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**CORRIGENDUM**

Ce document annule et remplace le  
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- Correction de la numérotation des Articles,  
à partir du nr. 70 jusqu'au nr. 93.  
qui concerne les versions EN, FR et DE.
- Correction de la page 9 (Art. 12)  
qui concerne uniquement la version FR

Proposal for a

**COUNCIL REGULATION**

**on the Financial Regulation applicable to the Euratom Supply Agency**

(presented by the Commission)

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## **EXPLANATORY MEMORANDUM**

The Euratom Supply Agency (hereinafter “the Agency”) is the Community body responsible for ensuring an equitable supply of nuclear materials (ores, raw materials and special fissile materials). As such, it has the exclusive right to conclude contracts relating to the supply of these materials coming from inside the Community or from outside (Article 52 Euratom).

The Agency is under the supervision of the Commission (Article 53 Euratom). The Agency has legal personality and financial autonomy (Article 54 Euratom). In Article 54, the Treaty provides that the statutes may provide for a charge on transactions to defray the operating expenses of the Agency.

Since circumstances have changed, the Agency’s statutes will be updated following the Council decision, the draft of which is submitted together with this draft Regulation. In 2002 the Community legislator adopted a new Financial Regulation applicable to the general budget of the European Communities and pursuant to Article 185 thereof a framework financial regulation was prepared for the decentralised bodies. These two Regulations are not directly applicable to the Agency.

For several years now the Court of Auditors has requested the adoption of a financial regulation for the Agency which could help to achieve the objectives of sound financial management pursued by the institutions. Given these factors, it seemed appropriate to base the proposal for a Financial Regulation for the Agency on the framework Financial Regulation No 2343/2002, since the legal environment is broadly similar. However, that model has also been adapted to take account of the special features of the Agency:

1. Since the Agency’s budget is small, the budgetary authority is the Commission, in accordance with the Agency’s statutes; however, for the sake of transparency and consistency with the Framework Regulation for the other Community bodies, the discharge authority becomes Parliament, on the Council’s recommendation;
2. The Agency can be covered by the Commission’s accounting consolidation exercise;
3. The Financial Regulation for the Agency does not require implementing rules but, in the absence of rules expressly laid down in it, the provisions of the general Financial Regulation and of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities apply;
4. Although the Agency is not one of the bodies cited in Article 185 of the general Financial Regulation, its internal auditing function is performed by the Internal Auditing Service of the Commission.

Under Article 8(10) of the Agency’s statutes, the Financial Regulation for the Agency should be adopted in accordance with Article 185 of the said Regulation.

Proposal for a

## **COUNCIL REGULATION**

**on the Financial Regulation applicable to the Euratom Supply Agency**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinions of the Advisory Committee of the Agency and of the Court of Auditors,

Whereas:

- (1) The Euratom Supply Agency (hereinafter “the Agency”), which was set up to perform certain activities relating to the supplying of ores, raw materials and special fissile materials, has legal personality and hence its own budget which is intended to be governed by specific financial rules.
- (2) To ensure the consistency of the Agency’s financial rules with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>1</sup>, it is appropriate, since the Agency receives a grant charged to the Community budget, that the implementation and control of its budget should be based as far as possible on Commission Regulation (EC, Euratom) No 2343/2002<sup>2</sup> of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002, taking the specific features of the Agency into account.
- (3) For the purposes of establishing and implementing the budget, the four fundamental principles of budgetary law (unity, annuality, universality, specification), and the principles of budgetary accuracy, equilibrium, unit of account, sound financial management and transparency must be reasserted.
- (4) It is necessary to define the powers and responsibilities of the accounting officer, the internal auditor and authorising officers. The last mentioned are fully responsible for all revenue and expenditure operations executed under their authority and must be held

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

<sup>2</sup> OJ L 357, 31.12.2002, p. 72.

accountable for their actions, including, where necessary, through disciplinary proceedings. The internal audit function must be performed by the Commission's internal auditor.

- (5) The timetable for establishing the budget, presenting the accounts and granting discharge can, where relevant, be aligned on the equivalent provisions of Regulation (EC, Euratom) No 1605/2002. Discharge should be given to the Director-General of the Agency by Parliament on the recommendation of the Council.
- (6) Each section of the budget includes an establishment plan. The staff of the Agency should appear separately in the Commission establishment plan.
- (7) The Agency should have access to the panel set up by the Commission to examine irregularities so that a similar assessment can be made of identical cases.
- (8) The Agency should observe the same requirements as the institutions in the award of public contracts. In this respect, reference should be made to the relevant provisions of Regulation (EC, Euratom) No 1605/2002.
- (9) The Agency may, for the performance of the tasks entrusted to it, employ external private sector bodies only where necessary and not for tasks involving any public service mission or any use of discretionary powers of judgment, in order to guarantee that the Agency is accountable for the implementation of its budget and adheres to the objectives assigned to it when it was set up.
- (10) The Agency should submit a cash-flow forecast in support of its requests for payment of the Community subsidy.
- (11) In view of the regulatory requirements arising from the statutes of the Agency, the procedure for presenting the accounts should be adapted.

