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THE EUROPEAN UNION**

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ADDENDUM TO NOTE

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to : Permanent Representatives Committee

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Subject : Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the annual budget of the Union (**first reading**)

PRESIDENCY PROPOSAL¹

¹ Changes compared to the Council's mandate recorded in document 9626/11 ADD 1 of 5 May 2011 are indicated in **bold** and ~~strikethrough~~.

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on the financial rules applicable to the annual budget of the Union**

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 Commission¹,

Having regard to the opinion of the Court of Auditors²,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:³

[...]

HAVE ADOPTED THIS REGULATION:

¹ OJ C 94, 26.03.11, p. 7.

² OJ [...], [...], p. [...].

³ Recitals have not been examined yet.

PART ONE
COMMON PROVISIONS

TITLE I
SUBJECT MATTER AND SCOPE

[Article 1¹
Subject matter

1. This Regulation lays down the rules for the establishment and the implementation of the general budget of the European Union, (the "budget") and the presentation and auditing of the accounts.

2. **For the purposes of this Regulation:**
 - **the term "institution" refers to the European Parliament, the European Council and the Council, the European Commission, the Court of Justice of the European Union and the European Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman, the European Data Protection Supervisor and the European External Action Service (hereinafter the "EEAS").**

 - **the European Central Bank shall not be considered an institution of the Union.**

3. **Any reference to "the Communities" or to "the Union" shall be understood as a reference to the European Union and/or the European Atomic Energy Community as the context may require.**

4. **This Regulation shall apply to the implementation of administrative expenditure relating to the appropriations provided in the budget for the Euratom Supply Agency.**

¹ **Articles 1 to 4 to be redrafted by the Legal Services.**

[Article 1a¹

Definitions

1. For the purposes of this Regulation:

- (a) **"Union"** means the European Union and/or the European Atomic Energy Community as the context may require;
- (b) **"institution"** means the European Parliament, the European Council and the Council of the European Union, the European Commission, the Court of Justice of the European Union, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman, the European Data Protection Supervisor and the European External Action Service (EEAS); the European Central Bank shall not be considered as an institution of the Union;
- (c) **"budget"** means the instrument which, for each financial year, forecasts and authorises all revenue and expenditure considered necessary for the Union;
- (d) **"basic act"** means a legal[ly binding] act adopted by the European Parliament and the Council or by the Council in application of the Treaty on the Functioning of the European Union (the "TFEU") and the Treaty establishing the European Atomic Energy Community (the "Euratom Treaty"); a basic act may take the form of a regulation, a directive or a decision within the meaning of Article 288 TFEU and provides a legal basis for the action and for the implementation of the corresponding expenditure entered in the budget;
- (e) **"management mode"** means the various methods of budget implementation, described in Articles 55, 56 and 57;
- (f) **"recipient"** means beneficiaries, contractors, and any natural or legal person receiving prizes or funds under a financial instrument;

¹ Articles 1 to 4 to be redrafted by the Legal Services.

- (g) **"beneficiary"** means any natural or legal person to whom a grant has been awarded or to whom a grant decision has been notified;
- (h) **"contractor"** means any natural or legal person with whom a procurement contract has been concluded;
- (i) **"Staff Regulations"** means the Staff Regulations of Officials of the European Communities and the Conditions of employment of other servants of the European Communities.]

[Article 2¹

Scope-Compliance of secondary legislation with this Regulation

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 **this Regulation.**

~~This Regulation shall apply to the European Parliament, the European Council and the Council, the European Commission, the Court of Justice of the European Union and the European Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman, the European Data Protection Supervisor and the European External Action Service (hereinafter referred to as "institution(s)").~~

~~This Regulation shall not apply to the European Central Bank.~~

~~This Regulation shall apply to the implementation of administrative expenditure relating to the appropriations provided in the budget for the Euratom Supply Agency.~~

Any proposal or amendment to a proposal submitted to the legislative authority shall clearly indicate the provisions containing derogations from this regulation or from delegated regulations adopted pursuant to this regulation and shall state the specific reasons justifying such derogations in the respective Explanatory Memorandum of any such proposal.]

¹ **Articles 1 to 4 to be redrafted by the Legal Services.**

[*Article 2a*^{1,2}

Protection of personal data

This Regulation is without prejudice to the requirements of 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 data and of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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 data.]

TITLE II

BUDGETARY PRINCIPLES

[*Article 3*²

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.]

¹ **Agreement on the content: lawyer-linguists to decide on the most appropriate place for this article.**

² **Articles 1 to 4 to be redrafted by the Legal Services.**

CHAPTER 1
PRINCIPLES OF UNITY AND OF BUDGETARY ACCURACY

[Article 4¹

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 Union and the European Atomic Energy Community.
2. The revenue and expenditure of the Union shall comprise:
 - (a) the revenue and expenditure of the Union, 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 the 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, **including the European Financial Stability Mechanism and Balance of Payment Facility operations, in accordance with point (d) of Article 46(1).**

Article 5

Rules governing the principles of unity and budgetary accuracy

1. ~~Subject~~ **Without prejudice** to Article 80, 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.

¹ **Articles 1 to 4 to be redrafted by the Legal Services.**

3. An appropriation may not be entered in the budget if it is not for an item of expenditure considered necessary.
4. Interest yielded by ~~pre-financing payments made from the budget~~ **the funds which are the property** of the Union shall not be due to the Union, except as otherwise provided for in the agreements concluded with the entrusted entities listed in points (ii) to (viii) of Article 55(1)(c). In those cases, such interest shall be re-used for the corresponding programme **action or either be deducted from the payment requests according to point (c) of Article 20(1)** or be recovered.

Article 5a

Lapse of deadline

Unless otherwise provided, Regulation No 1181/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits shall apply to deadlines set by this Regulation.

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 83(2) and 180(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 Council Regulation (EC, Euratom) No 1150/2000 implementing Decision **2007/436/EC, Euratom on the system of the European Communities' own resources**¹.
2. The entries in respect of value added tax own resources, the additional resource based on gross national income 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 83(2) and the agreements referred to in Article 180(2) and concluded with third countries, which shall be entered in the accounts on the basis of the budget commitments up to 31 December.

¹ OJ L 130, 31.5.2000, p. 1.

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:
 - (a) the expenditure of the European Agricultural Guarantee Fund shall be entered in the accounts for a financial year in accordance with the rules laid down in Title I of Part Two;
 - ~~(b) the other expenditure falling under Articles 56 and 57 shall be entered in the accounts for the reference periods as laid down in the applicable sector-specific rules.~~

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.

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 **or up to 31 December of the following year for amounts relating to building projects;**
 - (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. 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 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.
6. Without prejudice to Article 10, appropriations placed in reserve and appropriations for staff expenditure may not be carried over. **For the purpose of this article staff expenditure comprises the remuneration and allowances for members and staff of the institutions to which the Staff Regulations apply.**

Article 10

Carry over rules for assigned revenue

Carry over of assigned revenue referred to in Article 18 and of appropriations not used and available at 31 December arising from such revenue shall comply with the following rules:

- (a) 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;

- (b) internal assigned revenue shall be carried over for one year only, ~~without prejudice to Council Regulation (EC) No 320/2006¹~~.

Article 11

Decommitment of appropriations

Without prejudice to Articles 170 and 174, 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, except 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 definitively adopted at the beginning of the financial year, the provisional twelfths regime mentioned in the first paragraph of Article 315 TFEU shall apply. Commitments and payments may be made within the limits laid down in paragraph 2.
2. Commitments may be made per chapter to a maximum of one quarter of the total appropriations authorised in the relevant chapter of the previous financial year plus one twelfth for each month which has elapsed.

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

¹ ~~Council Regulation (EC) No 320/2006 of 20 February 2006 establishing a temporary scheme for the restructuring of the sugar industry in the Community and amending Regulation (EC) No 1290/2005 on the financing of the common agricultural policy (OJ L 58, 28.2.2006, p. 42).~~

Payments may be made monthly per chapter to a maximum of one twelfth of the appropriations authorised in the relevant chapter of the preceding financial year. That sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget.

3. The appropriations authorised in the relevant chapter of the preceding financial year, as specified in paragraphs 1 and 2, shall be understood to refer to the appropriations voted in the budget, including by amending budgets, and after adjustment for the transfers made during that financial year.
4. If the continuity of action by the Union and management needs so require, the Council, acting by a qualified majority on a proposal of the Commission, may authorise ~~two or more~~ **expenditure in excess of one provisional twelfth but not exceeding the total of four** provisional twelfths both for commitments and for payments over and above those automatically made available ~~by the provisions in accordance with paragraphs 1 to 3 and 2,~~ **unless in duly justified cases**. It shall forward the decision on authorisation without delay to the European Parliament.

The decision shall enter into force thirty days following its adoption unless the European Parliament, acting by a majority of its **component** Members, decides to reduce that expenditure within ~~those thirty days~~ **that time limit**.

If the European Parliament decides to reduce that expenditure, the Commission shall submit a new proposal.

If within those thirty days the European Parliament informs that it does not want to reduce that expenditure, the decision can enter into force before the expiry of this delay.

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

5. If, for a given chapter, the authorisation of ~~two or more~~ **four** provisional twelfths granted in the circumstances and under the procedures provided for in paragraph 4 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 European Parliament and the Council shall act under the procedures provided for in paragraph 4. However, the available overall total of the appropriations in the budget of the preceding financial year or the draft budget as proposed may in no circumstances be exceeded.

CHAPTER 3

PRINCIPLE OF EQUILIBRIUM

Article 14

Definition and scope

1. Budget revenue and payment appropriations must be in balance.
2. The Union and the European Atomic Energy Community, as well as the bodies set up by the Union as referred to in Article 200, may not raise loans within the framework of the budget.

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 35. They shall be drawn up in accordance with the Council Regulation implementing the Decision on the system of the Union's 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.

However, for the cash-flow purposes referred to in Article 65, the accounting officer and, in the case of imprest accounts, the imprest administrators, and, for the needs of the administrative management of the Commission and the European External Action Service, the authorising officer responsible shall be authorised to carry out operations in national currencies as laid down in the delegated Regulation referred to in Article 199.

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. 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;
 - (b) financial contributions from Member States, third countries, including in both cases their public and parastatal agencies, legal entities or natural persons, to certain external aid projects or programmes financed by the Union and managed by the Commission on their behalf;
 - (c) interest on deposits and the fines provided for in the Regulation on speeding up and clarifying the implementation of the excessive deficit procedure;
 - (d) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests, including the earmarked revenue specific to each institution;
 - (e) contributions to Union activities from third countries or various bodies;

[(ea) fines imposed in the area of competition, other fines and amounts receivable as a result of out-of-court settlements, understandings, or any other similar agreements concluded with, or off payments paid by, any non-state third parties;]¹

¹ **The Presidency proposes to reject this new point (ea) proposed by the European Parliament while accepting, as a compromise, the Commission statement on "the enhancing of efforts to combat the illegal traffic in tobacco products" (see statement No 1 recorded in Annex 1 to document 10256/12).**

(f) assigned revenue referred to in Articles 173(2) and 175(2).

However, in the case provided for in point (b), commitment appropriations may be made available upon signature by the Member State of a contribution agreement expressed in Euro. This shall not apply to cases provided for in Articles 173(2) and 175(2).

3. The following shall constitute internal assigned revenue:
- (a) revenue from third parties in respect of goods, services or work supplied at their request;
 - (b) 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;
 - (c) revenue arising from the repayment of amounts wrongly paid **in accordance with Article 77**;
 - (ca) revenue arising from interest on pre-financing subject to Article 5**;
 - (d) 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;
 - (e) ~~settlements of insurance claims~~ **payments received**;
 - (f) revenue from lettings;
 - (g) revenue from the sale of publications and films, including those on an electronic medium.
 - (h) reflows from financial instruments pursuant to Article 131(5).**

4. 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.
5. 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. Acceptance of donations of a value of EUR 50 000 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 delegated Regulation referred to in Article 199 may specify the cases where certain revenue~~ **following deductions** may be ~~deducted~~ **made** from **payment** requests ~~for payment~~, which shall then be passed for payment of the net amount.
 - (a) **penalties imposed on parties to procurement contracts or beneficiaries of a grant;**
 - (b) **discounts, refunds and rebates on individual invoices and cost statements;**

(c) **interest generated by pre-financing payments;**

(d) **adjustments for amounts unduly paid.**

Adjustments referred to in point (d) of the first subparagraph may be made, by means of direct deduction, against a new payment of the same type to the same payee under the chapter, article and financial year in respect of which the excess payment was made, and which give rise to interim payments or payments of balances.

To the items referred to in points (c) and (d) of the first subparagraph the Union accounting rules shall apply.

2. The cost of products or services provided to the Union incorporating taxes refunded by ~~third countries on the basis of the relevant agreements~~ **the Member States pursuant to the Protocol on the Privileges and Immunities of the European Union** shall be charged to the budget for the ex-tax amount. **Subsequent reimbursement of taxes shall be treated as assigned revenue in accordance with Article 18(2).**
3. The cost of products or services provided to the Union incorporating taxes refunded by third countries on the basis of the relevant agreements may be charged to the budget:
 - a) ex-tax amount or;
 - b) for the tax inclusive amount. In such case, subsequent reimbursement of taxes shall be treated as internal assigned revenue.
4. 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. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry "*pro memoria*".~~
- ~~3. Appropriations corresponding to assigned revenue may be transferred only if such revenue is used for the purpose to which it is assigned.~~

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 European Parliament and the Council of their intentions. In the event of duly substantiated reasons being raised within this period by either the European Parliament or the Council, the procedure laid down in Article 24 shall apply.

3. Any institution other than the Commission may propose to the European Parliament and the Council, 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 European Parliament and the Council beforehand.

Article 23

Transfers by the Commission

1. The Commission may, within its own section of the budget, **autonomously**:
 - (a) transfer appropriations within each chapter;
 - (b) 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;
 - (c) 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.
 - ~~(d) transfer appropriations, as soon as the basic act is adopted pursuant to the procedure laid down in Article 294 of the TFEU, 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 (e)~~ **of the first subparagraph**, the Commission shall inform the European Parliament and the Council of its ~~decision~~ **intention to do so**. In the event of duly substantiated reasons being raised within that three-week period by either the European Parliament or the Council, the procedure laid down in Article 24 shall apply.

- ~~2.~~ 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 European Parliament and the Council within two weeks after its decision on those transfers.

- 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;**
 - (b) in duly substantiated exceptional cases of international humanitarian disasters and crises, occurring after 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.**

Article 24

*Transfers by the Commission or any other institution submitted to the European Parliament
and the Council*

- ~~1. Transfers not falling under Articles 22 and 23 shall be subject to the approval of the European Parliament and the Council in accordance with the following provisions.~~
21. The Commission or any other institutions acting in the framework of Article 52 shall submit their proposals simultaneously to the European Parliament and the Council.
32. The European Parliament and the Council shall take decisions on transfers of appropriations as provided for in paragraphs 4 3 to 7 6, except as otherwise provided for in Title I of Part Two.
43. Except in urgent circumstances, the Council, acting by a qualified majority, and the European Parliament, shall deliberate upon the transfer proposal within six weeks of the date on which the two institutions received the proposal for each transfer submitted to them.
54. The transfer proposal shall be approved, if, within the six-week period, any of the following cases occurs:
- (a) the European Parliament and the Council approve it;
 - (b) either the European Parliament or the Council approves it and the other institution refrains from acting;
 - (c) the European Parliament and the Council refrain from acting or have not taken a decision contrary to the transfer proposal.

65. The six-week period referred to under paragraph 3 shall be reduced to three weeks, unless either the European Parliament or the Council requests otherwise, in any of the following cases:
- (a) the transfer represents less than 10 % of the appropriations of the line from which the transfer is made and does not exceed EUR 5 million;
 - (b) the transfer concerns only payment appropriations and the overall amount of the transfer does not exceed EUR 100 million.
76. If either the European Parliament or the Council has amended the amount of the transfer while the other institution has approved it or refrains from acting, or if the European Parliament and the Council have both amended the amount of the transfer, the smaller amount approved either by the European Parliament or the Council shall be deemed approved, unless the institution concerned withdraws its proposal.

Article 24a

Specific rules on transfers

1. **Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry "*pro memoria*".**
2. **Appropriations corresponding to assigned revenue may be transferred only if such revenue is used for the purpose to which it is assigned.**

Article 25

Transfer subject to special provisions

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

2. Decisions on transfers to allow the use of the emergency aid reserve shall be taken by the European Parliament and the Council on a proposal from the Commission. [A separate proposal must be submitted for each individual emergency action.]

The procedure provided for in Article 24(43) and (54) shall apply. If the Commission proposal is not agreed to by the European Parliament and the Council and there is a failure to arrive at a common position on the use of this reserve, the European Parliament and the Council shall refrain from acting on the Commission's transfer proposal.

- ~~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 European Parliament and the Council immediately after making such transfers.~~

CHAPTER 7

PRINCIPLE OF SOUND FINANCIAL MANAGEMENT

Article 26

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.

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 European Parliament and the Council. Such information, **as referred to in point (d) of Article 34(2a)**, shall be provided annually and at the latest in the documents accompanying the draft budget.
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 27

Compulsory financial statement

1. Any proposal or initiative submitted to the legislative authority by the Commission, the High Representative of the Union for Foreign Affairs and Security Policy (the "High Representative") or by a Member State, which may have an impact on the budget, including changes in the number of posts, must be accompanied by a financial statement and by the evaluation provided for in Article 26(4).

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.

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 statement in the light of the progress of deliberations on the basic act.

3. In order to reduce the risk of fraud and irregularities, the financial statement referred to in paragraph 1 shall provide information on the internal control system set up, an estimation of the costs and benefits of the ~~checks~~ **controls** implied by such system and an assessment of the expected level of risk of ~~non-compliance with the applicable rules~~ **error**, as well as existing and planned fraud prevention and protection measures.
4. ~~The assessment of the expected level of risk of non-compliance may include an estimate of a tolerable risk of error.~~

~~Such estimate shall be based on an analysis of the costs and benefits of checks, and an evaluation of the likely scale and type of errors.~~

The estimate of a tolerable risk of error **analysis** shall take into account the **likely scale and type of errors, as well as** the specific conditions of the policy area concerned and the rules applicable.

Article 28

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, detection and correction of fraud and irregularities **and their follow-up**;
- (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes, as well as the nature of the payments concerned.

2a. Effective internal control shall be based on best international practices and include in particular the following:

- (a) **segregation of tasks;**
- (b) **an appropriate risk management and control strategy including control at recipient level;**
- (c) **avoidance of conflicts of interests;**
- (d) **adequate audit trails and data integrity in data systems;**
- (e) **procedures for monitoring of performance and for follow-up of identified internal control weaknesses and exceptions;**
- (f) **periodic assessment of the sound functioning of the internal control system.**

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

- (a) **the implementation of an appropriate risk management and control strategy coordinated among appropriate actors involved in the control chain;**
- (b) **the accessibility of results of controls carried out to all appropriate actors in the control chain;**

- [(c) **reliance where appropriate on management declarations of implementation partners and independent audit opinions, provided that the quality of the underlying work is adequate and acceptable and that it has been performed in accordance with agreed standards.]¹**
 - (d) **the timely application of corrective measures including, where appropriate, dissuasive penalties;**
 - (e) **clear and unambiguous legislation underlying the policies;**
 - (f) **the elimination of multiple controls;**
 - (g) **the principle of improving the cost-benefit ratio of controls.**
3. If, during the programme implementation, the level of ~~non-compliance~~ **error** is persistently high, the Commission shall identify the weaknesses in the control systems, analyse the cost and benefits of possible corrective measures and take **or propose** appropriate action, **such as simplification of the applicable provisions, improvement of the control systems and re-design of the programme and/or delivery systems.**

Article 29

Tolerable risk of error

Cost-effective controls

~~The Legislative authority shall, in accordance with the procedure laid down in Article 322 of the TFEU, 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 157(2).~~

¹ **Point (c) is still open and will be re-examined in connection with Article 56.**

~~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 point (b) Article 55(1) 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 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.~~

When presenting revised or new spending proposals, the Commission shall estimate the cost and benefits of control systems as well as the level of risk of error with the proposed legislation per fund.

