

**DECISION AB no xx/2013**

**on the adoption of the**

**FINANCIAL REGULATION**

**of the Agency for the Cooperation of Energy Regulators**

THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002<sup>1</sup>, and in particular Article 208 thereof,

Whereas:

- (1) Commission Regulation (EC, Euratom) No 2343/2002<sup>2</sup> on the framework Financial Regulation for the bodies set up by the Communities was based on Council Regulation (EC, Euratom) No 1605/2002<sup>3</sup>. Regulation (EC, Euratom) No 1605/2002 has been replaced by Regulation (EU, Euratom) No 966/2012. It is therefore necessary to revise Regulation (EC, Euratom) No 2343/2002. In the interests of clarity, it is necessary to replace Regulation (EC, Euratom) No 2343/2002.
- (2) It is necessary to take into account the Joint statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19 July 2012.
- (3) Certain provisions of Regulation (EC, Euratom) No 2343/2002 need to be reviewed in order to take into account the experience gained in their application.
- (4) This Regulation should establish the broad principles and basic rules applicable to the bodies set up under TFEU and the Euratom Treaty (hereinafter "the Agency") that receive contributions charged to the budget and without prejudice to the constituent act. On the basis of this Regulation the Agency should adopt its own financial rules which may not depart from the Regulation except where their specific needs so require, and with the Commission's prior consent.

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<sup>1</sup> OJ L 298, 26.10.2012, p. 1.

<sup>2</sup> Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 72).

<sup>3</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).

- (5) The Agency should establish and implement its budget in accordance with the five fundamental principles of budgetary law - unity, accuracy, universality, specification and annuality, and the principles of equilibrium, unit of account, sound financial management and transparency.
- (7) The balancing nature of the Union contribution should be emphasized. The part of the the Agency's positive budget result that exceeds the amount of Union contribution paid during the year should be returned to the Union budget.
- (8) Where the constituent act provides that the revenue is constituted by fees and charges in addition to the Union contribution and that the revenues arising from fees and charges are assigned to particular items of expenditure, the Agency should have the possibility to carry forward the balance in the form of assigned revenues.
- (9) It is necessary to ensure that the fees are set at an appropriate level to cover the costs of providing the services and to avoid significant surpluses.
- (10) The delegation of budget implementation tasks to the Agency needs to be duly justified by the characteristics of the tasks and the specific expertise of the Agency, while ensuring sound financial management and cost-efficiency. The delegated tasks should be compatible with the constituent act.
- (11) The Agency should be allowed to receive ad-hoc grants only if this is expressly provided in the relevant basic acts and authorised in the constituent act.
- (12) Pursuant to Article 50 of Regulation (EU, Euratom) No 966/2012, the Agency has to take part in a benchmarking exercise with other Union bodies and institutions.
- (13) It is necessary to establish rules on the action plan to follow up on conclusions of the overall periodic evaluations in order to ensure their efficient implementation.
- (14) For the purpose of ensuring the consistent programming, the Agency should draw up a document containing annual and multi-annual programming taking into account Commission guidelines.
- (15) The Agency should align the timetable for the annual and multiannual programming with the budgetary procedure to ensure its efficiency and consistency of all programming documents.
- (16) It is necessary to clarify the current architecture of the internal audit and internal control functions and to streamline the reporting requirements. The internal audit function within the Agency should be performed by the Commission's internal auditor who should carry out audits when justified by the risks involved. It is necessary to provide rules on establishment and functioning of internal audit capabilities.
- (17) Reporting obligations should be streamlined. The Agency should provide a consolidated annual activity report which includes comprehensive information on the implementation of its work programme, budget, staff policy plan, its management and internal control systems.
- (18) In order to improve the cost-efficiency of the Agency, it is necessary to provide for the possibility of sharing services or transferring them to another Union body or to the Commission. In particular cost-efficiency can be improved by allowing the accounting

- officer of the Commission to be entrusted with all or part of the tasks of the accounting officer of the Agency.
- (19) As foreseen in Regulation (EU, Euratom) No 966/2012, the possibility to break down commitments extending over several years into annual instalments should be allowed only where the constituent act or basic act so provides or where they relate to administrative expenditure.
  - (20) In order to align the rules on assigned revenues with those of Regulation (EU, Euratom) No 966/2012 it is necessary to provide for rules on a differentiation of assigned revenue (internal and external) and on their carry over.
  - (21) In order to align the rules on treatment of interest generated by the Union contribution to the Agency with those of Regulation (EU, Euratom) No 966/2012, it is necessary to provide that interest is not due to the budget.
  - (22) Regulation (EU, Euratom) No 966/2012 provides for a possibility to enter a legal commitment before a budgetary commitment in specific cases. The Agency should also have that possibility.
  - (23) In order to ensure the consistency between Regulation (EC, Euratom) No 2343/2002 and Regulation (EU, Euratom) No 966/2012, specific provisions on procurement and grants should not be allowed. The application of a single set of rules ensures simplification of the Agency's work and enables the use of the guidelines and models prepared by the Commission.
  - (24) The possibility of awarding prizes by the Agency should be introduced in order to align the provisions of Regulation (EC, Euratom) No 2343/2002 with Regulation (EU, Euratom) No 966/2012.
  - (25) To identify and correctly manage risk of actual or perceived conflict of interests, the Agency should be required to adopt rules on the prevention and management of conflict of interests. Such rules should take into account guidelines developed by the Commission following the Joint statement of the European Parliament, The Council and the Commission of 19 July 2012.
  - (26) The provisions regarding building policy, including the introduction of the possibility and conditions allowing the Agency to raise loans, should be aligned with Regulation (EU, Euratom) No 966/2012 to ensure a consistent application of newly introduced rules by all Union bodies and institutions.
  - (27) It is necessary to provide for transitional provisions for programming and reporting given that Commission needs time to develop the appropriate guidelines in cooperation with the Union bodies,
  - (28) This Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union* in order to allow for the timely adoption of the revised financial regulations of the Union bodies as of 1 January 2014 in order to ensure coherent rules for the next multiannual financial framework.

HAS ADOPTED THIS REGULATION:

## **TITLE I**

### **GENERAL PROVISIONS**

#### *Article 1* *Subject matter*

This Regulation lays down the essential financial rules of the Agency for the Cooperation of Energy Regulators (hereafter ‘the Agency’). It is based on the Commission Delegated Regulation on the framework financial regulation for the bodies referred to in Article 208 of Council Regulation (EU, Euratom) No 966/2012 from which it does not depart.

#### *Article 2* *Definitions*

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

- ‘constituent act’ means the instrument of Union law governing the main aspects of the setting up and operation of the Agency;
- ‘budget of the Agency’ means the instrument which, for each financial year, forecasts and authorises all revenue and expenditure considered necessary for the Agency;
- ‘Union body’ means any body referred to in Article 208 of Regulation (EU, Euratom) No 966/2012, including the Agency;
- ‘administrative board’ means the main internal body of the Agency that is responsible for taking decisions on financial and budgetary matters, irrespective of the name given to it in the constituent act;
- ‘director’ means the person responsible for implementing the decisions of the administrative board and the budget of the Agency as authorising officer, irrespective of the title given to that person in the constituent act;

#### *Article 3* *Periods, dates and time limits*

Unless otherwise provided, Regulation (EEC, Euratom) No 1182/71 of the Council<sup>4</sup> shall apply to deadlines set by this Regulation.

#### *Article 4* *Protection of personal data*

This Regulation is without prejudice to the requirements of Directive 95/46/EC of the European Parliament and of the Council<sup>5</sup> and of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>6</sup>.

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<sup>4</sup> Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

*Article 5*

*Respect for budgetary principles*

The budget of the Agency shall be established and implemented in accordance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management which requires effective and efficient internal control, and transparency as set out in this Regulation.

**TITLE II**  
**BUDGETARY PRINCIPLES**

**CHAPTER 1**

**PRINCIPLES OF UNITY AND OF BUDGET ACCURACY**

*Article 6*

*Scope of the budget of the Agency*

1. The budget of the Agency shall comprise:
  - (a) own revenue consisting of all fees and charges which the Agency is authorised to collect by virtue of the tasks entrusted to it, and any other revenue;
  - (b) revenue made up of any financial contributions of the host Member States;
  - (c) a contribution granted by the Union;
  - (d) revenue assigned to specific items of expenditure in accordance with Article 23(1);
  - (e) the expenditure of the Agency, including administrative expenditure.
2. Revenue consisting of fees and charges shall only be assigned in exceptional and duly justified cases provided for in the constituent act.
3. When one or several constituent acts provide that clearly defined tasks are financed separately or when the Agency implements tasks entrusted to it by a delegation agreement, it shall hold separate accounts, on the revenue and expenditure operations. the Agency shall clearly identify each group of tasks in its human resource programming included in the annual and multiannual programming document referred to in Article 32.

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<sup>5</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

<sup>6</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

*Article 7*  
*Ad hoc grants*

1. The Agency may not receive ad-hoc grants from the budget unless authorised in the constituent act and expressly provided for by the basic act.
2. Where the Agency has been authorised to receive ad-hoc grants the tasks financed by these grants shall be included in the annual work programme referred to in Article 32(3).

*Article 8*  
*Delegation agreements*

1. The Agency shall not be entrusted budget implementation tasks by the Commission except if it is duly justified by the special nature of the action and specific expertise of the Agency.
2. The choice of the Agency shall take due account of:
  - (a) the cost efficiency of entrusting those tasks;
  - (b) the impact on the Agency's governance structure and on its financial and human resources.
3. Where the Commission exceptionally entrusts tasks to the Agency:
  - (a) Article 60 of Regulation (EU, Euratom) No 966/2012 shall apply to the Agency in respect of funds allocated to those tasks and Articles 108 and 109 of this Regulation shall not apply;
  - (b) tasks entrusted should be referred to in the annual work programme of the Agency, referred to in Article 32(3), for information purposes only.
4. Without prejudice to paragraph 2, the authorising officer shall consult the administrative board before signing the delegation agreement.

