



European Foundation for the Improvement of Living and Working Conditions

RULES FOR THE IMPLEMENTATION OF THE FINANCIAL REGULATION

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THE EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS

HAVING REGARD to Council Regulation (EEC) No. 1365/75 of 26 May 1975 on the creation of a European Foundation for the Improvement of Living and Working Conditions and amending Council Regulation (EEC) No. 1947/93 of 30 June 1993

HAVING REGARD to the decision of the Administrative Board of March 28th 2003 adopting a new financial regulation and in particular Article 99

HAVING REGARD to a proposal from the Director

WHEREAS:

- (1) The provisions of the Foundation's new Financial Regulation have been simplified to confine the Regulation to the basic principles and definitions relating to the establishment, execution and control of the general budget of the Foundation.
- (2) Implementing rules are therefore required not only to supplement the Financial Regulation in respect of the provisions thereof for which it expressly refers to the implementing rules but also in respect of the provisions whose application requires the implementing measures to be determined in advance. **For reference purposes and purposes of symmetry, the Commission's numbers for Parts, Titles and Chapters have been retained.**
- (3) To ensure that sectoral rules are consistent with the budgetary principles set out in the Financial Regulation, an inventory will be produced of all regulatory instruments relating to budget execution.
- (4) For the principle of annuality, it is important to clarify the meaning of annual appropriations and the preparatory stages of the commitment procedure which, if completed by 31 December, may allow the carryover of commitment appropriations which will then have to be used by 31 March of the following financial year.
- (5) As regards the principle of the unit of account, the rates to be used for conversion between the euro and the other currencies for the requirements of the management of the cash flow and the accounts are specified.
- (6) As for sound financial management, it is necessary to specify the objectives of the *ex ante*, interim and *ex post* evaluations of the programmes and activities, the minimum frequency with which they are to be carried out and the information to be given in the legislative financial statement.
- (7) As for the establishment and presentation of the budget, it is necessary to determine the contents of the general introduction to the budget, the working documents backing up the budget and the budget remarks for ensuring that the budgetary authority is fully informed. In the new activity-based budgeting (ABB) presentation, the definition and classification of administrative appropriations should also be set out.
- (8) Acts likely to constitute a conflict of interests should also be defined, together with the procedure to be followed in such cases.
- (9) As regards the role of the financial actors, the reform of financial management, together with the dropping of centralised *ex ante* controls, increases the responsibilities of the authorising

officers in all revenue and expenditure operations, including in terms of internal control systems. Consequently, the tasks, responsibilities and principles of the procedures to be observed should also be laid down. The internalisation of *ex ante* controls requires, in particular, a clear distinction between tasks relating to the initiation of operations in implementation of the budget and tasks relating to the verification of such operations. The Foundation shall adopt a code of professional standards applicable to the staff responsible for *ex ante* and *ex post* verifications. Provision should then be made for the responsibilities assumed to be accounted for in an annual report to the Foundation which must, *inter alia*, give the results of the *ex post* verifications; arrangements should also be made for keeping the supporting documents relating to the operations carried out.

Provision should be made requiring the authorising officer to request the opinion of an advisory committee and obtain the approval of the Administrative Board for contracts exceeding EUR 250.000 in value.

- (10) In order to clarify responsibilities, a precise definition should also be given of the tasks and responsibilities of the accounting officer in connection with the accounting systems, treasury management, the management of bank accounts and third-party files. The arrangements for the termination of the accounting officer's duties should also be spelled out.
- (11) The conditions for the use of imprest accounts, a system of management which forms an exception to normal budgetary procedures, should also be laid down, and the tasks and responsibilities of the imprest administrators, as well as those of the authorising officer and accounting officer in connection with the control of imprest accounts, should be set out. The budgetary authority should be informed of any appointment or termination of duties.
- (12) Once the tasks and responsibilities of each financial actor have been defined, they may be held liable only under the conditions laid down in the Staff Regulations of the Foundation. The procedure by which an authorising officer may seek confirmation of an instruction and thus be released from any liability should also be laid down.
- (13) As regards revenue, it is necessary to specify the tasks and controls falling within the responsibility of the authorising officers at the different stages of the procedure: establishment of the estimate of amounts receivable and then the recovery order; dispatch of the debit note informing the debtor that the amount receivable has been established; calculation of any default interest due; and, finally, the decision, where necessary, to waive an entitlement subject to criteria guaranteeing compliance with sound financial management. The accounting officer's role in the collection of revenue and in allowing any additional time for payment should also be specified.
- (14) As regards expenditure, the relationship between financing decisions, global commitments and individual commitments should be defined, as should the characteristics of those different stages. The distinction between a global commitment and an individual commitment depends on the extent to which the beneficiaries are identified and the amounts involved. Provisional commitments are limited to routine administrative expenditure. To restrict the volume of dormant commitments,

appropriations corresponding to commitments for which no payment has been made for three years should be decommitted.

- (15) It is then necessary to clarify the relationship between validation, authorisation and payment operations and the controls to be carried out by the authorising officer when validating expenditure, with the endorsement "passed for payment", and when authorising payment by

checking the validity of the release from all liability, for which the authorising officer now has sole responsibility. The documents to be produced in support of payments should be specified and rules laid down for the clearing of pre-financing and interim payments. Finally, the time-limits applicable to validation and payment operations should be laid down, account being taken of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combatting late payment in commercial transactions¹.

- (16) With regard to procurement, the option taken is to insert in the present Regulation the provisions of Council Directives 92/50/EEC², 93/36/EEC³ and 93/37/EEC⁴, as last amended by Commission Directive 2001/78/EC⁵ relating to the procedures for the award of public service, supply and works contracts respectively. Consequently, it is first necessary to define the various types of procurement contract; the advertising and publication measures applicable; the conditions in which use may be made of a particular form of procedure and the main features of the existing procedures; the specification of selection criteria and the possible award arrangements; rules for access to tender documents and for communication with tenderers or candidates; and, for cases where the Foundation awards contracts on its own account, the various thresholds applicable and the rules for estimating the value of the contracts to be awarded.
- (17) The purpose of the procedures for the award of contracts is to satisfy the needs of the Foundation on the best possible terms while guaranteeing equal access to public contracts and complying with the principles of transparency and non-discrimination. With a view to ensuring transparency and the equal treatment of candidates, as well as the full responsibility of authorising officers in the final choice, it is necessary to lay down the procedure for opening and then evaluating tenders and requests to participate, from the appointment of a committee up to the substantiated and documented award decision, which ultimately rests with the Foundation. The financial guarantees needed to protect the Foundation's financial interests should also be specified.
- (18) It is necessary to delimit the contracting authorities' powers to impose administrative penalties, in order to ensure that penalties are proportionate and dissuasive and to secure equal treatment as between the various institutions and as between departments.

Again with regard to the requirements of transparency, equal treatment for applicants and the enhancement of the accountability of authorising officers, the award procedure should be laid down, from the application for the grant to its evaluation, by a committee, in the light of previously specified selection and award criteria, before the authorising officer takes his final, appropriately documented decision.

- (19) As regards the keeping and presentation of the accounts, each of the generally accepted accounting principles on which the financial statements must be based should be defined. It is also necessary to specify the conditions for entering a transaction in the accounts and the rules for valuing assets and liabilities and for the constitution of provisions.
- (20) It should be specified that the Foundation's accounts must be accompanied by a report on budgetary and financial management and details should be given of the content and presentation of the elements making up the financial statements (balance sheet, economic outturn account, cash-flow table and annex) and the budget implementation statements (budget outturn account and annex).

¹ OJ L 200, 8.8.2000, p. 35.
² OJ L 209, 24.7.1992, p. 1.
³ OJ L 199, 9.8.1993, p. 1.
⁴ OJ L 199, 9.8.1993, p. 54.
⁵ OJ L 285, 29.10.2001, p. 1.

- (21) On accounting matters, it should be specified that the accounting officer of the Foundation must produce documents describing the organisation of the accounts and the accounting procedures of the Foundation and define the conditions to be respected by the computerised accounting systems, in particular as regards security of access and the audit trail for any changes made to the systems.
- (22) As regards the keeping of the accounts, it is necessary to specify the principles applicable to the accounting ledgers, the trial balance, the periodical reconciliation of the totals in that balance and the inventory, and to specify the components of the chart of accounts adopted by the Foundation's accounting officer. The rules applicable to the registration of operations, in particular the double-entry method, the rules for the conversion of operations which are not denominated in euro and the supporting documents for accounting entries, should be laid down. The content of the accounting records should also be specified.
- (23) It is necessary to lay down the rules relating to the property inventory and to clarify the respective responsibilities in this field of the accounting officers and authorising officers, as well as the rules applicable to the resale of property entered in the inventory.
- (24) To guarantee the sound management of Foundation appropriations, it is also necessary to specify the pre-conditions and the rules to be contained in the agreements when use is made of imprest accounts.
- (25) As regards administrative appropriations, the Foundation should inform the budgetary authority of significant building projects which are under way, that is to say, of those increasing the building stock.
- (26) The various thresholds and amounts referred to in these rules should be regularly updated by linking them with the inflation recorded in the Community, with the exception of the thresholds applicable to procurement,

HAS ADOPTED the following detailed Rules for the Implementation of the Financial Regulation applicable to the European Foundation for the Improvement of Living and Working Conditions .

**PART ONE
COMMON PROVISIONS**

**TITLE I
SUBJECT**

*Article 1
Subject
(Article 1 of the General Financial Regulation)
Article 1 of the Financial Regulation*

This Decision sets out the rules for implementing the provisions of the Foundation's Financial Regulation.

No articles 2-4

**TITLE II
BUDGETARY PRINCIPLES**

**CHAPTER 2
PRINCIPLE OF ANNUALITY**

*Article 5
Appropriations for the financial year
(Article 8(3) of the General Financial Regulation)
Article 7 of Financial Regulation*

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

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

Article 6
Carryover of appropriations
(Article 9(2) of the General Financial Regulation)
Article 10 of the Financial Regulation

1. The commitment appropriations referred to in Article 10 of the Financial Regulation may be carried over only if the commitments could not be made before 31 December of the financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to surmise that the commitment will be made by no later than 31 March of the following year.
2. The preparatory stages referred to in Article 10 of the Financial Regulation, which should be completed by 31 December of the financial year in order to allow a carryover to the following year, are in particular:
 - (a) for global commitments within the meaning of Article 61 of the Financial Regulation, the adoption of a financing decision or the closing by that date of the consultation of the departments concerned within the Foundation for the adoption of the decision;
 - (b) for individual commitments within the meaning of Article 61 of the Financial Regulation, the advanced stage of preparation of the contracts or agreements. This advanced stage of preparation of the contracts or agreements shall mean the completion of the selection of potential contractors or beneficiaries.
3. Appropriations carried over in accordance with Article 10 of the Financial Regulation which have not been committed by 31 March of the following financial year shall be automatically cancelled.
4. Appropriations carried over in accordance with Article 10 of the Financial Regulation may be used until 31 December of the following financial year.
5. The accounts shall identify appropriations carried over in this way.
6. The appropriations for staff expenditure referred to in Article 10 of the Financial Regulation are those for remuneration and allowances for staff of the Foundation.

CHAPTER 3
(CHAPTER 4 OF THE GENERAL FINANCIAL REGULATION)
PRINCIPLE OF UNIT OF ACCOUNT

Article 7
Rate of conversion between the euro and other currencies
(Article 16 of the General Financial Regulation)
Article 17 of the Financial Regulation

1. Without prejudice to specific provisions arising from the application of sectoral regulations, conversion between the euro and another currency shall be made using

the daily euro rate published in the C series of the *Official Journal of the European Communities*.
2. If no daily euro rate is published in the *Official Journal of the European Communities* for the currency in question, the Foundation shall use the accounting rate referred to in paragraph 3.

3. For the purposes of the accounts provided for in Articles 84 to 88 of the Financial Regulation . conversion between the euro and another currency shall be made using the monthly accounting rate of the euro. That accounting rate shall be established by the Commission by means of any source of information it regards as reliable, on the basis of the 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 General Financial Regulation)*

Article 17 of the Financial Regulation

1. Without prejudice to specific provisions deriving from the application of sectoral regulations, the rate to be used for conversion between the euro and other currencies shall 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 shall be determined by the date of the payment by the bank.
3. In the case of imprest accounts in national currencies, referred to in Article 16 of the General Financial Regulation, the rate to be used shall be that of the month of the expenditure from the imprest account.

No article 9

CHAPTER 4

(CHAPTER 5 OF THE GENERAL FINANCIAL REGULATION)

PRINCIPLE OF UNIVERSALITY

Article 10

*Structure to accommodate assigned revenue and provision of corresponding appropriations
(Article 18 of the General Financial Regulation)*

Article 19 of Financial Regulation

The structure to accommodate assigned revenue in the budget shall comprise:

- (a) in the statement of revenue of the Foundation's section, a budget line to receive the revenue;
- (b) in the statement of expenditure, the remarks shall show which lines may receive the appropriations corresponding to the assigned revenue which are made available.

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

No articles 11-13

Article 14

Passing for payment of the net amount

(Article 20(1) of the General Financial Regulation)
Article 21 of Financial Regulation

Pursuant to Article 21 of the Financial Regulation, the following deductions may be made from payment requests, invoices or statements, which shall then be passed for payment of the net amount:

- (a) penalties imposed on parties to contracts, including procurement contracts;
- (b) adjustments for amounts paid unduly, which can be made by means of direct deduction against a new payment of the same type to the same payee under the chapter, article and financial year in respect of which the excess payment was made, and which give rise to interim payments or payments of balances.

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

Article 15
Accounts for recoverable taxes
(Article 20(2) of the General Financial Regulation)
Article 21 of Financial Regulation

Any taxes borne by the Foundation under Article 21 of the Financial Regulation shall be entered in a suspense account until they are refunded by the States concerned.

CHAPTER 5
(CHAPTER 6 OF THE GENERAL FINANCIAL REGULATION)
PRINCIPLE OF SPECIFICATION

Article 16
Transfer procedures
(Article 22(1) of the General Financial Regulation)
Article 23 of Financial Regulation

1. The Foundation may propose to the budgetary authority, within its own section of the budget, transfers from one title to another exceeding the limit of 10% of the appropriations for the financial year on the line from which the transfer is to be made. It shall inform the Commission accordingly.

Those transfers shall be subject to the procedure laid down in Article 24 of the General Financial Regulation.

No articles 17-18

Article 19
Grounds for requests for transfers of appropriations
(Articles 22 and 23 of the General Financial Regulation)
Article 23 of Financial Regulation

Proposals for transfers and all information for the budgetary authority concerning transfers made under Article 23 of the Financial Regulation 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 lines to which the appropriations are to be transferred and for those from which they are to be taken.

