

Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (repealed)

PART ONE

COMMON PROVISIONS

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1

General provisions

Article 29

Information on transfers of personal data for audit purposes(Article 53 of the Financial Regulation)

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

Article 30

Preparatory measures in the field of the common foreign and security policy(Article 54(2)(c)of the Financial Regulation)

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

Article 31

Specific powers of the Commission under the Treaties(Article 54(2)(d) of the Financial Regulation)

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

- a Article 154 (social dialogue);
- b Article 156 (studies, opinions and consultations on social matters);
- c Articles 159 and 161 (special reports on social matters);
- d Article 168(2) (initiatives to promote coordination on health protection matters);
- e Article 171(2) (initiatives to promote coordination on trans-European networks);
- f Article 173(2) (initiatives to promote coordination on matters relating to industry);
- g Article 175, second subparagraph (report on progress made towards achieving economic, social and territorial cohesion);
- h Article 181(2) (initiatives to promote coordination on research and technological development);
- i Article 190 (report on research and technological development);
- j Article 210(2) (initiatives to promote coordination of development cooperation policies);
- k Article 214(6) (initiatives to promote coordination on humanitarian aid measures).

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

- a Article 70 (financial support, within the limits set by the budget, for prospecting programmes in the territories of the Member States);
- b Articles 77 to 85.

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

Article 32

Acts likely to constitute a conflict of interests and procedure(Article 57 of the Financial Regulation)

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

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

Other acts likely to be affected by a conflict of interests are those which may impair the impartial and objective performance of a person’s duties such as, inter alia, the participation in an evaluation committee for a public procurement or grant procedure

when the person may, directly or indirectly, benefit financially from the outcome of these procedures.

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

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

CHAPTER 2

Methods of implementation

Section 1

General provisions

Article 33

Management mode(Article 58 of the Financial Regulation)

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

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

- (a) departments of the Commission;
- (b) executive agencies;
- (c) heads of Union delegations;
- (d) trust funds referred to in Article 187 of the Financial Regulation.

Section 2

Direct Management

Article 34

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

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

Status: This is the original version (as it was originally adopted).

Article 35

Exercise of powers delegated to executive agencies(Articles 58(1)(a) and 62 of the Financial Regulation)

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

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

Article 36

Compliance with the procurement rules(Article 63 of the Financial Regulation)

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

Section 3

Shared management with Member States

Article 37

Specific provisions for shared management with Member States measures to promote best practices(Article 59 of the Financial Regulation)

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

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

Section 4

Indirect management

Article 38

Equivalence of systems, rules and procedures in indirect management(Article 60 of the Financial Regulation)

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

- a they comply with the principle of broad competition of tenderers to obtain the best value for money, and negotiated procedures are limited to reasonable amounts or are duly justified;
- b they ensure transparency with adequate *ex ante* publication, in particular of calls for tenders, and adequate *ex post* publication of contractors;
- c they ensure equal treatment, proportionality and non-discrimination;
- d they prevent conflicts of interests throughout the entire procurement procedure.

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

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

- a they comply with the principles of proportionality, sound financial management, equal treatment and non-discrimination;
- b they ensure transparency with adequate publication of calls for proposals, direct award procedures being limited to reasonable amounts or being duly justified, and adequate *ex post* publication of beneficiaries taking account of the principle of proportionality;
- c they prevent conflicts of interests throughout the entire grant award procedure;
- d they provide that grants may not be cumulative or awarded retrospectively, that they must, as a rule, involve co-financing and that they may not have the purpose or the effect of producing a profit for the beneficiary.

