



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL REGULATION**

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

**REPORT FROM THE COMMISSION TO THE COUNCIL  
AND THE EUROPEAN PARLIAMENT**

**Report on the application of the provisions  
of the new Financial Regulation**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1. BACKGROUND

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

The FR is subject to review every three years, or whenever it proves necessary to do so.

At the time of the adoption of the new FR in 2002, the Commission made a statement in the Council minutes in which it *“undertakes to make a report by 1 January 2006 on the application of the provisions of the new FR and, in particular, on the discontinuation of centralised ex ante controls, and, if necessary, to submit appropriate proposals to the Council”*. This report is annexed.

### 2. MAIN OBJECTIVES OF THE COMMISSION REVIEW

- To improve **efficiency** and **transparency** in the operation of the rules. In many cases, the rules do not necessarily need to be changed, but their interpretation and application need to be clarified.
- For contracts and grants, **simplification** of the procedural and documentation requirements, especially for those of low value, and ensuring the requirements are **proportionate** to the costs and risks involved. This process of simplification was initiated with the ongoing ("fast track") revision of the IR; it will be further completed with the proper revision of the implementing rules linked with the revision of the FR.
- As regards grants, simplification of the requirements for prior verification and for financial and legal guarantees: ensuring these requirements and the administrative burdens they place on beneficiaries, are proportionate to the costs and risks involved.
- **Clarification** and streamlining of the rules governing methods of management.

### 3. GENERAL APPROACH FOR THE REVIEW

#### 3.1. Scope

The Commission believes that these objectives can be achieved while maintaining **stability** as regards the basic principles, concepts and architecture of the FR, and hopes that the other institutions will share this view. Stable rules are **necessary for sound financial management**. Moreover, the financial rules also impose requirements on the beneficiaries of grants and contracts. Changing the rules too often, or without adequate justification, can have a **negative impact** on such beneficiaries and on the image of the European Union. The revision will therefore be limited in its scope.

### 3.2. Timetable

The objective is to reach agreement on the amendments so that they can enter into force on 1 January 2007. This will coincide with the entry into force of the financial framework for the period 2007-2013. The IR will also be modified, and the new IR must also be adopted by that date. There must be adequate time following adoption of the new regulations for the institutions and services to prepare for the changes before the regulations enter into force.

## 4. METHOD AND CRITERIA APPLIED BY THE COMMISSION IN ITS REVIEW

The Commission has applied strict criteria in assessing which changes are absolutely necessary. In July 2004, the financial units of all the Commission services, at their own initiative, set out their difficulties with the rules in a special report. Suggestions were also given by the other institutions. The Commission intends to have appropriate consultations of "stakeholders" in EC policies who will be affected by the rules.

The Commission took into account the following considerations:

- a) Legislative changes should be reserved for those problems where there is **no alternative**. Wherever possible, **other solutions**, such as interpretative notes or administrative measures, should be used.
- b) Amendments that would reverse the internal reforms or undermine any of their key elements are **unacceptable**.
- c) Legislative changes should be proposed **only where there are real difficulties**. Any proposed amendment should:
  - facilitate the Commission's obligation under the Treaty to implement the budget and to accomplish its policy objectives;
  - improve or ensure sound financial management;
  - enhance the protection of the EU's financial interests against fraud and illegal activities;
  - Contribute to the objective of a positive statement of assurance.

## 5. AMENDMENTS CONSIDERED NECESSARY

### 5.1. Budgetary principles

- a) **Other legislative acts** concerning budget implementation need to comply with the FR. This principle should be reinforced (Art. 2 FR).
- b) The **principle of budget accuracy** should be expanded (Art. 5 FR) to underline that existing legal commitments must be covered by an adequate allocation of appropriations in the budget.

- c) Regarding the **principle of unity of the budget**, the rule governing interest generated by pre-financing should be simplified (Art. 5(4) FR). The current rule is that pre-financing, and interest generated by it, belongs to the Community, and that interest must be recovered, at least annually. The existing scope of this rule is limited to grants subject to centralised management by the Commission services (Art. 3 IR). This places a disproportionate burden on those programmes where in-house administrative resources are required to administer recovery orders. It is therefore proposed to allow for the amount of interest to be set off against the final payment to the beneficiary. This maintains the principles of Community ownership of pre-financing and accounting for the interest generated. The limits on the scope of application of the general rule should be incorporated in the FR instead of the IR.
- d) With regard to the **principle of annuality**, more efficiency and transparency should be introduced to respond to the following needs:
- The **carry-over** of non-differentiated appropriations should exceptionally be permitted in the case of expenditure on direct payments to farmers.
  - **Commitment of expenditure in advance**, from 15 December of year n-1, should be exceptionally authorised for crisis management aid and humanitarian aid as referred to in Art. 110 FR.
  - Restrictions on the maximum threshold for **advance commitments** against the current "EAGGF/Guarantee" (from 15 November of year n-1) to cover routine management expenditure (charged to the budget of the year n) should be removed (Art. 150(3) FR). Under the new European Agricultural Guarantee Fund (COM(2004) 489), payment requests will be concentrated overwhelmingly at the beginning of the budget year n.
  - Non-differentiated appropriations for **veterinary measures**, charged against the current "EAGGF/Guarantee" should be converted into differentiated appropriations, more suited to the multi-annual nature of the expenditure (Art.149 (1) FR).
- e) Regarding the **principle of universality**, two items should be added to the list of assigned revenue (Art.18):
- The possibility for Member States to make ad hoc contributions for external relations programmes;
  - Proceeds from the sale of vehicles, equipment, installations, etc.
- f) At present, the Commission must be authorised by the budgetary authority before accepting any **donations** (Art. 19(2)). To avoid unnecessary and cumbersome procedures, it would be useful to limit the requirement for authorisation to donations which involve significant charges.
- g) In relation to the **principle of specification** of the budget, the rules governing transfers of appropriations should be simplified and clarified where they have proven cumbersome or unclear:

- “**Notification procedure**” (Art. 22 and 23): the text does not say when the deadline for the decision of the budgetary authority is deemed to start running, so a correction is necessary.
- For reasons of efficiency, the Commission should be allowed to decide autonomously on **transfers from the reserve** where no basic act exists for the action concerned when the budget is established but is adopted during the year (Art. 23(1) new paragraph (d)).
- Rules on **transfers of administrative appropriations** should be adapted to the new Activity-Based Budgeting (ABB) structure.

## 5.2. Methods of management (Arts 53-57)

- a) The limitation of **shared management** to EAGFF and Structural funds should be removed, to reflect current practice based on existing regulations as well as proposals for future basic acts after 2006.
- b) For **joint management** with international organisations, the definition and requirements need to be clarified and need to be completed in line with operational needs.
- c) The conditions and criteria for using national public-sector bodies ("**national agencies**") should be simplified in order to facilitate their use, and the scope of the provision is extended to international public bodies.
- d) The specific case of **special advisers/heads of mission** appointed by the Council to manage certain actions in common foreign and security policy (CFSP) needs to be included as a special case of indirect centralised management.
- e) The prohibition on delegating budget implementation tasks to **private bodies** should be modified, since experience has proved the terms of this prohibition to be unnecessarily strict.
- f) Finally, taking account of the need for a **common control framework**, controls carried out by the Commission on decentralised or indirect centralised management, and where appropriate in shared management, are reinforced, particularly by adding provisions concerning the Member States’ responsibilities under shared management.

