



FUSION FOR ENERGY

The European Joint Undertaking for ITER and the Development of Fusion Energy

THE GOVERNING BOARD

DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY ADOPTING THE IMPLEMENTING RULES OF THE FINANCIAL REGULATION

THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY,

Having regard to the Council Decision (EURATOM) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Joint Undertaking") and conferring advantages upon it¹ (hereinafter "the Constituent instrument") and in particular Article 5 thereof,

Having regard to the Statutes annexed to the Constituent instrument (hereinafter "the Statutes") and in particular Article 6(3)(h), Article 13, and Annex III thereof,

Having regard to the Council Regulation (EC, EURATOM) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities² (hereinafter "the general Financial Regulation"),

Having regard to 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 Communities³,

Having regard to the Financial Regulation of the Joint Undertaking, adopted by its Governing Board on 22 October 2007 (hereinafter "the Financial Regulation")⁴;

Having regard to the unanimous recommendation of the Executive Committee of the Joint Undertaking⁵;

Whereas:

- (1) In accordance with Article 136 of the Financial Regulation it is necessary that the Governing Board adopts the detailed rules for implementing the Financial Regulation,

HAS ADOPTED THIS DECISION:

¹ OJ L 90, 30.3.2007, p. 58.
² OJ L 248, 15.09.2002, p.1. Regulation as last amended by Regulation 1995/2006/EC/Euratom (OJ L 390, 30.12.2006)
³ OJ L 357, 31.12.2002, p.72
⁴ F4E(07)-GB03-11 Adopted 22/10/2007
⁵ F4E(07)-EC02-04.1 Adopted 18/10/2007

TITLE I

SUBJECT MATTER

Article 1

Scope

(Article 1 of the Financial Regulation)

This Decision (or "these Rules") sets out the detailed rules for implementing the provisions of the Financial Regulation.

TITLE II

BUDGETARY PRINCIPLES

CHAPTER 1

Principle of annuality

(Chapter 2 of Title II of the Financial Regulation)

Article 2

Appropriation for the financial year *(Article 9(3) of the Financial Regulation)*

The commitment appropriations and payment appropriations entered in the budget for a financial year and which have to be used during that year shall consist of the appropriations authorised for that financial year:

- (a) appropriations provided in the budget, including by amending budgets;
- (b) appropriations carried over;
- (c) appropriations provided following the receipt of revenue assigned during the financial year or during previous financial years and not used.

Article 3

Carry over of appropriations *(Article 10 of the Financial Regulation)*

1. The commitment appropriations referred to in Article 10(3) of the Financial Regulation may be carried over only if the commitments could not be made before 31 December of the financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to surmise that the commitment will be made by no later than 31 March of the following year.
2. The preparatory stages referred to in Article 10(3) of the Financial Regulation, which should be completed by 31 December of the financial year in order to allow a carryover to the following year, are in particular:
 - (a) for global commitments within the meaning of Article 65(4) of the Financial Regulation, the adoption of a financing decision or the closing by that date of the consultation of the departments concerned within the Joint Undertaking for the adoption of the decision;
 - (b) for individual commitments within the meaning of Article 65(3) of the Financial Regulation, the advanced stage of preparation of the contracts or

agreements. This advanced stage of preparation of the contracts or agreements shall mean the completion of the selection of potential contractors or beneficiaries.

3. Appropriations carried over in accordance with Article 10(5) of the Financial Regulation may be used until 31 December of the following financial year.
4. The accounts shall identify appropriations carried over in this way.
5. The appropriations for staff expenditure referred to in Article 10(2) of the Financial Regulation are those for remuneration and allowances for the staff of the Joint Undertaking.

Article 4

Provisional twelfths *(Article 14 of the Financial Regulation)*

The total allotted appropriations of the previous financial year, as specified in Article 14(2) of the Financial Regulation, shall be understood to refer to the appropriations for the financial year referred to in Article 2 of this Decision, after adjustment for the transfers made during that financial year.

CHAPTER 2 **Principle of equilibrium**

(Chapter 3 of Title II of the Financial Regulation)

Article 5

Loans *(Article 15(3) of the Financial Regulation)*

1. Raising or granting loans shall be subject to the prior authorisation of the Governing Board, which shall take a decision within one month of the date on which the justified request is submitted to it by the Director. If the Governing Board fails to take a decision within that period, the raising or granting of loans shall be deemed accepted.
2. Raising or granting loans shall be materialized by a written agreement detailing the conditions for reimbursement of the capital and interests, if any.
3. For raising loans, the Joint Undertaking may contract directly, without having recourse to a public procurement procedure, with the Community institutions or financial bodies, such as the European Investment Bank.
4. Without prejudice to paragraph 3, the accounting officer shall negotiate the operating terms for raising loans with financial institutions, in accordance with the principles of sound financial management, efficiency and competitive tendering.

5. Raising loans shall only generate payment appropriations.

CHAPTER 3

Principle of unit of account

(Chapter 4 of Title II of the Financial Regulation)

Article 6

Rate of conversion between the euro and other currencies

(Article 17 of the Financial Regulation)

1. Conversion between the euro and another currency shall be made using the daily euro rate published in the C series of the Official Journal of the European Union.
2. If no daily rate is published in the Official Journal of the European Union for the currency in question, the Joint Undertaking shall use the accounting rate referred to in paragraph 3.
3. For the purpose of the account provided for Article 119 to 125 of the Financial Regulation and subject to Article 190 of these Rules, conversion between the euro and another currency shall be made using the monthly accounting rate of the euro.
4. That accounting rate referred to in paragraph 3 shall be established by the Joint Undertaking by means of any source of information it regards reliable, on the basis of the rate on the penultimate working day of the month preceding that for which the rate is established.

CHAPTER 4

Principle of universality

(Chapter 5 of Title II of the Financial Regulation)

Article 7

Structure to accommodate assigned revenue and provision of corresponding appropriations

(Article 19 of the Financial Regulation)

1. The structure to accommodate assigned revenue in the budget shall comprise:
 - (a) in the statement of revenue, a budget item to receive the revenue;
 - (b) in the statement of expenditure, the budget remarks, including general remarks, shall show which items may receive the appropriations corresponding to the assigned revenue which are made available.

In the case referred to in point (a) of the first subparagraph, if the amount of such revenue is foreseeable, it shall be entered on the item. If it is not foreseeable, a token entry (p.m.) shall be made and the estimated revenue shall be shown for information in the remarks.

2. The appropriations corresponding to assigned revenue may be made available, both as commitment appropriations and as payment appropriations, when the revenue has been received by the Joint Undertaking.
3. The appropriations shall be made available automatically.

Article 8

Charges entailed by acceptance of donation to the Joint Undertaking
(Article 20 of the Financial Regulation)

Acceptance of donations of a value of EUR 50 000 or more which involve a financial charge, including follow-up costs, exceeding 10 % of the value of the donation made, shall be subject to the authorisation of the Governing Board, which shall act on the matter within two months of the date of receipt of the request from the Director. If no objection has been made within that period, the Director shall take a final decision in respect of acceptance.

CHAPTER 5
Principle of specification

(Chapter 6 of Title II of the Financial Regulation)

Article 9

Rules concerning the calculation of limits on transfers
(Article 23 of the Financial Regulation)

1. The percentages referred to in Article 23(1) of the Financial Regulation shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget, including amending budgets.
2. For the purpose of the limit referred to in Article 23(1) of the Financial Regulation, the amount to be taken into consideration shall be the sum of the transfers to be made on the item from which transfers are being made, after adjustment for earlier transfers made.

The amount corresponding to the transfers which can be carried out autonomously by the Director without a decision of the Governing Board shall not be taken into consideration.

CHAPTER 6
Principle of transparency

(Chapter 8 of Title II of the Financial Regulation)

Article 10

Provisional publication of a summary of the budget
(Article 27 of the Financial Regulation)

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(Article 27 of the Financial Regulation)

Pending official publication, a summary of the budget figures shall be published on the official internet website of the Joint Undertaking, within 60 days following the date on which the budget becomes definitive.

TITLE III ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1 Establishment of the budget

Article 11

Working documents in support of the estimate of the revenue and expenditure (Article 28 of the Financial Regulation)

In support of the draft budget, the following working documents shall be provided:

- (a) in respect of staff of the Joint Undertaking, a statement of the policy for permanent and temporary staff;
- (b) a detailed statement of borrowing and lending policy.

Article 12

Draft amending budget (Article 29 of the Financial Regulation)

Draft amending budgets shall be accompanied by statements of grounds and the information of the budget for the preceding and current financial years available at the time of their establishment.

CHAPTER 2 Structure and presentation of the budget

Article 13

Nomenclature for the statement of expenditure (Article 32 of the Financial Regulation)

Where the statement of expenditure of a section of the budget is presented in a nomenclature based on a classification by purpose, administrative appropriations shall be divided into separate headings by title according to the following classification:

- (a) expenditure on staff divided into separate headings by chapter :

- (i) expenditure on staff authorised in the establishment plans; there shall be an amount of appropriations and a number of employment posts corresponding to this expenditure;
 - (ii) expenditure on external staff and other management expenditure including representation expenses and meeting expenses;
- (b) expenditure on buildings and other related expenditure, including cleaning and maintenance, rental and hiring, telecommunications, water, gas and electricity.

Article 14

Actual expenditure in the last financial year for which the accounts have been closed
(Article 33 of the Financial Regulation)

For the purposes of establishing the budget of Article 33(2) of the Financial Regulation, actual expenditure in the last financial year for which the accounts have been closed shall be determined as follows:

- (a) in commitments: commitments entered in the accounts during the financial year against appropriations for that financial year as defined in Article 33(2)(a);
- (b) in payments: payment made during the financial year, that is to say, for which a payment order has been sent to the bank, against appropriations for that financial year as defined in Article 33(2)(a).

Article 15

Budget remarks
(Article 33 of the Financial Regulation)

The budget remarks shall include:

- (a) the references to the Constituent instrument;
- (b) all appropriate explanations concerning the nature and the purpose of the appropriations.

TITLE IV IMPLEMENTATION OF THE BUDGET

CHAPTER 1 General provisions

Article 16

Delegation by the Director of his powers of authorising officer *(Article 36 of the Financial Regulation)*

1. The Director as appointing authority is the only responsible for delegating the powers of authorising officer.
2. As regards to commitment transactions type, only heads of department may receive a delegation for acting as authorising officer of the Joint Undertaking.
3. As regards to other financial transactions, except the ones referred in paragraph 2, all officials and other servants (hereinafter "staff") covered by the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities⁶ (hereinafter "the Staff Regulations") may receive a delegation for acting as authorising officer of the Joint Undertaking.
4. In order to prevent any conflict of interests, staff assisting authorising officers by delegation or sub-delegation shall be subject to the obligations referred to in Article 37 of the Financial Regulation and shall sign a declaration on liability and conflicts of interests before they can receive a delegation.
5. Authorising officers by delegation may decide to install among themselves special procedures to ensure best practise in coordination and control of the budget management. If doing so, they shall all notify the Director of the detailed description of the procedures and actors involved.

Article 17

Definition of conflicts of interest *(Article 37 of the Financial Regulation)*

Acts likely to be vitiated by a conflict of interests within the meaning of Article 37(2) of the Financial Regulation may, *inter alia*, take one of the following forms:

- (a) granting oneself or others unjustified direct or indirect advantages;

⁶ OJ L 56, 4.3.1968, p.1. Regulation as last amended by Regulation (EC, Euratom) No 1895/2006 (OJ L 397, 30.12.2006, p.6)

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

CHAPTER 2

Financial actors

SECTION 1

PRINCIPLE OF SEGREGATION OF DUTIES

Article 18

Rights and obligations of the financial actors *(Article 40 of the Financial Regulation)*

The Joint Undertaking shall provide each financial actor with the resources required to perform his/her duties and a charter describing in detail his/her tasks, rights and obligations.

SECTION 2

AUTHORISING OFFICER

Article 19

Assistance for authorising officers by delegations and subdelegation *(Articles 37 and 41 of the Financial Regulation)*

The authorising officer responsible may be assisted in his duties by staff entrusted, under his responsibility, with certain operations required for the implementation of the budget and production of the financial and management information. In order to prevent any conflict of interests, staff assisting authorising officers by delegation or sub-delegation shall be subject to the obligations referred to in Article 37 of the Financial Regulation.

Article 20

Keeping of supporting documents by authorising officers *(Article 41(6) of the Financial Regulation)*

The management systems and procedures concerning the keeping of original supporting documents shall provide for:

- (a) such documents to be numbered;
- (b) such documents to be dated;

- (c) registers, which may be computerised, to be kept identifying the exact location of such documents;
- (d) such documents to be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate.

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

Article 21

Ex post verification and annual activity report *(Articles 41(5) and 42(4) of the Financial Regulation)*

The result of the *ex post* verifications shall, with other matters, be set out in the annual activity report referred to in Article 43 of the Financial Regulation.

Article 22

Code of professional standards *(Article 42(6) of the Financial Regulation)*

1. The staff designated by the authorising officer responsible to verify financial operations shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.
2. The Joint Undertaking shall draw up a code of professional standards which determine, on matters of internal control:
 - (a) the level of technical and financial competence required of the staff referred to in paragraph 1;
 - (b) the obligation for such staff to undergo continuing training;
 - (c) the mission, role and tasks allocated to them;
 - (d) the rules of conduct, in particular the standards of ethics and integrity that they must comply with and the rights they enjoy.
3. The Joint Undertaking shall put in place the appropriate structures to distribute to authorising departments and update periodically appropriate information concerning the control standards and the methods and techniques available for that purpose.

Article 23

Failure of the Director to take action
(Article 44 of the Financial Regulation)

Failure by the Director to take action, as referred to in Article 44 of the Financial Regulation, shall mean the absence of any reply within a reasonable time given the circumstances of the case and, at all events, within a month at most.

SECTION 3
ACCOUNTING OFFICER

Article 24

Termination of duties of the accounting officer
(Article 46 of the Financial Regulation)

1. A trial balance shall be drawn up without delay in the event of termination of the duties of the accounting officer.
2. The trial balance accompanied by a handing over report shall be transmitted by the accounting officer who is terminating his duties or, if it is not possible, by an official in his department to the new accounting officer.
3. The new accounting officer shall sign the trial balance in acceptance within one month from the date of transmission and he may make reservations.
4. The handing over report shall also contain the result of the trial balance and any reservations made.

Article 25

Opinion on accounting and inventory systems
(Article 46 of the Financial Regulation)

Where financial management systems set up by the authorising officer provide data for the Joint Undertaking's accounts or are used to substantiate data in those accounts, the accounting officer shall give his agreement to the introduction or modification of such systems.

The accounting officer shall also be consulted regarding the introduction or modification by the authorising officers responsible of inventory systems and systems for valuing assets and liabilities.

Article 26

Treasury management
(Article 46 of the Financial Regulation)

1. The accounting officer shall ensure that the Joint Undertaking has at its disposal sufficient funds to cover the cash requirements arising from budgetary implementation.
2. For the purposes of paragraph 1, the accounting officer shall set up cash management systems enabling him to draw up cash-flow forecasts.

Article 27

Management of bank accounts
(Article 46 of the Financial Regulation)

1. For the requirements of treasury management, the accounting officer may open accounts in the name of the Joint Undertaking with financial institutions or national central banks or cause such accounts to be opened. In duly warranted circumstances, he/she may open accounts in currencies other than the euro.
2. The accounting officer shall negotiate the operating terms for accounts with financial institutions, in accordance with the principles of sound financial management, efficiency and competitive tendering.
3. At least every five years the accounting officer shall re-launch competitive tendering between financial institutions with which accounts have been opened.
4. The accounting officer shall ensure strict compliance with the operating terms for accounts opened with financial institutions.

Article 28

Signatures on accounts
(Article 46 of the Financial Regulation)

The terms governing the opening, operation and use of accounts shall provide, depending on internal control requirements, that cheques, bank credit transfer orders or any other banking operations shall be signed by one or more duly authorised members of staff.

To that end, the accounting officer shall communicate to all financial institutions with which the Joint Undertaking has opened accounts the names and specimen signatures of the authorised members of staff.

Article 29

Management of account balances
(Article 46 of the Financial Regulation)

1. The accounting officer shall ensure that the balance on the bank accounts provided for in Article 27 does not deviate significantly from the cash-flow forecasts referred to in Article 26 (2) and in any event:

- (a) that none of those accounts is in debit;
 - (b) that the balance of accounts held in other currencies is periodically converted into euro.
2. The accounting officer may not maintain balances in foreign currency accounts which might cause excessive losses to the Joint Undertaking as a result of exchange rate fluctuations.

Article 30

Transfers and conversion operations
(Article 46 of the Financial Regulation)

Without prejudice to Article 37, the accounting officer shall conduct transfers between accounts opened in the name of the Joint Undertaking with financial institutions, and conduct currency conversion operations.

Article 31

Methods of payment
(Article 46 of the Financial Regulation)

Payments shall be made by bank credit transfer or by cheque.

Article 32

Legal Entities Files
(Article 46 of the Financial Regulation)

1. The accounting officer may make payments by bank credit transfer only if the payee's bank account details and information confirming the payee's identity, or any modification, have first been entered by the Joint Undertaking in a common file set up by the Commission.
2. Any such entry in the file of the payee's legal and bank account details or modification of those details shall be based on a supporting document, the form of which shall be defined by the Commission's accounting officer.
3. With a view to payment by bank credit transfer, authorising officer may enter into a commitment towards a third party on behalf of the Joint Undertaking only if that third party has provided the documentation required for its entry in the file.
4. The authorising officer shall check that these bank account details are valid before a payment is made.