HAS ADOPTED THIS REGULATION:

## **TITLE I - SCOPE**

### *Article 1*

1. This Regulation sets out the principles and basic rules for establishing and implementing the Agency's budget.
2. For the purposes of this Regulation:
  - (a) "budgetary authority" means the European Parliament and the Council of the European Union.
  - (b) "statutes" means the new statutes of the Agency adopted by Council Decision of xx xxxxx 200x.

## **TITLE II – BUDGETARY PRINCIPLES**

### *Article 2*

The Agency's budget shall be established and implemented in compliance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency as set out in this Regulation.

### **CHAPTER 1: Principles of unity and budget accuracy**

### *Article 3*

The budget is the instrument which, for each financial year, forecasts and authorises the revenue and expenditure considered necessary for the Agency.

### *Article 4*

The Agency's budget shall comprise:

1. own revenue consisting of the interest and return on its capital and bank investments and the commission on transactions as provided for in Article 10 of the statutes;
2. a grant determined by the budgetary authority as part of the general budget of the Communities;
3. revenue assigned to specific items of expenditure in accordance with Article 17(1);
4. the Agency's administrative expenditure;
5. special financial rules will be adopted to enable the Agency to use loans as a budgetary source (in accordance with Article VI(3) of the statutes).

### *Article 5*

1. No revenue shall be collected and no expenditure effected unless booked to a line in the budget.
2. An appropriation must not be entered in the budget if it is not for an item of expenditure considered necessary.
3. No expenditure may be committed or authorised in excess of the appropriations authorised by the budget.
4. Interest yielded by funds which are the property of the Agency shall be entered in the budget as revenue.
5. Special financial rules will be adopted on the use of any loans contracted by the Agency.

## CHAPTER 2: Principle of annuality

### *Article 6*

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

### *Article 7*

1. The budget shall contain non-differentiated appropriations, which shall consist of commitment appropriations and payment appropriations.
2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year.
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.
4. Administrative appropriations shall be non-differentiated appropriations. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.

### *Article 8*

1. The revenue of the Agency referred to in Article 4 shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year.
2. The revenue of the Agency shall give rise to an equivalent amount of payment appropriations.
3. The appropriations authorised in the budget for a given year may be used solely to cover expenditure committed and paid in that financial year, and to cover amounts due against commitments from preceding financial years.
4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December.
5. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year.

### *Article 9*

1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled.
2. Appropriations corresponding to obligations duly contracted at the close of the financial year shall be carried over automatically to the following financial year only.



3. The appropriations available at 31 December arising from the assigned revenue referred to in Article 17 shall be carried over automatically.

The appropriations available corresponding to earmarked revenue carried over must be used first.

#### *Article 10*

Where amounts are decommitted, as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were committed, the appropriations concerned shall be cancelled.

#### *Article 11*

The appropriations entered in the budget may be committed with effect from 1 January, once the budget has become definitive.

### **CHAPTER 3: Principle of equilibrium**

#### *Article 12*

1. Budget revenue and payment appropriations shall be in balance.
2. Appropriations may not exceed the amount of the Community subsidy, plus own revenue and any other revenue referred to in Article 4.
3. Funds paid to the Agency shall constitute for its budget a balancing subsidy which shall count as pre-financing within the meaning of Article 81(1)(b)(i) of Regulation (EC, Euratom) No 1605/2002.

#### *Article 13*

1. If the balance of the outturn account within the meaning of Article 76 is positive, it shall be repaid to the Commission up to the amount of the Community subsidy paid during the year.

The difference between the Community subsidy entered in the general budget of the European Communities (hereinafter “the general budget”) and that actually paid to the Agency shall be cancelled.

2. If the balance of the outturn account provided for in Article 76 is negative, it shall be entered in the budget for the following financial year.
3. The revenue or payment appropriations shall be entered in the budget during the budgetary procedure using the letter of amendment procedure or, while budget implementation is under way, by means of an amending budget.

## **CHAPTER 4: Principle of unit of account**

### *Article 14*

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

However, for cash-flow purposes, the accounting officer shall be authorised to carry out operations in national currencies.

### *Article 15*

1. If the Agency's budget has not been adopted at the beginning of the financial year, the following rules shall apply to the commitment and payment of expenditure which it has been possible to book to a specific budget line as part of the implementation of the last budget duly adopted.

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

Payments may be made monthly per chapter up to a maximum of one twelfth of the appropriations authorised in that chapter for the preceding financial year.

The limit on the appropriations provided for in the estimate of revenue and expenditure may not be exceeded.

