<u>Annex</u>

FINANCIAL RULES
OF THE EUROPEAN DEFENCE AGENCY
(Agency)

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Scope:

The Financial Rules of the European Defence Agency implement and complement related Articles on the financial aspects from the Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of the European Defence Agency [(1)] ('JA').

TITLE I

PRINCIPLES OF THE GENERAL BUDGET

Article 1

The General Budget

1. The General Budget shall consist of revenue and expenditure for one financial year.
2. The General Budget shall fully respect the limits set in the Agency's Financial Framework approved by the Council, in accordance with Article 3.
3. Expenditure shall consist of personnel, functioning, operational and provisional appropriations; Revenue shall consist of miscellaneous revenue, including deductions from Staff remuneration and interests earned on the Agency's bank accounts; and contributions from the Member States participating in the Agency ('participating Member States' or 'pMS').
4. Functioning Budget is the General Budget except the Operational Budget as defined in the Article 2 below.

Article 2

The Operational Budget

1. The Operational Budget forms part of the General Budget and consists of appropriations for procuring external advice, notably operational analysis, essential for the Agency to discharge its tasks, and for specific research and technology activities for the common benefit of all participating Member States, notably technical case-studies and pre-feasibility studies.

2. The Chief Executive shall inform the Steering Board on current and future activities under the Operational Budget on a regular basis.

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(1) OJ, L 245, 17.7.2004, p.17.

Article 3 [2]

Financial Framework

Every three years, the Council, acting by unanimity, shall approve a financial framework for the Agency for the following three years. This financial framework shall set out agreed priorities and shall constitute a legally binding ceiling. The first financial framework shall cover the period 2007 to 2009.

Article 4 [3]

Adoption of General Budget

1. The Head of the Agency shall provide the Steering Board by 30 June each year with an Overall Estimate of the Draft General Budget for the following year, fully respecting the limits set down in the Financial Framework.

2. The Head of the Agency shall propose the Draft General Budget to the Steering Board by 30 September each year. The draft shall include:

(a) the appropriations deemed necessary:

(i) to cover the Agency's running, staffing and meeting costs;

(ii) for procuring external advice, notably operational analysis, essential for the Agency to discharge its tasks, and for specific research and technology activities for the common benefit of all participating Member States, notably technical case-studies and pre-feasibility studies;

(b) a forecast of the revenue needed to cover expenditure.

3. The Steering Board shall aim to ensure that the appropriations referred to in paragraph 2(a)(ii) shall represent a significant share of the total appropriations referred to in paragraph 2. These appropriations shall reflect actual needs and shall allow for an operational role for the Agency.

4. The Draft General Budget shall be accompanied by a detailed staff establishment plan and detailed justifications.

5. The Steering Board, acting by unanimity, may decide that the Draft General Budget shall furthermore cover a particular project or programme where this is clearly for the common benefit of all participating Member States.

6. The appropriations shall be classified in titles and chapters grouping expenditure together by type or purpose, subdivided as necessary into articles.

7. Each title may include a chapter entitled «provisional appropriations». These appropriations shall be entered where there is uncertainty, based on serious grounds, about the amount of appropriations needed or the scope for implementing the appropriations entered.

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[2] Article 4(4) of JA.
[3] Article 13 of JA.

8. Revenue shall consist of:

(a) miscellaneous revenue;

(b) contributions payable by the participating Member States in the Agency based on the gross national income (GNI) scale.

The Draft General Budget shall carry lines to accommodate Earmarked Revenue and, wherever possible, shall indicate the amount foreseen.

9. The Steering Board shall adopt the Draft General Budget by 31 December of each year within the Agency's Financial Framework. When doing so, the Steering Board shall be chaired by the Head of the Agency, or by a representative appointed by him/her from within the General Secretariat of the Council, or by a member of the Steering Board invited to do so by him/her. The Chief Executive shall declare that the budget has been adopted and notify the participating Member States.

10. If, at the beginning of a financial year, the Draft General Budget has not been adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget. This arrangement shall not, however, have the effect of placing at the disposal of the Agency appropriations in excess of one twelfth of those provided for in the Draft General Budget in course of preparation. The Steering Board, acting by a qualified majority on a proposal from the Chief Executive, may authorise expenditure in excess of one twelfth. The Chief Executive may call for the contributions necessary to cover the appropriations authorised under this provision, which shall be payable within 30 days from dispatch of the call for contributions.