Article 33

Keeping of supporting documents by the accounting officer
(Article 46 of the Financial Regulation)

Supporting documents for the accounting system and for the preparation of the accounts referred to in Article 112 of the Financial Regulation shall be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate.

However, documents relating to operations not definitively closed shall be kept for longer, that is to say, until the end of the year following that in which the operations are closed.

The authorising officer shall liaise with the accounting officer before deciding in which department the supporting documents are to be kept.

SECTION 4
IMPREST ADMINISTRATOR

Article 34

Conditions of use of imprest account
(Article 47 of the Financial Regulation)

1. Where, owing to the limited amounts involved, it is materially impossible or inefficient to carry out payment operations by budgetary procedures, imprest accounts may be set up for the payment of such expenditure.
2. The imprest administrator may provisionally validate and pay expenditure, on the instructions from the authorising officer responsible.
3. The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer, on a duly substantiated proposal from the authorising officer responsible. That decision shall set out the respective responsibilities and obligations of the imprest administrator and the authorising officer.

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

Article 35

Conditions governing creation and payment
(Article 47 of the Financial Regulation)

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

- (a) the maximum amount which may be initially provided as an imprest, and its purpose;
 - (b) whether a bank account or post office giro account is to be opened in the name of the Joint Undertaking;
 - (c) the nature and maximum amount of each item of expenditure which may be paid by the imprest administrator to third parties or collected from them;
 - (d)st the frequency with which supporting documents must be produced, the procedure for producing them and the arrangements for transmitting them to the authorising officer for settlement;
 - (e) the procedure to be followed if the imprest has to be replenished;
 - (f) that imprest transactions will be settled by the authorising officer by no later than the end of the following month, so that the accounting balance and the bank balance can be reconciled;
 - (g) the period of validity of the authorisation given to the imprest administrator by the accounting officer;
 - (h) the identity of the appointed imprest administrator.
2. In proposals for decisions setting up imprest accounts the authorising officer responsible shall ensure that:
- (a) priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;
 - (b) imprest accounts are used only in substantiated cases.
- The maximum amount which may be paid by the imprest administration where it is materially impossible or inefficient to carry out payment operations by budgetary procedures shall not exceed EUR 60 000 for each item of expenditure.
3. The imprest administrator may make payments to third parties on the basis and within the limits of:
- (a) prior budget and legal commitments signed by the authorising officer responsible;
 - (b) the positive residual balance of the imprest account, in cash or at the bank.
4. Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 70 of the Financial Regulation, cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.
5. Payments made shall be followed by formal final validation decisions and/or payment orders signed by the authorising officer responsible.

Article 36

Choice of imprest administrators
(Article 47 of the Financial Regulation)

Imprest administrators shall be chosen from persons covered by the Staff Regulations and shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.

Article 37

Endowment of imprest accounts
(Article 47 of the Financial Regulation)

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

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

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

The imprest shall be settled, in terms of expenditure or miscellaneous or assigned revenue, in accordance with the decision setting up the imprest account referred to in Article 35 and the provisions of the Financial Regulation. The amounts in question shall be deducted by the authorising officer when he subsequently replenishes the imprest accounts concerned.

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

Article 38

Checks by authorising officers and accounting officers
(Article 47 of the Financial Regulation)

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

month together with supporting documents by the imprest administrator to the authorising officer responsible for settlement of the imprest operations.

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

Article 39

Procurement procedures

(Article 47 of the Financial Regulation)

Payments made from imprest accounts may, within the limits of EUR 500 for administrative expenditure and EUR 5 000 for operational expenditure, consist simply in the payment of costs against invoices, without prior acceptance of a tender.

CHAPTER 3

Liability of the financial actors

SECTION 1

GENERAL RULES

Article 40

Bodies responsible in matters of fraud

Article 44 and 49(2) of the Financial Regulation)

The authorities and bodies referred to in Articles 44 and 49(2) of the Financial Regulation shall be understood to mean the bodies designated by the Staff Regulations and the decisions of the Community institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Communities' interests.

SECTION 2
RULES APPLICABLE TO THE AUTHORISING OFFICER AND AUTHORISING OFFICERS BY DELEGATION AND SUBDELEGATION

Article 41

Confirmation of instructions
(Article 50(3) of the Financial Regulation)

1. An authorising officer by delegation or sub-delegation who receives a binding instruction which he considers to be irregular or contrary to the principle of sound financial management, in particular because the instruction cannot be carried out with the resources allocated to him, shall, in writing, so inform the authority from which he received the delegation or sub-delegation. If the instruction is confirmed in writing and that confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer by delegation or sub-delegation has challenged, the authorising officer may not be held liable; he shall carry out the instruction, unless it is manifestly illegal or constitutes a breach of the relevant safety standards.
2. Paragraph 1 shall also apply in cases where an authorising officer learns, in the course of acting on a binding instruction, that the circumstances of the case may give rise to an irregular situation.
3. Any instructions confirmed in the circumstances described in Article 50(3) of the Financial Regulation shall be recorded by the authorising officer by delegation responsible and mentioned in his annual activity report.

Article 42

Financial irregularities
(Article 50(5) of the Financial Regulation)

Without prejudice to the powers of the European Anti-Fraud Office (OLAF), the specialised financial irregularities panel referred to in Article 50(5) of the Financial Regulation shall be competent in respect of any infringement of a provision of the Financial Regulation or of a provision relating to financial management or the checking of operations resulting from an act or omission of a member of staff.

Article 43

Financial irregularities panel
(Article 50(5) of the Financial Regulation)

Cases of financial irregularities as referred to in Article 42 shall be referred to the Panel by the Director for an opinion referred to in the second subparagraph of Article 50(5) of the Financial Regulation.

An authorising officer by delegation may refer a matter to the panel if he considers that a financial irregularity has occurred. The Panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 42 have occurred, how serious they are and what their consequences might be. Where the Panel's analysis suggests that the case referred to it is a matter for OLAF, it shall transmit the file to the Director without delay and shall inform OLAF at once.

When the panel is directly informed of a matter by a member of staff in accordance with Article 44 of the Financial Regulation, it shall transmit the file to the Director and shall inform the member of staff accordingly. The Director may request the panel's opinion on the case.

CHAPTER 4

Revenue operations

SECTION 1

ESTIMATE OF AMOUNTS RECEIVABLE

(Section 2 of Chapter 4, Title IV of the Financial Regulation)

Article 44

Estimate of amounts receivable

(Article 55 of the Financial Regulation)

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

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

- (a) the revenue is booked to the correct budget item;
 - (b) the estimate is in order and complies with the provisions applicable and the principle of sound financial management.
2. An estimate of amounts receivable shall not have the effect of making commitment appropriations available.

SECTION 2

ESTABLISHMENT OF AMOUNTS RECEIVABLE

(Section 3 of Chapter 4, Title IV of the Financial Regulation)

Article 45

Procedure
(Article 56 of the Financial Regulation)

1. The establishment by the authorising officer responsible of an amount receivable shall constitute recognition of the right of the Joint Undertaking in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.
2. The recovery order shall be the operation by which the authorising officer responsible instructs the accounting officer to recover the amount established.
3. The debit note shall be to inform the debtor that:
 - (a) the Joint Undertaking has established the amount receivable;
 - (b) if payment of the debt is made before the deadline, no default interest will be due;
 - (c) failing payment by the deadline referred to in point (b) the debt shall bear, in accordance with the relevant contract or agreement, interest at the rate referred to in Article 48;
 - (d) failing payment by the deadline referred to in point (b) the Joint Undertaking shall effect recovery by either by offsetting or by enforcement of any guarantee lodged in advance;
 - (e) in accordance with the relevant contract or agreement, the accounting officer may effect recovery by offsetting before the deadline referred to in point (b), where it is necessary to protect the Joint Undertaking's financial interests when he has justified grounds to believe that the amount due to the Joint Undertaking would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting;
 - (f) if, after all those steps have been taken, the amount has not been recovered in full, the Joint Undertaking shall effect recovery by a legal action.

The authorising officer shall send the debit note to the debtor with a copy to the accounting officer.

Article 46

Establishment of amounts receivable
(Article 56 of the Financial Regulation)

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

- (a) the receivable is certain and not subject to any condition;
- (b) the receivable is of fixed amount, expressed precisely in cash terms;
- (c) the receivable is due and is not subject to any payment time;

- (d) the particulars of the debtor are correct;
- (e) the amount to be recovered is booked to the correct budget item;
- (f) the supporting documents are in order; and
- (g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) of Article 50 (1).

Article 47

Supporting documents for the establishment of amounts receivable
(Article 56 of the Financial Regulation)

1. The establishment of an amount receivable shall be based on supporting documents certifying the Joint Undertaking's entitlement.
2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or, on his own responsibility, shall ascertain that this has been done.
3. The supporting documents shall be kept by the authorising officer in accordance with Articles 20..

Article 48

Default interest
(Article 56(3) of the Financial Regulation)

1. In accordance with the relevant contract or agreement, any amount receivable not repaid on the deadline referred to in Article 45(3)(b) shall bear interest in accordance with paragraphs 2 and 3.
2. The interest rate for amounts receivable not repaid on the deadline referred to in Article 45(3)(b) shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the deadline falls, increased by:
 - (a) seven percentage points where the obligating event is a public supply and service contract referred to in Title V of the Financial Regulation of the Joint Undertaking and Title V of the general Financial Regulation when applicable;
 - (b) three and a half percentage points in all other cases.
3. Interest shall be calculated from the calendar day following the deadline referred to in Article 45(3)(b) and specified in the debit note up to the calendar day on which the debt is repaid in full.
4. Any partial payments shall first cover the interest determined in accordance with paragraphs 2 and 3.

SECTION 3
AUTHORISATION OF RECOVERY

(Section 4 of Chapter 4, Title IV of the Financial Regulation)

Article 49

Establishment of the recovery order
(Article 57 of the Financial Regulation)

1. The recovery order shall specify:
 - (a) the financial year to which the revenue is to be booked;
 - (b) the references of the act or legal commitment which is the source of the debt and gives rise to the entitlement to recovery;
 - (c) the budget article and any other subdivision that may apply, including, where appropriate, the references of the corresponding budget commitment;
 - (d) the amount to be recovered, expressed in euro;
 - (e) the name and address of the debtor;
 - (f) the deadline referred to in Article 45(3)(b);
 - (g) the possible method of recovery, including in particular recovery by offsetting or enforcement of any guarantee lodged.
2. The recovery order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.
3. The accounting officer shall keep a list of amounts due to be recovered. The Joint Undertaking entitlements shall be grouped in the list according to the date of issue of the recovery order. The accounting officer shall transfer this list to the accounting officer of the Commission.

SECTION 4
RECOVERY

(Section 5 of Chapter 4, Title IV of the Financial Regulation)

Article 50

Waiving of recovery of an established amount receivable
(Article 58 of the Financial Regulation)

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

- (a) where the foreseeable cost of recovery would exceed the amount to be recovered and the waiver would not harm the Joint Undertaking's image;
 - (b) where the amount receivable cannot be recovered in view of its age or the insolvency of the debtor;
 - (c) where recovery is inconsistent with the principle of proportionality.
2. The Director shall send to the Governing Board each year a report on the waivers referred to in paragraph 1 involving EUR 100 000 or more.

Article 51

Recovery by offsetting
(Article 60 of the Financial Regulation)

1. Where the debtor has a claim on the Joint Undertaking that is certain, of a fixed amount and due, relating to a sum established by a payment order, the accounting officer shall, following the deadline referred to in Article 45(3)(b) recover established amounts receivable by offsetting.

In exceptional circumstances, in accordance with the relevant contract or agreement, where it is necessary to safeguard the financial interests of the Joint Undertaking, when the accounting officer has justified grounds to believe that the amount due to the Joint Undertaking would be lost, the accounting officer shall recover by offsetting before the deadline referred to in Article 45(3)(b).

2. Before proceeding with any recovery in accordance with paragraph 1, the accounting officer shall consult the authorising officer responsible and inform the debtors concerned.
3. The offsetting referred to in paragraph 1 shall have the same effect as a payment and discharge the Joint Undertaking for the amount of the debt and, where appropriate of the interest due.

Article 52

Recovery procedure failing voluntary payment
(Articles 60 of the Financial Regulation)

1. Without prejudice to Article 51, if the full amount has not been recovered by the deadline referred to in Article 45(3)(b) and specified in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.
2. Without prejudice to Article 51, where the recovery method referred to in paragraph 1 cannot be used and the debtor has failed to pay in response to the letter of formal notice sent by the accounting officer, the accounting officer shall enforce a recovery by legal action.

CHAPTER 5

Expenditure operations

Article 53

Financing decision *(Article 64 of the Financial Regulation)*

1. The financing decision shall set out the essential elements of an action involving operational expenditure from the budget.
2. For grants, the decision adopting the annual work programme referred to in Article 100 of the Financial Regulation shall be considered to be the financing decision within the meaning of Article 64 of the Financial Regulation, provided that it constitutes a sufficiently detailed framework.

As regards procurement, where the implementation of the corresponding appropriations is provided for by an annual work programme constituting a sufficiently detailed framework, this work programme shall also be considered to be the financing decision for the procurement contracts involved.

3. In order to be considered a sufficiently detailed framework, the work programme adopted by the Joint Undertaking shall set out the following:
 - (a) for grants:
 - (i) the reference to the Constituent instrument and the budgetary item;
 - (ii) the priorities of the year, the objectives to be fulfilled and the foreseen results with the appropriations authorised for the financial year;
 - (iii) the essential selection and award criteria to be used to select the proposals;
 - (iv) the maximum possible rate of co-financing;
 - (v) the timetable and the indicative amount of the calls for proposals.
 - (b) for procurement:
 - (i) the global budgetary envelope reserved for the procurements during the year;
 - (ii) the indicative number and type of contracts envisaged and if possible their subject in generic terms;
 - (iii) the indicative timeframe for launching the procurement procedures.

If the annual work programme does not provide this detailed framework for one or more actions, it shall be modified accordingly or a specific financing decision shall

be adopted by the Governing Board containing the information referred to in points (a) and (b) of the first subparagraph for the actions concerned.

4. Any substantial change in a financing decision already adopted shall follow the same procedure as the initial decision.

SECTION 1 COMMITMENT OF EXPENDITURE

Article 54

Global commitments *(Article 65(4) of the Financial Regulation)*

1. The global budget commitment shall be implemented by the conclusion of one or more legal commitments.
2. A global commitment shall be made on the basis of a financing decision.

The global commitment shall be made at the latest before the decision on the selection of beneficiaries or contractors is taken and, where implementation of the appropriations concerned involves the adoption of an annual work programme within the meaning of Article 100 of the Financial Regulation, at the earliest after that work programme has been adopted.

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

Article 55

Administrative expenditure covered by provisional commitments *(Article 65(5) of the Financial Regulation)*

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

- (a) expenditure on staff, or other human resources and pensions and on the remuneration of experts;
- (b) expenditure relating to the Governing Board and committees of the Joint Undertaking including their members;
- (c) training expenditure;
- (d) expenditure on competitions, selection and recruitment;
- (e) mission expenses;
- (f) representation expenses;

- (g) meeting expenses;
- (h) freelance interpreters and/or translators;
- (i) exchanges of officials;
- (j) recurring rentals of movable and immovable property;
- (k) miscellaneous insurance;
- (l) cleaning and maintenance;
- (m) welfare expenditure;
- (n) the use of telecommunications services;
- (o) financial charges;
- (p) legal expenses;
- (q) damages, including interest;
- (r) work equipment;
- (s) water, gas and electricity;
- (t) periodical publications on paper or in electronic versions;
- (u) expenditure arising from agreements with the Commission, the Host State, the interinstitutional offices and the translation centre.

Article 56

Single signature
(Article 65 of the Financial Regulation)

The budget commitment and the corresponding legal commitment shall be adopted by the same authorising officer as a single signatory, save in the following cases alone:

- (a) where the commitments are provisional;
- (b) where the Joint Undertaking's decision constitutes the legal commitment;
- (d) where the global commitment is implemented by a number of legal commitments, for which different authorising officers are responsible.

If the authorising officer responsible who signed the budget commitment is not available and remains unavailable for a period incompatible with the time-limits for concluding the legal commitment, that legal commitment shall be concluded by the person designated under the delegation provided that that person has the status of delegated authorising officer in accordance with Article 36 of the Financial Regulation.

*Article 57****Registration of individual legal commitments***
(Article 66 of the Financial Regulation)

In the case of a global budget commitment followed by several individual legal commitments, the authorising officer responsible shall register in the central accounts the amounts of these successive individual legal commitments. Without prejudice to the annual instalments referred to Article 65(5) of the Financial Regulation, the authorising officer responsible shall check that the aggregate amount does not exceed the amount of the global commitment covering them.

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

The authorising officer responsible shall register the amounts in the accounts before signing the corresponding individual legal commitment.

SECTION 2
VALIDATION OF EXPENDITURE*Article 58****Validation and "passing for payment"***
(Article 69 of the Financial Regulation)

1. Validation of any expenditure shall be based on supporting documents within the meaning of Article 65 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 authorising officer responsible shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done, before taking the decision validating the expenditure.
3. The validation decision shall be expressed by the signing of a «passed for payment» voucher by the authorising officer responsible or by an official or other servant technically competent, empowered by formal decision of the authorising officer. Such empowerment decisions shall be kept for future reference.

