons shall be paid on the basis of a fixed amount announced in advance ⇐ ⇒ and shall be chosen on the basis of their professional capacity. The selection shall be done on the basis of selection criteria respecting the principles of non-discrimination, equal treatment and absence of conflict of interests. ⇐

↓ 1605/2002

PART THREE

TRANSITIONAL AND FINAL PROVISIONS

TITLE I

TRANSITIONAL PROVISIONS

↓ 1995/2006 Art. 1.115 (adapted)

Article 181

⊗ Transitional provisions ⊗

1. As regards the Funds mentioned in Article 155(1) for which the basic acts were repealed before the date of application of this Regulation, appropriations which were decommitted in application of Article 157(1) may be made available again in the event of a manifest error attributable solely to the Commission or in the case of *force majeure* which has serious repercussions for the implementation of operations supported by these Funds.

~~2. The central database referred to in Article 95 shall be set up by 1 January 2009.~~

~~32.~~ For transfers of appropriations concerning operational expenditure referred to in the Regulations governing the Structural Funds and the Cohesion Fund for the 2000 to 2006 programming period, for which Community payments still have to be made for the financial settlement of outstanding Community commitments until the closure of the assistance, the Commission may make transfers from one title to another, provided that the appropriations in question:

- are for the same objective, or
- relate to Community initiatives or to technical assistance and innovative measures and are transferred to measures of the same nature.

~~4. Article 30(3) shall apply for the fund mentioned in Article 148(1) for the first time in respect of the payments charged to the 2008 budget.~~

↓ 1605/2002 (adapted)
⇒ new

TITLE II

FINAL PROVISIONS

Article 182

⊗ Information requests by the Budgetary Authority ⊗

The European Parliament and the Council shall be empowered to obtain any information or explanations regarding budgetary matters within their fields of competence.

Article 183

⊗ Adoption of the Implementing Rules ⊗

⇒ In accordance with Article 290 of the Treaty on the Functioning of the European Union, ⇐
the Commission shall adopt ⇒ a delegated Regulation on ⇐ rules for implementing this Regulation.

↓ new

Article 183aa

Exercise of the delegation

1. The powers to adopt the delegated act referred to in Article 183 shall be conferred on the Commission for an indeterminate period of time.
2. As soon as it adopts this delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The powers to adopt the delegated act are conferred on the Commission subject to the conditions laid down in Articles 183ab and 183ac.

↓ new

Article 183ab

Revocation of the delegation

1. The delegation of power referred to in Article 183 may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.
3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

↓ new

Article 183ac

Objections to delegated acts

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.
2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

↓ 1605/2002 (adapted)

Article 184

⊗ Revision ⊗

~~Every three years, or~~ This Regulation shall be revised whenever it proves necessary to do so, ~~this Regulation shall be the subject of a review~~ in accordance with the procedure laid down by Article 322 of the Treaty on the Functioning of the European Union ~~279 of the EC Treaty~~ and Article 183 of the ~~Euratom~~ Treaty establishing the European Atomic Energy Community, ~~after recourse to the conciliation procedure, if the European Parliament so requests.~~

↓ 1605/2002 (adapted)
→₁ 1995/2006 Art. 1.116(a)
⇒ new

Article 185

⊗ Framework financial regulation for agencies and bodies set up under the Treaty on the functioning of the European Union and the Treaty establishing the European Atomic Energy Community ⊗

1. ⇒ In accordance with Article 290 of the Treaty on the Functioning of the European Union, ⇐ →₁ ~~the~~ Commission shall adopt a framework financial regulation for ~~the~~ bodies set up under ⊗ this Treaty and the Treaty establishing the European Atomic Energy Community ~~by the Communities~~, ⊗ and having which have legal personality ~~which actually receive~~ ⊗ and receive ⊗ contributions charged to the ⊗ Union ⊗ budget ←.

⇒ This framework financial regulation will be based on the principles and rules provided under this Regulation. ⇐

The financial rules of these bodies may not depart from the framework regulation except where their specific ~~operating~~ needs so require and with the Commission's prior consent.

⇒ Such exception may not concern the budgetary principles referred to in Title II of Part One, the principle of equality of treatment of operators, or specific provisions contained in the basic acts creating such bodies. ⇐

2. Discharge for the implementation of the budgets of the bodies referred to in paragraph 1, shall be given by the European Parliament on the recommendation of the Council.

3. The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as he/she does in respect of Commission departments.

⇒ 4. Unless otherwise provided in the basic act creating a body referred to in paragraph 1, the Court of Auditors shall examine the legality and regularity of the revenue and expenditure of this body before its accounts are consolidated with the Commission's accounts. This examination shall rely on the audit report established by an independent external auditor designated by the body and whose mission is to verify the conformity of the body's accounts with Article 123 of this Regulation. ⇐

⇒ 5. The provisions of Articles 183aa, 183ab and 183ac shall apply mutatis mutandis to this Article. ⇐

↓ new

Article 185a

Model Financial Regulation for public-private partnership bodies

The bodies having legal personality set up by a basic act and entrusted with the implementation of a public-private partnership pursuant to Article 53(1) point (2) (e) shall adopt their financial rules.