3. At the request of the Director-General, if the continuity of action by the Agency and management needs so require, the Commission may simultaneously authorise two or more provisional twelfths for both commitments and payments over and above those automatically made available by the provisions of paragraphs 1 and 2.

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

## **CHAPTER 5: Principle of universality**

### *Article 16*

Total revenue shall cover total payment appropriations, subject to Article 17. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to Article 19.

### *Article 17*

1. The following items of revenue shall be used to finance specific items of expenditure:

- (a) revenue earmarked for a specific purpose, such as income from donations, subsidies, gifts and bequests;

- (b) additional capital subscriptions by the Member States if such funds are granted or intended for specified activities or expenditure of the Agency, and if the Council so decides.
2. All items of revenue within the meaning of paragraph 1 shall cover all direct or indirect expenditure incurred by the activity or purpose in question.
3. The budget shall carry headings to accommodate the categories of assigned revenue referred to in paragraph 1 and wherever possible shall indicate the amount.

#### *Article 18*

1. The Director-General may accept any donation made to the Agency, such as grants, gifts and bequests.
2. Acceptance of donations which may involve some financial charge shall be subject to the prior authorisation of the Commission, which shall take a decision within two months of the date on which the request was submitted to it. If the Commission fails to take a decision within that period, the donation shall be deemed accepted.

#### *Article 19*

1. The amounts which may be deducted from payment requests, invoices or statements, which shall then be passed for payment of the net amount, are:
- (a) penalties imposed on parties to contracts, including procurement contracts;
  - (b) adjustments for amounts paid unduly, which can be made by means of direct deduction against a new payment of the same type to the same payee under the chapter, article and financial year in respect of which the excess payment was made, and which give rise to interim payments or payments of balances.

Discounts, refunds and rebates on invoices and payment requests shall not be recorded as Agency revenue.

2. The cost of products or services provided to the Agency shall be charged to the budget for the full ex-tax amount, where they incorporate taxes refunded:
- (a) either by the Member States pursuant to the Protocol on the Privileges and Immunities of the European Communities;
  - (b) or by a Member State or non-member country on the basis of other relevant agreements.

Any national taxes temporarily borne by the Agency under the first subparagraph shall be entered in a suspense account until they are refunded by the State concerned.

3. Any negative balance shall be entered in the budget as expenditure.

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

## **CHAPTER 6: Principle of specification**

### *Article 20*

The appropriations in their entirety shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.

### *Article 21*

1. The Director-General may make transfers from one article to another within each chapter. He/she shall inform the Commission of this as soon as possible.

2. The Director-General may make transfers from one title to another and from one chapter to another within a limit of 10% of the appropriations for the financial year. Beyond this limit, he/she may propose to the Commission transfers of appropriations from one title to another or from one chapter to another within a title. The Commission shall have one month in which to oppose such transfers; after this time limit they shall be deemed to be adopted.

3. Proposals for transfers and transfers carried out under this Article shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the headings to be credited and for those from which the appropriations are drawn.

### *Article 22*

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

2. Appropriations corresponding to assigned revenue may be transferred only if they are used for the purpose to which the revenue is assigned.

## **CHAPTER 7: Principle of sound financial management**

### *Article 23*

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

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

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

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

## **CHAPTER 8: Principle of transparency**

### *Article 24*

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

The budget and amending budgets, as finally adopted, shall be published on the Agency's website.

## **TITLE III – ESTABLISHMENT AND STRUCTURE OF THE BUDGET**

### **CHAPTER 1: Establishment of the budget**

#### *Article 25*

1. The preliminary budget shall be drawn up by the Director-General in accordance with the statutes of the Agency.
2. Having obtained the opinion of the Advisory Committee, the Director-General of the Agency shall send the Commission an estimate of the Agency's revenue and expenditure as well as its work programme by 31 March each year.
3. The estimate shall include an establishment plan setting the number of permanent and temporary posts at the Agency<sup>3</sup>.
4. As part of the procedure for adopting the general budget, the Commission shall take account of the Agency's estimate in order to determine the amount of the subsidy for the Agency and the number of staff it considers that the Agency needs.
5. The budgetary authority shall adopt the establishment plan of the Agency and any subsequent amendment thereof.
6. The budget and the establishment plan shall be adopted by the Commission after final adoption of the general budget setting the amount of the subsidy and the establishment plan and, if necessary, shall be adjusted accordingly.

#### *Article 26*

Any amendment of the budget, including the establishment plan, shall be the subject of an amending budget adopted by the same procedure as the initial budget.

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<sup>3</sup> In accordance with Article 30 of Regulation (EC, Euratom) No 2342/2002, Agency staff appear separately in the Commission establishment plan.

## **CHAPTER 2: Structure and presentation of the budget**

### *Article 27*

The budget shall comprise a statement of revenue and a statement of expenditure.

