

**DECISION No 8/2019**

**OF THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE  
COOPERATION OF ENERGY REGULATORS**

**of 21 June 2019**

**on the Financial Regulation of the Agency for the Cooperation of Energy Regulators**

THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

Having regard to the Treaty on the Functioning of the European Union, in conjunction with the Treaty establishing the European Atomic Energy Community,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012<sup>1</sup>, and, in particular, Article 70 thereof,

Having regard to Decision No 3/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 May 2019, and, in particular, Article 9 thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) No 1271/2013<sup>2</sup> establishes the framework financial regulation for the bodies which are set up by the Union under the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community and which have legal personality and receive contributions charged to the Union budget ('Union bodies'). Delegated Regulation (EU) No 1271/2013 is based on Regulation (EU, Euratom) No 966/2012<sup>3</sup>. Regulation (EU, Euratom) No 966/2012 has been replaced by Regulation (EU, Euratom) 2018/1046.
- (2) In order to align with Regulation (EU, Euratom) 2018/1046 and Commission Delegated Regulation (EU) 2019/715<sup>4</sup> and to allow for additional simplification and clarification of rules to take into account the experience gained in their application and to further improve the Union bodies' governance setting up and their accountability, the Financial Regulation adopted by the Administrative Board of the Agency for the Cooperation of

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<sup>1</sup> OJ L 193, 30.7.2018, p.1

<sup>2</sup> Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

<sup>3</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

<sup>4</sup> Commission Delegated Regulation (EU) No 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (OJ L122/1, 10.5.2019).

Energy Regulators with Decision No 22/2013 of 12 December 2013 is repealed and replaced by this Decision.

- (3) This Decision should establish the broad principles and basic rules applicable to the bodies set up under TFEU and the Euratom Treaty (hereinafter ‘the Agency’) that receive contributions charged to the Union budget and without prejudice to the constituent act. On the basis of this Decision the Agency should adopt its own financial rules that may not depart from the Decision except where its specific needs so require, and with the Commission’s prior consent.
- (5) The Agency should establish and implement its budget in accordance with the principles of unity, accuracy, universality, specification, annuality, equilibrium, unit of account, sound financial management and performance, and transparency.
- (6) The balancing nature of the Union contribution should be emphasised. The part of the Agency’s positive budget result that exceeds the amount of the Union contribution paid during the year should be returned to the Union budget.
- (7) Where the constituent act provides that revenue is constituted by fees and charges in addition to the Union contribution and that revenue arising from fees and charges is assigned to particular items of expenditure, the Agency should have the possibility to carry forward the balance in the form of assigned revenue. In order to allow for flexibility, the negative result related to assigned revenue from fees and charges could be offset against the accumulated surplus from previous years.
- (8) It is necessary to ensure that the fees are set at an appropriate level to cover the costs of providing the services and to avoid significant surpluses.
- (9) The exceptional delegation of tasks and award of grants to the Agency needs to be allowed in the constituent act or in a basic act and duly justified by the characteristics of the tasks and the specific expertise of the Agency, while ensuring sound financial management and cost-efficiency. Those additional tasks should fall within the scope of the Agency's objectives and should be compatible with the Agency's mandate, as defined in the constituent act.
- (10) In order to increase transparency the Commission should, in principle, conclude partnership agreements with the Agency covering all funding given in addition to the annual Union contribution, notably when this funding has a significant impact on the Agency's operations.
- (11) The provisions on carryovers and assigned revenues should be amended to take into account the provisions of Regulation (EU, Euratom) 2018/1046. With regard to internal assigned revenue, the financing of new building projects with the revenue from lettings and the sale of buildings should be allowed as provided for in Regulation (EU, Euratom) 2018/1046. To that end, such revenue should be considered as internal assigned revenue that can be carried over until it is fully used.
- (12) In order to allow for additional flexibility, the Agency should be able to carry out transactions in currencies other than euro for the needs of administrative management.
- (13) In line with Regulation (EU, Euratom) 2018/1046, the breaking down of commitments extending over several years into annual instalments should be allowed only where the constituent act or basic act provides so or where the commitments relate to administrative expenditure.

- (14) Taking into account the specificities of the Agency, the acceptance of donations should be made subject to enhanced scrutiny. Moreover, the Agency should not be able to use corporate sponsoring.
- (15) The concept of performance should be clarified. Performance should be linked to the principle of sound financial management. The principle of sound financial management should be clarified. A link should be established between objectives set and performance indicators, results and economy, efficiency and effectiveness in the use of appropriations.
- (16) Pursuant to Article 53 of Regulation (EU, Euratom) 2018/1046, the Agency has to take part in a benchmarking exercise with other Union bodies and with Union institutions.
- (17) It is necessary to establish rules on the action plan to follow up on the conclusions of overall periodic evaluations in order to ensure their efficient implementation.
- (18) For the purpose of ensuring consistent programming, the Agency should draw up a single programming document containing annual and multiannual programming, an estimate of its revenue and expenditure, resources programming, information on its building policy, a strategy for cooperation with third countries and/or international organisations, a strategy for achieving efficiency gains and synergies. The Agency should also draw up a strategy for operational management and internal control systems, including an anti-fraud strategy. The single programming document should take into account Commission guidelines.
- (19) The programming document should include the strategy for preventing recurrence of cases of conflict of interest, irregularities and fraud, in particular where weaknesses have led to critical recommendations.
- (20) The timetable for the single programming document should be aligned with the budgetary procedure to ensure its efficiency and consistency of all programming documents.
- (21) The Agency should adjust its internal control systems where it runs offices away from the main seat.
- (22) It is appropriate to provide for the possibility for the Agency to conclude service-level agreements in accordance with Article 59 of Regulation (EU, Euratom) 2018/1046, in particular with each other and with Union institutions, in order to facilitate the implementation of its appropriations, when this is in line with sound financial management. Appropriate reporting on those service-level agreements should be ensured.
- (23) It is necessary to clarify the architecture of the internal audit and internal control functions and to streamline reporting requirements. The internal audit function within the Agency should be performed by the Commission's internal auditor who should carry out audits when justified by the risks involved. It is necessary to provide rules on the establishment and functioning of internal audit capabilities.
- (24) Reporting obligations should be streamlined. The Agency should provide a consolidated annual activity report that includes comprehensive information on the achievement of objectives and results, the implementation of its work programme, budget, staff policy, and its operational management and internal control systems.
- (25) In order to improve the cost-efficiency of the Agency, it is necessary to provide for the possibility of sharing services or transferring them to another Union body or to the

