



**DECISION OF THE GOVERNING BOARD OF THE ENIAC JOINT
UNDERTAKING ADOPTING THE AMENDED JOINT UNDERTAKING'S
FINANCIAL RULES**

THE GOVERNING BOARD OF THE ENIAC JOINT UNDERTAKING,

Having regard to Council Regulation (EC) No 72/2008 of 20 December 2007 setting up the ENIAC Joint Undertaking¹, and in particular Article 6 thereof.

Having regard to the Statutes annexed to Council Regulation (EC) No 72/2008 of 20 December 2007 (hereinafter "the Statutes"), and in particular Article 6(2)(c) thereof.

Having regard to Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities² (hereinafter "the general Financial Regulation"), and in particular Article 185(1) thereof.

Having regard to Commission Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the general Financial Regulation (hereinafter "the framework Financial Regulation")³.

Having regard to the Governing Board Decision adopting the Joint Undertaking's financial rules⁴.

Having regard to the prior consent of the Commission of 30 April 2008⁵,

Whereas:

- (1) Following the amendment of Commission Regulation (EC, Euratom) No 2343/2002 by Commission Regulation (EC, Euratom) No 652/2008, it is necessary to adapt the financial rules of the Joint Undertaking in order to align them with the framework Financial Regulation.
- (2) The Joint Undertaking has legal personality and hence it should have its own budget governed by specific financial rules.

¹ OJ L 30, 04.02.2008, p. 21. Corrected by OJ L 219, 14.08.2008, p. 72.

² OJ L 248, 16.09.2002, p. 1, as last amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 (OJ L 390, 30.12.2006, p. 1), and by Council Regulation (EC, Euratom) No 1525/2007 of 17 December 2007 (OJ L 343, 27.12.2007, p. 9).

³ OJ L 357, 31.12.2002, p. 72, as amended by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 (OJ L 181, 10.07.2008, p. 23).

⁴ Decision ENIAC-GB-13-08 of 30 May 2008.

⁵ C(2008)1783

- (3) The main task of the Joint Undertaking should be to support R&D activities in the form of Projects by pooling resources from the public and private sector.
- (4) The Joint Undertaking should have specific financial rules in accordance with Article 185(1) of the general Financial Regulation. They may depart from the framework Financial Regulation where the specific operating needs of the Joint Undertaking so require and subject to prior consent of the Commission.
- (5) These financial rules confine themselves to setting out the broad principles and basic rules governing the whole of the budgetary cycle, while detailed implementing provisions may subsequently be adopted by the Governing Board.
- (6) For the purpose of establishing and implementing the budget, the budgetary principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification and sound financial management, which requires effective and efficient internal control and transparency, should be reasserted.
- (7) To ensure the overall implementation of the Joint Undertaking's tasks and activities, the cancelled appropriations should be entered in the budget of the following financial years.
- (8) It is necessary to define the powers and responsibilities of the accounting officer, the internal auditor and authorizing officers.
- (9) The internal auditing function within the Joint Undertaking should be carried out under the responsibility of the Governing Board, which should make appropriate provision, taking into account the size and scope of the Joint Undertaking, as well as the specificities resulting from its nature as public-private partnership and in particular from the private sector contribution to the budget.
- (10) The arrangements for the Community financial contribution should be established by means of a general agreement and annual financial agreements to be concluded between the Commission, on behalf of the Community, and the Joint Undertaking.
- (11) The timetable for establishing the budget, presenting the accounts and granting discharge should be aligned on the equivalent provisions of the general Financial Regulation.
- (12) The accounting rules applied by the Joint Undertaking should allow for consolidation with the accounts of the institutions and to this end they should be adopted by the Commission's accounting officer in accordance with the relevant provisions of the general Financial Regulation.
- (13) The specific operating needs of the Joint Undertaking stemming from its public-private nature of the Joint Undertaking and, in particular, from the private sector contribution to the budget, require that it should follow more efficient procedures for the award of procurement contracts respecting the principles of transparency, proportionality, equality of treatment and non-discrimination and partly departing from the relevant provisions laid down in the general Financial Regulation and the rules implementing that Regulation.

- (14) The Joint Undertaking should, in line with Articles 12 and 13 of its Statutes, conclude grant agreements which terms and conditions should, where appropriate, refer to and rely on corresponding national grant agreements. Where grant agreements rely on corresponding national grant agreements, they should partly derogate from the relevant provisions laid down in the general Financial Regulation and the rules implementing that Regulation.
- (15) For the evaluation of proposals and grant applications or tenders for procurement and for providing technical assistance in the follow up and final evaluation of projects, the Joint Undertaking may use external experts. These experts should be selected in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.
- (16) The Court of Auditors should scrutinize the accounts of the Joint Undertaking and the European Parliament should give a discharge for the implementation of the budget of the Joint Undertaking on recommendation of the Council.

HAS ADOPTED THE AMENDED FINANCIAL RULES OF THE JOINT UNDERTAKING:

TITLE I

SUBJECT MATTER

Article 1

This Decision is adopted pursuant to Article 6 of the ENIAC Joint Undertaking constituent instrument. It spells out the essential financial rules of the Joint Undertaking for the establishment, implementation, accounting and discharge of the Joint Undertaking's budget.

Article 2

For the purposes of this Decision:

1. "Joint Undertaking" shall mean the ENIAC Joint Undertaking established by Council Regulation 72/2008 of 20 December 2007⁶ setting up the ENIAC Joint Undertaking;
2. "Governing Board" shall mean the body of the Joint Undertaking as referred to in Articles 5 and 6 of the Statutes;
3. "Executive Director" shall mean the chief executive as referred to in Articles 5 and 7 of the Statutes, who shall be responsible for implementing the decisions of the Governing Board and the Joint Undertaking's budget as authorizing officer;
4. "Constituent instrument" shall mean Council Regulation 72/2008 of 20 December 2007 setting up the ENIAC Joint Undertaking;
5. "Budgetary authority" shall mean the European Parliament and the Council of the European Union;
6. "Budget" shall mean the Annual Budget Plan of the Joint Undertaking as referred to in Article 18 of the Statutes;
7. "General budget" shall mean the general budget of the European Communities;
8. "Statutes" shall mean the Statutes of the Joint Undertaking as annexed to Council Regulation 72/2008 of 20 December 2007;
9. "Host State" shall mean Belgium as the host country of the Joint Undertaking;
10. "Member" shall mean the Member of the Joint Undertaking as referred to in Article 3 of the Statutes;
11. "Economic operator" shall mean a natural or legal person or public body offering the execution of work and/or supplies and/or services;
12. "AENEAS" shall mean the AENEAS association as referred to in Article 3 of the Statutes;

⁶ OJ L 30, 04.02.2008, p. 52. Corrected by OJ L 219, 14.08.2008, p. 72.

13. "Public Authorities Board" shall mean the body of the Joint Undertaking composed of the public authorities of the Joint Undertaking as referred to in Articles 5 and 8 of the Statutes;
14. "National funding authority" shall mean a national entity implementing the administrative arrangements in accordance with Article 12 of the Statutes;
15. "General Financial Regulation" shall mean Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended.
16. "Implementing rules of the general Financial Regulation" shall mean Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002⁷ 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, as amended.

⁷ OJ L 357, 31.12.2002, p. 1, as last amended by Commission Regulation (EC, Euratom) No 478/2007 (OJ L 111, 28.04.2007, p. 13).

TITLE II

BUDGETARY PRINCIPLES

Article 3

The establishment and implementation of the budget of the Joint Undertaking 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 these rules.

CHAPTER 1

Principles of unity and of budget accuracy

Article 4

The budget is the instrument which, for each financial year, forecasts and authorises the revenue and expenditure considered necessary for the Joint Undertaking.

