

## ***European Aviation Safety Agency***

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### **DECISION OF THE MANAGEMENT BOARD<sup>1</sup> AMENDING THE AGENCY'S FINANCIAL REGULATION**

The Management Board,

Having regard to the Regulation (EC) 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC thereof, hereinafter called Basic Regulation,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, hereinafter called "General Financial Regulation", and in particular Article 185(1) thereof,<sup>2</sup>

Having regard to the Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 amending Regulation (EC, Euratom) No 2343/2002 on the Framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002; hereinafter called the "Framework Financial Regulation" and in particular Article 2 thereof,

Having regard to the Commission Regulation (EC) No 593/2007 of 31 May 2007 on the fees and charges levied by the European Aviation Safety Agency<sup>3</sup>, hereinafter called the "Fees and Charges Regulation", and in particular Article 3 thereof,

Having regard to the Opinion of the Commission of the European Communities,

Whereas:

- (1) The European Aviation Safety Agency, hereinafter referred to as "the Agency", has legal personality and hence its own budget covered by specific financial rules,
- (2) The Management Board of the Agency has accordingly adopted the Agency's own Financial Regulation which is based on the Framework Financial Regulation, and its financial Implementing Rules,
- (3) The Basic Regulation (EC) 216/2008 lays down the sources of revenue of the Agency, including fees and charges levied by the Agency,

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<sup>1</sup> Adopted at MB 02/2009 of 09.06.2009

<sup>2</sup> OJ L 248, 16.9.2002, p. 1

<sup>3</sup> OJ L 140, 1.6.2007, p. 3

- (4) According to Article 3 of the Fees and Charges Regulation the fees constitute assigned revenue in accordance with the Article 64.5 of the Basic Regulation,
- (5) A new Framework Financial Regulation was adopted on 9 July 2008<sup>4</sup>,
- (6) The Agency's Financial Regulation has to be amended accordingly, before the deadline set for in Article 2 of the Regulation (EC) 652/2008,

HAS ADOPTED THIS DECISION:

## ***Article 1***

1. Article 2 of the Financial Regulation of the European Aviation Safety Agency, is replaced by the following:

### 'Article 2

For the purposes of this Regulation:

1. "Basic Regulation" shall mean the Regulation (EC) 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC.
2. "The Agency" shall mean the European Aviation Safety Agency as established by Regulation (EC) 1592/2002, replaced by Regulation (EC) 216/2008.
3. "Budget" shall mean the budget of the Agency
4. "Associated country" is a European third country that has concluded an agreement with the Community in accordance with article 66 of the Basic Regulation.
5. "Budgetary Authority" shall mean the European Parliament and the Council of the European Union.
6. "Fees and charges" shall mean the fees paid by applicants for, and holders of, certificates and approvals issued by the Agency and charges for publications, training and other services provided by the Agency, as defined in articles 64 and 59 of the Basic Regulation.
7. "Staff Regulations" shall mean the Staff Regulations of officials of the European Communities and the Conditions of

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<sup>4</sup> OJ L 181/23, 10.07.2008

employment of other servants of the European Communities as applied to the staff of the Agency as stated in Article 29 of the Basic Regulation.

8. "Framework Financial Regulation" shall mean Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 amending Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities
9. "General Financial Regulation" shall mean the Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.
10. "General Implementing Rules" shall mean the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.
11. "Community body" shall mean any body referred to in Article 185(1) of the General Financial Regulation. '

2. Article 3 is replaced by the following:

'Article 3

The establishment and implementation of the budget shall comply with the principles of unity and budget accuracy, annuality, equilibrium, unit of account, universality, specification, and sound financial management, which requires effective and efficient internal control and transparency as provided for in this Regulation.'