- Commission. It is therefore necessary to allow the accounting officer of the Commission to be entrusted with all or part of the tasks of the accounting officer of the Agency.
- (26) In order to align the rules on assigned revenue with those of Regulation (EU, Euratom) 2018/1046, it is necessary to provide for rules on a differentiation of internal and external assigned revenue and on their carry over.
  - (27) In order to align the rules on treatment of interest generated by the Union contribution to the Agency with those of Regulation (EU, Euratom) 2018/1046, it is necessary to provide that interest is not due to the budget.
  - (28) Regulation (EU, Euratom) 2018/1046 provides for the possibility to enter a legal commitment before a budgetary commitment in specific cases. The Agency should also have that possibility.
  - (29) In order to ensure consistency, specific provisions on procurement and grants should not be allowed. The application of a single set of rules ensures simplification of the Agency's work and enables the use of the guidelines and models prepared by the Commission.
  - (30) The Agency should have the possibility to award grants and prizes in accordance with the constituent act or by delegation of the Commission pursuant to Article 62(1)(c)(iv) of Regulation 2018/1046.
  - (31) In addition to the forms of Union contribution already well established (reimbursement of the eligible costs actually incurred, unit cost, lump sums and flat-rate financing), it is appropriate to allow the Agency to provide financing not linked to costs of the relevant operations. This additional form of financing should be based on the fulfilment of certain conditions *ex ante* or on the achievement of results measured by reference to previously set milestones or through performance indicators.
  - (32) In order to protect the financial interests of the Union, the rules on a single early-detection and exclusion system set up by Regulation (EU, Euratom) 2018/1046 should apply to the Agency.
  - (33) Pursuant to Article 8(1) of Regulation (EU, Euratom) No 883/2013, the Agency shall transmit to the European Anti-Fraud Office without delay any information relating to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union. Pursuant to Article 24(1) of Council Regulation (EU) 2017/1939, the Agency shall without undue delay report to the European Public Prosecutor's Office any criminal conduct in respect of which it could exercise its competence in accordance with that regulation. In order to strengthen the governance of the Agency, it should also report cases of fraud, financial irregularities, as well as investigations, to the Commission without delay. The Commission and the Agency should put procedures in place that duly protect personal data and ensure the respect of the need-to-know principle in any transmission of information related to presumed fraud and other irregularities and on-going or completed investigations.
  - (34) To identify and correctly manage the risk of actual or perceived conflict of interests, the Agency should be required to adopt rules on the prevention and management of conflict of interests. Such rules should take into account guidance developed by the Commission.
  - (35) Comprehensive access rights for the Commission, the European Anti-Fraud Office and the Court of Auditors should be spelled out in this Decision.

- (36) The provisions regarding building policy, including the possibility and conditions for the Agency to finance building acquisition projects through loans, should be aligned with Regulation (EU, Euratom) 2018/1046 to ensure a consistent application of the rules by all Union bodies and institutions.
- (37) Given that Delegated Regulation (EU) No 1268/2012<sup>5</sup> has been repealed, the requirement for the the Agency to adopt its own implementing rules with Commission's prior consent should also be deleted.
- (38) It is necessary to provide for transitional provisions for programming and for the consolidated annual activity reporting given that the Commission needs time to develop the appropriate guidelines in cooperation with the Union bodies and the Union bodies need time to adapt to the new programming and reporting.
- (39) This Decision should enter into force on the day following that of its adoption at the latest by 1 July 2019 so that the Agency benefits from the simplification and alignment with Regulation (EU, Euratom) 2018/1046.

HAS ADOPTED THIS DECISION:

## **TITLE I**

### **GENERAL PROVISIONS**

#### *Article 1*

##### **Subject matter**

This Decision lays down the Financial Regulation of the Agency (hereinafter ‘Regulation’), containing the essential financial rules for the Agency for the Cooperation of Energy Regulators (hereinafter ‘the Agency’), which has legal personality and receives contributions charged to the Union budget. It is based and does not depart, from the Commission Delegated Regulation (EU) 2019/715 on the framework financial regulation for the bodies set up under TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council.

#### *Article 2*

##### **Definitions**

For the purposes of this Regulation, the following definitions shall apply:

- ‘constituent act’ means the instrument of Union law governing the main aspects of the setting up and operation of the Agency,
- ‘management board’ means the main internal body of the Agency that is responsible for taking decisions on financial and budgetary matters, irrespective of the name given to it in the constituent act,

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<sup>5</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

- ‘director’ means the person responsible for implementing the decisions of the management board and the budget of the Agency as authorising officer, irrespective of the title given to that person in the constituent act,
- ‘executive board’ means the internal body of the Agency that assists the management board and whose responsibilities and rules of procedures are, in principle, set out in the constituent act irrespective of the name given to this body in the constituent act.

Article 2 of Regulation (EU, Euratom) 2018/1046 shall apply *mutatis mutandis*.