[Integral to the full effectiveness of national management and control systems are management declarations on these systems submitted by the bodies accredited by the Member States.]¹

CHAPTER 8 PRINCIPLE OF TRANSPARENCY

Article 30

*Publication of ~~budgets~~, accounts, **budgets** and reports*

1. The budget shall be established and implemented and the accounts presented in compliance with the principle of transparency.
2. Adopted budgets and amending budgets shall be published in the *Official Journal of the European Union* pursuant to the third subparagraph of Article 297(1) TFEU.

Budgets shall be published within [three] months following the date on which they are finally adopted. The budget figures shall be made available to the public within four weeks following the date on which the corresponding budget is finally adopted.

¹ **The last subparagraph is still open and needs to be re-examined in connection with Article 56.**

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*.

Article 31

Publication of Union 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. The Commission shall make available, in an **appropriate and** timely manner, information on the recipients of funds ~~deriving, as well as the nature and purpose of the measure financed~~ from the budget held by it when the budget is implemented ~~on a centralised basis and~~ directly by its departments or by Union Delegations in accordance with ~~the second paragraph of~~ Article 535, and information on the recipients of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.

This obligation shall also apply to the other institutions with regard to their recipients.

3. This information shall be made available with due observance of the requirements of confidentiality **and security**, ~~in particular the protection of personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council¹ and Regulation (EC) No 45/2001 of the European Parliament and of the Council², 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.~~

¹ — OJ L 281, 23.11.1995, p. 31.

² — OJ L 8, 12.1.2001, p. 1.

Where natural persons are concerned, the publication shall be limited to the name of the contractor or the beneficiary, its localisation, the amount awarded and the purpose of the award, and the disclosure of these data, shall be based on relevant criteria such as the periodicity of award, or the type or the importance of the award. The criteria for disclosure and the level of details published shall take into account the specificities of the sector and of each management mode referred to in Article 55; the level of details and criteria shall be defined by means of the delegated regulation referred to in Article 199 and, where applicable, in the relevant sector-specific rules.

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

ESTABLISHMENT OF THE BUDGET

Article 32

Estimates of revenue and expenditure

The institutions **referred to in Article 1(2)** shall draw up an estimate of their revenue and expenditure, which they shall send to the Commission **and in parallel, for information, to the European Parliament and the Council** ~~by~~ **before** 1 July each year.

The High Representative shall hold ~~prior~~ consultations with the Members of the Commission responsible for development policy, neighbourhood policy and international cooperation, humanitarian aid and crisis response, regarding their respective responsibilities.

~~These estimates shall also be sent by these institutions to the European Parliament and the Council for information by 1 July each year.~~ The Commission shall draw up its own estimates, which it shall also send to the European Parliament and the Council ~~by the same date~~ **directly after adoption**.

In preparing its own estimates the Commission shall use the information referred to in Article 33.

Article 33

Estimated budget of the bodies referred to in Article 200

Each body referred to in Article 200 shall, in accordance with the instrument establishing it, send to the Commission and the European Parliament and the Council ~~by~~ **in parallel and no later than** 31 March each year an estimate of its revenue and expenditure, including the establishment plan, and its draft work programme.

Article 34

Draft budget

1. The Commission shall submit a proposal containing the draft budget to the European Parliament and the Council by 1 September of the year preceding that in which the budget is to be implemented. It shall also transmit it, for information, to the national Parliaments.

The draft budget shall contain a summary general statement of the expenditure and revenue of the Union and consolidate the estimates referred to in Article 32. ~~The Commission may submit an opinion on the estimates of the other institutions. Where that opinion covers~~ **It may also contain** different estimates, ~~it shall include explanations from those drawn up by the institutions.~~

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 multiannual financial framework.

2. In order to provide more precise and reliable forecasts concerning the legislation in force and pending legislative proposals, 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.

2a. The Commission shall attach to the draft budget:

- (a) where appropriate, the reasons for which the draft budget contains different estimates for those drawn up by other institutions.**
- (b) 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 200 and to the European Schools. Any such working paper, showing the latest authorised establishment plan, shall present:**
 - (i) all staff employed by the Union, including its legally separate entities, displayed by type of contract,**
 - (ii) a statement of the policy on posts and external personnel and on gender balance,**
 - (iii) the number of posts actually filled at the beginning of the year in which the draft budget is presented, indicating their distribution by grade and administrative unit,**
 - (iv) a list of posts broken down per policy area,**
 - (v) for each category of external staff, the initial estimated number of full-time equivalents on the basis of the authorised appropriations as well as the number of persons actually in place at the beginning of the year in which the draft budget is presented, indicating their distribution by function group and, as appropriate, by grade.**

- (c) a working document on the planned implementation of appropriations for the year and commitments outstanding, on the bodies referred to in Article [200] of the Financial Regulation and the European Schools, on the pilot projects and preparatory actions;**

- (ca) as regards funding to international organisations, a working document containing:**
 - (i) a summary of all contributions, with a breakdown per Union programme/fund and per international organisation,**
 - (ii) a statement of reasons explaining why it was more efficient for the Union to fund those international organisations rather than to act directly;**

- (d) activity statements or any other relevant document containing the following:**
 - (i) 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,**
 - (ii) full justification and cost-benefit approach for proposed changes in the level of appropriations,**
 - (iii) clear rationale for intervention at the Union level complying, inter alia, with the principle of subsidiarity,**
 - (iv) information on the implementation rates of the previous year's activity and implementation rates for the current year,**
 - (v) a summary of evaluation results when relevant to budget changes,**
 - (vi) information on prizes with a unit value of EUR 1 000 000 or more;**

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

2b. Where the Commission entrusts the budget implementation to public private partnerships (ppp), it shall attach to the draft budget a working document presenting:

- (a) an annual report on the performance of existing implementing ppPs in the previous year, including information on the legal form and the shareholders of bodies entrusted with budget implementation tasks under point (vii) of Article 55(1)(c);**
- (b) the targets set for the year to which the draft budget relates, indicating any specific budgetary needs dedicated to attaining this target,**
- (c) the administrative cost and implemented budget in total and per type as defined in Article 201 and per individual implementing ppp in the preceding year;**
- (d) the amount of financial contributions made from the Union's budget and the value of contributions and contributions in kind made by the other partners for each implementing ppp;**

Where implementing ppPs make use of financial instruments, the relevant information shall be included in the working document referred to in paragraph 2c.

2c. Where the Commission makes use of financial instruments, it shall attach to the draft budget a working document presenting:

- (a) the aggregate budgetary commitments and payments from the Union's budget for each financial instrument,**
- (b) additional resources arising from financial instruments in the previous year, and accrual for additional resources for the current year,**
- (c) the total amount of contingent liabilities and/or provisions for risks and liabilities, as well as any information on the financial risk exposure of the EU,**

- (d) impairments of assets of Equity/Risk Sharing instruments, and called guarantees for guarantee instruments, both for the previous year and the accumulated respective figures;**
 - (e) the average duration between the budget commitment to the financial instruments and the legal commitments for individual projects in the form of equity or debt, where this exceeds three years, the Commission shall, in the report foreseen under Article 131(4), explain the reasons and provide where appropriate an action plan for the reduction of the duration in the framework of the annual discharge procedure;**
 - (f) the administrative expenditure arising from management fees and other financial and operating charges paid for the management of financial instruments where this has been entrusted to third parties in total and per managing party and per financial instrument managed.**
- 3. The Commission shall also attach to the draft budget any further working paper it considers useful to support its budget requests.**
- 4. In accordance with Article 8(5) of Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service¹ and in order to ensure the budgetary transparency in the area of external action of the Union, the Commission shall transmit to the European Parliament and the Council, together with the draft budget, a working document presenting, in a comprehensive way:**
- (a) all administrative and operational expenditure related to the external actions of the Union, including Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy tasks, and financed from the budget;**

¹ OJ L 201, 3.8.2010, p. 30.

- (b) the EEAS' overall administrative expenditure for the previous year, broken down into expenditure by delegation and expenditure for the EEAS' central administration; together with the operational expenditure, broken down by geographic area (regions, countries), thematic areas, Union Delegation and mission.**

The working document shall also:

- (a) show the number of posts for each grade in each category and the number of permanent and temporary posts, including contractual and local staff authorised within the limits of the budget appropriations in each Union Delegation, as well as in the central administration of the EEAS;**
- (b) show any increase or reduction of posts by grade and category in the central administration of the EEAS, and in all Union Delegations based on the preceding year;**
- (c) show the number of posts authorised for the financial year, the number of posts authorised for the preceding year, as well as the number of posts occupied by diplomats seconded from the Member States, Council and Commission staff;**
- (d) provide a detailed picture of all staff in place in the Union Delegations at the time of presenting the draft budget, including a breakdown by geographic area, gender, individual country and mission, distinguishing establishment plan posts, contract agents, local agents and seconded national experts and appropriations requested in the draft budget for such other types of personnel with corresponding estimates of the equivalent full-time staff that may be employed within the limits of the appropriations requested.**

Article 34a¹

Working documents in support of the draft budget

~~1.—The Commission shall attach to the draft budget the following working documents in respect of human resources:~~

~~(a)—a statement of the policy on posts and external personnel;~~

~~(b)—the latest authorised establishment plan, as well as the number of posts actually filled at the beginning of the year in which the draft budget is presented, indicating their distribution by grade and administrative unit;~~

~~(c)—a list of posts broken down by policy area;~~

~~(d)—for each category of external staff, the initial estimated number of full-time equivalents on the basis of the authorised appropriations, as well as the number of persons actually in place at the beginning of the year in which the draft budget is presented, indicating their distribution by function group and, as appropriate, by grade.~~

~~2.—The Commission shall also provide, in support of the draft budget, the following working documents and any working paper it considers useful to support its budget requests:~~

~~(a)—working documents on the implementation of appropriations for the ongoing year, as well as on the implementation and, whenever possible, the estimated evolution of outstanding commitments, on the bodies referred to in Article 200 and the European Schools, on the pilot projects and preparatory actions;~~

~~(b)—activity statements or any other relevant document containing the following:~~

~~(i)—information on the achievement of the objectives referred to in Article 26 for the various activities;~~

¹ **Merged with Article 34.**

- ~~(ii) — full justification and cost-benefit analysis of proposed changes in the level of appropriations;~~
- ~~(iii) — clear rationale for intervention at the level of the Union complying, inter alia, with the principle of subsidiarity;~~
- ~~(iv) — information on the implementation rates of the activity in the previous year;~~
- ~~(v) — an annual assessment of the activities implemented by the executive agencies defined in Article 59;~~
- ~~(vi) — a summary of evaluation results;~~
- ~~(c) — a summary statement of the schedule of payments due in subsequent financial years to meet budgetary commitments entered into in earlier financial years.~~

~~3. — In accordance with Article 8(5) of Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service¹ and in order to ensure the budgetary transparency in the area of external action of the Union, the Commission shall transmit to the European Parliament and the Council, together with the draft budget, a working document presenting, in a comprehensive way:~~

- ~~(a) — all administrative and operational expenditure related to the external actions of the Union, including Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy tasks, and financed from the budget;~~
- ~~(b) — the EEAS' overall administrative expenditure for the previous year, broken down into expenditure by delegation and expenditure for the EEAS' central administration, together with the operational expenditure, broken down by geographic area (regions, countries), thematic areas, Union Delegation and mission.~~

¹ — OJ L 201, 3.8.2010, p. 30.

The working document shall also:

- (a) ~~show the number of posts for each grade in each category and the number of permanent and temporary posts, including contractual and local staff authorised within the limits of the budget appropriations in each Union Delegation, as well as in the central administration of the EEAS;~~
- (b) ~~show any increase or reduction of posts by grade and category in the central administration of the EEAS, and in all Union Delegations based on the preceding year;~~
- (c) ~~show the number of posts authorised for the financial year, the number of posts authorised for the preceding year, as well as the number of posts occupied by diplomats seconded from the Member States, Council and Commission staff;~~
- (d) ~~provide a detailed picture of all staff in place in the Union Delegations at the time of presenting the draft budget, including a breakdown by geographic area, individual country and mission, distinguishing establishment plan posts, contract agents, local agents and seconded national experts and appropriations requested in the draft budget for such other types of personnel with corresponding estimates of the equivalent full-time staff that may be employed within the limits of the appropriations requested.~~

Article 35

Letter of amendment to the draft budget

~~Until the Conciliation Committee referred to in Article 314 of the TFEU is convened~~ **On the basis of new information which was not available at the time the draft budget was established**, the Commission may, on its own initiative or if requested by the other institutions, each in respect of its own section, present simultaneously to the European Parliament and the Council letters of amendment to the draft budget ~~on the basis of new information which was not available at the time the draft was established~~, **before the Conciliation Committee referred to in Article 314 TFEU is convened. This might** include a letter of amendment updating expenditure estimates for agriculture.

Article 36

Approval of the outcome of the Conciliation Committee

~~Once the Conciliation Committee has agreed on a joint text, the European Parliament and the Council shall endeavour to approve the outcome of the Conciliation Committee as soon as possible in accordance with Article 314(6) of the TFEU, in accordance with their respective internal rules of procedure.~~

Article 37

Obligations of the Member States stemming from the adoption of the budget

Once the budget has been established pursuant to Article 314 TFEU and Article 177 of the Euratom Treaty, 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 Union the payments due as specified in the Council Regulation implementing the Decision on the system of the Union's own resources.

Article 38

Draft amending budgets

1. **The Commission may present the following draft amending budgets which are primarily revenue-driven:**
 - **to enter in the budget the balance of the previous financial year, in accordance with the procedure laid down in Article 15;**
 - **to revise the forecast of own resources on the basis of updated economic forecasts;**
 - and**

- **to update the revised forecast of own resources and other revenue, as well as to review the availability and needs for payment appropriations.**

Furthermore, if there are unavoidable, exceptional ~~or~~ and unforeseen circumstances, in particular in view of the mobilisation of the European Union Solidarity Fund, the Commission may present draft amending budgets which are primarily expenditure-driven.

~~Except for the timetable, Articles 34 and 37 shall apply to amending budgets. They must be substantiated by reference to the budget whose estimates they are amending.~~

2. Requests for amending budgets, in the same circumstances as referred to in **the preceding** paragraph ~~1~~, from institutions other than the Commission shall be sent to the Commission.

Before presenting a draft amending budget, the Commission and the other institutions shall examine the scope for reallocation of the relevant appropriations ~~primarily on the basis of~~ **with particular reference to** any expected under-implementation of appropriations.

Except for the timetable, Article 37 shall apply to amending budgets. They must be substantiated by reference to the budget whose estimates they are amending.

3. The Commission shall, except in **duly justified** exceptional circumstances **or in the case of the mobilisation of the European Union Solidarity Fund for which a draft amending budget can be presented at any time of the year**, submit ~~any~~ **its** draft amending budgets, simultaneously to the European Parliament and 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.
4. The European Parliament and the Council shall discuss them with due account for their urgency.

Article 39

Early transmission of estimates and draft budgets

The Commission and the European Parliament and the Council may agree to bring forward certain dates for the transmission of the estimates, and for the adoption and transmission of the draft budget. This arrangement may not, however, have the effect of shortening or prolonging the periods allowed for consideration of these texts under Article 314 TFEU 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 the following:

- (a) a general statement of revenue and expenditure;
- (b) separate sections subdivided into statements of revenue and expenditure for each institution.

The European Council and the Council shall share the same section of the budget.

Article 41

Budget nomenclature

1. Commission revenue and the revenue and expenditure of the other institutions shall be classified by the European Parliament and the Council 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 European Parliament and the Council, 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 operational appropriations and administrative appropriations.

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

2a. When presented by purpose, administrative appropriations for individual titles shall be classified as follows:

- (a) expenditure on staff authorised in the establishment plan: there shall be an amount of appropriations and a number of establishment plan posts corresponding to this expenditure;**
- (b) expenditure on external personnel and other expenditure referred to in point (c) of Article 23(1) and financed under the "administration" heading of the multiannual financial framework;**
- (c) expenditure on buildings and other related expenditure, including cleaning and maintenance, rental and hiring, telecommunications, water, gas and electricity;**
- d) external personnel and technical assistance directly linked to the implementation of programmes.**

The administrative expenditure of the Commission of a type which is common to several titles shall be set out in a separate summary statement classified by type.

2b. The delegated regulation referred to in Article 199 shall lay down guidelines for the classification of articles and items aiming at maximum transparency and conciseness of the budget.

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.

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

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 European Parliament and the Council shall take a decision on these transfers as provided for 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 entered in a separate title, shall comprise payment appropriations only.

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 Articles 23 and 24.

Article 45
Emergency Aid Reserve

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 25.

Article 46
Presentation of the budget

1. The budget shall show:
 - (a) in the general statement of revenue and expenditure:
 - (i) the estimated revenue of the Union for the financial year concerned;
 - (ii) the estimated revenue for the preceding financial year and the revenue for year $n - 2$;

- (iii) the commitment and payment appropriations for the financial year concerned;
 - (iv) the commitment and payment appropriations for the preceding financial year;
 - (v) the expenditure committed and the expenditure paid in year $n - 2$, **the latter also expressed as a percentage of the budget**;
 - (vi) appropriate remarks on each subdivision, as set out in Article 41(1);
- (b) in each section of the budget, the revenue and expenditure shall be shown in the same structure as in point (a);
- (c) as regards staff:
- (i) 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;
 - (ii) 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;
 - (iii) 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;

- (iv) an establishment plan setting the number of posts by grade and by category for each body referred to in Article 200 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;
- (d) as regards borrowing-and-lending operations:
- (i) in the general statement of revenue, the budget lines corresponding to the relevant operations and intended to record any reimbursements received from recipients who initially defaulted, leading to activation of the performance guarantee. These lines shall carry a token entry "*pro memoria*" and be accompanied by appropriate remarks;
- (ii) in the Commission section:
- the budget lines containing the Union's performance guarantees in respect of the operations concerned. These lines shall carry a token entry "*pro memoria*", so long as no effective charge which has to be covered by definitive resources has arisen;
 - 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;
- (iii) in a document annexed to the Commission section, as an indication:
- ongoing capital operations and debt management;
 - the capital operations and debt management for the financial year concerned;

(da) as regards financial instruments under Title VIII:

- (i) a reference to the basic act;**
- (ii) budget lines corresponding to the relevant operations;**
- (iii) a general description of the financial instruments, including their duration and their impact on budget;**
- (iv) the envisaged operations, including target volumes based on the leverage ratio arising from the existing financial instruments;**

(db) as regards the funding to bodies entrusted with budget implementation tasks under point (vii) of Article 55(1)(c):

- (i) a reference to the basic act of the relevant programme;**
- (ii) corresponding budget lines;**
- (iii) a general description of the tasks entrusted, including their duration and their impact on the budget;**

(e) the total amount of CFSP expenditure shall be entered into one budget chapter, entitled CFSP, with specific budgetary articles. Those articles shall cover CFSP expenditure and shall contain specific budget lines identifying at least the single major missions.