Article 5

The budget shall comprise:

- a) revenue from AENEAS' contribution to the running costs of the Joint Undertaking as referred to in Article 11(5) (a) of the Statutes;
- b) revenue from the European Community contribution to the running costs and to R&D activities of the Joint Undertaking as referred to in Articles 11(5)(b) and 11(6)(a) of the Statutes;
- c) any revenue generated by the Joint Undertaking;
- d) any other financial contributions, resources and revenues;
- e) the expenditure of the Joint Undertaking, including expenditure for running costs.

Article 6

1. No revenue shall be collected and no expenditure effected unless booked to a line in the budget.
2. Any appropriation must not be entered in the budget if it is not for an item of expenditure considered necessary.

3. No expenditure may be committed or authorised in excess of the appropriations authorised by the budget.

CHAPTER 2

Principle of annuality

Article 7

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

Article 8

1. The budget shall contain non-differentiated appropriations and differentiated appropriations. The latter shall consist of commitment appropriations and payment appropriations.
2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year.
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.
4. Appropriations for running costs shall be non-differentiated. Expenditure for running costs arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.

Article 9

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

Article 10

1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled. Given the needs of the Joint Undertaking, the cancelled appropriations may be entered in the estimate of revenue and expenditure of up to the following three financial years, in accordance with Article 27.

However, they may, by decision of the Governing Board taken not later than 15 February, be carried over to the next financial year only, in accordance with the paragraphs 2 to 7.

2. Appropriations relating to staff expenditure may not be carried over.
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 have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.
4. 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. The Joint Undertaking shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.
5. Non-differentiated appropriations corresponding to obligations duly contracted at the close of the financial year shall be carried over automatically to the following financial year only.
6. Appropriations carried over which have not been committed by 31 March of year N+1 shall be automatically cancelled. Given the needs of the Joint Undertaking, the cancelled appropriations shall be entered in the estimate of revenue and expenditure of up to the following three financial years, in accordance with Article 27.

Appropriations carried over in this way shall be identified in the accounts.

7. The appropriations available at 31 December arising from the assigned revenue referred to in Article 19 shall be carried over automatically.

The appropriations available corresponding to assigned revenue carried over must be used first.

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

Article 11

Where amounts are decommitted, as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were committed, the appropriations concerned shall be cancelled. Given the needs of the Joint Undertaking, the cancelled appropriations may be entered in the estimate of

revenue and expenditure of up to the following three financial years, in accordance with Article 27.

Article 12

The appropriations entered in the budget may be committed with effect from 1 January, once the budget has become definitive.

Article 13

1. As from 15 November of each year, routine expenditure for running costs 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 Governing 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.

Article 14

1. If the budget of the Joint Undertaking has not been finally adopted at the beginning of the financial year, the following rules shall apply to commitment and payment of expenditure which it has been possible to book to a specific line in the budget as part of implementation of the last budget duly adopted.
2. Commitments may be made per chapter up to a maximum of one quarter of the total appropriations authorised in the chapter in question for the previous financial year, plus one twelfth for each month which has elapsed.

Payments may be made monthly per chapter up to a maximum of one twelfth of the appropriations authorised in the chapter in question for the previous financial year.

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

3. At the request of the Executive Director, if the continuity of action by the Joint Undertaking and management needs so require, the Governing Board may simultaneously authorise two or more provisional twelfths for both commitments and payments over and above those automatically made available by the provisions of paragraphs 1 and 2.

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

CHAPTER 3

Principle of equilibrium

Article 15

1. The budget revenue and payment appropriations must be in balance.
2. Commitment appropriations may not exceed the relevant annual Community contribution, as set out in the annual financial agreement, annual contributions from other Members than the Community and any other revenue referred to in Article 5.
3. The Joint Undertaking may not raise loans.
4. Community funds paid to the Joint Undertaking 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.
5. The Joint Undertaking shall implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue.

Article 16

1. If the balance of the outturn account within the meaning of Article 114 is positive, it shall be entered in the budget for the following financial year.
2. If the balance of the outturn account provided for in Article 114 is negative, it shall be entered in the budget for the following financial year.
3. The revenue or payment appropriations shall be entered in the budget during the budgetary procedure by means of an amending draft Annual Budget Plan or, while budget implementation is under way, by means of an amending Annual Budget Plan.

CHAPTER 4

Principle of unit of account

Article 17

The budget shall be drawn up and implemented in euro and the accounts shall be presented in euro.

However, for cash-flow purposes, the accounting officer and, in the case of imprest accounts, imprest administrators shall be authorised to carry out operations in national currencies.

CHAPTER 5

Principle of universality

Article 18

Total revenue shall cover total payment appropriations, subject to Article 19. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to Article 21.

Article 19

1. The following items of revenue shall be used to finance specific items of expenditure:
 - (a) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests, voluntary contributions or other donations;
 - (b) contributions to the Joint Undertaking's activities from its Members, non-member countries or miscellaneous bodies, insofar as this is provided for in the agreement concluded between the Joint Undertaking and the Members, non-member countries or bodies in question;
 - (c) revenue from third parties in respect of goods, services or work supplied at their request;
 - (d) proceeds from the supply of goods, services and works for Community institutions or other Community bodies;
 - (e) revenue arising from the repayment of amounts wrongly paid;
 - (f) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus, which are being replaced or scrapped when the book value is fully depreciated;
 - (g) insurance payments received;
 - (h) revenue from payments connected with lettings;
 - (i) revenue from the sale of publications and films, including those on an electronic medium.
2. 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.

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

Article 20

1. The Executive Director may accept any donation made to the Joint Undertaking, such as voluntary contributions, foundations, subsidies, gifts and bequests.
2. Acceptance of donations shall be subject to the prior authorization of the Governing Board, which shall take a decision within two months of the date on which the request is submitted to it by the Executive Director. If the Governing Board fails to take a decision within that period, the donation shall be deemed accepted.

Article 21

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, as referred to in Article 103;
2. The cost of products or services provided to the Joint Undertaking shall be charged to the budget for the full ex-tax amount, where they incorporate taxes refunded:
 - a) either by the Member States pursuant to the Protocol on the Privileges and Immunities of the European Communities;
 - b) or, by a Member State or non-member country on the basis of other relevant agreements.

Any national taxes temporarily borne by the Joint Undertaking under the first subparagraph shall be entered in a suspense account until they are refunded by the State concerned.

3. Any negative balance shall be entered in the budget as expenditure.
4. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the year.

CHAPTER 6

Principle of specification

Article 22

The appropriations in their entirety shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.

Article 23

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 Governing Board transfers of appropriations from one title to another. The Governing 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 Governing Board as soon as possible of all transfers made. He shall inform the budgetary authority of all transfers carried out under paragraph 2.

Article 24

1. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry (p.m.).
2. Appropriations corresponding to assigned revenue may be transferred only if they are used for the purpose to which the revenue is assigned.

CHAPTER 7

Principle of sound financial management

Article 25

1. Budget appropriations shall be used in accordance with the principle of sound financial management, that is to say, in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by the Joint Undertaking for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency is concerned with the best relationship between resources employed and results achieved.

The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all chapters of activity covered by the budget. Achievement of those objectives shall be monitored by performance indicators for each activity and information shall be provided to the Governing Board by the Executive Director. This information shall be provided annually and at the latest in the documents accompanying the preliminary draft Annual Budget Plan.
4. In order to improve decision-making, the Joint Undertaking shall regularly carry out ex ante evaluations where appropriate and ex post evaluations of its programmes or activities which entail significant spending. The evaluation results shall be sent to the Governing Board.

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.

CHAPTER 8

Principle of transparency

Article 26

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 running costs and R&D 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 experts. It shall also indicate the figures for the previous years.

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 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 Joint Undertaking within four weeks of their adoption.
4. The Joint Undertaking shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, including experts contracted pursuant to Article 108. The published information shall be easily accessible, transparent and comprehensive. This 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 Council⁸.