*Article 59****Passing for payment of procurement contracts***
(Article 69 of the Financial Regulation)

For payments corresponding to procurement contracts, the endorsement «passed for payment» shall certify that:

- (a) the Joint Undertaking has received and formally registered an invoice drawn up by the contractor;

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

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

Article 60

Passing for payment of grants
(Article 69 of the Financial Regulation)

For payments corresponding to grants, the endorsement “passed for payment” shall certify that:

- (a) the Joint Undertaking has received and formally registered a payment request drawn up by the beneficiary;
- (b) the payment request itself, or an internal document accompanying the payment request received, has been endorsed “certified correct” and signed by an official or other servant technically competent, empowered by the authorising officer responsible; by such endorsement, he certifies that the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement;
- (c) all aspects of the payment request have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

Article 61

Passing for payment of staff expenditure
(Article 69 of the Financial Regulation)

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

- (a) in respect of monthly salary:
 - (i) the complete list of staff, giving all the components of remuneration;

- (ii) a form (personal information sheet) based on decisions taken in each individual case, showing, whenever such change occurs, any change in any component of remuneration;
- (iii) in the case of recruitments or appointments, a certified true copy of the recruitment or appointment decision which accompanies the validation of the first salary payment;
- (b) in respect of other remunerations such as staff paid on an hourly or daily basis: a statement signed by the authorised member of staff showing the days and hours worked;
- (c) in respect of overtime: a statement signed by the authorised member of staff certifying the amount of overtime worked;
- (d) in respect of mission expenses:
 - (i) the travel order signed by the competent authority;
 - (ii) the statement of mission expenses, signed by the member of staff on mission and by the administrative superior to whom the appropriate powers have been delegated, and showing, in particular, the place of mission, the dates and times of departure and arrival at the place of mission, travel expenses, subsistence expenses, and other expenses duly authorised on production of supporting documents;
- (e) in respect of other staff expenditure: the supporting documents referring to the decision on which the expenditure is based and giving all the components of the calculation.

Article 62

Material form of "passed for payment"
(Article 69 of the Financial Regulation)

In a non-computerised system, «passed for payment» shall take the form of a stamp incorporating the signature of the authorising officer responsible or of a technically competent member of staff, empowered by the authorising officer responsible in accordance with Article 58. In a computerised system, «passed for payment» shall take the form of an electronically secured validation by the authorising officer responsible or of a technically competent member of staff, empowered by the authorising officer responsible.

SECTION 3
AUTHORISATION OF EXPENDITURE

Article 63

Checks on payments by the authorising officer
(Article 70 of the Financial Regulation)

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

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

Article 64

Mandatory details on payment orders and transmission to the accounting officer
(Article 70 of the Financial Regulation)

1. The payment order shall state:
 - (a) the financial year to which the expenditure is to be booked;
 - (b) the budget item and any other subdivision that may apply;
 - (c) the references of the legal commitment giving rise to an entitlement to payment;
 - (d) the references of the budget commitment against which it is to be booked;
 - (e) the amount to be paid, expressed in euro;
 - (f) the name, address and bank account details of the payee;
 - (g) the object of the expenditure;
 - (h) the means of payment;
 - (i) the entry of items in the inventory in accordance with Article 199.
2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

SECTION 4
PAYMENT OF EXPENDITURE

Article 65

Supporting documents
(Article 71 of the Financial Regulation)

1. Pre-financing, including in cases where it is split into a number of payments, shall be paid either on the basis of the contract, the agreement, the Constituent instrument, or on the basis of supporting documents which make it possible to check the conformity of the actions financed with the terms of the contract or agreement in question. Interim payments and payments of balances shall be based on supporting documents which make it possible to check that the action financed has been carried out in accordance with the terms of the contract or agreement concluded with the beneficiary or contractor or the Constituent instrument.
2. The authorising officer responsible shall lay down, in compliance with the principle of sound financial management, the nature of the supporting documents referred to in paragraph 1 in accordance with Constituent instrument and the contracts and agreements concluded with the beneficiary or contractor. Interim and final technical and financial implementation reports and other documents required by the agreement or contract, shall constitute supporting documents for the purposes of paragraph 1.
3. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 19.

Article 66

Booking of pre-financing and interim payments
(Article 71 of the Financial Regulation)

1. Pre-financing is intended to provide the beneficiary or contractor with a float. It may be split into a number of payments.
2. An interim payment, which may be repeated, is intended to reimburse expenditure incurred by the beneficiary or contractor on the basis of a statement of expenditure when the action is in progress. It may clear pre-financing in whole or in part, without prejudice to the provisions of the Constituent instrument.
3. The closure of the expenditure shall take the form of the payment of the balance, which may not be repeated and clears all preceding payments, or a recovery order.

SECTION 5
TIME LIMITS FOR EXPENDITURE OPERATIONS

Article 67

Payment time limits and default interest
(Article 73 of the Financial Regulation)

1. Sums due shall be paid within no more than forty-five calendar days from the date on which an admissible payment request is registered by the authorised department of the authorising officer responsible; the date of payment shall be understood to mean the date on which the Joint Undertaking's account is debited.

The payment request is not admissible if at least one essential requirement is not met.

Where the payment request is not admissible, the authorising officer shall inform the contractor or beneficiary within 30 calendar days from the date on which the payment request was initially received. That information shall include a description of all deficiencies.

2. For contracts, grant agreements and decisions under which payment depends on the approval of a report, certificate or other documents, the time-limit for the purposes of the payment periods referred to in paragraphs 1 shall not begin to run until the report, certificate or other documents required by the agreement or contract in question has been approved. The beneficiary shall be informed without delay.
3. The authorising officer responsible may suspend the time limits for payment referred to in paragraph 1 by informing creditors, at any time during the period referred to in paragraph 1, that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the authorising officer responsible which puts in doubt the eligibility of expenditure appearing in a payment request, the authorising officer may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The authorising officer shall inform the contractor or beneficiary in question as soon as possible and set out the reasons for the suspension.

Time for the purposes of the remainder of the payment period shall begin to run again from the date on which the properly formulated payment request is first registered.

CHAPTER 6

IT systems

Article 68

Description of IT systems *(Article 74 of the Financial Regulation)*

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

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

Article 69

Periodical save *(Article 74 of the Financial Regulation)*

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

CHAPTER 7

Internal auditor

Article 70

Appointment of the internal auditor *(Article 75 of the Financial Regulation)*

1. The Director shall appoint its internal auditor in accordance with arrangements adapted to its specific features and requirements. The Director shall inform the Governing Board of the appointment of the internal auditor.
2. The Director shall determine, in accordance with its specific features and its requirements, the scope of the mission of the internal auditor and shall lay down in detail the objectives and procedures for the exercise of the internal audit function with due respect for international internal audit standards.
3. The Director may appoint as internal auditor, by virtue of their particular competence, an official or other servant covered by the Staff Regulations.
4. The Director shall inform the Governing Board when the duties of the internal auditor are terminated.

Article 71

Operational resources of the internal auditor *(Article 76 of the Financial Regulation)*

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

Article 72

Work programme of the internal auditor *(Article 76 of the Financial Regulation)*

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

Article 73

Liability of the internal auditor
(Article 77 of the Financial Regulation)

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

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

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

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

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

Article 74

Action by the internal auditor before the Court of Justice of the European Communities
(Article 77 of the Financial Regulation)

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

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

TITLE V PROCUREMENT

SUBTITLE I

CONTRACTS TO BE AWARDED BY THE JOINT UNDERTAKING FOR IMPLEMENTATION OF ITS OPERATIONAL TASKS

(Chapter 1 of Title V of the Financial Regulation)

CHAPTER I General provisions

(Articles 78-94 of the Financial Regulation)

Article 75

Definitions

For the purposes of this Title, the following definitions shall apply:

1. "Candidate" means an economic operator who has applied to take part in a restricted procedure or competitive dialogue in response to a call for expressions of interest or an economic operator who has applied to take part in a contest ;
2. "Consortium" means a group of economic operators;
3. "Contractor" means an economic operator who is a party to a contract with the Joint Undertaking;
4. "Executive Committee" means the body assisting the Governing Board in the preparation of its decisions as set out in Article 7 of the Statutes;
5. "Selected candidate" means a candidate selected to be invited to submit tenders in the case of a restricted procedure, or to be invited to participate in a dialogue in case of a competitive dialogue;
6. "Specific contract" means a contract based on the terms of a framework contract;
7. "Sub-contractor" means an economic operator or a consortium who is under contract to a contractor of the Joint Undertaking;
8. "Tender" means an offer submitted in reply to a call for tender;
9. "Tenderer" means an economic operator who has submitted a tender in reply to a call for tender;

10. "Work" means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.

Article 76

Types of contracts

1. The contracts referred to in Article 78 of the Financial Regulation are:
 - (a) contracts for the purchase or rental of a building, covering the purchase, long lease, usufruct, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate;
 - (b) supply contracts covering the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for sitting and installation shall be considered a supply contract;
 - (c) works contracts, covering either the execution, or both the execution and design, of works or a work related to one of the activities referred to in Annex I to Directive 2004/18/EC of the European Parliament and of the Council⁷ or the realisation, by whatever means, of a work corresponding to the requirements specified by the Joint Undertaking;
 - (d) service contracts, covering all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts. Those services are listed in Annexes IIA and IIB to Directive 2004/18/EC.

2. A contract covering both products and services shall be considered a service contract where the value of the services in question exceeds that of the products included in the contract.

A contract having as its object services and involving works that are only incidental in relation to the principal object of the contract shall be considered a service contract.

A contract having as its object services covered by Annex IIA to Directive 2004/18/EC and services covered by Annex IIB thereto shall be considered as covered by Annex IIA if the value of the services listed in that Annex exceeds that of the services listed in Annex IIB.

3. The description of the various types of contract is based on the reference nomenclature constituted by the common procurement vocabulary (CPV) within the meaning of Regulation (EC) No 2195/2002⁸ of the European Parliament and of the Council.

In the event of differences between the CPV and the statistical classification of economic activities in the European Community (NACE), listed in Annex I to

⁷ OJ L 134, 30.4.2004, p. 114.

⁸ OJ L 340, 16.12.2002, p. 1.

Directive 2004/18/EC, or between the CPV and the Central Product Classification (CPC) (provisional version), listed in Annex II to that Directive, the NACE nomenclature or the CPC nomenclature respectively shall take precedence.

Article 77

Framework contracts, specific contracts

1. Where a framework contract is to be concluded with several economic operators, it shall be concluded with at least three economic operators provided that there are a sufficient number of economic operators that satisfy the selection criteria or a sufficient number of admissible tenders which meet the award criteria.

A framework contract with a number of economic operators may take the form of contracts which are separate but concluded on identical terms.

The term of a framework contract may not exceed four years, save in exceptional cases duly justified in particular by the subject of the framework contract.

For market sectors subject to rapid changes in price and technology, framework contracts shall contain provisions for either a mid-term review or benchmarking to evaluate the conditions of the framework contract in relation to the current market conditions. If the conditions of the framework contract are deemed to have become unfavourable for the Joint Undertaking due to the price or technological evolution, the Joint Undertaking may not use of the framework contract concerned and shall take appropriate measures to terminate it.

2. Specific contracts based on framework contracts shall be awarded in accordance with the terms of the framework contract and only to the economic operators which are party to the framework contract.

Where a specific contract is to be awarded, the Joint Undertaking shall invite either all candidates that are party to the framework contract or only some of them, on the basis of objective and non-discriminatory criteria specific to that contract, to submit a tender.

When awarding specific contracts, the parties may not make substantial amendments to the terms laid down in that framework contract, in particular in the case referred to in paragraph 3.

3. Where a framework contract is concluded with one economic operator:
 - (a) specific contracts shall be awarded within the limits of the terms laid down in the framework contract; and
 - (b) for the award of specific contracts, the Joint Undertaking may consult in writing the economic operator which is party to the framework contract, requesting that economic operator to supplement its tender if necessary.

4. Where a framework contract was concluded with more than one economic operator, specific contracts based on that framework contract shall be awarded in accordance with the following arrangements:
 - (a) by application of the terms laid down in the framework contract without re-opening competition; or
 - (b) where not all the terms are laid down in the framework contract, by re-opening competition between the economic operators which are parties to that framework contract and which are capable of performing the proposed contract on the basis of the same or, if necessary, more precisely formulated terms of the framework contract, and where appropriate other terms referred to in the specification for the framework contract.
5. For each specific contract to be awarded in accordance with the procedure laid down in paragraph 4(b), the Joint Undertaking shall:
 - (a) consult in writing the economic operators, fixing a time limit which is sufficiently long to allow tenders to be submitted in writing; and
 - (b) award each specific contract to the tenderer that has submitted the best tender on the basis of the award criteria set out in the specification for the framework contract.
6. Only specific contracts based on framework contracts shall be preceded by a budgetary commitment.

Article 78

Separate contracts, contracts with lots and additional contracts

1. Whenever appropriate, technically feasible and cost efficient, contracts shall be awarded at the same time in the form of separate lots.
2. Where the planned purchase of standard supplies may give rise to simultaneous contracts in separate lots, the estimated aggregate value of all those lots shall be taken as the basis for the evaluation of any financial thresholds referred to in these Rules.
3. Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tenderer, a single contract covering those lots may be signed.
4. The Joint Undertaking shall not divide contracts with the intention of avoiding the application of these Rules.
5. The aggregate value of additional contracts awarded pursuant to Article 100 (2)(f) and (g) may not exceed 50 % of the amount of the initial contract.

Article 79

Arrangements for estimating the value of contracts

1. For the purposes of calculating the estimated value of a contract, the Joint Undertaking shall include the contractor's total estimated remuneration, net of value added tax.

Where a contract provides for options or possible renewal, the basis for calculation shall be the maximum amount authorised, including the use of option clauses and renewal of the contract.

For framework contracts the value to be taken into account shall be the value of all the contracts envisaged during the total lifetime of the framework contract.

2. For service contracts, account shall be taken of:
 - (a) in the case of insurance services, the premium payable and other forms of remuneration;
 - (b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;
 - (c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.
3. In the case of service contracts which do not specify a total price or of supply contracts for leasing, rental or hire purchase of products, the value to be taken as the basis for calculating the estimated value shall be:
 - (a) in the case of fixed-term contracts:
 - (i) where their term is forty-eight months or less in the case of services or twelve months or less in the case of supplies, the total contract value for their duration; or
 - (ii) where their term is more than twelve months in the case of supplies, the total value including the estimated residual value.
 - (b) in the case of contracts of an indefinite period or, in the case of services, for a period exceeding forty-eight months, the monthly value multiplied by forty-eight.
4. In the case of service or supply contracts which are awarded regularly or are to be renewed within a given time, the value of the contract shall be determined on the basis of:
 - (a) either the actual aggregate cost of similar contracts for the same categories of services or supplies awarded over the previous financial year or twelve months, adjusted, where possible, for anticipated changes in quantity or value over the twelve months following the initial contract; or

- (b) the estimated aggregate cost of successive contracts during the twelve months following the first service performed or first delivery or during the term of the contract, where this is greater than twelve months.
5. In the case of works contracts, account shall be taken not only of the value of the works but also of the estimated total value of the supplies needed to carry out the works and made available to the contractor by the Joint Undertaking.
6. The estimated value of a contract may not be determined with a view to evading the requirements laid down in these Rules.

Article 80

Low value contracts

Payments of amounts less than or equal to EUR 5 000 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender.

Article 81

Participation of economic operators

1. Participation in the Joint Undertaking's procurement procedures shall be open on equal terms to economic operators that are nationals of a Member or are established in the territory of a Member of the Joint Undertaking.

Establishment, as referred to in subparagraph 1, means the actual pursuit of an economic activity by an economic operator formed in accordance with the law of a Member of the Joint Undertaking and having its registered office, central administration or principle place of business within the territory of a Member of the Joint Undertaking.

2. Participation in procurement procedures may also be open to other economic operators than referred to in paragraph 1, if so decided by the Director in justified cases such as:
- (a) the supply, service or work may not be obtained in the territory of a Member of the Joint Undertaking, or may not be obtained under reasonable terms and conditions; or
 - (b) for the sector concerned, a monopoly situation may exist in the territory of the Members of the Joint Undertaking; or
 - (c) different participation conditions than those set out in the paragraph 1 are required under an international agreement or other international arrangement.

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Article 82

Participation of consortia
(Article 80 of the Financial Regulation)

1. Consortia may put themselves forward as candidates in response to a call for expressions of interest or may submit tenders in response to a call for tender.
2. To submit a tender or a request to participate, a consortium may not be required by the Joint Undertaking to assume a specific legal form; however the consortium may be required to do so when it has been awarded the contract to the extent that this change is necessary for the satisfactory performance of the contract.

Article 83

Joint procurement with another contracting authority

1. In the case of a joint procurement procedure between the Joint Undertaking and another contracting authority, the procurement procedures applicable to the Joint Undertaking shall apply.
2. Where the share pertaining to or managed by the other contracting authority in the total estimated value of the contract is equal to or above 50%, or in other duly justified cases, the Director with the prior approval of Executive Committee may decide that the procurement procedures applicable to the other contracting authority shall apply, provided that they can be considered as equivalent to those of the Joint Undertaking.
3. The Joint Undertaking and the other contracting authority concerned by the joint procurement procedure shall agree in particular upon the practical modalities for the evaluation of the requests or the tenders, the award of the contract, the law applicable to the contract and the competent court for hearing disputes.

CHAPTER II
Procurement Procedures

(Article 81(4) of the Financial Regulation)

SECTION I
OPEN PROCEDURE

Article 84

Description of the procedure

1. The open procedure is a procurement procedure in which all interested economic operators may submit a tender.

2. The open procedure shall be conducted in accordance with Articles 85 to 87 and the relevant provisions laid down in Chapters III, IV and V.