No article 20

CHAPTER 6
(CHAPTER 7 OF THE GENERAL FINANCIAL REGULATION)
PRINCIPLE OF SOUND FINANCIAL MANAGEMENT

Article 21

Evaluation

(Article 27 of the General Financial Regulation)

Article 27 of Financial Regulation

1. All proposals for programmes or activities occasioning expenditure or a reduction in revenue for the budget shall be the subject of an *ex ante* evaluation, which shall identify:
 - (a) the need to be met in the short or long term;
 - (b) the objectives to be achieved;
 - (c) the results expected and the indicators needed to measure them;
 - (d) the added value of Foundation involvement;
 - (e) the risks, including fraud, linked with the proposals and the alternative options available;
 - (f) the lessons learned from similar experiences in the past;
 - (g) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle;
 - (h) the monitoring system to be set up.

2. All programmes or activities shall then be the subject of an interim and/or *ex post* evaluation in terms 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.

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

No article 22

CHAPTER 7
(CHAPTER 8 OF THE GENERAL FINANCIAL REGULATION)
PRINCIPLE OF TRANSPARENCY

Article 23
Provisional publication of a summary of the budget
(Article 29 of the General Financial Regulation)
Article 26 of Financial Regulation

As soon as possible after the final adoption of the budget and within no more than four weeks, a summary of the budget figures shall be published on the Internet site of the Foundation pending official publication in the *Official Journal of the European Communities*.

TITLE III
ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1
ESTABLISHMENT OF THE BUDGET

Article 24
General introduction to the Estimate of Revenue and Expenditure
(Article 33 of the General Financial Regulation)
Article 27 of Financial Regulation

The Foundation shall draw up the general introduction to the Estimate of Revenue and Expenditure.

Each of the sections of the Estimate of Revenue and Expenditure shall be preceded by an introduction.

The general introduction shall comprise:

- (a) financial tables covering the entire budget;
- (b) as regards the titles in the Foundation section:
 - (i) a description of the policies substantiating entitlement to the appropriations requested, with due account for the principles and requirements set out in Article 27 of the Financial Regulation;
 - (ii) the grounds for changes in appropriations from one financial year to the next.

Article 25
Working documents in support of the Estimate of Revenue and Expenditure
(Articles 30 and 33 of the General Financial Regulation)
Article 27 of Financial Regulation

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

- (a) in respect of staff of the Foundation:
 - (i) a statement of the policy for permanent and temporary staff;

- (ii) for each category of staff, an organisation chart of budgetary posts and persons in post on the date of the presentation of the preliminary draft budget, indicating their distribution by grade and administrative unit;
- (iii) where a change in the number of persons in post is proposed, a statement of the reasons justifying such change;
- (iv) a list of posts broken down by policy area;

No article 26

CHAPTER 2 STRUCTURE AND PRESENTATION OF THE BUDGET

Article 27

Administrative appropriations

(Article 41 of the General Financial Regulation)

Article 30 of Financial Regulation

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

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

Article 28

Actual expenditure in the last financial year for which the accounts have been closed

(Article 46(1)(e) of the General Financial Regulation)

Article 31 of Financial Regulation

For the purposes of establishing the budget, actual expenditure in the last financial year for which the accounts have been closed shall be determined as follows:

- (a) in commitments: commitments entered in the accounts during the financial year against appropriations for that financial year as defined in Article 5;
- (b) in payments: payments made during the financial year, that is to say, for which a payment order has been sent to the bank, against appropriations for that financial year as defined in the same article.

No articles 29-43

**TITLE IV
IMPLEMENTATION OF THE BUDGET**

**CHAPTER 3
FINANCIAL ACTORS**

**SECTION 1
RIGHTS AND OBLIGATIONS OF THE FINANCIAL ACTORS**

Article 44
Rights and obligations of the financial actors
(Article 58 of the General Financial Regulation)
Article 37 of Financial Regulation

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

**SECTION 2
AUTHORISING OFFICER**

Article 45
Assistance for authorising officers by delegation and subdelegation
(Article 59 of the General Financial Regulation)
Article 38 of Financial Regulation

1. The authorising officer responsible may be assisted in his duties by officials or other servants (hereinafter "staff") entrusted, under his responsibility, with certain operations required for the implementation of the budget and production of the financial and management information. In order to prevent any conflict of interests, staff assisting authorising officers by delegation or subdelegation shall be subject to the obligations referred to in Article 52 of the General Financial Regulation.
2. For contracts with a value of EUR 250.000 or more the authorising officer shall request the opinion of an advisory committee on procurements and contracts and obtain the approval of the Administrative Board.

No article 46

Article 47
Segregation of duties of initiation and verification of an operation
(Article 60(4) of the General Financial Regulation)
Article 39 of Financial Regulation

1. Initiation of an operation shall be understood to mean all the operations which are normally carried out by the staff referred to in Article 45 and which are preparatory to the adoption of

- the acts implementing the budget by the competent authorising officer, holder of a delegation or a subdelegation.
2. *Ex ante* verification of an operation shall be understood to mean all the *ex ante* checks put in place by the authorising officer responsible in order to verify its operational and financial aspects.
 3. Each operation shall be subject at least to an *ex ante* verification. The purpose of that verification shall be to ascertain that:
 - (a) the expenditure and revenue are in order and comply with the provisions applicable, in particular those of the budget and the relevant regulations and of any acts adopted in implementation of the Treaties or regulations and, where appropriate, the terms of contracts;
 - (b) the principle of sound financial management referred to in Chapter 7 of Title II of the General Financial Regulation is applied.
 4. The *ex post* verifications on documents and, where appropriate, on the spot shall check that operations financed by the budget are correctly implemented and in particular that the criteria referred to in paragraph 3 are complied with. These verifications may be organised on a sample basis using risk analysis.
 5. The officials or other staff responsible for the verifications referred to in paragraphs 2 and 4 shall be different from those performing the tasks of initiation referred to in paragraph 1 and shall not be their subordinates.

Article 48
Management and internal control procedures
(Article 60(4) of the General Financial Regulation)
Article 39 of Financial Regulation

The management and internal control systems and procedures shall be designed to:

- (a) achieve the objectives of the policies, programmes and actions of the Foundation in accordance with the principle of sound financial management;
- (b) comply with the rules of Community law and minimum control standards established by the Foundation;
- (c) safeguard the Foundation's assets and information;
- (d) prevent and detect irregularities, errors and fraud;
- (e) identify and prevent management risks;
- (f) ensure reliable production of financial and management information;
- (g) keep supporting documents relating to and subsequent to budget implementation and budget implementation measures;
- (h) keep documents relating to advance guarantees for the Foundation and keep a log to enable such guarantees to be adequately monitored.

Article 49
Keeping of supporting documents by authorising officers
(Article 60(4) of the General Financial Regulation)
Article 39 of Financial Regulation

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

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

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

Article 50
Code of professional standards
(Article 60(5) of the General Financial Regulation)
Article 39 of Financial Regulation

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

Article 51
Failure of the authorising officer by delegation to take action
(Article 60(6) of the General Financial Regulation)
Article 42 of Financial Regulation

Failure by the authorising officer by delegation to take action, as referred to in Article 47 of the Financial Regulation, shall mean the absence of any reply within a reasonable time given the circumstances of the case and, at all events, within a month at most.

Article 52
Ex post verification and annual activity report
(Article 60(7) of the General Financial Regulation)
Articles 39 and 40 of Financial Regulation

The result of the *ex post* verifications shall, with other matters, be set out in the annual activity report submitted by the authorising officer.

Article 53
Transmission of financial and management information to the accounting officer
(Article 60 of the General Financial Regulation)
Article 43 of Financial Regulation

The authorising officer by delegation shall send the accounting officer, in accordance with the rules adopted by the latter, the financial and management information required for the performance of the accounting officer's duties.

Article 54
Report on negotiated procedures
(Article 60 of the General Financial Regulation)
Article 74 of Financial Regulation

Authorising officers by delegation shall record, for each financial year, contracts concluded by the negotiated procedures referred to in Articles 126, 127, 242 and 244. If the proportion of negotiated procedures in relation to the number of contracts awarded by the same authorising officer by delegation increases appreciably in relation to earlier years or if that proportion is distinctly higher than the average recorded for the Foundation, the authorising officer responsible shall report to the Foundation setting out any measures taken to reverse that trend. The Foundation shall send a report on negotiated procedures to the budgetary authority.

SECTION 3
ACCOUNTING OFFICER

Article 55
Appointment of the accounting officer
(Article 61 of the General Financial Regulation)
Article 43 of Financial Regulation

The Foundation shall appoint an accounting officer from officials subject to the Staff Regulations of Officials of the Foundation.

The accounting officer shall, obligatorily, be chosen by the Foundation on the grounds of his/her particular competence as evidenced by diplomas or by equivalent professional experience.

Article 56
Termination of duties of the accounting officer
(Article 61 of the General Financial Regulation)
Article 45 of Financial Regulation

1. An interim statement of account shall be drawn up without delay in the event of termination of the duties of the accounting officer.

That statement shall be made up of the accounts provided for in Title VII of Part One of the General Financial Regulation, closed on the last day of the month in which the accounting officer terminates his duties.

2. No interim statement of account shall be required where the accounting officer terminates his duties at the end of a financial year.
3. The interim statement or, in the circumstances referred to in paragraph 2, the provisional accounts referred to in Article 82 of the Financial Regulation 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, who, within no more than one month from the date of transmission, must sign in acceptance and may make reservations.
4. The Foundation shall inform the budgetary authority of the appointment or termination of duties of its accounting officer.

Article 57
Opinion on accounting and inventory systems
(Article 61 of the General Financial Regulation)
Article 43 of Financial Regulation

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

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

Article 58
Treasury management
(Article 61 of the General Financial Regulation)
Article 43 of Financial Regulation

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

Article 59
Management of bank accounts
(Article 61 of the General Financial Regulation)
Article 43 of Financial Regulation

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

Article 60
Signatures on accounts
(Article 61 of the General Financial Regulation)
Article 43 of Financial Regulation

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

To that end the Foundation shall communicate to all financial institutions with which it has opened accounts the names and specimen signatures of the authorised officials.

Article 61
Management of account balances
(Article 61 of the General Financial Regulation)
Article 43 of Financial Regulation

1. The accounting officer shall ensure that the balance on the bank accounts provided for in Article 59 does not deviate significantly from the cash-flow forecasts referred to in Article 58(2) and in any event:
 - (a) that none of those accounts is in debit;
 - (b) that the balance of accounts held in other currencies is periodically converted into euro.
2. The accounting officer may not maintain balances in foreign currency accounts which might cause excessive losses to the Foundation as a result of exchange rate fluctuations.

Article 62
Transfers and conversion operations
(Article 61 of the General Financial Regulation)
Article 43 of Financial Regulation

Without prejudice to Article 69, the accounting officer shall conduct transfers between accounts opened in the name of the Foundation with financial institutions, and conduct currency conversion operations.

Article 63
Methods of payment
(Article 61 of the General Financial Regulation)
Article 43 of Financial Regulation

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

Article 64
Third-party files
(Article 61 of the General Financial Regulation)
Article 43 of Financial Regulation

1. The accounting officer may make payments by bank credit transfer only if the bank account details of the payee have first been entered in a common file.

Entry in the file of the payee's bank account details or modification of those details shall be based on a document, in paper or electronic form.

2. With a view to payment by bank credit transfer, authorising officers may enter into a commitment towards a third party on behalf of the Foundation only if that third party has provided the documentation required for its entry in the file.

Authorising officers shall check that the bank account details communicated by the payee are still valid when each payment order is drawn up.

Article 65
Keeping of supporting documents by the accounting officer
(Article 61 of the General Financial Regulation)
Article 43 of the Financial Regulation

Supporting documents for the accounting system and for the preparation of the accounts referred to in Article 76 of the Financial Regulation shall be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate.

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

The Foundation shall decide in which department the supporting documents are to be kept.

SECTION 4
IMPREST ADMINISTRATOR

Article 66
Conditions of use of imprest accounts
(Article 63 of the General Financial Regulation)
Article 44 of the Financial Regulation

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

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

Article 67
Conditions governing creation and payment
(Article 63 of the General Financial Regulation)
Article 44 of the Financial Regulation

1. The decision setting up an imprest account and appointing an imprest administrator and the decision amending the operating terms for an imprest account shall specify in particular:
 - (a) the maximum amount which may be initially provided as an imprest, and its purpose;
 - (b) whether a bank account or post office giro account is to be opened in the name of the Foundation;
 - (c) the nature and maximum amount of each item of expenditure which may be paid by the imprest administrator to third parties or collected from them;
 - (d) the frequency with which supporting documents must be produced, the procedure for producing them and the arrangements for transmitting them to the authorising officer for settlement;
 - (e) the procedure to be followed if the imprest has to be replenished;
 - (f) that imprest transactions will be settled by the authorising officer by no later than the end of the following month, so that the accounting balance and the bank balance can be reconciled;
 - (g) the period of validity of the authorisation given to the imprest administrator by the accounting officer;

- (h) the identity of the appointed imprest administrator.
2. In proposals for decisions setting up imprest accounts the authorising officer responsible shall ensure that:
- (a) priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;
 - (b) imprest accounts are used only in substantiated cases.
- The maximum amount referred to in point (c) of paragraph 1 may not exceed EUR 30 000 for each item of expenditure.
3. The imprest administrator may make payments to third parties on the basis and within the limits of:
- (a) prior budget and legal commitments signed by the authorising officer responsible;
 - (b) the positive residual balance of the imprest account, in cash or at the bank.
4. Payments from imprest accounts may be made by bank credit transfer, cheque or other means of payment.
5. Payments made shall be followed by formal final validation decisions and/or payment orders signed by the authorising officer responsible

Article 68
Choice of imprest administrators
(Article 63 of the General Financial Regulation)
Article 44 of the Financial Regulation

Imprest administrators shall be chosen from category A, B or C officials. Imprest administrators shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.

Article 69
Endowment of imprest accounts
(Article 63 of the General Financial Regulation)
Article 44 of the Financial Regulation

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

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

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

(d) interest.

The imprest shall be settled, in terms of expenditure or miscellaneous or assigned revenue, in accordance with the decision setting up the imprest account referred to in Article 67 and the provisions of the General Financial Regulation. The amounts in question shall be deducted by the authorising officer when he subsequently replenishes the imprest accounts concerned.

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

Article 70

*Checks by authorising officers and accounting officers
(Article 63 of the General Financial Regulation)*

Article 44 of the Financial Regulation

1. The imprest administrator shall keep an account of the funds at his disposal, in cash and at the bank, and of payments made and amounts received, in accordance with the rules and on the instructions given by the accounting officer. Statements of that account shall be accessible at all times to the authorising officer responsible and a monthly list of transactions together with supporting documents shall be sent in the following month by the imprest administrator to the authorising officer for settlement of the imprest operations.
2. The accounting officer shall carry out, or have carried out by an official or other servant in his own department or in the authorising department specially empowered for that purpose, checks, which should normally be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time-limit set. The accounting officer shall communicate the findings of those checks to the authorising officer responsible.

Article 71

*Procurement procedure
(Article 63 of the General Financial Regulation)*

Article 74 of the Financial Regulation

Payments made from imprest accounts may, within the limits laid down in Article 29(4), consist simply in the payment of costs against invoices, without prior acceptance of a tender.