*Article 9*  
*Specific rules on the principles of unity and budgetary accuracy*

1. No revenue shall be collected and no expenditure effected unless booked to a line in the budget of the Agency.
2. No expenditure may be committed or authorised in excess of the appropriations authorised by the budget of the Agency.
3. An appropriation may be entered in the budget of the Agency only if it is for an item of expenditure considered necessary.
4. Interests generated by pre-financing payment made from the budget of the Agency shall not be due to the Agency.

## **CHAPTER 2**

### **PRINCIPLE OF ANNUALITY**

#### *Article 10*

##### *Definition*

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

#### *Article 11*

##### *Type of appropriations*

1. The budget of the Agency shall contain non-differentiated appropriations and, where justified by operational needs, differentiated appropriations. Differentiated appropriations shall consist of commitment appropriations and payment appropriations.
2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the financial year.
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years.

#### *Article 12*

##### *Accounting for revenue and appropriations*

1. The revenue of the Agency referred to in Article 6 shall be entered in the accounts for the financial year on the basis of the amounts collected during that financial year.
2. The revenue of the Agency shall give rise to an equivalent amount of payment appropriations.
3. The appropriations authorised for a financial year shall be used solely to cover expenditure committed and paid in that financial year, and to cover amounts due against commitments from preceding financial years.
4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December.
5. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year.

#### *Article 13*

##### *Commitment of appropriations*

The appropriations entered in the budget of the Agency may be committed with effect from 1 January, once the budget of the Agency has been definitively adopted.



*Article 14*

*Cancellation and carry-over of appropriations*

1. Appropriations which have not been used by the end of the financial year for which they were entered shall be cancelled. However, they may be carried over, but only to the following financial year, by a decision taken by 15 February by the administrative board in accordance with paragraphs 3 and 4 or they may be carried over automatically in accordance with paragraph 5.
2. Appropriations relating to staff expenditure may not be carried over.
3. Differentiated commitment appropriations and non-differentiated appropriations not yet committed at the end of the financial year may be carried over in respect of:
  - (a) amounts corresponding to commitment appropriations;
  - (b) amounts corresponding to non-differentiated appropriations relating to building projects, for which most of the preparatory stages of the commitment procedure have been completed by 31 December. The preparatory stage of the commitment procedure shall be specified in the rules implementing the financial regulation of the Agency.

Such amounts may be committed up to 31 March of the following year, or up to 31 December of the following year for amounts relating to building projects.

4. Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, where the payment appropriations provided for in the relevant budget lines for the following financial year are not sufficient to cover requirements.

The Agency shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.
5. Non-differentiated appropriations corresponding to obligations duly contracted at the end of the financial year shall be carried over automatically to the following financial year only.
6. Appropriations carried over which have not been committed by 31 March of year N+1 shall be automatically cancelled and shall be identified in the accounts.

*Article 15*

*Carry-over rules for assigned revenue*

Carry-over of assigned revenue referred to in Article 23, and of appropriations not used and available at 31 December arising from such revenue, shall comply with the following rules:

- (a) external assigned revenue shall be carried over automatically and shall be fully used by the time all the operations relating to the programme or action to which it is assigned have been carried out; external assigned revenue received during the last year of the programme or action may be used in the first year of the succeeding programme or action;



- (b) internal assigned revenue shall be carried over for one year only, with the exception of internal assigned revenue defined in point (f) of Article 23(3), which shall be carried over automatically.

By 1 June of the year N+1 at the latest, the Agency shall inform the Commission about the implementation of the assigned revenue carried over.

#### *Article 16*

##### *Decommitment of appropriations*

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

#### *Article 17*

##### *Commitments*

1. As from 15 October of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments shall not, however, exceed one quarter of the appropriations decided by the administrative board on the corresponding budget line for the current financial year. They shall not apply to new expenditure of a kind not yet approved in principle in the last budget of the Agency duly adopted.
2. Expenditure which shall be paid in advance, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. In this case, the limit referred to in paragraph 1 shall not apply.

#### *Article 18*

##### *Rules applicable in the event of late adoption of the budget of the Agency*

1. If the budget of the Agency has not been definitively adopted at the beginning of the financial year, the rules set out in paragraphs 2 to 6 shall apply.
2. Commitments and payments may be made within the limits laid down in paragraph 3.
3. Commitments may be made per chapter up to a maximum of one quarter of the total appropriations authorised in the relevant chapter of the previous financial year plus one twelfth for each month which has elapsed.

The limit of the appropriations provided for in the statement of estimates of revenue and expenditure shall not be exceeded.

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

4. The appropriations authorised in the relevant chapter of the preceding financial year, as specified in paragraphs 2 and 3, shall be understood as referring to the

appropriations voted in the budget of the Agency, including by amending budgets, and after adjustment for the transfers made during that financial year.

5. At the request of the director, if the continuity of action by the Agency and management needs so require, the administrative board, may authorise expenditure in excess of one provisional twelfth but not exceeding the total of four provisional twelfths, except in duly justified cases, both for commitments and for payments over and above those automatically made available in accordance with paragraphs 2 and 3.

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

6. If, for a given chapter, the authorisation of four provisional twelfths granted in accordance with paragraph 5 is not sufficient to cover the expenditure necessary to avoid a break in continuity of action by the Agency in the area covered by the chapter in question, authorisation may exceptionally be given to exceed the amount of the appropriations entered in the corresponding chapter of the budget of the Agency of the preceding financial year. The administrative board shall act in accordance with the procedures provided for in paragraph 5. However, the overall total of the appropriations available in the budget of the Agency of the preceding financial year or in the draft budget of the Agency, as proposed, may in no circumstances be exceeded.

### **CHAPTER 3**

#### **PRINCIPLE OF EQUILIBRIUM**

##### *Article 19*

##### *Definition and scope*

1. Revenue and payment appropriations shall be in balance.
2. Commitment appropriations may not exceed the amount of the Union contribution, plus own revenue and any other revenue referred to in Article 6.
3. For bodies for which the revenue is constituted by fees and charges in addition to the Union contribution, fees should be set at a level such as to avoid a significant accumulation of surplus. Where a significant positive or negative budget result, within the meaning of Article 97, becomes recurrent, the level of the fees and charges shall be revised.
4. The Agency may not raise loans within the framework of the budget of the Agency.
5. The Union contribution to the Agency shall constitute for the budget of the Agency a balancing contribution and may be divided into a number of payments.
6. The Agency shall implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue.

*Article 20*

*Budget result from financial year*

1. If the budget result within the meaning of Article 97 is positive, it shall be repaid to the Commission up to the amount of the contribution paid during the year. The part of the budget result exceeding the amount of the Union contribution paid during the year shall be entered in the budget of the Agency for the following financial year as revenue.

The first subparagraph shall also apply when the revenue of the Agency is constituted by fees and charges in addition to the Union contribution.

The difference between the contribution entered in the budget and that actually paid to the Agency shall be cancelled.

the Agency shall provide, no later than 31 January of the year n at the latest, an estimate of the budget result from the year n-1, which is to be returned to the budget later in year n, in order to complete the information already available concerning the budget result of the year n-2. This information shall be duly taken into account by the Commission when assessing the financial needs of the Agency for the year n+1.

2. In exceptional cases, where the constituent act provides that the revenues arising from fees and charges are assigned to particular items of expenditure, the Agency may carry-over the balance of fees and charges as assigned revenue for the activities related to the provision of the services for which the fees are due.
3. If the budget result within the meaning of Article 97 is negative, it shall be entered in the budget of the Agency for the following financial year as payment appropriations or, where appropriate, offset against positive budget result of the Agency in the following financial years.
4. The revenue or payment appropriations shall be entered in the budget of the Agency during the budgetary procedure using the letter of amendment procedure set out in Article 39 of Regulation (EU, Euratom) No 966/2012 or, while implementation of the budget of the Agency is under way, by means of an amending budget.

**CHAPTER 4**

**PRINCIPLE OF UNIT OF ACCOUNT**

*Article 21*

*Use of euro*

The budget of the Agency shall be drawn up and implemented in euro and the accounts shall be presented in euro. However, for cash-flow purposes, the accounting officer and, in the case of imprest accounts, the imprest administrators shall be authorised to carry out operations in other currencies as laid down in the financial rules of the Agency.

## **CHAPTER 5**

### **PRINCIPLE OF UNIVERSALITY**

#### *Article 22* *Definition and scope*

Without prejudice to Article 23, total revenue shall cover total payment appropriations. Without prejudice to Article 25, all revenue and expenditure shall be entered in full without any adjustment against each other.

#### *Article 23* *Assigned revenue*

1. External assigned revenue and internal assigned revenue shall be used to finance specific items of expenditure.
2. The following shall constitute external assigned revenue:
  - (a) financial contributions from Member States and third countries, including in both cases their public agencies, entities or natural persons, to certain activities, of Union bodies insofar as this is provided for in the agreement concluded between the Agency and the Member States, third countries or the public agencies, entities or natural persons in question;
  - (b) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;
  - (c) financial contributions, not covered by point (a), to Union bodies' activities from third countries or various non-Union bodies;
    - revenue from ad-hoc grants referred to in Article 7;
    - revenue from delegation agreements referred to in Article 8;
  - (d) internal assigned revenue referred to in paragraph 3, to the extent that it is ancillary to the other revenue referred to in points (a) to (c) of this paragraph;
  - (e) revenue from fees and charges referred to in Article 6(2).
3. The following shall constitute internal assigned revenue:
  - (a) revenue from third parties in respect of goods, services or work supplied at their request, with the exception of fees and charges referred to in Article 6(1)(a);
  - (b) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are replaced or scrapped when the book value is fully depreciated;
  - (c) revenue arising from the repayment, in accordance with Article 62, of amounts wrongly paid;
  - (d) proceeds from the supply of goods, services and works for Union institutions or other Union bodies;
  - (e) insurance payments received;

- (f) revenue from lettings;
  - (g) revenue from the sale of publications and films, including those on an electronic medium;
  - (h) revenue arising from subsequent reimbursement of taxes pursuant to Article 25(3)(b).
4. Without prejudice to Article 23(2)(e) the relevant constituent act may also assign the revenue for which it provides to specific items of expenditure. Unless specified otherwise in the relevant constituent act, such revenue shall constitute internal assigned revenue.
5. All items of revenue within the meaning of points (a) to (c) of paragraph 2 and points (a) and (d) of paragraph 3 shall cover all direct or indirect expenditure incurred by the activity or purpose in question.
6. The budget of the Agency shall include lines to accommodate external assigned revenue and internal assigned revenue and wherever possible shall indicate the amount.