Article 5 [(4)]

Earmarked Revenue

1. The Agency may receive in its General Budget as Earmarked Revenue for a specific purpose financial contributions to cover costs other than those referred to under Article 4(2)(a)(i):

(a) from the general budget of the European Union on a case-by-case basis, in full respect of the rules, procedures and decision-making processes applicable to it;

(b) from participating Member States, third countries or other third parties.

2. Earmarked Revenue may only be used for the specific purpose to which it is assigned.

[(4)] Article 15 of JA.

Article 6 [5]

Management by the Agency of Expenditure on behalf of pMS

1. The Steering Board, on a proposal from the Chief Executive or a participating Member State, may decide that the Agency may be entrusted by participating Member States, on a contractual basis, with the administrative and financial management of certain activities within its remit.

2. The Steering Board, in its decision, may authorise the Agency to enter into contracts on behalf of certain participating Member States. It may authorise the Agency to collect the necessary funds from these participating Member States in advance to honour the contracts entered into.

Article 7 [6]

Contributions

1. Determination of contributions where the GNI scale is applicable

1.1. Where the GNI scale is applicable, the breakdown of contributions between the participating Member States from whom a contribution is required shall be determined in accordance with the gross national product scale as specified in Article 28(3) TEU and in accordance with Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources, or any other Council Decision which may replace it.

1.2. The data for the calculation of each contribution shall be those set out in the «GNI own resources» column in the «Summary of financing of the general budget by type of own resource and by Member State» table appended to the latest budget adopted by the European Communities. The contribution of each participating Member State from whom a contribution is due shall be proportional to the share of that Member State's GNI in the total GNI aggregate of the participating Member States from whom a contribution is due.

2. Schedule for payment of contributions

2.1. The contributions intended to finance the General Budget shall be paid by the participating Member States in three equal instalments, by 15 February, 15 June and 15 October of the financial year concerned.

2.2. When an Amending Budget is adopted, the necessary contributions shall be paid by the participating Member States concerned within 60 days from dispatch of the call for contributions.

2.3. Each participating Member State shall pay the bank charges relating to the payment of its own contributions.

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(5) Article 17 of JA.
(6) Article 16 of JA.

Article 8

Budgetary Surplus

Any budgetary surplus arising from the financial year, as the result of a difference between revenues and expenditures, shall be considered as a credit available for the participating Member States and returned to them as a deduction from the third contribution of the following financial year (15 October).

Article 9 [(7)]

Budgetary Principles

1. Budgets, drawn up in euro, are the acts which for each financial year lay down and authorise all the revenue and expenditure administered by the Agency.

2. The appropriations entered in a budget are authorised for the duration of a financial year which begins on 1 January and ends on 31 December of the same year.

3. For each budget, revenue and expenditure must be balanced. All revenue and expenditure shall be entered in full in the relevant budget without any adjustment against each other.

4. The budget shall contain differentiated appropriations, which shall consist of commitment appropriations and payment appropriations and non-differentiated appropriations.

5. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year. However, commitments may be made globally or in annual instalments. Commitments shall be entered into the accounts on the basis of the legal commitments entered into up to 31 December.

6. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years. Payments shall be entered in the accounts on the basis of the budget commitments up to 31 December.

7. The revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year.

8. Neither revenue nor expenditure may be implemented other than by allocation to a heading in the budget and within the limit of the appropriations entered there.

9. Appropriations shall be used in accordance with the principles of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.

10. Treatment of assets and depreciation: in budgetary terms, all expenses related to acquisition of assets are charged to the budget as incurred; no depreciation charge is applied.

[(7)] Article 12 of JA.