## 5.3. Financial Actors

The relationship between the Commission's **internal auditor and the agencies** (FR) should be adjusted (Art. 185 FR). The latter should have their own internal audit function reporting to their own management boards, whereas the Commission's internal auditor reports to the College on the procedures and systems of the Commission.

As regards the Accounting Officer, his/her responsibility for certifying the accounts, on the basis of the financial information supplied to him/her by the authorising officers, has to be clarified.

#### 5.4. Recovery of amounts receivable (Arts. 72-73b)

The rules on recovery of amounts receivable should be **clarified** and **strengthened**.

- a) **Enforced recovery** should be assisted by ensuring (in Art. 72 FR) that the Community's claims also benefit from the instruments adopted under the Treaty provisions on judicial cooperation in civil law matters having cross-border implications (Art. 65 ECT).
- b) Recoveries should be treated by the Member States in the same way as they treat their own fiscal claims within their jurisdiction and should enjoy **the same privileges**.
- c) The practical experience of the Commission services shows that, unlike state authorities in many national jurisdictions, the Community is not subject to a **period of limitation under which financial claims extinguish** after a certain period of time. The introduction of such a period of limitation **corresponds to the principles of sound financial management and of equal treatment** of operators. The same period of limitation of five years is already provided for fines and periodic penalty payments by the Council Regulation on the implementation of the rules on competition.

#### 5.5. Public procurement and contracts

One of the main objectives, and achievements, of the FR adopted in 2002 was to **transpose the EC Public Procurement Directives** so that the Community institutions would apply the **same standards as the Member States**. Given the adoption of the new EC Public Procurement Directive in 2004, some further amendments to the FR are necessary:

- a) Including the possibility of declaring procurement to be **secret**.
- b) Distinguishing between the most serious **grounds for exclusion** and other grounds which involve a lower level of financial risk. : the most serious grounds for exclusion should be obligatory, while the rest should be applied as necessary, on the basis of a risk assessment by the contracting authority.

Experience has proved the following amendments to be necessary:

- a) Possibility of **sharing a common database** of those candidates or tenderers in situations of exclusion according to Arts 93 and 94 FR.
- b) Extension of simplified rules to govern the awarding contracts to external **experts** for evaluation and technical assistance (Arts 91, 97 FR).
- c) Clarification of the obligations of the institutions to **suspend a procurement procedure or a contract** in cases of fraud, etc.

#### 5.6. Grants

**Simplification** of the rules is needed: requirements for checks and guarantees need to be better adjusted to the financial risks involved.

- a) The scope of the title on grants (Title VI of Part One FR) needs to be **clarified** (Art.108 FR) in particular as regards financing related to **loan activities** and **shareholdings**.
- b) As for the public procurement, it is necessary to add the **principle of proportionality**.
- c) The scope of the **non-profit** rule needs to be clarified and its articulation between FR and IR.
- d) In certain situations, the **nature of the action leaves no choice** in the selection of beneficiaries. This category should therefore be added in Art. 110 FR.
- e) The same action should not give rise to **more than one grant** to any one beneficiary. However, some basic acts permit Community funding to be combined since it is considered useful for example for the structural funds to be complemented by interventions from other programmes (e.g. TENs). It should also be made clear that **the same costs can never be financed twice** (Art. 111 FR).
- f) Where grants are **given for running costs**, the rule that the necessary agreement may not be signed more than four months after the start of the beneficiary's financial year has proved unnecessarily rigid. Since there are strict rules on retrospective funding, this deadline could safely be fixed at six months (Art. 112 FR).
- g) The use of **flat-rate payments** should be authorised at the level of the FR along with the more traditional method of reimbursing pro rata costs actually incurred (new Art. 113a).
- h) Certain restrictions on the eligibility of beneficiaries should be removed (Art. 114 FR) in order to allow for **grants to physical persons** and certain types of association **without legal personality**.
- i) The **rules on exclusion** from grant procedures should include the same distinction as that for procurement (see 5.6, subparagraph 1 (b) above), in relation to the level of seriousness (Art. 114 FR).
- j) The case in which the implementation of an action needs to give a financial support to third parties has to be expressly provided for.

## 5.7. Accounting

**No substantial changes are proposed for Title VII** of Part One (Arts 121-138 FR). Only the following clarification is required: the **possibility to extend the scope of the consolidation** in accordance with EC accounting rules should be specified.

## 5.8. Specific policy sectors in Part Two of the FR

- a) Title I: agriculture. Some changes have already been referred to above under section 5.1 (Budgetary Principles). In addition:
  - Terminology needs to be adjusted to the existence of the new European Agricultural Guarantee Fund (**EAGF**).

- **Provisional commitments** can be made later than the normal two-month deadline after receipt of the Member States' statements of expenditure in cases where a decision on a transfer of appropriations is expected.
- **Art. 153 FR** concerning transfers is inaccurate: reference should be made only to the notification procedure in Art. 23.

b) Title II: structural funds.

- Terminology needs to be adjusted in the title and in Art. 155(1) and (3) to refer specifically to the structural funds, cohesion fund, fisheries funds and rural development fund.
- In the new basic acts proposed by the Commission for structural actions post-2006 the rule on the automatic decommitment of appropriations is suspended in cases of *force majeure* seriously disrupting the implementation of the actions. The making available again of appropriations is therefore no longer necessary in this case. The Commission, however, considers it justified to keep the case of "manifest error" attributable to itself (Art. 157). This will allow commitment appropriations to be found without disrupting the overall programming of appropriations for the seven-year period.

c) Title III: Research

Exceptionally, it should be possible to make decommitted commitment appropriations available again in the case of the framework research programme, under strictly defined conditions; this will enable decommitted appropriations earmarked for projects which were not implemented totally or partially to be re-used for alternative projects of sufficient quality.

## 5.9. Offices

The inter-institutional European Offices should be authorised to act as delegated authorising officers for appropriations corresponding to the budget of other institutions.

## 5.10. The constitutional treaty

The Commission has presented this proposal in accordance with the state of law on the date the proposal is adopted. When the constitutional treaty is ratified, any necessary amendments of the FR will be proposed.



Proposal for a

**COUNCIL REGULATION**

**of [...]**

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

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

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

Whereas:

- (1) Council Regulation (EC, Euratom) No 1605/2002<sup>4</sup>, hereinafter “the Financial Regulation”, lays down the legal foundations of the financial management reform. As such, its essential elements should be maintained and strengthened. Moreover, it establishes budgetary principles which should be respected by all legislative acts and from which derogations should be kept to a strict minimum.
- (2) Certain amendments are justified in light of practical experience in order to facilitate budget implementation and the realisation of the underlying policy objectives and to adjust some procedural and documentary requirements so as to make them more proportionate to the risks and cost involved.
- (3) All amendments must contribute to achieving the objectives of the Commission's reforms, should help improve or ensure sound financial management, and should enhance the protection of the Communities' financial interests against fraud and illegal activities, thus contributing to obtaining a reasonable assurance of the legality and regularity of financial operations.

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

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

<sup>3</sup> OJ C [...], [...], p. [...].