Assigned revenue may be included in the estimate of revenue and expenditure only for the amounts which are certain at the date of the establishment of the estimate.

*Article 24*  
*Donations*

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

*Article 25*  
*Rules on deductions and exchange rates adjustments*

1. The following deductions may be made from payment requests which shall then be passed for payment of the net amount:
  - (a) penalties imposed on parties to procurement contracts or beneficiaries;
  - (b) discounts, refunds and rebates on individual invoices and cost statements;
  - (c) adjustments for amounts unduly paid.

The adjustments referred to in point (c) of the first subparagraph may be made, by means of direct deduction, against a new interim payment or payment of a balance to the same payee under the chapter, article and financial year in respect of which the excess payment was made.

Union accounting rules shall apply to the deductions referred to in points (c) of the first subparagraph.

2. The cost of products or services provided to the Agency incorporating taxes refunded by the Member States pursuant to the Protocol on the Privileges and Immunities of the European Union shall be charged to the budget of the Agency for the ex-tax amount provided that it applies to the Agency.
3. The cost of products or services provided to the Agency incorporating taxes refunded by third countries on the basis of relevant agreements may be charged to the budget of the Agency for any of the following:
  - (a) the ex-tax amount;
  - (b) the tax-inclusive amount. In such case, subsequently reimbursed taxes shall be treated as internal assigned revenue.
4. Any national taxes temporarily borne by the Agency under paragraphs 2 and 3 shall be entered in a suspense account until they are refunded by the State concerned.
5. Any negative budget result shall be entered in the budget of the Agency as expenditure.
6. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget of the Agency. The final gain or loss shall be included in the budget result for the year.

## **CHAPTER 6**

### **PRINCIPLE OF SPECIFICATION**

#### *Article 26* *General provisions*

Appropriations shall be earmarked for specific purposes by title and chapter. The chapters shall be further subdivided into articles and items.

#### *Article 27* *Transfers*

1. The Director may transfer appropriations:
  - (a) from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made;
  - (b) from one chapter to another and from one article to another without limit.
2. Beyond the limit referred in paragraph 1, the director may propose to the administrative board transfers of appropriations from one title to another. The administrative board shall have three weeks to oppose such transfers. After that time-limit they shall be deemed to be adopted.
3. Proposals for transfers and transfers carried out under paragraphs 1 and 2 shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the headings to be credited and for those from which the appropriations are drawn.

4. The director shall inform the administrative board as soon as possible of all transfers made. The director shall inform the European Parliament and the Council of all transfers carried out under paragraph 2.

*Article 28*

*Specific rules on transfers*

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

**CHAPTER 7**

**PRINCIPLE OF SOUND FINANCIAL MANAGEMENT**

*Article 29*

*Principles of economy, efficiency and effectiveness/Principle of sound financial management*

1. Appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by the Agency in the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency concerns the best relationship between resources employed and results achieved.

The principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results.

3. The Agency shall carry out a benchmarking exercise referred to in Article 50 of Regulation (EU, Euratom) No 966/2012.

The benchmarking exercise shall include:

- a review of the efficiency of the Agency 's horizontal services;
- a cost-benefit analysis of sharing services or transferring them entirely to other Union body or the Commission.

When carrying out the benchmarking exercise referred to in the first and the second subparagraph the Agency shall make necessary arrangements to avoid any conflict of interests.

4. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget of the Agency. The achievement of those objectives shall be monitored by performance indicators for each activity, and the information shall be provided to the administrative board by the director. That information shall be provided annually and at the latest in the documents accompanying the draft budget of the Agency.



5. In order to improve decision-making, the Agency shall undertake both *ex ante* and *ex post* evaluations in line with guidance provided by the Commission. Such evaluations shall be applied to all programmes and activities which entail significant spending and evaluation results shall be sent to the administrative board.
6. The director shall prepare an action plan to follow-up on the conclusions of the evaluations referred to in paragraph 5 and report on its progress twice a year to the Commission and regularly to the administrative board.
7. The administrative board shall scrutinise the implementation of the action plan referred to in paragraph 6.

### *Article 30*

#### *Internal control of budget implementation*

1. The budget of the Agency shall be implemented in compliance with effective and efficient internal control.
2. For the purposes of the implementation of the budget of the Agency, internal control is defined as a process applicable at all levels of management and designed to provide reasonable assurance of achieving the following objectives:
  - (a) effectiveness, efficiency and economy of operations;
  - (b) reliability of reporting;
  - (c) safeguarding of assets and information;
  - (d) prevention, detection, correction and follow-up of fraud and irregularities;
  - (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.
3. Effective internal control shall be based on best international practices and include, in particular, the following:
  - (a) segregation of tasks;
  - (b) an appropriate risk management and control strategy including control at recipient level;
  - (c) avoidance of conflicts of interests;
  - (d) adequate audit trails and data integrity in data systems;
  - (e) procedures for monitoring of performance and for follow-up of identified internal control weaknesses and exceptions;
  - (f) periodic assessment of the sound functioning of the internal control system.
4. Efficient internal control shall be based on the following elements:
  - (a) the implementation of an appropriate risk management and control strategy coordinated among appropriate actors involved in the control chain;
  - (b) the accessibility for all appropriate actors in the control chain of the results of controls carried out;

- (c) reliance, where appropriate, on independent audit opinions, provided that the quality of the underlying work is adequate and acceptable and that it was performed in accordance with agreed standards;
- (d) the timely application of corrective measures including, where appropriate, dissuasive penalties;
- (e) the elimination of multiple controls;
- (f) improving the cost-benefit ratio of controls.

## **CHAPTER 8**

### **PRINCIPLE OF TRANSPARENCY**

#### *Article 31*

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

1. The budget of the Agency shall be established and implemented and the accounts presented in accordance with the principle of transparency.
2. A summary of the budget of the Agency and any amending budget of the Agency, as definitively adopted, shall be published in the *Official Journal of the European Union* within three months of their adoption.

The summary shall show the five main revenue budget lines, the five main expenditure budget lines for the administrative and operational budget of the Agency, the establishment plan and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts. It shall also indicate the figures for the previous year.

3. The budget of the Agency including the establishment plan and amending budgets of the Agency, as finally adopted, as well as an indication of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts, shall be transmitted for information to the European Parliament and the Council, the Court of Auditors and the Commission, and shall be published on the Internet site of the Agency within four weeks of their adoption.
4. the Agency shall make available on its internet site no later than 30 June of the following financial year information on the recipients of funds deriving from the budget of the Agency, including experts contracted pursuant to Article 89, in accordance with paragraphs 2, 3 and 4 of Article 21 of Commission Delegated Regulation (EU) No 1268/2012<sup>7</sup> following a standard presentation. The published information shall be easily accessible, transparent and comprehensive. The information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001.

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<sup>7</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

## **TITLE III**

# **ESTABLISHMENT AND STRUCTURE OF THE BUDGET**

### **CHAPTER 1**

## **Establishment of the budget of the Agency**

#### *Article 32*

#### *Annual and multi-annual programming*

1. The Agency shall draw up a programming document containing multi-annual and annual programming taking into account guidelines set by the Commission.
2. The multiannual programme shall set out:
  - overall strategic programming including objectives, expected results and performance indicators;
  - resource programming including multi-annual budget and staff.

The resource programming shall include qualitative and quantitative information on the human resource and budgetary matters for the reporting purposes, in particular:

- for the years n-1 and n, the information on, the number of officials, temporary and contract staff as defined in the Staff Regulations as well as seconded national experts.
- for the year n-1 an estimate of the budgetary operations within the meaning of Article 97 and information on contribution in kind granted by the host Member State to the Agency;
- for the year n+1 estimate of the number of officials, temporary and contract staff as defined in the Staff Regulations;
- for the following years, an indicative budget and staff resource programming.

The Commission shall send to the Agency the opinion of its relevant services on the draft human resource programming.

If the Agency does not fully take into account the Commission services' opinion, it shall provide the Commission with adequate explanations.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the overall evaluations referred to in the constituent act.

3. The annual work programme of the Agency shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the action(s) to be financed and an indication of the amount of financial and human resource allocated to each action. The annual work programme shall be coherent with the multi-annual programme referred to in paragraph 1.

It shall clearly indicate which tasks of the Agency have been added, changed or deleted in comparison with the previous financial year.

4. Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial work programme, in accordance with the provisions of the constituent act and Article 33 of this Regulation.

The administrative board may delegate the power to make non-substantial amendments to the annual work programme to the authorizing officer of the Agency.