#### *Article 3*

### **Periods, dates and time limits**

Unless otherwise provided, Council Regulation (EEC, Euratom) No 1182/71<sup>6</sup> shall apply to the deadlines set out in this Regulation..

#### *Article 4*

### **Protection of personal data**

*This Regulation is without prejudice to the requirements of Regulations (EU) 2018/1725<sup>7</sup> and (EU) 2016/679<sup>8</sup>.*

## **TITLE II**

### **BUDGET AND BUDGETARY PRINCIPLES**

#### *Article 5*

### **Respect for budgetary principles**

The budget of the Agency shall be established and implemented in accordance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency as set out in this Regulation.

## **CHAPTER 1**

### **Principles of unity and of budgetary accuracy**

#### *Article 6*

### **Scope of the budget of the Agency**

1. For each financial year, the budget of the Agency shall forecast and authorise all revenue and expenditure considered necessary for the Agency. It shall comprise the revenue and expenditure of the Agency, including administrative expenditure.

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<sup>6</sup> Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

<sup>7</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC Text with EEA relevance (OJ L 295, 21.11.2018, p. 39).

<sup>8</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance) (OJ L 119, 4.5.2016, p. 1).

2. The budget of the Agency shall contain the following:
  - (a) non-differentiated appropriations;
  - (b) where justified by operational needs, differentiated appropriations, which consist of commitment appropriations and payment appropriations.
3. The appropriations authorised for the financial year shall consist of:
  - (a) appropriations consisting of the annual contribution granted by the Union;
  - (b) appropriations arising from own revenue consisting of all fees and charges which the Agency is authorised to collect by virtue of the tasks entrusted to it, and any other revenue;
  - (c) appropriations consisting of any financial contributions from the host Member States;
  - (d) appropriations provided following the receipt of revenue assigned during the financial year to specific items of expenditure in accordance with Article 20(1);
  - (e) appropriations carried over from the preceding financial years.
4. Revenue consisting of fees and charges shall only be assigned in exceptional and duly justified cases provided for in the constituent act.
5. Commitment appropriations shall cover the total cost of the legal commitments entered into during the financial year, subject to Article 75(2).
6. Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years.
7. Paragraphs 3 and 5 of this Article shall not prevent appropriations being committed globally or budgetary commitments being made in annual instalments as respectively provided for in point (b) of Article 74(1) and in Article 74(2).

#### *Article 7*

#### **Contribution agreements, grant agreements and financial framework partnerships**

1. Contribution agreements and grant agreements may be exceptionally concluded between the Commission and the Agency provided that the following conditions are met:
  - (a) the constituent act of the Agency or a basic act expressly provides for such possibility;
  - (b) the conclusion of such an agreement is duly justified by the special nature of the action and specific expertise of the Agency;
  - (c) the tasks to be implemented by the Agency under the agreement satisfy the following criteria:
    - (i) fall within the scope of the Agency's objectives and the tasks are compatible with the Agency's mandate as set out in the constituent act;
    - (ii) the tasks do not form part of the tasks assigned to the Agency in the constituent act and financed by the annual contribution granted to it by the Union.

2. Where contribution agreements and grant agreements referred in paragraph 1 and service-level agreements are concluded for services offered by the Agency to the Commission, the Commission may establish a financial framework partnership agreement with the Agency in line with Article 130 of Regulation (EU, Euratom) 2018/1046.
3. The choice by the Commission of the Agency shall take due account of the cost efficiency of entrusting those tasks.
4. Where the Commission exceptionally signs a contribution agreement with the Agency, the rules applicable to indirect management laid down in Titles V and VI of Regulation (EU, Euratom) 2018/1046 shall apply to the Agency in respect of funds allocated to that agreement and Articles 105 and 106 of this Regulation shall not apply.
5. The tasks referred to under paragraph 1 should be included in the Single Programming Document of the Agency, referred to in Article 32, for information purposes only. Information on the agreements referred to under paragraph 2 shall be included in the consolidated annual activity report referred to in Article 48.
6. The authorising officer shall inform the management board before signing any agreement referred to in paragraph 2.

*Article 8*

**Specific rules on the principles of unity and budgetary accuracy**

1. All revenue and expenditure shall be booked to a budget line in the budget of the Agency.
2. No expenditure may be committed or authorised in excess of the appropriations authorised by the budget of the Agency.
3. An appropriation may be entered in the budget of the Agency only if it is for an item of expenditure considered necessary.
4. Interest generated by pre-financing payments made from the budget of the Agency shall not be due to the Agency except as otherwise provided in the contribution agreements referred to in Article 7.

**CHAPTER 2**

**Principle of annuality**

*Article 9*

**Definition**

The appropriations entered in the budget of the Agency shall be authorised for a financial year that shall run from 1 January to 31 December.

*Article 10*

**Budgetary accounting for revenue and appropriations**

1. The Agency's revenue of a financial year, as referred to in Article 6, shall be entered in the accounts for that financial year on the basis of the amounts collected during that financial year.

2. The revenue of the Agency shall give rise to an equivalent amount of payment appropriations.
3. Commitments shall be entered in the accounts for a financial year on the basis of the legal commitments entered into up to 31 December of that year. However, the global budgetary commitments referred to in point (b) of Article 74(1) shall be entered in the accounts for a financial year on the basis of the budgetary commitments up to 31 December of that year.
4. Payments shall be entered in the accounts for a financial year on the basis of the payments made by the accounting officer by 31 December of that year.
5. Where a constituent act provides that clearly defined tasks are financed separately or where the Agency implements agreements concluded in accordance with Article 7, the Agency shall have specific budget lines on the revenue and expenditure operations. The Agency shall clearly identify each group of tasks in its resource programming included in the single programming document drawn up pursuant to Article 32.