Article 10

Accounting Principles

1. The financial statements shall be drawn up in accordance with the generally accepted accounting principles of the European Union, in particular:
(a) going-concern, meaning that the Agency shall be deemed to be established for an indefinite duration,
(b) prudence, meaning that assets and income shall not be overstated and liabilities and charges shall not be understated,
(c) consistent accounting methods, meaning that the structure of the components of the financial statements and the accounting methods and valuation rules may not be changed from one year to the next. The Accounting Officer may not depart from the principle of consistent accounting methods other than in exceptional circumstances, in particular, where the change made is for the sake of a more appropriate presentation of the accounting operations,
(d) comparability of information, meaning that for each item the financial statements shall also show the amount of the corresponding item the previous year. Where, the presentation or the classification of one of the components of the financial statements is changed, the corresponding amounts for the previous year shall be made comparable and reclassified,
(e) materiality, meaning that all operations which are of significance for the information sought shall be taken into account in the financial statements. Materiality shall be assessed in particular by reference to the nature of the transaction or the amount,
(f) no netting, meaning that receivables and debts may not be offset against each other, nor may charges and income, save where charges and income derive from the same transaction, from similar transactions or from hedging operations and provided that they are not individually material,
(g) reality over appearance, meaning that accounting events recorded in the financial statements shall be presented by reference to their economic nature,
(h) accrual-based accounting, meaning that transactions and events shall be entered in the accounts when they occur and not when amounts are actually paid or recovered,
(i) traceabity of assets and write-offs, meaning that the Agency shall keep inventories showing the quantity and value of all tangible, intangible and financial assets, including any write-offs.

2. Where, in a specific case, the Accounting Officer considers that an exception should be made to the content of one of the accounting principles defined in paragraph 1, that exception shall be duly substantiated and reported.

Article 11

Carry-Overs

1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled.

2. However, commitment 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, namely the selection of potential contractors, have been completed by 31 December. These amounts may then be committed up to 31 March of the following year.

3. 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. Specific appropriations shall be carried over only once.

4. Appropriations placed in reserve and appropriations for staff expenditure may not be carried over.

5. Earmarked Revenue not used and appropriations available at 31 December arising from Earmarked Revenue referred to in Article 5 shall be carried over automatically and may only be used for the specific purpose to which it is assigned. The appropriations available corresponding to Earmarked Revenue carried over must be used first.

6. The Chief Executive shall submit to the Steering Board a Proposal on Carry-Overs by 15 February. The Steering Board shall take a decision by 15 March.

Article 12[(8)]

Amending Budget

1. In the case of unavoidable, exceptional or unforeseen circumstances, the Chief Executive may propose a draft Amending Budget within the limits set down in the Financial Framework, as defined in Article 3.

2. The draft Amending Budget shall be drawn up, proposed, and adopted and notification given in accordance with the same procedure as the General Budget, within the limits set down in the Financial Framework. The Steering Board shall act with due account to the urgency.

3. In the situation where the limits set down in the Financial Framework would be considered insufficient due to exceptional and unforeseen circumstances, taking also in full account rules set out in Article 4(2) and 4(3), the Steering Board will submit the Amending Budget for adoption by the Council, acting by unanimity.

Article 13

Revised Budget

1. If necessary, the Chief Executive may submit to the Steering Board a Revised Budget of the current financial year based on actual expenses incurred in the first nine months and estimated expenses until the end of that financial year within the limit of the adopted budget.

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(8) Article 14 of JA.

2. The Chief Executive may make transfers from one title to another within a total limit of 10 % of the appropriations for the financial year, or from one chapter to another, or from one article to another.

3. Three weeks before making the transfers referred to in paragraph 2, the Chief Executive shall inform the Steering Board of his/her intentions. In the event of duly justified reasons raised during this period by a participating Member State, the Steering Board shall take a decision.

4. The Chief Executive may make transfers within articles and propose other transfers to the Steering Board.

TITLE II

IMPLEMENTATION OF THE GENERAL BUDGET

CHAPTER 1

Finance Staff

Article 14

Principle of segregation of duties

The duties of Authorising Officer and Accounting Officer shall be segregated and mutually incompatible.

Article 15

Role of Authorising Officer

1. The Chief Executive shall perform the duties of Authorising Officer on behalf of the Agency.

2. The Agency shall lay down in its internal administrative rules the staff of an appropriate level to whom the Chief Executive may delegate in compliance with the conditions in the Agency's rules of procedure the duties of Authorising Officer and the scope of the powers delegated.

3. The powers of Authorising Officer shall be delegated only to personnel recruited directly by the Agency under fixed term contracts, selected among nationals of participating Member States, in accordance with Article 11(3)(3.1) of JA.