*Article 33*  
*Establishment of the budget*

1. The budget shall be established in accordance with the provisions of the constituent act.
2. The Agency shall send the Commission a provisional draft estimate of its revenue and expenditure and the general guidelines underlying that estimate no later than 31 January each year.
3. In accordance with Article 37 of Regulation (EU, Euratom) No 966/2012, each year the Agency shall send to the Commission, the European Parliament and the Council an estimate of its revenue and expenditure as specified in the constituent act.
4. The estimate of revenue and expenditure of the Agency shall include:
  - (a) an establishment plan setting the number of permanent and temporary posts authorised within the limits of the budget appropriations, by grade and by category;
  - (b) where there is a change in the number of persons in post, a statement justifying the request for new posts;
  - (c) a quarterly estimate of cash payments and receipts;
  - (d) information on the achievement of all previously set objectives for the various activities. Evaluation results shall be consulted and referred to as evidence of the likely merits of an increase or decrease of the proposed budget of the Agency in comparison with its budget for year n.
5. The Agency shall send to the Commission, the European Parliament and the Council the draft programming document referred to in Article 32 no later than 31 January each year as well as any later updated version of that document.
6. As part of the procedure for adoption of the budget, the Commission shall send the Agency's statement of estimates to the European Parliament and the Council and propose the amount of the contribution for the Agency and the number of staff it considers that the Agency needs. The Commission shall provide the draft establishment plan of the Agency and for an estimate of the number of contract staff and of seconded national experts expressed in full-time equivalents for which appropriations are proposed as soon as the Commission has established the draft budget.

7. The European Parliament and the Council shall adopt the establishment plan of the Agency and any subsequent amendment thereto in accordance with Article 38(1). The establishment plan shall be published in an Annex to Section III – Commission – of the budget.
8. The budget of the Agency and the establishment plan together with the programming document referred to in Article 32 shall be adopted by the administrative board. They shall become definitive after final adoption of the budget setting the amount of the contribution and the establishment plan and if necessary the budget of the Agency and the establishment plan shall be adjusted accordingly.
9. When entrusting new tasks to the Agency, the Commission shall, without prejudice to the legislative procedures for the modification of the constituent act, submit to the European Parliament and to the Council the necessary information to assess impact of the new tasks on the resources of the Agency so as to review, where necessary, its financing.

*Article 34*  
*Amending budgets*

Any amendment to the budget of the Agency, including the establishment plan, shall be the subject of an amending budget adopted by the same procedure as the initial budget of the Agency, in accordance with the provisions of the constituent act and Article 33 of this Regulation.

**CHAPTER 2**  
**STRUCTURE AND PRESENTATION OF THE BUDGET OF THE AGENCY**

*Article 35*  
*Structure of the budget of the Agency*

The budget of the Agency shall consist of a statement of revenue and a statement of expenditure.

*Article 36*  
*Budget nomenclature*

In so far as it is justified by the nature of the Agency's activities, the statement of expenditure must be set out on the basis of a nomenclature with a classification by purpose. That nomenclature shall be determined by the Agency and shall make a clear distinction between administrative appropriations and operating appropriations.

*Article 37*  
*Presentation of the budget of the Agency*

The budget of the Agency shall show:

1. In the statement of revenue:
  - (a) the estimated revenue of the Agency for the financial year concerned ('year n');

- (b) the estimated revenue for the preceding financial year and the revenue for year n – 2;
  - (c) appropriate remarks on each revenue line;
2. In the statement of expenditure:
- (a) the commitment and payment appropriations for year n;
  - (b) the commitment and payment appropriations for the preceding financial year, and the expenditure committed and the expenditure paid in year n – 2 - the latter also expressed as a percentage of the budget of the Agency of year n;
  - (c) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;
  - (d) appropriate remarks on each subdivision.

*Article 38*

*Rules on the establishment plans for staff*

1. The establishment plan referred to in Article 33 shall show next to the number of posts authorised for the financial year, the number authorised for the preceding year and the number of posts actually filled. It shall constitute an absolute limit for the Agency. No appointment may be made in excess of the limit set.
- However, save in the case of grades AD 16, AD 15, AD 14 and AD 13, the administrative board may modify the establishment plan by up to 10 % of posts authorised, subject to the following conditions:
- (a) the volume of staff appropriations corresponding to a full financial year is not affected;
  - (b) the limit of the total number of posts authorised by the establishment plan is not exceeded;
  - (c) the Agency has taken part in a benchmarking exercise with other bodies of the Union as initiated by the Commission's staff screening exercise.
2. By derogation from the second subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments. Where a staff member requests the withdrawal of the authorisation before expiry of the granted period, the Agency shall take appropriate measures to respect the limit referred to in point (b) of the second subparagraph of paragraph 1 as soon as possible.

## **TITLE IV**

# **IMPLEMENTATION OF THE BUDGET OF THE AGENCY**

### **CHAPTER 1**

#### **General provisions**

##### *Article 39*

##### *Budget implementation in accordance with the principle of sound financial management*

1. The director shall perform the duties of authorising officer. He or she shall implement the revenue and expenditure of the budget in accordance with the financial rules of the Agency and the principle of sound financial management under his or her own responsibility and within the limits of the appropriations authorised.
2. Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, the Agency shall participate in fraud prevention activities of the European Anti-fraud Office.

##### *Article 40*

##### *Delegation of budget implementation powers*

1. The director may delegate the powers of budget implementation to staff of the Agency covered by the Staff Regulations, in accordance with the conditions laid down in the financial rules of the Agency adopted by the administrative board. Those so empowered may act only within the limits of the powers expressly conferred upon them.
2. The delegatee may subdelegate the powers received as provided for in the rules implementing this Regulation referred to in Article 114. Each act of subdelegation shall require the explicit agreement of the director.

##### *Article 41*

##### *Conflict of interests*

1. Financial actors within the meaning of Chapter 2 of this Title and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the Agency.

Where such a risk exists, the person in question shall refrain from such action and shall refer the matter to the competent authority who shall confirm in writing whether a conflict of interests exists. Where a conflict of interest is found to exist, the person in question shall cease all activities in the matter. The competent authority shall take any further appropriate action.

2. For the purposes of paragraph 1, a conflict of interest exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in



paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.

3. The competent authority referred to in paragraph 1 shall be the immediate superior of the member of staff concerned. If the member of staff is the director, the competent authority shall be the administrative board.
4. The Agency shall adopt rules on the prevention and management of conflict of interests.

#### *Article 42*

#### *Method of implementation of the budget of the Agency*

1. The budget of the Agency shall be implemented by the Director.
2. Technical expertise tasks and administrative, preparatory or ancillary tasks not involving the exercise of public authority or the use of discretionary powers of judgement may be entrusted by contract to external private-sector entities or bodies, where this proves to be indispensable.

## **CHAPTER 2**

### **Financial actors**

#### **SECTION 1**

#### **PRINCIPLE OF SEGREGATION OF DUTIES**

#### *Article 43*

#### *Segregation of duties*

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

#### **SECTION 2**

#### **AUTHORISING OFFICER**

#### *Article 44*

#### *Powers and duties of authorising officer*

1. The authorising officer shall be responsible for implementing revenue and expenditure in accordance with the principle of sound financial management and for ensuring compliance with the requirements of legality and regularity.
2. For the purposes of paragraph 1, the authorising officer shall, in accordance with the minimum standards adopted by the administrative board on the basis of equivalent standards laid down by the Commission for its own departments and having due regard to the risks associated with the management environment and the nature of the action financed, put in place the organisational structure and the internal control systems suited to the performance of the duties of authorising officer.

The establishment of such structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost-effectiveness.

The authorising officer may establish within his or her departments an expertise and advice function to help him or her control the risks involved in his or her activities.

3. To implement expenditure, the authorising officer shall make budgetary and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminary steps for the implementation of appropriations.
4. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements, where appropriate.
5. The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget of the Agency. Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, as regards the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply.

*Article 45*  
*Ex ante controls*

1. Each operation referred to in Article 44 shall be subject at least to an *ex ante* control based on a desk review of documents and on the available results of controls already carried out, relating to the operational and financial aspects of the operation.

*Ex ante* controls shall comprise the initiation and the verification of an operation.

2. Initiation of an operation shall be understood as all the operations which are preparatory to the adoption of the acts implementing the budget of the Agency by the authorising officers referred to in Articles 33 and 34.
3. *Ex ante* verification of an operation shall be understood as all the *ex ante* checks put in place by the authorising officer in order to verify the operational and financial aspects.
4. *Ex ante* controls shall verify the coherence among supporting documents requested and any other information available. The extent in terms of frequency and intensity of the *ex ante* controls shall be determined by the authorising officer responsible taking into account risk-based and cost-effectiveness considerations. In case of doubt, the authorising officer responsible for validating the relevant payment shall request complementary information or perform an on-the-spot control in order to obtain reasonable assurance as part of the *ex ante* control.

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

- (a) the expenditure is in order and comply with the provisions applicable;
- (b) the principle of sound financial management set out in Article 29 has been applied.

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

5. For a given transaction, the verification shall be carried out by staff other than those who initiated the operation. The staff who carry out the verification shall not be subordinate to the members of staff who initiated the operation.

*Article 46*  
*Ex post controls*

1. The authorising officer may put in place *ex post* controls to verify operations already approved following *ex ante* controls. Such controls may be organised on a sample basis according to risk.
2. The *ex post* controls may be carried out on the basis of documents and, where appropriate, on the spot.

The *ex post* controls shall verify that operations financed by the budget of the Agency are correctly implemented and in particular that the criteria referred to in Article 45(4) are complied with.

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

The risk analysis referred to in paragraph 1 shall be reviewed in the light of the results of controls and other relevant information.

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

3. The *ex ante* controls shall be carried out by staff other than those responsible for the *ex post* controls. The staff responsible for the *ex post* controls shall not be subordinate to the members of staff responsible for the *ex ante* controls.

Where the authorising officer implements financial audits of beneficiaries as *ex-post* controls, the related audit rules shall be clear, consistent and transparent, and shall respect the rights of both the Agency and the auditees.

4. Staff responsible for controlling the management of financial operations referred to in paragraph 3 shall have the necessary professional skills. They shall respect a specific code of professional standards adopted by the Agency and based on standards laid down by the Commission for its own departments.