### *Article 28*

The budget shall show:

- 1) in the statement of revenue:
  - (a) the estimated revenue of the Agency for the financial year in question;
  - (b) the estimated revenue for the preceding financial year and the revenue for year n-2;
  - (c) appropriate remarks on each revenue line.
- 2) in the statement of expenditure:
  - (a) the commitment appropriations for the financial year in question;
  - (b) the commitment appropriations for the preceding financial year and the expenditure committed during the financial year n-2;
  - (c) appropriate remarks on each subdivision.

### *Article 29*

The establishment plan referred to in Article 25 shall show next to the number of posts authorised for the financial year, the number authorised for the preceding year and the number of posts actually filled.

It shall constitute an absolute limit for the Agency; no appointment may be made in excess of the limit set.

## **TITLE IV – IMPLEMENTATION OF THE BUDGET**

### **CHAPTER 1: General provisions**

### *Article 30*

The Director-General shall perform the duties of authorising officer. He/she shall implement the revenue and expenditure of the budget in accordance with the financial rules of the Agency, on his/her own responsibility, in the departments placed under his/her authority and within the limits of the allotted appropriations.

### *Article 31*

The Director-General may delegate his/her powers of budget implementation to Agency staff covered by the rules and regulations applicable to officials and other servants of the European Communities. Those so empowered may act only within the limits of the powers expressly conferred upon them.

### *Article 32*

1. All financial actors within the meaning of Chapter 2 of this title shall be prohibited from taking any measures to implement the budget which may bring their own interests into conflict with those of the Agency. Should such a case arise, the actor in question must refrain from such measures and refer the matter to the competent authority.

2. There is a conflict of interest where the impartial and objective exercise of the functions of a player in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.

3. The competent authority referred to in paragraph 1 shall be the immediate superior of the member of staff concerned. If the member of staff is the Director-General, the competent authority shall be the Commission.

### *Article 33*

Where necessary, technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgment may be entrusted by contract to external private-sector entities or bodies.

## **CHAPTER 2: Financial players**

### *Section 1: Principle of segregation of duties*

### *Article 34*

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

### *Section 2: Authorising officer*

### *Article 35*

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

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

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

4. As authorising officer for the Agency, the Director-General shall put in place the organisational structure and the management and internal control systems and procedures suited to the performance of the Agency's tasks. These shall be reasonably adapted from the Commission's internal control standards, taking account of the low level of risks associated with the management environment and the nature of the measures financed by the Agency.

5. Before a transaction is authorised, the operational and financial aspects shall be verified by officials other than the official who initiated it. The initiation and the ex ante verification of an operation shall be separate functions.

6. The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge for implementation of the budget.

### *Article 36*

1. Initiation of an operation as referred to in Article 35(5) shall be understood to mean all the operations which are preparatory to the adoption of the acts implementing the budget by the authorising officers responsible referred to in Articles 30 and 31.

2. Ex ante verification of an operation as referred to in Article 35(5) shall be understood to mean all the ex ante checks put in place by the authorising officer responsible in order to verify the operational and financial aspects.

3. Each operation shall be subject at least to an ex ante verification. The purpose of that verification shall be to ascertain that:

- (a) the expenditure is in order and conforms to the relevant provisions;
- (b) the principle of sound financial management referred to in Article 23 has been applied.

4. The officials or other staff responsible for the verification functions referred to in paragraph 2 are separate from those carrying out the initiation tasks referred to in paragraph 1 and are not subordinate to them.

5. All staff responsible for scrutinising the management of financial operations must have the necessary professional skills and respect a specific code based on standards laid down by the Commission for its own departments.

### *Article 37*

The Director-General shall report to the Commission on the performance of his/her duties as an authorising officer in the form of an annual activity report (hereinafter "authorising officer's report"), together with financial and management information.



The report shall cover the results of his/her operations by reference to the objectives set, the risks associated with those operations, the use made of the resources provided and the functioning of the internal control system. The internal auditor within the meaning of Article 66 shall take note of the annual activity report and any other pieces of information identified.

#### *Article 38*

Any member of staff involved in the financial management and control of transactions who considers that a decision he/she is required by his/her superior to apply or to agree to is illegal, irregular or contrary to the principles of sound financial management or the professional rules he/she is required to observe shall inform the Director-General in writing and, if the latter fails to take action within a reasonable period, the panel referred to in Article 43(4). In the event of any illegal activity, fraud or corruption which may harm the interests of the Community, he/she shall inform the authorities and bodies designated by the applicable legislation.

#### *Article 39*

Where powers of budget implementation are delegated in accordance with Article 31, then Article 35(1), (2) and (3) shall apply mutatis mutandis to the authorising officers by delegation.