4. Authorising Officers by delegation may act only within the limits set by the instrument of delegation. The responsible Authorising Officer by delegation may be assisted in his/her task by one or more members of staff entrusted, under his/her responsibility, to carry out certain operations necessary for implementation of the budget and presentation of the accounts.

Article 16

Responsibilities of Authorising Officer

1. The Authorising Officer shall be responsible for implementing revenue and expenditure in accordance with the principles of sound financial management, including the principles of economy, efficiency and effectiveness, and for ensuring that the requirements of legality and regularity are complied with.

2. To implement expenditure, the Authorising Officer by delegation shall make budgetary 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 by delegation shall put in place, in compliance with the minimum standards adopted by the Agency and having due regard to the risks associated with the management environment and the nature of the actions financed, the organisational structure and the internal management and control procedures suited to the performance of his/her duties, including where appropriate ex post verifications. 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. The initiation and the ex ante and ex post verification of an operation shall be separate functions.

5. All staff responsible for controlling the management of financial operations shall have the necessary professional skills. They shall comply with the Agency's code of professional standards.

6. The Authorising Officer shall be informed in writing by any member of staff involved in the financial management and control of transactions, who considers that a decision he/she is required by his/her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he/she is required to observe; and if he/she fails to take action, the member of staff shall inform in writing the panel referred to in Article 22(3). In the event of any illegal activity, fraud or corruption which may harm the interests of the Agency, the Authorising Officer shall inform the authorities and bodies designated by the applicable legislation.

7. The Authorising Officer shall report to the Steering Board on the performance of his/her duties in the form of an annual activity report together with financial and management information. This report shall indicate the results of the operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the way the internal control system functions. The Internal Auditor shall take note of the annual report and any other pieces of information identified.

Article 17

Segregation of duties of initiation and verification

1. Initiation of an operation shall mean all the operations which are normally carried out by the staff referred to in Article 16(4) and 16(5) and which are preparatory to the adoption of the acts implementing the budget by the competent Authorising Officer, by delegation.

2. Ex ante verification of an operation shall mean all the ex ante checks put in place by the Authorising Officer responsible by delegation in order to verify its operational and financial aspects.

3. Each operation shall be subject at least to an ex ante verification. The purpose of that verification shall be to ascertain that:

(a) the expenditure and revenue are in order and comply with the rules applicable, in particular those of the budget and the relevant regulations and of any acts adopted in implementation of the Treaties, the legislation applicable and, where appropriate, the terms of contracts;

(b) the principle of sound financial management is applied.

4. The Ex-post and, where appropriate, on the spot verifications of documents check that operations financed by the budget are correctly implemented and in particular that the criteria referred to in paragraph 3 are complied with. These verifications may be organised on a sample basis using risk analysis.

5. The officials or other staff responsible for the verifications referred to in paragraphs 2 and 4 shall be different from those performing the tasks of initiation referred to in paragraph 1 and shall not be their subordinates.

Article 18

Management and internal control procedures

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

(a) achieve the objectives of the policies, programmes and actions of the Agency in accordance with the principle of sound financial management;

(b) comply with the rules of EU law and control standards established by the Agency;

(c) safeguard the Agency's assets and information;

(d) prevent and detect irregularities, errors and fraud;

(e) identify and prevent management risks;

(f) ensure reliable production of financial and management information;

(g) keep supporting documents relating to and subsequent to budget implementation and budget implementation measures;

(h) keep documents relating to advance guarantees for the Agency and keep a log to enable such guarantees to be adequately monitored.

Article 19

Role of Accounting Officer

The Agency shall appoint an Accounting Officer from amongst personnel recruited directly by the Agency under fixed term contracts, selected among nationals of participating Member States, in accordance with Article 11(3)(3.1) of JA. The Accounting Officer shall be appointed by the Steering Board on the grounds of his/her particular competence as evidenced by professional qualifications or by equivalent professional experience.

Article 20

Responsibilities of Accounting Officer

1. The Accounting Officer shall be responsible in the Agency for:

(a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable, including interest on late payments as defined in article 29;

(b) preparing and presenting the accounts;

(c) maintaining the accounts;

(d) establishing the accounting rules and methods and the chart of accounts;

(e) establishing and validating the accounting systems and where appropriate validating systems laid down by the Authorising Officer to supply or justify accounting information;

(f) treasury management.