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

- (4) Some modifications are necessary to take account of provisions implementing the revenue and expenditure of the budget, contained in the legislative acts due to be adopted for the period 2007 to 2013, in order to ensure coherence between those acts and the Financial Regulation.
- (5) The principle that other legislative acts concerning budget implementation must comply with the Financial Regulation should be reinforced.
- (6) On certain points, more efficiency and transparency is needed with regard to the application of budgetary principles, in order better to suit operational needs.
- (7) As regards the principle of unity of the budget, the rule governing interest generated by pre-financing should be simplified. The administrative burden involved in the recovery of that interest is disproportionate to the objective pursued and it would be more efficient to allow for interest to be set off against the final payment to the beneficiary.
- (8) With regard to the principle of annuality, more flexibility and transparency should be introduced to respond to functional needs. The carry-over of appropriations should exceptionally be permitted in the case of expenditure on direct payments to farmers under the new European Agricultural Guarantee Fund (EAGF). Commitment of expenditure in advance should be authorised for crisis management aid and humanitarian aid so that the Community can respond adequately if an international disaster occurs at the end of the budget year.
- (9) Payment requests from the Member States under the new agricultural regulations will be concentrated overwhelmingly at the beginning of the budget year n. Therefore the maximum threshold for advance commitments against the EAGF (from 15 November of year n-1) to cover routine management expenditure (charged to the budget of the year n) should be removed with regard to the last adopted agricultural budget. As regards the limit on advance commitment of administrative expenditure, the text should be amended so that it refers to appropriations decided by the budget authority.
- (10) The use of non-differentiated appropriations for veterinary measures, charged against the EAGF, unduly hamper the implementation of such actions, especially in respect of the limits placed on the possibilities for carry-overs. The use of differentiated appropriations for such expenditure should therefore be permitted, as this is more in keeping with the multi-annual nature of the actions.
- (11) As regards the principle of universality, two points should be added to the list of assigned revenue. First, as is currently possible under specific research programmes, it should be possible for the Member States to make ad hoc contributions, as assigned revenue, for projects under external relations programmes managed by the Commission. Secondly, proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped should be treated as assigned revenue, as an encouragement to authorising officers to obtain the best prices for their disposal.
- (12) At present, the Commission must be authorised by the budgetary authority before accepting donations, such as gifts or bequests, which involve a charge. To avoid

unnecessary and cumbersome procedures, authorisations should be made compulsory only in the case of significant charges.

- (13) In relation to the principle of specification of the budget, the rules governing transfers of appropriations should be simplified and clarified on certain points because in practice they have proven cumbersome or unclear. The intention was for Article 22 of the Financial Regulation to apply to institutions other than the Commission since the Commission has its own regime. That provision should therefore be amended accordingly.
- (14) As regards the "notification procedure", the Commission and the other institutions notify their transfer proposals to the budgetary authority, which may invoke the normal procedure if it wishes to raise objections. In such cases, in theory, the normal deadlines apply for the decision of the budgetary authority on the transfer. However, the text does not state when time for the purposes of the deadline is to be deemed to start running, and that omission should be remedied.
- (15) As a measure of simplification for the management of their budget, the institutions other than the Commission should be enabled to make transfers of appropriations from article to article within the same chapter without prior notification to the budgetary authority.
- (16) For reasons of efficiency, the Commission should be allowed to decide autonomously on transfers from the reserve in cases where no basic act, within the meaning of Article 49 of the Financial Regulation, exists for the action concerned at the time when the budget is established, but where the basic act is adopted in the course of the year.
- (17) The rules on the Commission's administrative transfers should be adapted to the new Activity-Based Budgeting (ABB) structure. Thus, the "notification procedure" should be limited to transfers between articles, within the administrative chapter of each title, which exceed 10% of the appropriations of the year. On the other hand, transfers between articles of different titles financing expenditure of identical nature should be decided autonomously by the Commission.
- (18) Articles 26, 45 and 46 of the Financial Regulation should be amended because of the abolition of the reserve relating to Community loans and loan guarantees to third countries and the adoption of a new provisioning mechanism for the Guarantee Fund for external actions.
- (19) As regards the budget procedure, the requirement laid down in Article 29 of the Financial Regulation that the budget be published within two months of adoption has proven unrealistic: three months would be more practicable. The concept of "Activity Statement" should be inserted in Article 33 in order to render official one of the key elements of ABB. In Article 46 concerning the content of the budget, the payment schedules should be included in the working documents accompanying the preliminary draft budget instead of in the budget itself, as they are not relevant to the budgetary procedure and are unnecessarily burdensome.
- (20) As regards methods of management, it is necessary in Article 53(3) of the Financial Regulation to remove the limitation of shared management to the European Agricultural Guidance and Guarantee Fund (EAGGF) and Structural Funds, because

additional programmes will now operate under shared management. The requirements laid down in Article 53(7) for joint management need to be made clearer. The criteria set out in Article 54 for using national public-sector bodies should be simplified in order to facilitate their use and to respond to growing operational needs, and the scope of the provision should be extended to international public bodies. Article 54 should also clarify the position as regards the special case of special advisors or heads of mission appointed by Council to manage certain actions in the context of the common foreign and security policy.

- (21) The responsibilities of the Member States under shared management should be set out in more detail, to take account of the ongoing discussions between the institutions concerning the discharge procedure and the appropriate control systems to put in place, reflecting the mutual responsibilities of the Member States and the Commission. Taking account of the need for a common control framework, controls carried out by the Commission in decentralised or indirect centralised management and, where appropriate, in shared management, should be reinforced.
- (22) The prohibition on delegating implementation tasks to private bodies should be modified in Article 57 of the Financial Regulation because the terms of that prohibition have turned out to be unnecessarily strict. It should be possible, for example, for the Commission to engage the services of a travel agency or a conference organiser to take charge of reimbursing the costs of participants at conferences, provided that care is taken to ensure that no discretionary powers are exercised by the private company.
- (23) The authorising officer by delegation should be entitled to refer a matter to the financial irregularities panel if he considers that a financial irregularity has occurred.
- (24) As regards the accounting officer, his responsibility for certifying the accounts on the basis of the financial information supplied to him by the authorising officers has to be clarified.
- (25) As regards the internal auditor, the relationship between the Commission's internal auditor and bodies set up by the Communities should be clarified. Those bodies should have their own internal audit function reporting to their own management boards, whereas the Commission's internal auditor reports to the College on the procedures and systems of the Commission. It should be necessary for the Commission's internal auditor only to certify that the bodies' internal audit functions meet international standards, and for that purpose he should be able to conduct quality audits.
- (26) The rules on recovery of amounts receivable should be clarified and strengthened in order to take account of recent case-law and better to safeguard the financial interests of the Communities. Enforced recovery should be assisted by ensuring in Article 72 of the Financial Regulation that the Community's claims may also benefit from the instruments adopted under the EC Treaty provisions on judicial cooperation in civil law matters having cross-border implications, which notably means that an entitlement established by the courts in one jurisdiction would be recognised in the others under a simplified procedure. In order to improve the effectiveness of recoveries, a new Article 73a should be introduced, under which the Member States should be required to treat Community claims in the same way as claims of fiscal nature within their own jurisdiction.