#### *Section 3: Accounting officer*

#### *Article 40*

1. The Commission shall appoint an accounting officer, covered by the Staff Regulations of officials of the European Communities, who shall be responsible in the Agency for:

- (a) implementing payments properly, collecting revenue and recovering amounts established as receivable;
- (b) preparing and presenting the accounts in accordance with Title VII;
- (c) keeping the accounts in accordance with Title VII;
- (d) implementing, in accordance with Title VII, the accounting rules and methods and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;
- (e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information;
- (f) treasury management.

2. The accounting officer shall obtain from the authorising officer, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true and fair view of the Agency's assets and the budget's implementation.
3. The accounting officer alone shall be empowered to handle monies and other assets. He/she shall be responsible for their safekeeping.
4. The accounting officer may delegate certain tasks to a subordinate covered by the Staff Regulations, where this is indispensable for the performance of his/her duties.
5. The instrument of delegation shall lay down the tasks entrusted to the person empowered and his/her rights and obligations.

### **CHAPTER 3: Liability of the financial players**

#### *Section 1: General rules*

##### *Article 41*

1. Without prejudice to any disciplinary action, authorising officers by delegation may at any time have their delegation withdrawn temporarily or definitively by the authority which appointed them.
2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his/her duties by the Commission. The Commission shall appoint an interim accounting officer.

##### *Article 42*

1. The provisions of this chapter are without prejudice to the criminal-law liability which the authorising officer and the persons referred to in Article 41 may incur as provided for 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.
2. Each authorising officer or accounting officer shall be liable to disciplinary action and payment of compensation as provided for in the Staff Regulations, without prejudice to Articles 43 or 44. In the event of illegal activity, fraud or corruption which may harm the interests of the Community, the matter will be referred to the authorities and bodies designated by the applicable legislation.

#### *Section 2: Rules applicable to authorising officers by delegation*

##### *Article 43*

1. The authorising officer shall be liable to payment of compensation as laid down in the Staff Regulations. Accordingly, he/she 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 Financial Regulation and its implementing rules.

The same shall apply where, through serious misconduct, he/she fails to draw up a document establishing an amount receivable or if he/she fails to issue a recovery order or is, without justification, late in issuing it, or if he/she fails to issue a payment order or is late in issuing it, thereby rendering the Agency liable to civil action by third parties.

2. An authorising officer by delegation who considers that a decision which it is his/her responsibility to take is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation to implement the decision in question, the latter must implement it and may not be held liable; he shall carry out the instruction, unless it constitutes a breach of criminal law or of the relevant safety standards.

3. In the event of delegation, the authorising officer shall continue to be responsible for the effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by delegation.

4. The panel set up by the Commission in accordance with Article 66(4) of Regulation (EC, Euratom) No 1605/2002 to determine whether a financial irregularity has occurred and what the consequences, if any, should be shall exercise the same powers in respect of the Agency as it does in respect of Commission departments.

On the basis of the panel's opinion, the Director-General shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor. If the opinion implicates the Director-General, the panel shall send it to the internal auditor and the Commission.

5. Any member of staff may be required to make good, in whole or in part, any damage suffered by the Agency as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties.

The appointing authority shall take a reasoned decision, after completing the formalities laid down by the Staff Regulations with regard to disciplinary matters.

### *Section 3: Rules applicable to accounting officers*

#### *Article 44*

An accounting officer may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations of officials of the European Communities, in particular where:

1. he/she loses or damages monies, assets and documents in his/her keeping or causes them to be lost or damaged by his/her negligence;

2. he/she alters bank accounts or postal giro accounts without notifying the authorising officer in advance;

3. he/she recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
4. he/she fails to collect revenue due.

## **CHAPTER 4: Revenue operations**

### *Section 1: General provisions*

#### *Article 45*

The Agency shall present to the Commission requests for payment of all or part of the Community subsidy, supported by a cash-flow forecast, under terms and at intervals agreed with the Commission.

#### *Article 46*

The funds paid to the Agency by the Commission by way of the subsidy shall bear interest for the benefit of the general budget.

### *Section 2: Estimate of amounts receivable*

#### *Article 47*

An estimate of the amount receivable shall be made in advance by the authorising officer responsible in respect of any measure or situation which may give rise to or modify an amount owed to the Agency.

### *Section 3: Establishment of amounts receivable*

#### *Article 48*

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

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

2. Any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order given to the accounting officer, accompanied by a debit note sent to the debtor. Both of these documents shall be drawn up and sent by the authorising officer responsible.

3. Without prejudice to the provisions laid down in the rules, contract or agreement applicable, any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with the detailed rules for the implementation of Regulation (EC, Euratom) No 1605/2002.

4. In duly substantiated cases, certain routine revenue items may be established provisionally.

Provisional establishment shall cover the recovery of several individual amounts which need not therefore be established individually.

Before the end of the financial year, the authorising officer shall amend the amounts established provisionally to ensure that they correspond to the amounts receivable actually established.