Article 85

***Phase 1
Call for tender***

1. The call for tender is the phase where the Joint Undertaking shall invite simultaneously and in writing all of the interested economic operators to submit tenders.
2. The call for tender shall consist of three steps:
 - (a) issuing of a contract notice (Article 114);
 - (b) invitation to tender (Article 115);
 - (c) submission of tenders (Article 118).

Article 86

***Phase 2
Opening and evaluation of tenders***

After the closing date for the submission of tenders has passed, the tenders submitted shall be opened (Article 119) and the admissible tenders satisfying the requirements laid down in Article 118 shall be evaluated on the basis of the pre-announced award criteria (Article 120) subject to the condition that the tenderers satisfy the selection criteria.

Article 87

***Phase 3
Awarding and signature of contract***

The awarding and the signature of the contract is the phase where contract shall be awarded by the Director on the basis of the results of the evaluation and, where required, the prior approval of the Executive Committee (Article 124).

**SECTION 2
RESTRICTED PROCEDURE**

Article 88

Description of the procedure

1. The restricted procedure is a procurement procedure in which any economic operator may request to participate but only those satisfying the exclusion and selection criteria may be invited by the Joint Undertaking to submit a tender.

2. The restricted procedure shall be conducted in accordance with Articles 89 to 92 and the relevant provisions laid down in Chapters III, IV and V.

Article 89

***Phase 1
Call for expressions of interest***

1. The call for expressions of interest is the phase for selecting the candidates to be invited to respond to one or more invitations to tender.
2. The call for expressions of interest may be preceded by the publication of a pre-information notice (Article 107).
3. The call for expressions of interest shall consist of three steps:
 - (a) issuing of the contract notice (Article 108);
 - (b) submission by the economic operators of requests to be selected to tender (Article 109);
 - (c) selection of the candidates on the basis of the pre-announced selection criteria (Article 110).

Article 90

***Phase 2
Call for tender***

1. The call for tender is the phase where the Joint Undertaking shall invite simultaneously and in writing all or some of the selected candidates to submit tenders. A minimum number of candidates shall be invited to submit a tender according to Article 116.
2. The call for tender shall consist of two steps:
 - (a) invitation to tender (Article 115);
 - (b) submission of tenders (Article 118).

Article 91

***Phase 3
Opening and evaluation of tenders***

After the closing date for the submission of tenders has passed, the tenders submitted shall be opened (Article 119) and the admissible tenders satisfying the requirements laid down in Article 118 shall be evaluated on the basis of the pre-announced award criteria (Article 120).

Article 92

Phase 4
Awarding and signature of contract

The awarding and the signature of the contract is the phase where contracts shall be awarded by the Director on the basis of the results of the evaluation and, where required, the prior approval of the Executive Committee (Article 124).

SECTION 3
THE COMPETITIVE DIALOGUE

Article 93

Use of the competitive dialogue

In the case of particularly complex contracts, when the Joint Undertaking considers that use of the open procedure and the restricted procedure will not allow the contract to be awarded to the tender offering the best value for money, it may make use of the competitive dialogue.

A contract is considered to be "particularly complex" when the Joint Undertaking is not objectively able to define the technical means or solutions capable of satisfying the needs or objectives or able to specify the legal or financial make-up of the project.

Article 94

Description of the procedure

1. The competitive dialogue is a procurement procedure in which any economic operator may request to be selected to participate but only those candidates satisfying the exclusion and selection criteria may be invited to participate in a dialogue with the aim of developing one or more suitable solutions capable of meeting the Joint Undertaking's needs and requirements, and on the basis of which, the candidates are invited to submit a tender.
2. The competitive dialogue shall be conducted in accordance with Articles 95 to 99 and the relevant provisions laid down in Chapters III, IV and V.

Article 95

Phase 1
Call for expressions of interest

1. The call for expressions of interest is the phase for selecting the candidates in order to invite them to take part in a dialogue.
2. The call for expressions of interest may be preceded by the publication of a pre-information notice (Article 107).



3. The call for expressions of interest shall consist of three steps:
 - (a) issuing of the contract notice (Article 108);
 - (b) submission of the requests to be selected to participate by the economic operators (Article 109);
 - (c) selection of the candidates on the basis of the pre-announced selection criteria (Article 110).

Article 96

Phase 2

Dialogue with the selected candidates

1. The Joint Undertaking shall open a dialogue with all or some of the selected candidates in order to identify and define the means best suited to satisfying its needs and requirements.
2. The dialogue shall consist of three steps:
 - (a) invitation to participate in the dialogue (Article 111);
 - (b) the submission of replies (Article 112);
 - (c) the conduct of the dialogue (Article 113).

Article 97

Phase 3

Call for tender

1. The call for tender is the phase where the Joint Undertaking, having decided that the dialogue is concluded and having so informed the participants, shall invite them simultaneously and in writing to submit their tenders on the basis of the solution, or solutions, presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project.
2. The call for tender shall consist of two steps:
 - (a) invitation to tender (Article 115);
 - (b) submission of tenders (Article 118).

Article 98

Phase 4

Opening and evaluation of tenders

After the closing date for the submission of tenders has passed, the tenders submitted shall be opened (Article 119) and the admissible tenders satisfying the requirements laid down in Article 118 shall be evaluated by the Joint Undertaking's evaluation committee on the basis of the pre-announced award criteria (Article 120).

At the request of the Joint Undertaking, these tenders may be clarified, specified and fine-tuned provided that this does not have the effect of changing basic aspects of the tender, or the invitation to tender, variations in which could distort competition or have a discriminatory effect.

At the request of the Joint Undertaking, the tenderer identified as having submitted the tender offering the best value for money may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of:

- (a) modifying substantial aspects of the tender; or
- (b) does not risk distorting competition or causing discrimination.

Article 99

Phase 5

Awarding and signature of contract

The awarding and the signature of the contract is the phase where contracts shall be awarded by the Director on the basis of the results of the evaluation and, where required, the prior approval of the Executive Committee (Article 124).

SECTION 4

NEGOTIATED PROCEDURE

Article 100

Use of the negotiated procedure

1. The negotiated procedure may be used for the award of contracts having a value estimated in accordance with Article 79 of less than or equal to EUR 250 000.
2. In addition to the use of the negotiated procedure under the conditions laid down in paragraph 1, the negotiated procedure may be used for the award of contracts, whatever their estimated value, in the following cases:
 - (a) insofar as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the Joint Undertaking, it is impossible to comply with the time-limits associated with the open and restricted procedures;
 - (b) when no requests or no admissible requests, or no tenders have been submitted in response to a call for expression of interest or call for tender under an open procedure, a restricted procedure or a competitive dialogue, provided that the

original terms of the call for expression of interest or call for tender are not substantially altered;

- (c) when tenders which are irregular or unacceptable, by reference in particular to the selection and award criteria, have been submitted in response to an invitation to tender under an open procedure, a restricted procedure or a competitive dialogue, provided that in the negotiated procedure:
 - (i) the original terms of the contract specified in the invitation to tender are not substantially altered; and
 - (ii) the Joint Undertaking invites all the tenderers that satisfied the selection criteria and submitted tenders in accordance with the formal requirements of previous procedure.
- (d) when, for technical reasons or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator;
- (e) when a contract is to be awarded jointly with another contracting authority under an international agreement or other international arrangement;
- (f) when for supply contracts:
 - (i) in the case of additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations, or as the extension of existing supplies or installations where a change of contractor would oblige the Joint Undertaking to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
 - (ii) in respect of supplies quoted and purchases on a commodity market;
 - (iii) in respect of purchases on particularly advantageous terms either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law.
- (g) when for service and works contracts:
 - (i) in the case of additional contracts not included in the project initially envisaged or in original contract, but which, through unforeseen circumstances, have become necessary for the performance of the contracts, on condition that the award is made to the economic operator executing such contracts:
 - when such additional contracts cannot be legally, technically or economically separated from the original contract without major inconvenience to the Joint Undertaking; or

- when such additional contracts, although separable from the performance of the original contract, are strictly necessary for its completion.
- (ii) in the case of new contracts consisting of the repetition of similar services or works entrusted to the economic operator to whom the Joint Undertaking awarded the original contract, provided that such services or works fall within the scope of the original contract which was awarded according to the open procedure, restricted procedure or competitive dialogue. In this case:
 - the possibility of using this procedure shall be disclosed at the time the original contract is put out to tender; and
 - this procedure may be used only during the three years following the conclusion of the original contract.
- (h) in exceptional cases where the nature or the risks of the work, supplies or services to be procured:
 - (i) do not permit prior overall pricing by the tenderer; or
 - (ii) do not permit contract specifications to be established with sufficient precision for awarding of the contract by selecting the best tender in accordance with the rules governing the open and restricted procedure
- (i) for building contracts after prospecting the local market.

Article 101

Description of the negotiated procedure

1. The negotiated procedure is the procurement procedure without a prior publication of a contract notice in which the Joint Undertaking shall invite economic operators of its choice to submit tenders and, subject to the condition that they satisfy the exclusion and selection criteria, negotiate the terms of the contract with one or more of them.
2. The negotiated procedure shall be conducted in accordance with Articles 102 to 104 and with the relevant provisions laid down in Chapters III, IV and V.

Article 102

Phase 1 Call for tender

1. The Joint Undertaking shall invite simultaneously and in writing a minimum number of economic operators referred to in Article 117 to submit a tender.
2. The call for tender shall be divided in two steps:

- (a) invitation to tender (Article 115);
- (b) submission of tenders (Article 118).

Article 103

Phase 2
Opening, evaluation and negotiation of tenders

After the closing date for submission of tenders has passed, all the tenders submitted shall be opened (Article 119) and the admissible tenders satisfying the requirements laid down in Article 118 shall be evaluated by the Joint Undertaking's evaluation committee on the basis of the pre-announced award criteria subject to the condition that the tenderers satisfy the selection criteria.

The Joint Undertaking shall negotiate with tenderers the tenders they have submitted in order to adapt them to the requirements set out in the specifications and in any additional documents and in order to find the tender offering best value for money or the lowest price.

During the negotiation, the Joint Undertaking shall ensure equal treatment for all tenderers.

The Joint Undertaking may arrange for the negotiated procedure to be conducted in stages so as to reduce the number of tenders to be negotiated, while applying the award criteria set out in the contract notice or specification.

Article 104

Phase 3
Awarding and signature of contract

The awarding and the signature of the contract is the phase where contracts shall be awarded by the Director on the basis of the results of the evaluation and, where required, with the prior approval of the Executive Committee (Article 124).

SECTION 5
CONTESTS

(Article 81(4) of the Financial Regulation)

Article 105

Use of the contest

Contests may be used in order to enable the Joint Undertaking to acquire a plan or design:

- (a) against payments to participants and/or prizes;
- (b) as part of a procedure leading to the award of a public service contract.

Article 106

Description of the procedure

1. When the Joint Undertaking wishes to carry out a design contest it shall make known its intention by means of a contest notice.
2. The selection board shall be appointed by the authorising officer responsible. It shall be made up exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required for participation in a contest, at least one third of the members of the selection board shall have the same or an equivalent qualification. The selection board shall be autonomous in its decisions and opinions. It shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice. It shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points which may need clarification.

Anonymity shall be observed until the selection board has reached its opinion or decision.

3. Candidates may be invited, if need be, to answer questions which the selection board has recorded in the minutes to clarify any aspects of the projects. Minutes shall be drawn up.

CHAPTER III

Implementation of the Procurement Procedures

(Articles 82, 88, 89, 90, 91 and 92 of the Financial Regulation)

SECTION 1

PRE-INFORMATION NOTICE

Article 107

Pre-information notice

1. The pre-information notice is the means by which the Joint Undertaking may make known, by way of indication, the estimated total value of contracts and framework contracts, by category of service or groups of products, and the essential characteristics of works contracts which they intend to award using the restricted procedure or competitive dialogue during a budgetary year.

The pre-information notice shall be published in the Joint Undertaking's official internet website⁹ and a reference to that notice shall be published in the Official

⁹ <http://fusionforenergy.europa.eu>



Journal of the European Union. The pre-information notice shall be published as soon as possible after the approval of the work programme.

SECTION 2 CALL FOR EXPRESSIONS OF INTEREST

Article 108

Contract notice

1. The contract notice shall be the means by which the Joint Undertaking makes known its intention to initiate the procedure to award a contract, or group of contracts, pertaining to similar activities using a restricted procedure or competitive dialogue.

The contract notice shall be published in the Joint Undertaking's official internet website and a reference to that notice shall be published in the Official Journal of the European Union.

In addition to the advertising provided for in the second subparagraph, the contract may be advertised in any other way. Any such advertising shall refer to the contract notice published on the official Joint Undertaking's internet website which alone is authentic.

2. The contract notice shall in particular include:
 - (a) a description of the general nature of the supplies, services or works and, in the case of the competitive dialogue, a reference to a descriptive document setting out the needs and requirements of the Joint Undertaking;
 - (b) a statement indicating whether it is a joint procurement as described in Article 83 and the associated conditions;
 - (c) the contact details of the responsible persons at the Joint Undertaking;
 - (d) the date of dispatch of the notice and the last date for the receipt of requests to be selected from economic operators;
 - (e) the arrangements for the submission of the requests;
 - (f) a reference to the pre-information notice as referred to in Article 107, if applicable;
 - (g) the minimum and maximum number of candidates the Joint Undertaking plans to invite to submit a tender or to take part in a dialogue together with range and criteria to determine the maximum number of tenderers if applicable;
 - (h) a statement indicating whether the Joint Undertaking may provide for the competitive dialogue to be conducted in stages as referred to in Article 113;

- (i) information on the conditions of participation in the Joint Undertaking's procurement procedures referred to in Article 81 together with a template of a declaration to that effect;
 - (j) information on the exclusion criteria set out in Article 83 of the Financial Regulation together with a template of a declaration to that effect;
 - (k) information on the objective non-discriminatory selection criteria and the selection questionnaire referred to in Article 130;
 - (l) if available, information on the award criteria referred to in Article 133;
 - (m) a statement indicating whether variants are admitted by the Joint Undertaking;
 - (n) where applicable, information on the legal form to be taken by consortia in case the contract is awarded.
3. The contract notice shall not be compulsory for specific contracts based on framework contracts.

Article 109

The submission of requests

1. Economic operators shall respond to a call for expressions of interest in accordance with the requirements and within the time limits set out in the contract notice.

Supporting documents requested in the selection questionnaire referred to in Article 108(2)(k) and Article 130 proving that the candidates meet the declared minimum capacity levels for each selection criteria as well as the signed declarations referred to in Article 108(2)(i) and (j) shall be submitted together with the request.

2. Requests to be selected to tender or participate in a dialogue may be submitted by letter or by electronic means. The arrangements for the submission shall be determined by the Joint Undertaking in the contract notice, which may choose an exclusive method of submission.

The means of submission chosen shall be non-discriminatory in nature and shall not have the effect of restricting the access of economic operators to the call for expressions of interest.

Article 110

The selection of the candidates

1. The selection of the candidates shall be carried out by members of staff of the Joint Undertaking and, where authorised by the Director, also by external experts. In the case of joint procurements referred to in Article 83 third parties may also participate.

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2. The Joint Undertaking may ask candidates to supply additional information or to clarify the supporting documents submitted in connection with the selection criteria, within a time limit specified by the Joint Undertaking.
3. On the basis of the content of the request to be selected to tender or to participate in a dialogue, the Joint Undertaking shall draw up, for a contract or group of contracts pertaining to similar activities, one or more lists of selected candidates satisfying the minimum capacity levels required for each selection criteria. Requests to participate which do not satisfy all the requirements set out in the contract notice shall be eliminated.
4. The lists of selected candidates shall be open and valid up to 24 months from the date when the contract notice was published. The Executive Committee, acting on a proposal from the Director, may extend the period of validity of these lists.
5. At any time, selected candidates may be invited by the Joint Undertaking to update the information provided in their original request to be selected to tender or to participate in a dialogue.

SECTION 3 THE DIALOGUE

Article 111

Invitation to participate in the dialogue

1. In a competitive dialogue, the number of selected candidates invited to participate may not normally be less than three, provided that a sufficient number of candidates satisfy the selection criteria.

In any event, the number of selected candidates invited to submit a tender shall be sufficient to ensure genuine competition.
2. The invitation to participate addressed to selected candidates shall include in particular:
 - (a) a reference to the relevant pre-information notice and contract notice;
 - (b) the date and address set for the start of the dialogue;
 - (c) if applicable, the rules governing the submission and presentation of solutions including the address to which they shall be sent;
 - (d) indicate if the dialogue is to be conducted in successive stages as set out in Article 113 if not already specified in the contract notice or descriptive document.

Article 112

The submission of replies

Replies to the invitation to participate in a competitive dialogue may be submitted by letter or by electronic means. The arrangements for the submission of replies shall be determined by the Joint Undertaking in the invitation to take part in the dialogue.

Article 113

The conduct of the dialogue

1. The Joint Undertaking shall ensure equality of treatment among all participants and confidentiality of the solutions proposed or other information communicated by a selected candidate participating in the dialogue unless he/she agrees to its disclosure.
2. The dialogue shall commence on the date specified in the invitation to participate and continue until the Joint Undertaking declares by written notice to the selected candidates that the dialogue is concluded.

The Joint Undertaking may provide for the procedure to take place in successive stages or in such other format prescribed by the Joint Undertaking.

In each stage of the dialogue, the Joint Undertaking may, in accordance with paragraph 3, reduce the number of solutions to be discussed with any selected candidate by applying the award criteria in the contract notice or in the descriptive document.

The Joint Undertaking shall consider the solutions submitted by each selected candidate in the course of the dialogue and may compare any or all of the solutions provided by one candidate with any or all of the solutions provided by any other candidate.