#### *Article 11*

##### **Commitment of appropriations**

1. The appropriations entered in the budget of the Agency may be committed with effect from 1 January, once the budget of the Agency has been definitively adopted.
2. As of 15 October of the financial year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year, provided that the expenditure has been approved in the last budget of the Agency duly adopted, and only up to a maximum of one quarter of the appropriations decided upon by the management board on the corresponding budget line for the current financial year.

#### *Article 12*

##### **Cancellation and carry-over of appropriations**

1. Appropriations which have not been used by the end of the financial year for which they were entered shall be cancelled, unless they are carried over in accordance with paragraphs 2 and 4.
2. The following appropriations may be carried over by a decision taken pursuant to paragraph 3, but only to the following financial year:
  - (a) commitment appropriations and non-differentiated appropriations, for which most of the preparatory stages of the commitment procedure have been completed by 31 December of the financial year. Such appropriations may be committed up to 31 March of the following financial year, with the exception of non-differentiated appropriations related to building projects which may be committed up to 31 December of the following financial year;
  - (b) payment appropriations which are needed to cover existing commitments or commitments linked to commitment appropriations carried over, where the payment appropriations provided for in the relevant budget lines for the following financial year are insufficient.

With regard to point (b) of the first subparagraph, the Agency shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.

3. The management board or, where the constituent act allows it, the executive board, shall take its decision on carry-overs as referred to in paragraph 2 by 15 February of the following financial year.
4. Appropriations shall be automatically carried over in respect of:
  - (a) appropriations corresponding to internal assigned revenue. Such appropriations may be carried over only to the following financial year and may be committed up to 31 December of that year, with the exception of the internal assigned revenue from lettings and the sale of buildings and land referred to in point (e) of Article 20(3) which may be carried over until it is fully used;
  - (b) appropriations corresponding to external assigned revenue. Such appropriations shall be fully used by the time all the operations relating to the programme or action to which they are assigned have been carried out or they may be carried over and used for the succeeding programme or action.
5. Appropriations for staff expenditure shall not be carried over. For the purposes of this Article, staff expenditure comprises remuneration and allowances for the staff of the Agency who are subject to the Staff Regulations.
6. Non-differentiated appropriations legally committed by the end of the financial year shall be paid until the end of the following financial year.

#### *Article 13*

##### **Detailed provisions on cancellation and carryover of appropriations**

1. The commitment appropriations and the non-differentiated appropriations referred to in point (a) of the first subparagraph of Article 12(2) may be carried over only if the commitments could not be made before 31 December of the financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to expect that the commitment will be made by no later than 31 March of the following financial year, or, in relation to building projects, by 31 December of the following financial year.
2. Appropriations carried over in accordance with point (a) of Article 12(2) which have not been committed by 31 March of the following financial year or up to 31 December of the following year for amounts relating to building projects shall be automatically cancelled.
3. Appropriations carried over which have been cancelled shall be identified in the accounts.

#### *Article 14*

##### **Decommitment of appropriations**

1. Where budgetary commitments are decommitted in any financial year after the year in which they were made as a result of total or partial non-implementation of the actions for which they were earmarked, the appropriations corresponding to such decommitments shall be cancelled.

2. This Article shall not apply to external assigned revenue referred to in Article 20(2).

*Article 15*

**Rules applicable in the event of late adoption of the budget of the Agency**

1. If the budget of the Agency has not been definitively adopted at the beginning of the financial year, the rules set out in paragraphs 2 to 6 shall apply.
2. Commitments may be made per chapter up to a maximum of one quarter of the total appropriations authorised in the relevant chapter of the budget of the Agency for the preceding financial year plus one-twelfth for each month that has elapsed.

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

Payments may be made monthly per chapter up to a maximum of one twelfth of the appropriations authorised in the relevant chapter of the budget of the Agency for the preceding financial year. However, that sum shall not exceed one twelfth of the appropriations provided for in the same chapter of the statement of estimates of revenue and expenditure.

3. The appropriations authorised in the relevant chapter of the budget of the Agency for the preceding financial year, as referred to in paragraph 2, shall be understood as referring to the appropriations voted in the budget of the Agency, including by amending budgets, and after adjustment for the transfers made during that financial year.
4. If the continuity of Agency action and management needs so require, the management board may, at the request of the director, authorise expenditure in excess of one provisional twelfth but not exceeding a total of four provisional twelfths, except in duly justified cases, both for commitments and for payments over and above those automatically made available in accordance with paragraph 2.

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

5. If, for a given chapter, the authorisation of four provisional twelfths granted in accordance with paragraph 4 is not sufficient to cover the expenditure necessary to avoid a break in continuity of action by the Agency in the area covered by the chapter in question, authorisation may exceptionally be given by the management board, at the request of the director, to exceed the amount of the appropriations entered in the corresponding chapter of the budget of the Agency for the preceding financial year. However, the overall total of the appropriations available in the budget of the Agency of the preceding financial year or in the statement of estimates of revenue and expenditure, as proposed, shall in no circumstances be exceeded.

**CHAPTER 3**  
**Principle of equilibrium**

*Article 16*

**Definition and scope**

1. Revenue and payment appropriations shall be in balance.
2. Commitment appropriations may not exceed the amount of the Union contribution, plus own revenue and any other revenue referred to in Article 6.

3. For bodies for which the revenue is constituted by fees and charges in addition to the Union contribution, fees should be set at a level such as to avoid a significant accumulation of surplus. Where a significant positive or negative budget result, within the meaning of Article 99, becomes recurrent, the level of the fees and charges shall be revised.
4. The Agency shall not raise loans within the framework of the budget of the Agency.
5. The Union contribution to the Agency shall constitute for the budget of the Agency a balancing contribution and may be divided into a number of payments.
6. The Agency shall implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue.