#### *Section 4: Authorisation of recovery*

##### *Article 49*

The authorisation of recovery is the act whereby the authorising officer responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he/she has established.

#### *Section 5: Recovery*

##### *Article 50*

1. Amounts wrongly paid shall be recovered.

2. The accounting officer acts on recovery orders for amounts receivable duly established by the authorising officer responsible. He/she shall exercise due diligence to ensure that the Agency receives its revenue and shall see that its rights are safeguarded.

3. Where the authorising officer responsible is planning to waive recovery of an established amount receivable, he/she shall ensure that the waiver is in order and complies with the principle of sound financial management.

Such a waiver shall be by decision of the authorising officer, which must be substantiated. The authorising officer may not delegate such a decision.

The waiver decision shall state what action has been taken to secure recovery and the points of law and fact on which it is based.

4. The authorising officer responsible shall cancel an established amount receivable when the discovery of a mistake as to a point of law or fact reveals that the amount had not been correctly established. Such cancellation shall be by decision of the authorising officer responsible and shall be suitably substantiated.

5. The authorising officer responsible shall adjust the amount of an established debt upwards or downwards when the discovery of a factual error entails the alteration of the amount of the debt, provided that this correction does not involve the loss of the established entitlement

of the Agency. Such an adjustment shall be by decision of the authorising officer responsible and shall be suitably substantiated.

#### *Article 51*

Upon actual recovery of the sum due, the accounting officer shall make an entry in the accounts and shall inform the authorising officer responsible.

#### *Article 52*

1. If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately launch, after informing the debtor, the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.

2. The accounting officer shall recover amounts by offsetting them against equivalent claims that the Agency has on any debtor who himself or herself has a claim on the Agency that is certain, of a fixed amount and due, provided that offsetting is legally possible.

#### *Article 53*

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

1. the debtor undertakes to pay interest at the rate specified by the detailed rules for implementation of Regulation (EC, Euratom) No 1605/2002 for the entire additional period allowed, starting from the date on which the payment was originally due;

2. in order to safeguard the rights of the Agency, the debtor provides a financial guarantee covering both the principal sum and the interest.

#### *Section 6: Specific provisions applicable to fees and charges*

#### *Article 54*

The Director-General shall adopt the specific provisions applicable to fees and charges.

### **CHAPTER 5: Expenditure operations**

#### *Article 55*

Every item of expenditure shall be committed, validated, authorised and paid.

## *Section 1: Commitment of expenditure*

### *Article 56*

1. The budget commitment is the operation reserving the appropriations necessary to cover subsequent payments to honour a legal commitment.

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

The budgetary commitment and the legal commitment shall be adopted by the same authorising officer, save in duly substantiated cases as provided for in the detailed rules for the implementation of the Regulation (EC, Euratom) No 1605/2002.

3. The budgetary commitment shall be individual when the beneficiary and the amount of the expenditure are known.

4. The budget commitment shall be global when at least one of the elements necessary to identify the individual commitment is still not known.

5. The budget commitment shall be provisional when it is intended to cover routine administrative expenditure and either the amount or the final beneficiaries are not definitively known.

The provisional budget commitment shall be implemented either by the conclusion of one or more individual legal commitments giving rise to an entitlement to subsequent payments or, in exceptional cases relating to expenditure on staff management, directly by payments.

### *Article 57*

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budgetary commitment before entering into a legal obligation with third parties.

2. Individual legal commitments relating to individual or provisional budget commitments shall be concluded by 31 December of year n.

At the end of the periods referred to in the first subparagraph, the unused balance of these budget commitments shall be decommitted by the authorising officer responsible.

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

Any parts of such commitments which have not been executed six months after that final date shall be decommitted in accordance with Article 10.

### *Article 58*

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

1. the expenditure has been charged to the correct item in the budget;
2. the appropriations are available;
3. the expenditure conforms to the applicable provisions, in particular those of the statutes and rules of the Agency and all acts adopted pursuant to them;
4. the principle of sound financial management has been complied with.

### *Section 2: Validation of expenditure*

### *Article 59*

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

1. verifies the existence of the creditor's entitlement;
2. verifies the conditions in which payment is due;
3. determines or verifies the reality and the amount of the claim.

### *Article 60*

1. Validation of any expenditure shall be based on supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.

2. The decision validating the expenditure shall be expressed by the signing of a "passed for payment" voucher by the authorising officer responsible.

3. In a non-computerised system, "passed for payment" shall take the form of a stamp incorporating the signature of the authorising officer responsible. In a computerised system, "passed for payment" shall take the form of validation using the personal password of the authorising officer responsible.

### *Section 3: Authorisation of expenditure*

### *Article 61*

1. Authorisation of expenditure is the act whereby the authorising officer responsible, by issuing a payment order, instructs the accounting officer to pay an item of expenditure which he has validated.



2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 35(6).

