

COMMISSION REGULATION (EC, EURATOM) No 1248/2006

of 7 August 2006

amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, and in particular Article 183 thereof,

Having consulted the European Parliament, the Council, the Court of Justice of the European Communities, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Data Protection Supervisor,

Whereas:

(1) The obligation for the Commission to inform the budgetary authority by 15 April of the cancellation of carried over appropriations which have not been committed by 31 March has proven to be too strict and it should therefore be extended by two weeks to 30 April.

(2) It should be specified that where the system of provisional twelfths is to be applied, the total allotted appropriations of the previous financial year are to be understood as referring to appropriations for the financial year after adjustment for any transfers made during that financial year.

(3) It should be made clear that the rules on the rate of conversion between the euro and another currency set out in Articles 7 and 8 of Commission Regulation (EC, Euratom) No 2342/2002 ⁽²⁾ apply only to conversions carried out by authorising officers and not to those

carried out by contractors or beneficiaries, on the basis of the specific rules agreed in contracts or grant agreements. For reasons of efficiency, the Commission's accounting officer should be authorised to establish the monthly accounting exchange rate of the euro to be used for accounts purposes. In addition, for reasons of transparency and equal treatment of Community officials, a specific rule on conversion rates should be established for staff expenditure paid in a currency other than the euro.

(4) As regards the principle of sound financial management, the content of the *ex ante* evaluation should be clarified and the scope of the *ex ante*, interim or *ex post* evaluation should be better targeted, having due regard to the principle of proportionality. The priorities of evaluation should thus be redirected in order to focus on proposals with an impact on business and/or citizens and to cover pilot projects and preparatory actions to be continued. In addition, complementarity should be ensured when projects or actions are already subject to evaluation (for example, tasks shared between the Commission and Member States).

(5) For the purpose of *ex ante* verification for the authorisation of expenditure, a series of similar individual transactions relating to routine staff expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising office responsible to constitute a single operation. In that case, the authorising officer responsible, in accordance with his risk assessment, should carry out appropriate *ex post* verification.

(6) It is appropriate to include in the report on negotiated procedures only the cases of the use of negotiated procedures which constitute exceptions to the normal procurement procedures.

(7) Following the introduction of accrual accounting on 1 January 2005, and the availability of accounting data at any moment in the informatics system, it is more logical and quicker to draw up the trial balance on the day on which the accounting officer terminates his duty. If he terminates his duty on 31 December, the trial balance could be prepared the same day without waiting for the provisional accounts to be finalised.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 357, 31.12.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No 1261/2005 (OJ L 201, 2.8.2005, p. 3).

- (8) In order to render effective the accounting officer's responsibility for treasury management, he should be authorised to communicate to financial institutions with which he has opened accounts the names and specimen signatures of the officials authorised to sign banking operations.
- (9) The maximum amount which can be paid by the imprest administrator should be increased from EUR 30 000 to EUR 60 000 when payments by budgetary procedures are materially impossible or less effective.
- (10) In the light of Article 21a of the Staff Regulations of Officials and the Conditions of Employment of other Servants of the European Communities, the authorising officer by delegation or sub-delegation should, in the case of confirmation of instruction, be allowed not to carry out the instruction if it is manifestly illegal.
- (11) Given the complementary roles of the authorising officers and the accounting officer in the process of recovery by offsetting, providing for consultation between them before offsetting is justified.
- (12) When the debtor is a national authority or one of its administrative entities, in order to take account of the procedures existing at national levels, the accounting officer should inform the Member States concerned at least 10 working days in advance of his intention to resort to recovery by offsetting. However, in agreement with the Member State or administrative entity concerned, the accounting officer should be able to proceed with the recovery by offsetting before that deadline.
- (13) Where the debt is paid before the deadline no default interest will be due (period of grace) and recovery by offsetting before that deadline should be limited to cases where the accounting officer has justified reasons for considering the financial interests of the Communities to be at stake.
- (14) In order to protect the financial interests of the Communities, bank guarantees that secure a Community claim pending appeal against a fine should be completely independent of the obligation laid down in the contract.
- (15) The content of the financing decision should be further specified. For grants and procurement, the notion of 'essential elements' of an action involving expenditure from the budget should be defined in more detail. Moreover, it should be made clear that the work programme referred to in Article 110 of Regulation (EC, Euratom) No 1605/2002, hereinafter 'the Financial Regulation', may constitute a financing decision provided that it contains a sufficiently detailed framework.
- (16) Where a global budgetary commitment is made, any authorising officer — not only the authorising officer by delegation — may be responsible for the legal commitments implementing the global commitment.
- (17) The payment time-limits for contracts and grant agreements which depend on the approval of a report or certificate should be revised in order to make certain that payments are made on the basis of an approved report or certificate. Moreover, the time-limit for approval of a report related to a grant agreement involving actions which are particularly complex to evaluate should be brought into line with the current time-limit for complex service contracts.
- (18) Without modifying the existing time-limits or affecting the beneficiaries' rights, the authorising officer responsible should also, for simplification reasons, be able to decide that approval of the report or certificate and payment can be made within a single time-limit.
- (19) The thresholds for low-value contracts, fixed in 1994, should be updated and raised from EUR 50 000 to EUR 60 000 and from EUR 13 800 to EUR 25 000 respectively. Moreover, it should be specified that all contracts with a value equal to or less than EUR 60 000 may be awarded after a negotiated procedure.
- (20) In addition, the implementing rules should define more precisely the procedure to be followed for certain research and development service contracts and certain service contracts intended for broadcasting which are excluded from the scope of the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public work contracts, public supply contracts and public service contracts⁽¹⁾. In the light of the principle of transparency, those contracts may be awarded following a negotiated procedure after publication of a tender notice.
- (1) OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 2083/2005 (OJ L 333, 20.12.2005, p. 28).