*Article 17*

**Balance from financial year**

1. If the budget result within the meaning of Article 99 is positive, it shall be repaid to the Commission up to the amount of the contribution paid during the year. The part of the budget result exceeding the amount of the Union contribution paid during the year shall be entered in the budget of the Agency for the following financial year as revenue.  

The first subparagraph shall also apply when the revenue of the Agency is constituted by fees and charges in addition to the Union contribution.

The difference between the contribution entered in the budget and that actually paid to the Agency shall be cancelled.
2. In exceptional cases, where the constituent act provides that the revenues arising from fees and charges are assigned to particular items of expenditure, the Agency may carry-over the balance of fees and charges as assigned revenue for the activities related to the provision of the services for which the fees are due.
3. If the budget result within the meaning of Article 99 is negative, it shall be entered in the budget of the Agency for the following financial year as payment appropriations or, where appropriate, offset against positive budget result of the Agency in the following financial years.  

Where the fees and charges are assigned revenue the negative result related to this assigned revenue can be offset against the accumulated surplus from previous years, if available.
4. The revenue or payment appropriations shall be entered in the budget of the Agency during the budgetary procedure using the letter of amendment procedure set out in Article 42 of Regulation (EU, Euratom) 2018/1046 or, while implementation of the budget of the Agency is under way, by means of an amending budget.  

An estimate of the budget result from year N-1 will be provided by the Agency no later than 31 January of the year N. This information shall be duly taken into account by the Commission when assessing the financial needs of the Agency for the year N+1.

**CHAPTER 4**  
**Principle of unit of account**

*Article 18*

**Use of euro**

1. The budget shall be drawn up and implemented in euro and the accounts shall be presented in euro. However, for the cash-flow purposes referred to in Article 49, the accounting officer and, in the case of imprest accounts, the imprest administrators, and, for the needs of the administrative management of the Agency, the authorising officer responsible, shall be authorised to carry out operations in other currencies.
2. Without prejudice to specific provisions laid down in sector-specific rules, or in specific contracts, grant agreements, contribution agreements and financing agreements, conversion by the authorising officer responsible shall be made using the daily euro exchange rate published in the C series of the Official Journal of the European Union of the day on which the payment order or recovery order is drawn up by the authorising department.  
  
If no such daily rate is published, the authorising officer responsible shall use the one referred to in paragraph 3.
3. For the purposes of the accounts provided for in Articles 82, 83 and 84 of Regulation (EU, Euratom) 2018/1046 conversion between the euro and another currency shall be made using the monthly accounting exchange rate of the euro. That accounting exchange rate shall be established by the accounting officer of the Commission by means of any source of information regarded as reliable, based on the exchange rate on the penultimate working day of the month preceding that for which the rate is established.
4. Currency conversion operations shall be carried out in such a way as to avoid having a significant impact on the level of the Union co-financing or a detrimental impact on the budget. Where appropriate, the rate of conversion between the euro and other currencies may be calculated using the average of the daily exchange rate in a given period.

**CHAPTER 5**  
**Principle of universality**

*Article 19*

**Scope**

Without prejudice to Article 20, total revenue shall cover total payment appropriations. Without prejudice to Article 24, all revenue and expenditure shall be entered in full without any adjustment against each other.

*Article 20*

**Assigned revenue**

1. External assigned revenue and internal assigned revenue shall be used to finance specific items of expenditure.
2. The following shall constitute external assigned revenue:

- (a) financial contributions from Member States and third countries, including in both cases their public agencies, entities or natural persons, to certain activities of the Agency insofar as this is provided for in the agreement concluded between the Agency and the Member States, third countries or the public agencies, entities or natural persons in question;
  - (b) financial contributions from international organisations;
  - (c) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;
  - (d) financial contributions, not covered by point (a), to the Union bodies' activities from third countries or non-Union bodies;
  - (e) revenue from agreements referred to in Article 7;
  - (f) internal assigned revenue referred to in paragraph 3, to the extent that it is ancillary to the other revenue referred to in points (a) to (c) of this paragraph;
  - (g) revenue from fees and charges referred to in Article 6(3).
3. The following shall constitute internal assigned revenue:
  - (a) revenue from third parties in respect of goods, services or work supplied at their request, with the exception of fees and charges referred to in point (b) of Article 6(3);
  - (b) revenue arising from the repayment, in accordance with Article 62, of amounts wrongly paid;
  - (c) proceeds from the supply of goods, services and works for Union institutions or other Union bodies;
  - (d) insurance payments received;
  - (e) revenue from lettings and from the sale of buildings and land;
  - (f) revenue arising from subsequent reimbursement of taxes pursuant to point (b) of Article 27(3) of Regulation (EU, Euratom) 2018/1046.
4. Assigned revenue shall be carried over and transferred in accordance with the provisions of points (a) and (b) of Article 12(4) and Article 27.
5. Without prejudice to point (f) of the second paragraph, the relevant constituent act may also assign the revenue for which it provides to specific items of expenditure. Unless specified otherwise in the relevant constituent act, such revenue shall constitute internal assigned revenue.
6. All items of revenue within the meaning of points (a) to (c) of paragraph 2 and points (a) and (c) of paragraph 3 shall cover all direct or indirect expenditure incurred by the activity or purpose in question.
7. The budget of the Agency shall include lines to accommodate external assigned revenue and internal assigned revenue and wherever possible shall indicate the amount.

Assigned revenue may be included in the estimate of revenue and expenditure only for the amounts that are certain at the date of the establishment of the estimate.

*Article 21*

**Structure to accommodate assigned revenue and provision of corresponding appropriations**

1. The structure to accommodate assigned revenue in the budget of the Agency shall comprise:
  - (a) in the statement of revenue, a budget line to receive the revenue;
  - (b) in the statement of expenditure, the budget remarks, including general remarks, showing which budget lines may receive the appropriations corresponding to the assigned revenue which are made available.