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

Article 39

Ex ante assessment of rules and procedures of the entities and persons in indirect management(Article 61(1) of the Financial Regulation)

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

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

Article 40

Content of the agreement entrusting budget implementation tasks to entities and persons (Articles 61(3) of the Financial Regulation)

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

- (a) a clear definition of the tasks assigned and the limits thereof, concerning in particular the modification of the tasks entrusted, the waiving of debts, the use of funds reimbursed or unused;
- (b) conditions and detailed arrangements for performing the tasks, responsibilities and organising the controls to be carried out, including the evaluation of the programmes;
- (c) conditions for payments of the Union contribution, including the reimbursement of costs incurred in respect of implementation as well as the remuneration of the entrusted entity, together with rules on which supporting documents are required to justify the payments;
- (d) rules on reporting to the Commission on how the tasks are performed, the results expected, irregularities which occurred and the measures taken, the conditions under which payments may be suspended or interrupted as well as the conditions under which performance of the tasks terminates;
- (e) the date, by which individual contracts and agreements which implement the delegation agreement shall be concluded, which shall be commensurate with the nature of the tasks entrusted;
- (f) exclusion rules which allow the entity or person to exclude entities which are in a situation referred to in points (a), (b) and (e) of Article 106(1) and in points (a) and (b) of Article 107 of the Financial Regulation from participating in procurement, grant or prize award procedures or from being awarded procurement contracts, grants or prizes;
- (g) detailed arrangements for Commission scrutiny as well as provisions granting the Commission, OLAF and the Court of Auditors access to the information that is required for them to perform their duties, as well as the power to conduct audits and investigations including on the spot-checks;
- (h) arrangements providing for:
 - (i) an undertaking of the entrusted entity to inform the Commission without delay of any fraud occurring in the management of Union funds and the measures taken;
 - (ii) the designation of a contact point which shall have the appropriate powers to cooperate directly with OLAF in order to facilitate the latter's operational activities;
- (i) conditions governing the use of bank accounts and of the interest yielded as provided for in Article 8(4) of the Financial Regulation;

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

Article 41

Management declaration and compliance statement(Article 60(5) of the Financial Regulation)

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

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

Article 42

Procedures for the examination and acceptance of the accounts and exclusion from Union financing of expenditure made in breach of applicable rules under indirect management(Article 60(6)(b) and (c) of the Financial Regulation)

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

- a desk reviews and, where appropriate, on-the-spot checks by the Commission;
- b the establishment by the Commission of the amount of expenditure recognised as accepted, following, where necessary, a contradictory procedure with the authorities and bodies and after these authorities and bodies have been informed;
- c where appropriate, calculation by the Commission of financial corrections;
- d recovery or payment by the Commission of the balance arising from the difference between accepted expenditure and the sums already paid to the authorities or bodies.

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

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

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

Article 43

Specific provisions for indirect management with international organisations(Articles 58(1)(c)(ii) and 188 of the Financial Regulation)

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

- a international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations;
- b the International Committee of the Red Cross;
- c the International Federation of National Red Cross and Red Crescent Societies;
- d other non-profit organisations assimilated to international organisations by a Commission decision.

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

Article 44

Designation of public law bodies or bodies governed by private law with a public-service mission(Article 58(1)(c)(v) and (vi) of the Financial Regulation)

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

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

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

CHAPTER 3

Financial actors

Section 1

Rights and obligations of the financial actors

Article 45

Rights and obligations of the financial actors(Article 64 of the Financial Regulation)

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

2 Heads of Union delegations acting as authorising officers by subdelegation in accordance with Article 56(2) of the Financial Regulation shall be subject to the charter provided

by the Commission for the implementation of the financial management tasks subdelegated to them.

Section 2

Authorising officer

Article 46

Assistance for authorising officers by delegation and subdelegation(Article 65 of the Financial Regulation)

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

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

Article 47

Internal provisions governing delegations(Article 65 of the Financial Regulation)

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

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

Article 48

Keeping of supporting documents by authorising officers(Article 66(2) of the Financial Regulation)

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

- (a) such documents to be numbered;
- (b) such documents to be dated;
- (c) registers, which may be computerised, to be kept identifying the exact location of such documents;

- (d) such documents to be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate;
- (e) keeping of documents relating to pre-financing guarantees for the institution and of a log to enable such guarantees to be adequately monitored.

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

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

Article 49

Ex ante and ex post controls(Article 66(5) and (6) of the Financial Regulation)

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

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

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

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

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

- a the expenditure and revenue are in order and comply with the provisions applicable, in particular those of the budget and the relevant regulations and of any acts adopted in implementation of the Treaties or regulations and, where appropriate, the terms of contracts;
- b the principle of sound financial management referred to in Chapter 7 of Title II of Part One of the Financial Regulation is applied.