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

⁸ OJ L 8, 12.01.2001, p. 1.

TITLE III ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

Establishment of the budget

Article 27

1. The budget shall be established in accordance with the provisions of the constituent instrument of the Joint Undertaking.
2. The Joint Undertaking shall send the Commission a provisional draft estimate of its revenue and expenditure and the general guidelines underlying that estimate (provisional preliminary draft Annual Budget Plan) by 10 February each year and the final draft estimate (preliminary draft Annual Budget Plan) by the date specified in the constituent instrument.
3. The preliminary draft Annual Budget Plan of the Joint Undertaking shall include:
 - a) an establishment plan setting the number of 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 Joint Undertaking's proposed budget in comparison with its budget for year N.

4. The Joint Undertaking shall send to the Commission and the budgetary authority by 31 March each year at the latest the following:
 - (a) its draft Annual Implementation Plan;
 - (b) its updated multi-annual staff policy plan, established in line with the guidelines set by the Commission;
 - (c) information on the number of temporary and contract staff as defined in the Staff Regulations and the Conditions of Employment of Other Servants

- (hereinafter "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 Joint Undertaking;
 - (e) an estimate of the balance of the outturn account within the meaning of Article 114 for the year N-1.
5. As part of the procedure for adoption of the general budget, the Commission shall send the Joint Undertaking's statement of estimates to the budgetary authority and propose the amount of the Community contribution to the Joint Undertaking and the number of staff it considers that the Joint Undertaking needs. The Commission shall provide the draft establishment plan of the Joint Undertaking and 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 Joint Undertaking and any subsequent amendment thereto 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 Annual Budget Plan and the establishment plan shall be adopted by the Governing Board. They become definitive after final adoption of the general budget setting the amount of the contribution and the establishment plan and if necessary the Annual Budget Plan and the establishment plan shall be adjusted accordingly.

Article 28

Any amendment to the Annual Budget Plan, including the establishment plan, shall be the subject of an amending Annual Budget Plan adopted by the same procedure as the initial budget, in accordance with the provisions of the Statutes and Article 27.

CHAPTER 2

Structure and presentation of the budget

Article 29

The budget shall comprise a statement of revenue and a statement of expenditure.

Article 30

The statement of expenditure must be set out on the basis of a nomenclature with a classification by purpose. This nomenclature shall be determined by the Joint Undertaking and shall make a clear distinction between appropriations for running costs and appropriations for R&D activities.

Article 31

The budget shall show:

1. in the statement of revenue:
 - a) the estimated revenue of the Joint Undertaking for the financial year in question;
 - b) the estimated revenue for the preceding financial year and the revenue for the year n-2.
 - c) appropriate remarks on each revenue line.
2. in the statement of expenditure:
 - a) the commitment and payment appropriations for the financial year in question;
 - b) the commitment and payment appropriations for the preceding financial year, and the expenditure committed and the expenditure paid in year n-2;
 - c) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;
 - d) appropriate remarks on each subdivision.

Article 32

1. The establishment plan referred to in Article 27 shall show, next to the number of posts authorised for the financial year, the number authorised for the preceding year and the number of posts actually filled.

It shall constitute an absolute limit for the Joint Undertaking; no appointment may be made in excess of the limit set.

However, save in the case of grades AD 16, AD 15, AD 14 and AD 13, the Governing Board may modify the establishment plan by up to 20% of posts authorised, subject to two conditions:

- a) that the volume of staff appropriations corresponding to a full financial year is not affected;
 - b) that the limit of the total number of posts authorised by the establishment plan is not exceeded.
2. By way of derogation from the second subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments.

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

TITLE IV IMPLEMENTATION OF THE BUDGET

CHAPTER 1

General provisions

Article 33

The Executive Director shall perform the duties of authorising officer. He shall implement the revenue and expenditure of the budget in accordance with the financial rules of the Joint Undertaking, on his/her own responsibility and within the limits of the appropriations authorised.

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

Article 34

1. The Executive Director may delegate his/her powers of budget implementation to staff of the Joint Undertaking covered by the Staff Regulations, in accordance with the conditions laid down by these financial rules adopted by the Governing Board. Those so empowered may act only within the limits of the powers expressly conferred upon them.
2. The delegatee may sub-delegate the powers received with the explicit agreement of the Executive Director.

Article 35

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 Joint Undertaking. 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.
3. The competent authority referred to in paragraph 1 shall be the immediate superior of the member of staff concerned. If the member of staff is the Executive Director, the competent authority shall be the Governing Board.

Article 36

1. The budget shall be implemented by the Executive Director in the departments placed under his/her authority.
2. Technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgement may be entrusted by contract to external private-sector entities or bodies, where this proves to be indispensable.

CHAPTER 2**Financial actors****SECTION 1****PRINCIPLE OF SEGREGATION OF DUTIES***Article 37*

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

SECTION 2**AUTHORISING OFFICER***Article 38*

1. The authorising officer shall be responsible for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with.
2. To implement expenditure, the authorising officer shall make budget commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminaries for the implementation of appropriations.
3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.
4. The authorising officer shall put in place, in compliance with the minimum standards adopted by the Governing Board on the basis of equivalent standards laid down by the Commission for its own departments and having due regard to the risks

associated with the management environment and the nature of the action financed, the organisational structure and the internal management and control systems and procedures suited to the performance of his/her duties, including where appropriate ex post verifications.

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

5. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. Initiation and the ex ante and ex post verification of an operation shall be separate functions.
6. The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget.

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.

Article 39

1. Initiation of an operation as referred to in Article 38(5) shall be understood to mean all the operations which are preparatory to the adoption of the acts implementing the budget by the authorising officers responsible referred to in Articles 33 and 34.
2. Ex ante verification of an operation as referred to in Article 38(5) shall be understood to mean all the ex ante checks put in place by the authorising officer responsible in order to verify the operational and financial aspects.
3. Each operation shall be subject of at least one ex ante verification. The purpose of this verification shall be to ascertain that:
 - a) the expenditure is in order and conforms to the relevant provisions;
 - b) the principle of sound financial management referred to in Article 25 has been applied.

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.

4. The purpose of ex post verifications of documents and, where appropriate, on-the-spot verifications shall be to verify that operations financed by the budget have been correctly implemented and in particular that the criteria referred to in paragraph 3

have been complied with. These verifications may be organised on a sample basis using risk analysis.

5. Staff responsible for the verifications referred to in paragraphs 2 and 4 shall be different from those performing the tasks referred to in paragraph 1 and shall not be their subordinates.
6. All staff responsible for scrutinising the management of financial operations must have the necessary professional skills. They shall respect a specific code of professional standards adopted by the Joint Undertaking and based on standards laid down by the Commission for its own departments.

Article 40

1. The authorising officer shall report to the Governing 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 areas 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 72 shall take note of the annual activity report and any other pieces of information identified.

2. By no later than 15 June each year, the Governing Board shall send the budgetary authority and the Court of Auditors an analysis and an assessment of the authorising officer's annual report on the previous financial year. This analysis and assessment shall be included in the annual activity report of the Joint Undertaking, in accordance with the provisions of Article 19 of the Statutes.

Article 41

Any member of staff involved in the financial management and control of transactions who considers that a decision he is required by his superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he is required to observe shall inform the Executive Director in writing and, if the latter fails to take action within a reasonable period, the panel referred to in Article 47(4) and the Governing Board. In the event of any illegal activity, fraud or corruption which may harm the interests of the Joint Undertaking or of its Members, he shall inform the authorities and bodies designated by the applicable legislation.

Article 42

Where powers of budget implementation are delegated or sub-delegated in accordance with Article 34, Article 38(1), (2) and (3) shall apply *mutatis mutandis* to the authorising officers by delegation or subdelegation.