- (21) With a view to further simplifying the management of the procurement procedures, economic operators should be able to participate in a procedure on the basis of a declaration on their honour stating that they are not in one of the situations giving grounds for exclusion from that procurement procedure, except in the case of restricted procedures, competitive dialogue and negotiated procedures after publication of a contract notice whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender. However, in line with the principles of Directive 2004/18/EC and in order better to protect the financial interests of the Communities, for contracts covered by Directive 2004/18/EC and high value contracts in the external field, the economic operator to whom the contract is to be awarded should nevertheless have to provide evidence confirming the initial declaration. Whenever a candidate or tenderer is required to provide evidence, the contracting authority should also consider evidence provided by that candidate or tenderer in another procurement procedure launched by the same contracting authority, provided that the evidence is not more than one year old starting from its issuing date and that it is still valid.
- (22) In external actions, the competitive negotiated procedure should be rendered more efficient and the negotiated procedure should be allowed in the event of two failures of a competitive negotiated procedure and in the event of one failure when the competitive negotiated procedure follows the unsuccessful use of a framework contract. The option of not requiring proof of technical and economic capacity should be allowed up to the thresholds appropriate in that specific policy area for each type of contract. In that case also, the authorising officer responsible should be able to justify his choice. The evaluation committee or the contracting authority should have the option of asking candidates or tenderers to supply additional documents or clarify information, as provided for in the case of contracts awarded by the institutions on their own account.
- (23) In external actions, the legal framework for the procurement should also be simplified as regards the publication of the pre-information notice for international calls for tenders and the requirement for a performance guarantee. The pre-information notice should be published as early as possible and not necessarily before 31 January. Moreover, the performance guarantee should be required only in the event of procurement with a high value and the authorising officer responsible should have the option of waiving the requirement for a guarantee in the case of pre-financing to a public body, depending on his risk assessment.
- (24) With regard to the award of grants, in order to reduce the administrative burden, it should be accepted that the *de jure* or *de facto* monopoly of the beneficiary can be substantiated in the award decision.
- (25) The requirement to attach an external audit to the application should apply only to applications for grants with a value equal to or more than EUR 500 000 for actions and to operating grants with a value equal to or more than EUR 100 000.
- (26) Co-financing in kind by beneficiaries should be made easier, if appropriate or necessary, and the notion of bodies which pursue an aim of European general interest and which may receive operating grants should include European bodies involved in promoting citizenship or innovation.
- (27) Applicants should be informed as soon as possible of the rejection of their application.
- (28) In the case of operating grants to bodies which pursue an aim of general European interest, the implementation of the non-profit rule should be limited to the percentage of co-financing corresponding to the Community's contribution to the operating budget in order to take account of the rights of the other public contributors which are also required to recover the percentage of annual profit corresponding to their contribution. For the purpose of calculating the amount to be recovered, the percentage of the contributions in kind to the operating budget should not be taken into account.
- (29) In order to protect the Communities' financial interests, the requirement of guarantees for pre-financing should apply to any pre-financing exceeding 80 % of the amount of the grant and EUR 60 000.
- (30) Where pre-financing is split, where the consumption of any earlier pre-financing is less than 70 %, a new pre-financing should be possible but the amount of the new payment should be reduced by the unused amounts of the previous payment.
- (31) It should be specified that in the case of public bodies, external audit or certification to be attached to grant applications or requests for payments, may be carried out by a competent and independent public officer.
- (32) Following the adoption by the Commission's accounting officer in December 2004, pursuant to Article 133 of the Financial Regulation, of the accounting rules and methods and the harmonised chart of accounts, the Title on presentation of the accounts and accounting should be updated by deleting provisions which are no longer necessary.

- (33) In order to take account of Decision 2005/118/EC of the European Parliament, the Council, the Commission, the Court of Justice, Court of Auditors, the European Economic and Social Committee, the Committee of the Regions and the Ombudsman of 26 January 2005 setting up a European Administrative School ⁽¹⁾, the list of European offices should be adjusted to reflect that the European Administrative School is presently attached administratively to the European Communities Personnel Selection Office.
- (34) Regulation (EC, Euratom) No 2342/2002 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 2342/2002 is amended as follows:

1. In Article 6(3), second subparagraph, '15 April' is replaced by '30 April'.
2. The following Article 6a is inserted:

'Article 6a

Provisional twelfths

(Article 13(2) of the Financial Regulation)

The total allotted appropriations of the previous financial year, as specified in Article 13(2) of the Financial Regulation, shall be understood to refer to the appropriations for the financial year referred to in Article 5 of this Regulation, after adjustment for the transfers made during that financial year.'

3. Articles 7 and 8 are replaced by the following:

'Article 7

Rate of conversion between the euro and other currencies

(Article 16 of the Financial Regulation)

1. Without prejudice to specific provisions arising from the application of sector-specific regulations, conversion between the euro and another currency by the responsible authorising officer shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union*.