3. Where appropriate, the payment order sent to the accounting officer shall be accompanied by a document certifying that the goods have been entered in the inventories referred to in Article 85(1).

#### *Section 4: Payment of expenditure*

##### *Article 62*

1. Payment shall be made on production of proof that the relevant action has been carried out in accordance with the provisions of the basic act within the meaning of Article 49 of Regulation (EC, Euratom) N° 1605/2002 and the contract, and shall cover one of the following operations:

- (a) payment of the entire amount due;
- (b) payment of the amount due in any of the following ways:
  - pre-financing, which may be divided into a number of payments,
  - one or more interim payments;
  - payment of the balance of the amounts due.

Prefinancing shall count in full or in part against the interim payments.

The entire prefinancing and interim payments shall count against the payment of balances.

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

##### *Article 63*

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

#### *Section 5: Time limits for expenditure operations*

##### *Article 64*

The validation, authorisation and payment of expenditure must be carried out within the time limits specified in, and in accordance with the provisions of, the detailed rules for the implementation of Regulation (EC, Euratom) No 1605/2002.

## **CHAPTER 6: IT systems**

### *Article 65*

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

## **CHAPTER 7: Internal auditor**

### *Article 66*

1. The Agency shall have an internal auditing function which must be performed in compliance with the relevant international standards.
2. The Commission's internal auditor shall exercise the same powers with respect to the Agency as with respect to Commission departments.

### *Article 67*

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

He/she shall be responsible for:

- (a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them;
  - (b) assessing the suitability and quality of the internal control systems applicable to every budgetary implementation operation.
2. The internal auditor shall perform his/her duties with regard to all the Agency's activities and departments. He/she shall enjoy full and unlimited access to all information required to perform his/her duties.
3. The internal auditor shall report his/her findings and recommendations to the Commission and the Director-General. They shall ensure that action is taken on recommendations resulting from audits.
4. The internal auditor shall submit to the Agency an annual internal audit report setting out, inter alia, the number and type of internal audits conducted, the recommendations made and the action taken on these recommendations. The annual report shall also mention any systemic problems detected by the specialised panel set up under Article 66(4) of the Regulation (EC, Euratom) No 1605/2002.

5. The annual activity report drawn up by the Director-General and sent to the Commission for approval shall include a summary of the internal audits conducted by the internal auditor, the recommendations made and the action taken on these recommendations.

#### *Article 68*

The responsibility of the internal auditor for action taken in the performance of his/her duties shall be determined in accordance with Article 87 of Regulation (EC, Euratom) No 1605/2002.

### **TITLE V – PROCUREMENT**

#### *Article 69*

As regards procurement, the relevant provisions of Regulation (EC, Euratom) No 1605/2002 and the detailed rules for implementing that Regulation shall apply.

### **TITLE VI – PRESENTATION OF THE ACCOUNTS AND ACCOUNTING**

#### **CHAPTER 1: Presentation of the accounts**

#### *Article 70*

The annual accounts of the Agency shall comprise:

- (a) the financial statements of the Agency;
- (b) the reports on implementation of the Agency's budget.

The Agency's accounts shall be accompanied by a report on budgetary and financial management during the year.

#### *Article 71*

The accounts shall comply with the rules and shall be accurate and comprehensive and present a true and fair view:

- (a) as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities, and cash flow;
- (b) as regards reports on budgetary implementation, of revenue and expenditure operations.

## *Article 72*

The financial statements shall be drawn up in accordance with the generally accepted accounting principles specified in the detailed rules for implementing Regulation (EC, Euratom) No 1605/2002, namely:

- (a) going-concern basis;
- (b) prudence;
- (c) consistent accounting methods;
- (d) comparability of information;
- (e) materiality;
- (f) no netting;
- (g) reality over appearance;
- (h) accrual-based accounting.

## *Article 73*

1. In accordance with the principle of accrual-based accounting, the financial statements shall show the charges and income for the financial year, regardless of the date of payment or collection.

2. The value of assets and liabilities shall be determined in accordance with the valuation rules laid down by the accounting methods provided for in Article 132 of Regulation (EC, Euratom) No 1605/2002.

## *Article 74*

1. The financial statements shall be presented in euro and shall comprise:

- (a) the balance sheet and the economic outturn account, which represent the assets and liabilities and financial situation and the economic outturn at 31 December of the previous year; they shall be presented in accordance with the structure laid down by the Council Directive on the annual accounts of certain types of companies, but with account being taken of the specific nature of the Agency's activities;
- (b) the cash-flow table showing amounts collected and disbursed during the year and the final treasury position;
- (c) the statement of changes in capital presenting in detail the increases and decreases during the year in each item of the capital accounts.

2. The annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the Agency's activities.

#### *Article 75*

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

- (a) the budgetary outturn account, which sets out all budget operations for the year in terms of revenue and expenditure; the structure in which it is presented shall be the same as that of the budget itself;
- (b) the annex to the budgetary outturn account, which shall supplement and comment on the information given in that account.