2. In addition to the documents referred to in paragraph 1 the European Parliament and the Council 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 (c) 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, except in the case of 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~~ **the following** 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;
- (c) **that the institution or body has taken part in a benchmarking exercise with other institutions and bodies of the Union as initiated by the Commission's staff screening exercise.**¹

Three weeks before making the modifications referred to in the second subparagraph, the institutions shall inform the European Parliament and the Council of their intentions. In the event of duly justified reasons being raised within this period by either the European Parliament or the Council, the institutions shall refrain from making the modifications and the ~~normal~~ procedure **referred to in Article 38** 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.

¹ **A transitional rule will be included relation to this point.**

CHAPTER 3
BUDGETARY DISCIPLINE

Article 48

Compliance of the budget with the multiannual financial framework

The budget shall comply with the multiannual financial framework.

Article 49

Compliance of Union acts with the budget

Where the implementation of a Union act exceeds the appropriations available in the budget, such act may be implemented in financial terms only after the budget has been amended accordingly.

TITLE IV
IMPLEMENTATION OF THE BUDGET

CHAPTER 1
GENERAL PROVISIONS

Article 50

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.

Article 51

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 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 TFEU 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 or a decision within the meaning of Article 288 TFEU.

3. In application of Title V of the Treaty on European Union (the "TEU"), a basic act may take one of the **following** forms ~~specified in Articles 26(2), 28(1), 29, 31(2), 33 and 37 of the Treaty on European Union.:~~

- **Council Decision necessary for defining and implementing the common foreign and security policy (Article 26(2) TEU);**
- **Council decision on operational action required by the international situation (Article 28(1) TEU);**
- **Council decision defining the Union's approach to a particular matter of geographical or thematic nature (Article 29 TEU);**
- **Council decisions defining a Union action or position, or implementing such action or position (1st-3rd indents of Article 31(2) TEU) or on the appointment of a special representative (4th indent of Article 31(2), and Article 33 TEU);**
- **conclusion of agreements with one or more states or international organisations (Article 37 TEU).]¹**

¹ This part could be moved into Article 1a on "definitions".

~~4. 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.~~

54.[†] By way of derogation from paragraphs 1, 2 and 3, 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:

- (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 field of application of the TFEU and the Euratom Treaty, 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 European Parliament and the Council on the actions referred to in point (a) and the first paragraph of this point which shall also contain an assessment of results and the follow-up envisaged;

The total amount of appropriations for the pilot schemes referred to in point (a) may not exceed EUR 40 million in any budget year.

[†] ~~The final text of points (b) and (c) of Article 51(5) is linked to the decision to be adopted by the Council pursuant to Article 41(3) of the Treaty on European Union.~~

The total amount of appropriations for new preparatory actions referred to in the first subparagraph of this point may not exceed EUR 50 million in any budget year, and the total amount of appropriations actually committed for preparatory actions may not exceed EUR 100 million.

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

For the purpose of Union 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, on a proposal by the High Representative.

In order to ensure the rapid implementation of preparatory measures, the High Representative shall inform the **European Parliament and the Commission** as early as possible on the Council's intention to launch a preparatory measure and in particular of the estimated resources required for this purpose. **In conformity with 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 TFEU 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 delegated Regulation referred to in Article 199;
- (e) appropriations for the operation of each institution under its administrative autonomy.

Article 52

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.

Detailed arrangements may be agreed with the Commission in order to facilitate the implementation of the Union Delegations' administrative appropriations. Those arrangements shall not contain any derogation from the provisions of this Regulation and the delegated Regulation referred to in Article 199.

Article 53

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.

However, the Commission may delegate its powers of budget implementation concerning the operational appropriations of its own section to the Heads of Union Delegations. It shall, at the same time, inform the High Representative thereof. When Heads of Union Delegations act as subdelegated authorising officers of the Commission, they shall apply the Commission rules for the implementation of the budget and shall be submitted to the same duties, obligations and accountability as any other subdelegated authorising officer of the Commission.

The Commission may withdraw that delegation in accordance with its own rules.

For the purposes of the second paragraph, the High Representative shall take the measures necessary to facilitate the cooperation between Union Delegations and Commission departments.

Article 54
Conflict of interests

1. All financial actors and any other person involved in budget implementation, **and** management, **including acts preparatory thereto**, 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 ~~concerned~~ **in question** must refrain from such actions and refer the matter to the ~~competent authority~~ **authorising officer responsible who shall confirm in writing whether a conflict of interests exists. The person in question shall also inform his hierarchical superior. Where a conflict of interest is found to exist, the person subject to such interest shall cease all his activities in the pending matter. The authorising officer responsible shall personally take any further appropriate action.**

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.¹

¹ **A recital on the reputational risk will be included in relation to this article. The following text, as reworded by the Commission on the basis of the current text of the Implementing Rules will be included in the delegated act:**

"Acts likely to be vitiated by a conflict of interests within the meaning of Article 54(2) of the Financial Regulation may, inter alia, take one of the following forms:

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

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

CHAPTER 2
METHODS OF IMPLEMENTATION

Article 55

Methods of implementation of the budget

1. The Commission shall implement the budget in the following ways:
 - (a) directly, by its departments, **by including its staff in the Union Delegations under the authority of their respective Head of Delegation**, in accordance with the second paragraph of Article 53, or through executive agencies referred to in Article 59;
 - b) in shared management with Member States, or
 - (c) indirectly, **where this is foreseen in the basic act**, by entrusting budget implementation tasks to:¹
 - (i) third countries or the bodies they have designated;
 - (ii) international organisations and their agencies;
 - ~~(iii) financial institutions entrusted with the implementation of Financial Instruments pursuant to Title VIII;~~
 - (iv) the European Investment Bank and the European Investment Fund ~~or any other subsidiary of the Bank;~~
 - (v) bodies referred to in Articles 200 and 201;
 - (vi) public law bodies or bodies governed by private law with a public service mission as far as these latter provide adequate financial guarantees;

¹ **A transitional rule will be included in relation to this point.**

- (vii) bodies governed by private law of a Member State, entrusted with the implementation of a public and private partnership and providing adequate financial guarantees;
- (viii) persons entrusted with the implementation of specific actions **in the Common Foreign and Security Policy** pursuant to Title V of the Treaty on the European Union, and identified in the relevant basic act within the meaning of Article 51.

The Commission remains responsible for the implementation of the budget (Article 317 TFEU) and shall inform the European Parliament and the Council on the operations carried out by the entities under points (i) to (viii). Where the entrusted entity is identified in a basic act, the financial statement provided for in Article 27 shall provide a full justification for the choice of this particular entity under points (i) to (viii).

- 1a. The entities and persons entrusted with budget implementation tasks in accordance with point (c) of Article 55(1) shall fully cooperate in the protection of the European Union's financial interests. Agreements concluded with such entities shall provide for the right of the European Court of Auditors, as well as OLAF to comprehensively exert their competences under the TFEU in the audit of funds so managed.**

The Commission shall make the entrustment of implementing tasks contingent upon the existence of transparent, non-discriminatory, efficient and effective review procedures concerning the actual implementation of these tasks.

All agreements concluded with such entities and persons shall be made available to the budgetary authority at its request.

Entities and persons listed in points (i) to (viii) of paragraph 1(c) to which implementation tasks are delegated shall ensure, in conformity with Article 31(2), adequate annual ex post publication of beneficiaries of funds deriving from the budget. The Commission shall be notified of the measures taken.

2. Member States, and entities and persons listed under point (c) 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.

Article 56

Shared management ~~with Member States~~

1. Where the Commission implements the budget under shared management, implementation tasks shall be delegated to Member States. These **Commission and the 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, the Commission and the Member States shall fulfil **their respective** control and audit obligations, and assume the resulting responsibilities laid down in this regulation. Complementary provisions shall be laid down in sector-specific rules.
2. Member States shall **when executing tasks relating to the implementation of the budget, take all the necessary measures, including legislative, regulatory and administrative, to protect the Union's financial interests, namely:**
 - (a) **ensure that actions financed from the budget are implemented correctly and effectively and in accordance with the applicable sector-specific rules and for that purpose designate and supervise bodies responsible for the management and control of Union funds;**
 - (b) prevent, detect and correct irregularities and fraud ~~when executing tasks relating to the implementation of the budget.~~

To this ~~end effect~~, they shall, **respecting the principle of proportionality, and in compliance with this article, as well as the relevant sector-specific rules**, carry out, ~~in accordance with the principle of proportionality, and in compliance with the relevant sector-specific rules~~, *ex ante* and *ex post* controls including, where appropriate, on the spot checks on representative **and/or risk-based** samples of transactions, ~~to ensure that the actions financed from the budget are effectively carried out and implemented correctly~~. They shall also recover funds unduly paid and bring legal proceedings as necessary.

Member States shall impose effective, dissuasive and proportionate penalties on recipients where provided for in sector-specific rules and ~~without prejudice to~~ **in** specific provisions in national legislation.

As part of its risk assessment and in accordance with sector-specific rules, the Commission shall monitor the management and control systems set in the Member States. The Commission in its audit work shall respect the principle of proportionality and shall take into account the level of assessed risk in accordance with the sector-specific rules.

3. **In accordance with criteria and procedures laid down in Ssector-specific rules shall define, in compliance with the provisions set out in this Regulation, the role of the Commission and the Member States with respect to shall, at the appropriate level, designate bodies responsible for the management and control of Union funds. These bodies may carry out tasks not related to the management of Union funds and may entrust certain of their tasks to other bodies.**

Member States may base their decision on designation on whether the management and control systems are essentially the same as those in place for the previous period and have functioned effectively.

If the existing audit and control results show that the designated bodies no longer comply with the criteria set out in the sector-specific rules, Member States shall take the measures necessary to ensure that deficiencies in the implementation of the tasks of these bodies are remedied, including by ending the designation in accordance with the sector-specific rules.

The sector-specific rules shall define the role of the Commission in the process set out in this paragraph.

4. ~~Member States at the appropriate level~~ **Bodies designated pursuant to paragraph 3 shall:**
- (a) set up and ensure the functioning of an effective and efficient internal control system;
 - (b) use an accounting system providing accurate, complete and reliable information in a timely manner;
 - (c) provide the information required in paragraph 5;**
 - ~~(ed)~~ ensure *ex-post* publication of recipients **beneficiaries** of Union funds, in ~~conformity~~ **accordance** with Article 31(2); and
 - ~~(d) ensure a protection.~~ **Any processing** of personal data in ~~conformity~~ **shall comply** with the principles laid down in **national provisions implementing** Directive 95/46/EC.

5. ~~Bodies designated pursuant to paragraph 3,~~ **Member States at the appropriate level** shall provide the Commission ~~on a yearly basis by 15 February~~ with:
- (a) ~~their accountings at an aggregated level~~ on the expenditure made, **during the relevant reference period as defined in the sector-specific rules**, in the execution of their tasks ~~entrusted~~ and presented to the Commission for reimbursement, **These accounts shall include pre-financing** and sums ~~disbursed~~ for which recovery procedures are underway **or have been completed**. This ~~information~~ shall be accompanied by a ~~statement of management responsibilities~~ **declaration** confirming that, in the opinion of those in charge of the management of the funds:
- the information is properly presented, complete and accurate;
 - the expenditure has been used for its intended purpose, as defined in the sector-specific rules;
 - the control ~~procedures~~ **systems** put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions;
- (b) a summary ~~of the results~~ of the final audit reports **and of controls carried out**, including an analysis **of the nature and extent of errors and** of ~~recurrent~~ weaknesses **in systems identified**, as well as corrective actions taken or planned.

~~These documents~~ **accounts referred to in point (a) and the summaries referred to in point (b)** shall be accompanied by an ~~independent audit~~ opinion **of an independent audit body**, drawn up in accordance with internationally accepted audit standards, ~~on whether the accounting information~~. **Such opinion shall establish whether the accounts** gives a true and fair view, **and whether** expenditure for which reimbursement has been requested from the Commission is legal and regular, **and whether the control systems put in place function properly**. This opinion shall ~~indicate if~~ **also state whether** the examination puts in doubt the assertions made in the ~~statement of management responsibilities~~ **declaration**.

~~These elements shall be provided to the Commission by the dates and for the reference periods laid down in the sector-specific rules and may be published by Member States~~ **may, at the appropriate level, publish this information.**

6. In order to ensure that **Union** funds are used in accordance with the applicable rules, the Commission:
- (a) shall apply, ~~in accordance with sector-specific rules, timely clearance of accounts procedures and, where appropriate, financial correction mechanisms, which enable it to assume final responsibility for the implementation of the budget~~ **for the examination and acceptance of the accounts of the designated bodies, ensuring that the accounts are complete, accurate and true;**
 - (b) shall exclude from **Union financing expenditure for which disbursements have been made in breach of applicable law;**
 - (ba) shall interrupt payment deadlines or suspend payments where provided for in the **sector-specific rules;**

The Commission shall end all or part of the interruption or suspension of payments after a Member State has presented its observations and as soon as it has taken the necessary measures. The annual activity report of the Commission's competent authorising officer by delegation shall report on all the obligations under this subparagraph.

- 6a. **Sector-specific rules shall take account of the needs of European Territorial Cooperation programmes as regards, in particular, the content of the management declaration, the process set out in paragraph 3 and the audit function.**

6b. Member States may provide a national declaration on the expenditure made under the method of shared management, signed at the appropriate political level and based on the information to be provided under paragraph 5. If such a national declaration:

- (a) covers all funds managed under shared management;**
- (b) covers at least the reliability of the accounts, the effective functioning of the control systems in place and the legality and regularity of the underlying transactions;**
- (c) is provided by 15 February of the year following the financial year concerned; and**
- (d) has been subject to an opinion from an independent audit body,**

the Commission shall take that declaration into account in the definition of its sector-specific audit strategies and inform the European Parliament and the Council accordingly.

Article 57

Indirect management

1. Entities and persons entrusted with budget implementation tasks pursuant to point (c) of Article 55(1) 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 for:
 - (a) the nature of the tasks entrusted and the amounts involved;
 - (b) the financial risks involved;
 - (c) 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, in accordance with the principle of proportionality:
- (a) set up and ensure the functioning of an effective and efficient internal control system;
 - (b) use an accounting system providing accurate, complete and reliable information in a timely manner;
 - (c) be subject to an independent 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 31(2), ~~annual~~ *ex post* publication of recipients of Union funds;
 - (f) ensure a reasonable protection of personal data, **as laid down in Directive 95/46/EC and Regulation (EC) No 45/2001.**

Persons referred to in point (viii) of Article 55(1)(c) shall adopt their financial rules with the Commission's prior consent. **They may satisfy these requirements laid down in points (a) to (e) of this paragraph progressively within the first six months of their mandate. Where at the end of this period, they comply with these requirements in part, the Commission shall take appropriate remedial measures to supervise and support the implementation of the tasks entrusted.**

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 budget. To this end they shall carry out, in accordance with the principle of proportionality, *ex ante* and *ex post* ~~checks~~ **controls** including, where appropriate, on the spot checks on representative **and/or risk-based** samples of transactions, to ensure that the actions financed from the budget are effectively carried out and implemented correctly. They shall also 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 checks 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) accounting information on the expenditure made in the execution of the tasks entrusted and presented to the Commission for reimbursement, and sums disbursed for which recovery procedures are underway. This information shall be accompanied by a statement of management responsibilities confirming that, in the opinion of those in charge of the management of the funds:~~

~~—— this information is properly presented, complete and accurate;~~

~~— the expenditure has been used for its intended purpose, as defined in the sector-specific rules or in the delegation agreements concluded with the entrusted entities;~~

~~— the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions;~~

(c) ~~a summary of the results of the final audits reports, including an analysis of recurrent weaknesses as well as corrective actions taken or planned;~~

These documents shall be accompanied by an ~~independent~~ **audit opinion of an independent audit body**, drawn up in accordance with internationally accepted audit standards, on ~~whether the accounting information give a true and fair view, and expenditure for which reimbursement has been requested from the Commission is legal and regular~~ **the completeness, accuracy and veracity of the accounts, on the proper functioning of the control systems put in place, as well as on the legality and regularity of the underlying transactions**. This opinion shall ~~indicate if~~ **also state whether** the examination puts in doubt the assertions made in the ~~statement of management responsibilities~~ **declaration**.

These elements shall be provided to the Commission by ~~15 March~~ **1 February** each of the following financial year with the exception of the audit opinion referred to in the second subparagraph. **The latter shall be provided at the latest by 15 March.**¹

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 and the obligations laid down in the agreement concluded with the relevant international organisations or third country.

¹ **The Commission will provide a clarification on the feasibility of such deadline for Lifelong Learning and other programmes concerned.**

6. ~~In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply, in accordance with sector-specific rules and relevant agreements, timely clearance of accounts procedures and, where appropriate, financial correction mechanisms, which enable it to assume final responsibility for the implementation of the budget:~~
- (a) supervise that these persons and entities fulfil their responsibilities, in particular by carrying out audits and evaluations on the programme implementation;
 - (b) apply procedures for **the examination and acceptance** of the accounts of the entrusted entities and persons, ensuring that the accounts are complete, accurate and true;
 - (c) exclude from Union financing expenditure the disbursements which have been made in breach of the applicable rules.
7. Paragraphs 5 and 6 shall not apply to **Union** entities ~~and persons~~ which are subject to a separate discharge procedure.

Article 58

Ex ante checks and agreements under indirect management

1. Before the Commission entrusts tasks of budget implementation to entities or persons listed under point (c) of Article 55(1), it shall obtain evidence that the requirements of points (a) to (d) of Article 57(2) 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 points (a) to (d) of Article 57(2).

2. Unless the implementing entity is identified in the basic act, the Commission shall select an entity from a category listed in points (ii), ~~(iii)~~, (vi) and (vii) of Article 55(1)(c) taking 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 transparent, 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 points (a) to (d) of Article 57(2). They shall clearly define the tasks entrusted and contain an undertaking of the entities or persons concerned to fulfil the obligations laid down in points (e) to (f) of Article 57(2), and to refrain from any act which may give rise to a conflict of interests.

Article 59

Executive agencies

1. The executive agencies shall be legal persons under Union law created by Commission Decision to which powers may be delegated to implement all or part of a Union programme or project on behalf of the Commission and under its responsibility in accordance with Council Regulation (EC) No 58/2003¹.
2. Implementation of the corresponding operational appropriations shall be carried out by the director of the agency in direct management.

Article 60

Limits to delegation of powers

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 points (vi) and (vii) of Article 55(1)(c), or in specific cases where the payments involved are to be made to recipients 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.

¹ OJ L 11, 16.1.2003, p. 1.

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 61
Segregation of duties

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

SECTION 2

Authorising officer

Article 62
The authorising officer

1. The institution shall perform the duties of authorising officer.
2. For the purposes of this title, the term "staff" refers to persons covered by the Staff Regulations.
3. 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.