Where conversion between the euro and another currency is to be made by the contractors or beneficiaries, the

specific arrangements for conversion contained in procurement contracts, grant agreements or financing agreements shall apply.

2. If no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, the responsible authorising officer shall use the accounting rate referred to in paragraph 3.

3. For the purposes of the accounts provided for in Articles 132 to 137 of the Financial Regulation and subject to Article 213 of this Regulation, conversion between the euro and another currency shall be made using the monthly accounting exchange rate of the euro. That accounting exchange rate shall be established by the Commission's accounting officer by means of any source of information he regards as reliable, on the basis of the exchange rate on the penultimate working day of the month preceding that for which the rate is established.

Article 8

Rate to be used for conversion between the euro and other currencies

(Article 16 of the Financial Regulation)

1. Without prejudice to specific provisions deriving from the application of sector-specific regulations, or from specific procurement contracts, grant agreements and financing agreements, the rate to be used for conversion between the euro and other currencies shall, in cases where the conversion is carried out by the responsible authorising officer, be that of the day on which the payment order or recovery order is drawn up by the authorising department.

2. In the case of euro imprest accounts, the rate to be used for the conversion between the euro and other currencies shall be determined by the date of payment by the bank.

3. For the regularisation of imprest accounts in national currencies, as referred to in Article 16 of the Financial Regulation, the rate to be used for the conversion between the euro and other currencies shall be that of the month of the expenditure from the imprest account concerned.

4. For the reimbursement of flatrate expenditure, or expenditure arising from the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter: Staff Regulations) which is fixed at a ceiling, and which is paid in a currency other than the euro, the rate to be used shall be that which is in force when the entitlement arises.'

⁽¹⁾ OJ L 37, 10.2.2005, p. 14.

4. Article 21 is replaced by the following:

'Article 21

Evaluation

(Article 27 of the Financial Regulation)

1. All proposals for programmes or activities occasioning budget expenditure shall be the subject of an *ex ante* evaluation, which shall address:

- (a) the need to be met in the short- or long-term;
- (b) the added value of Community involvement;
- (c) the objectives to be achieved;
- (d) the policy options available, including the risks associated with them;
- (e) the results and impacts expected, in particular economic, social and environmental impacts, and the indicators and evaluation arrangement needed to measure them;
- (f) the most appropriate method of implementation for the preferred option(s);
- (g) the internal coherence of the proposed programme or activity and its relations with other relevant instruments;
- (h) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle;
- (i) the lessons learned from similar experiences in the past.

2. The proposal shall set out the arrangements for monitoring, reporting and evaluation, taking due account of the respective responsibilities of all levels of government that will be involved in the implementation of the proposed programme or activity.

3. All programmes or activities, including pilot projects and preparatory actions, where the resources mobilised exceed EUR 5 000 000 shall be the subject of an interim and/or *ex post* evaluation of the human and financial resources allocated and the results obtained in order to verify that they were consistent with the objectives set, as follows:

- (a) the results obtained in carrying out a multiannual programme shall be periodically evaluated in accordance with a timetable which enables the findings of that evaluation to be taken into account for any decision on the renewal, modification or suspension of the programme;

- (b) activities financed on an annual basis shall have their results evaluated at least every six years.

Points (a) and (b) of the first subparagraph shall not apply to each of the projects or actions conducted within the activities for which the requirement may be met by the final reports sent by the bodies which carried out the action.

4. The evaluations referred to in paragraphs 1 and 3 shall be proportionate to the resources mobilised for and the impact of the programme or activity concerned.'

5. Article 45 is amended as follows:

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

'The authorising officer responsible may be assisted in his duties by persons covered by the Staff Regulations (hereinafter: staff) entrusted, under his responsibility, with certain operations required for the implementation of the budget and production of the financial and management information.'

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

'2. Each institution shall inform the budgetary authority whenever an authorising officer by delegation takes up his duties, changes duties or terminates his duties.'

6. Article 47 is amended as follows:

- (a) In paragraph 3, the following subparagraphs are added:

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

In the case referred to in the second subparagraph, the authorising officer responsible shall, depending on his risk assessment, carry out an appropriate *ex post* verification, in accordance with paragraph 4.'

- (b) Paragraph 5 is replaced by the following:

'5. The members of staff responsible for the verifications referred to in paragraphs 2 and 4 shall be different from those members of staff performing the tasks of initiation referred to in paragraph 1 and they shall not be subordinate to the latter.'

7. In Article 54, the first sentence is replaced by the following:

‘Authorising officers by delegation shall record, for each financial year, contracts concluded under the negotiated procedures referred to in Articles 126(1)(a) to (g), 127(1)(a) to (d), 242, 244 and 246.’

8. Article 56 is replaced by the following:

‘Article 56

Termination of duties of the accounting officer

(Article 61 of the Financial Regulation)

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

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

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

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

3. Each institution shall inform the budgetary authority of the appointment or termination of duties of its accounting officer.’

9. In Article 60, the second paragraph is replaced by the following:

‘To that end, the accounting officer of each institution shall communicate to all financial institutions with which the institution concerned has opened accounts the names and specimen signatures of the authorised members of staff.’