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

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

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

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

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

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

Article 50

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

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

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

- a the level of technical and financial competence required of the staff referred to in paragraph 1;
- b the obligation for such staff to undergo continuous training;
- c the mission, role and tasks allocated to them;
- d the rules of conduct, in particular the standards of ethics and integrity that they must comply with and the rights they enjoy.

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

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

Article 51

Failure of the authorising officer by delegation to take action(Article 66(8) of the Financial Regulation)

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

Article 52

Transmission of financial and management information to the accounting officer(Article 66 of the Financial Regulation)

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

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

Article 53

Report on negotiated procedures(Article 66 of the Financial Regulation)

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

Section 3

Accounting officer

Article 54

Appointment of the accounting officer(Article 68 of the Financial Regulation)

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

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

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

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

Article 55

Termination of duties of the accounting officer(Article 68 of the Financial Regulation)

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

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

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

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

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

Article 56

Validation of accounting and inventory systems(Article 68 of the Financial Regulation)

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

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

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

Article 57

Treasury management(Article 68 of the Financial Regulation)

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

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

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

Article 58

Management of bank accounts(Article 68 of the Financial Regulation)

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

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

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

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

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

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

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

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

Article 59

Signatures on accounts(Article 68 of the Financial Regulation)

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

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

Article 60

Management of account balances(Article 68 of the Financial Regulation)

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

- a that none of those accounts is in debit;
- b that the balance of accounts held in other currencies is periodically converted into euro.

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

Article 61

Transfers and conversion operations(Article 68 of the Financial Regulation)

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

Article 62

Methods of payment(Article 68 of the Financial Regulation)

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

Article 63

Legal entities files(Article 68 of the Financial Regulation)

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

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

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

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

In connection with pre-accession aid, individual commitments may be concluded with the public authorities in the countries applying for accession to the European Union without a prior entry in the third-party file. In such cases the authorising officer shall do

his utmost to ensure that the entry is made as quickly as possible. The agreements shall provide that communication to the Commission of the payee's bank account details is a condition to be fulfilled before the first payment can be made.

Article 64

Keeping of supporting documents by the accounting officer(Article 68 of the Financial Regulation)

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

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

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

Article 65

Persons empowered to administer accounts(Article 69 of the Financial Regulation)

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

Section 4

Imprest administrator

Article 66

Conditions of use of imprest accounts(Article 70 of the Financial Regulation)

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

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

3 The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer, on a duly substantiated proposal from

the authorising officer responsible. That decision shall set out the respective responsibilities and obligations of the imprest administrator and the authorising officer.

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

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

Article 67

Conditions governing creation and payment(Article 70 of the Financial Regulation)

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

- a the maximum amount which may be initially provided as an imprest, and its purpose;
- b whether a bank account or post office giro account is to be opened in the name of the institution;
- c the nature and maximum amount of each item of expenditure which may be paid by the imprest administrator to third parties or collected from them;
- d the frequency with which supporting documents must be produced, the procedure for producing them and the arrangements for transmitting them to the authorising officer for settlement;
- e the procedure to be followed if the imprest has to be replenished;
- f that imprest transactions will be settled by the authorising officer by no later than the end of the following month, so that the accounting balance and the bank balance can be reconciled;
- g the period of validity of the authorisation given to the imprest administrator by the accounting officer;
- h the identity of the appointed imprest administrator.

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

- a priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;
- b imprest accounts are used only in substantiated cases.

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

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

- a prior budgetary and legal commitments signed by the authorising officer responsible;
- b the positive residual balance of the imprest account, in cash or at the bank.

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

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

Article 68

Choice of imprest administrators(Article 70 of the Financial Regulation)

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

Article 69

Endowment of imprest accounts(Article 70 of the Financial Regulation)

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

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

- a sales of equipment;
- b publications;
- c miscellaneous repayments;
- d interest.