4. The powers of authorising officer shall be delegated or subdelegated only to staff.
 5. 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 task by one or more members of staff entrusted, under his responsibility, to carry out certain operations necessary for implementation of the budget and presentation of the accounts.
 6. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with the second paragraph of Article 53, they shall be subject to the Commission as the institution responsible for the definition, exercise, monitoring and appraisal of their duties and responsibilities as authorising officers by subdelegation. The Commission shall, at the same time, inform the High Representative thereof.
- 6a. The authorising officer responsible may be assisted in his duties by persons covered by the Staff Regulations entrusted, under his responsibility, with certain operations required for the implementation of the budget and production of the financial and management information. In order to prevent any conflict of interests, staff assisting authorising officers by delegation or subdelegation shall be subject to the obligations referred to in Article 54.**
 - 6b. The Court of Auditors and the European Parliament and the Council shall be informed of the appointment and release of authorising officers, internal auditors and accounting officers. The Court of Auditors shall also be informed of the appointment of imprest administrators and of delegation decisions under Articles 66 and 67.**
 - 6c. Each institution shall inform the Court of Auditors and the European Parliament and the Council of any internal rules it adopts in respect of financial matters.**

Article 63

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.
2. For the purposes of paragraph 1, the authorising officer by delegation shall, in accordance with Article 28 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, put in place the organisational structure and the internal control systems suited to the performance of his duties. The establishment of such structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost-effectiveness.
3. 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.
4. 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.
5. Each operation shall be subject at least to an *ex ante* ~~check~~ **control** based on a desk review of documents and on the available results of ~~checks~~ **controls** already carried out, relating to the operational and financial aspects of the operation.

Ex ante ~~checks~~ **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.**

[†] ~~The last subparagraph of paragraph 5, as well as paragraphs 6 and 7 of the Commission proposal shall be included in the delegated Regulation referred to in Article 199.~~

6. **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 out 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.

In case the authorising officer by delegation implements financial audits of beneficiaries as *ex-post* controls, the related audit rules should be clear, consistent and transparent, respecting the rights of both the Commission and the auditees.

7. **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.**
68. Any member of staff, involved in the financial management and approval control of transactions who considers that a decision he is required by his superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he is required to observe, shall inform **his hierarchical superior who shall, if the information is given in writing, reply in writing. If the hierarchical superior fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to the grounds of his concern, he shall inform** the authorising officer by delegation in writing and, if that officer fails to take action, the panel referred to in Article 70(6).

In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, **he such a member of staff** shall inform the authorities and bodies designated by the applicable legislation. **Contracts with external auditors carrying out audits of the financial management of the EU shall provide for an obligation of the external auditor to inform the Authorising Officer by delegation of any suspected illegal activity, fraud or corruption which may harm the interests of the EU.**

79. The authorising officer by delegation shall report to his institution on the performance of his duties in the form of an annual activity report containing financial and management information, including the results of ~~checks~~ **controls**, declaring that, 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;
- (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.

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 systems, including an overall assessment of the costs ~~effectiveness of checks as provided for in paragraph 2~~ **and benefits of controls**. No later than 15 June each year, the Commission shall send to the European Parliament and the Council a summary of the annual reports for the previous year. The annual activity reports of the authorising officers by delegation shall also be made available to the European Parliament and the Council.

Article 64

Powers and duties of heads of Union Delegations

1. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with the second paragraph of Article 53, they shall cooperate closely with the Commission for the proper implementation of the funds, in order to ensure, in particular, the legality and regularity of financial transactions, the respect of the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union.

To this effect, they shall take the measures necessary to prevent any situation susceptible to put at stake the responsibility of the Commission for the implementation of the budget subdelegated to them, as well as any conflict of priorities which is likely to have an impact on the implementation of the financial management tasks subdelegated to them.

Where a situation or conflict referred to in the second subparagraph arises, the Heads of Union Delegations shall inform the responsible Directors-General of the Commission and of the EEAS thereof without delay. Those Directors-General shall take appropriate steps to remedy the situation.

2. If Heads of Union Delegations find themselves in a situation referred to in Article 63(86), they shall refer the matter to the specialised financial irregularities panel set up pursuant to Article 70(6). In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, they shall inform the authorities and bodies designated by the applicable legislation.
3. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 53 shall report to their authorising officer by delegation so that the latter can integrate their reports in his annual activity report referred to in Article 63(97). The reports of the Heads of Union Delegations shall include information on the efficiency and effectiveness of internal management and control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and provide the assurance pursuant to Article 70(5). These reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the European Parliament and the Council taking into account, where appropriate, their confidentiality.

The Heads of Union Delegations shall fully cooperate with institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information. In this context, they may be requested to attend meetings of the relevant bodies and assist the responsible authorising officer by delegation.

4. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 53 shall reply to any request by the authorising officer by delegation of the Commission at its own request or, in the context of discharge, at the request of the European Parliament.
5. The Commission shall ensure that subdelegating powers are not detrimental to the discharge procedure in accordance with Article 319 TFEU.

SECTION 3

Accounting officer

Article 65

Powers and duties of the accounting officer

1. Each institution shall appoint an accounting officer who shall be responsible in each institution for the following:
 - (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 IX;
 - (c) keeping the accounts in accordance with Title IX;
 - (d) laying down, in accordance with Title IX, the accounting 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; the accounting officer shall be empowered to verify at any time the respect of validation criteria;
 - (f) treasury management.

The responsibilities of the accounting officer of the EEAS shall concern only the EEAS section of the budget as implemented by the EEAS. The accounting officer of the Commission shall remain responsible for the entire Commission section of the budget, including accounting operations relating to appropriations subdelegated to Heads of Union Delegations.

The accounting officer of the Commission shall also act as the accounting officer of the EEAS in respect of the implementation of the EEAS section of the budget, subject to Article 208.

2. 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 IX.
3. 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 Institutions' financial situation and of budgetary implementation.
4. Before the adoption of the accounts by the institution or the body referred to in Article 200, 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 200.

For that purpose, the accounting officer shall verify that the accounts have been prepared in accordance with the Union accounting rules 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, the legality and regularity of the expenditure under their control and the completeness and accuracy of the information forwarded to the accounting officer.

5. 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.

6. Except 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.
7. 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 an entity listed in ~~the first paragraph of points (iii) and (iv) of Article 55(1)(c).~~

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.

- 7a. The accounting officer of the Commission shall lay down rules for the management of the fiduciary accounts and their use.**

Article 66

Powers which may be delegated by the accounting officer

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

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

SECTION 4

Imprest administrator

Article 67

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 delegated Regulation referred to in Article 199.

However, in the field of crisis management aid and humanitarian aid operations within the meaning of Article 118, imprest accounts may be used without any limitation on the amount while respecting the level of appropriations decided by the European Parliament and the Council 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 68

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 duties by the authority which appointed him.

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 69

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 68 may incur as provided in the applicable national law and in the provisions in force on the protection of the Union's 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 70, 71 and 72. In the event of illegal activity, fraud or corruption which may harm the interests of the Union, the matter shall be submitted to the authorities and bodies designated by the applicable legislation, **in particular to the European Anti-Fraud Office**.

SECTION 2

Rules applicable to authorising officers by delegation and subdelegation

Article 70

Rules applicable to authorising officers

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

2. 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 delegated Regulation referred to in Article 199;
 - (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.
3. An authorising officer by delegation or subdelegation who considers that a decision which it is his 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 that decision, the authorising officer may not be held liable.
4. 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.
5. In the event of subdelegation to the Heads of Union Delegations, the authorising officer by delegation shall be responsible for the definition of the internal management and control systems put in place, their efficiency and effectiveness. The Heads of Union Delegations shall be responsible for the adequate setting up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry out within the Union Delegation under their responsibility. Before taking up their duties, they must complete specific training courses on the tasks and responsibilities of authorising officers and the implementation of the budget, in accordance with the delegated Regulation referred to in Article 199.

Heads of Union Delegations shall report on their responsibilities pursuant to the first subparagraph of this paragraph in accordance with Article 64(3).

Each year, Heads of Union Delegations provide to the authorising officer by delegation of the Commission the assurance on the internal management and control systems put in place in their Delegation, as well as on the management of operations subdelegated to them and the results thereof, in order to allow the authorising officer to establish his statement of assurance, as provided for in Article 63(9).

6. 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.

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.

7. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with the second paragraph of Article 53, the specialised financial irregularities panel set up by the Commission pursuant to paragraph 6 shall be competent for cases referred to in that paragraph.

If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer, the High Representative and to the authorising officer by delegation of the Commission, provided the latter is not the person involved, as well as to the internal auditor.

On the basis of the opinion of the panel, the Commission may request the High Representative to initiate, in the High Representative's capacity as appointing authority, proceedings entailing liability to disciplinary action or to payment of compensation against authorising officers by subdelegation if irregularities concern the competencies of the Commission subdelegated to them. In such a case the High Representative shall take appropriate action in accordance with the Staff Regulation in order to enforce decisions on disciplinary action and/or the payment of compensation, as recommended by the Commission.

The Member States shall fully support the Union in the enforcement of any liability under Article 22 of the Staff Regulations of temporary staff to whom point (e) of Article 2 of the Conditions of Employment of Other Servants of the European Communities applies.

SECTION 3

Rules applicable to accounting officers and imprest administrators

Article 71

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 may in particular become liable by any of the following forms of misconduct:

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

Article 72

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 may in particular become liable by any of the following forms of misconduct:

- (a) he loses or damages funds, assets and documents in his keeping;
- (b) he cannot provide proper supporting documents for the payments he has made;
- (c) he makes payments to persons other than those entitled;
- (d) he fails to collect revenue due.

CHAPTER 5

REVENUE OPERATIONS

SECTION 1

Making own resources available

Article 73

Own resources

An estimate of revenue constituted by own resources, as referred to in the Council Decision on the system of the Union's 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

Article 74

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.
2. The estimate of the amount receivable is adjusted by the authorising officer responsible as soon as he 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.

3. 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's 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.

SECTION 3

Establishment of amounts receivable

Article 75

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 delegated Regulation referred to in Article 199.

SECTION 4

Authorisation of recovery

Article 76

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 has established.
- [2. The ~~institution~~ **Council, the Commission or the European Central Bank** may formally establish an amount as being receivable from persons other than Member States by means of a decision which shall be enforceable within the meaning of Article 299 TFEU. **As regards the other institutions, the Commission may adopt, on their behalf, such an enforceable decision within the meaning of Article 299 TFEU, under the conditions laid down in the delegated regulation referred to in Article 199.]¹**

SECTION 5

Recovery

Article 77

Rules on recovery

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

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

¹ **Paragraph still open: to be redrafted by the Legal Services.**

2. Where the ~~responsible~~ **competent** authorising officer by delegation is planning to waive or partially waive recovery of an established amount receivable, he 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 delegated Regulation referred to in Article 199.~~ The waiver decision must be substantiated. The authorising officer may delegate the decision ~~only as laid down in the delegated Regulation referred to in Article 199.~~

The ~~responsible~~ **competent** authorising officer may cancel an established amount receivable in full or in part, ~~in accordance with the conditions set out in the delegated Regulation referred to in Article 199.~~ The partial cancellation of an established amount receivable does not imply a waiver of a Union's established entitlement.

The rules for the procedures and criteria of a waiver decision as well as the delegation thereof by the authorising officer and the cancellation of an established amount shall be laid down in the delegated regulation referred to Article 199.

3. **The Member States shall in the first instance be responsible for carrying out controls and audits and for recovering amounts unduly spent, as provided for in the sector-specific rules. As far as Member States detect and correct on their own account irregularities, they shall be exempt from financial corrections by the Commission concerning these irregularities.**
4. **The Commission shall make financial corrections on Member State in order to exclude from Union financing expenditure which is in breach of applicable law. The Commission shall base its financial corrections on the identification of amounts unduly spent, and the financial implications for the Union budget or, where these cannot be identified precisely, apply extrapolated or flat-rate corrections according to the sector-specific rules.**

The Commission shall, when deciding the amount of a correction, take account of the nature and gravity of the breach of applicable law and the financial implications for the Union budget, including in case of deficiencies in management and control systems.

The criteria for establishing financial corrections and the procedure to be applied may be laid down in the sector-specific rules.

Article 78

Limitation period

Without prejudice to the provisions of specific regulations and the application of the Council Decision relating to the Union's 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 delegated Regulation referred to in Article 199.

Article 79

National treatment for Union entitlements

In the event of insolvency proceedings, Union entitlements shall be given the same preferential treatment as entitlements of the same nature due to public bodies in the Member States where the recovery proceedings are conducted, ~~thus respecting the privileged treatment accorded to inland revenue debts when this is laid down in national law.~~

Article 80

Fines, penalties and accrued interest imposed by the Commission

Amounts received by way of fines, penalties and sanctions, and any accrued interest or other income generated by them shall not be recorded as budgetary revenue as long as the decisions imposing them may be overruled by the Court of Justice of the European Union.

The amounts referred to in the first paragraph shall be recorded as budgetary revenue as soon as possible and 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 following a judgment of the Court of Justice of the European Union.

The first paragraph shall not apply to decisions on clearance of accounts or financial corrections.

CHAPTER 6
EXPENDITURE OPERATIONS

Article 81

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 point (e) of Article 51(5), 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.
- 2a. **The financing decision shall specify the objective pursued, the expected results, the method of implementation and its total amount. It shall also contain a description of the actions to be financed and an indication of the amount allocated to each action, and an indicative implementation timetable.**

In case of indirect management, it shall also specify the implementing partner chosen, the criteria used and the tasks entrusted to it.

The delegated Regulation referred to in Article 199 may determine further details to be included in financing decisions, and the conditions under which decisions adopting work programmes shall be considered financing decisions.

SECTION 1

Commitment of expenditure

Article 82

Types of commitments

1. The budgetary commitment is the operation reserving the appropriation necessary to cover subsequent payments to honour legal 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, except in duly substantiated cases as provided for in the delegated Regulation referred to in Article 199.

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 162 or routine administrative expenditure and either the amount or the final recipients 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 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 83

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 178.
2. 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 or by any other institution under its administrative autonomy.
3. In case of humanitarian aid operations, civil protection operations and crisis management aid, provided that it is indispensable for the efficient delivery of the Union's intervention to enter into a legal commitment with third parties immediately without being possible to make a prior booking of the individual budgetary commitment, the latter may be booked without delay after entering into a legal obligation with third parties.
4. 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 Articles 82(3) and 195(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.

5. The budgetary and legal commitments entered into for actions extending over more than one financial year shall, except 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.

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 87 has been made in a period of two years following the signing of the legal commitment shall be decommitted, exception made for cases under litigation before judicial courts or arbitral bodies and for the special provisions laid down in sector-specific rules.

Article 84

Checks 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 delegated Regulation referred to in Article 199 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 pre-financing payments, its amount and the overall payment schedule shall be commensurate with the planned duration, the progress in implementation and the financial risks such pre-financing 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 delegated Regulation referred to in Article 199 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 85

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 86
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 has validated.

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.

SECTION 4
Payment of expenditure

Article 87
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 budgetary accounting between the different types of payment referred to in paragraph 1 at the time they are made.
- 3. The accounting rules referred to in Article 143 shall include the rules for clearing the pre-financing in the accounts and for the acknowledgment of the eligibility of costs.
- 4.
 - (a) Pre-financing payments shall be cleared regularly by the responsible authorising officer, **following the economic nature and the timing of the underlying project.**
 - (b) **When the responsible authorising officer deems inefficient to request cost statement from beneficiaries and contractors, he shall obtain from them information on cumulative spending for grants or contracts above EUR 5 000 000, and at least twice once a year, in a manner to avoid excessive amounts of uncleared pre-financing .**
 - (c) 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 point (c) of Article 55(1).
 - (d) **These provisions are without prejudice to the specific rules laid down in Title IV of Part Two**
- ~~5. Further instalments made to beneficiaries of grants which take the form of a lump sum shall be entered as interim payments.~~

Article 88

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 89

Time limits for expenditure

1. ~~The validation, authorisation and time allowed for making payments shall be: of~~ expenditure must be completed as rapidly as possible and in any case within the time limits laid down in the delegated Regulation referred to in Article 199, 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.
 - (a) **90 calendar days for agreements concluded with the entities referred to in points (i) to (viii) of Article 55(1)(c), contracts, grant agreements and decisions involving technical services or actions which are particularly complex to evaluate and for which payment depends on the approval of a report or a certificate;**
 - (b) **60 calendar days for all other agreements concluded with the entities referred to in points (i) to (viii) of Article 55(1)(c), contracts, grant agreements and decisions for which payment depends on the approval of a report or a certificate;**
 - (c) **30 calendar days for all other agreements concluded with the entities referred to in points (i) to (viii) of Article 55(1)(c), contracts, grant agreements and decisions.**

2. **The authorising officer responsible may suspend the time limit for payment by informing creditors, at any time that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the authorising officer responsible which puts in doubt the eligibility of expenditure appearing in a payment request, the authorising officer responsible may suspend the time limit for payment for the purpose of further verification, including on the spot checks, in order to ascertain, prior to payment, that the expenditure has been indeed eligible.**

The creditors concerned shall be informed in writing of the reasons for suspension.

The creditor may request a decision by the authorising officer responsible on the continuity of the suspension, where the suspension exceeds two months.

On expiry of the time limits laid down in paragraph 1, the creditor shall be entitled to interest. This sub-paragraph shall not apply to Member States.

The delegated Regulation referred to in Article 199 may determine further details for payment delays and 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 AND E-GOVERNMENT

Article 90

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 91

Transmission of documents ~~between institutions~~

Subject to the prior agreement of the institutions **and Member States** concerned, any transmission of documents between ~~institutions~~ **them** may be done by electronic means.

Article 91a

Electronic government (e-government)

In shared management, all official exchanges of information between the Member States and the Commission shall be carried out by means indicated in the sector-specific rules, which shall provide for interoperability of data gathered or otherwise received and transmitted in the management of the budget.

The Institutions and the executive agencies as well as entities referred to in Article 200 shall establish and apply uniform standards for the electronic exchange of information with third parties participating in procurement and grants procedures. In particular, they shall, to the greatest possible extent, design and implement solutions for the submission, storage and processing of data submitted in grants and procurement procedures, and to this end, shall put in place a single ‘electronic data interchange area’ for applicants, beneficiaries or candidates and tenderers.

The Commission shall report regularly on progress in the implementation of e-government to the European Parliament and the Council.

CHAPTER 7A
ADMINISTRATIVE PRINCIPLES

Article 91b
Good administration

The need to supply evidence and/or documentation, its form and prerequisite content as well as, where appropriate, the indicative timetable for completion of the award procedure shall be announced at the earliest possible convenience.

Where, due to an obvious clerical error on the part of the applicant or tenderer, there is a failure to submit evidence or to give statements, the evaluation committee or, where appropriate, the authorising officer responsible shall, except in duly justified cases¹, ask the applicant or tenderer to provide the missing information or clarify supporting documents. Such information or clarifications may not substantially change the proposal or alter the terms of the tender.

Article 91c
Indication of means of redress

Where a procedural act of an authorising officer adversely affects the rights of an applicant or tenderer, beneficiary or contractor, it shall contain an indication of the available means of administrative and/or judicial redress for challenging this act.

In particular, the nature of the redress, the body or bodies before which it can be brought as well as time limits for their exercise shall be indicated.

¹ Current Article 147 of the Implementing Rules should be revised in such a way as to include in the "*written record*" the "*duly justified cases*" where the missing information is not asked.

CHAPTER 8

INTERNAL AUDITOR

Article 92

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.

For the purposes of the internal auditing of the EEAS, Heads of Union Delegations, acting as authorising officers by subdelegation in accordance with the second paragraph of Article 53 shall be subject to the verifying powers of the internal auditor of the Commission for the financial management subdelegated to them.