2. The Accounting Officer shall obtain from Authorising Officers, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true statement of the Agency assets and of budgetary implementation.

3. Only the Accounting Officer shall be empowered to manage monies and other assets. He/she shall be responsible for their safekeeping.

4. The Accounting Officer may, in the performance of his duties, delegate certain tasks to subordinates from the personnel recruited directly by the Agency under fixed term contracts, selected among nationals of participating Member States, in accordance with Article 11(3)(3.1) of JA. The instrument of delegation shall lay down the tasks entrusted to the delegates.

CHAPTER 2

Liability of the Finance Staff

Article 21

General Rules

1. Without prejudice to any disciplinary action, Authorising Officers by delegation may at any time have their delegation withdrawn temporarily or permanently by the authority which appointed them.

2. Without prejudice to any disciplinary action, the Accounting Officer may at any time be suspended temporarily or permanently from his/her duties by the authority which appointed him/her.

3. The provisions of this chapter are without prejudice to the criminal-law liability which the persons referred to in this Article may incur as provided in the applicable national law and in the provisions in force on the protection of the European

Communities' financial interests and on the fight against corruption involving officials of the European Communities or officials of participating Member States.

4. Each Authorising Officer, Accounting Officer shall be liable to disciplinary action and payment of compensation. In the event of illegal activity, fraud or corruption which may harm the interests of the Agency, the matter will be submitted to the authorities and bodies designated by the applicable legislation.

Article 22

Rules applicable to Authorising Officers by delegation

1. The Authorising Officer may be required to make good, in whole or in part, any damage suffered by the Agency as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties, in particular if he/she determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with these Financial Rules. The same shall apply where, through serious misconduct, he/she fails to draw up a document establishing an amount receivable or if he/she fails to issue a recovery order or is, without justification, late in issuing it, or if he/she fails to issue a payment order or is, without justification, late in issuing it, thereby rendering the Agency liable to civil action by third parties.

2. An authorising officer by delegation who considers that he/she is being asked to take a decision that 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 written instruction to the authorising officer by delegation to take the decision in question, the authorising officer will not be held liable. In the event of any illegal activity, fraud or corruption which may harm the interests of the Agency, the Authorising Officer by delegation shall inform the authorities and bodies designated by the applicable legislation.

3. The Agency shall set up a specialised financial irregularities panel which shall function independently and determine whether a financial irregularity has occurred and what the consequences, if any, should be. On the basis of the opinion of this panel, the Agency shall decide whether to initiate proceedings entailing liability to disciplinary action or to payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the Authorising Officer and to the Authorising Officer by delegation, provided the latter is not the person involved, as well as to the Internal Auditor.

Article 23

Rules applicable to Accounting Officers

The Accounting Officer may be required to make good, in whole or in part, any damage suffered by the Agency as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties. He/she may in particular render himself liable by any of the following forms of misconduct:

(a) he/she loses or damages monies, assets and documents in his/her keeping;

(b) he/she wrongly alters bank accounts;

(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.

CHAPTER 3

Revenue

Article 24

Making available the Agency's Revenue

An estimate of revenue constituted by miscellaneous revenue and the participating Member States' contributions shall be entered in the General Budget in euro. The participating Member States' contributions shall cover the total appropriations entered in the General Budget after miscellaneous revenue has been deducted.

Article 25

Estimate of Amounts Receivable

1. An estimate of the amount receivable shall be made by the Authorising Officer responsible in respect of any measure or situation which may give rise to or modify an amount owed to the Agency.

2. The Authorising Officer responsible shall issue a recovery order in respect of these amounts.

Article 26

Establishment of Amounts Receivable

1. Establishment of an amount receivable is the act by which the 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. The Agency's revenue and any amount receivable that is identified as being of a fixed amount and due must be established by a recovery order to the Accounting Officer followed by a debit note to the debtor, both drawn up by the Authorising Officer responsible.

3. Amounts wrongly paid shall be recovered.

Article 27

Authorisation of Recovery

1. The authorisation of recovery is the act whereby the Authorising Officer by delegation responsible instructs the Accounting Officer, by issuing a recovery order, to recover an amount receivable which he/she has established.