3. Article 5 is replaced by the following:

'Article 5

1. The revenues of the Agency that shall consist of:
  - (a) a contribution from the Community;
  - (b) a contribution from any associated country;
  - (c) the fees paid by applicants for, and holders of, certificates and approvals issued by the Agency;
  - (d) charges for publications, training and any other services provided by the Agency;
  - (e) any voluntary financial contribution from Member States, third countries or other entities, provided such a

contribution does not compromise the independence and impartiality of the Agency; and

- (f) revenue assigned to specific items of expenditure in accordance with Article 19(1),
2. The expenditure of the Agency, including administrative expenditure.'
4. In Article 8, paragraph 1 is replaced by the following:
    - '1. The budget shall contain non-differentiated appropriations and, where justified by operational needs, differentiated appropriations. The latter shall consist of commitment appropriations and payment appropriations.'
  5. Article 10, is amended as follows:
    - (a) Paragraph 3 is replaced by the following:
      - '3. Commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure, as defined in the rules implementing this financial regulation, have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.'
    - (b) In paragraph 4, the first sentence is replaced by the following:

'Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements'.
    - (c) Paragraph 7 is replaced by the following:
      - '7. The appropriations available at 31 December arising from the assigned revenue referred to in Article 19 shall be carried over automatically. By 1 June of year N+1 at the latest, the Agency shall inform the Commission about the implementation of the assigned revenue carried over.  
  
The appropriations available corresponding to assigned revenue carried over must be used first.'

6. Article 13 is replaced by the following:

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

7. Article 15 is amended as follows:

- (a) In paragraph 4, the first word 'The' is deleted and the word 'subsidy' is replaced by 'funds' as follows:

- '4. Community funds paid to the Agency shall constitute for its budget a balancing subsidy which shall count as pre-financing within the meaning of Article 81(1)(b)(i) of the general Financial Regulation.'

- (b) Paragraph 5 is inserted as follows:

- '5. The Agency shall implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests, it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue.'

8. In Article 16(1), the following subparagraph is added:

'The Agency shall provide, by 31 March of the year N at the latest, an estimate of the operating surplus from the year N-1, which is to be returned to the Community budget later in year N, in order to complete the information already available concerning the surplus of the year N-2. This information shall be duly taken into account by the Commission when assessing the financial needs of the Agency for the year N+1;'

9. In Article 19:

11.1 in paragraph 1 point (c) is replaced by the following:

'(c) revenue from third parties in respect of goods, services or work supplied at their request with the exception of fees and charges referred to in Article 5.1 (c);'

11.2 paragraph 1a. is replaced by the following:

'1a. Fees and charges shall be assigned revenues for the Agency, pursuant to article 64 of the Basic Regulation.'

11.3 paragraph 2 is replaced by the following:

'All items of revenue within the meaning of points (a) to d) of paragraph 1 shall cover all direct or indirect expenditure incurred by the activity or purpose in question'

11.4 paragraph 3 is replaced by the following:

'The budget shall carry lines to accommodate the categories of assigned revenue referred to in paragraphs 1 and 1a and wherever possible shall indicate the amount.'

10. Article 21(1) is replaced by the following:

'1. 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 procurement contracts or beneficiaries of a grant;
- b) discounts, refunds and rebates on individual invoices and payment requests;
- c) interest generated by pre-financing payments.'

11. Article 23 is replaced by the following:

'1. The Executive Director may make transfers from one chapter to another and from one article to another without limit and from one title to another up to a maximum of 10 % of the appropriations for the financial year shown on the line from which the transfer is made.

2. Beyond the limit referred to in the first paragraph, the Executive Director may propose to the Management Board transfers of appropriations from one title to another. The Management Board shall have three weeks in which to oppose such transfers. After this time-limit they shall be deemed to be adopted.

3. Proposals for transfers and transfers carried out under paragraphs 1 and 2 shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the headings to be credited and for those from which the appropriations are drawn.
4. The Executive Director shall inform the Management Board as soon as possible of all transfers made. He shall inform the budgetary authority of all transfers carried out under paragraph 2.'

12. In Title II, Chapter 7, the following Article 25a is inserted:

*'Article 25a*

1. The budget shall be implemented in compliance with effective and efficient internal control.
2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance of achieving the following objectives:
  - (a) effectiveness, efficiency and economy of operations;
  - (b) reliability of reporting;
  - (c) safeguarding of assets and information;
  - (d) prevention and detection of fraud and irregularities;
  - (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.'

13. Article 26 is replaced as follows:

- '1. The budget shall be drawn up and implemented and the accounts presented in compliance with the principle of transparency.
2. A summary of the budget and amending budgets, as finally adopted, shall be published in the Official Journal of the European Union within three months of their adoption.