No article 72

CHAPTER 4
LIABILITY OF THE FINANCIAL ACTORS

SECTION 2
RULES APPLICABLE TO AUTHORISING OFFICERS BY DELEGATION AND
SUBDELEGATION

Article 73
Confirmation of instructions
(Article 66(2) of the General Financial Regulation)
Article 47 of the Financial Regulation

1. An authorising officer by delegation or subdelegation who receives a binding instruction which he considers to be irregular or contrary to the principle of sound financial management, in particular because the instruction cannot be carried out with the resources allocated to him, shall, in writing, so inform the authority from which he received the delegation or subdelegation. If the instruction is confirmed in writing and that confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer by delegation or subdelegation has challenged, he may not be held liable; he shall carry out the instruction, unless it constitutes a breach of criminal law or of the relevant safety standards.
2. Paragraph 1 shall also apply in cases where an authorising officer learns, in the course of acting on a binding instruction, that the circumstances of the case may give rise to an irregular situation.
3. Any instructions confirmed in the circumstances described in Article 47 of the Financial Regulation shall be recorded by the authorising officer by delegation responsible and mentioned in his annual activity report.

Article 74
Financial irregularities
(Articles 60(6) and 66(4) of the General Financial Regulation)
Articles 38 and 47 of the Financial Regulation

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

Article 75
Financial irregularities panel
(Articles 60(6) and 66(4) of the General Financial Regulation)
Article 38 and 47 of the Financial Regulation

1. Cases of financial irregularities, as referred to in Article 74 shall be referred by the appointing authority or, where appropriate, by the authority authorised to conclude contracts of employment to the panel referred to in Article 47 of the Financial Regulation for an opinion.

Where a case is referred to it by the appointing authority or the authority authorised to conclude contracts of employment, the panel shall deliver an opinion evaluating whether

irregularities within the meaning of Article 74 have occurred, how serious they are and what their consequences might be. Should the panel's analysis suggest that the case referred to it is a matter for OLAF, it shall without delay return the case-file to the appointing authority or to the authority authorised to conclude contracts of employment and shall inform OLAF at once.

When the panel referred to in the first subparagraph is directly informed of a matter by a member of staff in accordance with Article 38 of the Financial Regulation, it shall transmit the file to the appointing authority or, where appropriate, to the authority authorised to conclude contracts of employment and shall inform the member of staff accordingly.

2. The Bureau of the Administrative Board shall specify the operating arrangements of the panel referred to in Article 47 of the Financial Regulation and its composition, which shall include an outside personality with the required qualifications and expertise.

CHAPTER 5 REVENUE OPERATIONS

No article 76

SECTION 2 ESTIMATE OF AMOUNTS RECEIVABLE

Article 77

*Estimate of amounts receivable
(Article 70 of the General Financial Regulation)
Article 52 Financial Regulation*

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

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

- (a) the revenue is booked to the correct budget item;
 - (b) the estimate is in order and complies with the provisions applicable and the principle of sound financial management.
2. An estimate of amounts receivable shall not have the effect of making commitment available. In the cases referred to in Article 19 of the Financial Regulation, appropriations may be made available only after the sums due have actually been recovered by the Communities.

SECTION 3
ESTABLISHMENT OF AMOUNTS RECEIVABLE

Article 78

Procedure

(Article 71 of the General Financial Regulation)

Article 53 Financial Regulation

1. The establishment by the authorising officer responsible of an amount receivable shall constitute recognition of the right of the Foundation in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.
2. The recovery order shall be the operation by which the authorising officer responsible instructs the accounting officer to recover the amount established.
3. The debit note shall be to inform the debtor that:
 - (a) the Foundation has established the amount receivable;
 - (b) payment of the debt to the Foundation is due on a certain date (hereinafter "the due date");
 - (c) failing payment by the due date the debt shall bear interest at the rate referred to in Article 86, without prejudice to any specific regulations applicable;
 - (d) wherever possible the Foundation shall effect recovery by offsetting after the debtor has been informed;
 - (e) failing payment by the due date the Foundation shall effect recovery by enforcement of any guarantee lodged in advance;
 - (f) if, after all those steps have been taken, the amount has not been recovered in full, the Foundation shall effect recovery by enforcement of a decision secured either in accordance with Article 54 of the Financial Regulation or by legal action.

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

Article 79

Establishment of amounts receivable

(Article 71 of the General Financial Regulation)

Article 53 of the Financial Regulation

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

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

- (e) the amount to be recovered is booked to the correct budget item;
- (f) the supporting documents are in order; and
- (g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) of Article 87(1).

Article 80
Supporting documents for the establishment of amounts receivable
(Article 71 of the General Financial Regulation)
Article 53 of the Financial Regulation

1. The establishment of an amount receivable shall be based on supporting documents certifying the Foundation's entitlement.
2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or, on his own responsibility, shall ascertain that this has been done.
3. The supporting documents shall be kept by the authorising officer in accordance with Articles 48 and 49.

SECTION 4
AUTHORISATION OF RECOVERY

Article 81
Establishment of the recovery order
(Article 72 of the General Financial Regulation)
Article 54 of the Financial Regulation

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

SECTION 5
RECOVERY

Article 82

Collection formalities

(Article 73 of the General Financial Regulation)

Article 55 of the Financial Regulation

1. Upon the recovery of an amount receivable, the accounting officer shall make an entry in the accounts and shall inform the authorising officer responsible.
2. A receipt shall be issued in respect of any cash payments made to the accounting officer or imprest administrator.

Article 83

Recovery by offsetting

(Article 73 of the General Financial Regulation)

Article 55 of Financial Regulation

At any point in the procedure the accounting officer shall, after informing the authorising officer responsible and the debtor, recover established amounts receivable by offsetting in cases where the debtor also has a claim on the Foundation that is certain, of a fixed amount and due relating to a sum established by a payment order.

Article 84

Recovery procedure failing voluntary payment

(Articles 72 and 73 of the General Financial Regulation)

Article 54 and 55 of Financial Regulation

1. Without prejudice to Article 83, if the full amount has not been recovered by the due date specified in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.
2. Without prejudice to Article 83, where the recovery method referred to in paragraph 1 cannot be used and the debtor has failed to pay in response to the letter of formal notice sent by the accounting officer, the accounting officer shall enforce a recovery decision secured either in accordance with Article 54 of the Financial Regulation or by legal action.

Article 85

Additional time for payment

(Article 73 of the General Financial Regulation)

Article 55 of Financial Regulation

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

- (a) the debtor undertakes to pay interest at the rate specified in Article 86 for the entire additional period allowed, starting from the date on which the payment was originally due; and

- (b) in order to safeguard the Foundation's rights, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the Foundation's accounting officer.

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

Article 86
Default interest
(Article 71(4) of the General Financial Regulation)
Article 53 of Financial Regulation

1. Without prejudice to any specific provisions deriving from the application of sectoral rules, any amount receivable not repaid on the due date shall bear interest in accordance with paragraphs 2 and 3.
2. The interest rate for amounts receivable not repaid on the due date 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 Communities*, in force on the first calendar day of the month in which the due date 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 due date specified in the debit note up to the calendar day on which the debt is repaid in full.
4. Any partial payments shall first cover the interest determined in accordance with paragraphs 2 and 3.
5. In the case of fines, where the debtor provides a financial guarantee which is accepted by the accounting officer in lieu of provisional payment, the interest rate applicable from the due date shall be the rate referred to in paragraph 2 increased by only one and a half percentage points.

Article 87
Waiving of recovery of an established amount receivable
(Article 73 of the General Financial Regulation)
Article 55 of Financial Regulation

1. The authorising officer responsible may waive recovery of all or part of an established amount receivable only in the following cases:
 - (a) where the foreseeable cost of recovery would exceed the amount to be recovered and the waiver would not harm the Foundation's image;
 - (b) where the amount receivable cannot be recovered in view of its age or the insolvency of the debtor;
 - (c) where recovery is inconsistent with the principle of proportionality.

2. In the case referred to in point (c) of paragraph 1, the authorising officer responsible shall act in accordance with predetermined procedures established within the Foundation and shall apply the following criteria which are compulsory and applicable in all circumstances:
 - (a) the facts, having regard to the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeat offence, intent, diligence, good faith, manifest error);
 - (b) the impact that waiving recovery would have on the operation of the Foundation and its financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law).

Depending on the circumstances of the case, the authorising officer responsible may also have to take the following additional criteria into account:

- (a) any distortion of competition that would be caused by the waiving of recovery;
 - (b) the economic and social damage that would be caused were the debt to be recovered in full.
3. The waiver decision referred to in Article 55 of the Financial Regulation shall be substantiated and shall refer to the diligence exercised to secure recovery and the points of law and fact on which the waiver is based. The authorising officer responsible shall waive recovery in accordance with the procedure provided for in Article 81.
4. The waiving of recovery of an established amount receivable may not be delegated by the Foundation where the amount to be waived:
 - (a) is EUR 1 000 000 or more; or
 - (b) is EUR 100 000 or more, where this represents 25% or more of the established amount receivable.

Beneath the thresholds set out in the first subparagraph, the Foundation shall lay down in its internal rules the conditions and procedure for delegating the power to waive recovery of an established debt.

5. The Foundation shall send to the budgetary authority each year a report on the waivers referred to in paragraphs 1 to 4 involving EUR 100 000 or more

Article 88
Cancellation of an established amount receivable
(Article 73 of the General Financial Regulation)
Article 55 of Financial Regulation

1. In the event of a mistake as to a point of law, the authorising officer responsible shall cancel the established amount receivable in accordance with Articles 80 and 81; cancellation shall be suitably substantiated.
2. The Foundation's internal rules lay down the conditions and procedure for delegating the power to cancel an established amount receivable.

Article 89
Technical and accounting adjustment of an established amount receivable
(Article 73 of the General Financial Regulation)
Article 55 of Financial Regulation

1. The authorising officer responsible shall adjust the established amount receivable upwards or downwards if the discovery of an error of fact necessitates the alteration of the amount, provided that the correction does not imply relinquishment of the Communities' established entitlement. Such adjustment shall be made in accordance with Articles 80 and 81 and shall be suitably substantiated.
2. The Foundation's internal rules lay down the conditions and procedure for delegating the power to make a technical and accounting adjustment of an established amount receivable.

CHAPTER 6
EXPENDITURE OPERATIONS

Article 90
Financing decision
(Article 75 of the General Financial Regulation)
Article 60 of Financial Regulation

The financing decision shall determine the essential elements of an action involving expenditure from the budget.

SECTION 1
COMMITMENT OF EXPENDITURE

Article 91
Global and provisional commitments
(Article 76(2) of the General Financial Regulation)
Article 61 of Financial Regulation

1. The global budget commitment shall be implemented either by the conclusion of a financing agreement, itself providing for the subsequent conclusion of one or more legal commitments, or by the conclusion of one or more legal commitments.

Financing agreements in the field of financial assistance and budgetary support which constitute legal commitments may give rise to payments without the conclusion of other legal commitments.

2. The provisional budget commitment shall be implemented either by the conclusion of one or more legal commitments giving rise to an entitlement to subsequent payments.

Article 92
Adoption of a global commitment
(Article 76 of the General Financial Regulation)
Article 61 of Financial Regulation

1. A global commitment shall be made on the basis of a financing decision.

The global commitment shall be made at the latest before the decision on the selection of beneficiaries is taken and, where implementation of the appropriations concerned involves the adoption of a work programme within the meaning of Article 166, at the earliest after that programme has been adopted.

2. Where the global commitment is implemented by the conclusion of a financing agreement, the second subparagraph of paragraph 1 shall not apply.

Article 93
Decommitment failing payment within three years
(Article 77 of the General Financial Regulation)
Article 62 of Financial Regulation

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 67 of the Financial Regulation has been made in a period of three years following the signing of the legal commitment shall be decommitted.

Article 94
Single signature
(Article 76 of the General Financial Regulation)
Article 61 of Financial Regulation

1. The rule that there be a single signatory for the budget commitment and the corresponding legal commitment may be departed from in the following cases alone:
 - (a) where the commitments are provisional;
 - (b) where global commitments relate to financing agreements with third countries;
 - (c) where the Foundation's decision constitutes the legal commitment;
 - (d) where the global commitment is implemented by a number of legal commitments, for which different authorising officers by delegation 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.
2. If the authorising officer responsible who signed the budget commitment is not available and remains unavailable for a period incompatible with the time-limits for concluding the legal commitment, that legal commitment shall be concluded by the person designated under the deputation rules adopted by the Foundation, provided that that person has the status of authorising officer in accordance with Article 38 of the Financial Regulation.

Article 95
Registration of individual legal commitments
(Article 77 of the General Financial Regulation)
Article 62 of Financial Regulation

In the case of a global budget commitment followed by several individual legal commitments, the authorising officer responsible shall register in the central accounts the amounts of these successive individual legal commitments. The authorising officer responsible shall check that the aggregate amount does not exceed the amount of the global commitment covering them.

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

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

Article 96
Administrative expenditure covered by provisional commitments
(Article 76 of the General Financial Regulation)
Article 61 of Financial Regulation

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

- (a) expenditure on staff, whether or not covered by the Staff Regulations, on other human resources and pensions and on the remuneration of experts;
- (b) expenditure relating to Members of the Foundation;
- (c) training expenditure;
- (d) expenditure on competitions, selection and recruitment;
- (e) mission expenses;
- (f) representation expenses;
- (g) meeting expenses;
- (h) freelance interpreters and/or translators;
- (i) exchanges of officials;
- (j) recurring rentals of movable and immovable property;
- (k) miscellaneous insurance;
- (l) cleaning and maintenance;
- (m) welfare expenditure;
- (n) the use of telecommunications services;
- (o) financial charges;
- (p) legal expenses;
- (q) damages, including interest;
- (r) work equipment;
- (s) water, gas and electricity;
- (t) periodical publications on paper or in electronic versions.

SECTION 2
VALIDATION OF EXPENDITURE

Article 97
Validation and "passing for payment"
(Article 79 of the General Financial Regulation)
Article 64 of Financial Regulation

1. Validation of any expenditure shall be based on supporting documents within the meaning of Article 104 attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.
2. The authorising officer responsible shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done, before taking the decision validating the expenditure.
3. The validation decision shall be expressed by the signing of a "passed for payment" voucher by the authorising officer responsible or by an official or other servant technically competent, empowered by formal decision of the authorising officer. Such empowerment decisions shall be kept for future reference.

Article 98
Passing for payment of procurement contracts
(Article 79 of the General Financial Regulation)
Article 64 of Financial Regulation

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

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

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

Article 99
Passing for payment of grants
(Article 79 of the General Financial Regulation)
Article 64 of Financial Regulation

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

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

Article 100
Passing for payment of staff expenditure
(Article 79 of the General Financial Regulation)
Article 64 of Financial Regulation

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

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

- (e) in respect of other staff expenditure: the supporting documents referring to the decision on which the expenditure is based and giving all the components of the calculation.

Article 101
Material form of "passed for payment"
(Article 79 of the General Financial Regulation)
Article 64 of Financial Regulation Article

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 an official or other servant technically competent, empowered by the authorising officer responsible in accordance with Article 97. In a computerised system, "passed for payment" shall take the form of validation using the personal password of the authorising officer responsible or of an official or other servant technically competent, empowered by the authorising officer responsible.