2. The Agency may formally establish an amount as being receivable from persons other than States by means of a decision the enforcement of which is subject to the rules of civil procedure in force in the State in the territory of which it is carried out.

Article 28

Recovery of Funds

1. The Accounting Officer shall act on recovery orders for amounts receivable duly established by the Authorising Officer by delegation responsible. He/she shall exercise due diligence to ensure that the Agency receives its revenue and shall see that its rights are safeguarded.

The Accounting Officer shall recover amounts against any of the Agency's claims.

2. Where the responsible Authorising Officer is planning to waive recovery of an established amount receivable, he/she shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality in accordance with the procedures and the criteria laid down in the implementing rules. The waiver decision must be substantiated.

Article 29

Interest on Late Payments

1. Any amount receivable not repaid on the due date shall bear interest in accordance with paragraphs 2 and 3.

2. The interest rate for amounts receivable not repaid on the due date shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union , in force on the first calendar day of the month in which the due date falls, increased by:

(a) seven percentage points where the obligating event is a public supply and service contract;

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

3. Interest shall be calculated from the calendar day following the due date specified in the debit note up to the calendar day on which the debt is repaid in full.

4. Any partial payments shall first cover the interest determined in accordance with paragraphs 2 and 3.

5. In the case of fines, where the debtor provides a financial guarantee which is accepted by the Accounting Officer in lieu of provisional payment, the interest rate applicable from the due date shall be the rate referred to in paragraph 2 increased by only one and a half percentage points.

6. To prevent interests on late payments in the case of pMS contributions, participating Member States shall receive from the Agency the original signed call for contribution letters at least 30 days in advance of the instalment dates, as defined in Article 7 paragraph 2.1.

CHAPTER 4

Expenditure

Article 30

General Principles

1. Every item of expenditure shall be committed, validated, authorised and paid.

2. The commitment of the expenditure shall be preceded by a financing decision adopted by the Agency or the authorities to which powers have been delegated by the Agency.

Article 31

Definition of the Budgetary Commitment

1. The budgetary commitment is the operation reserving the appropriation necessary to cover subsequent payments to honour a legal commitment. The legal commitment is the act whereby the Authorising Officer enters into or establishes an obligation which results in a charge. The budgetary commitment and the legal commitment shall be adopted by the same Authorising Officer, save in duly substantiated cases as provided for in the implementing rules.

2. The budgetary commitment is individual when the beneficiary and the amount of the expenditure are known. The budgetary commitment is global when at least one of the elements necessary to identify the individual commitment is still not known. The budgetary commitment is provisional when it is intended to cover routine administrative expenditure and either the amount or the final beneficiaries are not definitively known.

3. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the basic act so provides and for administrative expenditure. Where the budgetary commitment is thus divided into annual instalments, the legal commitment shall stipulate this, except in the case of expenditure on staff.

Article 32

Commitment Procedure

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the Authorising Officer responsible must first make a budgetary 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.

Subject to Article 31(3), individual legal commitments relating to individual or provisional budgetary commitments shall be concluded by 31 December of year n.

At the end of the periods referred to in the first and second subparagraphs, the unused balance of these budgetary commitments shall be decommitted by the Authorising Officer responsible.

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

3. The legal commitments entered into for actions extending over more than one financial year and the corresponding budgetary 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 date shall be decommitted and the appropriations concerned shall be cancelled.

Where a legal commitment has not then resulted in a payment after a period of three years, the Authorising Officer responsible shall de-commit it.

Article 33

Authorisation of Commitment

1. When adopting a budgetary 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 provisions of the Treaties, of the budget, of the present provisions and the applicable legislation;

(d) the principle of sound financial management has been complied with.

2. When registering a legal commitment, the Authorising Officer shall ensure that:

(a) the commitment is covered by the corresponding budgetary commitment;

(b) the expenditure is regular and conforms to the provisions of the Treaties, of the budget of the present provisions and the applicable legislation;

(c) the principle of sound financial management has been complied with.

Article 34

Validation of Expenditure

Validation of expenditure is the act whereby the Authorising Officer responsible:

(a) verifies the existence of the creditor's entitlement;

(b) determines or verifies the reality and the amount of the claim;

(c) verifies the conditions in which payment is due.