The Joint Undertaking shall continue such dialogue until it can identify the solution or solutions which are capable of meeting the Joint Undertaking needs and requirements.

3. At any time during the dialogue, the Joint Undertaking may give notice to a selected candidate that a solution or part of a solution will no longer be considered in the dialogue and the candidates shall amend their proposed solutions accordingly.
4. The Joint Undertaking may specify that payments may be made to a participant in respect of the selected candidate's expenses incurred in participating in the competitive dialogue.

SECTION 4 THE CALL FOR TENDER

Article 114

Contract notice

1. The contract notice shall be the means by which the Joint Undertaking makes known its intention to initiate the procedure to award a contract, using an open procedure.

The contract notice shall be published in the Joint Undertaking's official internet website and a reference to that notice shall be published in the Official Journal of the European Union.

In addition to the advertising provided for in the second subparagraph, the contract may be advertised in any other way. Any such advertising shall refer to the contract notice published on the official Joint Undertaking's internet website which alone is authentic.

2. The contract notice shall in particular include:
 - (a) a description of the general nature of the supplies, services or works;
 - (b) a statement indicating whether it is a joint procurement as described in Article 83 and the associated conditions;
 - (c) the contact details of the responsible persons at the Joint Undertaking;
 - (d) the date of dispatch of the notice and the last date for the receipt of requests to be invited to submit a tender;
 - (e) the date, time and, where appropriate, place of the meeting of the opening committee;
 - (f) a reference to the pre-information notice as referred to in Article 107, if applicable;
 - (h) information on the conditions of participation in the Joint Undertaking's procurement procedures referred to in Article 81 together with a template of a declaration to that effect;
 - (k) if available, information on the award criteria referred to in Article 133;
 - (l) a statement indicating whether variants are admitted by the Joint Undertaking;
 - (m) where applicable, information on the legal form to be taken by consortia in case the contract is awarded.
3. The contract notice shall not be compulsory for specific contracts based on framework contracts.

*Article 115**The invitation to submit a tender or to negotiate*

1. The invitation shall in particular:
 - (a) specify the rules governing the lodging and presentation of tenders, including, in particular, the closing date and time for submission, the address to which they shall be sent, any requirements as to the use of a standard reply form, and the documents to be attached to the tender including:
 - (i) evidence of the compliance of the tenderers with the participation conditions laid down in Article 81;
 - (ii) in case of open and negotiated procedure, evidence of the tenderers compliance with the selection criteria referred to in Article 130.
 - (b) in the case of the open procedure, restricted procedure or negotiated procedure, include the technical specifications describing the characteristics of the supply, service or work as referred to in Article 116;
 - (c) in the case of a competitive dialogue, include the solution or solutions identified during the dialogue as meeting the needs and requirements of the Joint Undertaking;
 - (d) in case of the open procedure, restricted procedure or competitive dialogue, include a reference to the relevant pre-information notice, where applicable, and the contract notice;
 - (e) specify the period during which a tender shall remain valid;
 - (f) specify the exclusion criteria;
 - (g) specify, in the case of open and negotiated procedure, the selection criteria;
 - (h) specify, in the case of the negotiated procedure a statement indicating whether the Joint Undertaking arranges the procedure to be conducted in stages as referred to in Article 101;
 - (i) specify the award criteria and their relative weighting or, where appropriate, the decreasing order of importance;
 - (j) state the minimum requirements that the variants shall meet in case the Joint Undertaking has stated in the contract notice that variants are admitted;
 - (k) state that the Protocol on Privileges and Immunities of the European Communities shall apply;
 - (l) include the model contract.
2. The Joint Undertaking may also demand in the invitation to tender information from the tenderers on:

- (a) in the case of a consortium, the internal organisation of the consortium including their identity, location, the proportion of the estimated contract value allocated to each member of the consortium and any other such information as deemed necessary to evaluate the ability of the consortium to execute the contract; and
- (b) in the case of subcontracts, any part of the contract that the tenderer may intend to subcontract including the identity of the subcontractors, their financial, economic, technical and professional capacities, the location where the subcontracted obligations would be performed as well as the estimated value of the subcontracts as a proportion of the total estimated value of the contract.

The information provided in point (b) shall be without prejudice to the question of the tenderers liability.

Article 116

Technical specifications

1. The technical specifications shall afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering.

They shall define the characteristics required of the supplies, services or works with regard to the purpose for which they are intended by the Joint Undertaking.

2. Where the criterion for award is that of the best-value-for-money procedure, the Joint Undertaking may authorise tenderers to submit variants.

The Joint Undertaking shall indicate in the contract notice whether or not it authorises variants.

When the Joint Undertaking authorises variants, it shall state in the contract documents the minimum requirements to be met by the variants and any specific requirements for their presentation.

Article 117

Number of invited candidates

1. In a restricted procedure or in a competitive dialogue, the number of candidates invited to submit a tender or invited to participate in a dialogue may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria.

The Joint Undertaking may also provide for a maximum number of candidates, depending on the subject of the contract and on the basis of objective and non-discriminatory selection criteria. In such cases, the range and criteria shall be indicated in the contract notice referred to in Article 108.

In any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition.



2. In a negotiated procedure and after the conclusion of a competitive dialogue, the number of economic operators invited to negotiate or to submit a tender may not normally be less than three provided that a sufficient number of economic operators satisfy the selection criteria. Contracts with a value less than or equal to EUR 50 000 may be awarded on the basis of a single tender.

3. In any event, the number of economic operators invited to submit a tender must be sufficient to ensure genuine competition.

If following the consultation of the candidates, the Joint Undertaking receives only one tender that is administratively and technically valid the contract may be awarded provided that the award criteria are met.

4. In case of a contests, described to in Article 106, restricted to a limited number of participants, the Joint Undertaking shall lay down clear and non-discriminatory selection criteria. In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

Article 118

Submission of tenders

1. Tenders may be submitted by letter or by electronic means.

2. The arrangements for the submission of tenders shall be determined by the Joint Undertaking in the invitation to tender or the invitation to negotiate.

The means of submission chosen shall be non-discriminatory in nature and shall not have the effect of restricting the access of economic operators to the award procedure.

The means of submission chosen shall be such as to ensure that the following conditions are satisfied:

- (a) each submission contains all the information required in the invitation to tender for its evaluation;
- (b) the integrity of data is preserved;
- (c) the confidentiality of tenders is preserved and the Joint Undertaking examines the content of tenders only after the time limit set for submitting them has expired.

3. Where the Joint Undertaking authorises submission of tenders by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use.

4. Where submission is by letter, tenderers may choose to submit tenders:

- (a) either by post or by courier service, in which case the invitation to tender shall specify that the compliance with the mandatory time limits shall be evaluated on the basis of the date of dispatch, the postmark or the date of the deposit slip; or
 - (b) by hand-delivery to the premises of the Joint Undertaking by the tenderer in person or by an agent, for which purposes the invitation to tender shall specify the department or otherwise to which tenders are to be delivered against a signed and dated receipt.
5. In order to maintain secrecy and to avoid any difficulties where tenders are sent by letter, the invitation to tender shall include the following provision:

Tenders shall be submitted in a sealed envelope itself enclosed within a second sealed envelope. The inner envelope must bear, in addition to the name of the department to which it is addressed, as indicated in the invitation to Tender, the words "Invitation to tender - Not to be opened by the mail service". If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across that tape.

SECTION 5 OPENING AND EVALUATION

Article 119

Opening of tenders

1. All tenders that satisfy the requirements referred to in Article 118 shall be opened.
2. Where the estimated value of a contract is greater than EUR 50 000, the authorising officer responsible shall appoint a committee to open the tenders.

The opening committee shall be made up of at least three members of the staff of the Joint Undertaking. To avoid any conflicts of interest, those persons shall be subject to the obligations laid down in Article 37 of the Financial Regulation.

In the case of a joint procurement conducted with another contracting authority referred to in Article 83, the composition of the opening committee shall reflect, insofar as possible, the character of such a procurement procedure.

3. Where tenders are submitted by post, one or more members of the opening committee shall initial the documents confirming compliance with the mandatory time limits for dispatch for each tender.

They shall also initial:

- (a) either each page of each tender; or
- (b) the cover page and the pages containing the financial details of each tender, the integrity of the initial tender being guaranteed by any appropriate technique

employed by a department that is independent of the authorising department save in the case referred to in the third subparagraph of paragraph 2.

The members of the opening committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which satisfy the requirements and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 118.

Article 120

Evaluation of tenders

1. All tenders declared by the opening committee as satisfying the requirements referred to in Article 119 shall be evaluated and ranked by an evaluation committee on the basis of the pre-announced award criteria referred to in Article 133.
2. The evaluation committee shall be appointed by the authorising officer responsible to give an advisory opinion on contracts with an estimated value greater than EUR 50 000. The evaluation committees shall be made up of at least three persons of the staff of the Joint Undertaking. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 37 of the Financial Regulation of the Joint Undertaking.
3. The evaluation committee may be composed of the same members as the opening committee set out in Article 119.

External experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 37 of the Financial Regulation.

In the case of a joint procurement with another contracting authority referred to in Article 83 conducted by the Joint Undertaking, the composition of the evaluation committee shall reflect, insofar as possible, the character of such joint procurement.

3. Tenders which do not satisfy all the essential requirements set out in the supporting documentation for invitations to tender or the specific requirements laid down therein shall be eliminated.

The evaluation committee or the Joint Undertaking may ask tenderers to supply additional material or to clarify the supporting documents submitted, within the time limit it specifies.

4. In the case of abnormally low tenders as referred to in Article 121, the evaluation committee shall request any relevant information concerning the tender.

Article 121

Abnormally low value tenders

If, for a given contract, tenders are deemed by the evaluation committee to be abnormally low in value, the Joint Undertaking shall, before rejecting such tenders on those grounds alone, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements, after due hearing of the parties, taking account of the explanations received.

The Joint Undertaking may, in particular, take into consideration explanations relating to:

- (a) the economics of the manufacturing process, of the provision of services or of the construction method;
- (b) the technical solutions chosen, or the exceptionally favourable conditions available to the tenderer;
- (c) the originality of the tender.

Article 122

Results of the evaluation

1. A written record of the evaluation and ranking of tenders shall be drawn up, signed and dated by the members of the evaluation committee.
2. The written record referred to in paragraph 1 shall contain in particular the following information:
 - (a) the subject and value of the contract or the framework contract;
 - (b) the tenders rejected and the reasons for their rejection including those found to be abnormally low;
 - (c) the ranking of the tenders evaluated according to the award criteria, their scores and comments where appropriate;
 - (d) the contractor(s) proposed for the award of the contract(s) and the reason for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
 - (e) where appropriate, the reasons why the evaluation committee has proposed not to award a contract.

SECTION 6

THE AWARDING AND SIGNATURE OF THE CONTRACT

Article 123

Contract adjudication file

1. The adjudication of the contract or framework contract shall be done on the basis of the ranking of the tenders referred to in Article 122 established according to the award criteria referred to in Article 133.
2. After the evaluation committee has evaluated the tenders according to Article 120, the contract adjudication file shall be prepared. The file shall, in particular, include the following information:
 - (a) the written record of the opening committee (Article 119)
 - (b) the written record providing the results of the evaluation (Article 122);
 - (c) in the case of a negotiated procedure or competitive dialogue, the circumstances which justified its use;
 - (d) a copy of the best ranked tender(s);
 - (e) the draft contract and its general conditions.

The contract adjudication file shall be addressed to the authorising officer responsible in order to allow him/her to take the contract award decision. The adjudication file shall be classified EU CONFIDENTIAL and shall be kept in the contract file.

Article 124

Contract award decision

1. On the basis of the contract adjudication file referred to in Article 123 and in particular of the written record referred to in Article 122, the authorising officer responsible shall take his/her decision on the award of contracts or framework contracts providing at least the following:
 - (a) the subject and value of the contract or the framework contract;
 - (b) the tenderers rejected and the reasons for their rejection including when found to be abnormally low;
 - (c) the tenderers examined
 - (d) the contractor(s) selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
 - (e) in the case of negotiated procedures and competitive dialogues, the circumstances which justified their use;
 - (f) where appropriate, the reasons why the Joint Undertaking has decided not to award a contract.



In the case of a joint procurement procedure referred to in Article 83, the decision referred to in the first subparagraph shall be taken by the contracting authority responsible for the procurement procedure.

For contracts with a value greater than EUR 50 000, an award notice shall be published on the Joint Undertaking's official internet website. The award notice shall describe the outcome of the procedure for the award of contracts or framework contracts. It shall not be compulsory for specific contracts based on framework contracts.

2. Before taking the contract award decision referred to in paragraph 1, the authorising officer responsible shall submit the contract adjudication file referred to in Article 123 to the Executive Committee for approval when:
 - (a) the value of the contract or the framework contract(s) is greater than EUR 1 000 000; or
 - (b) deemed appropriate by the Director on the basis of a risk assessment.

The Executive Committee shall certify the correctness of the procedural aspects followed to award the contract(s) or the framework contract(s).

3. The authorising officer responsible shall report *ex post* to the Executive Committee the details of all awarded contracts with a value between EUR 250 000 and EUR 1 000 000 within three months after the award.

Article 125

Standstill period before signature of the contract

1. The authorising officer responsible shall not sign the contract having a value greater than EUR 50 000 with the selected contractor until 14 calendar days (hereinafter "the standstill period") after the publication of the award notice on the Joint Undertaking's official internet website and notifying the unsuccessful tenderers accordingly.
2. The standstill period shall not apply in the following cases:
 - (a) in case of open procedures where only one tender has been submitted;
 - (b) in case of the restricted procedure or competitive dialogue where the tenderer to whom the contract is to be awarded was the only one that satisfied the exclusion and selection criteria, provided that, in accordance with Article 136, the other candidates or tenderers have been informed of the grounds of their exclusion or rejection shortly after the relevant decisions have been taken on the basis of the exclusion and selection criteria;
 - (c) in case of specific contracts based on a framework contract and by applying the terms set out in such a framework contract, without reopening the competition to other economic operators;
 - (d) in case of extreme urgency referred to in Article 100(2)(a).

CHAPTER IV

Provisions for exclusion, selection and award criteria

(Articles 83 – 87 of the Financial Regulation)

Article 126

Illegal activities giving rise to exclusions

The cases referred to in point (e) of Article 83(1) of the Financial Regulation shall be the following:

- (a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995¹⁰;
- (b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997¹¹;
- (c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council¹²;
- (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC¹³.

Article 127

Application of exclusion criteria

Candidates and tenderers shall be excluded from participating in procurement procedures as long as they are in one of the situations referred to in points (a) and (d) of Article 83(1) of the Financial Regulation.

Article 128

Evidence for exclusion criteria

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Article 83 of the Financial Regulation.

¹⁰ OJ C 316, 27.11.1995, p. 48.

¹¹ OJ C 195, 25.6.1997, p. 1.

¹² OJ L 351, 29.12.1998, p. 1.

¹³ OJ L 166, 28.6.1991, p. 77.

Depending on its risk assessment, the Joint Undertaking may refrain from requiring the declaration referred to in the first subparagraph for contracts with an estimated value less than or equal to EUR 5 000.

When requested by the Joint Undertaking, the candidate shall provide from the intended subcontractor a declaration on their honour that they are not in one of the situations referred to in Articles 83 of the Financial Regulation.

2. For contracts of a value equal or above 50,000 EUR, the tenderer to whom the contract is to be awarded, and when requested by the Joint Undertaking also its subcontractors, shall provide, within a time limit defined by the Joint Undertaking and preceding the signature of the contract, the evidence referred to in paragraph 3 confirming the declarations of honour referred to in paragraph 1. For contracts with a value of less than 50,000 EUR, the provision of such evidence may be requested by the Joint Undertaking.
3. The Joint Undertaking shall accept as satisfactory evidence that the tenderers and subcontractors, are not in one of the situations described in point (a), (b) or (e) of Article 83(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The Joint Undertaking shall accept, as satisfactory evidence that the tenderers are not in the situation described in point (d) of Article 83(1) of the Financial Regulation, a recent certificate issued by the competent authority of the country concerned.

Where the document or certificate referred to in paragraph 1 is not issued in the country concerned and for the other cases of exclusion referred to in Article 83 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

4. Depending on the national legislation of the country in which the tenderer is established, the documents referred to in paragraphs 1 and 2 shall relate to legal persons and/or natural persons including, where considered necessary by the Joint Undertaking, company directors or any person with powers of representation, decision-making or control in relation to the tenderer.
5. Where tenderers may have doubts as to whether they are in one of the situations of exclusion, Joint Undertaking may apply directly to the competent authorities referred to in paragraph 2 to obtain any information it considers necessary about that situation.
6. The Joint Undertaking may waive the obligation of a tenderer to submit the documentary evidence referred to in paragraph 2 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that not more than one year has elapsed since the documents were issued and that they are still valid.

In such a case, the tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

Article 129

Central Database

1. The Joint Undertaking shall have access to the to the information contained in the central database referred to in Article 85 of the Financial Regulation and may take it into account, as appropriate and on its own responsibility for the assessment of whether a tenderer is in one of the situations referred to in Articles 83 and 84 of the Financial Regulation.
2. The Joint Undertaking shall transmit to the Commission, in the format agreed with the latter, information identifying the economic operators which are in one of the situations referred to in Articles 83 and 84 of the Financial Regulation, the grounds for exclusion and the duration of the period of exclusion.

The Joint Undertaking shall also transmit information concerning persons with powers of representation, decision making or control over economic operators which are legal entities, when these persons have found themselves in one of the situations referred to in Articles 83 and 84 of the Financial Regulation.