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

3. The budget including the establishment plan and amending budgets, as finally adopted, as well as an indication of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission, and shall be published on the Internet site of the Agency concerned within four weeks of their adoption.
4. The Agency shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, including experts contracted pursuant to Article 74b. The published information shall be easily accessible, transparent and comprehensive. The information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council.\*

Where information is published only in anonymous form, the Agency shall, upon request, provide information on the beneficiaries concerned to the European Parliament in an appropriate manner.

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(\* ) OJ L 8, 12.1.2001, p.1.'

14. Article 27 is replaced by the following:

- '1. The budget shall be established in accordance with the provisions of the Basic Regulation,
2. The Agency shall send the Commission a provisional draft estimate of its revenue and expenditure and the general guidelines underlying that estimate by 10 February each year and the final draft estimate by the date specified in Article 59.6 of the Basic Regulation.
3. The estimate of revenue and expenditure shall include:
  - (a) an establishment plan setting the number of permanent and temporary posts authorised within the limits of the budget appropriations, by grade and by category;
  - (b) where there is a change in the number of persons in post, a statement justifying the request for new posts;
  - (c) a quarterly estimate of cash payments and receipts;
  - (d) information on the achievement of all previously set objectives for the various activities as well as new objectives measured by indicators;

Evaluation results shall be consulted and referred to as evidence of the likely merits of an increase or decrease of the Agency's proposed budget in comparison with its budget for year N.

4. The Agency shall send to the Commission and the budgetary authority by 31 March each year at the latest the following:
  - (a) its draft work programme;
  - (b) its updated multi-annual staff policy plan, established in line with the guidelines set by the Commission;
  - (c) information on the number of officials, temporary and contract staff as defined in the Staff Regulations for the years n-1 and n as well as an estimate for the year N+1;
  - (d) information on contributions in kind granted by the host Member State to the Agency.
  - (e) an estimate of the balance of the outturn account within the meaning of Article 81 for the year N-1.
5. As part of the procedure for adoption of the general budget, the Commission shall send the Agency's statement of estimates to the budgetary authority and propose the amount of the subsidy for the Agency and the number of staff it considers that the Agency needs. The Commission shall provide the draft establishment plan of the Agency and for an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are proposed.
6. The budgetary authority shall adopt the establishment plan of the Agency and any subsequent amendment thereto made in accordance with Article 32(1). The establishment plan shall be published in an annex to Section III – Commission – of the general budget.
7. The budget and the establishment plan shall be adopted by the Management Board. They become definitive after final adoption of the general budget setting the amount of the subsidy and the establishment plan and if necessary the budget and the establishment plan shall be adjusted accordingly.'
15. In Article 28, the words 'constituent' and 'instrument' have been replaced by 'Basic Regulation' as follows:

'Any amendment to the budget, including the establishment plan, shall be the subject of an amending budget adopted by the same procedure as the initial budget, in accordance with the provisions of the Basic Regulation and Article 27.'
16. In Article 31 point (b), the letter in 'n-2' is replaced by 'N-2' as follows:

'(b) the commitment and payment appropriations for the preceding financial year, and the expenditure committed and the expenditure paid in year N- 2;'

17. Article 32 is amended as follows:

(a) In the third subparagraph of paragraph 1, the words 'A1 and A2 and A3' are replaced by 'AD 16, AD 15, AD 14 and AD 13;'

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

'Where a staff member requests the withdrawal of the authorisation before expiry of the granted period, the Agency shall take appropriate measures to respect the limit referred to in point (b) of paragraph 1 as soon as possible.'

18. In Article 33, the following subparagraph is added:

'Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, the Agency shall participate in fraud prevention activities of the European Anti-fraud Office.'

19. In Article 35, paragraphs 1 and 2 are replaced by the following:

'1. All financial actors within the meaning of Chapter 2 of this Title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any measures which may bring their own interests into conflict with those of the Agency. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.

2. There is a conflict of interests where the impartial and objective exercise of the functions of a person referred to in paragraph 1 is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.'

20. In Article 38(6), the following sentences are added:

'Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, as concerns the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply.'