*Article 47*  
*Consolidated Annual Activity Report*

1. The authorising officer shall report to the administrative board on the performance of his duties in a form of a consolidated annual activity report containing:

- (a) information on:
- the implementation of the Agency's annual work programme, budget and staff resources referred to in Article 38;
  - management and internal control systems including the summary of number and type of internal audits carried out by the internal auditor, the internal audit capabilities, the recommendations made and the action taken on these recommendations and on the recommendations of previous years, as referred to in Articles 82 and 83;
  - any observations of the Court of Auditors and the actions taken on these observations;
  - the accounts and the report on budgetary and financial management without prejudice to Articles 92, 96 and 97.
- (b) a declaration of the authorising officer stating whether he has a reasonable assurance that unless otherwise specified in any reservations related to defined areas of revenue and expenditure:
- the information contained in the report presents a true and fair view;
  - the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;
  - the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The consolidated annual activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with the operations, the use made of the resources provided and the efficiency and effectiveness of the internal control systems, including an overall assessment of the costs and benefits of controls.

The consolidated annual report shall be submitted to the administrative board for the assessment.

2. No later than 1 July each year the consolidated annual activity report together with its assessment shall be sent by the administrative board to the Court of Auditors, to the Commission, to the European Parliament and the Council.
3. Additional reporting requirements may be provided in the constituent act in duly justified cases, in particular when it is required by the nature of the field in which the Agency operates.

#### *Article 48*

##### *Protection of Union's financial interests*

1. If a member of staff, involved in the financial management and control of transactions, considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform the director in writing who shall reply in writing. If the

director fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the relevant panel referred to in Article 54(5) and the administrative board in writing.

2. In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, the member of staff shall inform the authorities and bodies designated by the applicable legislation. Contracts with external auditors carrying out audits of the financial management of the Agency shall provide for an obligation of the external auditor to inform the authorising officer of any suspected illegal activity, fraud or corruption which may harm the interests of the Union.

#### *Article 49*

#### *Delegation of budget implementation*

Where powers of budget implementation are delegated or subdelegated in accordance with Article 40, Article 44(1), (2) and (3) shall apply *mutatis mutandis* to the authorising officers by delegation or subdelegation.

### **SECTION 3**

### **ACCOUNTING OFFICER**

#### *Article 50*

#### *Powers and duties of the accounting officer*

1. The administrative board shall appoint an accounting officer, covered by the Staff Regulations, who shall be totally independent in the performance of his or her duties. The accounting officer shall be responsible in the Agency for:
  - (a) properly implementing payments, collecting revenue and recovering amounts established as being receivable;
  - (b) preparing and presenting the accounts in accordance with Title IX;
  - (c) keeping the accounts in accordance with Title IX;
  - (d) implementing, in accordance with Title IX, the accounting rules and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;
  - (e) laying down and validating the accounting systems and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information; in this respect, the accounting officer shall be empowered to verify at any time compliance with validation criteria;
  - (f) treasury management.
2. Two or more Union bodies may appoint the same accounting officer.

The Agency may also agree with the Commission that the accounting officer of the Commission shall also act as accounting officer of the Agency.

The Agency may also entrust the accounting officer of the Commission with part of the tasks of an accounting officer of the Agency, taking into account the cost-benefit analysis referred to in Article 29.

In the case referred to in this paragraph, they shall make necessary arrangements in order to avoid any conflict of interests.

3. The accounting officer shall obtain from the authorising officer all the information necessary for the production of accounts which give a true and fair view of the Agency's financial situation and of budgetary implementation. The authorising officer shall guarantee the reliability of that information.
4. Before the adoption of the accounts by the director, the accounting officer shall sign them off, thereby certifying that the accounting officer has reasonable assurance that the accounts present a true and fair view of the financial situation of the Agency.

For the purposes of the first subparagraph, the accounting officer shall verify that the accounts have been prepared in accordance with the accounting rules, referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, and that all revenue and expenditure is entered in the accounts.

The authorising officer shall forward any information that the accounting officer needs in order to fulfil his or her duties.

The authorising officers shall remain fully responsible for the proper use of the funds they manage, the legality and regularity of the expenditure under their control and the completeness and accuracy of the information forwarded to the accounting officer.

5. The accounting officer shall be empowered to check the information received as well as to carry out any further checks he or she deems necessary in order to sign off the accounts.

The accounting officer shall make reservations, if necessary, explaining exactly the nature and scope of such reservations.

6. Subject to paragraph 7 of this Article and Article 51, only the accounting officer shall be empowered to manage cash and cash equivalents. The accounting officer shall be responsible for their safekeeping.
7. The accounting officer may, in the performance of his or her duties, delegate certain tasks to subordinate staff subject to the Staff Regulations, where this is indispensable for the performance of his or her duties.
8. The instrument of delegation shall lay down the tasks entrusted to the delegates and their rights and obligations.

## **SECTION 4**

### **IMPREST ADMINISTRATOR**

#### *Article 51*

##### *Imprest accounts*

Where it proves indispensable for the payment of small sums and for the collection of other revenue referred to in Article 6, imprest accounts may be set up. Imprest accounts shall be endowed by the accounting officer and shall be placed under the responsibility of imprest administrators designated by him or her.

The maximum amount of each item of expenditure or revenue that can be paid by the imprest administrator to third parties shall not exceed EUR 60 000 and shall be specified by the Agency for each item of expenditure or revenue. Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 74(1), cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.

## **Chapter 3**

### **Liability of financial actors**

#### **SECTION 1**

##### **GENERAL RULES**

#### *Article 52*

##### *Withdrawal of delegation and suspension of duties given to financial actors*

1. Authorising officers by delegation and subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them. The authorising officer may at any time withdraw his or her agreement to a specific subdelegation.
2. The accounting officer or imprest administrator, or both, may at any time be suspended temporarily or definitively from their duties by the administrative board. In such a case, the administrative board shall appoint an interim accounting officer.
3. Paragraphs 1 and 2 shall be without prejudice to any disciplinary action taken in respect of the financial actors referred to in those paragraphs.

#### *Article 53*

##### *Liability of the financial actors for illegal activity, fraud or corruption*

1. Articles 52 to 56 are without prejudice to any liability under criminal-law which the financial actors referred to in Article 52 may incur as provided for in the applicable national law and in the provisions in force concerning the protection of the Union's financial interests and the fight against corruption involving Union officials or officials of Member States.
2. Without prejudice to Articles 54, 55 and 56 each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of



compensation as laid down in the Staff Regulations. In the event of illegal activity, fraud or corruption which may harm the interests of the Union, the matter shall be submitted to the authorities and bodies designated by the applicable legislation, in particular to European Anti-Fraud Office.

## **SECTION 2**

### **RULES APPLICABLE TO AUTHORISING OFFICERS**

#### *Article 54*

#### *Rules applicable to authorising officers*

1. The authorising officer shall be liable for payment of compensation as laid down in the Staff Regulations.
2. The obligation to pay compensation shall apply in particular if the authorising officer, whether intentionally or through gross negligence on his or her part:
  - (a) determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and, where appropriate, with the rules implementing the Agency's Financial Regulation;
  - (b) omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the Agency liable to civil action by third parties.
3. An authorising officer by delegation or subdelegation who considers that a decision, which is his or her responsibility to take, is irregular or contrary to the principle of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to take that decision, that authorising officer shall not be held liable.
4. In the event of delegation, the authorising officer shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by delegation.
5. The specialised financial irregularities panel set up by the Commission or in which the Commission participates in accordance with Article 73(6) of Regulation (EU, Euratom) No 966/2012, shall exercise the same powers in respect of the Agency as it does in respect of Commission departments, unless the administrative board decides to set up a functionally independent panel, or to participate in a joint panel established by several bodies. For cases submitted by Union bodies, the specialised financial irregularities panel set up by the Commission or in which the Commission participates shall include one staff member of the Agency.

On the basis of the opinion of the panel referred to in the first subparagraph, the director shall decide whether to initiate proceedings for disciplinary action or payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor. If the opinion implicates the director, the panel shall send it to the administrative

board and the Commission's internal auditor. The director shall refer, in anonymous form, to opinions of the panel in his or her annual activity report and indicate the follow-up measures taken.

6. Any member of staff may be required to compensate, in whole or in part, any damage suffered by the Agency as a result of serious misconduct on his or her part in the course of or in connection with the performance of his or her duties. The appointing authority shall take a reasoned decision, after completing the formalities laid down by the Staff Regulations with regard to disciplinary matters.

### **SECTION 3**

#### **RULES APPLICABLE TO ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS**

##### *Article 55*

##### *Rules applicable to accounting officers*

An accounting officer shall be liable to disciplinary action and payment of compensation, as laid down in, and in accordance with the procedures in the Staff Regulations. An accounting officer may, in particular, become liable as a result of any of the following forms of misconduct on his or her part:

- (a) losing or damaging funds, assets or documents in his or her keeping or causing them to be lost or damaged by his or her negligence;
- (b) wrongly altering bank accounts or postal giro accounts;
- (c) recovering or paying amounts which are not in conformity with the corresponding recovery or payment orders;
- (d) failing to collect revenue due.

##### *Article 56*

##### *Rules applicable to imprest administrators*

An imprest administrator officer shall be liable to disciplinary action and payment of compensation, as laid down in, and in accordance with, the procedures in the Staff Regulations. An imprest administrator may in particular become liable as a result of any of the following forms of misconduct on his or her part:

- (a) losing or damaging funds, assets and documents in his or her keeping or causing them to be lost or damaged by his or her negligence;
- (b) not providing proper supporting documents for the payments he or she has made;
- (c) making payments to persons other than those entitled to such payments;
- (d) failing to collect revenue due.

## **CHAPTER 4**

### **REVENUE OPERATIONS**

*Article 57*  
*Request for payment*

The Agency shall present to the Commission requests for payment of all or part of the Union contribution pursuant to Article 19(6) under terms and at intervals agreed with the Commission.

*Article 58*  
*Treatment of interest*

The interest generated by funds paid to the Agency by the Commission by way of the contribution shall not be due to the budget.