SECTION 3**ACCOUNTING OFFICER***Article 43*

1. The Governing Board shall appoint an accounting officer, covered by the Staff Regulations, who shall be functionally independent in the performance of his duties. He shall be responsible in the Joint Undertaking 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 VIII;
 - c) keeping the accounts in accordance with Title VIII;
 - d) implementing, in accordance with Title VIII, 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 Joint Undertaking'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 has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Joint Undertaking.

For that purpose the accounting officer shall satisfy himself 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/her 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 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 Joint Undertaking 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 shall be responsible for their safekeeping.
 4. The accounting officer may, in the performance of his 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.

SECTION 4

IMPREST ADMINISTRATOR

Article 44

Where it proves indispensable for the payment of small sums and for the collection of other revenue referred to in Article 5, imprest accounts may be set up which shall be endowed by the accounting officer and shall be placed under the responsibility of imprest administrators designated by him.

The maximum amount of each item of expenditure or revenue that can be paid by the imprest administrator to third parties may not exceed a certain amount to be specified by the Joint Undertaking for each item of expenditure or revenue.

Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 67 (1a), cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.

CHAPTER 3

Liability of the financial actors

SECTION 1

GENERAL RULES

Article 45

1. Without prejudice to any disciplinary action, authorising officers by delegation and subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.

The authorising officer may at any time withdraw his/her agreement to a specific subdelegation.

2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his/her duties by the Governing Board. The Governing Board shall appoint an interim accounting officer.
3. Without prejudice to any disciplinary action, imprest administrators may at any time be suspended temporarily or definitively from their duties by the accounting officer.

Article 46

1. The provisions of this chapter are without prejudice to the criminal-law liability which the authorising officer and the persons referred to in Article 45 may incur as provided in the applicable national law and in the provisions in force on the protection of the Communities' financial interests and on the fight against corruption involving officials of the Communities or officials of Member States.
2. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, without prejudice to Articles 47, 48 and 49. In the event of illegal activity, fraud or corruption which may harm the interests of the Joint Undertaking or of its Members, the matter will be referred to the authorities and bodies designated by the applicable legislation.

SECTION 2**RULES APPLICABLE TO THE AUTHORISING OFFICER AND AUTHORISING OFFICERS BY DELEGATION OR SUBDELEGATION***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 part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with these rules and their 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 Joint Undertaking liable to civil action by third parties.
2. An authorising officer by delegation or subdelegation who considers that a decision falling under his 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 Joint Undertaking as it does in respect of Commission departments, unless the Governing 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 with recommendations to the authorising officer. If the opinion implicates the Executive Director, the panel shall send it to the Governing Board. The Executive Director shall refer, in anonymous form, to opinions of the panel in his 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 Joint Undertaking as a result of serious misconduct on his 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.

SECTION 3

RULES APPLICABLE TO ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS

Article 48

An accounting officer may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- a) he/she loses or damages monies, assets and documents in his/her keeping or causes them to be lost or damaged by his/her negligence;
- b) he/she alters bank accounts or postal giro accounts without notifying the authorising officer in advance;
- c) he/she recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- d) he/she fails to collect revenue due.

Article 49

An imprest administrator may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- a) he/she loses or damages monies, assets and documents in his/her keeping or causes them to be lost or damaged by his/her negligence;
- b) he/she cannot provide proper supporting documents for the payments he/she has made;
- c) he/she makes payments to persons other than those entitled;
- d) he/she fails to collect revenue due.

CHAPTER 4

Revenue operations

SECTION 1

GENERAL PROVISIONS

Article 50

1. The Joint Undertaking shall present to the Commission requests for payment of all or part of the Community contribution pursuant to Article 15(5) under terms and at intervals agreed with the Commission.
2. The Joint Undertaking shall present to AENEAS requests for payment of its contribution to the Joint Undertaking's running costs, supported by a cash-flow forecast, under terms and at intervals agreed with AENEAS.

Article 51

The contributions paid to the Joint Undertaking by its Members shall bear interest for the benefit of its budget.

SECTION 2

ESTIMATE OF AMOUNTS RECEIVABLE

Article 52

An estimate of the amount receivable shall first be made by the authorising officer responsible in respect of any measure or situation which may give rise to or modify an amount owing to the Joint Undertaking.

SECTION 3

ESTABLISHMENT OF AMOUNTS RECEIVABLE

Article 53

1. Establishment of an amount receivable is the act by which the authorising officer or authorising officer by delegation:

- a) verifies that the debt exists;
 - b) determines or verifies the reality and the amount of the debt;
 - c) verifies the conditions in which the debt is due.
2. Any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order given to the accounting officer, accompanied by a debit note sent to the debtor. Both of these documents shall be drawn up and sent by the authorising officer responsible.
 3. The contracts and grant agreements concluded by the Joint Undertaking 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 Joint Undertaking, including the rate for default interest, shall be explicitly referred to in the contracts and grant agreements.
 4. In duly substantiated cases, certain routine revenue items may be established provisionally.

Provisional establishment shall cover the recovery of several individual amounts which need not therefore be established individually.

Before the end of the financial year, the authorising officer shall amend the amounts established provisionally to ensure that they correspond to the amounts receivable actually established.

SECTION 4

AUTHORISATION OF RECOVERY

Article 54

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

SECTION 5

RECOVERY

Article 55

1. Amounts wrongly paid shall be recovered.
2. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer or authorising officer responsible. He shall

exercise due diligence to ensure that the Joint Undertaking receives its revenue and shall see that its rights are safeguarded.

3. Where the authorising officer responsible is planning to waive recovery or partially waive recovery of an established amount receivable, he 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.

The waiver decision shall state what action has been taken to secure recovery and the points of law and fact on which it is based.

4. The authorising officer responsible shall cancel an established amount receivable when the discovery of a mistake as to a point of law or fact reveals that the amount had not been correctly established. Such cancellation shall be by decision of the authorising officer responsible and shall be suitably substantiated.
5. The authorising officer responsible shall adjust the amount of an established debt upwards or downwards when the discovery of a factual error entails the alteration of the amount of the debt, provided that this correction does not involve the loss of the established entitlement of the Joint Undertaking. Such an adjustment shall be by decision of the authorising officer responsible and shall be suitably substantiated.

Article 56

1. Upon actual recovery of the sum due, 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 all cash payments made to the accounting officer.

Article 57

1. If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.
2. The accounting officer shall recover amounts by offsetting them against equivalent claims that the Joint Undertaking has on any debtor who himself or herself has a claim on the Joint Undertaking that is certain, of a fixed amount and due, provided that offsetting is legally possible.

Article 58

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, provided that the following two conditions are met:

- 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;
- b) in order to safeguard the rights of the Joint Undertaking, the debtor provides a financial guarantee covering both the principal sum and the interest.

Article 59

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

The Joint Undertaking 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.

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

SECTION 6**SPECIFIC PROVISIONS APPLICABLE TO FEES AND CHARGES***Article 60*

Where the Joint Undertaking collects fees and charges referred to in Article 5 (d), an overall provisional estimate of such fees and charges shall be made at the beginning of each financial year.

Where fees and charges are entirely determined by legislation or decisions of the Governing Board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Joint Undertaking'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 Joint Undertaking's report on budgetary and financial management.

Where the Joint Undertaking 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 Joint Undertaking shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety. 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.

CHAPTER 5

Expenditure operations

Article 61

1. Every item of expenditure shall be committed, validated, authorised and paid.
2. Every commitment of expenditure shall be preceded by a financing decision.
3. The Annual Implementation Plan of the Joint Undertaking shall be equivalent to a financing decision for the activities it covers, provided that they are clearly identified and the underlying criteria are spelled out precisely. The Annual Implementation Plan shall comprise detailed objectives and performance indicators.
4. Appropriations for running costs may be implemented without a prior financing decision.