21. In Article 39(3), the following subparagraphs are added:

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

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

22. In Article 40, paragraph 1 is replaced by the following:

'1. The authorising officer shall report to the Management Board on the performance of his/her duties in the form of an annual activity report, together with financial and management information confirming that the information contained in the report presents a true and fair view except as otherwise specified in any reservations related to defined area of revenue and expenditure.

The annual activity report shall indicate the results of his/her operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. The internal auditor within the meaning of Article 71 shall take note of the annual activity report and any other pieces of information identified.'

23. Article 43 is replaced by the following:

'1. The Management Board shall appoint an accounting officer, covered by the Staff Regulations, who shall be functionally independent in the performance of his/her duties. He/she shall be responsible in the Agency for:

- (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
- (b) preparing and presenting the accounts in accordance with Title VII;
- (c) keeping the accounts in accordance with Title VII;
- (d) implementing, in accordance with Title VII, the accounting rules and methods and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;
- (e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information; the accounting officer shall be empowered to verify the respect of validation criteria;

(f) treasury management.

2. The accounting officer shall obtain from the authorising officer, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the Agency's assets and of budget implementation.

2a. Before the adoption of the accounts by the executive director, the accounting officer shall sign them off, thereby certifying that he/she has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Agency.

For that purpose the accounting officer shall satisfy himself/herself that the accounts have been prepared in accordance with the accounting rules, methods and accounting systems established, and that all revenue and expenditure is entered in the accounts.

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

The authorising officer shall remain fully responsible for the proper use of the funds they manage as well as the legality and regularity of the expenditure under their control.

2b. The accounting officer shall be empowered to check the information received as well as to carry out any further checks he/she deems necessary in order to sign off the accounts.

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

2c. The accounting officer of the Agency shall sign off its annual accounts and send them to the Commission's accounting officer.

3. Subject to paragraph 4 of this Article and Article 44, only the accounting officer shall be empowered to manage cash and cash equivalents. He/she shall be responsible for their safekeeping.

4. The accounting officer may, in the performance of his/her duties delegate certain tasks to subordinate staff subject to the Staff Regulations, where this is indispensable for the performance of his/her duties.

5. The instrument of delegation shall lay down the tasks entrusted to the delegates and their rights and obligations.'

24. In Article 44, the following changes have been made:

a. Paragraph 2 has been modified as follows:

'2. The maximum amount of each item of expenditure or revenue that can be paid by the imprest administrator to third parties may not exceed the amount determined in the implementing rules referred to in article 99, for each item of expenditure or revenue'.

- b. A new paragraph 3 is added:
- '3. Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 66 (1a), cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.'

25. In title IV, Chapter 3, the title of Section 2 is replaced by the following:

**'SECTION 2  
RULES APPLICABLE TO AUTHORISING OFFICERS AND  
AUTHORISING OFFICER BY DELEGATION OR SUBDELEGATION'**

26. Article 47 is replaced by the following:

'Article 47

1. The authorising officer shall be liable to payment of compensation as laid down in the Staff Regulations.
- 1a. The obligation to pay compensation shall apply in particular if:
  - (a) the authorising officer, whether intentionally or through gross negligence on his/her part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and its implementing rules.
  - (b) the authorising officer, whether intentionally or through gross negligence on his/her part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it, or is late in issuing a payment order, thereby rendering the Agency liable to civil action by third parties.
2. An authorising officer by delegation or subdelegation who considers that a decision falling under his/her responsibility is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to implement the decision in question, the latter must implement it and may not be held liable.
3. In the event of delegation, the authorising officer shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by delegation.
4. The specialised financial irregularities panel set up by the Commission in accordance with Article 66(4) of the general

Financial Regulation, shall exercise the same powers in respect of the Agency as it does in respect of Commission departments, unless the Management Board decides to set up a functionally independent panel, or to participate in a joint panel established by several Community bodies. For cases submitted by Community bodies, the specialised financial irregularities panel set up by the Commission shall include one staff member of a Community body.

On the basis of the opinion of this panel, the Executive Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report and recommendations to the authorising officer and to the Commission's internal auditor. If the opinion implicates the Executive Director, the panel shall send it to the Management Board and the Commission's internal auditor. The Executive Director shall refer, in anonymous form, to opinions of the panel in his/her annual activity report and indicate the follow-up measures taken.