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

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

Article 70

Checks by authorising officers and accounting officers(Article 70 of the Financial Regulation)

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

2 The accounting officer shall carry out, or have carried out by a staff member in his own department or in the authorising department specially empowered for that purpose, checks, which must as a general rule be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time limit set. The accounting officer shall communicate the findings of those checks to the authorising officer responsible.

Article 71

Procurement procedure(Article 70 of the Financial Regulation)

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

Article 72

Creation of imprest accounts(Article 70 of the Financial Regulation)

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

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

Article 73

Imprest administrators and persons empowered to administer accounts in the Union delegations(Article 70 of the Financial Regulation)

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

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

CHAPTER 4

Liability of the financial actors

Section 1

General rules

Article 74

Bodies responsible in matters of fraud(Articles 66(8) and 72(2) of the Financial Regulation)

The authorities and bodies referred to in Articles 66(8) and 72(2) of the Financial Regulation shall be understood as the bodies designated in the Staff Regulations and the decisions of the Union institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Union's interests.

Section 2

Rules applicable to authorising officers by delegation and subdelegation

Article 75

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

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

Article 76

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

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

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

An authorising officer by delegation may refer a matter to the panel if he considers that a financial irregularity has occurred. The Panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 75 have occurred, how serious they are and what their consequences might be. Where the Panel's analysis suggests that

the case referred to it is a matter for OLAF, it shall transmit the file to the appointing authority without delay and shall inform OLAF at once.

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

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

Article 77

Confirmation of instructions(Article 73(3) of the Financial Regulation)

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

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

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

CHAPTER 5

Revenue operations

Section 1

Own resources

Article 78

Rules applying to own resources(Article 76 of the Financial Regulation)

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

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

Section 2

Estimate of amounts receivable

Article 79

Estimate of amounts receivable(Article 77 of the Financial Regulation)

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

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

- a the revenue is booked to the correct budget item;
- b the estimate is in order and complies with the provisions applicable and the principle of sound financial management.

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

Section 3

Establishment of amounts receivable

Article 80

Procedure(Article 78 of the Financial Regulation)

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

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

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

- a the Union has established the amount receivable;
- b if payment of the debt is made before the deadline, no default interest will be due;
- c failing reimbursement by the deadline referred to in point (b) the debt shall bear interest at the rate referred to in Article 83, without any prejudice to any specific regulations applicable;
- d failing reimbursement by the deadline referred to in point (b) the institution shall effect recovery either by offsetting or by enforcement of any guarantee lodged in advance;

- e the accounting officer may effect recovery by offsetting before the deadline referred to in point b), where it is necessary to protect the Union's financial interests when he has justified grounds to believe that the amount due to the Commission would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting;
- f if, after taking all the steps set out in points (a) to (e) of this subparagraph, the amount has not been recovered in full, the institution shall effect recovery by enforcement of a decision secured either in accordance with Article 79(2) of the Financial Regulation or by legal action.

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

Article 81

Establishment of amounts receivable(Article 78 of the Financial Regulation)

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

- (a) the receivable is certain, meaning that it is not subject to any condition;
- (b) the receivable is of fixed amount, expressed precisely in cash terms;
- (c) the receivable is due and is not subject to any payment time;
- (d) the particulars of the debtor are correct;
- (e) the amount to be recovered is booked to the correct budget item;
- (f) the supporting documents are in order; and
- (g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) of Article 91(1).

Article 82

Supporting documents for the establishment of amounts receivable(Article 78 of the Financial Regulation)

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

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

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

Status: This is the original version (as it was originally adopted).

Article 83

Default interest(Article 78 of the Financial Regulation)

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

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

- a eight percentage points where the obligating event is a public supply and service contract referred to in Title V;
- b three and a half percentage points in all other cases.

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

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

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

Section 4

Authorisation of recovery

Article 84

Establishment of the recovery order(Article 79 of the Financial Regulation)

- 1 The recovery order shall specify:
 - a the financial year to which the revenue is to be booked;
 - b the references of the act or legal commitment which is the source of the debt and gives rise to the entitlement to recovery;
 - c the budget article and any other subdivision that may apply, including, where appropriate, the references of the corresponding budget commitment;
 - d the amount to be recovered, expressed in euro;
 - e the name and address of the debtor;
 - f the deadline referred to in Article 80(3)(b);
 - g the possible method of recovery, including in particular recovery by offsetting or enforcement of any guarantee lodged.