*Article 59*  
*Estimate of amounts receivable*

1. When the authorising officer has sufficient and reliable information in respect of any measure or situation which may give rise to an amount owing to the Agency, the authorising officer shall make an estimate of the amount receivable.
2. The estimate of the amount receivable shall be adjusted by the authorising officer as soon as he or she is aware of an event modifying the measure or the situation which gave rise to the estimate being made.

When establishing the recovery order on a measure or situation that had previously given rise to an estimate of amounts receivable, that estimate shall be adjusted accordingly by the authorising officer.

If the recovery order is drawn up for the same amount as the original estimate of amounts receivable, that estimate shall be reduced to zero.

*Article 60*  
*Establishment of amounts receivable*

1. The establishment of an amount receivable is the act by which the authorising officer:
  - (a) verifies that the debt exists;
  - (b) determines or verifies the reality and the amount of the debt;
  - (c) verifies the conditions according to which the debt is due.
2. Any amount receivable that is identified as being certain, of a fixed amount and due shall be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer.
3. Amounts wrongly paid shall be recovered.
4. Any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with Delegated Regulation (EU) No 1268/2012.

5. In duly substantiated cases, certain routine revenue items may be established provisionally. Provisional establishment shall cover the recovery of several individual amounts which need not therefore be established individually. Before the end of the financial year, the authorising officer shall amend the amounts established provisionally to ensure that they correspond to the amounts receivable actually established.

*Article 61*  
*Authorisation of recovery*

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

*Article 62*  
*Rules on recovery*

1. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer. The accounting officer shall exercise due diligence to ensure that the Agency receives its revenue and shall ensure that its rights are safeguarded.
2. If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer and immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.
3. The accounting officer shall recover amounts by offsetting them against equivalent claims that the Agency has on any debtor who in turn has a claim on the Agency. Such claims shall be certain, of a fixed amount and due.
4. Where the authorising officer plans to waive or partially waive recovery of an established amount receivable, he or she shall ensure that the waiver is in order and is in accordance with the principles of sound financial management and proportionality. The waiver decision shall be substantiated. The authorising officer may delegate the waiver decision only for amounts receivable of less than EUR 5 000.  
  
The waiver decision shall state what action has been taken to secure recovery and the points of law and fact on which it is based.
5. The authorising officer shall cancel an established amount receivable in full or in part when the discovery of a mistake reveals that the amount had not been correctly established. Such cancellation shall be by decision of the authorising officer and shall be suitably substantiated.

*Article 63*  
*Collection formalities*

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

2. A receipt shall be issued in respect of all cash payments made to the accounting officer.
3. Partial reimbursement by a debtor subject to several recovery orders shall first be posted on the oldest entitlement unless otherwise specified by the debtor.  
Any partial payments shall first cover the interest.

*Article 64*

*Additional time for payment*

1. The accounting officer, in collaboration with the authorising officer, may allow additional time for payment only at the written request of the debtor, with due indication of the reasons, and provided that the following two conditions are fulfilled:
  - (a) the debtor undertakes to pay interest at the rate specified in Article 83 of Delegated Regulation (EU) 1268/2012 for the entire additional period allowed, starting from the deadline referred to in Article 80(3)(b) of Delegated Regulation (EU) 1268/2012;
  - (b) in order to safeguard the rights of the Agency, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the Agency's accounting officer.

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

2. In exceptional circumstances, following a request by the debtor, the accounting officer may waive the requirement of a guarantee referred to in point (b) of the first subparagraph of paragraph 1 when, on the basis of his assessment, the debtor is willing and able to make the payment in the additional time period but is not able to lodge such guarantee and is in a distressed situation.

*Article 65*

*List of entitlements*

1. The accounting officer shall keep a list of amounts due to be recovered. The Agency's entitlements shall be grouped in the list according to the date of issue of the recovery order. The accounting officer shall also indicate decisions to waive or partially waive recovery of established amounts. The list shall be added to the Agency's report on budgetary and financial management.
2. The Agency shall establish a list of the Agency entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to reimburse by a court decision that has the force of *res judicata* and where no or no significant reimbursement has been made for one year following its pronouncement. The list shall be published, with due regard to the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001.

As far as personal data referring to natural persons are concerned, the information published shall be removed once the amount of the debt has been fully reimbursed.

The same shall apply to personal data referring to legal persons for whom the official title identifies one or more natural persons.

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

*Article 66*  
*Limitation period*

Entitlements of the Agency in respect of third parties and entitlements of third parties in respect of the Agency shall be subject to a limitation period of five years.

*Article 67*  
*Specific provisions applicable to fees and charges*

Where the Agency collects fees and charges referred to in Article 6(1)(a), an overall provisional estimate of such fees and charges shall be made at the beginning of each financial year.

Where fees and charges are entirely determined by legislation or decisions of the administrative board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Agency's entitlement shall be registered. The accounting officer shall keep a list of all debit notes and provide the number of the debit notes and the global amount in the Agency's report on budgetary and financial management.

Where the Agency uses a separate invoicing system, the accounting officer shall regularly, and at least on a monthly basis, enter the accumulated sum of fees and charges received into the accounts.

The Agency shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety. However, in exceptional circumstances, a service may be provided without prior payment of the corresponding charge or fee. In cases where service has been provided without prior payment of the corresponding charge or fee, Articles 60 to 66 shall apply.

## **CHAPTER 5**

### **EXPENDITURE OPERATIONS**

*Article 68*  
*Financing decisions*

1. Every item of expenditure shall be committed, validated, authorised and paid.
2. Every commitment of expenditure shall be preceded by a financing decision.
3. The annual work programme of the Agency shall be equivalent to a financing decision for the activities it covers, provided that the elements set out in Article 32(3) are clearly identified.

4. Administrative appropriations may be implemented without a prior financing decision.

#### *Article 69*

##### *Types of commitments*

1. A budgetary commitment is the operation by which the appropriation necessary to cover subsequent payments to honour legal commitments is reserved
2. A legal commitment is the act whereby the authorising officer enters into or establishes an obligation which results in a charge.
3. Budgetary commitments shall fall into one of the following three categories:
  - (a) individual: the budgetary commitment is individual when the recipient and the amount of the expenditure are known;
  - (b) global: the budgetary commitment is global when at least one of the elements necessary to identify the individual commitment is still not known;
  - (c) provisional: the budgetary commitment is provisional when it is intended to cover routine administrative expenditure and either the amount or the final payees are not definitively known.

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

4. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the constituent act or basic act so provides or where they relate to administrative expenditure.

#### *Article 70*

##### *Rules applicable to commitments*

1. In respect of any measure which may give rise to expenditure chargeable to the budget of the Agency, the authorising officer shall make a budgetary commitment before entering into a legal commitment with third parties.
2. The obligation to make a budgetary commitment before entering into a legal commitment as provided for in paragraph 1, shall not be applicable to legal commitments concluded following a declaration of a crisis situation in the framework of a business continuity plan, in accordance with the procedures adopted by the Agency.
3. Global budgetary commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year  $n + 1$ .  
Subject to Articles 69(4) and 87(2) individual legal commitments relating to individual or provisional budgetary commitments shall be concluded by 31 December of year  $n$ .



At the end of the periods referred to in the first and the second subparagraph, the unused balance of such budgetary commitments shall be decommitted by the authorising officer.

The amount of each individual legal commitment adopted following a global budgetary commitment shall, prior to signature, be registered by the authorising officer in the budgetary accounts and booked to the global budgetary commitment.

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

Any parts of such commitments which have not been executed six months after the date referred to in the first subparagraph of this paragraph shall be decommitted in accordance with Article 16.

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 75 has been made within two years of the signing of the legal commitment shall be decommitted, except where that amount relates to a case under litigation before judicial courts or arbitral bodies or where there are special provisions laid down in basic acts..

#### *Article 71*

##### *Checks applicable to commitments*

1. When adopting a budget commitment, the authorising officer shall ensure that:
  - (a) the expenditure has been charged to the correct item in the budget of the Agency;
  - (b) the appropriations are available;
  - (c) the expenditure is in compliance with the applicable provisions, in particular those of the constituent act, the financial rules of the Agency and all acts adopted pursuant to them;
  - (d) the principle of sound financial management is respected.
2. When registering a legal commitment by physical or electronic signature, the authorising officer shall ensure that:
  - (a) the commitment is covered by the corresponding budgetary commitment;
  - (b) the expenditure is legal and regular and in compliance with the applicable provisions, in particular those of the constituent act, the financial rules of the Agency and all acts adopted pursuant to them;
  - (c) the principle of sound financial management is respected.

#### *Article 72*

##### *Validation of expenditure*

Validation of expenditure is the act whereby the authorising officer:

- (a) verifies the existence of the creditor's entitlement;
- (b) determines or verifies the reality and the amount of the claim;
- (c) verifies the conditions according to which payment is due.

*Article 73*

*Validation and material form of 'passed for payment'*

1. Validation of any expenditure shall be based on supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment, including recurring payments of subscriptions or training courses.
2. The authorising officer 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.
4. In a non-computerised system, 'passed for payment' shall take the form of a stamp incorporating the signature of the authorising officer.

In a computerised system, 'passed for payment' shall take the form of validation using the personal password of the authorising officer.

*Article 74*

*Authorisation of expenditure*

1. The authorisation of expenditure is the act by which the authorising officer, having verified that the appropriations are available, instructs the accounting officer, by issuing a payment order, to pay an amount of expenditure which the authorising officer has validated.

Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, and subject to the authorising officer's risk analysis, the authorising officer may order the application of a direct debit system.

2. The payment order shall be dated and signed by the authorising officer, then sent to the accounting officer. The supporting documents shall be kept by the authorising officer in accordance with Article 44(5).
3. Where appropriate, the payment order sent to the accounting officer shall be accompanied by a document certifying that the goods have been entered in the inventories referred to in Article 106(1).