- (27) A period of limitation on the validity of claims should be introduced. The Community, unlike many of its Member States, is not subject to a period of limitation under which financial claims are extinguished after a certain period of time. Nor is the Community restricted by a period of limitation in the pursuit of its claims against third persons. The introduction of such a period of limitation in a new Article 73b corresponds to sound financial management.
- (28) As regards the rules on public procurement contracts, certain technical adjustments should be made to ensure that the terminology of the Financial Regulation is fully in line with that of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts<sup>5</sup>. The possibility open to Member States under that Directive of declaring procurement procedures to be secret should be made available to the Community institutions in Article 91 of the Financial Regulation.
- (29) The Financial Regulation rules on the exclusion of tenderers impose a stricter regime for the Community institutions than that provided for in Directive 2004/18/EC. The Financial Regulation makes no distinction between the most serious grounds for exclusion and other grounds. Directive 2004/18/EC, on the other hand, does make such a distinction and that distinction should be made available for the Community institutions. Articles 93 and 94 of the Financial Regulation should provide for mandatory exclusion in the most serious cases, while allowing the possibility for the contracting authority, on the basis of a risk assessment, to add other cases of exclusion. The same distinction should be made in Article 114 of the Financial Regulation, as regards grants. The rules on penalties, laid down in Article 96 of that Regulation, should be adjusted accordingly.
- (30) It should be made obligatory under Article 93 of the Financial Regulation for candidates or tenderers in procurement procedures to certify, if so requested, the ownership or the management, control and power of representation of the legal entity submitting a tender.
- (31) Article 95 of the Financial Regulation requires all institutions to keep databases of those candidates or tenderers in situations of exclusion under Article 93 or 94 and to have access to each other's databases. It would be more cost-effective, but still consistent with that principle, to allow small institutions with only a few procurement procedures to meet that obligation by sharing a database.
- (32) Successive framework research programmes have facilitated the work of the Commission by laying down specific simplified rules to govern the awarding of contracts to external experts for evaluation and technical assistance. Articles 91 and 97 of the Financial Regulation should make similar provision in respect of all other programmes where there is a need for such a procedure.

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<sup>5</sup> OJ L 134, 30.4.2004, p. 114. Directive as amended by Commission Regulation (EC) No 1874/2004 (OJ L 326, 29.10.2004, p. 17).

- (33) The obligations of the institutions to suspend a procurement procedure or a contract under Article 103 of the Financial Regulation in cases of fraud and irregularities need to be clarified, so that the obligations are understandable and capable of being applied.
- (34) As regards grants, simplification of the rules is needed. Requirements for checks and guarantees should be more proportionate to the financial risks involved. Some essential changes need to be made first in the Financial Regulation, so that detailed provision can later be made in the implementing rules. The scope of grants needs to be clarified in Article 108 of the Financial Regulation, in particular as regards financing related to loan activities and share-holdings. The principle of proportionality has to be added.
- (35) It is appropriate that the exceptions to the non-profit rule, provided for in the implementing rules, be included in the Financial Regulation. Furthermore, Article 109 of the Financial Regulation should make it quite clear that the whole purpose of awarding grants to certain actions is to help reinforce financial capacity or generate an income.
- (36) The rule that grants should be awarded on the basis of calls for proposals has proved its worth. Experience has shown, however, that in certain situations the nature of the action leaves no choice in the selection of beneficiaries, and Article 110 of the Financial Regulation should expressly recognise that such exceptional cases arise.
- (37) The rule that the same action should not give rise to more than one grant to any one beneficiary should be adjusted because some basic acts do permit Community funding to be combined and such cases may increase in future in order to ensure the effectiveness of expenditure. However, the opportunity should be taken to make clear in Article 111 of the Financial Regulation that the same costs can never be financed twice by the Community budget.
- (38) Where grants are given for running costs, the rule that the necessary agreement may not be signed more than four months after the start of the beneficiary's financial year has proven unnecessarily rigid and Article 112 of the Financial Regulation could safely fix that deadline at 6 months.
- (39) For reasons of clarity and transparency, the use of flat-rate payments should be authorised in a new Article 113a of the Financial Regulation, to co-exist with the more traditional method of reimbursing costs actually incurred.
- (40) In Article 114 of the Financial Regulation, certain restrictions on the eligibility of beneficiaries should be removed in order to allow for grants to natural persons and certain types of entity which lack legal personality.
- (41) While grants will continue to be awarded on the basis of selection and award criteria, there is no need in practice to have those criteria evaluated by one and the same committee and that requirement should therefore be removed from Article 116 of the Financial Regulation.
- (42) As regards the procurement standards to be applied by beneficiaries of grants, the current rule in Article 120 of the Financial Regulation is unclear and needs to be

simplified. Moreover, the case in which the implementation of an action necessitates financial support to third parties has to be expressly provided for.

- (43) As regards the rules on accounting and the accounts, Article 121 of the Financial Regulation should make it possible for the Commission's accounting officer to determine, in compliance with international standards, which other bodies, in addition to those receiving Community subsidies, fall under the scope of the consolidation.
- (44) In view of the coming into existence of the EAGF, which replaces the EAGGF from 2007, terminology needs to be adjusted in the title of Title I of Part Two, and in Articles 148 to 151, of the Financial Regulation. Clarification is required in Article 151 to the effect that provisional commitments may be made after the normal two-month deadline following receipt of the Member States' statements of expenditure in cases where a decision on a transfer of appropriations is expected. Article 153 concerning transfers needs clarification.
- (45) As well as in the title of Title II of Part Two, terminology should be adjusted in Article 155(1) and (3) of the Financial Regulation so that reference is made only to the structural funds, the cohesion fund, the fisheries fund and the rural development fund. References to pre-accession structural measures (ISPA) and agricultural measures (SAPARD) should be removed, since they involve management by third countries on a decentralised basis in accordance with Article 164 and will continue to be implemented largely in the same way as at present. As regards the making available again of decommitted appropriations, in line with the new basic acts for structural actions in the period 2007 to 2013, which cover the case of *force majeure*, provision should be maintained in the Financial Regulation only for cases where "manifest error" is attributable to the Commission.
- (46) In Article 160 of the Financial Regulation, a provision needs to be added to cover the assigned revenue generated by the winding-up of the European Coal and Steel Community and the making available of the corresponding appropriations.
- (47) It is necessary to allow appropriations which have been decommitted as a result of total or partial non-implementation of the projects for which they were earmarked to be made available again. However, that should be possible only under strict conditions, and only in the area of research, since research projects present a higher financial risk than those in other policy areas.
- (48) As regards external actions, it should be clarified that the grant procedures to be applied by third countries in the case of decentralised management have to be specified in the financing agreements concluded with those countries. That would amount to a codification of existing practice.
- (49) As regards the European Offices, it should be made possible for the institutions to delegate authorising officer power to directors of inter-institutional European Offices for the management of appropriations entered in their respective sections of the budget, in order to facilitate management. Whilst the content should remain unchanged, Articles 171, 173 and 176 of the Financial Regulation should be slightly re-structured in order to clarify the sub-delegation of authorising powers by the directors of Offices.

(50) Regulation (EC, Euratom) No 1605/2002 should therefore be amended accordingly,  
HAS ADOPTED THIS REGULATION:

*Article 1*

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

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

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

(2) Article 2 is replaced by the following:

*"Article 2*

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

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

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

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

*"Article 5a*

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

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

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

- (a) pre-financing which does not represent a significant amount, as determined in the implementing rules;
- (b) pre-financing paid under a procurement contract within the meaning of Article 88;



- (c) pre-financing paid to Member States;
- (d) pre-financing paid under the pre-accession aid;
- (e) advances paid to members of the institutions and to staff in accordance with the Staff Regulations of Officials of the European Communities and the Conditions of employment of other servants of the European Communities, hereinafter 'the Staff Regulations';
- (f) pre-financing paid in the framework of joint management as referred to in point (c) of Article 53(1)."

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

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

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

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

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

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

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

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

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

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

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

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

"Acceptance of donations which involve a significant financial charge shall be subject to the authorisation of the European Parliament and the Council, both of

which shall act on the matter within two months of the date of receipt of the request from the Commission.”

- (10) Article 22 is replaced by the following:

*“Article 22*

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

The budgetary authority shall take decisions on these transfers within the time limits laid down in Article 24, which shall be deemed to begin on the date on which the budgetary authority was informed by the institution of the intended transfer.