#### *Article 76*

The accounting officer shall send the Agency's provisional accounts, together with the report on budgetary and financial management during the year referred to in Article 71 of this Regulation:

- 1. to the Commissioner's accounting officer by 1 March of the following year so that the Commission's accounting officer can consolidate the accounts as provided for in Article 128 of Regulation (EC, Euratom) No 1605/2002;
- 2. to the Court of Auditors by 31 March of the following year.

#### *Article 77*

- 1. The Court of Auditors shall make its observations on the Agency's provisional accounts by 15 June.
- 2. On receiving the Court of Auditors' observations on the Agency's provisional accounts, the Director-General shall draw up the final accounts of the Agency, under his/her own responsibility, and send them to the Agency's Advisory Committee, which shall give an opinion on these accounts.
- 3. The Director-General shall, by 1 July of the next financial year, forward the final accounts, together with the Advisory Committee's opinion, to the European Parliament, the Council and the Court of Auditors.
- 4. The final accounts shall be published on the Agency's website.
- 5. The Director-General shall send the Court of Auditors a reply to the observations made in its annual report by 30 September.

## **CHAPTER 2: Accounting**

### *Section 1: Common provisions*

#### *Article 78*

1. The Agency's accounting system is the system serving to organise the budgetary and financial information in such a way that figures can be input, filed and registered.
2. The accounts shall consist of general accounts and budgetary accounts. These accounts shall be kept in euro on the basis of the calendar year.
3. The figures in the general accounts and the budgetary accounts shall be adopted at the close of the budgetary year so that the accounts referred to in Chapter 1 can be drawn up.
4. Notwithstanding paragraphs 2 and 3, the authorising officer may keep analytical accounts.

#### *Article 79*

The accounting rules and methods and the chart of accounts to be applied by the Agency shall be adopted by the Commission's accounting officer in accordance with Article 133 of Regulation (EC, Euratom) No 1605/2002.

### *Section 2: General accounts*

#### *Article 80*

The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the Agency.

#### *Article 81*

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.
2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.
3. The accounting system shall be such as to leave a trail for all accounting entries.

#### *Article 82*

The Agency's accounting officer shall, after the close of the budgetary year and up to the date of presentation of the final accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts in compliance with the rules.

### *Section 3: Budgetary accounts*

#### *Article 83*

1. The budgetary accounts shall provide a detailed record of budgetary implementation.
2. For the purposes of applying paragraph 1, the budgetary accounts shall record all budgetary revenue and expenditure operations provided for in Title IV of this Regulation.

### **CHAPTER 3: Property inventories**

#### *Article 84*

1. The Agency shall keep inventories showing the quantity and value of all the Community's tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

The Agency shall check that entries in the inventory correspond to the actual situation.

2. The sale of movable property shall be suitably advertised.

## **TITLE VII – EXTERNAL AUDIT AND DISCHARGE**

### **CHAPTER 1: External audit**

#### *Article 85*

The Court of Auditors shall scrutinise the Agency's accounts in accordance with Article 160c of the Euratom Treaty.

#### *Article 86*

1. The Agency shall send the Court of Auditors the budget, as finally adopted. It shall inform the Court of Auditors, as soon as possible, of all decisions and acts adopted pursuant to Article 24.
2. The Court of Auditors shall be informed of the appointment of authorising officers and accounting officers and of delegation decisions under Articles 31 and 40.

#### *Article 87*

The scrutiny carried out by the Court of Auditors shall be governed by Articles 139 to 144 of Regulation (EC, Euratom) No 1605/2002.

## CHAPTER 2: Discharge

### *Article 88*

1. The European Parliament, upon a recommendation from the Council, shall, before 30 April of year n+2, give a discharge to the Director-General of the Agency in respect of the implementation of the budget for the year n.
2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Director-General of the reasons for the postponement.
3. If the European Parliament postpones the decision giving a discharge, the Director-General shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

### *Article 89*

1. The discharge decision shall cover the accounts of all the Agency's revenue and expenditure, the resulting balance and the assets and liabilities of the Agency shown in the balance sheet.
2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the Agency's accounts and financial statements. It shall also examine the annual report made by the Court of Auditors, together with the replies of the Director-General of the Agency, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.
3. The Director-General shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 146(3) of Regulation (EC, Euratom) No 1605/2002.

### *Article 90*

1. The Director-General shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.
2. At the request of the European Parliament or the Council, the Director-General shall report on the measures taken in the light of these observations and comments. He/she shall send a copy thereof to the Commission and the Court of Auditors.



## TITLE VIII - TRANSITIONAL AND FINAL PROVISIONS

### *Article 91*

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

### *Article 92*

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

Done at Brussels, [...]

*For the Council*  
*The President*