10. Article 64 is amended as follows:

(a) The title is replaced by the following:

‘Article 64

Legal Entities File

(Article 61 of the Financial Regulation)’

(b) Paragraph 1 is replaced by the following:

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

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

(c) In paragraph 2, the second subparagraph is replaced by the following:

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

11. In Article 66, paragraph 2 is replaced by the following:

‘2. The imprest administrator may provisionally validate and pay expenditure, on the basis of a detailed framework set out in the instructions from the authorising officer responsible. Those instructions shall specify the rules and conditions under which the provisional validation and payments shall be carried out and, where appropriate, the terms for signing legal commitments within the meaning of Article 94(1)(e).’

12. In Article 67(2), the second subparagraph is replaced by the following:

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

13. In Article 68, the first and second sentences are replaced by the following:

‘Imprest administrators shall be chosen from officials or, should the need arise and only in duly substantiated cases, from other members of staff.’

14. Article 70 is amended as follows:

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

'Statements of that account shall be accessible at all times to the authorising officer responsible and a list of transactions shall be established at least once a month and be sent the following month together with supporting documents by the imprest administrator to the authorising officer responsible for settlement of the imprest operations.'

- (b) In paragraph 2, the first sentence is replaced by the following:

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

15. In Article 73(1), the second sentence is replaced by the following:

'If that instruction is confirmed in writing and that confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer by delegation or subdelegation has challenged, the authorising officer may not be held liable; he shall carry out the instruction, unless it is manifestly illegal or constitutes a breach of the relevant safety standards.'

16. In Article 78(3), points (b) to (e) are replaced by the following:

- '(b) if payment of the debt is made before the deadline specified, no default interest will be due;

- (c) failing payment by the deadline referred to in point (b) the debt shall bear interest at the rate referred to in Article 86, without any prejudice to any specific regulations applicable;

- (d) failing payment by the deadline referred to in point (b) the institution shall effect recovery either by offsetting or by enforcement of any guarantee lodged in advance;

- (e) the accounting officer may effect recovery by offsetting before the deadline referred to in point (b), where it is necessary to protect the Communities' financial interests when he has justified reasons for believing that the amount due to the Commission would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting.'

17. In Article 81(1), point (f) is replaced by the following:

- '(f) the deadline referred to in Article 78(3)(b).'

18. Article 83 is replaced by the following:

'Article 83

Recovery by offsetting

(Article 73 of the Financial Regulation)

1. Where the debtor has a claim on the Communities that is certain, of a fixed amount and due, relating to a sum established by a payment order, the accounting officer shall, once the deadline referred to in Article 78(3)(b) has passed, recover established amounts receivable by offsetting.

In exceptional circumstances, where it is necessary to safeguard the financial interests of the Communities, when the accounting officer has justified reasons for believing that the amount due to the Communities would be lost, the accounting officer shall recover by offsetting before the deadline referred to in Article 78(3)(b).

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

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

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

19. In Article 84, paragraph 1 is replaced by the following:

'1. Without prejudice to Article 83, if the full amount has not been recovered by the deadline referred to in Article 78(3)(b) and specified in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.'

20. In Article 85, point (a) of the first paragraph is replaced by the following:

'(a) the debtor undertakes to pay interest at the rate specified in Article 86 for the entire additional period allowed, starting from the deadline referred to in Article 78(3)(b).'

21. The following Article 85a is inserted:

'Article 85a

Recovery of fines, periodic penalty payments and other penalties

(Articles 73 and 74 of the Financial Regulation)

1. Where an action is brought before a Community court against a Commission decision imposing a fine, periodic penalty payment or other penalty under the EC Treaty or Euratom Treaty and until such time as all legal remedies have been exhausted, the accounting officer shall provisionally collect the amounts concerned from the debtor or request him to provide a financial guarantee. The guarantee requested shall be independent of the obligation to pay the fine, periodic penalty payment or other penalty and shall be enforceable upon first call. It shall cover the claim as to principal and the interest due as specified in Article 86(5).

2. After all legal remedies have been exhausted, the provisionally collected amounts and the interest they have yielded shall be entered into the budget or repaid to the debtor. In the event of a financial guarantee, the latter shall be enforced or released.'

22. Article 86 is amended as follows:

(a) Paragraphs 1, 2 and 3 are replaced by the following:

'1. Without prejudice to any specific provisions deriving from the application of sector-specific regu-

lations, any amount receivable not repaid on the deadline referred to in Article 78(3)(b) shall bear interest in accordance with paragraphs 2 and 3 of this Article.

2. The interest rate for amounts receivable not repaid on the deadline referred to in Article 78(3)(b) shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by:

(a) seven percentage points where the obligating event is a public supply and service contract referred to in Title V;

(b) three and a half percentage points in all other cases.

3. Interest shall be calculated from the calendar day following the deadline referred to in Article 78(3)(b) and specified in the debit note up to the calendar day on which the debt is repaid in full.'

(b) Paragraph 5 is replaced by the following:

'5. In the case of fines, where the debtor provides a financial guarantee which is accepted by the accounting officer in lieu of a provisional payment, the interest rate applicable from the deadline referred to in Article 78(3)(b) shall be the rate referred to in paragraph 2 of this Article increased by only one and a half percentage points.'

23. Article 90 is replaced by the following:

'Article 90

Financing decision

(Article 75 of the Financial Regulation)

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

2. For grants, the decision adopting the annual work programme referred to in Article 110 of the Financial Regulation shall be considered to be the financing decision within the meaning of Article 75 of the Financial Regulation, provided that it constitutes a sufficiently detailed framework.