The Joint Undertaking shall transmit to the Commission, in the format agreed with the Commission:

- (a) information identifying the following persons who are in one of the situations referred to in Article 83(1)(e) of the Financial Regulation, where their conduct was detrimental to the Communities' financial interests:
 - (i) the economic operators;
 - (ii) persons with powers of representation, decision-making or control over economic operators which are legal entities;
 - (b) the type of their conviction;
3. The Joint Undertaking shall designate the persons authorised to communicate to and receive from the Commission the information contained in the database. The designated persons shall:
 - (a) address the information as soon as possible to the accounting officer of the Commission, and request, as appropriate, entry, modification or removal of data in the database;
 - (b) address the requisite information to the Commission authorising officer responsible for the programme or action concerned, within three months of the issue of the relevant judgement.

4. The Joint Undertaking shall certify to the Commission that the information communicated by them was established and transmitted in accordance with the principles set out in Regulation (EC) No 45/2001 and in Directive 95/46/EC of the European Parliament and of the Council¹⁴ concerning the protection of personal data.

In particular, the Joint Undertaking shall inform in advance all economic operators or persons referred to in paragraph 2 that their data may be included in the database and communicated by the Commission to the designated persons referred to in paragraph 3. They shall update, where appropriate, the information transmitted, following rectification or erasure or any modification of data.

Article 130

Selection criteria

1. The Joint Undertaking shall draw up clear and non-discriminatory selection criteria.
2. The selection criteria shall be applied in every procurement procedure for the purposes of assessing the financial, economic, technical and professional capacity of the candidate or the tenderer.

The Joint Undertaking may lay down minimum capacity levels below which candidates in the case of a restricted procedure or competitive dialogue may not be selected and economic operators in case of a negotiated procedure may not be accepted.

3. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.
4. The Joint Undertaking shall specify in the contract notice or the invitation to tender, the references chosen to test the status and the legal capacity of tenderers or candidates.
5. The information requested by the Joint Undertaking as proof of the financial, economic, technical and professional capacity of the candidate or tenderer and the minimum capacity levels required in accordance with paragraph 2 may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the economic operators' technical and business secrets.
6. The information, referred to in paragraph 5 shall be provided by the candidates in their reply to the selection questionnaire.
7. The Joint Undertaking may, depending on his assessment of risks, decide not to require proof of the financial, economic, technical and professional capacity of tenderers in the case of contracts with a value less than or equal to EUR 50 000.

¹⁴ OJ L 281, 23.11.1995, p. 3.

When the Joint Undertaking decides not to require proof of the financial, economic, technical and professional capacity of tenderers, no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided.

Article 131

Economic and financial capacity

1. Proof of economic and financial capacity may in particular be furnished by one or more of the following documents:
 - (a) appropriate statements from banks or evidence of professional risk indemnity insurance;
 - (b) the presentation of balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established;
 - (c) a statement of overall turnover and turnover concerning the works, supplies or services covered by the contract during a period which may be no more than the last three financial years.
2. If, for some exceptional reason which the Joint Undertaking considers justified, the tenderer or candidate is unable to provide the references referred to in paragraph 1, he may prove his economic and financial capacity by any other means which the Joint Undertaking considers appropriate.
3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities including subcontractors, regardless of the legal nature of the links which it has with them. It must in that case prove to the Joint Undertaking that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium may rely on the capacities of members of the consortium or of other entities including subcontractors.

Article 132

Technical and professional capacity

1. The technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraphs 2 and 3. In procurement procedures for supplies requiring sitting or installation operations, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.
2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or

works to be provided, be furnished on the basis of one or more of the following documents:

- (a) the educational and professional qualifications of the staff and management and, in particular, those of the person or persons responsible for providing the supplies, services or carrying out the works;
- (b) a list:
 - (i) of the principal supplies, services and works provided and delivered in the past three years, with the nature of the activities, their value, dates and recipients, public or private; and
 - (ii) if appropriate, certificates demonstrating satisfactory execution of the supplies, services and works demonstrating that they have been fully completed according to the relevant quality control standards.
- (c) a description of the technical equipment and tools to be employed by the economic operator, the measures employed to ensure the quality control and, if appropriate, a description of the firm's study and research facilities;
- (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- (f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- (g) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;
- (h) information on the parts of the contract which are intended to be subcontracted, the identity of the subcontractors, their financial, economic, technical and professional capacities, the location where the subcontracted obligations would be performed as well as the estimated value of the subcontracts as a proportion of the total estimated value of the contract.

Where the services or supplies referred to in point (b)(i) of the first subparagraph are provided to the Joint Undertaking, evidence of performance shall be in the form of certificates issued or countersigned by the competent authority.

3. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Joint Undertaking or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

4. Where the Joint Undertaking requires the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.
5. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities including subcontractors, regardless of the legal nature of the links which it has with them. It shall in that case prove to the Joint Undertaking that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.
6. Under the same conditions, a consortium may rely on the capacities of members of the consortium or of other entities including subcontractors. The reliance upon other entities including subcontractors shall be without prejudice to the question of the tenderers liability.

Article 133

Award Criteria

1. Contracts shall be awarded in one of the following two ways:
 - (a) under the best-value-for-money procedure whereby the tender offering the best value for money shall be the one with the best price-quality ratio, taking into account criteria justified by the subject of the contract such as the price quoted, technical merit, functional characteristics, environmental characteristics, running costs, profitability completion or delivery times, after-sales service and technical assistance; or
 - (b) under the automatic award procedure, in which case the contract is awarded to the tender which, quotes the lowest price provided that the tender is fully compliant with the technical specifications.
2. The Joint Undertaking shall specify, in the contract notice or in the invitation to tender, a scale of marking and weightings factors for the relative importance of each criterion it will apply for determining the best value for money. The weighting may be expressed as a range with an appropriate maximum spread.

If, in exceptional cases, weighting is technically impossible, particularly on account of the subject of the contract, the Joint Undertaking shall merely specify the decreasing order of importance in which the criteria are to be applied.

CHAPTER V
Miscellaneous provisions

(Articles 89, 90, 93 and 94 of the Financial Regulation)

CE

Article 134

Language and currency

All documents and related correspondence associated with the procurement procedure shall be in English, except when otherwise specified in the invitation to tender.

Prices shall be requested in euro.

Article 135

Time limits

1. The time limits for the receipt of tenders and requests to participate, laid down in calendar days by the Joint Undertaking, shall be long enough to allow interested economic operators a reasonable and appropriate period to prepare and submit their tenders or requests to participate, taking into account the complexity of the contract or the need to visit the site or consult on the spot the documents annexed to the specifications.
2. For open procedures the time limit for receipt of tenders shall be no less than 52 calendar days from the date on which the contract notice was published.
3. For restricted procedures and the competitive dialogue the time limits shall be no less than:
 - (a) 37 calendar days for the receipt of requests to be selected to tender or requests to participate from the date on which the contract notice was published;
 - (b) 40 calendar days for the receipt of tenders from the date on which the invitation to tender is issued.
4. When the Joint Undertaking has published a pre-information notice, as referred to in Article 107, the minimum time limits for the receipt of tenders under paragraphs 2 and 3(b) may, as a general rule, be shortened to 36 days.
5. When contract notices are drawn up and transmitted by electronic means, the time limits for the receipt of tenders referred to in paragraphs 2 and 4 for open procedures, and the time limits for the receipts of the requests to participate referred to in paragraph 3(a) in restricted and negotiated procedures and the competitive dialogue, may be reduced by seven days.
6. Provided that the request was made in good time before the deadline for submission of tenders, additional information relating to the specification or the descriptive documents or additional documents shall be supplied simultaneously to all economic operators who have expressed interest in participating in a dialogue or submitting a tender no later than six days before the deadline for the receipt of tenders or, in the case of requests for information received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request. The Joint Undertaking is not bound to reply to requests for additional information made less than five working days before the deadline for submission of tenders.

7. If, for whatever reason the additional documents or information cannot be supplied within the time-limits set in paragraph 6, or where tenders can be made only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time-limits for receipt of tenders referred to in paragraphs 2, 3(b) and 4 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. That extension shall be advertised in appropriate manner.
8. Where duly substantiated urgency renders impracticable the minimum time limits laid down in paragraph 3, the Joint Undertaking may set the following time limits:
 - (a) 15 calendar days for the receipt of requests to be selected to tender or requests to participate from the date on which the contract notice was published;
 - (b) 10 calendar days for the receipt of tenders from the date on which the invitation to tender is issued.

Additional information on the specifications shall, provided it has been requested in good time, be communicated to all candidates or tenderers no later than four calendar days before the deadline for receipt of tenders.

Article 136

Information for candidates and tenderers

1. The Joint Undertaking shall, as soon as possible, inform tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract or to recommence the procedure.
2. The Joint Undertaking shall notify, in accordance with Article 90(2) of the Financial Regulation and without prejudice to paragraph 4:
 - (a) all the candidates or tenderers whose requests or tenders are rejected of the grounds on which the decision was taken;
 - (b) all tenderers whose tenders are admissible and who make a request in writing, the relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.
3. In the case of contracts awarded by the Joint Undertaking with a value greater than EUR 50 000, the Joint Undertaking shall inform all unsuccessful candidates or tenderers, simultaneously and individually, by mail or e-mail, or via the official internet website of the Joint Undertaking, that their application or tender has not been accepted at either of the following stages:
 - (a) shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in the case of the restricted procedure and competitive dialogue;
 - (b) as regards the award decisions and decisions to reject tenders, as soon as possible after the award decision and within 7 calendar days at the latest.

etc

Unsuccessful candidates or tenderers may request additional information about the reasons for their rejection in writing by mail or email, and all tenderers who have submitted an admissible tender may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer, without prejudice to paragraph 4. The Joint Undertaking shall reply within no more than fifteen calendar days from receipt of the request.

4. In accordance with Article 90(2) subparagraph 2 of the Financial Regulation, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

Article 137

Signature of the contracts

Implementation of a contract may not start before the contract is signed.

Article 138

Confidentiality

1. In the case that documents supplied by, or on behalf of, the Joint Undertaking, during a procurement procedure are designated as EU CONFIDENTIAL the selected candidates and the tenderers shall take all necessary steps to ensure that these documents, including any specification, description, solution, plan, drawing, pattern, sample or information shall not be disclosed to any person other than a person employed or engaged by the selected candidates and the tenderers, whether under sub-contract or otherwise, for the preparation of the tender.
2. Except with the written consent of the Joint Undertaking, the selected candidates and the tenderers shall not make use of any of the documents or information set out in paragraph 1 than for purposes other than the preparation of the tender.
3. Without prejudice to the provisions of these Rules, in particular those concerning the obligations relating to the advertising of awarded contracts and to the information for tenderers set out in Articles 124 and 136, the Joint Undertaking shall not disclose information forwarded to it by economic operators which they have designated as confidential, such information includes, in particular, technical or trade secrets and confidential aspects of tenders.

Article 139

Contacts between the Joint Undertaking and tenderers

1. Without prejudice to the contact allowed under the competitive dialogue and the negotiated procedure, contact between the Joint Undertaking and tenderers during the

contract award procedure may take place, by way of exception, under the conditions set out in this Article.

2. Before the closing date for the submission of tenders, in respect of the additional documents and information referred to in Article 135, the Joint Undertaking may:
 - (a) at the request of economic operators invited to submit a tender, communicate additional information solely for the purpose of clarifying the nature of the contract, such information shall be communicated on the same date to all economic operators invited to submit a tender;
 - (b) at its own initiative, if it discovers an error, a lack of precision, an omission or any other type of administrative error in the text of the contract notice, invitation to tender, specifications or descriptive document, the Joint Undertaking shall inform the economic operators invited to submit a tender concerned on the same date and in a manner identical with that applicable in respect of the original invitation to tender.
3. If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious administrative errors in the tender must be corrected, the Joint Undertaking may contact the tenderer, although such contact may not lead to any alteration of the terms of the tender.
4. If deemed necessary, the evaluation committee may seek technical clarification from the tenderers, including the carrying out of on site visits by the tenderers.
5. In every case where contact has been made with tenderers this shall be recorded in the contract adjudication file.
6. Contacts with tenderers may take place if the result of evaluation is that no tenders are acceptable but the evaluation committee considers that one or more of the tenders may be rendered acceptable by minor changes of their offer provided that the content of the technical specifications of the tender will not be essentially affected.

Negotiations may also be undertaken if the result of the evaluation is that some tenders are equally ranked and the evaluation committee, being unable to make a recommendation for the award of the contract, deems it appropriate to negotiate with all the potential tenderers equally ranked. The aim of the negotiation shall be to obtain improvements in the tenders in order to permit a recommendation to be made for the award of the contract.

When only a single admissible tender has been submitted in response to call for tender, the Joint Undertaking may negotiate with the tenderer in order to adapt the tender to the requirements set out in the specifications and in any additional documents, provided that the content of the technical specifications of the tender will be not substantially affected.

Any consultation and negotiation with tenderers shall be treated confidentially and recorded in the contract adjudication file.

Article 140

Tender guarantees

1. The Joint Undertaking may require a tender guarantee representing 1 % to 5 % of the total value of the contract.
2. The guarantee shall be supplied by a bank or an authorised financial institution. It may be replaced by a joint and several guarantee by a third party.

The guarantee shall be denominated in euro.

It shall have the effect of making the bank or financial institution or the third party stand as irrevocable collateral security, or first-call guarantor of the contractor's obligations.

3. A tender guarantee shall be released when the contract is awarded. If no tender is submitted by the deadline set or if the tender is subsequently withdrawn, the guarantee shall be retained.

Article 141

Suspension in the event of errors or irregularities

1. In accordance with the relevant contract, contract contracts shall be suspended under Article 94 of the Financial Regulation in order to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible.
2. A substantial error or irregularity shall be any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the Joint Undertaking's budget.

SUBTITLE II

**ADMINISTRATIVE CONTRACTS TO BE AWARDED BY THE JOINT
UNDERTAKING**

(Chapter 2 of Title V of the Financial Regulation)

Article 142

Contract award decision

Article 124(2) and (3) shall also apply to contracts to be awarded in accordance with the procedures referred to in Article 95 of the Financial Regulation.

TITLE VI GRANTS

CHAPTER 1 General provisions

Article 143

Definitions

For the purposes of this Title, the following definitions shall apply:

1. "Executive Committee" means the body assisting the Governing Board in the preparation of its decisions as set out in Article 7 of the Statutes;
2. "International organisation" means an intergovernmental organisation, other than the Community, which has legal personality under international public law, as well as any specialised agency set up by such an international organisation;
3. "Beneficiary" means a natural or legal person contributing to an action and having rights and obligations with regard to the Joint Undertaking under the terms of these Rules;
4. "Public body" means any legal person established as a public body by national law, and international organisations.

Article 144

Actions which may receive grants *(Article 96 of the Financial Regulation)*

An action of the Joint Undertaking which may receive a grant shall be clearly identified.

No action may be split for the purpose of evading these Rules.

Article 145

Consortium agreements *(Article 96 of the Financial Regulation)*

When required in the call for proposals or in the Joint Undertakings' annual work programme, all beneficiaries in an action shall conclude an agreement, to govern at least the following:

- (a) the internal organisation of the consortium;
- (b) the distribution of the financial contribution;

- (c) rules on dissemination, use, and access rights;
- (d) the settlement of internal disputes including the cases of abuses of power;
- (e) liability, indemnification and confidentiality arrangements between the beneficiaries.

Article 146

Coordinator

(Article 96 of the Financial Regulation)

1. For actions with more than one beneficiary, the natural or legal persons wishing to participate in an action shall appoint one of their members to act as coordinator to carry out the following tasks:
 - (a) to monitor the compliance by beneficiaries in the action with their obligations;
 - (b) to verify whether the natural or legal persons identified in the grant agreement complete the necessary formalities for accession to the grant agreement;
 - (c) to receive the financial contribution from the Joint Undertaking and to distribute it in accordance with the consortium and grant agreement;
 - (d) to keep the records and financial accounts relevant for the financial contribution and to inform the Joint Undertaking of its distribution in accordance with point (b) of Article 145;
 - (e) to act as an intermediary for efficient and correct communication between the beneficiaries and to report regularly to the beneficiaries and to the Joint Undertaking on the progress of the action.
2. The coordinator shall be identified in the grant agreement.

The appointment of a new coordinator shall require the written approval of the Joint Undertaking.

Article 147

Partnerships

(Article 96 of the Financial Regulation)

1. Specific grants may form part of a framework partnership.
2. A framework partnership may be established as a long-term cooperation mechanism between the Joint Undertaking and the beneficiaries of grants. It may take the form of an agreement.

The framework partnership agreement shall specify the common objectives, the nature of actions planned on a one-off basis or as part of an approved annual work

programme, the procedure for awarding specific grants, in compliance with the principles and procedural rules in this Title, and the general rights and obligations of each party under the specific agreements.

The duration of the partnership may not exceed four years, save in exceptional cases, justified in particular by the subject of the framework partnership and approved by the Executive Committee.

The Joint Undertaking may not make undue use of framework partnership agreements or use them in such a way that the purpose or effect is contrary to the principles of transparency or equal treatment of applicants.

3. Framework partnership agreements shall be treated as grants for the purposes of the award procedure. They shall be subject to the *ex ante* publication procedures referred to in Article 157.
4. Specific grants based on framework partnership agreements shall be awarded in accordance with the procedures laid down in those agreements, and in compliance with this Title.

They shall be subject to the *ex post* publication procedures laid down in Article 159.