3. Any institution other than the Commission may propose to the budgetary authority, within its own section of the budget, transfers from one title to another exceeding the limit of 10% of the appropriations for the financial year on the line from which the transfer is to be made. The budgetary authority shall inform the Commission accordingly. Those transfers shall be subject to the procedure laid down in Article 24.
4. Any institution other than the Commission may, within its own section of the budget, make transfers within chapters without first informing the budgetary authority.”

- (11) Article 23 is amended as follows:

- (a) paragraph 1 is amended as follows:

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

"(b) as regards staff and operating expenditure, transfer appropriations from one title to another only between articles financing expenditure of identical nature";

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

"(d) transfer appropriations from the "provisions" title referred to in Article 43 for the cases where no basic act exists for the action

concerned when the budget is established but is adopted during the course of the budget year";

(iii) the second subparagraph is deleted;

(b) the following paragraph 1a is inserted:

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

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

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

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

(c) in paragraph 2, "paragraph 1(c)" is replaced by "paragraphs 1 and 1a".

(12) In Article 26(2), the first subparagraph is replaced by the following:

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

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

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

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

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

(14) In Article 33(2), point (d) is replaced by the following:

"(d) the activity statements containing the information on the achievement of all previously set objectives for the various activities as well as new objectives measured by indicators; evaluation results shall be consulted and referred to as evidence of the likely merits of a proposed budget amendment."

- (15) In Article 40, point (a) is replaced by the following:  
“(a) a general statement of revenue and expenditure;”
- (16) Article 43 is amended as follows:
- (a) in the second subparagraph of paragraph 1, "Article 24" is replaced by "Articles 23 and 24";
  - (b) in paragraph 2, "Article 24" is replaced by "Articles 23 and 24".
- (17) In the second paragraph of Article 44, "Articles 22, 23 and 25" is replaced by "Articles 23 and 25".
- (18) Article 45 is replaced by the following:

*"Article 45*

- 1. The Commission section of the budget shall include a reserve for emergency aid for third countries.
  - 2. The reserve referred to in paragraph 1 shall be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 24 and 26."
- (19) Article 46(1) is amended as follows:
- (a) point (1) is amended as follows:
    - (i) the introductory phrase is replaced by the following:  
“in the general statement of revenue and expenditure”;
    - (ii) point (f) is deleted;
    - (iii) point (g) is replaced by the following:  
“(g) appropriate remarks on each subdivision, as defined in Article 41(1)”;
  - (b) point (2) is replaced by the following:  
“(2) in the section for each institution, the revenue and expenditure shall be shown in the same structure as in point 1”;
  - (c) in point (3), point (c) is replaced by the following:  
“(c) as regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget; the establishment plan must specify the number of highly qualified technical or scientific personnel who are accorded special advantages under the specific provisions of the Staff Regulations;”

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

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

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

(21) Article 52 is replaced by the following:

*"Article 52*

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

(22) Article 53 is amended as follows:

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

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

In order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the measures necessary to:

- (a) satisfy themselves that actions financed from the budget are actually carried out and to ensure that they are implemented correctly;
- (b) prevent and deal with irregularities and fraud;
- (c) recover funds wrongly paid or incorrectly used or funds lost as a result of irregularities or errors.

To that effect, the Member States shall conduct regular checks and shall put in place an effective internal control system. They shall bring judicial proceedings if necessary for the purposes of points (b) and (c).

4. Where the Commission implements the budget by decentralised management, implementation tasks shall be delegated to third countries in accordance with Article 56 and Title IV of part two.”;

(b) paragraph 6 is deleted;

(c) paragraph 7 is replaced by the following:

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

- (a) wherever the Commission and the international organisation are bound by a long-term framework agreement laying down the administrative and financial arrangements for their cooperation;
- (b) wherever the Commission and the international organisation elaborate a joint project or programme;
- (c) where the funds of several donors are pooled and are not earmarked for specific items or categories of expenditure, that is to say, in the case of multi-donor actions.

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

The individual agreement concluded with the international organisation for the award of the financing shall contain detailed provisions for the implementation of the tasks entrusted to the international organisation.”

(23) Article 54 is amended as follows:

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

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

(b) paragraph 2 is amended as follows:

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

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

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

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

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

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

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

*“Article 55*

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

*Article 56*

1. Where the Commission implements the budget by indirect centralised management, it shall first obtain evidence of the existence, relevance and proper operation within the entities to which it entrusts implementation, in accordance with the rules of sound financial management, of the following:
  - (a) transparent procurement and grant-award procedures which are non-discriminatory and exclude any conflict of interest and which are in accordance with the relevant provisions of this Regulation;
  - (b) an effective internal control system for the management of operations, which includes effective segregation of the duties of authorising officer and accounting officer or of the equivalent functions;
  - (c) accounting arrangements for the operations and procedures for the presentation of the accounts which will enable the correct use of Community funds to be ascertained and the true extent of this use to be reflected in the Community accounts;
  - (d) an independent external audit;
  - (e) public access to information at the level provided for in Community Regulations.
2. In the case of decentralised management, the criteria laid down in paragraph 1 shall apply, in full or in part, depending on the degree of decentralisation agreed between the Commission and the third country concerned.

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

- (a) to comply, subject to the first subparagraph of this paragraph, with the criteria laid down in paragraph 1;
  - (b) to ensure that the audit referred to in point (d) of paragraph 1 is exercised by a national institution for independent external auditing;
  - (c) to conduct regular checks to ensure that the actions to be financed from the budget have been implemented correctly;
  - (d) to take appropriate measures to prevent irregularities and fraud and, if necessary, to bring judicial proceedings to recover funds wrongly paid.
3. The Commission shall ensure supervision, evaluation and control of the implementation of the tasks entrusted. It shall take the equivalence of control systems into account when it carries out controls using its own control systems.

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(\*) OJ L 11, 16.1.2003, p. 1.”

(25) In Article 57, paragraph 1 is replaced by the following:

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

(26) Article 59 is amended as follows:

(a) the following paragraph 1a is inserted:

“1a. For the purposes of this Title, the term “staff” refers to persons covered by the Staff Regulations.”;

(b) paragraph 3 is replaced by the following:

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

(27) In Article 60, the first sentence of paragraph 7 is replaced by the following:

"The authorising officer by delegation shall report to his/her institution on the performance of his/her duties in the form of an annual activity report together with financial and management information and a declaration of assurance certifying that the information contained in the report presents a true and fair view."

(28) Article 61 is amended as follows:



(a) the following paragraph 2a is inserted:

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

(b) paragraph 3 is replaced by the following:

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

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

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

(30) Article 63 is replaced by the following:

*"Article 63*

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

However, in the field of crisis management aid and humanitarian aid operations within the meaning of Article 110, imprest accounts may be used for larger payments.

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

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

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

(32) Article 66 is amended as follows:

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

“The authorising officer shall be liable for payment of compensation as laid down in the Staff Regulations, which specify that a member of staff covered by the relevant provisions may be required to make good, in whole or in part, any damage suffered by the Communities as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties, in particular if he/she determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and the implementing rules.”;

(b) the following paragraph 2a is inserted:

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

(33) In Article 72(2), the following subparagraph is added:

"The institution may also obtain an enforcement order from the competent authority by ordinary judicial procedure. For such purposes its receivable amounts are assimilated to receivable amounts under civil and commercial law within the meaning of the instruments adopted on the basis of Article 65 of the EC Treaty."