SECTION 1

COMMITMENT OF EXPENDITURE

Article 62

1. The budget commitment is the operation reserving the appropriations necessary to cover subsequent payments to honour a legal commitment.
2. The legal commitment is the act whereby the authorising officer responsible enters into or establishes an obligation which results in a charge for the budget.
3. The budget commitment is individual when the beneficiary and the amount of the expenditure are known.
4. The budget commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

5. The budget commitment is provisional when it is intended to cover routine expenditure for running costs and either the amount or the final beneficiaries are not definitively known.

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

Article 63

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 68 has been made in a period of three years following the signing of the legal commitment shall be decommitted.

Article 64

When adopting a budget commitment, the authorising officer responsible shall ensure that:

- a) the expenditure has been charged to the correct item in the budget;
- b) the appropriations are available;
- c) the expenditure conforms to the applicable provisions, in particular those of the constituent instrument, these rules and all acts adopted by the Joint Undertaking pursuant to them;
- d) the principle of sound financial management is complied with.

SECTION 2

VALIDATION OF EXPENDITURE

Article 65

Validation of expenditure is the act whereby the authorising officer responsible:

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

Article 66

1. Validation of any expenditure shall be based on supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.
2. Where grant agreements rely on corresponding national grant agreements as referred to in Article 92(2), validation of any expenditure shall be based on the certification on the reality and the amount of the claim submitted by the respective national funding authorities.
3. The validation decision shall be expressed by the signing of a 'passed for payment' voucher by the authorising officer responsible.
4. In a non-computerised system, 'passed for payment' shall take the form of a stamp incorporating the signature of the authorising officer responsible. In a computerised system, 'passed for payment' shall take the form of validation using the personal password of the authorising officer responsible.

SECTION 3

AUTHORISATION OF EXPENDITURE

Article 67

1. Authorisation of expenditure is the act whereby the authorising officer responsible, by issuing a payment order, instructs the accounting officer to pay an item of expenditure which he has validated.
 - 1a. Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, and subject to his risk analysis, the authorising officer may order the application of a direct debit system.

2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 38(6).
3. Where appropriate, the payment order sent to the accounting officer shall be accompanied by a document certifying that the goods have been entered in the inventories referred to in Article 123(1).

SECTION 4

PAYMENT OF EXPENDITURE

Article 68

1. Payment shall be made on production of proof that the relevant action has been carried out in accordance with the provisions of the constituent instrument or the contract or grant agreement, and shall cover one of the following operations:
 - a) payment of the entire amount due;
 - b) payment of the amount due in any of the following ways:
 - i. prefinancing, which may be divided into a number of payments;
 - ii. one or more interim payments;
 - iii. payment of the balance of the amounts due.

Prefinancing shall count in full or in part against the interim payments.

The entire prefinancing and interim payments shall count against the payment of balances.

2. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 1 at the time they are made.

Article 69

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

SECTION 5

TIME LIMITS FOR EXPENDITURE OPERATIONS

Article 70

The validation, authorisation and payment of expenditure must be carried out within time limits that allow the sums due to 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, save where the contract provides otherwise; the date of payment shall be understood to mean the date on which the Joint Undertaking's account is debited.

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

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

CHAPTER 6

IT systems

Article 71

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

CHAPTER 7

Internal auditor

Article 72

The internal auditing function of the Joint Undertaking as set out in Article 73 shall be carried out under the responsibility of the Governing Board, which shall make appropriate provision taking into account the scope and size of the Joint Undertaking, as well as the specificities resulting from its nature as a public-private partnership and in particular from the private sector contribution to its budget.

Article 73

1. The internal auditor shall advise the Joint Undertaking on dealing with risks, by issuing independent opinions on the quality of management and control systems and

by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

He shall be responsible:

- a) for assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them; and
 - b) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budgetary implementation operation.
2. The internal auditor shall perform his/her duties on all the Joint Undertaking's activities and departments. He shall enjoy full and unlimited access to all information required to perform his/her duties.
 3. The internal auditor shall report to the Governing Board and the Executive Director on his/her findings and recommendations. They shall ensure that action is taken on recommendations resulting from audits.
 4. The internal auditor shall submit to the Governing Board and the Executive Director an annual internal audit report setting out, inter alia, the number and type of internal audits conducted, the recommendations made and the action taken on these recommendations. This annual report shall also mention any systemic problems detected by the specialised panel referred to in Article 47(4).
 5. Each year the Joint Undertaking shall send to the authority responsible for discharge and to the Commission, a report drawn up by the Executive Director summarising the number and type of internal audits conducted by the internal auditor, the recommendations made and the action taken on these recommendations.

Article 74

The responsibility of the internal auditor for action taken in the performance of his/her duties shall be determined in accordance with the relevant provisions of the general Financial Regulation.

TITLE V PROCUREMENT

Article 75

1. As regards procurement, the relevant provisions of Regulation (EC, Euratom) No 2342/2002 shall apply unless otherwise provided in the present rules.
2. The Joint Undertaking 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 Joint Undertaking 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 Joint Undertaking 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 2965/94⁹ for the supply of goods, provision of services or performance of work that the latter provide.
5. The Joint Undertaking may conclude a contract, without having recourse to a public procurement procedure, with its other Members for the supply of goods, provision of services or performance of work that the latter directly supply, perform or provide without having recourse to third parties.
6. The Joint Undertaking 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*.
7. For the application of Article 88 of these rules, the call for tender shall provide that the Joint Undertaking 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.
8. For the application of Article 90 of these rules, calls for tender launched by the Joint Undertaking 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 90 of these rules, the contracts concluded by the Joint Undertaking with economic operators shall stipulate that it may take the measures specified in that Article under the conditions laid down therein.

⁹ OJ L 314, 07.12.1994, p. 1.

CHAPTER 1

Scope and award principles

Article 76

1. Contracts covered by this Title are contracts for pecuniary interest concluded in writing between one or more economic operators and the Joint Undertaking in order to obtain against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.

These contracts comprise:

- a) contracts for the purchase or rental of a building;
 - b) supply contracts;
 - c) works contracts;
 - d) service contracts.
2. Framework contracts covered by this Title are contracts concluded between the Joint Undertaking and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. They shall be governed by the provisions of this Title concerning the award procedure, including advertising.
 3. This Title does not relate to grants, without prejudice to Articles 82 to 83b.

Article 77

1. Procurement contracts financed in whole or in part by the budget of the Joint Undertaking shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination.
2. All procurement contracts shall be put out to tender on the broadest possible base, except when use is made of the negotiated procedure referred to in Article 79(1)(d).

The Joint Undertaking may not use framework contracts improperly or in such a way that the purpose or effect is to prevent, restrict or distort competition.

CHAPTER 2

Publication

Article 78

1. All procurement contracts exceeding the thresholds provided for in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹⁰ shall be published in the Official Journal of the European Union.

Contract notices shall be published in advance except in the cases referred to in Article 79(2) and for the service contracts covered by Annex IIB to Directive 2004/18/EC.

Publication of certain information after the contract has been awarded may be dropped where it would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between them.

2. Procurement contracts with a value below the thresholds provided for in Directive 2004/18/EC and the service contracts referred to in Annex IIB to Directive 2004/18/EC shall be advertised on the internet site of the Joint Undertaking in order to ensure competitive tendering and impartiality of the procurement procedures.

CHAPTER 3

Procurement procedures

Article 79

1. Procurement procedures shall take one of the following forms:
 - a) the open procedure;
 - b) the restricted procedure;
 - c) contests;
 - d) the negotiated procedure;
 - e) the competitive dialogue.

¹⁰ OJ L 143, 30.04.2004, p. 114, as amended.

Where a procurement contract or a framework contract is of interest to two or more institutions, executive agencies or bodies referred to in Article 185 of the general Financial Regulation, and whenever there is a possibility for realizing efficiency gains, the contracting authorities concerned shall seek to carry out the procurement procedure on an interinstitutional basis.