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

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

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

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

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

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

Article 85

Enforceable decision for the benefit of other institutions(Article 79(2) of the Financial Regulation)

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

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

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

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

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

Section 5

Recovery

Article 86

Collection formalities(Article 80 of the Financial Regulation)

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

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

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

Any partial payments shall first cover the interest.

Article 87

Recovery by offsetting(Article 80 of the Financial Regulation)

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

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

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

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

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

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

Article 88

Recovery procedure failing voluntary payment(Articles 79 and 80 of the Financial Regulation)

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

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

Article 89

Additional time for payment(Article 80 of the Financial Regulation)

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

- (a) the debtor undertakes to pay interest at the rate specified in Article 83 for the entire additional period allowed, starting from the deadline referred to in Article 80(3)(b);
- (b) in order to safeguard the rights of the Union, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the institution's accounting officer.

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

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

Article 90

Recovery of fines or other penalties(Articles 80 and 83 of the Financial Regulation)

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

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

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

- a the provisionally collected amounts and the interest and other amounts they have yielded shall be entered into the budget in accordance with Article 83 of the Financial Regulation at the latest during the financial year following the year in which all legal remedies have been exhausted;
- b where a financial guarantee has been lodged, the latter shall be enforced and the corresponding amounts entered in the budget;

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

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

- a the amounts unduly collected together with the interest yielded shall be repaid to the third party concerned. In cases where the overall return yielded for the relevant period has been negative, the nominal value of the amounts unduly collected shall be repaid;
- b where a financial guarantee has been lodged, the latter shall be released accordingly.

Article 91

Waiving of recovery of an established amount receivable(Article 80 of the Financial Regulation)

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

- a where the foreseeable cost of recovery would exceed the amount to be recovered and the waiver would not harm the image of the Union;
- b where the amount receivable cannot be recovered in view of its age or the insolvency of the debtor;
- c where recovery is inconsistent with the principle of proportionality.

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

- a the facts, having regard to the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeat offence, intent, diligence, good faith, manifest error);
- b the impact that waiving recovery would have on the operation of the Union and its financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law).

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

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

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

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

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

- a where the amount to be waived is EUR 1 000 000 or more;
- b where the amount to be waived is EUR 100 000 or more, where this represents 25 % or more of the established amount receivable.

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

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

Article 92

Cancellation of an established amount receivable(Article 80 of the Financial Regulation)

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

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

Article 93

Rules for limitation periods(Article 81 of the Financial Regulation)

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

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

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

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

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

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

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

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

CHAPTER 6

Expenditure operations

Article 94

Financing decision(Article 84 of the Financial Regulation)

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

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

a for grants:

- (i) the reference to the basic act and the budgetary line;
- (ii) the priorities of the year, the objectives to be fulfilled and the foreseen results with the appropriations authorised for the financial year;
- (iii) the essential eligibility, selection and award criteria to be used to select the proposals;
- (iv) the maximum possible rate of co-financing and if different rates are envisaged the criteria to be followed for each rate;
- (v) the timetable and the indicative amount of the calls for proposals;

b for procurement:

- (i) the global budgetary envelope reserved for the procurements during the year;
- (ii) the indicative number and type of contracts envisaged and if possible their subject in generic terms;
- (iii) the indicative time-frame for launching the procurement procedures;

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

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

- (ii) the appropriations reserved to the trust fund for the year together with the amounts planned over its duration;
- (iii) the objectives of the trust fund and its duration;
- (iv) the rules of governance of the trust fund;
- (v) the possibility to entrust budget implementation tasks to the entities and persons referred to in Article 187(2) of the Financial Regulation;
- d for prizes:
 - (i) the reference to the basic act and the budgetary line;
 - (ii) the objectives to be fulfilled and the foreseen results;
 - (iii) the essential conditions for participation and award criteria;
 - (iv) the timetable of the contest and the amount of the prize or prizes;
- e for financial instruments:
 - (i) the reference to the basic act and the budgetary line;
 - (ii) the objectives to be fulfilled and the foreseen results;
 - (iii) the amount allocated to the financial instrument;
 - (iv) the indicative implementation timetable.