These rules shall include a set of principles necessary to ensure sound financial management of Union funds, inspired in particular by Article 53b of the present Regulation and which shall be laid down in a light model financial regulation, to be adopted by the Commission, in accordance with Article 290 of the Treaty on the Functioning of the European Union.

The provisions of Articles 183aa, 183ab and 183ac shall apply mutatis mutandis to this Article.

↓ new

Article 185b

Specific provisions concerning the Euratom Supply Agency

The administrative expenditure relating to the appropriations provided in the Union's budget for the Euratom Supply Agency set up under the Treaty establishing the European Atomic Energy Community shall be implemented in accordance with the relevant provisions of this Regulation and the detailed provisions set out in the Implementing Rules of this Regulation.

↓ 1605/2002 (adapted)

⇒ new

Article 186

⊗ **Repeal** ⊗

~~The Financial Regulation of 21 December 1977~~ (EC, Euratom) No 1605/2002 is hereby repealed with the exception of its Article 53b which shall apply to all commitments made before the 31 December 2013 of funds referred to in Article 155.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in ~~the~~ Annex II.

Article 187

☒ Entry into force ☒

This Regulation shall enter into force on the ~~20th~~ third day following that of its publication in the *Official Journal of the European ~~Communities~~ Union*.

It shall apply from ~~1 January 2003~~ ⇨ the date of entry into application of the Commission Regulation amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of the Financial Regulation and at the latest from 1 January 2012 ⇐ .

↓ new

Article 53a shall apply from the date of entry into application of new rules governing the Structural Funds, the Cohesion Fund, Rural Development, the European Fund for Fisheries and funds in the area of Freedom, Security and Justice managed in shared management pursuant to Article 53a under the Multiannual Financial Framework to be adopted for the period from 1 January 2014.

↓ 1605/2002 (adapted)

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

Done at [...],[...]

For the European Parliament
The President
[...]

For the Council
The President
[...]

ANNEX

CORRELATION TABLE

~~referred to in Article 186~~

Financial Regulation of 21st December 1977	Financial Regulation of 25th June 2002
Part I — Provisions applicable to the general budget of the European Communities	Part one — Common provisions
Title I: General principles	Title II: Budgetary principles
Article 1, 1(1)	Article 4, 4(1) and 4(2)
Article 1, 1(2)	Article 6
Article 1, 1(3)	Article 179, 179(2)
Article 1, 1(4) and 1(5)	Article 7
Article 1, 1(6)	Deleted
Article 1, 1(7)	Article 77, 77(3)
Article 2	Articles 27 and 48, 48(2)
Article 3	Article 28
Article 4, 4(1)	Article 17
Article 4, 4(2)	Articles 17 and 18
Article 4, 4(3)	Article 19
Article 5	Article 5
Article 6	Articles 6 and 8
Article 7, 7(1)	Article 9(1), 9(2), 9(4) and 9(6)
Article 7, 7(2)	Article 9(1), 9(2), 9(3), 9(5) and 9(6)
Article 7, 7(3)	Deleted
Article 7, 7(4)	Article 10
Article 7, 7(5)	Article 9(1)
Article 7, 7(6)	Articles 11 and 157

Article 7, 7(7)	Deleted, except Article 156, 156(3)
Article 7, 7(8)	Consigned to the regulation foreseen in Article 183
Article 7, 7(9)	Consigned to the regulation foreseen in Article 183
Article 8, 8(1)	Article 12
Article 8, 8(2) and 8(3)	Articles 150, 150(3) and 178
Article 9	Article 13
Article 10	Article 29, 29(2)
Article 11	Article 16
Title II: Establishment and structure of the budget	Title III: Establishment and structure of the budget
Section I: Establishment of the budget	Chapter 1: Establishment of the budget
Article 12	Article 31
Article 13	Article 33
Article 14	Article 34
Article 15, except 15(2)	Article 37
Articles 15, 15(2) and 16, 16(2)	Article 38
Article 16, 16(1)	Article 35
Article 17	Article 36
Article 18	Article 39
Section II: Structure and presentation of the budget	Chapter 2: Structure and presentation of the budget
Article 19, 19(1)	Articles 40 and 41
Article 19, 19(2) and 19(3)	Article 41
Article 19, 19(4)	Article 43
Article 19, 19(5)	Article 44
Article 19, 19(6)	Deleted