Article 35

Authorisation of Expenditure

Authorisation of expenditure is the act whereby the Authorising Officer responsible, having verified that the appropriations are available and by issuing a payment order, instructs the Accounting Officer to pay an amount of expenditure which he/she has validated.

Article 36

Payment of Expenditure

1. Payment shall be made on production of proof that the relevant action is in accordance with the provisions of the basic act or the contract and shall cover one or more of the following operations:

(a) payment of the entire amount due;

(b) payment in one or more interim payments

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.

3. Payment of expenditure shall be made by the Accounting Officer within the limits of the funds available.

Article 37

Time Limits for Payment

1. Sums due shall be paid within no more than 45 calendar days from the date on which an admissible payment request is registered by the authorised department of the Authorising Officer responsible; the date of payment shall mean the date on which the Agency's account is debited.

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

2. The payment period referred to in paragraph 1 shall be 30 calendar days for payments relating to service or supply contracts, save where the contract provides otherwise.

3. For contracts or agreements under which payment depends on approval of a report, time for the purposes of the payment periods referred to in paragraphs 1 and 2 shall not begin to run until the report in question has been approved, either explicitly with the beneficiary being informed, or implicitly because the time allowed by the contract for approval has expired without being suspended by means of a formal document sent to the beneficiary.

The time allowed for approval may not exceed:
(a) 20 calendar days for straightforward contracts relating to the supply of goods and services;
(b) 45 calendar days for other contracts and grant agreements;
(c) 60 calendar days for contracts involving technical services which are particularly complex to evaluate.

4. The Authorising Officer responsible may suspend the time limit for payment by informing creditors, at any time during the period referred to in paragraph 1, that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the Authorising Officer responsible which puts in doubt the eligibility of expenditure appearing in a payment request, the Authorising Officer may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The Authorising Officer shall inform the beneficiary in question as soon as possible.

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

5. On expiry of the time limits laid down in paragraphs 1 and 2, the creditor may, within two months of receiving late payment, demand interest in accordance with the following provisions:
(a) the interest rates shall be those referred to in the first subparagraph of Article 29(2);
(b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time-limit for payment up to the day of payment.

The first subparagraph shall not apply to participating Member States.

CHAPTER 5

IT systems

Article 38

Accounting Software

1. The Agency's accounting software should reflect the principles laid out in these Financial Rules.

2. Documents may be signed by a secure computerised or electronic procedure.

CHAPTER 6

Internal audit

Article 39

Role of Internal Auditor

1. The Agency shall establish an internal auditing function which must be performed in compliance with the relevant international standards. The Internal Auditor appointed by the Agency shall be answerable to the latter for verifying the proper operation of budgetary implementation systems and procedures. The Internal Auditor may neither be Authorising Officer nor Accounting Officer.

2. Special rules applicable to the Internal Auditor shall be laid down by the Agency and shall be such as to guarantee that he/she is totally independent in the performance of his/her duties and to establish his responsibility.

Article 40

Responsibilities of Internal Auditor

1. The Internal Auditor shall advise the Agency on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The Internal Auditor shall be responsible in particular:

(a) for assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them;

(b) for assessing the suitability and quality 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 Agency's activities and departments. He/she shall enjoy full and unlimited access to all information required to perform his/her duties, if necessary on the spot.

3. The Internal Auditor shall report to the Agency on his/her findings and recommendations. The Agency shall ensure that action is taken on recommendations resulting from audits. The Internal Auditor shall also submit to the Agency an annual internal audit report indicating the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.

4. Each year the Chief Executive shall forward a report to the Steering Board summarising the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.

TITLE III

FINANCIAL REPORTING AND ANNUAL AUDIT

Article 41

Budgetary and Reporting Calendar

The Agency shall provide the following documents to the Steering Board:

(a) by 15 February, a Proposal on Carry-Overs, as stipulated in Article 11,

(b) by 30 June, an Overall Estimate of the Draft General Budget for the following year, as stipulated in Article 4(1),

(c) by 30 September, a Draft General Budget for the following financial year, as stipulated in Article 4(9),

(d) if necessary, after the first nine months of the financial year, a Revised Budget of the current financial year, as stipulated in Article 13,

(e) quarterly financial reports, as stipulated in Article 42,

(f) reports on the Operational Budget, as stipulated in Article 2,

(g) the audited Financial Report approved by the Steering Board on 1 September, as stipulated in Article 44.