SECTION 3
AUTHORISATION OF PAYMENTS

Article 102
Checks on payments by the authorising officer
(Article 80 of the General Financial Regulation)
Article 66 of Financial Regulation Article

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

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

Article 103
Mandatory details on payment orders and transmission to the accounting officer
(Article 80 of the General Financial Regulation)
Article 66 of Financial Regulation Article

- 1. The payment order shall state:
 - (a) the financial year to which the expenditure is to be booked;
 - (b) the budget article and any other subdivision that may apply;

- (c) the references of the legal commitment giving rise to an entitlement to payment;
 - (d) the references of the budget commitment against which it is to be booked;
 - (e) the amount to be paid, expressed in euro;
 - (f) the name, address and bank account details of the payee;
 - (g) the object of the expenditure;
 - (h) the means of payment;
 - (i) the entry of items in the inventory in accordance with Article 222.
2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

SECTION 4
PAYMENT OF EXPENDITURE

Article 104
Supporting documents
(Article 81 of the General Financial Regulation)
Article 67 of Financial Regulation

1. Pre-financing, including in cases where it is split into a number of payments, shall be paid either on the basis of the contract, the agreement or the basic act, or on the basis of supporting documents which make it possible to check the conformity of the actions financed with the terms of the contract or agreement in question. Interim payments and payments of balances shall be based on supporting documents which make it possible to check that the action financed has been carried out in accordance with the terms of the contract or agreement concluded with the beneficiary or of the basic act.
2. The authorising officer responsible shall lay down, in compliance with the principle of sound financial management, the nature of the supporting documents referred to in paragraph 1 in accordance with the basic act and the contracts and agreements concluded with the beneficiary. Interim and final technical and financial implementation reports, shall constitute supporting documents for the purposes of paragraph 1.
3. The supporting documents shall be kept by the authorising officer responsible in accordance with Articles 48 and 49.

Article 105
Booking of pre-financing and interim payments
(Article 81 of the General Financial Regulation)
Article 67 of Financial Regulation

1. Pre-financing is intended to provide the beneficiary with a float. It may be split into a number of payments.

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

SECTION 5
TIME-LIMITS FOR EXPENDITURE OPERATIONS

Article 106
Payment time-limits and default interest
(Article 83 of the General Financial Regulation)
Article 69 of Financial Regulation

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

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

2. The payment period referred to in paragraph 1 shall be thirty calendar days for payments relating to service or supply contracts, save where the contract provides otherwise.
3. For contracts or agreements under which payment depends on approval of a report, time for the purposes of the payment periods referred to in paragraphs 1 and 2 shall not begin to run until the report in question has been approved, either explicitly with the beneficiary being informed, or implicitly because the time allowed by the contract for approval has expired without being suspended by means of a formal document sent to the beneficiary.

The time allowed for approval may not exceed:

- (a) twenty calendar days for straightforward contracts relating to the supply of goods and services;
 - (b) forty-five calendar days for other contracts and grant agreements;
 - (c) sixty calendar days for contracts involving technical services which are particularly complex to evaluate.
4. The authorising officer responsible may suspend the time-limit for payment by informing creditors, at any time during the period referred to in paragraph 1, that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the authorising officer responsible which puts in doubt the eligibility of expenditure appearing in a payment request, the authorising officer may suspend the time-limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The authorising officer shall inform the beneficiary in question as soon as possible.

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

5. On expiry of the time limits laid down in paragraphs 1 and 2, the creditor may, within two months of receiving late payment, demand interest in accordance with the following provisions:
- (a) the interest rates shall be those referred to in the first subparagraph of Article 86(2);
 - (b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment up to the day of payment.

The first subparagraph shall not apply to Member States.

CHAPTER 7 IT SYSTEMS

Article 107
Description of IT systems
(Article 84 of the General Financial Regulation)
Article 70 of Financial Regulation

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

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

Article 108
Periodical save
(Article 84 of the General Financial Regulation)
Article 70 of Financial Regulation

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

No Article 109

**CHAPTER 8
INTERNAL AUDITOR**

Article 110

Operational resources

(Article 86 of the General Financial Regulation)

Article 72 of Financial Regulation

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

Article 111

Work programme

(Article 86 of the General Financial Regulation)

Article 72 of Financial Regulation

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

Article 112

Reports of the internal auditor

(Article 86 of the General Financial Regulation)

Article 72 of Financial Regulation

1. The internal auditor shall submit to the Foundation the annual internal audit report provided for in Article 72 of the Financial Regulation, indicating the number and type of internal audits carried out, the principal recommendations made and the action taken on those recommendations.

That annual report shall also mention any systemic problems detected by the specialised panel set up pursuant to Article 47 of the Financial Regulation.

2. The Foundation may consider whether the recommendations made in the reports of its internal auditor are suitable for an exchange of best practices with the other Executive Agencies.

Article 113

Independence

(Article 87 of the General Financial Regulation)

Article 72 of Financial Regulation

The internal auditor shall enjoy complete independence in the conduct of his audits. He may not be given any instructions nor be restricted in any way as regards the performance of the functions which, by virtue of his appointment, are assigned to him under the General Financial Regulation.

Article 114
Liability of the internal auditor
(Article 87 of the General Financial Regulation)
Article 72 of Financial Regulation

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

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

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

On the basis of the report and the hearing, the Foundation shall adopt either a reasoned decision terminating the proceedings or a reasoned decision in accordance with Articles 22 and 86 to 89 of the Staff Regulations. Decisions imposing disciplinary measures or financial penalties shall be notified to the interested party and communicated, for information purposes, to the other institutions and the Court of Auditors.

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

Article 115
Action before the Court of Justice of the European Communities
(Article 87 of the General Financial Regulation)
Article 72 of Financial Regulation

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

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

**TITLE V
PROCUREMENT**

**CHAPTER 1
GENERAL PROVISIONS**

**SECTION 1
SCOPE AND AWARD PRINCIPLES**

*Article 116
Definitions and scope
(Article 88 of the General Financial Regulation)
Article 74 of Financial Regulation*

1. Building contracts cover the purchase, long lease, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.
2. Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. The delivery of products may in addition include siting, installation and maintenance.
3. Works contracts cover either the execution, or both the execution and design, of works or the realisation, by whatever means, of a work corresponding to the requirements specified by the Foundation. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.
4. Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts. These services are listed in Annexes IA and IB to Council Directive 92/50/EEC.
5. A contract covering both products and services shall be considered a service contract where the value of the services in question exceeds that of the products included in the contract.
6. The terms "supplier", "contractor" and "service provider" refer to three categories of economic operator, natural or legal persons, who supply products, execute works and provide services respectively. Economic operators who have submitted a tender are referred to as "tenderers". Those who have asked to be allowed to take part in a restricted or negotiated procedure are referred to as "candidates".
7. The Foundation shall be considered to be a contracting authority.

*Article 117
Framework contracts and specific contracts
(Article 88 of the General Financial Regulation)
Article 74 of Financial Regulation*

1. A framework contract is a contract concluded between a Foundation and an economic operator for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular as regards the duration, subject, prices, conditions of performance and the quantities envisaged.

The Foundation may also conclude multiple framework contracts, which are separate contracts with identical terms awarded to a number of suppliers or service providers. The specifications referred to in Article 130 shall then specify the maximum number of operators with whom the Foundation will conclude contracts.

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

Contracting authorities may not make undue use of framework contracts or use them in such a way that the purpose or effect is to prevent, restrict or distort competition.

2. Specific contracts based on the framework contracts referred to in paragraph 1 shall be awarded in accordance with the terms laid down in the framework contract.
3. Only specific contracts concluded under framework contracts shall be preceded by a budget commitment.

SECTION 2 PUBLICATION

Article 118

*Advertising of contracts covered by the public procurement directives
(Article 90 of the General Financial Regulation)*

Article 74 of Financial Regulation

1. Publication shall consist in a pre-information notice, a contract notice and an award notice.
2. The pre-information notice shall be the notice by which the Foundation makes known, by way of indication, the estimated total value of contracts, by category of service or groups of products, and the essential characteristics of works contracts which they intend to award during a budgetary year, where the estimated total value is equal to or greater than the thresholds laid down in Article 157.

The pre-information notice shall be sent to the Office for Official Publications of the European Communities as soon as possible and by no later than 31 March of each budgetary year in the case of supply and service contracts and, in the case of works contracts, as soon as possible after the decision approving the programme for those contracts.

3. The contract notice shall be the means by which the Foundation makes known its intention to launch a procurement procedure. It shall be compulsory for contracts of an estimated value equal to or greater than the thresholds laid down in points (a) and (c) of Article 158(1).

In an open procedure the contract notice shall specify the date, time and place of the meeting of the opening committee, which shall be open to the tenderers.

The Foundation shall issue a notice announcing its intention to organise a contest.

4. The award notice shall give the outcome of the procurement procedure. In the case of contracts the value of which is equal to or greater than the thresholds laid down in Article 158, the award notice shall be compulsory. It shall not be compulsory for specific contracts awarded under a framework contract.

The award notice shall be sent to the Office for Official Publications of the European Communities no later than forty-eight calendar days after the procedure is closed, that is to say, from the date on which the contract is signed.

5. The notices shall be drawn up in accordance with the models annexed to Directive 2001/78/EC.

Article 119

*Advertising of contracts not covered by the public procurement directives
(Article 90 of the General Financial Regulation)*

Article 74 of Financial Regulation

1. Contracts with a value below the thresholds provided for in Articles 157 and 158 and the service contracts referred to in Annex IB to Council Directive 92/50/EEC shall be advertised by appropriate means in order to ensure competitive tendering and impartiality of the procurement procedure. Such advertising shall involve:
 - (a) if no contract notice as referred to in Article 118(3) has been published, notice of a call for expressions of interest for contracts covering a similar subject with a value equal to or greater than the amount referred to in Article 128(1);
 - (b) the annual publication of a list of contractors, specifying the subject and the value of the contract awarded.
2. A list of contractors to whom building contracts are awarded shall be published annually, with an indication of the subject and value of the contracts awarded. That list shall be sent to the budgetary authority; in the case of the Commission, it shall be annexed to the summary of the annual activity reports referred to in Article 60(7) of the General Financial Regulation.
3. Information relating to contracts with a value equal to or greater than the amount referred to in Article 128(1) shall be sent to the Office for Official Publications of the European Communities; the annual lists of contractors shall be sent by no later than 31 March following the end of the financial year.

Ex ante advertising and the annual publication of the list of contractors for the other contracts shall be on the Internet site of the Foundation; *ex post* publication shall take place by no later than 31 March of the following financial year. Publication may also be in the *Official Journal of the European Communities*.

Article 120

Publication of notices

(Article 90 of the General Financial Regulation)

Article 74 of Financial Regulation

1. The Office for Official Publications of the European Communities shall publish the notices referred to in Articles 118 and 119 in the *Official Journal of the European Communities* no later than twelve calendar days after their dispatch.

That period shall be reduced to five calendar days in the case of the fast-track procedures referred to in Article 142 and if the notices have been prepared and sent electronically.
2. The Foundation must be able to provide evidence of the date of dispatch.

Article 121
Other forms of advertising
(Article 90 of the General Financial Regulation)
Article 74 of Financial Regulation

In addition to the advertising provided for in Articles 118, 119 and 120, contracts may be advertised in any other way, notably in electronic form. Any such advertising shall refer to the notice published in the *Official Journal of the European Communities*, as provided for in Article 120, if one has been published, and may not precede the publication of that notice, which alone is authentic.

Such advertising may not introduce any discrimination between candidates or tenderers nor contain details other than those contained in the contract notice, if one has been published.

SECTION 3
PROCUREMENT PROCEDURES

Article 122
Types of procurement procedure
(Article 91 of the General Financial Regulation)
Article 74 of Financial Regulation

1. Contracts shall be awarded by call for tender, using the open, restricted or negotiated procedure after publication of a contract notice or by negotiated procedure without prior publication of a contract notice, where appropriate following a contest.

2. Calls for tender shall be open where all interested economic operators may submit a tender.

Calls for tender are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria referred to in Article 135 and invited simultaneously and in writing by the contracting authorities may submit a tender.

The selection phase may be repeated for each individual contract or may involve drawing up a list of potential candidates under the procedure referred to in Article 128.

3. In a negotiated procedure, the contracting authorities shall consult tenderers of their choice who satisfy the selection criteria laid down in Article 135, and negotiate the terms of the contract with one or more of them.

In negotiated procedures where a contract notice is published, as referred to in Article 127, the contracting authorities shall simultaneously and in writing invite the selected candidates to negotiate.

4. Contests are procedures which enable the Foundation to acquire, mainly in the fields of architecture and civil engineering or data processing, a plan or design proposed by a selection board after being put out to competitive tender with or without the award of prizes.

Article 123
Number of candidates in restricted or negotiated procedures
(Article 91 of the General Financial Regulation)
Article 74 of Financial Regulation

1. In a restricted procedure, including the procedure referred to in Article 128, the number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria.

The Foundation may also provide for a maximum number of twenty candidates, depending on the subject of the contract and on the basis of objective and non-discriminatory selection criteria. In such cases, the range and criteria shall be indicated in the contract notice or the call for expressions of interest referred to in Articles 118 and 119.

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

2. In negotiated procedures the number of candidates invited to negotiate may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria.

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

The second subparagraph shall not apply to contracts involving very small amounts, as referred to in Article 129(3).

Article 124
Arrangements for negotiated procedures
(Article 91 of the General Financial Regulation)
Article 74 of Financial Regulation

The Foundation shall negotiate with tenderers the tenders they have submitted in order to adapt them to the requirements set out in the contract notice referred to in Article 118 or in the specifications and in any additional documents and in order to find the tender offering best value for money.

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

Article 125
Contests
(Article 91 of the General Financial Regulation)
Article 74 of Financial Regulation

1. The rules for the organisation of a contest shall be communicated to those interested in taking part.

The number of candidates invited to take part must be sufficient to ensure genuine competition.

2. The selection board shall be appointed by the authorising officer responsible. It shall be made up exclusively of natural persons who are independent of participants in the contest. Where a

particular professional qualification is required for participation in a contest, at least one third of the members of the selection board must have the same or an equivalent qualification.

The selection board shall be autonomous in its opinions. Its opinions shall be adopted on the basis of projects submitted to it anonymously by the candidates and solely in the light of the criteria set out in the contest notice.

3. The proposals of the selection board, based on the merits of each project, and its observations, shall be recorded in a report signed by its members.

Candidates shall remain anonymous until the selection board has given its opinion.

4. The Foundation shall then take a decision giving the name and address of the candidate selected and the reasons for the choice by reference to the criteria announced in the contest notice, especially if it departs from the proposals made in the selection board's opinion.