*Article 75*  
*Types of payments*

1. Payment shall be made on production of proof that the relevant action has been carried out in accordance with the provisions of the basic act or the contract or grant agreement, and shall cover one of the following operations:
  - (a) payment of the entire amount due;
  - (b) payment of the amount due in any of the following ways:
    - (1) pre-financing, which may be divided into a number of payments after the signature of the contract or grant agreement or after notification of the grant decision.
    - (2) one or more interim payments as a counterpart of a partial execution of the action;
    - (3) payment of the balance of the amounts due where the action is completely executed.

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

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

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

2. A distinction shall be made in the budgetary accounting between the different types of payment referred to in paragraph 1 at the time each payment is made.

*Article 76*  
*Payment limited to funds available*

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

*Article 77*  
*Time limits*

The payment of expenditure shall be carried out within the time limits specified in, and in accordance with Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012.

## **CHAPTER 6**

### **IT SYSTEMS**

#### *Article 78*

##### *Electronic management of operations*

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

#### *Article 79*

##### *e-Government*

The Agency shall establish and apply uniform standards for the electronic exchange of information with third parties participating in procurement and grant procedures. In particular, they shall, to the greatest possible extent, design and implement solutions for the submission, storage and processing of data submitted in grant and procurement procedures, and to this end, shall put in place a single electronic data interchange area for applicants, candidates and tenderers.

#### *Article 80*

##### *Good administration*

1. The authorising officer shall make known without delay the need to supply evidence and/or documentation, their form and prerequisite content, as well as, where appropriate, the indicative timetable for completion of award procedures.
2. Where, due to an obvious clerical error on the part of the applicant or tenderer, the applicant or tenderer omits to submit evidence or to make statements, the evaluation committee or, where appropriate, the authorising officer shall, except in duly justified cases, ask the applicant or tenderer to provide the missing information or clarify supporting documents. Such information or clarifications shall not substantially change the proposal or alter the terms of the tender.

#### *Article 81*

##### *Indication of means of redress*

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

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

## **CHAPTER 7**

### **INTERNAL AUDITOR**

#### *Article 82*

#### *Appointment and powers and duties of the internal auditor*

1. The Agency shall have an internal auditing function which shall be performed in compliance with the relevant international standards.
2. The internal audit function shall be performed by the Commissions' internal auditor. The internal auditor may be neither authorising officer nor accounting officer neither of the Agency nor of the Commission
3. The internal auditor shall advise the Agency on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The internal auditor shall be responsible, in particular, for:

- (a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them;
  - (b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each operation for implementation of the budget of the Agency.
4. The internal auditor shall perform his or her duties in relation to all the Agency's activities and departments. The internal auditor shall enjoy full and unlimited access to all information required to perform his or her duties.
  5. The internal auditor shall take note of the consolidated annual activity report of the authorising officer and any other pieces of information identified.
  6. The internal auditor shall report to the administrative board and the director on his or her findings and recommendations.

The internal auditor shall also report in any of the following cases:

- critical risks and recommendations have not been addressed;
- there are significant delays in the implementation of the recommendations made in previous years.

The administrative board and the director shall ensure regular monitoring of the implementation of audit recommendations. The administrative board shall examine the information referred to in the Article 47(1)(a) and whether the recommendations have been fully and timely implemented.

7. The Agency shall make available the contact details of the internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.

8. The reports and findings of the internal auditor shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.

*Article 83*

*Independence of the internal auditor*

The independence of the internal auditor, his or her liability for action taken in the performance of his or her duties and the right for the internal auditor to bring action before the Court of Justice of the European Union shall be determined in accordance with Article 100 of Regulation (EU, Euratom) No 966/2012.

*Article 84*

*Establishment of internal audit capability*

1. The administrative board may establish, with due regard to cost effectiveness and added value, an internal audit capability which shall perform its duties in compliance with the relevant international standards.

The purpose, authority and responsibility of the internal audit capability shall be provided for in the internal audit charter and shall be subject to the approval of the administrative board.

The annual audit plan of an internal audit capability shall be drawn up by the Head of internal audit capability taking into consideration inter alia the director's assessment of risk in the Agency.

It shall be reviewed and approved by administrative board.

The internal audit capability shall report to the administrative board and the director on his or her findings and recommendations.

2. If the internal audit capability of the Agency is not cost-effective or is not able to meet international standards, the Agency may decide to share an internal audit capability with other Union bodies functioning in the same policy area.

In such cases the administrative board shall agree on the practical modalities of the shared internal audit capability.

3. The internal audit actors shall cooperate efficiently through exchanging information and audit reports and, where appropriate, establishing joint risk assessments, and carrying out joint audits.

The administrative board and the director shall ensure regular monitoring of the implementation of internal audit capability's recommendation.

## **TITLE V**

### **PROCUREMENT**

#### *Article 85*

##### *General provisions*

1. As regards procurement, Title V of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to Article 86.
2. The Agency may be associated, at its request, as contracting authority, in the award of Commission or interinstitutional contracts and with the award of contracts of other Union bodies.
3. The Agency shall participate in the central exclusion database set up and operated by the Commission pursuant to Article 108 of Regulation (EU, Euratom) No 966/2012.

#### *Article 86*

##### *Procurement Procedures*

1. The Agency may conclude a contract, without having recourse to a public procurement procedure, with the Commission, the interinstitutional offices and the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94<sup>8</sup> for the supply of goods, provision of services or performance of work that the latter provide.
2. The Agency may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs. In such case, Article 133 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis*.

## **TITLE VI**

### **SPECIFIC PROVISIONS REGARDING ADMINISTRATIVE APPROPRIATIONS**

#### *Article 87*

##### *Administrative appropriations*

1. Administrative appropriations shall be non-differentiated appropriations.
2. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the Agency of the financial year in which it is effected.
3. The Agency shall provide the European Parliament and the Council, by 1 July each year, with a working document on its building policy, which shall incorporate the following information:

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<sup>8</sup> Council Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union (OJ L 314, 7.12.1994, p. 1).



- (a) for each building, the expenditure and surface area covered by the appropriations of the corresponding lines in the budget of the Agency;
- (b) the expected evolution of the global programming of surface area and locations for the coming years with a description of the building projects in planning phase which are already identified;
- (c) the final terms and costs, as well as relevant information regarding project implementation of new building projects previously submitted to the European Parliament and the Council under the procedure established in Article 88 and not included in the preceding year's working documents.

*Article 88*

*Building projects*

1. For any building project likely to have significant financial implications for the budget of the Agency, the Agency shall inform the European Parliament and the Council as early as possible about the building surface area required and provisional planning before any prospecting of the local market takes place, in the case of building contracts, or before invitations to tender are issued, in the case of building works.
2. For any building project likely to have significant financial implications for the budget of the Agency, the Agency shall present the building project, including its detailed estimated costs and its financing, as well as a list of draft contracts intended to be used, and shall request the approval of the European Parliament and the Council before contracts are concluded. At the request of the Agency, documents submitted relating to the building project shall be treated confidentially.

Except in cases of force majeure, the European Parliament and the Council shall deliberate upon the building project within four weeks of its receipt by both institutions.

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

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

If the European Parliament or the Council takes a decision contrary to the building project, the Agency shall withdraw its proposal and may submit a new one.

3. In cases of force majeure, the information provided for in paragraph 1 may be submitted jointly with the building project. The European Parliament and the Council shall deliberate upon the building project within two weeks of its receipt by both institutions. The building project shall be deemed to be approved at the expiry of this two-week period, unless the European Parliament and/or the Council take a decision contrary to the proposal within this period of time.
4. The following shall be considered as building projects likely to have significant financial implications for the budget of the Agency:
  - (a) any acquisition of land;

- (b) the acquisition, sale, structural renovation, construction of buildings or any project combining these elements to be implemented in the same timeframe, exceeding EUR 3 000 000;
  - (c) any new building contract (including usufructs, long-term leases and renewals of existing building contracts under less favourable conditions) not covered by point b) with an annual charge of at least EUR 750 000;
  - (d) the extension or renewal of existing building contracts (including usufruct and long-term leases) under the same or more favourable conditions, with an annual charge of at least EUR 3 000 000.
5. Without prejudice to Article 19(4), a building acquisition project may be financed through a loan, subject to prior approval by the European Parliament and the Council.
- Loans shall be contracted and repaid in accordance with the principle of sound financial management and with due regard to the best financial interests of the Union.
- When the Agency proposes to finance the acquisition through a loan, the financing plan to be submitted, together with the request for prior approval by the Agency, shall specify in particular, the maximum level of financing, the financing period, the type of financing, the financing conditions and savings compared to other types of contractual arrangements.
- The European Parliament and the Council shall deliberate upon the request for prior approval within four weeks, extendable once by two weeks, of its receipt by both institutions. The acquisition through a loan shall be deemed to be rejected if the European Parliament and the Council do not expressly approve it within the deadline.

## **TITLE VII EXPERTS**

### *Article 89 Remunerated external experts*

Article 287 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis* to the selection of experts. Such experts shall be paid on the basis of a fixed amount announced in advance and shall be chosen on the basis of their professional capacity. The selection shall be done on the basis of selection criteria respecting the principles of non-discrimination, equal treatment and absence of conflict of interests.

## **TITLE VIII GRANTS AND PRIZES AWARDED BY THE AGENCY**

### *Article 90 Grants*

Where the Agency may award grants in accordance with the constituent act or by delegation of the Commission pursuant to Article 58(1)(c)(iv) of Regulation (EU, Euratom) No 966/2012,

the relevant provisions of that Regulation and Delegated Regulation (EU) No 1268/2012 shall apply.

*Article 91*  
*Prizes*

Where the Agency may award prizes in accordance with the constituent act or by delegation of the Commission pursuant to Article 58(1)(c)(iv) of Regulation (EU, Euratom) No 966/2012, the relevant provisions of that Regulation and Delegated Regulation (EU) No 1268/2012 shall apply.