In the case referred to in point (a) of the first subparagraph, a token entry 'pro memoria' shall be made and the estimated revenue shall be shown for information in the remarks.

2. The appropriations corresponding to assigned revenue shall be made available automatically, both as commitment appropriations and as payment appropriations, when the revenue has been received by the Agency.
3. By way of exception from paragraph 2, where assigned revenue stems from the implementation of a contribution agreement concluded pursuant to Article 7, the total amount of commitment appropriations may be made available upon entry into effect of the agreement concerned provided that the basic act with regard to the funds being delegated to the Agency provides for the possibility to make use of annual instalments.

*Article 22*

**Donations**

1. The director may accept any donation made to the Agency, such as foundations, subsidies, gifts and bequests.
2. Acceptance of a donation of a value of EUR 50 000 or more which involves a financial charge or any type of obligation, including follow-up costs, exceeding 10% of the value of the donation made, shall be subject to the prior authorisation of the management board or, where the constituent act allows it, of the executive board. The management board or executive board, as applicable, shall take a decision within two months of the date on which the request for authorisation is submitted to it. If the management board or, where the constituent act allows it, the executive board fails to take a decision within that period, the donation shall be deemed accepted.
3. The director shall, at the request of the management board or, where the constituent act allows it, the executive board, analyse, estimate and duly explain the financial charges, including follow-up costs, and any other obligations as referred to in paragraph 1 that the acceptance of the donation entails.

*Article 23*

**Corporate Sponsorship**

Article 26 of Regulation (EU, Euratom) 2018/1046 shall not apply to the Agency.

*Article 24*

**Rules on deductions and exchange rates adjustments**

Article 27 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

## **CHAPTER 6**

### **Principle of specification**

#### *Article 25*

#### **General provisions**

1. Appropriations shall be earmarked for specific purposes by title and chapter. The chapters shall be further subdivided into articles and lines.
2. In the budget of the Agency, appropriations may only be transferred to lines for which the budget of the Agency has authorised appropriations or which carry a token entry 'pro memoria'.
3. The limits referred to in Article 26 shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget of the Agency, including amending budgets.
4. The amount to be taken into consideration for the purposes of calculating the limits referred to in Article 26 shall be the sum of the transfers to be made on the line from which transfers are being made, after adjustment for earlier transfers made.

#### *Article 26*

#### **Transfers**

1. The director may transfer appropriations:
  - (a) 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;
  - (b) from one chapter to another and within each chapter without limit.
2. Beyond the limit referred in paragraph 1, the director may propose transfers of appropriations from one title to another to the management board or, where the constituent act allows it, to the executive board. The management board or, where the constituent act allows it, the executive board shall have two weeks to oppose the proposed transfers. After that time limit, the proposed transfers 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 authorising officer shall inform the management board as soon as possible of all transfers made. The authoring officer shall inform the European Parliament and the Council of all transfers carried out under paragraph 2.

#### *Article 27*

#### **Specific rules on transfers**

Appropriations corresponding to assigned revenue may be transferred only if such revenue is used for the purpose for which it is assigned.

## **CHAPTER 7**

### **Principle of sound financial management and performance**

#### *Article 28*

##### **Performance and principles of economy, efficiency and effectiveness**

1. Appropriations shall be used in accordance with the principle of sound financial management, and thus be implemented respecting the following principles:
  - (a) the principle of economy which requires that the resources used by the Agency in the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price;
  - (b) the principle of efficiency which concerns the best relationship between the resources employed, the activities undertaken and the achievement of objectives;
  - (c) the principle of effectiveness which concerns the extent to which the objectives pursued are achieved through the activities undertaken.
2. In line with the principle of sound financial management, the use of appropriations shall focus on performance and for that purpose:
  - (a) objectives for programmes and activities shall be established ex ante;
  - (b) progress in the achievement of objectives shall be monitored with performance indicators;
  - (c) progress in, and problems with, the achievement of those objectives shall be reported to the European Parliament and the Council in accordance with point (d) of the first subparagraph of Article 32(5) and with point (b) of the first subparagraph of Article 48(1).
3. Specific, measurable, attainable, relevant and time-bound objectives as referred to in paragraphs 1 and 2 and relevant, accepted, credible, easy and robust indicators shall be defined where relevant. The indicators used to monitor the achievement of the objectives shall cover all sectors. The director shall provide the relevant information to the management board annually. It shall be included in the Single Programming Document referred to in Article 32.
4. The Agency shall carry out a benchmarking exercise referred to in Article 38 of this Regulation.

The benchmarking exercise shall include:

  - (a) a review of the efficiency of the Agency's horizontal services,
  - (b) a cost-benefit analysis of sharing services or transferring them entirely to another Agency or the Commission.

When carrying out the benchmarking exercise referred to in the first and the second subparagraph the Agency shall make necessary arrangements to avoid any conflict of interests.

#### *Article 29*

##### **Evaluations**

1. Programmes and activities that entail significant spending shall be subject to ex-ante and retrospective evaluations ("evaluation"), which shall be proportionate to the objectives and expenditure.
2. Ex-ante evaluations supporting the preparation of programmes and activities shall be based on evidence, if available, on the performance of related programmes or activities and shall identify and analyse the issues to be addressed, the added value of Union involvement, objectives, expected effects of different options and monitoring and evaluation arrangements.
3. Retrospective evaluations shall assess the performance of the programme or activity, including aspects such as effectiveness, efficiency, coherence, relevance and EU added value. Retrospective evaluations shall be based on the information generated by the monitoring arrangements and indicators established for the action concerned. They shall be undertaken periodically and in sufficient time for the findings to be taken into account in ex-ante evaluations or impact assessments that support the preparation of related programmes and activities.
4. The director shall prepare an action plan to follow-up on the conclusions of the evaluations referred to in paragraph 3 and report on its progress to the Commission in the consolidated annual activity report referred to in Article 48 and regularly to the Management Board.
5. The management board shall scrutinise the implementation of the action plan referred to in paragraph 4.