Where a procurement contract or framework contract is necessary for the implementation of a joint action between the Joint Undertaking and a contracting authority from a Member State, the procurement procedure may be carried out jointly by the Joint Undertaking and this contracting authority, as specified in the implementing rules of the general Financial Regulation.

2. For procurement contracts where the value exceeds the thresholds provided for in Directive 2004/18/EC, use of the negotiated procedure shall be authorised only in the cases provided for in the implementing rules of the general Financial Regulation.
3. A negotiated procedure with consultation of at least five candidates may be used for procurement contracts with a value below the thresholds laid down in Directive 2004/18/EC.

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

For procurement contracts with a value less than or equal to EUR 60 000, the procedure referred to in subparagraphs 1 and 2 of this paragraph with consultation of at least three candidates may be used.

Procurement contracts with a value less than or equal to EUR 5000 may be awarded on the basis of a single tender.

Payment of amounts less than or equal to EUR 500 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender.

4. The implementing rules of the general Financial Regulation shall define the procurement procedure, referred to in paragraph 1, applicable to service contracts covered by Annex IIB to Directive 2004/18/EC and to contracts which are declared to be secret, whose performance must be accompanied by special security measures, or when the protection of essential interests of the Joint Undertaking or of its members so require.

Article 80

Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has with the European Communities a special agreement in the field of public procurement under the conditions laid down in this agreement.

Where the Multilateral Agreement on Government Procurement concluded within the World Trade Organization applies, the contracts shall also be open to nationals of the States which have ratified this agreement, under the conditions laid down in that agreement.

Article 81

The documents relating to the call for tenders shall give a full, clear and precise description of the subject of the contract and specify the exclusion, selection and award criteria applicable to the contract.

Article 82

1. Candidates or tenderers shall be excluded from participation in a procurement procedure if:
 - a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
 - c) they have been guilty of grave professional misconduct proven by any means which the Joint Undertaking can justify;
 - d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the Joint Undertaking or those of the country where the contract is to be performed;
 - e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
 - f) they are currently subject to an administrative penalty imposed by the Joint Undertaking in accordance with Article 83b or by the Community institutions as referred to in the general Financial Regulation.

Points (a) to (d) of the first subparagraph shall not apply in the case of purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

2. Candidates or tenderers shall certify that they are not in one of the situations listed in paragraph 1. However, the Joint Undertaking may refrain from requiring such certification for contracts with a value less or equal to EUR 5000.

For the purpose of the correct application of paragraph 1, the candidate or tenderer, whenever requested by the Joint Undertaking, shall:

- a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity,
 - b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.
3. The implementing rules of the general Financial Regulation determine the maximum period during which the situations referred to in paragraph 1 give rise to the exclusion of candidates or tenderers from the participation in a procurement procedure. This maximum period shall not exceed 10 years.

Article 83

A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for this contract:

- a) are subject to a conflict of interest;
- b) are guilty of misrepresentation in supplying the information required by the Joint Undertaking as a condition of participation in the procurement procedure or fail to supply this information;
- c) find themselves in one of the situations of exclusion, referred to in Article 82(1), for this procurement procedure.

Article 83a

A central database set up and operated by the Commission under relevant provisions of the general Financial Regulation containing details of candidates and tenderers which are in one of the situations of exclusion may be used by the Joint Undertaking in accordance with the relevant rules adopted by the Commission.

Article 83b

1. The Joint Undertaking may impose administrative or financial penalties on the following:
 - (a) candidates or tenderers in the cases referred to in point (b) of Article 83;
 - (b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

In all cases, however, the Joint Undertaking must first give the person concerned an opportunity to present his observations.

2. The penalties referred to in paragraph 1 shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist in:

- (a) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the budget, for a maximum period of ten years; and/or
- (b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of the contract in question.

Article 84

1. Procurement contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under Articles 82, 83 and 83b(2)a has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders.
2. Procurement contracts shall be awarded by the automatic award procedure or by the best-value-for-money procedure.

Article 85

1. The arrangements for submitting tenders shall be such as to ensure that there is genuine competition and that the contents of tenders remain confidential until they are all opened simultaneously.
2. If deemed appropriate and proportionate, the Joint Undertaking may require tenderers, as provided in the implementing rules of the general Financial Regulation, to lodge a security in advance as a guarantee that the bids made will not be withdrawn.
3. With the exception of the contracts referred to in Article 79(3), applications and tenders shall be opened by an opening board appointed for this purpose. Any tender or application declared by the board not to satisfy the conditions laid down shall be rejected.
4. All requests to participate or tenders declared by the opening board as satisfying the conditions laid down shall be evaluated, on the basis of the criteria provided in the documents relating to the call for tenders, in order to propose to the Joint Undertaking the award of the contract or to proceed with an electronic auction.

Article 86

While the procurement procedure is under way, all contacts between the Joint Undertaking and candidates or tenderers must satisfy conditions ensuring transparency and equal treatment. They may not lead to amendment of the conditions of the contract or the terms of the original tender.

Article 87

1. The authorizing officer shall decide to whom the contract is to be awarded, in compliance with the selection and award criteria laid down in advance in the documents relating to the call for tenders and the procurement rules.

2. The Joint Undertaking shall notify all candidates or tenderers whose applications or tenders are rejected of the grounds on which the decision was taken, and all tenderers whose tenders are admissible and who make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

Article 88

The Joint Undertaking 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.

The decision must be substantiated and be brought to the attention of the candidates or tenderers.

CHAPTER 4

Guarantees and control

Article 89

1. The Joint Undertaking shall require contractors to lodge a guarantee in advance in the cases specified in the implementing rules of the general Financial Regulation.
2. The Joint Undertaking may, if it deems it appropriate and proportionate, require contractors to lodge such a guarantee in order to:
 - a) ensure full performance of the contract,
 - b) limit the financial risks connected with payment of pre-financing.

Article 90

Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the Joint Undertaking shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the Joint Undertaking may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract.

Where such errors, irregularities or fraud are attributable to the contractor, the Joint Undertaking may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.

TITLE VA

PROJECTS WITH SIGNIFICANT BUDGET IMPLICATIONS

Article 91

The Governing 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 running costs, in particular any projects related 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 Joint Undertaking of its intention to issue such an opinion. Failing a reply, the Joint Undertaking may proceed with the planned operation.

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

TITLE VI GRANTS

Article 92

1. As regards grants, the relevant provisions of Regulation (EC, Euratom) No 2342/2002 shall apply unless otherwise provided in the present rules and with the exception of cases where grant agreements refer to corresponding national grant agreements as referred in paragraph 2.
2. Grant agreements may refer to and rely on corresponding national grant agreements and on the certifications submitted by the respective national funding authorities when provided for in these rules and in particular as regards the following provisions:
 - a) the definition of the eligible costs as set out in Article 94(3);
 - b) the definition of the pace of payments as set out in Article 103;
 - c) the rules on the award of procurement contracts by the beneficiary as set out in Article 107;
 - d) the validation of expenditure and the acceptance of the final financial reports and accounts as set out in Articles 66(2) and 105(1);
 - e) the termination, suspension or reduction as set out in Article 105(2).

The authorising officer shall ensure that the Joint Undertaking's grant agreements, when they refer to and rely on corresponding national grant agreements, comply with the principles laid down in Chapter 2 of this Title.

3. For the application of Article 105(2), grant agreements concluded by the ENIAC Joint Undertaking 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 observations.

CHAPTER 1

SCOPE AND FORM OF GRANTS

Article 93

1. Grants are direct financial contributions, by way of donation, from the budget in order to finance an action intended to help implement the tasks and achieve the objectives of the Joint Undertaking.

They shall be covered by a written agreement between the Joint Undertaking and the successful applicant.