Article 126

Use of a negotiated procedure without prior publication of a contract notice

(Article 91 of the General Financial Regulation)

Article 74 of Financial Regulation

1. The Foundation may use the negotiated procedure without prior publication of a contract notice in the following cases:
 - (a) where no tenders or no suitable tenders have been submitted in response to an open procedure or restricted procedure after the initial procedure has been completed, provided that the original terms of the contract as specified in the documents relating to the invitation to tender referred to in Article 130 are not substantially altered;
 - (b) where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator;
 - (c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the contracting authorities and likely to jeopardise the Foundation's interests, it is impossible to comply with the time-limits set for the other procedures and laid down in Articles 140, 141 and 142;
 - (d) where a service contract follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates; in the latter case, all successful candidates shall be invited to participate in the negotiations;
 - (e) for additional services and works not included in the project initially considered nor in the contract first concluded but which, through unforeseen circumstances independent of the Foundation, have become necessary for the performance of the services or works, subject to the conditions set out in paragraph 2;
 - (f) for additional contracts consisting in the repetition of similar services or works entrusted to the contractor awarded an earlier contract by the same contracting authorities, provided that the subject of the contract conforms to a basic project and that the first contract was awarded under the open or restricted procedure;
 - (g) for supply contracts:
 - (i) in the case of additional deliveries which are intended either as a partial replacement of normal supplies or installations or as the extension of existing

supplies or installations, where a change of supplier would oblige the Foundation to acquire equipment having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts may not exceed three years;

- (ii) where the products are manufactured purely for the purpose of research, experiment, study or development, with the exception of commercial viability tests and large-scale production aimed at recovering research and development costs;
 - (h) for building contracts, after prospecting the local market;
 - (i) for contracts with a value below the threshold laid down in Article 129(2).
2. For the additional services and works referred to in point (e) of paragraph 1, the Foundation may make use of the negotiated procedure without prior publication of a contract notice on condition that the award is made to the contractor performing the contract:
- (a) where such additional contracts cannot be technically or economically separated from the main contract without serious inconvenience for the Foundation; or
 - (b) where such services or works, although separable from the performance of the original contract, are strictly necessary for its completion.

The aggregate value of additional contracts may not exceed 50% of the amount of the initial contract.

3. In the cases referred to in point (f) of paragraph 1, the option of using the negotiated procedure shall be pointed out as soon as the first contract is put out to competitive tender, and the total estimated cost of the additional contracts shall be taken into consideration in calculating the thresholds referred to in Article 158. That procedure may be used only during the three years following conclusion of the original contract.

Article 127

Use of a negotiated procedure after prior publication of a contract notice (Article 91 of the General Financial Regulation)

Article 74 of Financial Regulation

1. The Foundation may use the negotiated procedure after having published a contract notice in the following cases:
- (a) in the event of the submission of tenders which are irregular or unacceptable, by reference in particular to the selection or award criteria, in response to an open or restricted procedure which has been completed, provided that the original terms of the contract as specified in the documents relating to the invitation to tender referred to in Article 130 are not substantially altered;
 - (b) for service and works contracts, in exceptional cases where the nature of the services or works or the risks attaching thereto do not permit prior overall pricing by the tenderer;
 - (c) where the nature of the service to be procured, in particular in the case of financial services and intellectual services, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender in accordance with the rules governing open or restricted procedures;

- (d) for works contracts, where the works are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs;
 - (e) for the service contracts referred to in Annex 1B to Council Directive 92/50/EEC, subject to point (i) of Article 126(1).
2. In the cases referred to in point (a) of paragraph 1, the a contract notice may not be published if the Foundation includes in the negotiated procedure all the tenderers who satisfy the selection criteria and who, during the previous procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

Article 128
Restricted procedure involving a call for expressions of interest
(Article 91 of the General Financial Regulation)
Article 74 of Financial Regulation

1. A call for expressions of interest shall constitute a means of preselecting candidates who will be invited to submit tenders in response to future restricted invitations to tender for contracts of a value of EUR 50 000 or more, subject to Articles 126 and 127.
2. The list drawn up following a call for expressions of interest shall be valid for no more than three years from the date on which the notice referred to in point (a) of Article 119(1) is sent to the Office for Official Publications of the European Communities.

Any interested person may submit an application at any time during the period of validity of the list, with the exception of the last three months of that period.

3. Where a specific contract is to be awarded, the Foundation shall invite either all candidates entered on the list or only some of them, on the basis of objective and non-discriminatory selection criteria specific to that contract, to submit a tender.

Article 129
Low-value contracts
(Article 91 of the General Financial Regulation)
Article 74 of Financial Regulation

1. A restricted procedure with at least five candidates being consulted but without a call for expressions of interest may be used for contracts with a value of less than EUR 50 000, subject to Articles 126 and 127.
2. The negotiated procedure with at least three candidates may be used for contracts with a value of less than EUR 13 800.
3. Contracts with a value of less than EUR 1 050 may be awarded on the basis of a single tender by a negotiated procedure.
4. Payments made from imprest accounts or for expenditure related to communications activities engaged in by the Foundation for the coverage of Foundation events may consist simply in the payment of costs against invoices, without prior acceptance of a tender, where the expenditure is less than EUR 200.

Article 130
Documents relating to the invitation to tender
(Article 92 of the General Financial Regulation)
Article 74 of Financial Regulation

1. The documents relating to the invitation to tender shall include at least:
 - (a) the invitation to submit a tender or to negotiate;
 - (b) the attached specifications, to which shall be annexed the general terms and conditions applicable to contracts;
 - (c) the model contract.

The documents relating to the invitation to tender shall contain a reference to the advertising measures taken under Articles 118 to 121.

2. The invitation to tender shall at least:
 - (a) specify the rules governing the lodging and presentation of tenders, including in particular the closing date and time for submission, any requirement as to the use of a standard reply form, the documents to be attached, including those in evidence of financial, economic, technical and professional capacity referred to in Article 135, and the address to which they must be sent;
 - (b) state that submission of the tender implies acceptance of the specifications and of the general terms and conditions referred to in paragraph 1 to which the tender relates and that this submission binds the contractor to whom the contract is awarded during performance of the contract;
 - (c) specify the period during which a tender will remain valid and may not be varied in any respect;
 - (d) forbid any contact between the Foundation and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 148, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit.

3. The specifications shall at least:
 - (a) specify the exclusion and selection criteria applying to the contract, save in the restricted procedure and in the negotiated procedures following publication of a notice referred to in Article 127; in such cases those criteria shall appear solely in the contract notice or the call for expressions of interest;
 - (b) specify the award criteria and their relative weighting, if this is not specified in the contract notice;
 - (c) set out the technical specifications referred to in Article 131;
 - (d) state the minimum requirements which variants must meet in the procedures provided for in Article 138(2) under which the contract is awarded to the tender offering best value for money, where the Foundation has not stated in the contract notice that such variants are not permitted;
 - (e) state that the Protocol on Privileges and Immunities or, where appropriate, the Vienna Convention on Diplomatic Relations or Consular Relations applies;

- (f) specify the evidence of access to contracts, as set out in Article 159.
4. The model contract shall in particular:
- (a) specify the penalties for failure to comply with its clauses;
 - (b) specify the details which must be contained in invoices or in the relevant supporting documents in accordance with Article 98;
 - (c) specify the law applicable to the contract and the competent court for hearing disputes.
5. The contracting authorities may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors.

Article 131
Technical specifications
(Article 92 of the General Financial Regulation)
Article 74 of Financial Regulation

1. Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering.
- They shall define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the Foundation.
2. The characteristics referred to in paragraph 1 shall include:
- (a) the quality levels;
 - (b) environmental performance;
 - (c) design for all requirements (including accessibility for disabled people);
 - (d) the levels and procedures of conformity assessment;
 - (e) fitness for use;
 - (f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
 - (g) for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the Foundation may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve.
3. The technical specifications shall be formulated as follows:
- (a) by reference to European standards, or to European technical approvals or common technical specifications, where such exist, to international standards or to other technical reference material produced by European standards bodies or, failing this, their national equivalents. Every reference shall be followed by the expression "or equivalent"; or

- (b) in terms of performance or of functional requirements; they shall be sufficiently detailed to enable tenderers to determine the purpose of the contract and the contracting authorities to award the contract; or
 - (c) by a mixture of those two formulation methods.
4. Where the Foundation makes use of the possibility of referring to the specifications referred to in point (a) of paragraph 3, it may not reject a tender on the grounds that it does not comply with those specifications if the tenderer or candidate proves, to the satisfaction of the Foundation Evaluation Committee, by any appropriate means, that the tender meets in equivalent manner the requirements set.
 5. Where the Foundation make use of the possibility provided for in point (b) of paragraph 3, of prescribing specifications in terms of performance or of functional requirements, they may not reject a tender which complies with a national standard transposing a European standard, a European technical approval or common technical specifications, an international standard or technical reference material produced by a European standards body, if those specifications relate to the necessary performance or functional requirements.
 6. Save in exceptional cases, duly warranted by the subject of the contract, those specifications may not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production which would have the effect of favouring or eliminating certain products or economic operators.

Where it is not possible to provide a sufficiently detailed and intelligible description of the subject of the contract, the reference shall be followed by the expression "or equivalent".

Article 132

Price revision

(Article 92 of the General Financial Regulation)

Article 74 of Financial Regulation

1. The documents relating to the invitation to tender shall clearly state whether a firm, non-revisable price must be quoted.
2. If that is not the case, the documents relating to the invitation to tender shall lay down the conditions and/or formulas for revision of prices during the lifetime of the contract. In such cases the Foundation shall take particular account of:
 - (a) the object of the procurement procedure and the economic situation in which it is taking place;
 - (b) the type of tasks and contract and their duration;
 - (c) its financial interests.

Article 133

Administrative and financial penalties

(Articles 93 to 96 and 114 of the General Financial Regulation)

Article 74 of Financial Regulation

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure shall be excluded from all contracts and grants financed by the Community budget for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

That period may be extended to three years in the event of a repeat offence within five years of the first infringement.

Tenderers or candidates who have been guilty of making false declarations shall also receive financial penalties representing 2% to 10% of the total value of the contract being awarded.

Contractors who have been found to have seriously failed to meet their contractual obligations shall receive financial penalties representing 2% to 10% of the total value of the contract in question.

That rate may be increased to 4% to 20% in the event of a repeat offence within five years of the first infringement.

2. In the cases referred to in points (a), (c) and (d) of Article 93(1) of the General Financial Regulation, the candidates or tenderers shall be excluded from all contracts and grants for a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor.

In the cases referred to in points (b) and (e) of Article 93(1) of the General Financial Regulation, the candidates or tenderers shall be excluded from all contracts and grants for a minimum of one year and a maximum of four years from the date of notification of the judgment.

Those periods may be extended to five years in the event of a repeat offence within five years of the first infringement or the first judgment.

3. The cases referred to in point (e) of Article 93(1) of the General Financial Regulation shall be the following:
 - (a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995⁶;
 - (b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997⁷;
 - (c) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council⁸;
 - (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC⁹.

⁶ OJ C 316, 27.11.1995, p. 48.

⁷ OJ C 195, 25.6.1997, p. 1.

⁸ OJ L 351, 29.12.1998, p. 1.

⁹ OJ L 166, 28.6.1991, p. 77.

Article 134
Evidence
(Article 96 of the General Financial Regulation)
Article 74 of Financial Regulation

1. The Foundation shall accept, as satisfactory evidence that the candidate or tenderer is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the General Financial Regulation, production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.
2. The Foundation 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 General Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where no such certificate is issued in the country concerned, 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.

3. Depending on the national legislation of the country in which the tenderer or candidate is established, the documents referred to in paragraphs 1 and 2 shall relate to legal persons and/or natural persons including, where considered necessary by the Foundation, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

Article 135
Selection criteria
(Article 97(1) of the General Financial Regulation)
Article 74 of Financial Regulation

1. The contracting authorities shall draw up clear and non-discriminatory selection criteria.
2. The following selection criteria shall apply in every procurement procedure:
 - (a) the eligibility of the tenderer or candidate to take part in the procedure, checks having been carried out on the possible grounds for exclusion referred to in Articles 93 and 94 of the General Financial Regulation;
 - (b) criteria for assessing his financial, economic, technical and professional capacity.

The Foundation may lay down minimum capacity levels below which it cannot select candidates.

3. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.
4. The Foundation shall specify in the contract notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.

5. The information requested by the Foundation as proof of the financial, economic, technical and professional capacity of the candidate or tenderer may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

Article 136
Economic and financial capacity
(Article 97(1) of the General Financial Regulation)
Article 74 of Financial Regulation

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

Article 137
Technical and professional capacity
(Article 97(1) of the General Financial Regulation)
Article 74 of Financial Regulation

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraphs 2 and 3. In procurement procedures for supplies requiring siting or installation operations, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.
2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of the following documents:
 - (a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;

- (b) a list:
 - (i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;
 - (ii) of the works carried out in the last five years, with the sums, dates and place. The list of the most important works shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;
- (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
- (d) a description of the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
- (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- (f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- (g) a statement of the average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;
- (h) an indication of the proportion of the contract which the service provider may intend to subcontract.

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

3. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the Foundation or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.
4. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the Foundation that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Article 138
Award arrangements and criteria
(Article 97(2) of the General Financial Regulation)
Article 74 of Financial Regulation

1. Contracts shall be awarded in one of the following two ways:

- (a) under the automatic award procedure, in which case the contract is awarded to the tender which, while being in order and satisfying the conditions laid down, quotes the lowest price;
 - (b) under the best-value-for-money procedure.
2. The tender offering the best value for money shall be the one with the best price-quality ratio, taking into account criteria justified by the subject of the contract such as the price quoted, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, profitability completion or delivery times, after-sales service and technical assistance.
3. The Foundation shall specify, in the contract notice or in the specifications, the weighting it will apply to each of the criteria for determining best value for money.

The weighting applied to price in relation to the other criteria must not result in the neutralisation of price in the choice of contractor.

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

Article 139
Abnormally low tenders
(Article 97(2) of the General Financial Regulation)
Article 74 of Financial Regulation

1. If, for a given contract, tenders appear to be abnormally low, the Foundation shall, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements, after due hearing of the parties, taking account of the explanations received.
- The Foundation may, in particular, take into consideration explanations relating to:
- (a) the economics of the manufacturing process, of the provision of services or of the construction method;
 - (b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
 - (c) the originality of the tender.
2. Where the Foundation establishes that a tender is abnormally low as a result of State aid provided, it may reject the tender on that ground alone only if the tenderer is unable to prove, within a reasonable time determined by the Foundation, that the aid in question has been awarded definitively and in accordance with the procedures and decisions specified in the Community rules on State aid.

Article 140
Time limits for receipt of tenders and requests to participate
(Article 98(1) of the General Financial Regulation)
Article 74 of Financial Regulation

1. The time-limits for the receipt of tenders and requests to participate, laid down in calendar days by the Foundation, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders, taking particular account of the complexity of the contract or the need to visit the site or consult on the spot the documents annexed to the specifications.
2. In open procedures, the time limit for receipt of tenders shall be no less than fifty-two days from the date on which the contract notice is dispatched.
3. In restricted and negotiated procedures where a contract notice is published, the time limit for receipt of requests to participate shall be no less than thirty-seven days from the date on which the contract notice is dispatched.

In restricted procedures for contracts above the thresholds set in Article 158, the time limit for receipt of tenders shall be no less than forty days from the date on which the invitation to tender is dispatched.