*Article 30*

**Internal control of budget implementation**

1. Pursuant to the principle of sound financial management, the budget of the Agency shall be implemented in compliance with effective and efficient internal control.
2. For the purposes of the implementation of the budget of the Agency, internal control shall be applied at all levels of management and shall be 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, detection, correction and follow-up 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.
3. Effective internal control shall be based on best international practices and on the Internal Control Framework laid down by the Commission for its own departments and shall include, in particular, the following elements:
  - (a) segregation of tasks;
  - (b) an appropriate risk management and control strategy that includes control at recipient level;

- (c) avoidance of conflicts of interests;
  - (d) adequate audit trails and data integrity in data systems;
  - (e) procedures for monitoring effectiveness and efficiency;
  - (f) procedures for follow-up of identified internal control weaknesses and exceptions;
  - (g) periodic assessment of the sound functioning of the internal control system.
4. Efficient internal control shall be based on the following elements:
- (a) the implementation of an appropriate risk management and control strategy coordinated among appropriate actors involved in the control chain;
  - (b) the accessibility for all appropriate actors in the control chain of the results of controls carried out;
  - (c) reliance, where appropriate, on independent audit opinions, provided that the quality of the underlying work is adequate and acceptable and that it was performed in accordance with agreed standards;
  - (d) the timely application of corrective measures including, where appropriate, dissuasive penalties;
  - (e) the elimination of multiple controls;
  - (f) the improvement of the cost-benefit ratio of controls.
5. Where the Agency runs also offices away from the main seat, the internal control system shall be designed in order to mitigate the specific risks of the activities of those offices.

## **CHAPTER 8** **Principle of transparency**

### *Article 31*

#### **Publication of accounts and budgets**

1. The budget of the Agency shall be established and implemented and the accounts presented in accordance with the principle of transparency.
2. A summary of the budget of the Agency and any amending budget of the Agency, as definitively adopted, shall be published in the Official Journal of the European Union within three months of their adoption.

The summary shall show the aggregated figures for each Title of the budget of the Agency, the establishment plan and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts. It shall also indicate the equivalent information for the previous financial year.

3. The budget of the Agency including the establishment plan and any amending budgets of the Agency, as definitively adopted, as well as an indication of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and of the number of seconded national experts, shall be transmitted for information to the European Parliament and the Council, the Court of Auditors and the

Commission, and shall be published on the website of the Agency within four weeks of their adoption.

4. The Agency shall make available on its website, no later than 30 June of the year following the financial year in which the funds were legally committed, information on the recipients of funds financed from the budget of the Agency, including experts contracted pursuant to Article 93 of this Regulation, in accordance with Article 38 of Regulation (EU, Euratom) 2018/1046 and following a standard presentation. The published information shall be easily accessible, transparent and comprehensive. The information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EU) 2018/1725<sup>9</sup>.

### **TITLE III ESTABLISHMENT AND STRUCTURE OF THE BUDGET**

#### **CHAPTER 1 Establishment of the budget of the Agency**

##### *Article 32*

##### **Single programming document**

1. In accordance with Article 40 of Regulation (EU, Euratom) 2018/1046 the Agency shall send by 31 January each year to the Commission, the European Parliament and the Council its draft single programming document, as endorsed by its Management Board, containing:
  - (a) a multiannual work programme;
  - (b) an annual work programme;
  - (c) an estimate of its revenue and expenditure;
  - (d) a resources programming document;
  - (e) information on its building policy;
  - (f) strategy for cooperation with third countries and/or international organisations;
  - (g) strategy for achieving efficiency gains and synergies;
  - (h) strategy for the organisational management and internal control systems including their anti-fraud strategy as last updated and an indication of measures to prevent recurrence of cases of conflict of interest, irregularities and fraud, in particular where weaknesses, reported under Article 48 or paragraph 6 of Article 78, have led to critical recommendations.

The strategies referred to in the first subparagraph shall be assessed annually and updated as necessary.

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<sup>9</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC Text with EEA relevance (OJ L 295, 21.11.2018, p. 39).

The single programming document shall be drawn up taking into account guidelines set by the Commission.

2. The multiannual work programme shall set out the overall strategic programming for the years N+1 to N+3, including the objectives, expected results and performance indicators to monitor the achievement of the objectives and the results.

This overall strategic programming shall also show, per activity, the indicative financial and human resources considered necessary to attain the objectives set and shall also demonstrate the contribution of the Agency to the achievement of the EU political priorities.

This strategic programming will be updated where appropriate, and in particular, to address the outcome of the overall evaluations referred to in the constituent act.

3. The annual work programme shall set out for the year N+1:
  - (a) the expected outputs that will contribute to the achievement of the objectives set in the overall strategic programming;
  - (b) a description of the activities to be financed together with an indication of the amount of financial and human resources, showing the number of officials, temporary and contract staff as defined in the Staff Regulations, as well as Seconded National Experts.

It shall clearly indicate which tasks of the Agency have been added, changed or deleted in comparison with the adopted annual work programme of the previous financial year. Evaluation results shall be taken into account as evidence of the likely merits of an increase or decrease of the proposed budget of the Agency in comparison with its budget of the previous financial year.

The annual work programme shall be coherent with the multiannual programme referred to in paragraph 2.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial work programme, in accordance with the provisions of the constituent act.