Article 148

Content of grant agreements *(Article 96 of the Financial Regulation)*

1. The grant agreement shall establish the rights and obligations of the beneficiary with regard to the Joint Undertaking. It shall also establish, in accordance with the same conditions, the rights and obligations of natural or legal persons who become beneficiaries when the action is ongoing.

Apart from the subject, beneficiary(s) and description of the action, the grant agreement shall at least lay down the following:

- (a) the duration, namely:
 - (i) the date of its entry into force and its termination;
 - (ii) the starting date and the duration of the action being funded.
- (b) the estimated overall budget required for the execution of the proposed action;
- (c) the maximum financial contribution of the Joint Undertaking expressed as an absolute value, supplemented as appropriate by the maximum rate of funding expressed in percentage terms;
- (d) the general terms and conditions applicable to all agreements of this type, such as the acceptance by the beneficiary of audits by the Joint Undertaking, OLAF

and the Court of Auditors and of the *ex post* publication rules referred to in Article 159, in accordance with Regulation (EC) No 45/2001¹⁵;

- (e) the responsibilities of the beneficiary, at least in terms of sound financial management and submission of activity and financial reports; whenever appropriate, intermediate targets shall be established, upon which those reports become due.
2. In case a consortium has been created, the grant agreement shall identify the coordinator as referred to in Article 146(2).
3. Grant agreements may be amended only by additional written agreements. Such additional agreements shall not have the purpose or the effect of making such changes to agreements that would call into question the grant award decision or be contrary to the equal treatment of applicants.
4. Some of the information referred to in paragraph 1 may be provided in the call for proposals or any related document.

Article 149

Eligibility for participation *(Article 97 of the Financial Regulation)*

1. Any natural or legal person who is a national or established in a territory of a Member of the Joint Undertaking may participate in an action, unless otherwise specified in the relevant call for proposals.

Establishment, as referred to in subparagraph 1, means the actual pursuit of an economic activity by a legal person formed in accordance with the law of a Member of the Joint Undertaking and having its registered office, central administration or principle place of business within the territory of a Member of the Joint Undertaking.

2. If specific conditions for participation are deemed necessary, they shall be laid down in the Joint Undertakings' relevant call for proposals. Those conditions shall be established with due regard for the objectives of the action and shall comply with the principles of transparency and non-discrimination.

Article 150

Applicants without legal personality *(Article 97 of the Financial Regulation)*

1. When an application for a grant is submitted by an applicant who does not have legal personality, in accordance with Article 97(a) of the Financial Regulation, the representatives of that applicant shall prove that they have the capacity to undertake

¹⁵ OJ L 145, 31.5.2001, p. 43

legal obligations on behalf of the applicant, and shall offer financial guarantees equivalent to those provided by legal persons.

Article 151

Independence

(Article 97 of the Financial Regulation)

1. If the specific conditions referred to in Article 149(2) require for more than one natural or legal person, they shall be independent of each other.

Natural or legal persons shall be regarded as independent of each other where neither is under the direct or indirect control of the other or under the same direct or indirect control as the other.

2. For the purposes of paragraph 1, control may in particular take either of the following forms:
 - (a) the direct or indirect holding of more than 50 % of the nominal value of the issued share capital in the legal person concerned, or of a majority of the voting rights of the shareholders or associates of that operator;
 - (b) the direct or indirect holding, in fact or in law, of decision-making powers in the legal person concerned.
3. However, the following relationships between natural and legal persons shall not in themselves be deemed to constitute controlling relationships:
 - (a) the same public investment corporation, institutional investor or venture-capital company has a direct or indirect holding of more than 50 % of the nominal value of the issued share capital or a majority of voting rights of the shareholders or associates;
 - (b) the legal persons are owned or supervised by the same public body.

Article 152

Forms of grants

(Article 98 of the Financial Regulation)

Grants awarded by the Joint Undertaking in the form referred to in point (a) of Article 98(1) of the Financial Regulation shall be calculated on the basis of eligible costs, which are defined as costs actually incurred by the beneficiary and subject to the total budget estimate as submitted with the proposal and included in the grant agreement.

CHAPTER 2

Principles

Article 153

Upper funding limits *(Article 99 (1) of the Financial Regulation)*

1. For research, technological development and demonstration activities, the financial contribution of the Joint Undertaking may reach a maximum of 40% of the total eligible costs.
2. For coordination and support actions, including studies, the financial contribution of the Joint Undertaking may reach a maximum of 100% of the total eligible costs.
3. For management activities, including certificates on the financial statements, and other activities not covered by paragraphs 1 and 2, the financial contribution of the Joint Undertaking may reach a maximum of 100% of the total eligible costs.

Article 154

Co-financing principle *(Article 99 (1) of the Financial Regulation)*

1. Co-financing shall require that part of the cost of an action is borne by the beneficiary of a grant, or by contributions other than the Joint Undertaking or Community contributions.
2. In the case of grants taking one of the forms provided for in points (b) or (c) of Article 98(1) of the Financial Regulation, or a combination thereof, co-financing shall only be assessed at the stage of the evaluation of the grant application.

Article 155

No-profit rule *(Article 99 (2) of the Financial Regulation)*

1. Profit in the context of a grant shall mean a surplus of receipts over the costs incurred by the beneficiary when the request is made for final payment.
2. Lump sums and flat-rate financing shall be determined on the basis of the costs or the category of costs to which they relate, established by statistical data and similar objective means, in such a way as to exclude *a priori* a profit. On the same basis, those amounts shall be reassessed and, where appropriate, adjusted by the Joint Undertaking every two years.

In that case, and for each grant, non-profit shall be verified at the time of the determination of the amounts.

Where the *ex post* control on the generating event reveals that the event has not occurred and an undue payment has been made to the beneficiary on a lump sum or flat-rate financing, the Joint Undertaking shall be entitled to recover up to the amount of the lump sum or flat-rate financing in accordance with the relevant grant agreement.

Such controls are without prejudice to the verification and certification of actual costs required for the payment of grants or for grants consisting in the reimbursement of a specified proportion of the eligible costs.

Article 156

Annual programming
(Article 100 (1) of the Financial Regulation)

The work programme of the Joint Undertaking shall set out the grants to be awarded, in particular the objectives, the indicative schedule of calls for proposals with the indicative amount and the results expected.

Article 157

Content of calls for proposals
(Article 100 (1) of the Financial Regulation)

1. The Joint Undertaking shall issue calls for proposals in accordance with its annual work programme. Calls for proposals shall in particular specify:
 - (a) the needs and requirements of the Joint Undertaking;
 - (b) the eligibility, specific conditions, exclusion, selection and award criteria as referred to in Articles 97, 104 and 105 of the Financial Regulation and the relevant supporting documents;
 - (c) the arrangements and final date for the submission of proposals and the possible start-up date for the actions and the planned date for closing the award procedure.
 - (d) a model grant agreement and its general conditions.
2. Calls for proposals shall be published via the Joint Undertaking's official internet website and possibly by any other appropriate means. They may be published during the year preceding budget implementation. Any modification of the content of the calls for proposals shall be also subject to publication under the same conditions.

Article 158

Exceptions to calls for proposals
(Article 100 (1) of the Financial Regulation)

Grants may be awarded without a call for proposals only in the following cases:

- (a) in exceptional and duly substantiated emergencies;
- (b) to bodies with a *de jure* or *de facto* monopoly that are identified in the work programme and duly substantiated in the award decision;
- (c) for actions with specific characteristics that require a particular type of body on account of its technical competence or its high degree of specialisation. The bodies shall be identified in the work programme and duly substantiated in the award decision.

Article 159

Ex post publication

(Article 100 (2) of the Financial Regulation)

1. All grants awarded in the course of a financial year, except scholarships paid to natural persons, shall be published in the Joint Undertaking's official internet website during the first half of the year following the closure of the budget year in respect of which they were awarded.
2. The following shall be published with the agreement of the beneficiary:
 - (a) the name and address of the beneficiaries;
 - (b) the subject of the grant;
 - (c) the amount awarded and, except in the case of a lump sum or flat-rate financing as referred to in Article 98(1)(b) and (c) of the Financial Regulation, the rate of funding of the costs of the action or approved work programme.

The obligation laid down in the first subparagraph may be waived if publication of the information may threaten the safety of the beneficiaries or harm their business interests.

Article 160

External co-financing

(Article 103 of the Financial Regulation)

1. The beneficiary shall supply evidence of the co-financing provided, either by way of own resources, or in the form of financial transfers from third parties, or in kind.
2. The authorising officer responsible may accept co-financing in kind, if considered necessary or appropriate. In such cases the value of such contributions must not exceed:
 - (a) either the costs actually borne and duly supported by accounting documents;

- (b) or the costs generally accepted on the market in question.
3. The authorising officer responsible may, depending on his risk assessment, waive the obligation to provide the evidence for co-financing referred to in paragraph 1.

Article 161

Eligible costs
(Article 103 of the Financial Regulation)

1. Eligible costs shall be costs actually incurred by the beneficiary of a grant which meet all the following criteria:
- (a) they are incurred during the duration of the action, with the exception of costs relating to final reports and audit certificates;
 - (b) they are indicated in the estimated overall budget of the action;
 - (c) they are necessary for the implementation of the action;
 - (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost-accounting practices of the beneficiary;
 - (e) they comply with the requirements of applicable tax and social legislation;
 - (f) they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.
2. Without prejudice to paragraph 1 and to the annual work programme, the following costs may be considered as eligible by the authorising officer responsible:
- (a) costs relating to a bank guarantee or comparable surety to be lodged by the beneficiary of the grant pursuant to Article 108 of the Financial Regulation;
 - (b) costs relating to external audits required by the responsible authorising officer either upon the request for financing or upon the request for payment;
 - (c) value added tax paid, and which cannot be refunded to the beneficiary according to the applicable national legislation;
 - (d) depreciation costs, provided they are actually incurred by the beneficiary;
 - (e) administrative expenditure, staff and equipment costs, including the salary costs of personnel of national administrations to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken.

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CHAPTER 3 Award procedure

Article 162

Grant applications *(Article 104 of the Financial Regulation)*

1. Applications shall be made in the form specified by the Joint Undertaking, and in accordance with the criteria laid down in the call for proposals.
2. The arrangements for the submission of grant applications shall be determined by the authorising officer responsible. Grant applications may be submitted by letter or by electronic means.

The means of communication chosen shall be non-discriminatory in nature and shall not have the effect of restricting the access of applicants to the award procedure.

The confidentiality of applications should be preserved.

3. The application shall show the legal status of the applicant and his financial and operational capacity to carry out the proposed action.

For that purpose the applicant shall submit a declaration on his honour and any supporting documents requested, on the basis of his risks assessment, by the authorising officer responsible. The request for such documents shall be indicated in the call for proposals.

The supporting documents may consist in particular in the profit and loss account, the balance sheet for the last financial year for which the accounts were closed.

4. The estimated budget for the action attached to the application shall have revenue and expenditure in balance, subject to provisions for possible variations in exchange rates, and shall indicate the costs which are eligible for financing from the Joint Undertaking's budget.
5. Where the application concerns grants for an action for which amount greater than EUR 500 000 an audit report produced by an approved external auditor shall be submitted. That report shall certify the accounts for the last financial year available.

The provisions of the first subparagraph shall apply only to the first application made by a beneficiary to the authorising officer in any one budget year.

In the case of agreements linking the Joint Undertaking and a number of beneficiaries, those thresholds shall apply to each beneficiary.

In case of partnerships as referred to in Article 147, the audit referred to in the first subparagraph, covering the last two financial years available shall be produced before the framework partnership agreement is concluded.

The authorising officer responsible may, depending on his risk assessment, waive the obligation of audit referred to in the first subparagraph for secondary and higher education establishments and beneficiaries who have accepted joint and several liabilities in the case of agreements with a number of beneficiaries.

The first subparagraph shall not apply to public bodies and international organisations.

6. The applicant shall indicate the sources and amounts of any other funding received or applied for in the same financial year for the same action or for any other action and for routine activities.

Article 163

Application of exclusion criteria

Applicants shall be excluded from participating in grant procedures as long as they are in one of the situations referred to in points (a) and (d) of Article 83(1) of the Financial Regulation.

Article 164

Evidence of non exclusion

(Article 104 (2) of the Financial Regulation)

Applicants shall declare on their honour that they are not in one of the situations listed in Article 83(1) and 84 of the Financial Regulation. The authorising officer responsible may, depending on his risk analysis, request the evidence referred to in Article 128. Applicants shall be required to supply such evidence, unless there is a material impossibility recognised by the authorising officer responsible.

The authorising officer may refrain from requiring the applicants to certify that they are in one of the situations referred to in Article 83(1) or 84 of the Financial Regulation for grants lower or equal to Euro 50 000.

Article 165

Selection criteria

(Article 105 (1) of the Financial Regulation)

1. The selection criteria shall be published in the call for proposals and shall be such as to make it possible to assess the applicant's financial and operational capacity to complete the proposed action.
2. The applicant shall have stable and sufficient sources of funding to maintain his activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. The applicant shall have the professional competencies and qualifications required to complete the proposed action unless specifically provided otherwise in the work programme.

3. Financial and operational capacity shall be verified in particular on the basis of an analysis of any of the supporting documents referred to in Article 162 and requested by the authorising officer responsible in the call for proposals.

If no supporting documents were requested in the call for proposals and if the authorising officer responsible has doubts about the financial or operational capacity of applicants, he shall request them to provide any appropriate documents.

4. The verification of financial capacity in accordance with paragraph 3 shall not apply to natural persons in receipt of scholarships, to public bodies or to international organisations.

In the case of the partnerships referred to in Article 147, that verification shall be performed before the framework agreement is concluded.

Article 166

Award criteria

(Article 105 (2) of the Financial Regulation)

1. The award criteria shall be published in the call for proposals.
2. The award criteria shall be such as to enable grants to be awarded to actions which maximise the overall effectiveness of the Joint Undertakings work programme which they implement. Those criteria shall be defined in such a way as to ensure also that the Joint Undertakings funds are properly managed and that it will be possible subsequently to carry out an evaluation.

Article 167

Evaluation of applications and award

(Article 106 of the Financial Regulation)

1. The Joint Undertaking shall evaluate all the proposals submitted in response to a call for proposals on the basis of the pre-announced selection and award criteria.

Proposals which do not fulfill the conditions set out in the work programme or in the call for proposals shall not be selected. Such a proposal may be excluded from the evaluation procedure at any time.

2. The authorising officer responsible shall appoint a committee to evaluate the proposals. The authorising officer may appoint such a committee before the final date for the submission of proposals provided for in Article 157(1)(c).

The committee shall be made up of at least three persons of the staff of the Joint Undertaking. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 37 of the Financial Regulation.

Outside experts may assist the committee, by decision of the authorising officer responsible whereby Title VII of the Financial Regulation applies.

3. The evaluation committee or, where appropriate, the authorising officer responsible may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, in particular in the case of obvious clerical errors.

The authorising officer shall keep appropriate records of contacts with applicants during the procedure.

4. Upon completion of its work, the members of the evaluation committee shall sign a record of all the proposals examined, containing an assessment of their quality and identifying those which may receive funding. Where necessary that record shall rank the proposals examined.

The record shall be kept for future reference.

5. Before awarding the grant, the authorising officer responsible shall submit the necessary information to the Executive Committee for approval when:

- (a) the maximum financial contribution of the Joint Undertaking is greater than EUR 200 000; or
- (b) as deemed appropriate by the Director on the basis of a risk assessment.

The Executive Committee shall certify the correctness of the procedural aspects followed to award the grant.

The authorising officer responsible shall report *ex post* to the Executive Committee the details of all awarded grants within three months.

6. The authorising officer responsible shall then take his decision giving at least:

- (a) the subject and the overall amount of the decision;
- (b) the name of the beneficiaries, the title of the actions, the amounts accepted and the reasons for that choice, including where it is inconsistent with the opinion of the evaluation committee;
- (c) the names of any applicants rejected and the reasons for that rejection.

7. The provisions of paragraphs 1 to 4 shall not apply to beneficiaries who are identified in the work programme.

Article 168

Information for applicants *(Article 106 of the Financial Regulation)*

Applicants shall be informed as soon as possible and in any case within 15 calendar days after the award decision has been sent to the beneficiaries.

CHAPTER 4 Payment and control

Article 169

Supporting documents for requests for payments (Article 107 of the Financial Regulation)

1. For each grant, pre-financing may be split into several instalments.

The payment in full of the new pre-financing payment shall be subject to the consumption of at least 70 % of the total amount of any earlier pre-financing.

Where the consumption of the previous pre-financing is less than 70 %, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing.

The statement of the beneficiary's outlay shall be produced in support of any request for a new payment.

2. The beneficiary shall, without prejudice to Article 65, certify on his honour that information contained in requests for payments is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the grant agreement and that requests for payment are substantiated by adequate supporting documents that can be checked.
3. A certificate on the financial statements and underlying accounts, produced by an approved auditor or in case of public bodies, by a competent and independent public officer, may be demanded by the authorising officer responsible in support of any payment on the basis of his assessment of risks. The certificate shall be attached to the request for payment. It shall certify that the costs declared by the beneficiary in the financial statements on which the request for payment is based are real, accurately recorded and eligible in accordance with the grant agreement.

Except in the case of lump sums and flat rate financing, the certificate on the financial statements and underlying accounts shall be compulsory for interim payments per financial year and for payments of balances in cases for an action of greater than EUR 750 000, when the cumulative amounts of requests for payment are greater than EUR 325 000.

Depending on his risk assessment, the authorising officer responsible may also waive the obligation to provide such certificate on the financial statements and underlying accounts in the case of:

- (a) public bodies and international organisations ;
- (b) beneficiaries of multiple grants who have provided independent certification offering equivalent guarantees on the control systems and methodology used to prepare their claims.