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

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

27. Article 50 is replaced by the following:

'Article 50

The Agency shall present to the Commission requests for payment of all or part of the Community subsidy pursuant to Article 15(5) under terms and at intervals agreed with the Commission.'

28. In Article 53, paragraph 3 is replaced by the following:

'The contracts and grant agreements concluded by the Agency shall provide that any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with Commission Regulation (EC, Euratom) No 2342/2002(\*). The conditions whereby interest on late payment is due to the Agency, including the rate for default interest, shall be explicitly referred to in the contracts and grant agreements.

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(\* ) OJ L 357, 31.12.2002, p.1.'

29. In Article 55(3), the first and second subparagraphs are replaced by the following:

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

Such a waiver shall be made by a duly substantiated decision of the authorising officer. The authorising officer may delegate such a decision only for amounts receivable of less than EUR 5 000.'

30. In Article 58, point (a) is replaced by the following:

'(a) the debtor undertakes to pay interest at the rate specified in Article 86 of Regulation (EC, Euratom) No 2342/2002 for the entire additional period allowed, starting from the date set in the debit note;'

31. In Title IV, Chapter 4, Section 5, the following Articles 58a and 58b are inserted:

*Article 58a*

The accounting officer shall keep a list of amounts due to be recovered, in which the Agency's entitlements are grouped according to the date of issue of the recovery order. He/she shall also indicate decisions to waive or partially waive recovery of established amounts. The list shall be added to the Agency's report on budgetary and financial management.

The Agency shall establish a list of its entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision that has the force of *res judicata* and where no or no significant payment has been made for one year following its pronouncement. The list shall be published, taking account of the relevant legislation on data protection.

*Article 58b*

Entitlements of the Agency in respect of third parties and entitlements of third parties in respect of the Agency shall be subject to a limitation period of five years, which shall be laid down in the contracts and grant agreements concluded by the Agency.'

32. Article 59 is replaced by the following:

*'Article 59*

An overall provisional estimate of fees and charges referred to in Articles 5(a) and 19.1a shall be made at the beginning of each financial year.

Where fees and charges are entirely determined by legislation or decisions of the Management Board, including those referred to in Article 19.1a, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Agency's entitlement shall be registered. The accounting officer shall keep a list of all debit notes and provide the number of the debit notes and the global amount in the Agency's report on budgetary and financial management.

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

As a general rule, the Agency shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety, unless provided differently in the Agency's Basic Regulation or the regulation on fees and charges referred to in its Article 64. Save the provisions of these regulations, if by way of exception, a service has been provided without prior payment of the corresponding charge or fee, sections 3, 4 and 5 of this chapter shall apply.'

33. In Article 60(3), the following sentence is added: 'The work programme shall comprise detailed objectives and performance indicators.'
34. In Article 61(1), the word 'appropriation' has been amended by 'appropriations' as follows:
  - '1. The budget commitment is the operation reserving the appropriations necessary to cover subsequent payments to honour a legal commitment.'
35. Article 62 is replaced by the following:

*'Article 62*

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budget commitment before entering into a legal obligation with third parties.
2. Global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year N+1.

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

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

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

Any parts of such commitments which have not been executed six months after that final date shall be decommitted in accordance with Article 11.

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

36. In Article 66, the following paragraph 1a is inserted:

'1a. Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, and subject to his/her risk analysis, the authorising officer may order the application of a direct debit system.'

37. In Article 72(1), point (b) is replaced by the following:

'(b) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budget implementation operation.'

38. Article 74 is replaced by the following:

*'Article 74*

1. As regards procurement, the relevant provisions of the general Financial Regulation and Regulation (EC, Euratom) No 2342/2002 shall apply subject to paragraphs 4 to 7 of this Article.
2. The Agency may be associated, at its request, as contracting authority, in the award of Commission or interinstitutional contracts and with the award of contracts of other Community bodies.