2. The following shall not constitute grants within the meaning of this Title:
 - a) expenditure on the members and staff of the Joint Undertaking and contributions to the European schools;
 - b) loans, risk-bearing instruments of the Joint Undertaking or the Joint Undertaking's financial contributions to such instruments, the procurement contracts referred to in Article 76 and aid paid as macro financial assistance and budgetary support;
 - c) contributions paid by the Joint Undertaking as subscriptions to bodies of which it is member;
 - d) repayment of travel and subsistence expenses incurred by, or, where appropriate, any other indemnities paid to persons invited or mandated by the Joint Undertaking.
3. Equity investments or participations shall be assimilated to grants and shall be governed, as appropriate, by this Title.
4. The Joint Undertaking may award grants for communication activities where, for duly justified reasons, the use of procurement procedures is not appropriate.
5. If provided for and under the relevant provisions of the grant agreement, new Project participants may accede to the grant agreement.

Article 94

1. Grants may take any of the following forms:
 - a) reimbursement of a specified proportion of the eligible costs actually incurred ;
 - b) lump sums;
 - c) flat-rate financing;
 - d) a combination of the forms referred to in points (a), (b) and (c).
2. Grants shall not exceed an overall ceiling expressed in terms of absolute value.
3. Where grant agreements rely on corresponding national grant agreements, grants shall take the form of reimbursement of a specified proportion of the eligible costs incurred by the beneficiary as defined by the respective national funding authority.
4. Where grant agreements do not refer to and rely on corresponding national grant agreements, they may authorise, in the form of flat-rates, funding of the beneficiary's indirect costs up to a maximum of 20% of total eligible direct costs for the action.
5. Where grant agreements do not refer to and rely on corresponding national grant agreements, average personnel costs may be considered eligible if they are consistent

with the management principles and accounting practices of the participant and do not differ significantly from actual costs.

6. Where grant agreements do not refer to and rely on corresponding national grant agreements, in order for costs to be considered eligible they must be recorded in the accounts of the participant and, in the case of any contribution from third parties, they must be recorded in the accounts of the third parties.

CHAPTER 2

PRINCIPLES

Article 95

1. Grants shall be subject to the principles of transparency and equal treatment.

They may not be cumulative or awarded retrospectively and they must involve co-financing.

On no account may the combined total costs eligible for financing be exceeded.
2. Grants may not have the purpose or effect of producing a profit for the beneficiary.
3. Paragraph 2 shall not apply to the following:
 - a) study, research or training scholarships paid to natural persons;
 - b) prizes awarded following contests.

Article 96

1. Grants shall be subject to the Annual Implementation Plan of the Joint Undertaking to be published at the start of the year.

The Annual Implementation Plan shall be implemented as regards grants through the publication of calls for proposals, save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary or of the action leave no other choice for a given action.
2. All grants awarded in the course of a financial year shall be published annually with due observance of the requirements of confidentiality and security.

Article 97

Each action may give rise to the award of only one grant from the budget to any one beneficiary.

The Joint Undertaking shall request the applicant to immediately inform the authorising officers of any multiple applications and multiple grants relating to the same action.

In no circumstances, shall the same costs be financed twice by the budget.

Article 98

A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the grant is awarded.

In such cases, costs eligible for financing may not have been incurred prior to the date of submission of the grant application.

No grant may be awarded retrospectively for actions already completed.

Article 99

The grant may not finance the entire costs of the action.

CHAPTER 3

AWARD PROCEDURE

Article 100

1. Grant applications shall be submitted in writing.
2. Grant applications shall be eligible if submitted by the following:
 - a) legal persons; grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on their behalf, and assume financial liability;
 - b) natural persons in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant.

3. Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 82(1), 83 and 83b(2)(a).

Applicants must certify that they are not in one of the situations referred to in the first subparagraph. However, the authorising officer may refrain from requiring such certification for grants lower than or equal to EUR 5000, as well as when such certification is to be provided to the national funding authority where grant agreements rely on corresponding national grant agreements as referred in Article 92(2).

4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 83b.

Such penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.

Article 101

1. The selection criteria shall be such as to make it possible to assess the applicant's ability to complete the proposed action.
2. The award criteria announced in advance in the call for proposals shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

Article 102

1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which actions may be financed.
2. The Joint Undertaking shall adopt rules governing the procedure for the submission of proposals as well as the related evaluation, selection and award procedures.
3. The Public Authorities Board shall, on the basis of the evaluation provided for in paragraph 1, decide on the selection of proposals and the allocation of Joint Undertaking's and national funding to selected proposals in accordance with Article 13(5)(e) of the Statutes.

The Executive Director shall, on the basis of the decision taken by the Public Authorities Board, draw up the list of beneficiaries and the amounts approved for Joint Undertaking's funding.

4. The authorizing officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the Joint Undertaking shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria already announced.

CHAPTER 4

PAYMENT AND CONTROL

Article 103

1. The pace of payments shall be determined by the financial risks involved, the duration and progress of the action or the costs incurred by the beneficiary. Where grant agreements rely on corresponding national grant agreements as referred in Article 92(2), the pace of payments shall be determined by the provisions of the corresponding national grant agreement. However, the pre-financing shall never represent over 80% of the total amount of the grant.

2. Interest generated by pre-financing payments shall be assigned to the programme implemented by the Joint Undertaking and deducted from the payment of the balance of the amounts due to the beneficiary. Interest shall not be due to the Joint Undertaking if the pre-financing does not exceed the amount of EUR 50 000.
3. By way of exception, the authorising officer shall recover for each reporting period following the implementation of the agreement the amount of interest generated by pre-financing payments which exceed EUR 750,000 per beneficiary at the end of each financial year.
4. The authorising officer responsible may recover at least once a year the amount of interest generated by pre-financing payments lower than those referred to in paragraph 3, taking account of the risks associated with his management environment and the nature of the actions financed.
5. The authorising officer responsible shall recover the amount of interest generated by pre-financing payments which exceeds the balance of the amounts due as referred to in paragraph 2.
6. Notwithstanding paragraphs 2 to 5 and in accordance with paragraph 1, where grant agreements rely on corresponding national grant agreements as referred in Article 92(2), the respective national funding authorities shall lay down the rules as regards the interest generated by the pre-financing.

Article 104

1. The authorizing officer responsible may, if he deems it appropriate and proportionate, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.
2. The authorising officer shall require the beneficiary to lodge such a guarantee in advance in the cases specified in the implementing rules.

Article 105

1. The amount of the grant shall not become final until the final reports and accounts have been accepted by the Joint Undertaking. Where grant agreements rely on corresponding national grant agreements as referred in Article 92(2), the acceptance of final financial reports and accounts by the Joint Undertaking shall be based on the certification on their acceptance by the respective national funding authorities notified to the Joint Undertaking. Acceptance of the final reports and accounts by the Joint Undertaking shall be without prejudice to subsequent checks and audits by the Joint Undertaking or/and, where appropriate, by the respective national funding authorities, the Commission including OLAF and the Court of Auditors.
2. Should the beneficiary fail to comply with his obligations the grant shall be suspended or reduced or terminated 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 observations.

Where grant agreements rely on corresponding national grant agreements as referred in Article 92(2), the grant may be suspended, reduced or terminated in case the corresponding national grant agreement has been suspended, reduced or terminated, subject to the authorizing officer's assessment.

CHAPTER 5

IMPLEMENTATION

Article 106

1. The participants may agree to add a new participant or to remove an existing participant to the grant agreement in accordance with the respective provisions of the grant agreement and the project agreement.
2. Where provided in the grant agreement, the consortium shall publish a call and advertise it widely.
3. Any proposed change in the composition of the consortium shall be subject to the approval of the Joint Undertaking.

Article 107

1. Where implementation of the action requires the award of procurement contracts by the beneficiary, the relevant procedures shall be as set out in the implementing rules.