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In the case of an agreement linking the Joint Undertaking and a number of beneficiaries, the thresholds referred to in the second subparagraph shall apply to each beneficiary.

Article 170

*Advance guarantee
(Article 108 of the Financial Regulation)*

1. In order to limit the financial risks connected with the payment of pre-financing, the authorising officer responsible may, on the basis of his risks assessment either require the beneficiary to lodge a guarantee in advance, for up to the same amount as the pre-financing, or split the payment into several instalments.

However, for grants of a value equal to or less than EUR 5 000, the authorising officer responsible may require the beneficiary to lodge a guarantee in advance only in duly substantiated cases.

Such a guarantee may also be required by the authorising officer responsible, depending on his risks assessment, in the light of the method of funding laid down in the grant agreement.

Whenever a guarantee is required, it is subject to the assessment and acceptance of the authorising officer responsible.

2. Where pre-financing represents 80% of the total amount of the grant and provided it is greater than EUR 60 000, a guarantee shall be required.

The guarantee shall be valid for a period sufficiently long to allow it to be activated.

3. The guarantee shall be provided by an approved bank or financial institution established in the territory of a Member of the Joint Undertaking. When the beneficiary is established in the territory of a third country, the authorising officer responsible may agree that a bank or financial institution established in that third country may provide the guarantee if he considers that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or financial institution established in the territory of a Member of the Joint Undertaking.

At the request of the beneficiary, that guarantee may be replaced by a joint and several guarantee by a third party or by the irrevocable and unconditional joint guarantee of the beneficiaries of an action who are parties to the same grant agreement, after acceptance by the authorising officer responsible.

The guarantee shall be denominated in euro.

It shall have the effect of making the bank or financial institution, third party or the other beneficiaries stand as irrevocable collateral security, or first-call guarantor of the grant beneficiary's obligations.

4. The guarantee shall be released as the pre-financing is gradually cleared against interim payments or payments of balances to the beneficiary in accordance with the conditions laid down in the grant agreement.

In the cases referred to in the second subparagraph of paragraph 1, it shall be released only upon payment of the balance.

5. The authorising officer responsible may waive the obligation laid down in paragraph 2 for public bodies and international organisations.

The authorising officer responsible may also exempt from that obligation beneficiaries who have concluded a framework partnership agreement under Article 147.

TITLE VII PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

(Title VIII of the Financial Regulation)

CHAPTER 1 Presentation of the accounts

Article 171

Report on budgetary and financial management during the year
(Article 112 of the Financial Regulation)

1. The report on budgetary and financial management during the year shall give an accurate description of:
 - (a) the achievement of the objectives for the year, in accordance with the principle of sound financial management;
 - (b) the financial situation and the events which have had a significant influence on activities during the year.

2. The report on budgetary and financial management shall be separate from the reports on implementation of the budget referred to in Article 112 of the Financial Regulation.

Article 172

Exception to the accounting principles
(Article 114 of the Financial Regulation)

Where, in a specific case, the accounting officers consider that an exception should be made to the content of one of the accounting principles defined in Articles 173 to 180, that exception shall be duly substantiated and reported in the annex to the financial statements referred to in Article 183.

Article 173

Going-concern principle
(Article 114(a) of the Financial Regulation)

1. Without prejudice to Article 1(1) of the Constituent instrument, setting out the duration of the Joint Undertaking, the going-concern principle means that for the purposes of preparing the financial statements, the Joint Undertaking shall be deemed to be established for an indefinite duration.

2. Where there are objective indications that the Joint Undertaking is to cease its activities, the accounting officer shall present that information in the annex, indicating the reasons. The accounting officer shall apply the accounting rules with a view to determining the liquidation value of the Joint Undertaking.

Article 174

Principle of prudence
(Article 114 (b) of the Financial Regulation)

The principle of prudence means that assets and income shall not be overstated and liabilities and charges shall not be understated. However, the principle of prudence does not allow the creation of hidden reserves or undue provisions.

Article 175

Principle of consistent accounting methods
(Article 114(c) of the Financial Regulation)

1. The principle of consistent accounting methods means that the structure of the components of the financial statements and the accounting methods and valuation rules may not be changed from one year to the next.
2. The accounting officer may not depart from the principle of consistent accounting methods other than in exceptional circumstances, in particular:
 - (a) in the event of a significant change in the nature of the entity's operations;
 - (b) where the change made is for the sake of a more appropriate presentation of the accounting operations.

Article 176

Principle of comparability of information
(Article 114(d) of the Financial Regulation)

1. The principle of comparability of information means that for each item the financial statements shall also show the amount of the corresponding item the previous year.
2. Where, pursuant to paragraph 1, the presentation or the classification of one of the components of the financial statements is changed, the corresponding amounts for the previous year shall be made comparable and reclassified.

Where it is impossible to reclassify items, this shall be explained in the annex referred to in Article 183.

Article 177

Materiality principle
(Article 114 (e) of the Financial Regulation)

1. The materiality principle means that all operations which are of significance for the information sought shall be taken into account in the financial statements. Materiality shall be assessed in particular by reference to the nature of the transaction or the amount.
2. Transactions may be aggregated where:
 - (a) the transactions are identical in nature, even if the amounts are large;
 - (b) the amounts are negligible;
 - (c) aggregation makes for clarity in the financial statements.

Article 178

No-netting principle
(Article 114(f) of the Financial Regulation)

The no-netting principle means that receivables and debts may not be offset against each other, nor may charges and income, save where charges and income derive from the same transaction, from similar transactions or from hedging operations and provided that they are not individually material.

Article 179

Principle of reality over appearance
(Article 114 (g) of the Financial Regulation)

The principle of reality over appearance means that accounting events recorded in the financial statements shall be presented by reference to their economic nature.

Article 180

Accrual-based accounting principle
(Article 114(h) of the Financial Regulation)

1. The accrual-based accounting principle means that transactions and events shall be entered in the accounts when they occur and not when amounts are actually paid or recovered. They shall be booked to the financial years to which they relate.
2. The accounting methods provided for in Article 121 of the Financial Regulation shall specify the obligating event for the entry of each transaction in the accounts.

Article 181

Economic outturn account
(Article 116 of the Financial Regulation)

The economic outturn account shall show the income and charges for the year, classified according to their nature.

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Article 182

Cash flow table

(Article 116 of the Financial Regulation)

1. The cash flow table shall show treasury movements.
2. The treasury shall be made up of the following:
 - (a) cash in hand;
 - (b) bank accounts and deposits payable on demand; and
 - (c) other disposable assets which can quickly be converted to cash and whose value is stable.

Article 183

Annex to the financial statements

(Article 116 of the Financial Regulation)

The annex referred to in Article 116 (2) of the Financial Regulation shall form an integral part of the financial statements. It shall contain at least the following information:

- (a) accounting principles, rules and methods;
- (b) explanatory notes, supplying additional information not contained in the body of the financial statements which is necessary for an accurate picture. These explanatory notes shall be presented with cross references to the items in the financial statements to which they relate and in the same order of presentation;
- (c) off-balance-sheet commitments showing entitlements and obligations not included in the balance sheet which could have a material impact on the assets and liabilities, the financial situation or the result of the entity concerned.

Article 184

Budgetary outturn account

(Article 117 of the Financial Regulation)

1. The budgetary outturn account shall contain:
 - (a) information on revenue comprising:
 - (i) changes in the revenue estimates in the budget;
 - (ii) the revenue outturn;
 - (iii) entitlements established;
 - (b) information showing changes in the total commitment and payment appropriations available;

- (c) information showing the use made of the total commitment and payment appropriations available;
- (d) information showing commitments outstanding, those carried over from the previous year and those made during the year.
2. As regards information on revenue, a statement shall also be attached showing, for each Member of the Joint Undertaking, the breakdown of amounts still to be recovered at the end of the financial year and covered by a recovery order.

Article 185

Annex to the budgetary outturn account
(Article 117 of the Financial Regulation)

The annex to the budgetary outturn account referred to in Article 117(b) of the Financial Regulation shall contain at least:

- (a) information on the budget principles, types of appropriation and the structure of the budget;
- (b) information on commitments outstanding;
- (c) the information required for a proper understanding of the budget outturn.

CHAPTER 2
Accounting

SECTION 1
COMMON PROVISIONS

Article 186

Organisation of the accounts
(Article 120 of the Financial Regulation)

1. The accounting officer shall draw up and keep updated documents describing the organisation of the accounts and accounting procedures of the Joint Undertaking.
2. In drawing up the financial statements, as little use as possible shall be made of information from outside the accounts.
3. Budget revenue and expenditure shall be recorded in the computerised system referred to in Article 187, according to the economic nature of the operation, as current revenue or expenditure or as capital.

Article 187

Computerised systems
(Article 120 of the Financial Regulation)

1. The accounts shall be kept with the help of an integrated computerised system.
2. Where accounts are kept using computerised systems and subsystems, such systems and subsystems shall be described in full.

That description shall define the content of all data fields and specify how the system treats individual operations. It shall state how the system guarantees the existence of a complete audit trail for each operation and for any change made to the computerised systems and subsystems so that it is possible at any time to identify the nature of the change and the person who made it.

The description of computerised accounting systems and subsystems shall indicate any links between those systems and the central accounting system, particularly as regards the transfer of data and the reconciliation of balances.

3. Access to the computerised systems and subsystems shall be confined to persons included on a list of authorised users which is kept and updated by the Joint Undertaking.

SECTION 2
GENERAL ACCOUNTS

Article 188

Accounting ledgers
(Article 123 of the Financial Regulation)

1. The Joint Undertaking shall keep a journal, a general ledger and an inventory.
2. The accounting ledgers shall consist of electronic documents which are identified by the accounting officer and offer full guarantees for use as evidence.
3. Entries in the journal shall be transferred to the general ledger, itemised according to the chart of accounts adopted by the Commission's accounting officer.
4. The journal and the general ledger may be split into as many special journals and special ledgers as are necessary to meet requirements.
5. Entries recorded in special journals and special ledgers shall be centralised at least every month in the journal and in the general ledger.

Article 189

Trial balance
(Article 123 of the Financial Regulation)

The Joint Undertaking shall establish a trial balance covering all the accounts of the general accounts, including the accounts cleared during the year, with, in each case:

- (a) account number;
- (b) description;
- (c) total debits;
- (d) total credits;
- (e) balance.

Article 190

Accounting reconciliations
(Article 123 of the Financial Regulation)

1. The data in the general ledger shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.
2. As regards the inventory of fixed assets, the provisions of Article 198 to 205 shall apply.

Article 191

Entries in the accounts
(Article 123 of the Financial Regulation)

1. Entries shall be made using the double entry method, whereby any movement or variation recorded in the accounts shall be represented by an entry establishing equivalence between the amount debited and the amount credited in the various accounts affected by that entry.
2. The euro counterpart of a transaction denominated in a currency other than the euro shall be calculated and entered in the accounts.

Transactions in foreign currencies in accounts which can be revalued shall be revalued at least each time the accounts are closed.

That revaluation shall be based on the rates laid down in accordance with Article 6.

The rate to be used for conversion between the euro and another currency to draw up the balance sheet at 31 December of year *n* shall be that of the last working day of year *n*.

3. The accounting rules adopted under Article 121 of the Financial Regulation shall specify the conversion and re-evaluation rules to be provided for the purposes of accrual accounting.

Article 192

Accounting records
(Article 123 of the Financial Regulation)

All accounting records shall specify the origin, content and booking reference of each data item and the references of the relevant supporting documents.

Article 193

Supporting documents
(Article 123 of the Financial Regulation)

1. Each entry shall be based on a dated and numbered supporting document, produced on paper or on a medium which guarantees the reliability and safeguarding of its content for the periods laid down in Article 20.
2. Operations of the same type, carried out in the same place and on the same day may be summarised in a single supporting document.

Article 194

Recording in the journal
(Article 123 of the Financial Regulation)

Accounting operations shall be recorded in the journal by one of the following methods, which are not mutually exclusive:

- (a) day by day, operation by operation;
- (b) in the form of a monthly summary of the total amounts involved in operations, provided that all documents allowing verification of individual operations day by day are kept.

Article 195

Validation of entries
(Article 123 of the Financial Regulation)

1. Entries in the journal and in an inventory ledger shall be made final by means of a validation procedure prohibiting any change to or deletion of the entry.
2. A closure procedure designed to freeze the chronology of records and guarantee their inviolability shall be implemented at the latest before the final financial statements are presented.

Article 196

Reconciliation of accounts
(Article 123 of the Financial Regulation)

1. The balance of accounts in the trial balance shall be reconciled periodically, and at least at the annual closure, with the data from the management systems used by authorising officers for the management of assets and liabilities and for the daily input into the accounting system.
2. Periodically, and at least whenever the accounts are closed, the accounting officer shall check that the data in the inventory ledger referred to in Article 188 correspond to the actual situation, in particular as regards:
 - (a) cash at bank, by reconciliation of the statements of account from financial institutions;
 - (b) cash in cash offices, by reconciliation with the data in the cash book.The fixed assets accounts shall be reviewed in accordance with Article 202.
3. The interinstitutional liaison accounts shall be reconciled and cleared monthly.
4. The suspense accounts shall be reviewed annually by the accounting officer so that they can be cleared as soon as possible.

SECTION 3

BUDGETARY ACCOUNTS

Article 197

Content and keeping of budget accounts *(Article 125 of the Financial Regulation)*

1. The budget accounts shall show, for each subdivision of the budget:
 - (a) in the case of expenditure:
 - (i) the appropriations authorised in the initial budget, the appropriations entered in amending budgets, the appropriations carried over, the appropriations available following collection of assigned revenue, transfers of appropriations and the total appropriations thus available;
 - (ii) the commitments and payments in respect of the financial year;
 - (b) in the case of revenue:
 - (i) the estimates entered in the initial budget, the estimates entered in amending budgets, assigned revenue and the total amount of estimates thus determined;
 - (ii) the entitlements established and the amounts recovered in respect of the financial year in question;

- (c) the commitments still to be paid and revenue still to be recovered carried forward from previous financial years.

The commitment appropriations and payment appropriations referred to in point (a) of the first subparagraph shall be entered and shown separately.

2. The budget accounts shall show separately:
- (a) the use of appropriations carried over and the appropriations for the year;
 - (b) the clearance of outstanding commitments.

On the revenue side, amounts still to be recovered from previous financial years shall be shown separately.

3. The budget accounts may be organised in such a way as to develop a cost accounting system.
4. The budget accounts shall be kept using computer systems, in books or on file cards.

CHAPTER 3

Property inventories

Article 198

Property inventories *(Article 126 of the Financial Regulation)*

The system of property inventories shall be established by the authorising officer with technical assistance from the accounting officer. That inventory system must supply all the information required for keeping the accounts and safeguarding assets.

Article 199

Safeguarding property *(Article 126 of the Financial Regulation)*

The Joint Undertaking shall adopt provisions on safeguarding the property included in their respective balance sheets and decide which administrative departments are responsible for the inventory system.

Article 200

Entry of items in the inventory *(Article 126 of the Financial Regulation)*

All items acquired with a period of use greater than one year, which are not consumables, and whose purchase price or production cost is higher than that indicated in the accounting rules

adopted under Article 121 of the Financial Regulation shall be entered in the inventory and recorded in the fixed assets accounts.

Article 201

Content of the inventory for each item
(Article 126 of the Financial Regulation)

The inventory shall contain an appropriate description of each item and specify its location, the date of acquisition and its unit cost.

Article 202

Inventory checks
(Article 126 of the Financial Regulation)

Inventory checks carried out by the Joint Undertaking shall be performed in such a way as to ensure that each item physically exists and matches the relevant entry in the inventory. Such checks shall be carried out under an annual verification programme, save for tangible and intangible fixed assets, which shall be checked at least on a three-year basis.

Article 203

Resale of property
(Article 126 of the Financial Regulation)

Members, officials or other servants and any other staff of the Joint Undertaking may not acquire items that are resold, save where those items are resold by public tender procedure.

Article 204

Procedure for sale of fixed assets
(Article 126 of the Financial Regulation)

1. Sales of fixed assets shall be advertised locally in appropriate fashion, if the unit purchase value is EUR 8 100 or more. The period between publication of the last announcement and conclusion of the sales contract shall be no less than fourteen calendar days.
2. Those sales shall be the subject of a notice of sale published in the Official Journal of the European Union, if the unit purchase value is EUR 391 100 or more. Appropriate advertising may also be placed in the press of the Members of the Joint Undertaking. The period between the date of publication of the notice in the Official Journal of the European Union and conclusion of the sales contract shall be no less than one month.
3. The Joint Undertaking may forgo advertising where the cost of advertising exceeds the expected return from the operation.
4. The Joint Undertaking shall always endeavour to obtain the best price for sales of fixed assets.

Article 205

Procedure for disposing of fixed assets
(Article 126 of the Financial Regulation)

A statement or record shall be drawn up by the authorising officer whenever any property in the inventory is sold, given away free of charge, scrapped, hired out or missing on account of loss, theft or any other reason.

The statement or record shall indicate in particular whether the item shall be replaced at the expense of an official or other servant of the Joint Undertaking or any other person.

Where immovable property or major installations are made available free of charge, a contract must be drawn up and the case notified in an annual report referred to in Article 43 of the Financial Regulation.

TITLE VIII FINAL PROVISIONS

Article 206

This Decision shall enter into force on the 1 November 2007.

It can be amended following the same procedure as for its adoption.

Done at Barcelona,

For the Governing Board

Car Varandas

Carlos Varandas

Chair of the Governing Board