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

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

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

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

Section 1

Commitment of expenditure

Article 95

Global and provisional commitments(Article 85 of the Financial Regulation)

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

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

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

Article 96

Adoption of a global commitment(Article 85 of the Financial Regulation)

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

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

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

Article 97

Single signature(Article 85 of the Financial Regulation)

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

- a where the commitments are provisional;
- b where global commitments relate to financing agreements with third countries;
- c where the institution's decision constitutes the legal commitment;
- d where the global commitment is implemented by a number of legal commitments, for which different authorising officers are responsible;
- e where, in connection with imprest accounts available for external action, legal commitments must be signed by members of staff of the local units referred to in Article 72 on the instruction of the authorising officer responsible, who remains, however, fully responsible for the underlying transaction.
- f where an institution has delegated authorising officer powers to the director of an interinstitutional European office pursuant to Article 199(1) of the Financial Regulation.

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

Article 98

Administrative expenditure covered by provisional commitments(Article 85 of the Financial Regulation)

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

- (a) expenditure on staff, whether or not covered by the Staff Regulations, on other human resources and pensions and on the remuneration of experts;
- (b) expenditure relating to members of the institution;
- (c) training expenditure;
- (d) expenditure on competitions, selection and recruitment;
- (e) mission expenses;
- (f) representation expenses;
- (g) meeting expenses;
- (h) freelance interpreters and translators;
- (i) exchanges of officials;
- (j) recurring rentals of movable and immovable property or recurring payments relating to building contracts within the meaning of Article 121 of this Regulation or loan instalments pursuant to Article 203(8) of the Financial Regulation;
- (k) miscellaneous insurance;
- (l) cleaning, maintenance and security;
- (m) welfare and medical expenditure;
- (n) the use of telecommunications services;
- (o) financial charges;
- (p) legal expenses;
- (q) damages, including interest;
- (r) work equipment;
- (s) water, gas and electricity;
- (t) publications on paper or in electronic versions;
- (u) communications activities engaged in by the institutions for the coverage of Union events.

Article 99

Registration of individual legal commitments(Article 86 of the Financial Regulation)

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

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

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

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

Section 2

Validation of expenditure

Article 100

Validation and ‘passing for payment’(Article 88 of the Financial Regulation)

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

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

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

Article 101

Certified correct for pre-financing payments(Article 88 of the Financial Regulation)

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

Article 102

Passing for payment of procurement contracts for interim and balance payments(Article 88 of the Financial Regulation)

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

- (a) the institution has received and formally registered an invoice drawn up by the contractor;
- (b) the invoice itself, or an internal document accompanying the invoice received, has been endorsed ‘certified correct’ and signed by the authorising officer responsible or by a technically competent member of staff, duly empowered by the authorising officer responsible;
- (c) all aspects of the invoice have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

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

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

Article 103

Passing for payment of grants for interim and balance payments(Article 88 of the Financial Regulation)

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

- (a) the institution has received and formally registered a payment request drawn up by the beneficiary;
- (b) the payment request itself, or an internal document accompanying the cost statement received, has been endorsed ‘certified correct’ and signed by an official or other servant technically competent, duly empowered by the authorising officer responsible;
- (c) all aspects of the payment request have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

By endorsement referred to in point (b) of the first paragraph, the official or other servant technically competent, duly empowered by the authorising officer responsible, certifies that the action or work programme carried out by the beneficiary is in all respects in

compliance with the grant agreement or decision, including, where applicable that the costs declared by the beneficiary are eligible.