Article 19, 19(7)	Article 30, 30(1)
Article 19, 19(8)	Article 45
Article 20, except 20(4)	Article 46
Article 20, 20(4)	Article 47
Title III: Implementation of the budget	Title IV: Implementation of the budget
Section I: General provisions	Chapter 1: General provisions
Article 21	Article 58
Article 22, 22(1)	Articles 48 and 49
Article 22, 22(2)	Article 50, 54(1) and 57(1)
Article 22, 22(3)	Deleted
Article 22, 22(4)	Articles 51, 52 and 59
Article 22, 22(4a)	Article 56
Article 22, 22(5)	Article 1(2)
Article 23	Article 84
Article 24	Deleted
Article 24a	Articles 85 and 86
Article 25	Article 61
Article 26, 26(1)	Article 21
Article 26, 26(2) and 26(4)	Article 22
Article 26, 26(3)	Article 23
Article 26, 26(5)	Article 24
Article 26, 26(6) and (7)	Deleted
Article 26, 26(8) and (9)	Article 25
Article 26, 26(10) and (11)	Article 26
Article 27, 27(1)	Article 20, 20(1)
Article 27, 27(2) and (5)	Deleted

Article 27, 27(2a)	Article 20, 20(2)
Article 27, 27(3)	Deleted
Article 27, 27(4)	Article 20, 20(3)
Section II: Budgetary revenue, management of available funds	Chapter 5: Revenue operations
Article 28, 28(1)	Article 70, 70(1)
Article 28, 28(2)	Article 71, 71(2)
Article 28, 28(3)	Article 70, 70(2)
Article 28a	Article 74
Article 29	Article 73
Article 30	Consigned to the regulation foreseen in Article 183
Article 31	Article 69
Article 32	Article 15
Article 33	Consigned to the regulation foreseen in Article 183
Article 34	Article 131
Article 35	Consigned to the regulation foreseen in Article 183
Section III: Commitment, validation, authorisation and payment of expenditure	Chapter 6: Expenditure operations
Article 36	Articles 77, 77(1) and (2) and 166, 166(2)
Article 37	Deleted
Article 38	Deleted
Article 39	Deleted
Article 40	Article 79
Article 41	Consigned to the regulation foreseen in Article 183
Article 42	Consigned to the regulation

	foreseen in Article 183
Article 43	Article 80
Article 44	Consigned to the regulation foreseen in Article 183
Article 45	Consigned to the regulation foreseen in Article 183
Article 46	Article 81
Article 47	Deleted
Article 48	Deleted
Article 49	Article 71, 71(4)
Article 50	Deleted
Article 51, 51(1)	Deleted
Article 51, 51(2)	Article 82
Article 51, 51(3)	Deleted
Article 52	Deleted
Article 53	Consigned to the regulation foreseen in Article 183
Article 54	Article 63
Section IV: Management of posts	
Article 55	Deleted
Title IV: Conclusion of contracts, inventories, accountancy	Title V: Procurement
Section I: Contracts for the supply of goods and services; contracts for purchase, lease and hire	
Article 56	Article 105
Article 57	Deleted
Article 58, 58(1)	Articles 88, 89, 89(2) and 91
Article 58, 58(2)	Article 90
Article 58, 58(3)	Article 97, 97(1)

Article 58, 58(4)	Consigned to the regulation foreseen in Article 183
Article 59	Article 91, 91(2)
Article 60	Article 91, 91(3)
Article 61	Deleted
Article 62	Article 89, 89(1)
Article 63	Deleted
Article 64	Deleted
Article 64a	Article 102
Section II: Inventories of movable and immovable property	Title VII: Presentation of the accounts and accounting
	Chapter 4: Property inventories
Article 65	Article 138, 138(1)
Article 66	Article 138, 138(2)
Article 67	Consigned to the regulation foreseen in Article 183
Article 68	Consigned to the regulation foreseen in Article 183
Section III: Accounts	Chapter 3: Accounting
Article 69	Articles 132 and 133
Article 70	Articles 132, 133, 134 and 137
Article 70a	Consigned to the regulation foreseen in Article 183
Article 71	Deleted
Article 72	Articles 132, 132(3) and 136
Title V: Responsibilities of authorising officers, financial controllers, accounting officers and administrators of advance funds	Title IV: Implementation of the budget Chapter 4: Liability of the financial actors
Article 73	Article 66

Article 74	Deleted
Article 75, 75(1)	Article 67
Article 75, 75(2)	Article 68
Article 75, 75(3)	Deleted
Article 75, 75(4)	Deleted
Article 75, 75(5)	Consigned to the regulation foreseen in Article 183
Article 76	Article 65, 65(2)
Article 77	Deleted
Title VI: Presenting and auditing accounts	Title VII: Presentation of the accounts and accounting Chapter 1: Presentation of the accounts
Article 78	Article 128
Article 79	Article 128
Article 80	Articles 122 and 127
Article 81	Articles 126 and 128
Article 82	Article 128, 128(2)
Article 83, 83(1)	Article 140, 140(3)
Article 83, 83(2) bis (4)	Article 139
Article 84	Deleted
Article 85	Article 140, 140(1) and (2)
Article 86	Article 141
Article 87	Article 142, 142(1) bis (5)
Article 88	Article 143
Article 88a	Deleted
Article 89, 89(1)	Article 145, 145(1)
Article 89, 89(2), (3) and (5)	Article 146