In the restricted procedures referred to in Article 128, the time-limit for receipt of tenders shall be no less than twenty-one days from the date on which the invitation to tender is dispatched.

4. Where the Foundation, in accordance with Article 118, have sent for publication a pre-information notice containing all the information required in the contract notice no less than fifty-two days and no more than twelve months before the date on which the contract notice is dispatched, the time-limit for the receipt of tenders may generally be reduced to thirty-six days but shall in no circumstances be less than twenty-two days from the date of dispatch of the contract notice, in the case of open procedures, or may be reduced to twenty-six days from the date of dispatch of the invitation to submit a tender, in the case of restricted procedures.

Article 141
Time allowed for access to invitation to tender documents
(Article 98(1) of the General Financial Regulation)
Article 74 of Financial Regulation

1. Provided that the request was made in good time before the deadline for submission of tenders, the specifications and additional documents shall be sent, within six calendar days of the receipt of the request, to all economic operators who have requested the specifications or expressed interest in submitting a tender.
2. Provided it has been requested in good time, additional information relating to the specifications shall be supplied simultaneously to all economic operators who have requested the specifications or expressed interest in submitting a tender no later than six days before the deadline for the receipt of tenders or, in the case of requests for information received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request.
3. If, for whatever reason, the specifications and the additional documents or information cannot be supplied within the time-limits set in paragraphs 1 and 2, or where tenders can be made

only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time-limits for receipt of tenders referred to in Article 140 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders, subject to the provisions of Article 240. That extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 118 to 121.

4. If all the invitation to tender documents are freely, fully and directly accessible by electronic means, the contract notice referred to in Article 118(3) shall give the Internet address at which those documents can be consulted.

In such cases any additional documents and information shall also be made freely, fully and directly accessible as soon as they are supplied to all the economic operators who have requested the specifications or expressed interest in submitting a tender.

Article 142
Time-limits in urgent cases
(Article 98(1) of the General Financial Regulation)
Article 74 of Financial Regulation

1. Where duly substantiated urgency renders impracticable the time-limits laid down in Article 140(3), the Foundation may set the following time-limits, expressed in calendar days:
 - (a) a time-limit for the receipt of requests to participate which may not be less than fifteen days from the date on which the contract notice was dispatched;
 - (b) a time limit for the receipt of tenders which may not be less than ten days from the date of the invitation to tender.
2. Provided it has been requested in good time, additional information on the specifications shall be communicated to all candidates no later than four calendar days before the deadline for receipt of tenders.

Article 143
Methods of communication
(Article 98(1) of the General Financial Regulation)
Article 74 of Financial Regulation

1. Requests to participate shall be submitted by letter, fax or electronic mail; requests submitted by fax or electronic mail shall be confirmed by letter before expiry of the time-limits set in Articles 140 and 251.
2. Tenderers may submit tenders:
 - (a) by post, for which purposes the invitation to tender documents shall specify that the relevant date is to be the date of despatch by registered post, as evidenced by the postmark; or
 - (b) by hand-delivery to the premises of the Foundation by the tenderer in person or by an agent, including courier service; for which purposes the invitation to tender documents

shall specify, in addition to the information referred to in point (a) of Article 130(2), the department to which tenders are to be delivered against a signed and dated receipt.

3. In order to maintain secrecy and to avoid any difficulties where tenders are sent by letter, the invitation to tender must include the following provision:

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

Article 144
Tender guarantees
(Article 98(2) of the General Financial Regulation)
Article 74 of Financial Regulation

The Foundation may require a tender guarantee, lodged in accordance with Article 150, representing 1% to 2% of the total value of the contract.

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

Article 145
Opening of tenders and requests to participate
(Article 98(3) of the General Financial Regulation)
Article 74 of Financial Regulation

1. All requests to participate and tenders that satisfy the requirements of Article 143(1) and (2) shall be opened.
2. Where the value of a contract exceeds the threshold laid down in Article 129(2), the authorising officer responsible shall appoint a committee to open the tenders.

The committee shall be made up of at least three persons representing at least two organisational entities of the Foundation concerned with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 35 of the Financial Regulation.

In the representations and local units referred to in Article 252, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

3. One or more members of the opening committee shall initial the documents proving the date and time of despatch of each tender.

They shall also initial:

- (a) either each page of each tender; or
- (b) the cover page and the pages containing the financial details of each tender, the integrity of the initial tender being guaranteed by any appropriate technique employed by a department that is independent of the authorising department, save in the cases referred to in the third subparagraph of paragraph 2.

Where the contract is awarded under the automatic award procedure in accordance with point (a) of Article 138(1), the prices quoted in tenders satisfying the requirements shall be made public.

The members of the committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which satisfy the requirements and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 143.

Article 146

*Committee for the evaluation of tenders and requests to participate
(Article 98(4) of the General Financial Regulation)*

Article 74 of Financial Regulation

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance.

That committee shall be appointed by the authorising officer responsible to give an advisory opinion for contracts with a value above the threshold referred to in Article 129(2).

2. The evaluation committee shall be made up of at least three persons representing at least two organisational entities of the Foundation concerned with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 52 of the General Financial Regulation.

In the representations and local units referred to in Article 254, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

The evaluation committee may be composed of the same members as the committee opening the tenders.

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

However, the evaluation committee 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 a specified time limit.

4. In the case of abnormally low tenders as referred to in Article 139 of this Regulation, the evaluation committee shall request any relevant information concerning the composition of the tender.

Article 147

Results of the evaluation

(Articles 99 and 100 of the General Financial Regulation)

Article 74 of Financial Regulation

1. A written record of the evaluation and ranking of requests to participate and tenders declared to satisfy the requirements shall be drawn up and dated. It shall be signed by all the members of the evaluation committee. It shall be kept for future reference.

2. That written record shall contain at least the following:
 - (a) the name and address of the Foundation, and the subject and value of the contract or of the framework contract;
 - (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
 - (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
 - (d) the reasons for the rejection of tenders found to be abnormally low;
 - (e) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.

3. The Foundation shall then take its decision giving at least the following:
 - (a) the name and address of the Foundation, and the subject and value of the contract or of the framework contract;
 - (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
 - (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
 - (d) the reasons for the rejection of tenders found to be abnormally low;
 - (e) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
 - (f) in the case of negotiated procedures, the circumstances referred to in Articles 126, 127, 242, 244, 246 and 247 which justify their use;
 - (g) where appropriate, the reasons why the Foundation has decided not to award a contract.

Article 148
Contacts between contracting authorities and tenderers
(Article 99 of the General Financial Regulation)
Article 74 of Financial Regulation

1. Contact between the Foundation and tenderers during the contract award procedure may take place, by way of exception, under the conditions set out in paragraphs 2 and 3.
2. Before the closing date for the submission of tenders, in respect of the additional documents and information referred to in Article 141, the Foundation may:
 - (a) at the instance of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract, such information to be communicated on the same date to all tenderers who have asked for the specifications;

- (b) at its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the contract notice, invitation to tender or specifications, inform the persons concerned on the same date and in a manner identical with that applicable in respect of the original invitation to tender.
3. If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the tender must be corrected, the Foundation may contact the tenderer, although such contact may not lead to any alteration of the terms of the tender.
4. In every case where contact has been made, a 'note for the file' shall be drawn up.

Article 149
Information for candidates and tenderers
(Articles 100(2) and 101 of the General Financial Regulation)
Article 74 of Financial Regulation

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.
2. The Foundation shall, within not more than fifteen calendar days from the date on which a written request is received, communicate the information provided for in Article 100(2) of the General Financial Regulation.

SECTION 4
GUARANTEES AND CONTROL

Article 150
Advance guarantee
(Article 102 of the General Financial Regulation)
Article 74 of Financial Regulation

1. Where suppliers, contractors or service providers are required to lodge a guarantee in advance, it must be for an amount and a period that are sufficient for it to be activated.
2. The guarantee shall be supplied by a bank or an authorised financial institution. It may be replaced by a joint and several guarantee by a third party.

The guarantee shall be denominated in euro.

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

Article 151
Performance guarantee
(Article 102 of the General Financial Regulation)
Article 74 of Financial Regulation

1. Subject to Article 250, a performance guarantee may be demanded by the authorising officer in accordance with the usual commercial terms for supply and service contracts and in accordance with the special specifications for works contracts.

This guarantee shall be mandatory above EUR 345 000 for works contracts.

2. A guarantee corresponding to 10% of the total value of the contract may be constituted by deductions from payments as and when they are made.

It may be replaced by an amount withheld from the final payment in order to constitute a guarantee until final acceptance of the services, supplies or works.

3. Guarantees shall be released in accordance with the terms of the contract, save where the contract has not been performed or has been performed incorrectly or completion is late. In such cases a proportion of the guarantee shall be retained in proportion to the seriousness of the damage suffered.

Article 152
Guarantee for pre-financing
(Article 102 of the General Financial Regulation)
Article 74 of Financial Regulation

A guarantee shall be required in return for the payment of pre-financing exceeding EUR 150 000.

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.

Article 153
Suspension in the event of errors or irregularities
(Article 103 of the General Financial Regulation)
Article 74 of Financial Regulation

1. Contracts shall be suspended under Article 103 of the General Financial Regulation in order to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible.
2. A substantial error or irregularity shall be any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the Foundation budget.

CHAPTER 2
PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY THE FOUNDATION ON ITS OWN ACCOUNT

Article 154
Identification of the appropriate level for the calculation of thresholds

(Article 104 of the General Financial Regulation)
Article 74 of Financial Regulation

It shall be for each authorising officer by delegation or subdelegation within the Foundation to assess whether the thresholds laid down in Article 105 of the General Financial Regulation have been reached.

Article 155
Separate contracts and contracts with lots
(Article 105 of the General Financial Regulation)
Article 74 of Financial Regulation

1. The estimated value of a contract may not be determined with a view to evading the requirements laid down in this Regulation, nor may a contract be split up for that purpose.
2. Where the subject of a service or works contract is subdivided into several lots, each one the subject of an individual contract, the value of each lot shall be taken into account for the overall evaluation of the applicable threshold.

Where the overall value of lots is equal to or exceeds the thresholds laid down in Article 158 the provisions of Articles 90(1) and 91(1) and (2) of the General Financial Regulation shall apply to each of the lots, save those with an estimated value of less than EUR 80 000 in the case of service contracts, or less than EUR 1.000.000 in the case of works contracts, provided that the aggregate amount of those lots does not exceed 20% of the aggregate value of all the lots making up the contract in question.

3. Where the planned purchase of standard supplies may give rise to simultaneous contracts in separate lots, the estimated value of all those lots shall be taken as the basis for determining the applicable threshold.

Article 156
Arrangements for estimating the value of certain contracts
(Article 105 of the General Financial Regulation)
Article 74 of Financial Regulation

1. For the purposes of calculating the estimated amount of a contract, the Foundation shall include the contractor's total estimated remuneration.

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

2. For service contracts, account shall be taken of:
 - (a) in the case of insurance services, the premium payable;
 - (b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;
 - (c) in the case of design contracts, the fees, prizes or commissions payable.
3. In the case of service contracts which do not specify a total price or of supply contracts for leasing, rental or hire purchase of products, the value to be taken as the basis for calculating the estimated value shall be:

- (a) in the case of fixed-term contracts:
 - (i) where their term is forty-eight months or less in the case of services or twelve months or less in the case of supplies, the total contract value for their duration;
 - (ii) where their term is more than twelve months in the case of supplies, the total value including the estimated residual value;
 - (b) in the case of contracts for an indefinite period or, in the case of services, for a period exceeding forty-eight months, the monthly value multiplied by forty-eight.
4. In the case of service or supply contracts which are awarded regularly or are to be renewed within a given time, the contract value shall be established on the basis of:
- (a) either the actual aggregate cost of similar contracts for the same categories of services or products awarded over the previous financial year or twelve months, adjusted, where possible, for anticipated changes in quantity or value over the twelve months following the initial contract;
 - (b) or the estimated aggregate cost of successive contracts during the twelve months following the first service performed or first delivery or during the term of the contract, where this is greater than twelve months.
5. In the case of works contracts, account shall be taken not only of the value of the works but also of the estimated total value of the supplies needed to carry out the works and made available to the contractor by the Foundation.

Article 157
Thresholds for pre-information notices
(Article 105 of the General Financial Regulation)
Article 74 of Financial Regulation

The thresholds provided for in Article 118 for publication of a pre-information notice shall be:

- (a) EUR 750.000 for the supply and service contracts listed in Annex IA to Directive 92/50/EEC;
- (c) EUR 6.242.028 for works contracts.

Article 158
Thresholds for application of the procedures under the public procurement directives
(Article 105 of the General Financial Regulation)
Article 74 of Financial Regulation

1. The thresholds referred to in Article 105 of the General Financial Regulation shall be:
- (a) EUR 162.293 for the supply and service contracts listed in Annex IA to Directive 92/50/EEC, with the exception of the research and development contracts listed in category 8 of that Annex;

- (b) EUR 200.000 for the service contracts listed in Annex IB to Directive 92/50/EEC and for the research and development service contracts listed in category 8 of Annex IA to that Regulation;
 - (c) EUR 6.242.028 for works contracts.
2. The time limits referred to in Article 105 of the General Financial Regulation shall be those specified in Articles 140, 141 and 142.

Article 159
Evidence of access to contracts
(Articles 106 and 107 of the General Financial Regulation)
Article 74 of Financial Regulation

The specifications shall require tenderers to indicate in which State they have their headquarters or domicile and to present the supporting evidence normally acceptable under their own law.

No Articles 160-184

TITLE VII
PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1
PRESENTATION OF THE ACCOUNTS

Article 185
Report on budgetary and financial management during the year
(Article 122 of the General Financial Regulation)
Article 76 of Financial Regulation

The report on budgetary and financial management during the year shall give an accurate description of:

- (a) the achievement of the objectives for the year, in accordance with the principle of sound financial management;
- (b) the financial situation and the events which have had a significant influence on activities during the year.

Article 186
Exception to the accounting principles
(Article 124 of the General Financial Regulation)
Article 78 of Financial Regulation

Where, in a specific case, the accounting officers consider that an exception should be made to the content of one of the accounting principles defined in Articles 187 to 1941, that exception shall be duly substantiated and reported in the annex to the financial statements referred to in Article 203.

Article 187
Going-concern principle
(Article 124 of the General Financial Regulation)
Article 78 of Financial Regulation

1. The going-concern principle means that for the purposes of preparing the financial statements, the Foundation is deemed to be established for an indefinite duration.
2. Where there are objective indications that the Foundation is to cease its activities, the accounting officer shall present that information in the annex, indicating the reasons. The accounting officer shall apply the accounting rules with a view to determining the liquidation value of the Foundation.

Article 188
Principle of prudence
(Article 124 of the General Financial Regulation)
Article 78 of Financial Regulation

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

Article 189
Principle of consistent accounting methods
(Article 124 of the General Financial Regulation)
Article 78 of Financial Regulation

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

Article 190
Principle of comparability of information
(Article 124 of the General Financial Regulation)
Article 78 of Financial Regulation

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

Where it is impossible to reclassify items, this shall be explained in the annex referred to in Article 203.