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

3. In order to be considered a sufficiently detailed framework, the work programme adopted by the Commission shall set out the following:

(a) For grants:

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

(b) For procurement:

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

If the annual work programme does not provide this detailed framework for one or more actions, it must be modified accordingly or a specific financing decision must be adopted containing the information referred to in points (a) and (b) of the first subparagraph for the actions concerned.

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

24. In Article 94(1), points (d) and (e) are replaced by the following:

'(d) where the global commitment is implemented by a number of legal commitments, for which different authorising officers are responsible;

(e) where, in connection with imprest accounts available for external action, legal commitments must be signed by members of staff of the local units referred to in Article 254 on the instructions of the authorising officer responsible, who remains, however, fully responsible for the underlying transaction.'

25. Article 100 is amended as follows:

(a) Points (b) and (c) are replaced by the following:

'(b) in respect of other remunerations such as staff paid on an hourly or daily basis: a statement signed by the authorised member of staff showing the days and hours worked;

(c) in respect of overtime: a statement signed by the authorised member of staff certifying the amount of overtime worked;'

(b) In point (d), point (ii) is replaced by the following:

'(ii) the statement of mission expenses, signed by the member of staff on mission and by the administrative superior to whom the appropriate powers have been delegated, and showing, in particular, the place of mission, the dates and times of departure and arrival at the place of mission, travel expenses, subsistence expenses, and other expenses duly authorised on production of supporting documents.'

26. Article 101 is replaced by the following:

'Article 101

Material form of 'passed for payment'

(Article 79 of the Financial Regulation)

In a non-computerised system, 'passed for payment' shall take the form of a stamp incorporating the signature of the authorising officer responsible or of a technically competent member of staff, empowered by the authorising officer responsible in accordance with Article 97. In a computerised system, 'passed for payment' shall take the form of an electronically secured validation by the authorising officer responsible or by a technically competent member of staff, empowered by the authorising officer responsible.'

27. In Article 106, paragraph 3 is replaced by the following:

‘3. For contracts and grant agreements under which payment depends on the approval of a report or a certificate, the time-limit for the purposes of the payment periods referred to in paragraphs 1 and 2 shall not begin to run until the report or certificate in question has been approved. The beneficiary shall be informed without delay.

The time allowed for approval may not exceed:

- (a) 20 calendar days for straightforward contracts relating to the supply of goods and services;
- (b) 45 calendar days for other contracts and grant agreements;
- (c) 60 calendar days for contracts and grant agreements involving technical services or actions which are particularly complex to evaluate.

The authorising officer responsible shall inform the beneficiary by means of a formal document of any suspension of the period allowed for approval of the report or certificate.

The authorising officer responsible may decide that a single time-limit for the approval of the report or the certificate and payment shall apply. This single time-limit cannot exceed the aggregated maximum applicable periods for approval of the report or certificate and for payment.’

28. In Article 114, the fourth paragraph is replaced by the following:

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

29. In Article 116, paragraph 1 is replaced by the following:

‘1. Building contracts cover the purchase, long lease, usufruct, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.’

30. In Article 118(3), the second sentence of the first subparagraph is replaced by the following:

‘Without prejudice to contracts concluded after a negotiated procedure as referred to in Article 126, the contract notice shall be compulsory for the following contracts: contracts with an estimated value equal to or above the thresholds laid down in points (a) and (c) of Article 158(1); research and development contracts listed in category 8 of Annex II A to Directive 2004/18/EC with an estimated value of equal to or above the threshold laid down in point (b) of Article 158(1) of this Regulation for research and development contracts listed.’

31. In Article 119(1), point (b) is replaced by the following:

‘(b) the annual publication of a list of contractors, specifying the subject and the value of the contract awarded, for contracts with a value equal to or greater than EUR 25 000.’

32. In Article 126(1), the second subparagraph is replaced by the following:

‘Contracting authorities may also use the negotiated procedure without prior publication of a contract notice in the case of contracts with a value less than or equal to EUR 60 000.’

33. In Article 127(1), the following points (f) and (g) are added:

‘(f) for research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

(g) for service contracts for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time.’

34. In Article 128, paragraph 1 is replaced by the following:

‘1. A call for expressions of interest shall constitute a means of pre-selecting candidates who will be invited to submit tenders in response to future restricted invitations to tender for contracts with a value of more than EUR 60 000, subject to Articles 126 and 127.’

35. Article 129 is replaced by the following:

'Article 129

Lowvalue contracts

(Article 91 of the Financial Regulation)

1. A negotiated procedure with consultation of at least five candidates may be used for contracts with a value less than or equal to EUR 60 000.

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

2. For contracts with a value less than or equal to EUR 25 000, the procedure referred to in paragraph 1 with consultation of at least three candidates may be used.

3. Contracts with a value less than or equal to EUR 3 500 may be awarded on the basis of a single tender.

4. Payments in respect of items of expenditure for an amount less than or equal to EUR 200 may consist simply in payment against invoices, without prior acceptance of a tender.'

36. Article 134 is replaced by the following:

'Article 134

Evidence

(Articles 93 and 94 of the Financial Regulation)

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Article 93 or 94 of the Financial Regulation.

However, in the case of restricted procedures, competitive dialogue and negotiated procedures after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.