Article 42

Quarterly Reporting

Every three months the Chief Executive shall present to the Steering Board a report on the implementation of revenue and expenditure during the preceding three months and since the beginning of the financial year.

Article 43

College of Auditors

1. An external audit of the expenditure, including Functioning and Operational Budgets, and revenue administered by the Agency shall be carried out following the end of each financial year.

2. The College of Auditors shall be composed of three auditors from three different participating Members States, supported by staff as required, acting under their responsibility.

3. The members of the College of Auditors are appointed for a period of three subsequent audits, except for the initial members, who shall be appointed

respectively for three, two and one audits. A fair rotation amongst the participating Member States wishing to send auditors should be ensured.

4. The Steering Board shall appoint the College of Auditors from candidates proposed by the participating Member States. The candidates shall preferably be members of the supreme national audit institution of the participating Member States and offer adequate guarantees of security and independence. They shall be available to carry out tasks on behalf of the Agency as needed. In carrying out these tasks:

(a) the members of the college shall continue to be paid by their audit body of origin and shall only receive from the Agency reimbursement of their mission expenses on the same basis as provided for in the rules applicable to officials of the European Communities of an equivalent grade;

(b) they shall neither request nor receive instructions other than from the Steering Board; within its audit mandate, the College of Auditors and its members shall be completely independent and solely responsible for the conduct of the external audit;

(c) they shall only report on their task to the Steering Board;

(d) they shall check that revenue and expenditure administered by the Agency has been implemented in conformity with the applicable legislation and the principles of sound financial management, that is in accordance with the principles of economy, effectiveness and efficiency.

5. Each year, the College of Auditors shall elect its chairman for the forthcoming financial year. It shall adopt the rules applicable to audits carried out by its members in accordance with the highest international standards on auditing. The College of Auditors shall approve the audit reports drawn up by its members before their transmission to the Chief Executive and to the Steering Board.

6. The auditors shall ensure that they respect the confidentiality of the information and protect the data of which they acquire knowledge during their audit task, in accordance with the rules applicable to that information and data.

7. The auditors shall have access without delay and without giving prior notice to the documents and to the contents of all data supports relating to that revenue and expenditure, including any written documents referred to in Article 22, and to the premises where those documents and supports are kept. They may make copies. The persons involved in implementing the Agency's revenue and expenditure shall give the Chief Executive and the persons responsible for the audit of that expenditure the necessary assistance in performing their task. Expenses related to the audit shall be charged to the Agency's General Budget.

8. The Steering Board, on the basis of a proposal by the Chief Executive or a Member State, may at any time additionally appoint external auditors, whose tasks and conditions of employment it shall determine.

Article 44

Annual Audit

1. By 31 March following the end of the financial year, the Chief Executive shall submit to the College of Auditors, for examination and opinion, a draft of the annual Financial Report.

The Financial Report of the European Defence Agency shall be composed of different sections, in particular:

(a) the Activity Report, which shall describe major aspects of the financial year,

(b) the Management Accounts, which shall show for each budget administered by the Agency, appropriations, expenditure committed and paid, as well as miscellaneous revenue and revenue from participating Member States and other parties,

(c) the Balance Sheet, as per end of the financial year, which shall show the assets belonging to the Agency and liabilities, taking account of depreciation and any disposals.

2. By 15 June following the end of the financial year, the College of Auditors shall submit to the Chief Executive its annual Audit Report containing the College's opinion and observations on the draft Financial Report referred to in paragraph 1.

3. By 15 July following the end of the financial year, the Chief Executive shall submit to the Steering Board the audited Financial Report and the Audit Report accompanied by his replies.

4. By 1 September following the end of the financial year, the Steering Board shall approve the audited Financial Report and grant the discharge to the Chief Executive and the Accounting Officer for the financial year.

5. Once approved by the Steering Board, the publication of the audited Financial Report shall be notified in *the Official Journal of the European Union.*

6. All accounts and inventories shall be retained by the Accounting Officer for a period of five years from the date on which the corresponding discharge was granted.

Article 45

Closing Article

The present Financial Rules shall not affect existing measures taken by participating Member States under Article 296 of the Treaty establishing the European Community or under Articles 10 and 14 of the Directive 2004/18/EC.