The internal auditor of the Commission shall also act as the internal auditor of the EEAS in respect of the implementation of the EEAS section of the budget, subject to Article 208.

Article 93

Powers and duties of the internal auditor

1. The internal auditor shall advise his 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 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;
- (b) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budgetary implementation operation.

2. The internal auditor shall perform his duties on all the institution's activities and departments. He 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.

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

3. The internal auditor shall report to the institution on his 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.

- 3a. The contact details of the internal auditor shall be made available to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.**

4. Each year the institution shall forward a report to the European Parliament and the Council **which should detail the individual areas covered** containing a summary of the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.

The summary report shall include information on any review that recommends changes to any major acquisition project or grant or that recommends significant budgetary savings, and on the impact of actions taken on the recommendations for the institution as well as further possible improvements proposed by an audit committee, where it exists.

In the context of the implementation of Article 319(2) TFEU, the Commission shall make available to the European Parliament, upon request, its final internal audit reports. For the purpose of the present article, audit reports shall be understood as final reports after contradictory procedure that included auditee's position. Subject to paragraph 4a, they shall be treated confidentially.¹

- 4a. The reports and findings of the Internal Auditor, as well as the report of the institution, shall be accessible to the public only after validation by the Internal Auditor of the actions taken for their implementation.**

Article 94

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 is totally independent in the performance of his duties and to establish his responsibility.

If the internal auditor is a member of staff, he shall exercise his exclusive audit functions in full independence and assume responsibility as laid down in the Staff Regulations and set out in the delegated Regulation referred to in Article 199.

¹ **The Commission statement "on confidentiality of audit reports" will accompany Article 93(4) (see statement No 2 recorded in Annex 1 to document 10256/12).**

TITLE V
PROCUREMENT

CHAPTER 1
GENERAL PROVISIONS

SECTION 1
Scope and award principles

Article 95

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 111 and 181, 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) 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 apply to grants, without prejudice to Articles 100 to 103, or to service contracts **for technical assistance, as defined in the delegated act referred to in Article 199**, concluded ~~between the Commission, on the one hand, and with the European Investment Bank or, the European Investment Fund or any other subsidiary of the European Investment Bank, on the other hand.~~

Article 96

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 point (d) of Article 98(1).

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.

SECTION 2

Publication

Article 97

Publication of public contracts

1. All contracts exceeding the thresholds provided for in Article 112 or Article 181 shall be published in the *Official Journal of the European Union*.

Contract notices shall be published in advance except in the cases referred to in Article 98(2), as specified in the delegated Regulation referred to in Article 199, and for the service contracts covered by Annex IIB to Directive 2004/18/EC.

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.

2. Contracts with a value below the thresholds provided for in Article 112 or Article 181 and the service contracts referred to in Annex IIB to Directive 2004/18/EC shall be advertised by appropriate means, as specified in the delegated Regulation referred to in Article 199.

SECTION 3

Procurement procedures

Article 98

Procurement procedures

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 Articles 200 and 201, and whenever there is 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 an institution and **one or more** contracting authorities from a Member State, the procurement procedure may be carried out jointly by the institution and **the** contracting authorities, as specified in the delegated Regulation referred to in Article 199.

Joint procurement may be conducted with EFTA countries, as well as candidate countries, if this possibility has been specifically foreseen in a bilateral or multilateral Treaty. Detailed rules for the implementation of this provision shall be established in the delegated Regulation referred to in Article 199.

2. For contracts where the value exceeds the thresholds provided for in Article 112 or Article 181, use of the negotiated procedure shall be authorised only in the cases provided for in the delegated Regulation referred to in Article 199.
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 95(1), simply pay costs against invoices shall be determined in the delegated Regulation referred to in Article 199.
4. The delegated Regulation referred to in Article 199 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 so requires.

Article 99

Content of tender documents

Tender documents 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.

Article 100

Exclusion criteria applicable for participation in tenders

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 European Investment Bank and international organisations;
 - (d) 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;
 - (f) they are currently subject to an administrative penalty referred to in Article 103(1).

Points (a) to (d) 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).

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 points (a), (c) and (d) of paragraph 1, if this is indispensable in order to ensure the continuity of service of the institution. In this case, it shall duly justify its decision.
3. 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 delegated Regulation referred to in Article 199.

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.

4. The delegated Regulation referred to in Article 199 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.

Article 101

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 100(1), for this procurement procedure.

Article 102

Central exclusion database

1. A central database shall be set up and operated by the Commission ~~in compliance with Union rules on the protection of personal data~~. The database shall contain details of candidates and tenderers which are in one of the situations referred to in Article 100, point (b) of Article 103(1) and point (a) of Article 103(2). It shall be common to the institutions, executive agencies and the bodies referred to in Article 200. **The European Parliament and the Council shall be annually informed of the number of new cases and of the total number of cases entered into the database.**

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 55 and 58, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in point (e) of Article 100(1), 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.

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 point (e) of Article 100(1), where the conduct of the operators concerned was detrimental to the Union's financial interests.

4. Transparent and coherent criteria to ensure proportionate application of the exclusion criteria shall be laid down in the delegated Regulation referred to in Article 199. The Commission shall define standardised procedures and technical specifications for the operation of the database.

- 4a. **Access may be granted to authorities of third countries only when the rules laid down in Article 9 of Regulation (EC) No 45/2001 are fulfilled and after an evaluation on a case-by-case basis.**

Article 103

Administrative and financial penalties

1. The contracting authority may impose administrative and/or financial penalties on the following:
 - (a) contractors, candidates or tenderers in the cases referred to in point (b) of Article 101;
 - (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 that contract.
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, in compliance with the right of personal data protection and only if justified by the need to~~ **In order to reinforce the protection of the Union's financial interests, institutions may decide, in compliance with the principle of proportionality, to publish their decisions imposing administrative or financial penalties referred to in paragraph 1 after the procedure set out in paragraph 1 has been fully complied with.**

The decision to publish a decision imposing administrative or financial penalties referred to in the first subparagraph shall take into account, in particular, the seriousness of the misconduct including its impact on the Union's financial interests and image and the time which has elapsed since the misconduct took place, the duration and recurrence of the misconduct, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

The decision on the publication shall be included in the decision imposing administrative or financial penalties and shall expressly provide for publication of the decision imposing penalties, or of a summary thereof, on the internet site of the institution.

In order to ensure a deterrent effect, the summary published shall include the name of the person responsible for the misconduct, a short description of that misconduct, the programme concerned and the duration of the exclusion and/or the amount of the financial penalties.

The decision shall be published after the legal remedies against the decision have been exhausted or after the expiry of the deadlines for redress and the publication shall remain on the internet site until the end of the exclusion period or until 6 months after the payment of the financial penalties where these penalties constitute the sole measure decided.

Where natural persons are concerned, the decision to publish shall be taken with due consideration of the right to privacy and with due observance of the rights provided for in the Regulation (EC) No 45/2001.

Article 104
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 100, 101 and point (a) of Article 103(2) 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.

Article 105
Submission of tenders

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.
- 1a. **The Commission shall ensure by appropriate means and in application of Article 91a that tenderers may enter the contents of the tenders and any supporting evidence in an electronic format (e-procurement).**

The Commission shall report to the European Parliament and the Council on the progress of the implementation of this provision within two years after the entry into force of this Regulation and regularly afterwards.

2. If deemed appropriate and proportionate, the contracting authority may require tenderers, as provided in the delegated Regulation referred to in Article 199, to lodge a security in advance as a guarantee that the bids made will not be withdrawn.

3. With the exception of the low value contracts referred to in Article 98(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.
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.

Article 106

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 107

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, **as well as the duration of the standstill period referred to in Article 112(2)**, and all tenderers 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 108

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 corrective action

Article 109

Guarantees

- ~~1. The contracting authority shall require contractors to lodge a guarantee in advance in the cases specified in the delegated Regulation referred to in Article 199.~~
2. **Other than in the case of low value contracts,** the contracting authority may, if it deems it appropriate and proportionate **on a case-by-case basis and subject to a risk-analysis,** require contractors to lodge a guarantee in order to:
 - (a) ensure full performance of the contract or
 - (b) the financial risks connected with payment of pre-financing.

The Commission may define criteria for the risk analysis in the delegated regulation referred to in Article 199.

Article 110

Errors, irregularities and fraud in the procedure

Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the 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 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 those errors, irregularities or fraud are attributable to the contractor, the 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.

CHAPTER 2

PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY THE INSTITUTIONS ON THEIR OWN ACCOUNT

Article 111

The contracting authority

The institutions shall be deemed to be contracting authorities in the case of contracts awarded on their own account. They shall delegate, in accordance with Article 62, the necessary powers for the exercise of the function of contracting authority.

Article 112
Thresholds applicable

1. Subject to Title IV of Part Two, Directive 2004/18/EC lays down the thresholds which determine:
 - (a) the publication arrangements referred to in Article 97;
 - (b) the choice of procedures referred to in Article 98(1);
 - (c) the corresponding time limits.

2. Subject to exceptions and conditions specified in the delegated Regulation referred to in Article 199, 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.

Article 113
Rules on tender participation

1. 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 Union a special agreement in the field of public procurement under the conditions laid down in that agreement.

2. **OLAF shall exercise the power conferred on the Commission by Regulation (Euratom, EC) No 2185/96 to carry out on-the-spot inspections and checks in the Member States and, in accordance with the cooperation and mutual assistance agreements in force, in third countries and on the premises of international organisations.**

Article 114

Procurement rules of the World Trade Organisation

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

CHAPTER 1

SCOPE AND FORM OF GRANTS

Article 115

Scope of grants

1. Grants are direct financial contributions, by way of donation, from the budget in order to finance any of the following:
 - (a) an action intended to help achieve an objective forming part of a Union policy;
 - (b) the functioning of a body which pursues an aim of general European interest or has an objective forming part of, **and supporting** a Union policy (operating grants).

They shall be covered either by a written agreement or by a Commission decision notified to the successful applicant.

The Commission may establish secure electronic systems for exchanges with the beneficiaries. The conditions under which documents submitted by means of such systems, including grant agreements, are to be deemed originals and to be signed shall be specified in the delegated Regulation referred to in Article 199.

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) public contracts referred to in Article 95 and aid paid as macro financial assistance and budgetary support;
 - (c) financial instruments as referred to in Title VIII 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 Union bodies such as the European Investment Fund;
 - (d) contributions paid by the Union as subscriptions to bodies of which it is member;
 - (e) expenditure implemented under shared management and indirect management within the meaning of Articles 55, 56 and 57;
 - (f) contributions made by virtue of their constitutive basic act to bodies set up under Article 59;
 - (g) expenditure relating to fisheries markets referred to in ~~point f~~ of Article 3(2)(f) of Council Regulation (EC) No 1290/2005¹;
 - (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 VII of Part One applies.

¹ OJ L 209, 11.08.2005, p. 1.

- 2a. Interest rate rebates and guarantee fee subsidies shall be assimilated to grants, provided that they are not combined in a single measure with financial instruments as referred to in Title VIII.**

They shall be subject to the provisions of this Title, with the exception of the following:

- (a) the co-financing principle as referred to in Article 117(3);**
 - (b) the no-profit principle as referred to in Article 117(4);**
 - (c) for actions where the objective is to reinforce the financial capacity of a beneficiary or to generate an income, the assessment of the financial capacity of the applicant as referred to in Article 123(1).**
- 3. Each institution may award grants for communication activities where, for duly justified reasons, the use of public procurement procedures is not appropriate.**

Article 115a

Beneficiaries

- 1. For the purposes of this Title, the term "beneficiary" shall mean one or several entities to which the grant is awarded.**
- 2. The delegated Regulation referred to in Article 199 shall define the minimum content of the grant agreement or decision, in particular, where the grant is awarded to several entities, the specific obligations of the coordinator, if any, and of the other beneficiaries, the applicable responsibility regime and the conditions for adding or removing a beneficiary.**
- 3. Where several legal entities satisfy the criteria for being awarded a grant and together form one legal entity, the latter may be the sole beneficiary, including where it is specifically established for the purpose of implementing the action.**

4. For the purpose of this Title, the following entities shall be considered as entities affiliated to the beneficiary:

(a) Legal entities forming the beneficiary in accordance with paragraph 3;

(b) Legal entities satisfying the eligibility and non-exclusion criteria and having a link with the beneficiary, notably a legal or capital link, which is neither limited to the action nor established for the sole purpose of its implementation.

Article 116

Forms of grants

Grants may take any of the following forms:

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

(b) ~~lump sums, including~~ reimbursement **on the basis** of ~~predefined~~ **unit costs**;

(c) **lump sums**;

(ed) flat-rate financing;

(de) combination of the forms referred to in points (a) to (ed).

When determining the appropriate form of a grant, the potential beneficiaries' interests and accounting methods shall be taken into account to the greatest possible extent.

Article 116a

Lump sums, unit costs and flat-rate financing

1. **Without prejudice to the provisions of the basic act, the use of lump sums, unit costs or flat-rate financing shall be authorised by way of a Commission decision ensuring the respect of the principle of equal treatment of beneficiaries for the same category of actions or work programmes.**

Where the maximum amount per grant does not exceed EUR 50 000, the authorisation may be given by the authorising officer responsible.

2. **The authorisation shall at least be supported by the following:**
 - a) **justification of the appropriateness of these forms of financing with regard to the nature of the supported actions or work programmes as well as to the risks of irregularities and fraud and costs of control;**
 - b) **identification of the costs or categories of costs covered by lump sums, unit costs or flat-rate financing, which shall exclude ineligible costs according to the applicable Union rules;**
 - c) **description of the methods to determine lump sums, unit costs or flat-rate financing, which shall set conditions to reasonably ensure compliance with the no-profit and co-financing rules and avoidance of double funding of costs. These methods shall be based on:**
 - i) **statistical data or similar objective means, or**
 - ii) **a beneficiary-by-beneficiary approach, by reference to certified or auditable historical data of the beneficiary or to its usual cost accounting practices.**

3. **Where recourse to the usual cost accounting practices of the beneficiary is authorised, the authorising officer responsible may assess compliance of these practices with the conditions set out in paragraph 2 ex ante or through an appropriate strategy for ex post controls.**

If the compliance of the usual cost accounting practices of the beneficiary with the conditions set out in paragraph 2 has been established ex ante, the amounts of lump sums, unit costs or flat-rate financing determined by application of these practices shall not be challenged by ex post controls.

The authorising officer responsible may consider that the usual cost accounting practices of the beneficiary are compliant with the conditions set out in paragraph 2 if they are accepted by the national authorities under comparable funding schemes.

4. **The grant decision or agreement may authorise or impose, in the form of flat-rates, funding of the beneficiary's indirect costs up to a maximum of 7 % of total eligible direct costs for the action, except where the beneficiary is in receipt of an operating grant financed from the Union budget. The 7 % ceiling may be exceeded by reasoned decision of the Commission.**
5. **SME¹ owners and other natural persons who do not receive a salary may declare eligible personnel costs for the work carried out under an action or work programme, on the basis of unit costs determined by way of a Commission decision.**

¹ **A definition of SME shall be included in a recital.**

CHAPTER 2 PRINCIPLES

Article 117

General principles applicable to grants

1. Grants shall be subject to the principles of transparency and equal treatment.
2. Without prejudice to Article 120, they may not be cumulative or awarded retrospectively.
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.~~

~~The grant shall not exceed the eligible costs.[†]~~

Unless otherwise specified in this Regulation, the regulations governing political parties at European level and the rules regarding their funding are laid down in Regulation 2004/2003.

4. Grants may not have the purpose or effect of producing a profit within the framework of the action or the work programme of the beneficiary.

The first subparagraph shall not apply to:

- (a) actions the objective of which is the reinforcement of the financial capacity of a beneficiary or ~~the actions which generation of an income to ensure their sustainability after the period of Union financing provided for in the grant decision or agreement;~~

[†] ~~The delegated Regulation referred to in Article 199 shall clarify whether VAT shall be considered as eligible cost.~~

- (b) study, research or training scholarships paid to natural persons
- (ba) other direct support paid to natural persons in most need, such as unemployed persons and programmes for refugees;**
- (bb) grants based on flat rates and/or lump sums and/or unit costs where these comply with the conditions set out in Article 116a(2);**
- (bc) low value grants.**

Where a profit is made, the Commission shall be entitled to recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary to carry out the action or work programme

- 4a. For the purpose of this Title, profit shall be defined as a surplus of the receipts over the eligible costs incurred by the beneficiary, when the request is made for final payment. The receipts referred to in the previous subparagraph shall be limited to income generated by the action or work programme as well as financial contributions specifically assigned by the donors to the financing of the eligible costs.**

In the case of an operating grant, amounts dedicated to the building up of reserves shall not be taken into account for the purpose of verifying compliance with the no-profit rule.

5. If a political party at Union 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 24, 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 Union 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.

6. ~~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 4 shall be reasonably ensured at the time of their determination or at the stage of the evaluation of the grant application.~~ **Grants may be awarded without a call for proposals to the European Investment Bank or the European Investment Fund for actions of technical assistance as defined in a delegated act. In such cases Articles 122(2) to (4) and 123(1) shall not apply.**

Article 117a

Eligible costs

1. **Grants shall not exceed an overall ceiling expressed in terms of an absolute value which is to be established on the basis of estimated eligible costs.**

Grants shall not exceed the eligible costs.

2. **Eligible costs are costs actually incurred by the beneficiary of a grant which meet all the following criteria:**
- (a) **they are incurred during the duration of the action or of the work programme, with the exception of costs relating to final reports and audit certificates;**
 - (b) **they are indicated in the estimated overall budget of the action or work programme;**

- (c) they are necessary for the implementation of the action or of the work programme which is the subject of the grant;
 - (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost accounting practices of the beneficiary;
 - (e) they comply with the requirements of applicable tax and social legislation;
 - (f) they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.
3. The call for proposals shall specify the categories of costs considered as eligible for Union funding.

Without prejudice to paragraph 2 and to the basic act, the following eligibility conditions shall apply to the following categories of costs, where considered as eligible by the authorising officer responsible under the call for proposals:

- (a) costs relating to a pre-financing guarantee lodged by the beneficiary of the grant, where required by the authorising officer responsible pursuant to Article 125;
- (b) costs relating to external audits where required by the authorising officer responsible in support of the requests for payments;
- (c) value added tax ("VAT") where it is not recoverable under the applicable national VAT legislation and is paid by a beneficiary other than a non-taxable person as defined in the first subparagraph of Article 13(1) of Directive 2006/112/EC;¹

¹ The Commission statement on "eligibility of non recoverable VAT" will accompany point (c) of Article 117a(3) (see statement No 3 recorded in Annex 1 to document 10256/12).

- (d) **depreciation costs, provided they are actually incurred by the beneficiary;**
 - (e) **salary costs of the personnel of national administrations to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken.**
- 4. Costs incurred by entities affiliated to a beneficiary as referred to in Article 115a may be accepted as eligible by the authorising officer responsible under the call for proposals. In such a case, the following conditions shall apply cumulatively:**
- (a) **the concerned entities are identified in the grant agreement or decision;**
 - (b) **the concerned entities abide by the rules applicable to the beneficiary under the grant agreement or decision with regard to eligibility of costs and rights of audits by the Commission, OLAF and the Court of Auditors.**

Article 117b

Co-financing in kind

- 1. For the purpose of calculating the profit generated by the grant, co-financing in the form of in-kind contributions shall not be taken into account.**
- 2. The authorising officer responsible may accept in-kind contributions as co-financing, if considered necessary or appropriate. Where co-financing in kind is offered in support of low value grants and the authorising officer intends to refuse this, he shall justify why it is not necessary or inappropriate.**

Such contributions must not exceed:

- (a) either the costs actually borne and duly supported by accounting documents;**
- (b) or, in the absence of such documents, the costs generally accepted on the market in question.**

In-kind contributions shall be presented separately in the estimated budget to reflect the total resources allocated to the action. Their unit value is evaluated in the provisional budget and shall not be subject to subsequent changes.