2. The tenderer to whom the contract is to be awarded shall provide, within a time-limit defined by the contracting authority and preceding the signature of the contract, the

evidence referred to in paragraph 3, confirming the declaration referred to in paragraph 1 in the following cases:

(a) for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 158;

(b) for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in Article 241(1)(a), Article 243(1)(a), or Article 245(1)(a).

For contracts with a value less than the thresholds referred to in points (a) and (b), the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.

3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in the first subparagraph is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

4. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraphs 1 and 3 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

5. Where they have doubts as to whether candidates or tenderers are in one of the situations of exclusion, contracting authorities may themselves apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.

6. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 3 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the documents are not more than one year old starting from their issuing date and that they are still valid.

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

37. Article 135 is amended as follows:

(a) Paragraph 2 is replaced by the following:

'2. The selection criteria shall be applied in every procurement procedure for the purpose of assessing the financial, economic, technical and professional capacity of the candidate or the tenderer.

The contracting authority may lay down minimum capacity levels below which candidates may not be selected.'

(b) Paragraph 6 is replaced by the following:

'6. The contracting authority may, depending on its assessment of the risks, decide not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers in the case of the following contracts:

(a) contracts awarded by the institutions on their own account, with a value of less than or equal to EUR 60 000;

(b) contracts awarded in the field of external actions, with a value below the thresholds referred to in Article 241(1)(a), Article 243(1)(a), or Article 245(1)(a).

Where the contracting authority decides not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers, no pre-

financing shall be made unless a financial guarantee of an equivalent amount is provided.'

38. In Article 138(1), the introductory words are replaced by the following:

'Without prejudice to Article 94 of the Financial Regulation, contracts shall be awarded in one of the following two ways:'

39. In Article 145(2), the first subparagraph is replaced by the following:

'Where the value of a contract exceeds the threshold laid down in Article 129(1), the authorising officer responsible shall appoint a committee to open the tenders.'

40. In Article 146(1), the second subparagraph is replaced by the following:

'That committee shall be appointed by the authorising officer responsible to give an advisory opinion on contracts with a value above the threshold referred to in Article 129(1).'

41. Article 152 is replaced by the following:

'Article 152

Guarantee for pre-financing

(Article 102 of the Financial Regulation)

A guarantee shall be required in return for the payment of pre-financing exceeding EUR 150 000 or in the case referred to in Article 135(6), second subparagraph.

However, where the contractor is a public body, the authorising officer responsible may, depending on his risk assessment, waive that obligation.

The guarantee shall be released as and when the pre-financing is deducted from interim payments or payments of balances to the contractor in accordance with the terms of the contract.'

42. In Article 155, the title is replaced by the following:

'Article 155

Separate contracts and contracts with lots

(Articles 91 and 105 of the Financial Regulation)'

43. In Article 157, point (b) is replaced by the following:

‘(b) EUR 5 278 000 for works contracts.’

44. Article 158(1) is replaced by the following:

‘1. The thresholds referred to in Article 105 of the Financial Regulation shall be:

(a) EUR 137 000 for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC, with the exception of the research and development contracts listed in category 8 of that Annex;

(b) EUR 211 000 for the service contracts listed in Annex IIB to Directive 2004/18/EC and for the research and development service contracts listed in category 8 of Annex IIA to Directive 2004/18/EC;

(c) EUR 5 278 000 for works contracts.’

45. In Article 162, point (a) is replaced by the following:

‘(a) a European body involved in education, training, information, innovation or research and study on European policies, any activities contributing to the promotion of citizenship or human rights, or a European standards body.’

46. In Article 164, the following paragraph 1a is inserted:

‘1a. The grant agreement may lay down the arrangements and time-limits for suspension in accordance with Article 183.’

47. In Article 165, the following paragraph 3 is added:

‘3. In the case of operating grants to bodies which pursue an aim of general European interest, the Commission shall be entitled to recover the percentage of the annual profit corresponding to the Community contribution to the operating budget of the bodies concerned where these bodies are also funded by public authorities which are themselves required to recover the percentage of the annual profit corresponding to their contribution. For the purpose of calculating the amount to be recovered, the percentage corresponding to the contributions in kind to the operating budget shall not be taken into account.’

48. In Article 168(1), point (c) is replaced by the following:

‘(c) to bodies with a *de jure* or *de facto* monopoly, duly substantiated in the award decision;’

49. Article 172 is amended as follows:

(a) In paragraph 2, the first sentence is replaced by the following:

‘The authorising officer responsible may accept co-financing in kind, if considered necessary or appropriate.’

(b) The following paragraph 3 is added:

‘3. For grants with a total value of less than or equal to EUR 25 000, the authorising officer responsible may, depending on his risk assessment, waive the obligation to provide the evidence for co-financing referred to in paragraph 1.’

Where a single beneficiary is awarded several grants in a financial year, the threshold of EUR 25 000 shall apply to the total of those grants.’

50. Article 173 is amended as follows:

(a) Paragraph 2 is replaced by the following:

‘2. The application shall show the legal status of the applicant and his financial and operational capacity to carry out the proposed action or work programme, subject to Article 176(4).

For that purpose, the applicant shall submit a declaration on his honour and, for applications for a grant exceeding EUR 25 000, any supporting documents requested, on the basis of his risk assessment, by the authorising officer responsible. The request for such documents shall be indicated in the call for proposals.