Article 89, 89(4)	Article 145, 145(2) and (3)
Article 89, 89(6)	Deleted
Article 89, 89(7) and (8)	Article 147
Article 89, 89(9) and (10)	Consigned to the regulation foreseen in Article 183
Article 90	Article 144
Title VII: Special provisions applicable to research and technological development appropriations	Part Two: Special provisions Title III: Research
Article 91	Article 160, 160(1)
Article 92, 92(1) and (2)	Article 160, 160(1)
Article 92, 92(3)	Article 161, 161(1)
Article 92, 92(4)	Article 161, 161(3)
Article 93	Deleted
Article 94	Deleted
Article 95	Article 161, 161(4)
Article 96, 96(1) and (4)	Article 161, 161(2)
Article 96, 96(2) and (3)	Deleted
Article 97	Deleted
Title VIII: Special provisions applicable to the European Agricultural Guidance and Guarantee Fund, Guarantee Section	Part Two: Special provisions Title I: European Agricultural Guidance and Guarantee Fund, Guarantee Section
Article 98	Article 148
Article 99, 99(1)	Article 150, 150(1) and (2)
Article 99, 99(2)	Deleted
Article 100	Article 151, 151(1)
Article 101	Article 152
Article 102	Consigned to the regulation

	foreseen in Article 183
Article 103	Article 151, 151(2)
Article 104	Article 153
Title IX: Special provisions applicable to external aid	Part Two: Special provisions Title IV: External actions
Section I: General provisions	Chapter 1: General provisions
Article 105, 105(1) and (2)	Article 162
Article 105, 105(3)	Consigned to the regulation foreseen in Article 183
Article 105, 105(4)	Deleted
Article 105, 105(5)	Consigned to the regulation foreseen in Article 183
Article 106, 106(1)	Article 166
Article 106, 106(2)	Deleted
Article 106, 106(3)	Consigned to the regulation foreseen in Article 183
Section II: Implementation	Chapter 2: Implementation of actions
Article 107	Deleted
Article 108	Deleted
Article 109	Deleted
Article 110	Deleted
Article 111	Deleted
Section III: Award of contracts	Chapter 3: Procurement
Article 112	Article 167, 167(1)
Article 113	Article 167, 167(2)
Article 114	Article 168
Article 115	Consigned to the regulation foreseen in Article 183

Article 116	Deleted
Article 117	Deleted
Article 118	Consigned to the regulation foreseen in Article 183
Article 119	Deleted
Section IV: Auditing of accounts	Chapter 4: Auditing of accounts
Article 120	Article 170
Title X: Special provisions applicable to the management of appropriations relating to staff serving in offices and suboffices in the Community and in delegations outside the Community and to their administration	Deleted
Article 121	Deleted
Article 122 (Deleted)	Deleted
Article 123	Deleted
Title XI: Special provisions applicable to financial participation by third parties and outside bodies in Community activities	Deleted
Section I: General provisions	
Article 124 to 126	Article 18(1)(d)
Section II: Provisions applicable to participation provided for pursuant to the agreement on the European Economic Area	
Article 127 to 132	Article 18(1)(d)
Title XIa: Special provisions relating to the sanctions referred to in Section 4 of Regulation (EC) No 1467/97	
Article 132a	Article 18(1)(b)
Title XII: Special provisions relating to the Office for Official Publications of the European Communities	Title V: European Offices
Article 133	Article 171 to 175
Part II: Provisions applicable to borrowing and lending operations by the European Communities	

Article 134	Article 130
Article 135	Consigned to the regulation foreseen in Article 183
Article 136	Deleted
Article 137	Article 142, 142(6)
Part III: Transitional and final provisions	Part three: Transitional and final provisions
Article 138	Article 182
Article 139	Article 183
Article 140	Article 184
Article 141	Article 186
Article 142	Article 185
Article 143	Article 187



ANNEX I

Repealed Regulation with list of its successive amendments

Council Regulation (EC, Euratom) No 1605/2002	(OJ L 248, 16.9.2002, p. 1)
Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006	(OJ L 390, 30.12.2006, p. 1)
Council Regulation (EC) No 1525/2007 of 17 December 2007	(OJ L 343, 27.12.2007, p. 9)

ANNEX V

CORRELATION TABLE

Regulation (EC, Euratom) No 1605/2002	This Regulation
Article 1	
-	Annex I
Annex	Annex II