In-kind contributions shall comply with national tax and social security rules.

Article 118
Transparency

1. Grants shall be subject to a work programme, to be published prior to its implementation.

That work programme shall be implemented through the publication of calls for proposals, except 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.

- 1a. Calls for proposals shall specify the planned date by which all applicants shall have been informed of the outcome of the evaluation of their application and the indicative date for the signature of grant agreements or notification of grant decisions.**

Those dates shall be fixed on the basis of the following periods:

- (a) a maximum of six months from the final date for the submission of complete proposals for informing all applicants;**
- (b) a maximum of three months from the date of information of the successful applicants for signing grant agreements with them or notifying grant decisions to them.**

Those time limits do not include the time necessary to comply with the specific procedures that may be required by the basic act in accordance with Regulation (EU) No 182/2011 and may be exceeded in exceptional cases, in particular for complex actions, large number of proposals or delays attributable to the applicants.

The authorising officer by delegation shall report in his annual activity report on the average times for informing applicants and signing grant agreements or notifying grant decisions. In case the time-limits referred to in the second subparagraph are exceeded, he shall give reasons and, where not duly justified in accordance with the third subparagraph, propose remedial actions.

- 2. All grants awarded in the course of a financial year shall be published annually in accordance with Article 31(2) and (3). ~~A statement of the costs incurred in administering the grant programme shall also be published.~~**

Article 119

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 120

~~*Retroactivity award*~~ ***Principle of non-retroactivity***

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, except in duly substantiated exceptional cases as provided for in the basic act or in case of extreme urgency for crisis management aid, civil protection operations and humanitarian aid operations.

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.

[Article 121 deleted]

CHAPTER 3
AWARD PROCEDURE

Article 122

Applications for grants

1. Grant applications shall be submitted in writing, **including, where appropriate, in a secure electronic format.**

The Commission shall provide, where it deems it feasible, the possibility for online applications.

2. Grant applications shall be eligible if submitted by the following:
 - (a) 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.

For the purposes of point (a), 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 the behalf of the entity and offer guarantee for the protection of the Union's financial interests equivalent to that offered by legal persons.

- 2a. **The application shall show the legal status of the applicant and his financial and operational capacity to carry out the proposed action or work programme.**

For that purpose the applicant shall submit a declaration on his honour and, unless the grant is a low value grant, any supporting documents requested, on the basis of a risk assessment, by the authorising officer responsible. The prerequisite documents shall be indicated in the call for proposals.

The verification of financial capacity shall not apply to natural persons in receipt of scholarships, to natural persons in most need in receipt of direct support, to public bodies or international organisations. The authorising officer responsible may, depending on a risk assessment, waive the obligation to verify the operational capacity of public bodies or international organisations.

3. Articles 100(1) and 101 to 103 shall also apply to grant applicants. Applicants must certify that they are not in one of the situations referred to in Articles 100(1) and 101 to 103. However, the authorising officer ~~may refrain from~~ **shall not** require such certification, ~~as specified in the delegated Regulation referred to in Article 199,~~ for any of the following:
- (a) ~~very~~ low value grants;
 - (b) when such certification has recently been provided in another award procedure;
 - ~~(c) when there is a material impossibility to provide such certification.~~
4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 103.

Those 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 that information.

Article 123

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 124
Evaluation procedure

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.
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 125
Pre-financing guarantee

The authorising officer responsible may, if he deems it appropriate and proportionate, **on a case-by-case basis and subject to risk analysis**, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

Guarantees shall not be required in the case of low value grants.

Article 126
Payment of grants and controls

1. The amount of the grant shall not become final until after the authorising officer responsible has accepted the final reports and accounts, without prejudice to subsequent checks by the institution, **which shall be carried out in a timely manner.**

2. Where **the award procedure proves to have been subject to** substantive 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~~ **responsible may shall** suspend the procedure and **may** take the necessary ~~whatever~~ measures referred to in Article 110 **are necessary, including the cancellation of the procedure. He shall inform OLAF immediately of suspected cases of fraud.**

- 2a. **Where, after the award of the grant, the award procedure or the implementation of the grant proves to have been subject to substantial errors, irregularities or fraud, the authorising officer responsible may, depending on the stage reached in the procedure, refrain from signing the grant agreement or notifying the grant decision, suspend implementation of the grant or, where appropriate, terminate the grant agreement or decision after the applicant or beneficiary has been given the opportunity to make his observations.**

- 2b. **Where those errors, irregularities or fraud are attributable to the beneficiary, or should the beneficiary fail to comply with his obligations under a grant agreement or decision, the authorising officer responsible may in addition reduce the grant or recover amounts unduly paid under the grant agreement or decision, in proportion to the seriousness of the errors, irregularities or fraud or of the breach of obligations, after the beneficiary has been given the opportunity to make his observations.**

3. **Where controls or audits demonstrate systemic or recurrent errors or irregularities attributable to the beneficiary and having a material impact on a number of grants awarded to him under similar conditions, the authorising officer responsible may suspend implementation of all the grants concerned or, where appropriate, terminate the concerned grant agreements or decisions with this beneficiary, in proportion to the seriousness of the errors, irregularities or fraud, after the beneficiary has been given the opportunity to make his observations.**

The authorising officer responsible may in addition proceed to financial corrections for all the grants concerned by the systemic or recurrent errors or irregularities referred to above that may be audited in accordance with the grant agreements or decisions by either reducing the grants or recovering amounts unduly paid under the grant agreements or decisions, following an adversarial procedure.

The authorising officer responsible shall determine the amount of financial corrections to be made wherever possible and practicable on the basis of costs unduly declared as eligible for each grant concerned, following acceptance of the revised financial statements submitted by the beneficiary.

Where it is not possible or practicable to quantify the amount of ineligible costs precisely for each grant concerned, financial corrections may be determined by extrapolating the correction rate applied to the grants for which the systemic or recurrent errors or irregularities have been demonstrated or, where ineligible costs may not serve as a basis for determining financial corrections, by applying a flat rate, having regard to the principle of proportionality. The beneficiary shall be given the opportunity to make his observations on the extrapolation method or flat rate to be applied and to propose a duly substantiated alternative method or rate before the financial correction is made.

- 3a. The Commission shall ensure equal treatment of beneficiaries of a programme, in particular where it is implemented by several authorising officers responsible.**

Beneficiaries shall be informed of the means for challenging decisions taken under paragraphs 2a to 3, in accordance with Article 91c.

Article 126a

Periods for record keeping

- 1. Beneficiaries shall keep records, supporting documents, statistical records and other records pertinent to a grant for five years following the payment of the balance and for three years for low value grants.**

2. **Records related to audits, appeals, litigation or the settlement of claims arising out of the performance of the project shall be retained until such audits, appeals, litigation or claims have been disposed of.**
3. **The Commission may define periods for record keeping by the designated bodies in the meaning of Article 56 and by the Commission in the delegated regulation referred to in Article 199.**

CHAPTER 5 IMPLEMENTATION

Article 127

~~*Subcontracting and grant redistribution*~~ ***Implementation contracts and financial support to third parties***

1. Where implementation of the action, or the work programme in case of operating grant, requires the award of procurement contracts by the beneficiary, the relevant procedures shall be as set out in the delegated Regulation referred to in Article 199.
2. Where implementation of the action or the work programme requires financial support to be given to third parties, the beneficiary of a Union grant may give such financial support provided that the following conditions are met:
 - (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;
 - (b) the conditions for the giving of such support are strictly defined in the grant decision or agreement between the beneficiary and the Commission, in order to avoid the exercise of discretion by the beneficiary;

(c) the amounts concerned are small, as defined in the delegated Regulation referred to in Article 199, **except where the financial support is the primary aim of the action.**

- 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 and on information, even stored on electronic media, over all third parties who have received Union funds.

TITLE VII

PRIZES

Article 128

Definition Scope of prizes

"Prizes" are financial contributions given as rewards following contests.¹

Article 129

General rules

- Prizes are subject to the principles of transparency and equal treatment **and must promote the achievement of policy objectives of the Union.**
- For this purpose, prizes shall be ~~included in~~ **subject to** a work programme to be published prior to its implementation. The work programme shall be implemented through the publication of contests.

Contests for prizes with a unit value of EUR 1 000 000 or more may only be published if they are foreseen in the statements or any other relevant document referred to in point (c) of Article 34(2a).

¹ A recital expressing that *"the use of prizes shall be encouraged but not as a substitute for properly structured funding"* will be included.

The rules of the contest shall at least lay down the conditions for participation, the award criteria, the amount of the prize and the payment arrangements.

Prizes may not be awarded directly without a contest and shall be published annually in application of Article 31(2) and (3).¹

~~All prizes awarded in the course of a financial year shall be published annually in accordance with Article 31(2) and (3).~~

3. Entries in a contest shall be evaluated by a panel of experts on the basis of the published rules of the contest.

Prizes shall then be awarded by the authorising officer responsible, on the basis of the evaluation provided by the panel of experts who are free to decide whether or not to recommend the award of prizes, depending on their appraisal of the quality of the entries.

4. The amount of the prize shall not be linked to the costs incurred by the recipient.
5. Where implementation of an action or work programme requires prizes to be given to third parties by a beneficiary of a Union grant, this beneficiary may give such prizes provided that the minimum content of the rules of the contest, as referred to in paragraph 2, is strictly defined in the grant decision or agreement between the beneficiary and the Commission, with no margin for discretion.

¹ **The Commission proposes to add in the delegated act a provision similar to the current Article 169(3) of the Implementing Rules for grants, i.e. that following the publication of information on winners, when requested by the European Parliament and the Council, the Commission shall forward them a report on:**

- **the number of contestants in the past year;**
- **the number of contestants and the percentage of successful entries per contest;**
- **a list of the experts having taken part in panels in the past year, together with a reference to the procedure for their selection.**

TITLE VIII
FINANCIAL INSTRUMENTS

Article 130

Definition and scope

1. For the purpose of this Regulation, "financial instruments" shall mean Union measures of financial support provided ~~from the budget~~ on a complementary basis¹ **from the budget** in order to address, ~~when necessary and duly justified,~~ one or more specific policy objectives of **the Union**. Such instruments may take the form of loans, ~~including loans with interest rate rebates,~~ guarantees, equity or quasi-equity, ~~equity/debt investments or participations,~~ **or other facilitated where appropriate by the Union through risk-sharing instruments, and may, where appropriate, be possibly** combined with grants.

Financial instruments shall be authorised by means of a basic act.²

Notwithstanding the second subparagraph, financial instruments may be established, in duly justified cases, without being authorised by means of a basic act, provided that such instrument is included in the budget in accordance with point (da) of Article 46(1).

¹ **The following recital shall clarify that "complementary" does not mean "additional funds":**

"Within the framework of the annual appropriations authorised by the European Parliament and the Council for a given spending programme, financial instruments should be used on a complementary basis, on the basis of an ex ante evaluation demonstrating that they are more effective for the achievement of the policy objectives of the Union than other forms of Union funding, including grants."

² **The following recital shall clarify the link to basic acts:**

"Financial instruments should be authorised by means of a basic act, defining in particular their objectives and duration. Where financial instruments are established without a basic act in duly justified cases, they should be authorised by the European Parliament and the Council in the budget."

The following definitions shall apply:¹

- (a) **"loan"** means an agreement which obliges the lender to make available to the borrower a sum of money for the agreed amount and time. The borrower is obliged to repay during a certain period the loan made available to him. Usually the borrower is obliged to pay interest on the loan amount;
- (b) **"guarantee"** means a written commitment to be responsible for all or part of the debt, obligation or successful performance of a third party in an event that triggers such guarantee, such as a loan default;
- (c) **"equity investment"** means the provision of capital to a firm, invested directly or indirectly in return for total or partial ownership of that firm and where the equity investor may assume some management control of the firm and may share the firm's profits;
- (d) **"quasi-equity investment"** means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity. Quasi-equity investments can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or as preferred equity.
- (e) **"risk-sharing instrument"** means a financial instrument which allows for the sharing of a defined risk between two or more entities, where appropriate in exchange for an agreed remuneration.

¹

The following recital on definitions shall be included:

"The Financial Regulation should include a definition of possible instruments falling under Title VIII, such as loans, guarantees, equity investments, quasi-equity investment and risk sharing instruments. Risk sharing instruments may include credit enhancements for project bonds, covering the debt service risk of a project and mitigating the credit risk of bond holders through credit enhancements in the form of a loan or a guarantee."

2. ~~The Where Union support is provisionsded of this title shall also apply to~~ **by means of financial instruments pursuant to Article 130(1) and combined in a single measure with elements directly related to financial instruments targeting the same final recipients, including technical assistance, interest rate rebates and guarantee fee subsidies, Title VIII shall apply to all elements of that measure.**
- 2a. **Where financial instruments are combined with grants funded from the Union budget under Title VI for elements not directly relating to financial instruments, separate records shall be maintained for each source of financing.**
3. The Commission may implement financial instruments in direct management mode or in indirect management mode, **as set out in the basic act**, by entrusting tasks to ~~financial institutions, including those established in Member States and aiming at the achievement of public interests under the control of public authorities, as well as the European Investment Bank, the European Investment Fund or any other subsidiary of the bank~~ **the entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c).**

The entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c), when implementing financial instruments, may further entrust, under their responsibility, part of the implementation to financial intermediaries provided that these entities ensure that the financial intermediaries satisfy the criteria laid down in Article 131(1), (2) and (4). Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interests.

The Commission shall remain responsible for ensuring that the implementation framework for financial instruments complies with sound financial management and supports the attainment of defined and timed policy objectives, measured by outputs and results. The Commission shall be accountable for the implementation of financial instruments without prejudice to the entrusted entities' legal and contractual responsibility, in accordance with the applicable law.

4. ~~In case of~~ **Where** financial instruments **are** implemented in shared management with Member States, the provisions applying to those instruments, **including rules for contributions to financial instruments managed directly or indirectly under this Title**, ~~may~~ **shall** be laid down in the regulations referred to in Article 167.

Article 131

*Principles **and conditions** applicable to financial instruments*

1. Financial instruments shall be used in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination ~~and~~, equal treatment **and subsidiarity**, and in accordance with their objectives and, **where applicable**, ~~for the duration~~ established in the basic act ~~that applies to~~ **for** those financial instruments.
- ~~1a2.~~ Financial instruments shall comply with the following ~~conditions~~:
- ~~(a)~~ ~~added value of the Union intervention, which means that financial instruments shall only be implemented at Union level where their objectives, in particular by reason of their scale or effects, can be better achieved at Union level than at national level;~~
 - ~~(ba)~~ ~~they shall be implemented in order to~~ **addressing market failures or** sub-optimal investment situations, which have proven to be financially viable but do not give rise to sufficient funding from market sources;
 - ~~(eb)~~ ~~additionality, which means that:~~ financial instruments of the EU shall not aim at replacing those of a Member State, private funding or another financial EU intervention;
 - ~~(dc)~~ ~~financial instruments shall be implemented in a way which does not~~ **distortion of competition in the internal market and consistency with State aid rules;**

- (~~ed~~) ~~financial instruments shall be implemented in a way which does leverage effect, which means that:~~ the Union contribution to a financial instrument shall **aim at mobilising** a global investment exceeding the size of the Union contribution according to the indicators defined in advance;
- (~~fe~~) ~~appropriate measures shall be put in place to ensure that the entrusted entity has alignment of interest, which means that:~~ when implementing financial instruments, the Commission shall ensure that there is a common interest in achieving the policy objectives defined for a financial instrument, possibly fostered by provisions such as co-investment, risk sharing requirements or financial incentives, while preventing conflict of interest with other activities of the entrusted entity;
- (g) **financial instruments shall be established on the basis of on an *ex ante* evaluation.**

~~1b. When the implementation of financial instruments gives rise to revenues and repayments, these shall be entered in the Union budget as revenue, unless the relevant basic act provides otherwise for duly justified reasons.~~

23. The budgetary expenditure linked to a financial instrument and the financial liability of the Union shall in no case exceed the amount of the relevant budgetary commitment made for it, thus excluding contingent liabilities for the Union budget.

34. The entities referred to in ~~Article 130(3)~~ **points (ii), (iv) and (vi) of Article 55(1)(c)** and all financial intermediaries ~~involved~~ **selected to participate** in the execution of financial operations under a financial instrument shall comply with relevant standards **and applicable legislation** on the prevention of money laundering, ~~and the~~ **fight against terrorism and tax fraud. For the implementation of financial instruments under this Title, the entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c)** ~~They~~ shall not be established **and shall not maintain business relations with entities incorporated** in territories whose jurisdictions do not co-operate with the Union in relation to the application of ~~the~~ **internationally agreed tax standard and shall transpose such requirements in their contracts with the selected financial intermediaries.**

4. ~~Each agreement between an eEntityies referred to in points (ii), (iv) and (vi) of Article 130(3) 55(1)(c), and a financial intermediaryies referred to in paragraph 3 involved in managing Union financial instruments, and final recipients of Union support under this Title shall provide afford expressly for the access of the Commission and the Court of Auditors to documents, premises and information, even stored on electronic media, of the financial intermediaries who have received Union funds~~ **all the facilities and give it all the information which the Court of Auditors considers necessary for the performance of its task, pursuant to Article 152.**

Regulation (Euratom, EC) No 2185/96 and Regulation XXX¹ shall apply to Union support under this Title.

5. **Amounts corresponding at least to the Union contribution, or, where applicable, multiples thereof shall be used for the attainment of the specific policy objectives targeted through the financial instrument and shall not generate undue advantages, in particular in the form of undue dividends or profits for third parties.**

Without prejudice to sector-specific rules for shared management, interest, capital resources paid back to the Commission or fiduciary accounts opened for financial instruments from investments or from the release of resources committed for guarantee contracts, guarantee fees, dividends, capital gains or any other income receipts attributable to the support from the Union budget to under a financial instrument shall constitute internal assigned revenue in accordance with Article 18. They shall be used for the same financial instrument, for a period not exceeding the period for the commitment of appropriations plus two years, unless specified otherwise in a basic act.