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

(b) Paragraph 4 is amended as follows:

(i) The first subparagraph is replaced by the following:

‘Where the application concerns grants for an action for which the amount exceeds EUR 500 000 or operating grants which exceed EUR 100 000, an audit report produced by an approved external auditor shall be submitted. That report shall certify the accounts for the last financial year available.’

- (ii) The fourth and fifth subparagraphs are replaced by the following:

'In the case of partnerships as referred to in Article 163, the audit report referred to in the first subparagraph, covering the last two financial years available, must be produced before the framework agreement is concluded.

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

- (iii) The following subparagraph is added:

'The first subparagraph shall not apply to public bodies and the international organisations referred to in Article 43(2).'

51. Article 176 is amended as follows:

- (a) Paragraph 3 is replaced by the following:

'3. Financial and operational capacity shall be verified in particular on the basis of an analysis of any of the supporting documents referred to in Article 173 and requested by the authorising officer responsible in the call for proposals.'

- (b) In paragraph 4, the first subparagraph is replaced by the following:

'The verification of financial capacity in accordance with paragraph 3 shall not apply to natural persons in receipt of scholarships, to public bodies or to the international organisations referred to in Article 43(2).'

52. Article 179 is replaced by the following:

'Article 179

Information for applicants

(Article 116 of the Financial Regulation)

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

53. Article 180 is amended as follows:

- (a) Paragraph 1 is replaced by the following

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

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

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

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

- (b) Paragraph 2 is amended as follows:

- (i) The first subparagraph is replaced by the following:

'A certificate on the financial statements and underlying accounts, produced by an approved auditor, or, in the case of public bodies, by a competent and independent public officer, may be demanded by the authorising officer responsible in support of any payment on the basis of his risk assessment. In the case of a grant for an action or of an operating grant, the certificate shall be attached to the request for payment. The certificate shall certify, in accordance with a methodology approved by the authorising officer responsible, that the costs declared by the beneficiary in the financial statements on which the request for payment is based are real, accurately recorded and eligible in accordance with the grant agreement.'

- (ii) In the second subparagraph, the introductory words are replaced by the following:

'Except in the case of lump sums and flat rate financing, the certificate on the financial statements and underlying accounts shall be compulsory for interim payments per financial year and for payments of balances in the following cases.'

- (iii) In the third subparagraph, the introductory words are replaced by the following:

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

54. Article 182 is amended as follows:

(a) Paragraph 1 is replaced by the following:

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

However, for grants with a value of less than or equal to EUR 10 000, the authorising officer responsible may require the beneficiary to lodge a guarantee in advance only in duly substantiated cases.

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

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

(b) In paragraph 2, the first subparagraph is replaced by the following:

'Where the pre-financing represents over 80 % of the total amount of the grant and provided it exceeds EUR 60 000, a guarantee shall be required.'

55. Articles 195, 196, 197, 198, 200 and 202 are deleted.

56. Article 211 is replaced by the following:

'Article 211

Accounting reconciliations

(Article 135 of the Financial Regulation)

1. The data in the general ledger shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.

2. As regards the inventory of fixed assets, the provisions of Articles 220 to 227 shall apply.'

57. Article 212 is deleted.

58. Article 213 is amended as follows:

(a) In paragraph 2, the fourth subparagraph is replaced by the following:

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

(b) The following paragraph 3 is added:

'3. The accounting rules adopted under Article 133 of the Financial Regulation shall specify the conversion and re-evaluation rules to be provided for the purposes of accrual accounting.'

59. Article 222 is replaced by the following:

'Article 222

Entry of items in the inventory

(Article 138 of the Financial Regulation)

All items acquired with a period of use greater than one year, which are not consumables, and whose purchase price or production cost is higher than that indicated in the accounting rules adopted under Article 133 of the Financial Regulation shall be entered in the inventory and recorded in the fixed assets accounts.'

60. In Article 240, paragraph 1 is replaced by the following:

'1. The pre-information notice for international calls for tender shall be sent to the office for Official Publications of the European Communities as early as possible for supply and service contracts and as quickly as possible after the decision authorising the programme for works contracts.'

61. Article 241 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) In the first subparagraph, point (a) is replaced by the following:

'(a) for contracts with a value of EUR 200 000 or more: an international restricted invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2).'

(ii) The second subparagraph is replaced by the following:

'Contracts with a value less than or equal to EUR 5 000 may be awarded on the basis of a single tender.'

(b) In paragraph 2, the following subparagraph is added:

'If the number of candidates satisfying the selection criteria or the minimum capacity levels is less than the minimum number, the contracting authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.'

(c) Paragraph 3 is replaced by the following:

'3. Under the procedure referred to in point (b) of paragraph 1, the contracting authority shall draw up a list of at least three tenderers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 124.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If, following consultation of the tenderers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.'

62. Article 242 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) The first subparagraph is amended as follows:

— The introductory words are replaced by the following:

'For service contracts, contracting authorities may use the negotiated procedure with a single tender in the following cases:'

— The following point (g) is added:

'(g) where one attempt for the use of the competitive negotiated procedure following the unsuccessful use of a framework contract has failed. In this case, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.'

(ii) The following subparagraph is added:

'Where the Commission is not the contracting authority, the use of the negotiated procedure is subject to the prior agreement of the responsible authorising officer.'