**TITLE IX**  
**PRESENTATION OF THE ACCOUNTS AND ACCOUNTING**

**CHAPTER 1**  
**PRESENTATION OF THE ACCOUNTS**

*Article 92*  
*Structure of the accounts*

The accounts of the Agency shall comprise:

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

*Article 93*  
*Report on budgetary and financial management*

1. The Agency shall prepare a report on budgetary and financial management for the financial year.
2. The director shall send the report to the European Parliament, the Council, the Commission and the Court of Auditors, by 31 March of the following financial year.
3. The report referred to in paragraph 2 shall give an account, both in absolute terms and expressed as a percentage, at least, of the rate of implementation of appropriations together with summary information on the transfers of appropriations among the various budget items.

*Article 94*  
*Rules governing the accounts*

1. The accounting officer of the Agency shall apply the rules adopted by the accounting officer of the Commission based on internationally accepted accounting standards for the public sector.
2. The accounts of the Agency referred to in Article 92 shall respect the budgetary principles laid down in Articles 5 to 31. They shall present a true and fair view of the budgetary revenue and expenditure operations.

*Article 95*  
*Accounting principles*

The financial statements referred to in Article 92 shall present information, including information on accounting policies, in a manner that ensures it is relevant, reliable, comparable and understandable. The financial statements shall be drawn up in accordance with generally accepted accounting principles as outlined in the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012.

*Article 96*  
*Financial statements*

1. The financial statements shall be presented in euro and shall comprise:
  - (a) the balance sheet and the statement of financial performance, which represent all assets and liabilities, the financial situation and the economic result at 31 December of the preceding year; they shall be presented in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012;
  - (b) the cash-flow statement showing amounts collected and disbursed during the year and the final treasury position;
  - (c) the statement of changes in net assets presenting an overview of the movements during the year in reserves and accumulated results.
2. The notes to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the Agency's activities.

*Article 97*  
*Budgetary implementation reports*

1. The budgetary implementation reports shall be presented in euro. They shall consist of:
  - (a) reports which aggregate all budgetary operations for the year in terms of revenue and expenditure;
  - (b) explanatory notes, which shall supplement and comment on the information given in the reports.
2. The budget result shall consist of the difference between:
  - all the revenue collected in respect of that financial year;
  - the amount of payments made against appropriations for that financial year increased by the amount of the appropriations for the same financial year carried over.

The difference referred to in the first subparagraph shall be increased or decreased on the one hand, by the net amount of appropriations carried over from previous financial years which have been cancelled and, on the other hand, by:

- payments made in excess of non-differentiated appropriations carried over from the previous financial year, as a result of change in euro rates;
  - the balance resulting from exchange gains and losses during the financial year, both realised and non-realised.
3. The structure of the budgetary implementation reports shall be the same as that of the budget of the Agency itself.

*Article 98*  
*Provisional accounts*

1. The accounting officer of the Agency shall send the provisional accounts to the accounting officer of the Commission and to the Court of Auditors by 1 March of the following year.
2. The accounting officer of the Agency shall also send by 1 March of the following year a reporting package to the accounting officer of the Commission, in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

*Article 99*  
*Approval of the final accounts*

1. In accordance with Article 148(1) of Regulation (EU, Euratom) No 966/2012, the Court of Auditors shall, by 1 June of the following year at the latest, make its observations on the provisional accounts of the Agency.
2. On receiving the Court of Auditors' observations on the provisional accounts of the Agency, the accounting officer shall draw up the final accounts of the Agency in accordance with Article 50. The director shall send them to the administrative board, which shall give an opinion on these accounts.
3. The accounting officer shall send the final accounts, together with the opinion of the administrative board, to the accounting officer of the Commission, the Court of Auditors, the European Parliament and the Council, by 1 July of the following financial year.

The accounting officer of the Agency shall also send by 1 July, a reporting package to the accounting officer of the Commission, in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

4. The accounting officer of the Agency shall also send to the Court of Auditors, with a copy to the accounting officer of the Commission, at the same date as the transmission of his or her final accounts, a representation letter covering those final accounts.

The final accounts shall be accompanied by a note drawn up by the accounting officer, in which the latter declares that the final accounts were prepared in accordance with this Title and with the applicable accounting principles, rules and methods.

The final accounts of the Agency shall be published in the *Official Journal of the European Union* by 15 November of the following year.

5. The Director shall send the Court of Auditors a reply to the observations made in its annual report by 30 September of the following year at the latest. The replies of the Agency shall be sent to the Commission at the same time.

## **CHAPTER 2**

### **ACCOUNTING AND PROPERTY INVENTORIES**

#### **SECTION 1**

##### **COMMON PROVISIONS**

###### *Article 100*

###### *The accounting system*

1. The accounting system of the Agency shall serve to organise the budgetary and financial information in such a way that figures can be entered, filed and registered.
2. The accounting system shall consist of general accounts and budgetary accounts. The accounts shall be kept in euro on the basis of the calendar year.
3. The authorising officer may also keep analytical accounts.

###### *Article 101*

###### *Common requirements for the institutions' accounting system*

The accounting rules and the harmonised chart of accounts to be applied by the Agency shall be adopted by the Commission's accounting officer in accordance with Article 152 of Regulation (EU, Euratom) No 966/2012.

#### **SECTION 2**

##### **GENERAL AND BUDGETARY ACCOUNTS**

###### *Article 102*

###### *The general accounts*

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

###### *Article 103*

###### *Entries in the general accounts*

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

*Article 104*  
*Accounting adjustments*

The accounting officer of the Agency shall, after the close of the financial year and up to the date of presentation of the final accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts. Such adjustments shall comply with the accounting rules referred to in Article 101.

*Article 105*  
*Budgetary accounting*

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

*Article 106*  
*Property inventory*

1. The Agency shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting Union property in accordance with a model drawn up by the accounting officer of the Commission.  
The Agency shall check that entries in the inventory correspond to the actual situation.
2. The sale of the Agency's tangible assets shall be suitably advertised.

**TITLE X**  
**EXTERNAL AUDIT, DISCHARGE AND COMBATTING**  
**FRAUD**

*Article 107*  
*External audit*

1. An independent external auditor shall verify that the annual accounts of the Agency, properly present the income, expenditure and financial position of the Agency prior to the consolidation in the final accounts of the Union.  
Unless otherwise provided for in the constituent act, the Court of Auditors shall prepare a specific annual report on the Agency in line with the requirements of Article 287(1) of TFEU.  
In preparing the report referred to in the second subparagraph, the Court shall consider the audit work performed by the independent external auditor referred to in the first subparagraph and the action taken in response to his or her findings.
2. The Agency shall send to the Court of Auditors the budget of the Agency, as finally adopted. It shall inform the Court of Auditors, as soon as possible, of all decisions and acts adopted pursuant to Articles 10, 14, 19 and 23.



3. The scrutiny carried out by the Court of Auditors shall be governed by Articles 158 to 163 of Regulation (EU, Euratom) No 966/2012.

*Article 108*

*Timetable of the discharge procedure*

1. The European Parliament, upon a recommendation from the Council, shall, before 15 May of year N+2 save where otherwise provided in the constituent act, give a discharge to the director in respect of the implementation of the budget for year N. The director shall inform the administrative board of the observations of the European Parliament contained in the resolution accompanying the discharge decision.
2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the director of the reasons for the postponement.
3. If the European Parliament postpones the decision giving a discharge, the director, in cooperation with the administrative board, shall make every effort to take measures as soon as possible to remove or facilitate removal of the obstacles to that decision.

*Article 109*

*The discharge procedure*

1. The discharge decision shall cover the accounts of all the revenue and expenditure of the Agency, the budget result and the assets and liabilities of the Agency shown in the financial statement.
2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements of the Agency. It shall also examine the annual report made by the Court of Auditors, together with the replies of the director of the Agency, any relevant special reports by the Court of Auditors in respect of the financial year concerned and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.
3. The director shall submit to the European Parliament, at its request, in the same manner as provided for in Article 165(3) of Regulation (EU, Euratom) No 966/2012 any information required for the smooth application of the discharge procedure for the financial year concerned.

*Article 110*

*Follow-up measures*

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

*Article 111*

*On-the-spot checks by the Commission, the Court of Auditors and OLAF*

1. The Agency shall grant Commission staff and other persons authorised by it, as well as the Court of Auditors, access to its sites and premises and to all the data and information, including data and information in electronic format, needed in order to conduct their audits.
2. The European Anti-Fraud Office (OLAF) may carry out investigations including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>9</sup> and Council Regulation (Euratom, EC) No 2185/96<sup>10</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with grant or contract awarded under this Regulation.
3. Without prejudice to paragraphs 1 and 2, agreements with third countries and international organisations, contracts, grants and procurements of the Agency shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

**TITLE XI**  
**TRANSITIONAL AND FINAL PROVISIONS**

*Article 112*

*Information requests by the European Parliament and the Council*

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

*Article 113*

*Nihil*

*Article 114*

*Rules implementing the financial regulation of the Agency*

The administrative board shall, as far as is necessary and with the Commission's prior consent, adopt detailed rules for implementing the financial regulation of the Agency, on a proposal from its Director.

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<sup>9</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p.1)

<sup>10</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ( OJ L 292 , 15.11.1996 p. 2)

*Article 115*  
*Repeal*

The Financial Regulation applicable to the Agency adopted on 22 September 2011 by Administrative Board decision No 22/2011 is repealed with effect from 1 January 2014. However, Article 40 shall continue to apply until 31 December 2014 and paragraphs 4 and 7 of Article 27 shall continue to apply until 31 December 2015.

*Article 116*  
*Entry into force*

This Regulation shall enter into force on the day following that of its adoption. It shall apply from 1 January 2014. However, Articles 47 and 82(5) shall apply from 1 January 2015 and Article 32 and paragraphs 5 and 8 of Article 33 shall apply from 1 January 2016.

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

Done at Ljubljana, xx December 2013

*For the Administrative Board*

*Piotr Woźniak*  
*Chairman of the Agency' Administrative Board*