¹ **Regulation of the European Parliament and of the Council amending Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-fraud Office (OLAF).**

- 5a. Payments to fiduciary accounts shall be made by the Commission on the basis of payment requests that are duly substantiated with disbursement forecasts, taking into account the balances available on the fiduciary accounts and the need to avoid excessive balances on such amounts. In case the amounts on the fiduciary accounts are sufficient to cover the contractually stipulated minimum reserve on the fiduciary accounts, increased by the disbursement forecasts for the current financial year and the amounts needed to exclude contingent liabilities in relation to out-currency payment obligations, no further payment to the fiduciary accounts will be made. Disbursement forecasts are to be provided on an annual or, where appropriate, on a semi-annual basis.**
- 56. The Commission shall ~~submit annually a comprehensive and detailed~~ report **annually** to the European Parliament and the Council on the activities supported by. **The report shall include, for each financial instrument, supported:****
- (a) an identification of the financial instrument and the basic act;**
 - (b) a description of the financial instrument, implementation arrangements and the added value of the Union contribution;**
 - (c) ~~on~~ the financial institutions involved in their implementation, **including any issues relating to the application of paragraph 4;****
 - (d) the aggregate budgetary commitments and payments from the Union's budget for each financial instrument;**
 - (e) ~~on~~ the performance of **the** financial instrument, including **the investments realised;****
 - (f) **the** balance on the trust accounts, revenues and repayments, multiplier effect achieved and value of participations, in line with normal commercial practice. The Commission shall attach its report to the synthesis report referred to in Article 63(7).;**

- (g) the additional resources, including interest, capital resources paid back to the financial instrument, guarantee fees, dividends, capital gains or any other income receipts attributable to the support from the Union budget;**
 - (h) the value of equity investments, with respect to previous years;**
 - (i) the accumulated figures on impairments of assets of equity/risk-sharing instruments, and on called guarantees for guarantee instruments;**
 - (j) the target leverage effect, and the achieved one;**
 - (k) the contribution of the financial instrument to the achievement of the objectives of the programme concerned as measured by the established indicators, including, where applicable, the geographical diversification.**
- 6a. Where the European Parliament and/or the Council consider that a financial instrument has not achieved its objectives effectively, they may request that the Commission submit a proposal for a revised basic act with a view to discontinue appropriations for that financial instrument or, where appropriate, with a view to the winding down of the instrument. In such an event, any new revenue of such financial instrument pursuant to the second subparagraph of paragraph 5 shall be considered as general revenue.**
- 7. The purpose of the financial instruments and, where applicable, their specific legal form and legal place of registration shall be published on the Commission website.**
- 8. For financial instruments the authorising officer responsible shall ensure that financial statements, covering the period 1 January to 31 December and in compliance with the EU accounting rules and IPSAS, as well as any information necessary to produce financial statements in accordance with Article 65(3) of the Financial Regulation, will be provided by the entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c) by 15 February of the following year. The authorising officer responsible shall also ensure that audited financial statements for financial instruments will be provided by the entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c) by 15 May of the following year.**

9. **The Commission shall ensure a harmonised management of financial instruments in particular in the area of accounting, reporting, monitoring and financial risk management.**
10. **The Commission may determine details for the implementation of financial instruments in the delegated act referred to Article 199.¹**

TITLE IX
PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1
PRESENTATION OF THE ACCOUNTS

Article 132

Structure of the Union accounts

The Union accounts shall comprise:

- (a) the consolidated financial statements, which present the consolidation of the financial information contained in the financial statements of the institutions financed by the budget, those of the bodies referred to in Article 200 and of other bodies whose accounts must be consolidated in accordance with Union accounting rules;
- (b) the aggregated budgetary accounts which present the information contained in the budgetary accounts of the institutions financed by the budget.

¹ **The review clause (Article 205) will address specifically Title VIII.**

Article 133

Report on budgetary and financial management

1. Each institution and body referred to in Article 132 shall prepare a report on budgetary and financial management of the financial year.

They shall send the report to the European Parliament and the Council and the Court of Auditors, by 31 March following the financial year.

2. The report referred to in paragraph 1 shall give an account, **both in absolute terms and expressed as a percentage**, at least, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.

Article 134

Rules governing the accounts

The accounting officer of the Commission shall adopt rules based on internationally accepted accounting standards for the public sector. The accounting officer may diverge from these if he considers this necessary to give a true and fair view of the assets and liabilities, charges, income and cash flow. Where an accounting rule diverges materially from these standards, the notes to the financial statements shall disclose this fact and the reasons for it.

The budgetary accounts referred to in Article 132 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.

Article 135

Accounting principles

The financial statements referred to in Article 132 shall present information, including accounting policies, in a manner that provides relevant, reliable, comparable and understandable information. They shall be drawn up in compliance with the generally accepted accounting principles as outlined in the Union's accounting rules.

Article 136
Financial statements

1. The financial statements shall be presented in millions of euro and shall comprise:
 - (a) the balance sheet and the statement of financial performance, which represent ~~the~~ **all** assets and liabilities¹ and financial situation and the economic 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 Union's activities~~ **relevant accounting rules adopted by the Accounting Officer of the Commission**;
 - (b) the cash-flow statement showing amounts collected and disbursed during the year and the final treasury position;
 - (c) the statement of changes in net assets presenting an overview of the movements during the year in reserves and accumulated results.

2. The 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 Union.

¹ **The following recital shall be included on pension liability:**
"As required by the internationally accepted accounting standards on which EU accounting rules are based on, pension liability, together with other employee benefits liabilities, should be recorded in the EU accounts, separately disclosed on the face of the EU balance sheet and explained further in the notes to the financial statements."

Article 137

Budgetary implementation reports

The budgetary implementation reports shall be presented in millions of euro. They shall comprise:

- (a) the budget implementation reports, which aggregate all budgetary operations for the year in terms of revenue and expenditure;
- (b) the notes to the budget implementation reports, which shall supplement and comment on the information given in the reports.

The structure in which budget implementation reports are presented shall be the same as that of the budget itself.

Article 138

Provisional accounts

The accounting officers of the other institutions and bodies referred to in Article 132 shall send to the accounting officer of the Commission and to the Court of Auditors by 1 March of the following year at the latest their provisional accounts.

The accounting officers of the other institutions and bodies referred to in Article 132 shall also send by 1 March 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.

The 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.

Article 139

Approval of the final consolidated accounts

1. The Court of Auditors shall, by the 1st of June at the latest, make its observations on the provisional accounts of other institutions and each body referred to in Article 132, and by 15 June at the latest, make its observations on the provisional accounts of the Commission and the consolidated Union provisional accounts.
2. The institutions other than the Commission, and each of the bodies referred to in Article 132, shall draw up their final accounts and send them to the accounting officer of the Commission, 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.

The accounting officers of the other institutions and bodies referred to in Article 132 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.

3. The accounting officer of each institution and body referred to in Article 132 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.

4. The 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 132 under paragraph 2. The final consolidated accounts shall be accompanied by a note established by the accounting officer of the Commission, by which he declares that they were prepared in accordance with Title IX and with the accounting principles, rules and methods set out in annex to the financial statements.

5. 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 by 31 July of the following financial year.

By the same date, the accounting officer of the Commission shall transmit a representation letter covering the final consolidated accounts to the Court of Auditors.

6. 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 TFEU and Article 160c of the Euratom Treaty by 15 November of the following financial year.

CHAPTER 2

INFORMATION ON THE IMPLEMENTATION OF THE BUDGET

Article 140

Report on the budgetary guarantees and risks

In addition to the statements provided for in Articles 136 and 137, the Commission shall report to the European Parliament and to the Council ~~twice~~ **once** a year on budgetary guarantees referred to in point (d) of Article 46(1) and the corresponding risks.

This information shall be sent to the Court of Auditors at the same time.

Article 141

Budget implementation report

1. In addition to the statements provided for in Articles 136 and 137, 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, 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.

These reports 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 **and published on the Internet.**
- 3a. **By 15 September of each year, the accounting officer shall send to the European Parliament and to the Council a report containing information on current risks noted, general trends observed, new accounting issues encountered, progress on accounting matters, including those raised by the Court of Auditors, and information on recoveries.**

CHAPTER 3 ACCOUNTING

SECTION 1 Common provisions

Article 142

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. Notwithstanding paragraph 2, the authorising officer by delegation may keep analytical accounts.

Article 143

Common provision to the institutions' accounting system

~~1.~~ The accounting officer of the Commission shall, **in accordance with Article 134**, after consulting the accounting officers of the other institutions and bodies referred to in Article 132, adopt the accounting rules and the harmonised chart of accounts to be applied by all the institutions financed by the budget, the offices referred to in Title V of Part Two and all the bodies referred to in Article 132.

~~2.~~ ~~When adopting the rules and methods referred to in paragraph 1, the 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 144

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 Article 132.

Article 145

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 **clear audit** trail for all accounting entries.

Article 146

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 147

Budgetary accounting

1. The budgetary accounts provide a detailed record of the implementation of the budget.
2. For the purposes of 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 148

The inventory

1. Each institution and each body referred to in Article 132 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 Article 132 shall check that entries in the inventory correspond to the actual situation.

2. The sale of property shall be suitably advertised.

TITLE X
EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1
EXTERNAL AUDIT

Article 149

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, 25 and 37.
- ~~2.~~—~~Each institution shall inform the Court of Auditors and the budgetary authority of any internal rules it adopts in respect of financial matters.~~

~~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 53, 65, 66, 67 and 92.~~

Article 150

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 delegated Regulation referred to in Article 199 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 152, 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~~ **liaison** with the national audit institutions or, where they do not have the necessary powers, with the **competent** national departments ~~responsible~~. The Court of Auditors and the national audit ~~bodies~~ **institutions** 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 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 151

Checks on 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.

Article 152

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 recipients 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 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~~ **electronically**.

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 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 150(1).

The information supplied under point (b) 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 Union funds received by way of grants.
5. Union financing paid to recipients outside the institutions shall be subject to the agreement in writing by the recipients 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 153

Annual report of the Court of Auditors

1. The Court of Auditors shall transmit to the Commission and the institutions concerned by 30 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 15 October at the latest. The replies of institutions other than the Commission shall be sent to the Commission at the same time.
2. The annual report shall contain an assessment of the soundness of financial management.
3. 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 next to or after each observation to which they relate.

4. 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*.
5. 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 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 the Commission within 60 days. The Commission shall transmit a summary of this information to the Court of Auditors, the Council and the European Parliament before 28 February.

Article 154

Special reports of the Court of Auditors

1. The Court of Auditors shall transmit to the institution or the body concerned 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 an 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 replies it wishes to make on those observations.

The Court of Auditors shall adopt the definitive version of the special report 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.

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 together with the report.

2. The opinions referred to in Article 287(4) TFEU 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.

[Article 155 deleted]

CHAPTER 2

DISCHARGE

Article 156

Timetable of the discharge procedure

1. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before 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 157

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, financial statements and the evaluation report referred to in Article 318 TFEU. It shall also examine the annual report made by the Court of Auditors together with the replies of the institutions under audit, and any relevant special reports by the Court of Auditors in respect of the financial year concerned 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 concerned, in accordance with Article 319 TFEU.¹

Article 158

Follow-up measures

1. In accordance with Article 319 TFEU 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.

¹ **The Commission proposed the following rewording as a possible alternative to the text further below on which the European Parliament insists:**

"The institutions, entities and bodies concerned in the framework of their administrative autonomy 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 concerned, in accordance with Article 319 of the TFEU."

Text proposed by the European Parliament:

*"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 concerned, in accordance with Article 319 of the TFEU.
At the Commission's request, institutions, entities and bodies implementing the budget shall timely submit to the Commission any such information and may be asked to be heard giving evidence together with the Commission."*

Article 159

Specific provisions regarding the EEAS

The EEAS shall be fully subject to the procedures provided for in Article 319 TFEU and in Articles 156, 157 and 158 of this Regulation. The EEAS shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies.

PART TWO

SPECIAL PROVISIONS

TITLE I

EUROPEAN AGRICULTURAL GUARANTEE FUND

Article 160

Special provisions on the European Agricultural Guarantee Fund

1. Parts One and Three 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, except as otherwise provided in this title.
2. Operations managed directly by the Commission shall be implemented in accordance with the rules laid down in Parts One and Three.

Article 161

Commitments of EAGF funds

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.
2. Payment appropriations which have been carried over but which have not been used by the end of the financial year shall be cancelled.

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 73/2009¹ 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 point (c) of Article 3(1) of Regulation (EC) No 1290/2005.

Such carryover may lead to an additional payment only to the final recipients 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 European Parliament and the Council.

Article 162

Global provisional commitments of EAGF appropriations

1. The Commission shall reimburse the expenditure incurred by the Member States.
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.

¹ OJ L 270, 21.10.2003, p. 1.

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.

Article 163

Schedule and timing of budgetary commitments of EAGF funds

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 relevant budget lines is necessary. Except 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 162.

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.

Article 164
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.

Article 165
Transfer of EAGF appropriations

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 European Parliament and the Council as provided for in Article 23(1).
2. In cases other than those referred to in paragraph 1, the Commission shall submit transfer proposals to the European Parliament and the Council by 10 January of the following financial year at the latest.

The European Parliament and the Council shall take decisions on such transfers in accordance with the procedure provided for in Article 24, but within a time limit of three weeks.

Article 166
Assigned revenue of EAGF funds

1. Assigned revenue under this title shall be assigned according to origin in accordance with Article 18(4).
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.

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

Article 167

Special provisions

1. Parts One and Three shall apply to expenditure effected by the authorities and bodies referred to in Regulation (EC) No ~~1290~~ **1698**/2005 on European Agricultural Fund for Rural Development¹, Regulation (EC) No 1080/2006 of the European Parliament and of the Council on the European Regional Development Fund², Regulation (EC) No 1081/2006 of the European Parliament and of the Council on the European Social Fund³, Council Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund⁴, Council Regulation (EC) No 1084/2006 on the Cohesion Fund⁵, Council Regulation (EC) No 1198/2006 on the European Fisheries Fund⁶ and funds in the area of Freedom, Security and Justice **including the Funds under the "Solidarity and Management of Migration Flows" Programme**, managed in shared management pursuant to Article 56, (the "Funds"), and to their revenue, except as otherwise provided in this title.

2. Operations managed directly by the Commission shall also be implemented in accordance with the rules laid down in Parts One and Three.

¹ **OJ L 277, 21.10.2005, p. 1.**

² OJ L 210, 31.7.2006, p. 1.

³ OJ L 210, 31.7.2006, p. 12.

⁴ OJ L 210, 31.7.2006, p. 25.

⁵ OJ L 210, 31.7.2006, p. 79.

⁶ OJ L 223, 15.8.2006, p. 1.

Article 168

Respect of the allocations of commitment appropriations

The European Parliament and the Council undertake to respect the allocations of commitment appropriations provided for in the relevant basic acts for structural operations, rural development and the European Fisheries Fund.

Article 169

Payments of contributions, interim payments and repayments

1. Payment by the Commission of financial contributions from the Funds shall be made in accordance with the regulations referred to in Article 167.
2. The time limit for interim payments by the Commission shall be laid down in accordance with the regulations referred to in Article 167.
3. **In accordance with the regulations referred to in Article 167 the repayment in full or in part of pre-financing payment in respect of a given operation shall not have the effect of reducing the contribution from the funds to the operation concerned.**

Amounts repaid shall constitute assigned revenue in accordance with point (c) of Article 18(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 167.

4. By way of derogation from Article 10, commitment appropriations available on 31 December arising from repayments of **pre-financing** 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.

5. **In budgetary accounting, expenditure shall be booked to the accounts for a financial year on the basis of reimbursements made by the Commission to the Member States by 31 December of the year concerned at the latest, including the expenditure charged by 31 January of the following financial year at the latest against the payment appropriations made available in this month following the transfers referred to in Article 171.**

Article 170

Decommitment of appropriations

The Commission shall automatically decommit appropriations that have been committed as provided for in the regulations referred to in Article 167.

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

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.

Article 171

Transfer of appropriations

1. With regard to the operational expenditure referred to in this title, the Commission may, except in the case of the European Agricultural Fund for Rural Development, make transfers from one title to another, provided that the appropriations concerned are for the same objective within the meaning of the Regulations governing the Funds referred to in Article 167, or are Technical Assistance expenditure. **It shall take its decisions up to 31 January of the following financial year at the latest.**

2. **In cases other than those referred to in paragraph 1, the Commission may submit proposals for transfers to the Funds of payment appropriations to the European Parliament and the Council by 10 January of the following financial year at the latest. The transfer of the payment appropriations may be made from any item of the budget. The European Parliament and the Council shall take decisions on such transfers in accordance with the procedure provided for in Article 24, but within a time limit of three weeks.**
3. **If the transfer is not approved or only partially approved by the European Parliament and the Council, the corresponding part of the expenditure referred to in Article 169(5) shall be charged to the payment appropriations of the following financial year.**

Article 172

Management, selection and audit

~~Aspects concerning~~ †The management and selection of projects and audit shall be governed by the regulations referred to in Article 167.

**TITLE III
RESEARCH**

Article 173

Research funds

1. Parts One and Three shall apply to the research and technological development appropriations, except 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 delegated Regulation referred to in Article 199.

2. The appropriations relating to the revenue generated by the Research Fund for Coal and Steel established by the Protocol annexed to the TFEU 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.
3. 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.
4. 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.

Article 174

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 European Parliament and the Council, by 15 February of each financial year, stating for each budget item the reasons for making these appropriations available again.

3. The European Parliament and the Council 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.

Article 175

Participation of the Joint Research Centre

1. The Joint Research Centre (JRC) may receive funding charged to appropriations entered outside the titles and the chapters referred to in Article 173(1) in respect of its participation to procurement and grant procedures following Titles V and VI of Part One, and financed in whole or in part from the budget.

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.

2. ~~Shall be treated as assigned revenue within the meaning of Article 18(2) the a~~Appropriations relating to:
 - (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

shall be treated as assigned revenue within the meaning of Article 18(2).

The commitment appropriations generated by revenue referred to in points (a) and (c) shall be made available as soon as the amount receivable has been estimated.

For activities referred to in point (c), appropriations not used within five years shall be cancelled.

The use 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.

3. When participating in grants or tender procedures in accordance with paragraph 1, the JRC shall not be subject to the conditions laid down in Article 100, points (b) and (c) of Article 101, Articles 102, 103, 122(3) and 122(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 109 and 125.

4. The rules on procurement in Title V of Part One shall not apply to the activities of the JRC on behalf of third parties.
5. 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 176
External actions

1. Parts One and Three shall apply to external actions financed from the budget, except 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 in partnership with a third country referred to in point (i) of Article 55(1)(c), through the signature of a financing agreement;
3. Where external actions are co-financed both from appropriations entered in the budget and from external assigned revenue referred to in point (b) of Article 18(2) the funds which ~~remain unspent~~ **are not committed** after the ~~financial closure~~ **end of the contracting period referred to in Article 180(2)** of the relevant action shall be reimbursed on a *pro rata* basis, **deduction made of a lump sum corresponding to audit, evaluation and contingencies which can be committed later.**
4. **For the actions referred to in the present title, point (b) of Article 87(4) does not apply.**

For grants in centralised management of more than EUR 5 000 000 financing external actions, no more than two pre-financing payments shall remain uncleared throughout the duration of the operation.

CHAPTER 2 IMPLEMENTATION OF ACTIONS

Section 1 *General provisions*

Article 177 *Implementation of external actions*

The actions referred to in this title may be implemented directly by the Commission pursuant to point (a) of Article 55(1), by shared management pursuant to point (b) of Article 55(1) or indirectly by any of the entities or persons listed in point (c) of Article 55(1), in accordance with the relevant provisions of Articles 55 to 60. Appropriations for external actions may be combined with funds from other sources to achieve a joint objective.

Article 177a *Use of budget support*

- 1. Where provided for in the relevant basic acts, the Commission may use budget support within a third country if the beneficiary country's management of public finances is sufficiently transparent, reliable and effective.**

- 2. The financing decision shall detail the objectives and the expected results of the provision of budget support to a third country. The payment of the Union contribution shall be based on the fulfilment of conditions referred to in paragraph 1, including the improvement of the management of public finances, and on clear and objective performance indicators forming the basis for the measuring of progress over time in the respective sector"**

3. **The Commission includes in the corresponding financing agreement concluded in accordance with point (b) of Article 176(2), the appropriate provisions following which the concerned beneficiary country commits to immediately reimburse all or part of the relevant operation funding, in the event that it is established that the payment of the concerned Union funds has been vitiated by serious irregularities attributable to the beneficiary country.**

For processing the reimbursement referred to in the first subparagraph, Article 77(1) concerning recovery by offsetting may be applied.