(b) Paragraph 2 is amended as follows:

(i) Point (b) of the first subparagraph is replaced by the following:

'(b) additional services consisting in the repetition of similar services entrusted to the contractor providing services under a first contract, provided that:

(i) a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the first service;

(ii) the extension of the contract is a single one and for a value and duration not exceeding the value and the duration of the initial contract.'

(ii) The second subparagraph is deleted.

63. Article 243 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) In the first subparagraph, points (a) and (b) are replaced by the following:

'(a) for contracts with a value of EUR 150 000 or more: an international open invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2);

(b) for contracts with a value of EUR 30 000 or more but less than EUR 150 000: a local open invitation to tender within the meaning of Article 122(2) and point (b) of Article 240(2).'

(ii) The second subparagraph is replaced by the following:

'Contracts with a value less than or equal to EUR 5 000 may be awarded on the basis of a single tender.'

(b) Paragraph 2 is replaced by the following:

'2. Under the procedure referred to in point (c) of paragraph 1, the contracting authority shall draw up a list of at least three suppliers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 124.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following consultation of the suppliers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.'

64. Article 244(1) is amended as follows:

(a) The introductory words are replaced by the following:

'Supply contracts may be awarded by negotiated procedure with a single tender in the following cases:'

(b) The following point (e) is added:

'(e) where after two attempts the competitive negotiated tender procedure has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.'

(c) The following subparagraph is added:

'Where the Commission is not the contracting authority, the use of the negotiated procedure is subject to the prior agreement of the responsible authorising officer.'

65. Article 245 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) In the first subparagraph, points (a) and (b) are replaced by the following:

'(a) for contracts with a value of EUR 5 000 000 or more:

(i) in principle an international open invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2);

(ii) exceptionally, in view of the characteristics of certain works and after the agreement of the authorising officer responsible if the Commission is not the contracting authority, an international restricted invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2).

(b) for contracts with a value of EUR 300 000 or more but less than EUR 5 000 000: a local open invitation to tender within the meaning of Article 122(2) and point (b) of Article 240(2);'

(ii) The second subparagraph is replaced by the following:

'Contracts with a value less than or equal to EUR 5 000 may be awarded on the basis of a single tender.'

(b) Paragraph 2 is replaced by the following:

'2. Under the procedure referred to in point (c) of paragraph 1, the contracting authority shall draw up a list of at least three contractors of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 124.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following consultation of the contractors, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.'

66. Article 246(1) is amended as follows:

(a) The first subparagraph is amended as follows:

(i) the introductory words are replaced by the following:

'Works contracts may be awarded by negotiated procedure with a single tender in the following cases:'

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

'(d) where the competitive negotiated tender procedure, after two attempts, has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.'

(b) The following subparagraph is added:

'Where the Commission is not the contracting authority, the use of the negotiated procedure is subject to the prior agreement of the responsible authorising officer.'

67. In Article 250, paragraphs 3 and 4 are replaced by the following:

'3. Where the pre-financing exceeds EUR 150 000, a guarantee shall be required. However, where the contractor is a public body, the responsible authorising officer may, depending on his risks assessment, waive that obligation.

The guarantee shall be released as and when the pre-financing is deducted from interim payments or payments of balances made to the contractor in accordance with the terms of the contract.

4. A performance guarantee may be required by the contracting authority for an amount set in the tender file and corresponding to between 5 and 10 % of the total value of the contract. That guarantee shall be determined on the basis of objective criteria such as the type and value of the contract.

However, a performance guarantee shall be required where the following thresholds are exceeded:

(i) EUR 345 000 for works contracts;

(ii) EUR 150 000 for supply contracts.

The guarantee shall remain valid at least until final acceptance of the supplies and works. If the contract is not properly performed the entire guarantee shall be retained.'

68. In Article 252(3) the following subparagraph is added:

'However, the evaluation committee or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time-limit they specify and having respect to the principle of equal treatment.'

69. In Article 257, in the first paragraph, point (c) is replaced by the following:

'(c) The European Communities Personnel Selection Office and the European Administrative School administratively attached to it.'

70. In Article 260, the second paragraph is deleted.

71. In Article 262, the following paragraphs are added:

'Budgetary commitments corresponding to administrative appropriations of a type common to all titles and which are managed globally may be recorded globally in the budgetary accounting following the summary classification by type as set out in Article 27.

The corresponding expenditure shall be booked to the budget lines of each title according to the same distribution as for appropriations.'

72. In Article 264, the following paragraph is added:

'However, where, for transactions in third countries, it is not possible to use any of those forms of rent guarantees, the authorising officer responsible may accept other forms provided that those forms ensure equivalent protection of the Communities' financial interests.'

73. In Article 271, paragraphs 1 and 2 are replaced by the following:

‘1. The thresholds and amounts laid down in Articles 54, 67, 119, 126, 128, 129, 130, 135, 151, 152, 164, 172, 173, 180, 181, 182, 226, 241, 243, 245 and 250 shall be updated every three years in line with movements in the consumer price index in the Community.

2. The thresholds referred to in point (b) of Article 157 and in Article 158(1) in respect of procurement contracts shall be adjusted every two years pursuant to Article 78(1) of Directive 2004/18/EC.’

Article 2

Public procurement and grant award procedures launched before the entry into force of this Regulation shall continue to be subject to the rules applicable at the time when those procedures were launched.

Article 3

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

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

Done at Brussels, 7 August 2006.

For the Commission
Dalia GRYBAUSKAITĖ
Member of the Commission