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

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

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

*"Article 73a*

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

*Article 73b*

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

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

(36) In Article 75(2), “Article 49(2)” is replaced by “Article 49(2)(d)”

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

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

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

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

(39) Article 88 is amended as follows:

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

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

(b) paragraph 2 is replaced by the following:

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

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

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

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(\*\*) OJ L 134, 30.4.2004, p. 114.”

(41) Article 91 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

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

(c) the following paragraph 4 is added:

“4. The implementing rules shall define the procurement procedure, referred to in paragraph 1, applicable to service contracts covered by Annex IIB to Directive 2004/18/EC and to contracts declared to be secret and shall include specific rules for the awarding of contracts to external experts to provide evaluation or technical assistance.”

(42) Articles 93 and 94 are replaced by the following:

*“Article 93*

1. Subject to paragraph 5, candidates or tenderers who are in any of the following situations shall be excluded from participation in a procurement procedure:
  - (a) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity detrimental to the Communities' financial interests;
  - (b) they are currently subject to an administrative penalty, referred to in Article 96.
2. Subject to paragraph 5, and on the basis of the analysis of risks, the contracting authority may decide to exclude from participation in a procurement procedure candidates and tenderers who are in any of the following situations:
  - (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
  - (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
  - (c) they have been guilty of serious professional misconduct proven by any means which the contracting authority can justify;
  - (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed.
3. The situations of exclusion shall be defined in advance and communicated to candidates or tenderers.

4. Candidates or tenderers must certify that they are not in one of the situations listed in paragraph 1 and, as appropriate, that they are not in one of the situations listed in paragraph 2.

Where the candidate or tenderer is a legal entity, information on the ownership or on the management, control and power of representation of the legal entity must be provided, whenever requested by the contracting authority.

5. The implementing rules shall determine the maximum period during which the situations referred to in paragraphs 1(a) and 2 give rise to the exclusion of candidates or tenderers from participation in a procurement procedure.

#### *Article 94*

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

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

- (43) In Article 95, the following paragraph is added:

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

- (44) Article 96 is replaced by the following:

#### *“Article 96*

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

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

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

(45) In Article 97, paragraph 2 is replaced by the following:

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

(46) Article 98 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) paragraph 4 is replaced by the following:

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

(47) Article 103 is replaced by the following:

*"Article 103*

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

Where, after the award of the contract, the award procedure proves to have been vitiated by substantial errors or irregularities or by fraud, or the performance of the contract is so vitiated, the institutions shall, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract.

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

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

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

(49) Article 105 is replaced by the following:

*"Article 105*

Subject to Title IV of part two of this Regulation, Directive 2004/18/EC shall lay down the thresholds which determine:

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

(50) Article 108 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

- (a) expenditure on the institutions' staff,
- (b) loans, loan guarantees, the public contracts referred to in Article 88 and aid paid as macro financial assistance and budgetary support;
- (c) equity investments on the basis of the private investor principle and shareholdings or equity participations in international financial institutions such as the European Bank for Reconstruction and Development (EBRD) or the European Investment Fund (EIF);
- (d) contributions paid by the Communities as subscriptions to bodies of which they are members;
- (e) expenditure implemented as part of shared, decentralised or joint management within the meaning of Article 53;
- (f) payments made to the delegate bodies of the Commission referred to in Articles 54 and 55 and the Community bodies referred to in Article 185;
- (g) repayment of travel and subsistence expenses incurred by persons invited or mandated by the institutions."

- (b) the following paragraph 3 is added:
- “3. The following shall be assimilated to grants and shall be governed, as appropriate, by this Title:
- (a) the benefit deriving from an interest subsidy on certain loans;
  - (b) equity investments or participations other than those referred to in point (c) of paragraph 2.”

(51) The title of Chapter 2 of Title VI of part one is replaced by the following:

### **“Principles”**

(52) Article 109 is replaced by the following:

#### *“Article 109*

1. Grants shall be subject to the principles of transparency, proportionality, and equal treatment.  
  
They may not be cumulative or awarded retrospectively and they must involve co-financing.
2. Grants may not have the purpose or effect of producing a profit.
3. Paragraph 2 shall not apply to the following:
  - (a) study, research or training scholarships paid to natural persons;
  - (b) prizes awarded following contests;
  - (c) actions the objective of which is the reinforcement of the financial capacity of a beneficiary or the generation of an income;
  - (d) low-value grants taking one of the forms provided for in points (b) or (c) of Article 113a(1), or a combination thereof, in accordance with the implementing rules.”

(53) In Article 110(1), the second subparagraph is replaced by the following:

"That work programme shall be implemented through the publication of calls for proposals save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary or of the action leave no other choice for a given action."

(54) Article 111 is replaced by the following:



*"Article 111*

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

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

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

(55) Article 112 is amended as follows:

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

"In such cases, costs eligible for financing may not have been incurred prior to the date of submission of the grant application, save in duly substantiated exceptional cases as provided for in the basic act or in the case of expenditure necessary for the proper implementation of crisis management aid or humanitarian aid operations as provided for in the implementing rules.";

(b) paragraph 2 is replaced by the following:

"2. The agreement on an operating grant may not be signed more than six months after the start of the beneficiary's budgetary year. Costs eligible for financing may have been incurred neither before the grant application was lodged nor before the start of the beneficiary's budgetary year."

(56) The following Article 113a is inserted:

*"Article 113a*

1. Grants may take any of the following forms:

- (a) reimbursement of a specified proportion of the eligible costs actually incurred;
- (b) lump sums;
- (c) flat-rate financing ;
- (d) a combination of the forms referred to in points (a), (b) and (c).

2. Grants shall respect an overall ceiling expressed in terms of absolute value. In any event, Articles 109 and 111 shall apply."

(57) Article 114 is replaced by the following:

*"Article 114*

- 1. Grant applications shall be submitted in writing.
- 2. Grant applications shall be eligible if submitted by the following:

- (a) legal persons;
- (b) natural persons in so far as this is required by the characteristics of the action or the objective pursued by the applicant.

Exceptionally, grant applications may be eligible if submitted by entities, established in the Community, which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on their behalf, and assume financial liability.

- 3. Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 93(1) and 94 or, where appropriate, in one of the situations referred to in Article 93(2).

Applicants must certify that they are not in one of the situations referred to in the first subparagraph.

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

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

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

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

(59) Article 120 is replaced by the following:

*"Article 120*

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

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

(60) Article 121 is amended as follows:

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

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

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

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

(61) In Article 122, "Article 185" is replaced by "Article 121".

(62) Article 128 is replaced by the following:

*"Article 128*

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

The Commission's accounting officer shall consolidate these provisional accounts with the Commission's provisional accounts and shall send to the Court of Auditors, by 31 March of the following year at the latest, the Commission's provisional accounts together with the provisional consolidated accounts.

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

(63) Article 129 is amended as follows:

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

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

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

(c) the following paragraph 2a is inserted:

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

(d) paragraph 3 is replaced by the following:

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

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

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

(65) Article 131 is amended as follows:

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

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

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

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

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

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

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

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

"1. Parts one and three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules relating to the European Agricultural Guarantee Fund, hereinafter 'the EAGF', and to revenue, save as otherwise provided in this title."

(71) Article 149 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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(\*\*\*) OJ L [...], [...], p. [...].”

(b) paragraph 3 is replaced by the following:

“3. Non-committed appropriations relating to the actions referred to in Article 3(1) of Regulation (EC) No [xxxx/xxxx] may be carried over to the next financial year only.