3. The Agency shall participate in the common central database set up and operated by the Commission pursuant to Article 95 of the general Financial Regulation.
4. The Agency may conclude a contract, without having recourse to a public procurement procedure, with the Commission, the interinstitutional offices and the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/942(\*) for the supply of goods, provision of services or performance of work that the latter provide.
5. The Agency may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs. In such case, Article 125c of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis*.
6. For the application of Article 101 of the general Financial Regulation, the call for tender shall provide that the Agency may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.
7. For the application of Article 103 of the general Financial Regulation, calls for tender launched by the Agency shall provide that it may suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure under the conditions laid down in that Article.

For the application of Article 103 of the general Financial Regulation, the contracts concluded by the Agency with economic operators shall stipulate that it may take the measures specified in that Article under the conditions laid down therein.

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(\*) OJ L 314, 7.12.1994, p. 1.'

39. The following Titles VA and VB are inserted:

**'TITLE VA**  
**Projects with significant budget implications**

*Article 74a*

The Management Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its administrative budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on

the project notify the Agency of its intention to issue such an opinion. Failing a reply, the Agency may proceed with the planned operation.

This opinion shall be forwarded to the Agency within four weeks of the notification pursuant to the second paragraph.

## **TITLE VB EXPERTS**

### *Article 74b*

Article 265a of the Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting the Agency, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of projects. The Agency may use the lists drawn up by the Commission or other Community bodies.'

40. Article 75 is replaced by the following:

### *'Article 75*

1. Where the Agency may award grants in accordance with its constituent instrument or by delegation of the Commission pursuant to Article 54(2) (b) of the general Financial Regulation, the relevant provisions of the general Financial Regulation and Regulation (EC, Euratom) No 2342/2002 shall apply subject to paragraphs 2 and 3 of this Article.
2. Grants shall be covered by written agreements between the Agency and the beneficiary.
3. For the application of Article 119(2) of the general Financial Regulation, grant agreements concluded by the Agency shall stipulate that it may suspend, reduce or terminate the grant in the cases provided for by Article 183 of Regulation (EC, Euratom) No 2342/2002 after the beneficiary has been given the opportunity to make his/her observations.'

41. In Article 76, the second paragraph is replaced by the following:

'The accounts of the Agency shall be accompanied by a report on budgetary and financial management during the year. The report shall give an account, *inter alia*, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.'

42. Articles 82 and 83 are replaced by the following:

*Article 82*

The accounting officer shall send to the Commission's accounting officer and the Court of Auditors by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management during the year, referred to in Article 76 of this Regulation, so that the Commission's accounting officer can consolidate the accounts as provided for in Article 128 of the general Financial Regulation.

The accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest.

*Article 83*

1. In accordance with Article 129(1) of the general Financial Regulation, the Court of Auditors shall, by 15 June of the following year at the latest, make its observations on the provisional accounts of the Agency.
2. On receiving the Court of Auditors' observations on the provisional accounts of the Agency, the Executive Director shall draw up the final accounts of the Agency in accordance with Article 43, under his/her own responsibility, and send them to the Management Board, which shall give an opinion on these accounts.
3. The Executive Director shall send the final accounts, together with the opinion of the Management Board, to the Commission's accounting officer, to the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest.
4. The final accounts of the Agency, consolidated with those of the Commission, shall be published in the Official Journal of the European Union by 15 November of the following financial year.
5. The Executive Director shall send the Court of Auditors a reply to the observations made in its annual report by 30 September of the following year at the latest. The replies of the Agency shall be sent to the Commission at the same time.

43. Article 94 is replaced by the following:

*Article 94*

1. The European Parliament, upon a recommendation from the Council, shall, before 15 May of year **N** + 2 save where otherwise provided in the Basic Regulation, give a discharge to the Executive Director in respect of the implementation of the

budget for year **N**. The Executive Director shall inform the Management Board of the observations of the European Parliament contained in the resolution accompanying the discharge decision.

2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Executive Director of the reasons for the postponement.
3. If the European Parliament postpones the decision giving a discharge, the Executive Director, in cooperation with the Management Board, shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.'

44. Article 97 is deleted.

45. Article 99 is replaced by the following:

*'Article 99*

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

## ***Article 2***

This Regulation shall enter into force on the day following its adoption by the Management Board of the Agency and repeals the Financial regulation of the Agency as amended by the Management Board Decision 15-2007 of 14 December 2007.

Done at Cologne,

[Signed]

Michael Smethers  
Chair of the Management Board