4. **The Commission shall support the development of parliamentary control and audit capacities and to increase transparency and public access to information.**

Article 178

EU trust funds for external actions

1. For emergency or, post-emergency **or thematic** actions, **the Commission may create** EU trust funds ~~may be created together~~ **under an agreement concluded** with two or more other donors ~~within the limits of the following provisions~~. The constitutive act of each EU trust fund shall define its ~~the objectives of the trust fund and may entail a financial agreement concluded with other donors~~.
2. EU trust funds shall be implemented ~~directly by the Commission pursuant to point (a) of Article 55(1) and~~ in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination and equal treatment, and in accordance with the specific objectives defined in each constitutive act.

They shall be implemented directly by the Commission pursuant to point (a) of Article 55(1), with the exception of EU trust funds for emergency or post-emergency actions, which may also be implemented indirectly by entrusting budget implementation tasks to entities referred to in points (i), (ii) and (vi) of Article 55(1)(c).

3. EU trust funds shall comply with the following conditions:
 - (a) added value of the Union intervention, ~~which means that:~~ trust funds shall only be created and implemented at Union level where their objectives, in particular by reason of their scale or effects, can be better achieved at Union level than at national level;
 - (b) additionality, ~~which means that:~~ EU trust funds shall not overlap with other funding channels aiming at similar objectives. **EU thematic trust funds shall not aim at replacing existing trust funds.**
4. A board chaired by the Commission ~~is~~ **shall be** established for each EU trust fund to ensure the representation of the donors and, as observers, of the ~~other EU~~ **non contributing** Member States and to decide for the use of the funds.
5. EU trust funds are created for a limited duration determined in their constitutive act. **This duration may be extended by a decision of the Commission upon request of the board.**

The European Parliament and the Council may request the Commission to discontinue appropriations for that trust fund or to revise the constitutive act with a view to the liquidation of the trust fund, where appropriate. In such an event, any remaining funds shall be returned on a pro rata basis to the EU budget as a general revenue and to the contributing Member States and other donors.

6. The contributions of the Union and the donors shall be entered into a specific bank account. The contributions of the Union shall ~~not~~ be transferred to this account ~~before their~~ **on the basis of payment requests that are duly substantiated with** disbursement ~~is called for~~ **forecast, taking into account the balances available on the account and the resulting need for additional payments. Disbursement forecasts are to be provided on an annual or where appropriate on a semi annual basis.** These contributions are not integrated in the budget and are managed by the Commission under the responsibility of the authorising officer by delegation.

The accounting officer of a EU trust fund shall be the accounting officer of the Commission. He shall be responsible for laying down accounting procedures and chart of accounts common to all EU trust funds.

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.

Funds shall be committed and paid by financial actors of the Commission.

7. The Commission is authorised to withdraw a maximum of 5 % of the amounts pooled into the trust fund to cover its management costs in the year in which these contributions are used. For the duration of the trust fund, these management fees are assimilated to assigned revenues within the meaning of point (b) of Article 18(2).

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 77.

8. The Commission shall submit its draft decisions concerning the creation, the extension and the liquidation of a EU trust fund to the competent committee provided for in the basic act under which the Union contribution to the EU trust fund is provided.¹

~~9.~~ Further detailed rules for the management, reporting and governance of these trust funds are laid down in the delegated Regulation referred to in Article 199.

~~The Commission shall submit its draft decision concerning the creation of a EU trust fund to the competent committee provided for in the basic act.~~

~~10.~~ The Commission shall submit annually a comprehensive and detailed report to the European Parliament and the Council on the activities supported by EU trust funds, on their implementation and performance, as well as on their accounts. The Commission shall attach its report to the synthesis report referred to in Article 63(7).

Section 3

Other management modes

Article 179

Implementation of external actions through indirect management

The implementation of actions implemented indirectly is subject to scrutiny by the Commission and by Union Delegations in accordance with the second paragraph of Article 53. Such scrutiny shall be exercised either by prior approval, by *ex post* checks or by a combined procedure.

¹ **The Commission statement on "the comitology for EU trust funds" will accompany Article 178(8) (see statement No 4 recorded in Annex 1 to document 10256/12).**

Article 180

Financing agreements on the implementation of external actions

1. Actions carried out shall give rise to one or more of the following instruments:
 - (a) an agreement between the Commission and an entity referred to in Article 177;
 - (b) a contract or a grant agreement between the Commission and natural or legal persons responsible for carrying out the actions.

The terms on which the external aid is given shall be laid down in the instrument by which the agreements or the contracts or the grants provided for in points (a) and (b) shall be managed.

2. Financing agreements with the entities referred to in point (a) of paragraph 1 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 financing agreements shall lay down the period within which the entities referred to in point (a) of paragraph 1 shall conclude all individual contracts and grants which implement the action. Such period shall not be longer than three years following the date of conclusion of the agreement, except:

- (a) for multi-donor actions;
- (b) for individual contracts relating to audit and evaluation ;
- (c) under exceptional circumstances in the following cases:
 - (i) 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.

3. Paragraph 2 shall not apply to the multiannual programmes that are implemented through split commitments in the following cases:
 - (a) the transition assistance and institution building, the cross-border cooperation, regional development, human resources development and rural development components of the Pre-Accession Assistance,
 - (b) the cross-border cooperation component of the European Neighbourhood and Partnership policy.

In these cases, the appropriations shall be automatically decommitted by the Commission in accordance with the sector-specific rules.

CHAPTER 3

PROCUREMENT

Article 181

External action procurement

1. The provisions of Chapter 1 of Title V of Part One relating to the general provisions on procurement shall be applicable ~~under direct and indirect management~~ 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 delegated Regulation referred to in Article 199. 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 third countries;
 - (b) entities referred to in Article 177 and entrusted with the corresponding budget implementation tasks.
2. The procurement procedures must be laid down in the agreements provided for in Article 180.

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 118.

Article 182

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.
2. In cases referred to in Article 51(5), it may be decided, under exceptional circumstances duly motivated by the authorising 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 Union 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.

CHAPTER 4

GRANTS

Article 183

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.

Article 184

Applicable rules for external action grants

Grant procedures to be applied in indirect management by the entities referred to in Article 177 shall be laid down in the agreements concluded between the Commission and those entities.

~~*Article 185*~~

~~*Income generated by an action*~~

~~The responsible authorising officer may deduct the income generated by an action from the profit referred to in Article 117(4) where a generation of income was provided for in the grant agreement, and the income in question does not exceed a certain amount as laid down in the delegated Regulation referred to in Article 199, and it is reinvested to ensure the sustainability of the action.~~

CHAPTER 5

AUDITING OF ACCOUNTS

Article 186

EU audit in external action grants

Each agreement between the Commission and an entity referred to in Article 177, 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 funds.

TITLE V

EUROPEAN OFFICES

Article 187

The European Offices

1. "European offices" for the purposes of this title are the administrative structures set up by one or more institutions to perform specific cross-cutting tasks.

2. This title shall apply to the operation of the European Anti-fraud Office, with the exception of Articles 190, 191 and 192.
3. Parts One and Three shall apply to the operation of the European offices, except as otherwise provided in this title.

Article 188

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 European Parliament and the Council of such transfers.
4. Each European office's accounts shall form an integral part of the Union's accounts referred to in Article 132.

Article 189

Authorising officer of the interinstitutional 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 62.

Article 190

The accounts of the interinstitutional 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. 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.

Article 191

Delegation of powers for interinstitutional 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 Chapter 8 of Title IV of Part One.

Article 192

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.

TITLE VI

ADMINISTRATIVE APPROPRIATIONS

Article 193

General provisions

Parts One and Three shall apply to administrative appropriations, except as otherwise provided in this title.

Article 194

Commitments

1. As from 15 October of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the appropriations decided by the European Parliament and the Council 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. In this case, the limit referred to in paragraph 1 shall not apply.

Article 195

Specific provisions regarding administrative appropriations

1. Administrative appropriations shall be non-differentiated appropriations.
2. 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 Each~~ institutions¹ shall ~~request the approval of~~ **provide** the European Parliament and the Council as soon as possible for any building project likely to have significant financial implications for the budget, as specified in the delegated Regulation referred to in Article 199 **by 1 June each year with a working document on its building policy incorporating the following information:**
 - (a) **for each building, expenditure and areas covered by the appropriations of the corresponding budget lines;**
 - (b) **expected evolution of the global programming of areas and locations for the coming years with a description of the building projects in planning phase which are already identified;**
 - (c) **final terms and costs as well as relevant information regarding project implementation of new building projects previously submitted to the European Parliament and the Council under the procedure established in Article 195(4) and (5) and not included in previous year's working documents;**

¹ **Equivalent provisions will be included in the Framework Financial Regulation for agencies and bodies set up under the Treaties.**

4. **For any building project likely to have significant financial implications for the budget, the Institution shall inform the European Parliament and the Council as early as possible about the building surface area required and provisional planning before any prospecting of the local market in the case of building contracts or before invitations to tender are issued or takes place, in the case of building works.**
5. **For any building project likely to have significant financial implications for the budget, the Institution shall present the building project including its detailed estimated costs and its financing and request the approval of the European Parliament and the Council before contracts are concluded. At the request of the institution, the draft contract shall be treated confidentially.**

Except in ~~in urgent circumstances~~ cases of *force majeure*, the European Parliament and the Council shall deliberate upon the building project ~~proposal~~, which shall include a list of the draft contracts envisaged, within ~~six~~ four weeks of the date on which the two institutions received it.

The building project ~~proposal~~ shall be deemed to be approved at the expiry of this ~~six~~ four-week period, unless the European Parliament ~~and/or~~ the Council take a decision contrary to the proposal **within this period of time.**

If the European Parliament and/or the Council raise duly substantiated concerns within that four-week period, that period shall be extended once by two weeks.

If the European Parliament ~~and/or~~ the Council take a decision contrary to the building project ~~proposal~~, the institution concerned shall withdraw its proposal and may submit a new one.

6. **In cases of *force majeure*, the information foreseen in paragraph 4 above may be submitted jointly with the building project. The European Parliament and the Council shall deliberate upon the building project within 2 weeks of the date on which the two institutions received it. The building project shall be deemed to be approved at the expiry of this two-week period, unless the European Parliament and/or the Council take a decision contrary to the proposal within this period of time.**

- 7. Building projects likely to have significant financial implications for the budget are:**
- (i) any acquisition of land;**
 - (ii) the acquisition, sale, structural renovation works, construction of buildings or any project combining these elements to be implemented in the same timeframe, exceeding EUR 3 million;**
 - (iii) any new building contract (including usufructs and long-term leases) not covered by point (ii) with an annual charge of at least EUR 750 000;**
 - (iv) the renewal of existing building contracts (including usufruct and long term leases) with an annual charge of at least EUR 3 million, except where the building project is renewed under the same or more favourable conditions.**

Points (i) to (iv) apply also to building projects which have an interinstitutional nature, as well as to EU delegations.

- 8. Building projects may, by way of derogation from Article 14, be financed through a loan to be contracted by the proposing institution on behalf of the Union.**

All loan-financed building projects shall be submitted to the European Parliament and the Council for approval, as provided for in paragraphs 5 or 6. The proposing institution shall submit, together with its request and the elements foreseen in paragraph 3, a financing plan specifying in particular the maximum level of financing, the financing period the type of financing and any savings compared to other types of contractual arrangements.

Notwithstanding paragraphs 5 and 6, no loan-financed building project shall be carried forward unless the European Parliament and the Council each take an explicit decision of approval.

TITLE VII
EXPERTS

Article 196
Experts

The delegated Regulation referred to in Article 199 shall include a specific procedure for the selection of natural persons as experts, for assisting the institutions in the evaluation of grant applications, projects and tenders, and for providing 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.

PART THREE
FINAL PROVISIONS

[*Article 197*¹
Transitional provisions

1. The Funds referred to in Article 167(1) for which the basic acts were repealed before the date of application of this Regulation, appropriations which were decommitted in application of Article 170 may be made available again in the case 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 those Funds.

¹ **Examination of Article 197 postponed to a later stage of the legislative negotiations.**

2. For transfers of appropriations concerning operational expenditure referred to in Regulation (EC) No 1260/1999, Regulation (EC) No 1290/2005, Regulation (EC) No 1080/2006, Regulation (EC) No 1081/2006, Regulation (EC) No 1083/2006, Regulation (EC) No 1084/2006 and Regulation (EC) No 1198/2006 for the 2000 to 2006 programming period, for which Union payments still have to be made for the financial settlement of outstanding Union commitments until the closure of the assistance, the Commission may make transfers from one title to another, provided that the appropriations concerned are for the same objective or relate to Union initiatives or to technical assistance and innovative measures and are transferred to measures of the same nature.]

Article 198

Information requests by the European Parliament and the Council

The European Parliament and the Council shall be empowered to obtain any information or explanations regarding budgetary matters within their fields of competence.

Article 199¹

Adoption of the detailed rules for the application of this Regulation

~~The Commission shall adopt a delegated Regulation on detailed rules for the application of this Regulation in accordance with Articles 202, 203 and 204.~~

~~The delegated Regulation shall include rules on the implementation of administrative expenditure relating to the appropriations provided in the budget for the Euratom Supply Agency.~~

1. **The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.**

¹ **The following phrase will be inserted in each of the articles delegating power:**
"The Commission shall be empowered to adopt delegated acts in accordance with Article 199 concerning [content and scope]."
[Example - Article 16
"The Commission shall be empowered to adopt delegated acts in accordance with Article 199 concerning the [authorising officer's] carrying out of operations in national currencies."]

2. The delegation of power referred to in Articles [5, 8, 9, 16, 18, 19, 20, 22, 23, 25, 26, 27, 30, 31, 34, 38, 41, 46, 50, 51, 55, 56, 57, 58, 61, 63, 65, 66, 67, 69, 70, 71, 72, 75, 76, 77, 77b, 78, 80, 81, 82, 83, 84, 85, 86, 87, 89, 90, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 117a, 118, 119, 120, 122, 123, 124, 125, 126, 126a, 126c, 127, 133, 135, 136, 137, 139, 142, 145, 147, 148, 173, 175, 176, 178, 179, 180, 181, 182, 183, 184, 187, 188, 191, 193, 195, 196, 197] shall be conferred on the Commission for a period of [3] years from [XX]¹. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the X-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles [5, 8, 9, 16, 18, 19, 20, 22, 23, 25, 26, 27, 30, 31, 34, 38, 41, 46, 50, 51, 55, 56, 57, 58, 61, 63, 65, 66, 67, 69, 70, 71, 72, 75, 76, 77, 77b, 78, 80, 81, 82, 83, 84, 85, 86, 87, 89, 90, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 117a, 118, 119, 120, 122, 123, 124, 125, 126, 126a, 126c, 127, 133, 135, 136, 137, 139, 142, 145, 147, 148, 173, 175, 176, 178, 179, 180, 181, 182, 183, 184, 187, 188, 191, 193, 195, 196, 197] may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

¹ Date of entry into force of the basic legislative act or from any other date set by the legislator.

5. A delegated act adopted pursuant to Articles [5, 8, 9, 16, 18, 19, 20, 22, 23, 25, 26, 27, 30, 31, 34, 38, 41, 46, 50, 51, 55, 56, 57, 58, 61, 63, 65, 66, 67, 69, 70, 71, 72, 75, 76, 77, 77b, 78, 80, 81, 82, 83, 84, 85, 86, 87, 89, 90, 92, 93, 94, 95, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 117a, 118, 119, 120, 122, 123, 124, 125, 126, 126a, 126c, 127, 133, 135, 136, 137, 139, 142, 145, 147, 148, 173, 175, 176, 178, 179, 180, 181, 182, 183, 184, 187, 188, 191, 193, 195, 196 or 197] shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [2 months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [2 months] at the initiative of the European Parliament or the Council.

Article 200

Framework financial regulation for agencies and bodies set up under the TFEU and the Euratom Treaty

1. ~~The Commission shall adopt a~~ **A framework financial regulation shall be adopted by means of a delegated act in accordance with Articles 202, 203 and 204** for bodies which are set up under the TFEU and the Euratom Treaty and which have legal personality and receive contributions charged to the budget ~~by means of a delegated act in accordance with Articles 202, 203 and 204.~~¹

This framework financial regulation will be based on the principles and rules provided under this Regulation.

¹ The Commission shall provide a statement confirming that it will consult the Court of Auditors before adopting such framework financial regulation.

The financial rules of those bodies may not depart from the framework financial regulation except where their specific 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, and specific provisions set out in the basic acts establishing 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. **The bodies referred to in paragraph 1 shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, the additional necessary information, including through attendance at meetings of the relevant bodies.**
3. The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as he does in respect of ~~the Commission departments.~~
4. **Unless otherwise provided for in the basic act** ~~Each of the bodies referred to in paragraph 1 shall appoint by contract, after consultation of, 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 134 and to undertake an analysis, under the direction of the Court of Auditors, of the legality and regularity of the revenue and expenditure of this body. The Court of Auditors shall examine the report prepared by any such independent auditor and, together with carrying out any other procedure it deems necessary, may rely on the independent auditor's report when forming its opinion.~~

Article 201

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 ~~point (v) of Article 55(1)(e)~~ shall adopt their financial rules.

Those rules shall include a set of principles necessary to ensure sound financial management of Union funds. These principles shall be laid down in a model financial regulation adopted by the Commission, by means of a delegated act in accordance with Articles 202, 203 and 204, and be based on Article 57.

The financial rules of those bodies may not depart from the model financial regulation except where their specific needs so require and with the Commission's prior consent.

Article 202

Exercise of the delegation

1. The powers to adopt the delegated act referred to in Articles 199, 200 and 201 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 203 and 204.

Article 203

Revocation of the delegation

1. The delegation of power referred to in Article 199 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*.

Article 204

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 two months.
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.

Article 205

Review

This Regulation shall be reviewed whenever it proves necessary to do so, and in any case at the latest two years before the end of the multiannual financial framework.

The Commission may amend, by means of delegated acts in accordance with Article 202, all the thresholds and amounts laid down in this Regulation, without prejudice to Article 112.¹

Article 206

Repeal

Regulation (EC, Euratom) No 1605/2002 is repealed.

However, Article 53b of Regulation (EC, Euratom) No 1605/2002² shall continue to apply to all commitments made before 31 December 2013 of funds referred to in Article 167.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

Article 207

Review concerning the EEAS

The third subparagraph of Article 65(1) and the third paragraph of Article 92 will be reviewed in 2013 taking due account of the specificity of the EEAS and in particular that of the Union delegations, and, where appropriate, an adequate financial management capacity of the EEAS.

¹ **A specific reference to the need to carry out a review of the provisions in Title VIII, "Financial Instruments", shall be included.**

² OJ L 248, 16.9.2002, p. 1.

[Article 208¹

Entry into force

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

It shall apply as of [1 January 2012].

Article 56 shall apply only to commitments made as of 1 January 2014 of funds referred to in Article 167.

Article 79 shall apply as of 1 January 2014.

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

Done at [...],

For the European Parliament

For the Council

The President

The President

¹ **Examination of Article 208 postponed to a later stage of the legislative negotiations.**