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

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

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

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

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

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

"2. The Commission decisions fixing the amounts of these payments shall constitute global provisional commitments, which may not exceed the total appropriations entered for the EAGF.

3. As from 15 November, routine management expenditure for the EAGF may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed the corresponding appropriations decided by the budgetary authority for the last adopted budget. They may apply only to expenditure for which the principle is laid down in an existing basic act."

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

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

- (74) Article 152 is replaced by the following:

*"Article 152*

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

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

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

- (76) Article 154 is replaced by the following:

*"Article 154*

1. Assigned revenue under this Title shall be assigned according to origin in accordance with Article 18(2).
2. The result of decisions on clearance of accounts, as referred to in Article 30 of Council Regulation (EC) No [xxxx/xxxx]<sup>(\*\*\*\*\*)</sup> [on the financing of the common agricultural policy] shall be entered in a single Article.

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(\*\*\*\*\*) OL [...], [...], p. [...]"

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

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

- (78) Article 155 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) paragraph 3 is deleted.

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

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

(80) Article 158 is replaced by the following:

*"Article 158*

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

(a) Community Initiatives;

(b) Technical Assistance and Innovative Measures."

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

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

(82) The following Article 160a is inserted:

*"Article 160a*

1. The commitment appropriations corresponding to the amount of the commitment decommitted as a result of total or partial non implementation of the projects relating to research for which they were earmarked may, exceptionally and in duly substantiated cases, be made available again where it is essential to carry out the programme originally planned unless the budget for the current financial year contains funds for this purpose.

2. For the purposes of paragraph 1, the Commission shall, at the beginning of each financial year, examine decommitments made during the previous financial year and assess, in the light of the requirements, the need for making the appropriations available again.

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

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

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

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

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

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

(83) Article 164 is deleted.

(84) In Article 166(1), the second subparagraph is replaced by the following:

"The contracts and agreements provided for in points (a) and (b) of the first subparagraph shall lay down the terms on which the external aid shall be managed by the beneficiaries or by the contractors."

(85) In Article 167(1), point (c) is replaced by the following:

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

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

## **“Chapter 4 GRANTS”**

(87) The following Article 169a is inserted:



*“Article 169a*

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

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

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

(89) Article 173 is replaced by the following:

*“Article 173*

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

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

"Its Director shall adopt, after approval by the Management Committee, the criteria on which the accounting system shall be based."

(91) The following Article 174a is inserted:

*"Article 174a*

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

(92) Article 175 is amended as follows:

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

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

(93) Article 176 is deleted.

(94) Article 178 is amended as follows:

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

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

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

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

(95) In Article 185, paragraphs 3 and 4 are replaced by the following:

"3. Each body referred to in paragraph 1 shall establish an internal audit function which must be performed in compliance with the relevant international standards. The Commission's internal auditor shall certify that the operation of the audit function respects international audit standards and, for that purpose, may conduct quality audits.

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

#### *Article 2*

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

It shall apply from 1 January 2007.

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

Done at Brussels, [...]

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

## REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

### Report on the application of the provisions of the new Financial Regulation

1. In a statement to Article 85 of the Financial Regulation (FR), the Commission undertook “to make a report by 1 January 2006 on the application of the provisions of the new Financial Regulation and, in particular, on the discontinuation of centralised ex ante controls, and, if necessary, to submit appropriate proposals to the Council”.

#### PRACTICAL EXPERIENCE OF THE ADMINISTRATIONS OF THE INSTITUTIONS WITH DAY-TO-DAY FINANCIAL MANAGEMENT

##### a) Report from the Commission's network of financial units

2. The Commission's network of financial units (RUF) has produced a report on the management difficulties encountered following the introduction of the new FR and the IR. The report, established by a group of officials representing the financial units of the Commission, contains almost 100 points having an impact on the daily management and provided valuable internal feedback to the Commission.
3. **Low-value contracts**, i.e. those worth less than EUR 50 000 account, for up to 75% of the number of contracts for certain departments, far less in terms of value but far more in terms of management problems both for the departments concerned and for relations with the economic operators. The RUF considers that the implementing rules in this area are unnecessarily rigid and proposes amending a series of the IR provisions in order to provide a specific management environment for low-value contracts.
4. For grants, the RUF requests that the rules be adapted to low-value grants and to small-scale beneficiaries or those with a particular profile. A number of Commission departments managing programmes made up to a large extent of small-scale projects would like the provisions on grants to impose obligations on beneficiaries and authorising officers that are proportional to the amount and to the size and type of beneficiaries.
5. **Pre-financing** remains the property of the Communities unless the basic act provides otherwise (Article 3(1) IR). The RUF proposes that this be interpreted to allow new basic acts to offer an exception to this principle and adjust the provisions to the effect that interest generated by pre-financing of less than a certain amount does not give rise to establishment and recovery.
6. The RUF sees a serious shortcoming in the Financial Regulation which causes management difficulties and legal problems in relations with beneficiaries of Community funds, in that **there are no Community rules on time-barring**. The RUF proposes that a general time-barring system be introduced to apply to all Community funds on both the revenue side and the expenditure side.

7. The RUF considers that the rules to be applied as regards **the financing decision** should be thoroughly revised and consolidated in the IR in order to provide a suitable and stable management environment. As regards the **budget implementation methods**, the RUF calls for simplification and updating of the rules and an easing of the conditions for making use of national public or private bodies for the performance of tasks involving public authority.
8. With specific reference to the **delegation of implementing tasks**, the RUF suggests that provision be made, subject to appropriate supervision, for private-law bodies to be allowed to reimburse certain travel and subsistence costs to participants in seminars and other events. Management of such events would require Commission departments, which do not have the means, to handle directly a large number of small transactions.
9. The RUF would like the **provisions and procedures applicable away from headquarters**, in representations and delegations and also for operational expenditure, to be reviewed and validated.

**b) Information gathered from the administrations of the other institutions and bodies**

10. In November 2004 the administrations of the other institutions were asked to report on their experience and any problems encountered in implementing the FR and the IR. The information submitted is without prejudice to any position that the respective institutions may take.
11. The administration of the **European Parliament** has explained that total decentralisation of *ex ante* controls has come up against certain difficulties, especially the lack of qualified staff. Application of the new arrangements has not yet reached full maturity in the EP; it is therefore not yet possible to make a valid comparison with the old arrangements. The EP administration does not make any proposals for reviewing the major principles of the reform and reintroducing centralised *ex ante* controls.
12. The EP administration considers that most of the other provisions of the new rules which have posed problems for its department are already covered by the fast-track amendment procedure of the IR. EP departments do, however, propose amending Article 9(6) FR to restrict **the ban on carrying over appropriations for staff expenditure** to the remuneration and allowances of members of staff and to **add to the list of assigned revenue** the proceeds of the sale of movable assets, including sales by way of part exchange. They wish to amend Article 22(1) and (2) FR to **facilitate transfers between articles and between chapters** while retaining for the budgetary authority the possibility of deciding on the most significant changes. In Article 47(1) FR the EP administration proposes **converting grades A1, A2 and A3 into the grades in the new Staff Regulations** (A16, A15, A14, A13) and making an exception to the rule on a single signature to allow imprest administrators to conclude legal commitments after the authorising officer concerned has signed the budgetary commitment. The EP departments suggest **harmonising the various reports** (Articles 60(7) and 122) at interinstitutional level and cutting down on the duplication of information.