Where grant agreements rely on corresponding national grant agreements as referred in Article 92(2), the respective national funding authorities shall lay down the rules and conditions for the award of procurement contracts by the beneficiary.

2. Where implementation of the action requires financial support to be given to third parties, the beneficiary of a Joint Undertaking's grant, may give such financial support provided that the following conditions are met:
 - a) the financial support is not the primary aim of the action;
 - b) the conditions for the giving of such support are strictly defined in the grant agreement between the beneficiary and the Joint Undertaking, with no margin for discretion;
 - c) the amounts concerned are small.

For the purpose of point (c), the maximum amount of financial support that can be paid to a third party by a beneficiary shall be determined in the implementing rules.

3. Each grant agreement shall provide expressly for the Joint Undertaking, the Commission and the Court of Auditors and, where appropriate, for the respective ENIAC Member State on behalf of the Joint Undertaking, to exercise their powers of

control, on documents and on the premises, over all contractors and subcontractors who have received Joint Undertaking's funds.

TITLE VII EXPERTS

Article 108

1. The Joint Undertaking may select external experts for assisting it, 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 Joint Undertaking may use experts on the lists drawn up by the Commission, its Member States or by other Community bodies. It may, if deemed appropriate, select any individual with the appropriate skills from outside the lists.

2. A call for expressions of interest may be published in particular in the Official Journal of the European Union or the internet site of the Joint Undertaking in order to ensure maximum publicity among potential candidates and with a view to establishing a list of experts.

The list drawn up following the call for expressions of interest shall be valid for no more than five years.

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

External experts shall not appear on the list if they are in one of the situations of exclusion referred to in Article 82.

3. External experts shall be selected on the basis of their ability to perform the tasks referred to in paragraph 1 and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.

TITLE VIII

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

Presentation of the accounts

Article 109

The annual accounts of the Joint Undertaking shall comprise:

- a) the financial statements of the Joint Undertaking;
- b) the reports on implementation of the budget of the Joint Undertaking.

The accounts of the Joint Undertaking 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.

Article 110

The accounts must comply with the rules and be accurate and comprehensive and present a true and fair view:

- a) as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities and cash flow;
- b) as regards reports on budgetary implementation, of revenue and expenditure operations.

Article 111

The financial statements shall be drawn up in accordance with the generally accepted accounting principles specified in the detailed rules for implementing the general Financial Regulation, namely:

- a) going concern basis;
- b) prudence;
- c) consistent accounting methods;
- d) comparability of information;

- e) materiality;
- f) no netting;
- g) reality over appearance;
- h) accrual-based accounting.

Article 112

1. In accordance with the principle of accrual-based accounting, the financial statements shall show the charges and income for the financial year, regardless of the date of payment or collection.
2. The value of assets and liabilities shall be determined in accordance with the valuation rules laid down by the accounting methods provided for in Article 118.

Article 113

1. The financial statements shall be presented in euro and shall comprise:
 - a) the balance sheet and the economic outturn account, which represent the assets and liabilities and financial situation and the economic outturn at 31 December of the previous year; they shall be presented in accordance with the structure laid down by the Council Directive on the annual accounts of certain types of companies, but with account being taken of the specific nature of the Joint Undertaking's activities;
 - b) the cash-flow table showing amounts collected and disbursed during the year and the final treasury position;
 - c) the statement of changes in capital presenting in detail the increases and decreases during the year in each item of the capital accounts.
2. The Annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the Joint Undertaking's activities.

Article 114

The budgetary implementation reports shall be presented in euro. They shall comprise:

- a) the budgetary outturn account, which sets out all budget operations for the year in terms of revenue and expenditure; the structure in which it is presented shall be the same as that of the budget itself;
- b) the annex to the budgetary outturn account, which shall supplement and comment on the information given in that account.

Article 115

The accounting officer shall send to the Commission's accounting officer and to 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 109, 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 116

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 Joint Undertaking.
2. On receiving the Court of Auditors' observations on the provisional accounts of the Joint Undertaking, the Executive Director shall draw up the final accounts of the Joint Undertaking in accordance with Article 43 and send them to the Governing Board, for approval.
3. The Executive Director shall send the final accounts, together with the approval of the Governing Board, to the Commission's accounting officer, 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 Joint Undertaking, consolidated with those of the Commission, shall be published in the Official Journal of the European Union by 15 November of the following 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 Joint Undertaking shall be sent to the Commission at the same time.

CHAPTER 2

Accounting

SECTION 1

COMMON PROVISIONS

Article 117

1. The accounting system of the Joint Undertaking is the system serving to organise the budgetary and financial information in such a way that figures can be input, filed and registered.
2. The accounts shall consist of general accounts and budgetary accounts. These accounts shall be kept in euro on the basis of the calendar year.
3. The figures in the general accounts and the budgetary accounts shall be adopted at the close of the budget year so that the accounts referred to in Chapter 1 can be drawn up.
4. Notwithstanding paragraphs 2 and 3, the authorising officer may keep analytical accounts.

Article 118

The accounting rules and methods and the harmonised chart of accounts to be applied by the Joint Undertaking shall be adopted by the Commission's accounting officer in accordance with Article 133 of the general Financial Regulation.

SECTION 2

GENERAL ACCOUNTS

Article 119

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

Article 120

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.

2. All accounting entries including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.
3. The accounting system must be such as to leave a trail for all accounting entries.

Article 121

The accounting officer of the Joint Undertaking shall, after the close of the budgetary year and up to the date of presentation of the final accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts in compliance with the rules.

SECTION 3

BUDGETARY ACCOUNTS

Article 122

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

CHAPTER 3

Property inventories

Article 123

1. The Joint Undertaking shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting its property in accordance with a model drawn up by the accounting officer of the Commission.

The Joint Undertaking shall check that entries in the inventory correspond to the actual situation.

2. The sale of movable property shall be advertised in appropriate manner.

TITLE IX EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

External audit

Article 124

The Court of Auditors shall scrutinise the accounts of the Joint Undertaking in accordance with Article 248 of the EC Treaty.

Article 125

1. The Joint Undertaking shall send the Court of Auditors the budget, as finally adopted. It shall inform the Court of Auditors, as soon as possible, of all decisions and acts adopted pursuant to Articles 10, 14, 19 and 23.
2. The Joint Undertaking shall send the Court of Auditors the internal financial rules it adopts.
3. The Court of Auditors shall be informed of the appointment of authorising officers, accounting officers and imprest administrators and of delegation decisions under Article 34, Article 43(1) and (4) and Article 44.

Article 126

The scrutiny carried out by the Court of Auditors shall be governed by the relevant provisions of the general Financial Regulation.

CHAPTER 2

Discharge

Article 127

1. The European Parliament, upon a recommendation from the Council shall, before 15 May of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N. The Executive Director shall inform the Governing 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 Governing Board, shall make every effort to take measures, as soon as possible to remove or facilitate removal of the obstacles to that decision.

Article 128

1. The discharge decision shall cover the accounts of all the revenue and expenditure of the Joint Undertaking, the resulting balance and the assets and liabilities of the Joint Undertaking shown in the financial statement.
2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements of the Joint Undertaking. It shall also examine the annual report made by the Court of Auditors, together with the replies of the Executive Director of the Joint Undertaking, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.
3. The Executive Director shall submit to the European Parliament, at the latter's request in the same manner as provided for in Article 146(3) of the general Financial Regulation, any information required for the smooth application of the discharge procedure for the year in question.

Article 129

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

TITLE X

TRANSITIONAL AND FINAL PROVISIONS

Article 130

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

Article 131

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

Article 132

This Decision shall enter into force on the day following its adoption by the Governing Board of the Joint Undertaking.

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

Done at Brussels, 28 January 2009

For the Governing Board

René Penning de Vries
Chairperson of the Governing Board