Article 191
Materiality principle
(Article 124 of the General Financial Regulation)
Article 78 of Financial Regulation

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

Article 192
No-netting principle
(Article 124 of the General Financial Regulation)
Article 78 of Financial Regulation

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

Article 193
Principle of reality over appearance
(Article 124 of the General Financial Regulation)
Article 78 of Financial Regulation

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

Article 194
Accrual-based accounting principle
(Article 125 of the General Financial Regulation)
Article 79 of Financial Regulation

1. The accrual-based accounting principle means that transactions and events shall be entered in the accounts when they occur and not when amounts are actually paid or recovered. They shall be booked to the financial years to which they relate.
2. The accounting methods provided for in Article 133 of the General Financial Regulation shall specify the obligating event for the entry of each transaction in the accounts.

Article 195
Valuation of assets and liabilities
(Article 125 of the General Financial Regulation)
Article 79 of Financial Regulation

1. Assets and liabilities shall be valued at purchase price or production cost. However, the value of non-financial fixed assets and formation expenses shall be written down for depreciation. In addition a write-down may be applied where the value of an asset decreases and an increase in the value of a liability may be covered by a provision.
2. The accounting rules and methods referred to in Article 133 of the General Financial Regulation may lay down that all items or only some of them are to be valued at a value other than their purchase price.

Article 196
Provisions
(Article 125 of the General Financial Regulation)
Article 79 of Financial Regulation

A provision shall be made only if the following conditions are satisfied:

- (a) a current obligation exists as a result of a past event;
- (b) resources representing economic benefits will probably have to be used to extinguish the obligation;
- (c) the amount of the obligation can be reliably estimated.

Article 197
Structure of the balance sheet
(Article 126 of the General Financial Regulation)
Article 80 of Financial Regulation

1. The balance sheet shall be made up of the various items classified by titles and sub-titles.
2. Assets items shall be classified by increasing degree of liquidity, and liability items by increasing degree of callability.

Article 198
Presentation of the balance sheet
(Article 126 of the General Financial Regulation)
Article 80 of Financial Regulation

For the presentation of the balance sheet, the accounting officer shall use at least the following headings:

Assets

Formation expenses

Intangible fixed assets

Tangible fixed assets

Financial fixed assets
Debtors: due in over one year
Stocks
Debtors: due in one year or less
Cash and cash equivalents

Prepayments and accrued income

Liabilities

Capital (made up of the economic result for the year, the result brought forward from earlier years and reserves)

Provisions

Creditors: due in over one year

Creditors: due in one year or less

Accruals and deferred income.

Article 199
Economic outturn account
(Article 126 of the General Financial Regulation)
Article 80 of Financial Regulation

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

Article 200
Presentation of the economic outturn account
(Article 126 of the General Financial Regulation)
Article 80 of Financial Regulation

For the presentation of the economic outturn account, the accounting officer shall apply the following minimum layout:

Operating income
- Operating charges
= Operating result
+/- Financial result
= Result from ordinary activities
+/- Exceptional result
= Result for the year

Article 201
Cash flow table
(Article 126 of the General Financial Regulation)
Article 80 of Financial Regulation

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

Article 202
Cash flow classification
(Article 126 of the General Financial Regulation)
Article 80 of Financial Regulation

1. The cash flow table shall show treasury movements broken down into operating flows, investment flows and financial flows.
2. The operating cash flow shall show treasury movements resulting from ordinary activities.
3. The investment cash flow shall show treasury movements resulting from the acquisition or sale of fixed assets.

Article 203
Annex to the financial statements
(Article 126 of the General Financial Regulation)
Article 80 of Financial Regulation

The annex referred to in Article 126 of the General Financial Regulation shall form an integral part of the financial statements. It shall contain at least the following information:

- (a) accounting principles, rules and methods;
- (b) explanatory notes, supplying additional information not contained in the body of the financial statements which is necessary for an accurate picture;
- (c) off-balance-sheet commitments showing entitlements and obligations not included in the balance sheet which could have a material impact on the assets and liabilities, the financial situation or the result of the entity concerned.

Article 204
Explanatory notes
(Article 126 of the General Financial Regulation)
Article 80 of Financial Regulation

The explanatory notes shall be presented with cross-references to the items in the financial statements to which they relate and in the same order of presentation.

Article 205
Budgetary outturn account
(Article 127 of the General Financial Regulation)
Article 81 of Financial Regulation

1. The budgetary outturn account shall contain:
 - (a) information on revenue comprising:
 - (i) changes in the revenue estimates in the budget;
 - (ii) the revenue outturn;
 - (iii) entitlements established;
 - (b) information showing changes in the total commitment and payment appropriations available;
 - (c) information showing the use made of the total commitment and payment appropriations available;
 - (d) information showing commitments outstanding, those carried over from the previous year and those made during the year.

3. As regards information on revenue, a statement shall also be attached showing, for each Member State, the breakdown of amounts of own resources still to be recovered at the end of the financial year and covered by a recovery order.

Article 206
Annex to the budgetary outturn account
(Article 127 of the General Financial Regulation)
Article 81 of Financial Regulation

The annex to the budgetary outturn account referred to in Article 127 of the General Financial Regulation shall contain at least:

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

CHAPTER 2
(CHAPTER 3 OF THE GENERAL FINANCIAL REGULATION)
ACCOUNTING

SECTION 1
ORGANISATION OF THE ACCOUNTS

Article 207
Organisation of the accounts
(Article 132 of the General Financial Regulation)
Article 84 of Financial Regulation

1. The accounting officer of the Foundation and body referred to in Article 185 of the General Financial Regulation shall draw up and keep updated documents describing the organisation of the accounts and accounting procedures of the Foundation.
2. In drawing up the financial statements, as little use as possible shall be made of information from outside the accounts.
3. Budget revenue and expenditure shall be recorded in the computerised system referred to in Article 208, according to the economic nature of the operation, as current revenue or expenditure or as capital.

Article 208
Computerised systems
(Article 132 of the General Financial Regulation)
Article 84 of Financial Regulation

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

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

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

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

SECTION 2
ACCOUNTING LEDGERS

Article 209
Accounting ledgers
(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

1. The Foundation shall keep a journal, a general ledger and an inventory.
2. The accounting ledgers shall consist of electronic documents which are identified by the accounting officer and offer full guarantees for use as evidence.
3. Entries in the journal shall be transferred to the general ledger, itemised according to the chart of accounts referred to in Article 212.
4. The journal and the general ledger may be split into as many special journals and special ledgers as are necessary to meet requirements.
5. Entries recorded in special journals and special ledgers shall be centralised at least every month in the journal and in the general ledger.

Article 210
Trial balance
(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

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

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

Article 211
Inventory
(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

1. The inventory is a statement of all assets and liabilities and commitments of all kinds, indicating for each item the quantity and value on the inventory date.
2. The data in the inventory shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.
3. As regards the inventory of fixed assets, the provisions of Articles 220 to 227 shall apply.

SECTION 3
CHART OF ACCOUNTS

Article 212
Chart of accounts
(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

1. The chart of accounts shall be adopted by the Commission's accounting officer.
2. The chart of accounts shall divide the accounts into classes.

Each class may be subdivided into groups or subgroups, as required.
3. The chart of accounts must contain at least the following classes:
 - (a) for the balance-sheet accounts:
 - (i) class 1: accounts for capital, provisions and creditors due in over one year;
 - (ii) class 2: accounts for formation expenses, fixed assets and debtors due in over one year;
 - (iii) class 3: stock accounts;
 - (iv) class 4: accounts for debtors and creditors due in one year or less;
 - (v) class 5: financial accounts;
 - (b) for the revenue and expenditure accounts:
 - (i) class 6: charges accounts;
 - (ii) class 7: income accounts;
 - (c) for the special accounts:

classes 8 and 9: special accounts;
 - (d) for off-balance-sheet transactions:

class 0: off-balance-sheet transactions.
4. The contents of each account and class and its operation shall be laid down in the chart of accounts.

SECTION 4
REGISTRATION

Article 213
Entries in the accounts

(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

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

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

That revaluation shall be based on the rates laid down in accordance with Article 8.

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-1.

Article 214
Accounting records
(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

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

Article 215
Supporting documents
(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

1. Each entry shall be based on a dated and numbered supporting document, produced on paper or on a medium which guarantees the reliability and safeguarding of its content for the periods laid down in Article 49.
2. Operations of the same type, carried out in the same place and on the same day may be summarised in a single supporting document.

Article 216
Recording in the journal
(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

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

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

Article 217
Validation of entries
(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

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

SECTION 5
RECONCILIATION AND VERIFICATION

Article 218
Reconciliation of accounts
(Article 135 of the General Financial Regulation)
Article 87 of Financial Regulation

1. The balance of accounts in the trial balance shall be reconciled periodically, and at least at the annual closure, with the data from the management systems used by authorising officers for the management of assets and liabilities and for the daily input into the accounting system.
2. Periodically, and at least whenever the accounts are closed, the accounting officer shall check that the data in the inventory ledger referred to in Article 209 correspond to the actual situation, in particular as regards:

- (a) cash at bank, by reconciliation of the statements of account from financial institutions;
- (b) cash in cash offices, by reconciliation with the data in the cash book.

The fixed assets accounts shall be reviewed in accordance with Article 224.

3. The interinstitutional liaison accounts shall be reconciled and cleared monthly.
4. The suspense accounts shall be reviewed annually by the accounting officer so that they can be cleared as soon as possible.

SECTION 6
BUDGET ACCOUNTS

Article 219
Content and keeping of budget accounts
Article 89 of the Financial Regulation

1. The budget accounts shall show, for each subdivision of the budget:
 - (a) in the case of expenditure:
 - (i) the appropriations authorised in the initial budget, the appropriations entered in amending budgets, the appropriations carried over, the appropriations available

following collection of assigned revenue, transfers of appropriations and the total appropriations thus available;

- (ii) the commitments and payments in respect of the financial year;
- (b) in the case of revenue:
 - (i) the estimates entered in the initial budget, the estimates entered in amending budgets, assigned revenue and the total amount of estimates thus determined;
 - (ii) the entitlements established and the amounts recovered in respect of the financial year in question;
- (c) the commitments still to be paid and revenue still to be recovered carried forward from previous financial years.

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

The global provisional commitments relating to the EAGGF Guarantee Section and the corresponding payments shall also be recorded in the budget accounts.

Those commitments shall be presented in respect of total EAGGF Guarantee Section appropriations.

2. The budget accounts shall show separately:

- (a) the use of appropriations carried over and the appropriations for the year;
- (b) the clearance of outstanding commitments.

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

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

CHAPTER 3
(CHAPTER 4 OF THE GENERAL FINANCIAL REGULATION)
PROPERTY INVENTORIES

Article 220
Property inventories
(Article 138 of the General Financial Regulation)
Article 90 of Financial Regulation

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

Article 221
Safeguarding property

(Article 138 of the General Financial Regulation)
Article 90 of Financial Regulation

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

Article 222
Entry of items in the inventory
(Article 138 of the General Financial Regulation)
Article 90 of Financial Regulation

All items acquired whose purchase price or production cost is EUR 420 or more, with a period of use greater than one year, and which are not consumables shall be entered in the inventory and recorded in the fixed assets accounts.

Article 223
Content of the inventory for each item
(Article 138 of the General Financial Regulation)
Article 90 of Financial Regulation

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

Article 224
Inventory checks
(Article 138 of the General Financial Regulation)
Article 90 of Financial Regulation

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

Article 225
Resale of property
(Article 138 of the General Financial Regulation)
Article 90 of Financial Regulation

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

Article 226
Procedure for sale of fixed assets
(Article 138 of the General Financial Regulation)
Article 90 of Financial Regulation

1. Sales of fixed assets shall be advertised locally in appropriate fashion, if the unit purchase value is EUR 8 100 or more. The period between publication of the last announcement and conclusion of the sales contract shall be no less than fourteen calendar days.

Those sales shall be the subject of a notice of sale published in the *Official Journal of the European Communities*, if the unit purchase value is EUR 391 100 or more. Appropriate advertising may also be placed in the Member States' press. The period between the date of publication of the notice in the *Official Journal of the European Communities* and conclusion of the sales contract shall be no less than one month.

2. The Foundation may forgo advertising where the cost of advertising exceeds the expected return from the operation.
3. The Foundation shall always endeavour to obtain the best price for sales of fixed assets.

Article 227
Procedure for disposing of fixed assets
(Article 138 of the General Financial Regulation)
Article 90 of Financial Regulation

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

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

Where immovable property or major installations are made available free of charge, a contract must be drawn up and the case notified in an annual report sent to the European Parliament and the Council when the preliminary draft budget is presented.

No Articles 228-238

**PART TWO
SPECIAL PROVISIONS**

**TITLE III
(TITLE IV OF THE GENERAL FINANCIAL REGULATION)
EXTERNAL ACTIONS**

**CHAPTER 3
PROCUREMENT**

*Article 239
Advertising and non-discrimination
(Articles 167 and 168 of the General Financial Regulation)
Article 74 of Financial Regulation*

The Foundation shall take the necessary implementing measures to guarantee as wide a participation as possible, on equal terms, in competitive tendering for the award of contracts financed by the Community. To that end, care shall be taken in particular to:

- (a) ensure adequate advance publication, in reasonable time, of the pre-information notices, contract notices and award notices;
- (b) eliminate any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons referred to in Article 168 of the General Financial Regulation.

*Article 240
Advertising
(Article 167 of the General Financial Regulation)
Article 74 of Financial Regulation*

- 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, and in any event before 31 March each year for supply and service contracts and as quickly as possible after the decision authorising the programme for works contracts.
- 2. For the purposes of this Chapter, the contract notice shall be published:
 - (a) at least in the *Official Journal of the European Communities* and on the Internet for international calls for tender;
 - (b) at least in the official gazette of the recipient State or in any equivalent publication for local invitations to tender.

Where the contract notice is also published locally, it must be identical to the one published in the *Official Journal of the European Communities* and on the Internet and it must be published simultaneously. The Commission shall be responsible for publication in the

Official Journal of the European Communities and on the Internet. If the notice is published locally, this may be done by the beneficiary.

3. The award notice shall be sent when the contract is signed.

Article 241
Thresholds and procedures for awarding service contracts
(Article 167 of the General Financial Regulation)
Article 74 of Financial Regulation

1. The thresholds and procedures referred to in Article 167 of the General Financial Regulation shall be as follows for service contracts:
 - (a) for contracts with a value of EUR 200 000 or more: an international restricted invitation to tender within the meaning of point (b) of Article 122(2) and point (a) of Article 240(2);
 - (b) for contracts with a value of less than EUR 200,000: competitive negotiated procedure within the meaning of paragraph 3, provided that the use of an existing framework contract is impossible or has been unsuccessful.

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

2. In the international restricted procedure referred to in point (a) of paragraph 1, the contract notice shall state the number of candidates who will be invited to submit tenders. For service contracts the number of tenderers shall be within a range of four to eight. The number of candidates allowed to submit tenders must be sufficient to ensure genuine competition.