13. The EP administration notes that for multiannual expenditure the accounts do not reflect the reality of legal commitments contracted and proposes that **clear provisions be laid down concerning multiannual expenditure from administrative budgets**. The EP proposes **making it easier to issue calls for tenders common to a number of institutions** by introducing an exception to allow an authorising officer to entrust management to a member of staff of another institution; this would also cover grants.
14. The EP departments propose that thought be given to the **use of languages in tendering procedures**, which could result in provisions being drafted which would comply with the principle of equality between languages without adding unnecessarily to the administrative burden. They also propose **simplifying the provisions for low-value donations** to institutions other than the Commission if no additional costs are involved.
15. The EP administration identifies certain difficulties which could be resolved in the revision of the FR. It wishes to **extend to the EP all the provisions governing grants** and, as regards **grants to European political parties**, it suggests a mechanism to allow **a limited and controllable carryover of part of the grant from one year to the next** (if, for instance, a major event scheduled for December n has to be postponed until January/February n+1). One solution EP sees would be to make it possible to accept in the final outturn account provisions for costs already committed but which would concern year n+1. These provisions would reduce by the same amount any surplus of resources over expenditure, and hence any amount that has to be repaid in the event of an operating “profit”.
16. The EP departments propose incorporating in the FR the possibility of **recognising certain features specific to the political groups which prompted exceptions** in the specific rules governing the use of appropriations for the expenditure of political groups and in particular the exceptional arrangements for carrying over appropriations and the higher thresholds for public contracts. Finally the administration proposes **easing the management constraints in EP information offices** for low-value contracts concerning information policy.
17. The Council administration reports that for low value contracts outside the EU suppliers have failed to provide, as requested, the banking details that are necessary before a legal commitment can be made (third party file). It suggests that this obligation be confined to contracts of a certain size, say above EUR 3 500. Concerning Article 47(1) FR on the **establishment plan**, the Council administration notes the need to refer to the corresponding grades in the new Staff Regulations (A\*16, A\*15, A\*14).
18. For the sake of optimum budget management, the Council administration advocates aligning the basis for **advance commitments of routine management expenditure**, namely a quarter of the appropriations on the corresponding budget line for the current year, on the limit laid down for provisional twelfths, i.e. a quarter of the appropriations authorised in the chapter in question. The Council administration also suggests specifying that **the limit of a quarter of the current appropriations** (Articles 13 and 178(1) FR) **does not apply to Article 178(2) FR** relating to expenditure which must be paid in advance pursuant to legal or contractual

provisions, for example rents, and may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year.

19. The administration of the **Court of Justice** reports that it proved very difficult to apply the FR and the IR from 1 January 2003. In view of the legal and administrative implications, changes in the organisation and operation of departments and in the assignment of human resources, reform on such a scale could hardly be implemented only six months after the broad lines were laid down and a week after the implementing rules were spelled out.
20. The Secretary-General of the **Court of Auditors** states that because of the Court's small size, a central *ex ante* verification cell was set up and directly attached to the delegated authorising officer. The cell supports the progressive strengthening of *ex ante* verification in the managing departments. The results of the verifications are monitored, and contribute to the action plans for improving internal controls in the managing departments. It is possible that *ex ante* verification will in future be decentralised, but, according to the Secretary-General of the Court, the Court's size is a factor working against this.
21. The administration of the **Court of Auditors** seeks clarification of several provisions: Article 22 FR and Article 16 IR (transfer of appropriations), Article 178 FR and would find it useful to specify the time limit implied by the term "immediately" in Article 179(3) FR regarding notification of the intention to issue an opinion on building projects. It made the experience that the thresholds in Article 129 of the IR regarding low-value contracts are too low and give rise to additional administrative procedures without a corresponding benefit in internal control. The Court's "cellule marchés" made a number of further suggestions and notably that the Commission should register cases at the request of institutions which do not have a data base pursuant Article 95 FR because of the few contracts passed.
22. The Secretaries-General of the **European Economic and Social Committee (ESC) and the Committee of the Regions** state that the committees have undertaken greater decentralisation of authorisation, hedging this with appropriate safeguards in terms of training and preparation of the authorising officers. They point out that for the smaller institutions, the quantity of human resources assigned to control activities has increased substantially and represents a significant cost. They take the view that the introduction of the new FR has not brought about any fundamental change in the level of *ex ante* control of budget operations in the Committees, but they observe that controls are more thorough and take up a larger proportion of the time of the financial actors and this is felt in terms of the burden of financial management.
23. The **ESC** has doubts about the relevance of performance indicators for administrative expenditure and suggest that they be dropped; it highlights the difficulty of reconciling building projects with the principle of budget annuality and maintains that reporting obligations on institutions have increased; it suggests that they be rationalised. It would like a common infrastructure to be set up for a central database (Article 95 FR). The **Committee of the Regions** underlines the heavy administrative burden imposed by the introduction of the internal control standards; they are beyond the means of the small institutions, which have only administrative costs.

24. The European **Data Protection Supervisor** points out that the EDPS began work in 2004. He has not therefore had any problem in adjusting to a new system but does not have any hindsight to be able to draw any conclusions from his experience.

## CONCLUSIONS

25. The new FR laid down the legal foundations for a robust management and control system focusing on decentralisation. The necessary organisation steps have been taken and formal compliance has been generally achieved. Effective implementation can be seen as satisfactory at this stage and can and should be further strengthened and improved in the light of experience with the active commitment and involvement of the actors concerned. In this process, it is essential that the services are able to operate confidently in a stable legal environment during the demanding initial period of implementation. The change of management culture and the integration of risk management in the day-to-day management will take longer to become embedded. The Commission will continue its efforts to this effect by developing a common risk methodology.
26. The overall appraisal shows that abolition of the centralised *ex ante* controls and replacement by precise requirements for *ex ante* controls when validating finalised projects before payments led to accrued empowerment and responsibility of the authorising officers. The annual appraisal of their management mainly through the annual activity reports proves to be a key pillar in reinforcing the accountability of the AOD.
27. None of the institutions or the administrations of the institutions proposed changes in the architecture and the key elements of the reform of the financial management embodied in the FR. (Certain clarifications of the role of the accounting officer concerning the systemic and overall product responsibility for the integrity of the accounts without encroaching on the responsibility of the authorising officers need to be addressed.)

Detected internal control deficiencies concern the implementation of provisions of the FR and can be addressed through measures taken at the institution's level and do not necessitate any modification of the legal framework, which proved to be consistent and unambiguous. Therefore the Commission does not propose any modification regarding the duties of the financial actors and the internal control system.

28. The comments of the administrations of the other institutions and of the RUF on the need for remodulation of supervisory and control requirements should be taken into account in the revision of the FR and its IR.

The changes should facilitate the Commission's obligation to implement the budget and accomplish the policy objectives whilst providing reasonable assurances on the legality of expenditure and minimise the risk of irregularity at a proportionate administrative cost.

The simplification of rules and procedures should aim at enhancing efficiency for the operations of financial transactions carried out away from headquarters so as to facilitate the delivery of external aid to third countries.

29. The need for simplification was particularly felt in relation to low-value contracts and grants. As a first step, the Commission in the context of the limited ongoing revision of the IR launched in order to transpose the harmonised Directive on procurement took the opportunity to address specific difficulties encountered in the field of public procurement and grants by notably streamlining the provisions on low value contracts and the use of scales of costs and flat-rate amounts for grants. This can be seen a first measure to meet financial management needs. The forthcoming revision of the FR and its IR should complete the simplification of procedural and documentary requirements for low-value operations.