Article 104

Passing for payment of staff expenditure(Article 88 of the Financial Regulation)

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

- (a) in respect of monthly salary:
 - (i) the complete list of staff, giving all the components of remuneration;
 - (ii) a form (personal information sheet) based on decisions taken in each individual case, showing, whenever such change occurs, any change in any component of remuneration;
 - (iii) in the case of recruitments or appointments, a certified true copy of the recruitment or appointment decision which accompanies the validation of the first salary payment;
- (b) in respect of other remunerations such as staff paid on an hourly or daily basis: a statement signed by the authorised member of staff showing the days and hours worked;
- (c) in respect of overtime: a statement signed by the authorised member of staff certifying the amount of overtime worked;
- (d) in respect of mission expenses:
 - (i) the travel order signed by the competent authority;
 - (ii) the statement of mission expenses, signed by the member of staff on mission and by the administrative superior to whom the appropriate powers have been delegated, if the mission expenses differ from the mission order;
- (e) in respect of some other administrative expenditure related to staff including subscriptions or training courses which, according to the contract, are to be paid in advance: the supporting documents referring to the decision on which the expenditure is based and giving all the components of the calculation.

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

Article 105

Material form of ‘passed for payment’(Article 88 of the Financial Regulation)

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

the form of an electronically secured validation by the authorising officer responsible or of a technically competent member of staff, duly empowered by the authorising officer responsible.

Article 106

Material form of ‘certified correct’(Article 88 of the Financial Regulation)

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

Section 3

Authorisation of payments

Article 107

Checks on payments by the authorising officer(Article 89 of the Financial Regulation)

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

- (a) the payment order has been properly issued, meaning that a corresponding validation decision has been taken previously in the form of ‘passed for payment’, that the particulars of the payee are correct and that the amount is due;
- (b) the payment order corresponds to the budgetary commitment against which it is booked;
- (c) the expenditure is charged to the correct item in the budget;
- (d) appropriations are available.

Article 108

Mandatory details on payment orders and transmission to the accounting officer(Article 89 of the Financial Regulation)

- 1 The payment order shall state:
 - a the financial year to which the expenditure is to be booked;
 - b the budget article and any other subdivision that may apply;
 - c the references of the legal commitment giving rise to an entitlement to payment;
 - d the references of the budgetary commitment against which it is to be booked;
 - e the amount to be paid, expressed in euro;
 - f the name, address and bank account details of the payee;
 - g the object of the expenditure;

- h the means of payment;
- i the entry of items in the inventory in accordance with Article 248.

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

Section 4

Payment of expenditure

Article 109

Types of payment(Article 90 of the Financial Regulation)

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

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

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

Article 110

Supporting documents(Article 90 of the Financial Regulation)

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

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

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

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

Section 5

Time limits for expenditure operations

Article 111

Payment time limits and default interest(Article 92 of the Financial Regulation)

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

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

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

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

2 A payment request shall include the following essential elements:

- a creditor's identification;
- b amount;
- c currency;
- d date.

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

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

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

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

- a the interest rates shall be those referred to in Article 83(2) of this Regulation;
- b the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment laid down in Article 92(1) of the Financial Regulation up to the day of payment.

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

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

CHAPTER 7

IT systems

Article 112

Description of IT systems(Article 93 of the Financial Regulation)

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

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

Article 113

Periodical save(Article 93 of the Financial Regulation)

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

CHAPTER 8

Internal auditor

Article 114

Appointment of the internal auditor(Article 98 of the Financial Regulation)

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

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

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

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

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

Article 115

Resources for the internal auditor(Article 99 of the Financial Regulation)

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

Article 116

Work programme(Article 99 of the Financial Regulation)

- 1 The internal auditor shall adopt his work programme and shall submit it to the institution.
- 2 The institution may ask the internal auditor to carry out audits not included in the work programme referred to in paragraph 1.

Article 117

Reports of the internal auditor(Article 99 of the Financial Regulation)

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

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

- 2 Each institution shall consider whether the recommendations made in the reports of its internal auditor are suitable for an exchange of best practices with the other institutions.
- 3 The internal auditor shall, during the elaboration of his report, particularly focus on the overall compliance with the principle of sound financial management and shall ensure that appropriate measures have been taken in order to steadily improve and enhance its application.

Article 118

Independence(Article 100 of the Financial Regulation)

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

Article 119

Liability of the internal auditor(Article 100 of the Financial Regulation)

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

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

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

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

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

Article 120

Action before the Court of Justice of the European Union(Article 100 of the Financial Regulation)

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

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

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