The list of selected candidates shall be published on the Foundation's Internet site.

3. Under the negotiated procedure referred to in point (b) of paragraph 1, the Foundation 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 a selection board with the necessary technical and administrative expertise. The members of the selection board must sign a declaration of impartiality.

If the Foundation does not receive at least three valid tenders, the procedure must be cancelled and started again.

4. The bids shall be sent in a package or outer envelope containing two separate sealed envelopes, one bearing the words "Envelope A - Technical bid" and the other the words "Envelope B - Financial bid". The outer envelope shall bear:
 - (a) the address indicated in the tender documents for the submission of tenders;
 - (b) the reference to the call for tenders to which the tenderer is responding;
 - (c) where appropriate, the numbers of the lots for which a tender is being submitted;
 - (d) the phrase "Not to be opened before the tender-opening session", in the language of the tender documents.

If interviews were envisaged in the tender documents, the selection board may interview the principal members of the team of experts proposed in the technically acceptable bids, after establishing its written provisional conclusions and before definitively concluding the evaluation of the technical bids. In such cases the experts shall be interviewed by the selection board, preferably collectively if they form a team, and at intervals close enough to allow comparisons to be made. Interviews shall be conducted in accordance with a standard model agreed in advance by the selection board and applied to all the experts or teams called for interview. The date and time of the interview must be communicated to the tenderers at least ten calendar days in advance. In cases of *force majeure*, preventing the tenderer from attending the interview, a new date and time must be sent to the tenderer.

5. The contract award criteria shall serve to identify the tender offering best value for money.

The tender offering best value for money shall be selected using an 80/20 weighting distribution between technical quality and price. For that purpose:

- (a) the score awarded to the technical bids shall be multiplied by 0.80;
- (b) the score awarded to the price bids shall be multiplied by 0.20.

Article 242
Use of the negotiated procedure for service contracts
(Article 167 of the General Financial Regulation)
Article 74 of Financial Regulation

1. For service contracts, the Foundation may use the negotiated procedure with a single tender, after the Commission has given its agreement if it is not the contracting authority, in the following cases:
 - (a) where, for reasons of extreme urgency brought about by events which the Foundation could not have foreseen and which can in no way be attributed to it, the time limit for the procedures referred to in points (a), (b) and (c) of Article 91(1) of the General Financial Regulation cannot be kept;
 - (b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
 - (c) for services which are an extension of services already started, subject to the conditions laid down in paragraph 2;
 - (d) where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the Foundation 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;
 - (e) where the contract concerned follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates, in which case, all successful candidates shall be invited to participate in the negotiations;
 - (f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider.

For the purposes of point (a) of the first subparagraph, operations carried out in crisis situations as referred to in Article 168(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

2. Services which are an extension of services already started, as referred to in point (c) of paragraph 1, are as follows:
 - (a) additional services not covered by the principal contract but which, as a result of unforeseen circumstances, have become necessary for the performance of the contract, provided that the additional service cannot be technically and economically separated from the principal contract without serious inconvenience for the Foundation and the aggregate amount of additional services does not exceed 50% of the value of the principal contract;
 - (b) additional services consisting in the repetition of similar services entrusted to the contractor providing services under a first contract, provided that a contract notice was published for the supply of 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.

A single extension of the contract shall be possible for a value and duration equal to no more than the value and the duration of the initial contract.

Article 243
Thresholds and procedures for awarding supply contracts
(Article 167 of the General Financial Regulation)
Article 74 of Financial Regulation

1. The thresholds and procedures referred to in Article 167 of the General Financial Regulation shall be as follows for supply contracts:
 - (a) for contracts with a value of EUR 150 000 or more: an international open invitation to tender within the meaning of point (a) 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 point (a) of Article 122(2) and point (b) of Article 240(2);
 - (c) for contracts with a value of less than EUR 30 000: competitive negotiated procedure within the meaning of paragraph 2.

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

2. Under the negotiated procedure referred to in point (c) of paragraph 1, the Foundation 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 a selection board with the necessary technical and administrative expertise. The members of the selection board must sign a declaration of impartiality.

If the Foundation does not receive at least three valid tenders, the procedure must be cancelled and started again.

3. Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:
 - (a) the address indicated in the tender documents for the submission of tenders;
 - (b) the reference to the call for tenders to which the tenderer is responding;
 - (c) where appropriate, the numbers of the lots for which a tender is being submitted;
 - (d) the phrase "Not to be opened before the tender-opening session", in the language of the tender documents.

At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the Foundation considers appropriate must be announced.

4. In the case of a supply contract not involving after-sales service, the sole award criterion shall be price.

Where proposals for after-sales service or for training are particularly significant, the tender offering best value for money shall be chosen, with due account for the technical quality of the service offered and the price quoted.

Article 244

Use of the negotiated procedure for supply contracts (Article 167 of the General Financial Regulation)

Article 74 of Financial Regulation

1. Supply contracts may be awarded by negotiated procedure with a single tender, after the Commission has given its agreement if it is not the Foundation, in the following cases:
 - (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time-limit for the procedures referred to in points (a), (b) and (c) of Article 91(1) of the General Financial Regulation cannot be kept;
 - (b) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;
 - (c) for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the Foundation to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
 - (d) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Foundation 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.

2. For the purposes of point (a) of paragraph 1, operations carried out in crisis situations as referred to in Article 168(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

Article 245
Thresholds and procedures for awarding works contracts
(Article 167 of the General Financial Regulation)
Article 74 of Financial Regulation

1. The thresholds and procedures referred to in Article 167 of the General Financial Regulation shall be as follows for works contracts:
 - (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 point (a) 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 Commission, an international restricted invitation to tender within the meaning of point (b) 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 point (b) of Article 122(2) and point (a) of Article 240(2);
 - (c) for contracts with a value of less than EUR 300 000: a competitive negotiated procedure within the meaning of paragraph 2;

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

2. Under the negotiated procedure referred to in point (c) of paragraph 1, the Foundation shall draw up a list of at least three contractors of its choice. The procedure shall involve 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 a selection board with the necessary technical and administrative expertise. The members of the selection board must sign a declaration of impartiality.

If the Foundation does not receive at least three valid tenders, the procedure must be cancelled and started again.

3. The selection criteria shall cover the capacity of the tenderer to carry out similar contracts, in particular by reference to works carried out in recent years. With selection being made in this way and since inadmissible tenders have already been eliminated, the only award criterion shall be the price.
4. Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:
 - (a) the address indicated in the tender documents for the submission of tenders;

- (b) the reference to the call for tenders to which the tenderer is responding;
- (c) where appropriate, the numbers of the lots for which a tender is being submitted;
- (d) the phrase "Not to be opened before the tender-opening session", in the language of the tender documents.

At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the Foundation thinks appropriate must be announced.

Article 246
Use of the negotiated procedure for works contracts
(Article 167 of the General Financial Regulation)
Article 74 of Financial Regulation

1. Works contracts may be awarded by negotiated procedure with a single tender, after the Commission has given its agreement if it is not the contracting authority, in the following cases:
 - (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time-limit for the procedures referred to in points (a), (b) and (c) of Article 91(1) of the General Financial Regulation cannot be kept.
 - (b) for additional works not included in the initial contract concluded but which have, through unforeseen circumstances, become necessary for carrying out the work described therein, subject to the conditions laid down in paragraph 2;
 - (c) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the Foundation 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.

For the purposes of point (a) of the first subparagraph, operations carried out in crisis situations as referred to in Article 168(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

2. The additional works referred to in point (b) of paragraph 1 shall be awarded to the contractor already carrying out the work:
 - (a) where such works cannot be technically or economically separated from the main contract without serious inconvenience for the Foundation;
 - (b) where such works, although separable from the performance of the original contract, are strictly necessary for its completion;
 - (c) where the aggregate value of contracts awarded for additional works does not exceed 50% of the value of the principal contract.

No Articles 247-248

Article 249

Tender documents

(Article 167 of the General Financial Regulation)

74 of Financial Regulation

1. The tender documents referred to in Article 130 shall be drawn up on the basis of best international practices and in accordance with the provisions of this Chapter regarding advertising and contacts between the Foundation and tenderers.
2. For service contracts, the tender file must contain the following documents:
 - (a) instructions to tenderers, which must include:
 - (i) the type of contract;
 - (ii) the award criteria and their weightings;
 - (iii) the possibility of interviews and the timetable for them;
 - (iv) whether variants are permitted;
 - (v) the proportion of sub-contracting which may be authorised;
 - (vi) the maximum budget available for the contract;
 - (vii) the currency of tenders;
 - (b) shortlist of candidates selected (mentioning the ban on association);
 - (c) general conditions for service contracts;
 - (d) specific conditions which amplify, supplement or derogate from the general conditions;
 - (e) terms of reference indicating the planned timetable for the project and dates from which it is planned that the principal experts must be available;
 - (f) price schedule (for completion by the tenderer);
 - (g) tender form;
 - (h) contract form;
 - (i) bank (or similar) guarantee forms for the payment of pre-financing.
3. For supply contracts, the tender file must contain the following documents:
 - (a) instructions to tenderers, which must include:
 - (i) the selection and award criteria;
 - (ii) whether variants are authorised;
 - (iii) the currency of tenders;

- (b) general conditions for supply contracts;
- (c) specific conditions which amplify, supplement or derogate from the general conditions;
- (d) technical annex containing any plans, technical specifications and the planned timetable for performance of the contract;
- (e) price schedule (for completion by the tenderer);
- (f) tender form;
- (g) contract form;
- (h) bank (or similar) guarantee forms for:
 - (i) the tender;
 - (ii) payment of advances, and
 - (iii) proper performance.

4. For works contracts, the tender file must contain the following documents:

- (a) instructions to tenderers, which must include:
 - (i) the selection and award criteria;
 - (ii) whether variants are authorised; and
 - (iii) the currency of tenders;
- (b) general conditions for works contracts;
- (c) specific conditions which amplify, supplement or derogate from the general conditions;
- (d) technical annexes containing plans, technical specifications and the planned timetable for performance of the contract;
- (e) price schedule (for completion by the tenderer) and the breakdown of prices;
- (f) tender form;
- (g) contract form;
- (h) bank (or similar) guarantee forms for:
 - (i) the tender;
 - (ii) payment of advances;
 - (iii) proper performance.

4. In the event of contradiction, the specific conditions referred to in point (d) of paragraph 2, point (c) of paragraph 3 and point (c) of paragraph 4 shall override the general conditions.

Article 250
Guarantees
(Articles 102 and 167 of the General Financial Regulation)
74 of Financial Regulation

1. By way of derogation from Article 150, advance guarantees shall be denominated in euro or in the currency of the contract they cover.
2. The Foundation may demand a tender guarantee, within the meaning of this Chapter, representing 1% to 2% of the overall value of the contract for supply and works contracts; it shall comply with the provisions of Article 150. It shall be released when the contract is awarded. It shall be retained if a tender submitted by the final date for submission is subsequently withdrawn.
3. A guarantee shall be required in return for the payment of pre-financing exceeding EUR 150 000. It 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 shall be provided by the tenderer upon signing contracts for supplies and works for an amount set in the tender file and corresponding at the most to 10% of the total value of the contract. This 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.

Article 251
Time-limits for procedures
(Article 167 of the General Financial Regulation)
74 of Financial Regulation

1. Tenders must reach the Foundation at the address and by no later than the date and time shown in the invitation to tender. The time-limit for receipt of tenders and requests to participate, laid down by the contracting authorities, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.

For service contracts, the minimum time between the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders shall be fifty days. However, in urgent cases and with the prior authorisation of the Commission, other time limits may be authorised.

2. Tenderers may put questions in writing no later than twenty-one days before the closing date for receipt of tenders. The Foundation shall provide the answers to the questions no later than eleven days before the closing date for submission of tenders.

3. In international restricted procedures, the time limit for receipt of tenders shall be no less than thirty days from the date on which the contract notice is published. The period between the date on which the letter of invitation is sent and the final date for the receipt of tenders shall be no less than fifty days. However, in certain exceptional cases and with the prior authorisation of the Commission, other time limits may be authorised.
4. In international open procedures, the time limits for receipt of tenders, running from the date on which the contract notice is sent, shall be at least:
 - (a) ninety days for works contracts,
 - (b) sixty days for supply contracts.

However, in certain exceptional cases and with the prior authorisation of the Commission, other time limits may be authorised.

5. In local open procedures, the time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least:
 - (a) sixty days for works contracts;
 - (b) thirty days for supply contracts.

However, in certain exceptional cases and with the prior authorisation of the Commission, other time limits may be authorised.

6. For the competitive negotiated procedures referred to in point (b) of Article 241(1), point (c) of Article 243(1) and point (c) of Article 245(1), candidates shall be allowed at least thirty days from the date of dispatch of the letter of invitation to tender in which to submit their tenders.
7. For service contracts, the period of validity of the tenders shall be ninety calendar days from the final date for submission of tenders. In exceptional cases, before the period of validity expires, the Foundation may ask the tenderers to extend the period for a specific number of days up to no more than forty calendar days. The tenderer whose tender is selected must maintain the validity of the tender for a further sixty calendar days from the date of notification of the award of the contract.
8. For supply contracts, the period of validity of the tenders shall be ninety calendar days from the final date for submission of tenders. In exceptional cases, before the period of validity expires, the Foundation may ask the tenderers to extend the period for a specific number of days up to no more than forty calendar days. The tenderer whose tender is selected must maintain the validity of the tender for a further sixty calendar days from the date of notification of the award of the contract.
9. For works contracts, the period of validity of the tenders shall be ninety calendar days from the final date for submission of tenders. In exceptional cases, before the period of validity expires, the Foundation may ask the tenderers to extend the period for a specific number of days up to no more than forty calendar days. The tenderer whose tender is selected must maintain the validity of the tender for a further sixty calendar days from the date of notification of the award of the contract.
10. The time limits specified in paragraphs 1 to 9 are expressed in calendar days.

Article 252
Evaluation committee
(Article 167 of the General Financial Regulation)
74 of Financial Regulation

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance. This committee shall have an odd number of members, at least three, with all the necessary technical and administrative expertise to assess the tenders.
2. If the Commission is not the Foundation, it must be kept systematically informed. It shall always be invited as an observer to the opening and assessment of tenders and shall receive a copy of each of them. The Foundation shall send to the Commission, for its agreement, the results of evaluation of the tenders and a proposal for the award of the contract. Once it has received this agreement, it shall sign the contracts and send them to the Commission.
3. Tenders which do not contain all the essential items demanded in the tender documents or which do not correspond to the specific requirements laid down shall be eliminated.
4. In the case of abnormally low tenders as referred to in Article 139, the committee shall ask for the necessary clarifications concerning the composition of the tender.

No Articles 253-271

**PART THREE
TRANSITIONAL AND FINAL PROVISIONS**

**TITLE II
FINAL PROVISIONS**

*Article 272
Repeal*

The implementing rules for the Financial Regulation of the European Foundation for the Improvement of Living and Working Conditions are repealed.

*Article 273
Entry into force*

These rules shall enter into force on the day following their adoption.

Done at Dublin 28 March 2003

For the Administrative Board

M. Valkonen

Chairperson