The management board may delegate the power to make non-substantial amendments to the annual work programme to the authorising officer of the Agency.

4. The estimate of revenue and expenditure of the Agency, supported by the general guidelines underlying that estimate, shall include:
  - (a) an estimate of revenue broken down by Title; indicating fees and charges separately, where appropriate;
  - (b) an estimate of expenditure (commitment and payment appropriations), broken down by expenditure Title and Chapter;
  - (c) quarterly estimate of cash payments and receipts;
  - (d) an establishment plan setting the number of permanent and temporary posts by grade and by function group authorised within the limits of the budget appropriations requested for year N+1. Where there is a change in the number of establishment plan posts requested for year N+1, a statement justifying the request for new posts shall be provided;

The same information shall be provided on the number of contract staff and seconded national experts and shall be expressed in full-time equivalents.

5. The resources programming shall include qualitative and quantitative information on the human resource and budgetary matters for the reporting purposes, in particular:
  - (a) an estimate of the budget result from the year N-1 as referred to in Article 17;
  - (b) information on contribution in kind granted by the host Member State to the Agency for year N-1;
  - (c) information on the number of officials, temporary and contract staff as defined in the Staff Regulations as well as seconded experts for year N-1 and for year N.
  - (d) information on the achievement of all previously set objectives for the various activities for year N-1, showing the actual use of the human and financial resources by the end of year split between activities.

The resource programming document shall be updated annually.

6. Information on the building policy of the Agency shall include:
  - (a) for each building, including of offices away from the main seat, the expenditure and surface area covered by the appropriations of the corresponding lines in the budget of the Agency;
  - (b) the expected evolution of the global programming of surface area and premises for the coming years with a description of the building projects in planning phase which are already identified;
  - (c) the final terms and costs, as well as relevant information regarding project implementation of new building projects previously submitted to the European Parliament and the Council under the procedure established in Article 266 of Regulation (EU, Euratom) 2018/1046 and not included in the preceding year's working documents.
7. The Commission shall send its opinion on the draft Single Programming Document to the Agency in a timely manner in any case not later than 1st July of the year N.

If the Agency does not fully take into account the Commission's opinion, it shall provide the Commission with adequate explanations.

8. The final single programming document shall be adopted by the management board.
9. The Agency shall send any later updated version of the single programming document, notably to reflect the Commission's opinion and the outcome of the annual budgetary procedure, to the Commission, the European Parliament and the Council.

### *Article 33*

#### **Establishment of the budget**

1. The budget of the Agency shall be established in accordance with the provisions of the constituent act.
2. As part of the procedure for adoption of the budget, the Commission shall send the Agency's statement of estimates to the European Parliament and the Council and

propose the amount of the contribution for the Agency and the number of staff it considers the Agency needs.

The Commission shall provide the draft establishment plan of the Agency and an estimate of the number of contract staff and of seconded national experts expressed in full-time equivalents for which appropriations are proposed as soon as the Commission has established the draft budget.

3. The European Parliament and the Council shall adopt the establishment plan of the Agency and any subsequent amendments thereto, in accordance with Article 34.
4. After adoption of the draft budget by the Commission, the single programming document shall be adopted by the management board. It shall become definitive after final adoption of the Union budget setting the amount of the contribution and the establishment plan. If necessary the budget of the Agency and its establishment plan shall be adjusted accordingly.
5. When proposing to entrust new tasks to a Agency, the Commission shall, without prejudice to the legislative procedures for the modification of the constituent act, submit to the European Parliament and to the Council the necessary information to assess the impact of the new tasks on the resources of the Agency so as to review, where necessary, its financing and its staffing level.

*Article 34*

**Amending budgets**

Any amendment to the budget of the Agency, including to the establishment plan, beyond the modifications authorized under Articles 26(1) and 38(1) of this Regulation, shall be the subject of an amending budget adopted by the same procedure as the initial budget of the Agency, in accordance with the provisions of the constituent act and Article 32 of this Regulation.

Amending budgets shall be accompanied by statements of reasons and the information on the implementation of the budget for the preceding and current financial years available at the time of their establishment.

**CHAPTER 2**

**Structure and presentation of the budget of the Agency**

*Article 35*

**Structure of the budget of the Agency**

The budget of the Agency shall consist of a statement of revenue and a statement of expenditure.

*Article 36*

**Budget nomenclature**

As far as it is justified by the nature of the Agency's activities, the statement of expenditure must be set out on the basis of a nomenclature with a classification by purpose. That nomenclature shall be determined by the Agency and shall make a clear distinction between administrative appropriations and operational appropriations.

The budget nomenclature shall comply with the principles of specification, sound financial management and transparency. It shall provide the clarity and transparency necessary for the budgetary process, facilitating the identification of the main objectives as reflected in the

relevant legal bases, making choices on political priorities possible and enabling efficient and effective implementation.

*Article 37*

**Presentation of the budget of the Agency**

The budget of the Agency shall show:

- (a) in the statement of revenue:
  - (i) the estimated revenue of the Agency for the financial year concerned ('year N');
  - (ii) the estimated revenue for the preceding financial year and the revenue for year N-2;
  - (iii) appropriate remarks on each revenue line.
- (b) in the statement of expenditure:
  - (i) the commitment and payment appropriations for year N;
  - (ii) the commitment and payment appropriations for the preceding financial year, and the expenditure committed and the expenditure paid in year N-2 — the latter also expressed as a percentage of the budget of the Agency of year N;
  - (iii) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;
  - (iv) appropriate remarks on each subdivision.

*Article 38*

**Rules on the establishment plans for staff**

1. The establishment plan referred to in Article 32(4) 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 Agency. 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 management board may modify the establishment plan by up to 10 % of posts authorised, subject to the following conditions:

- (a) the volume of staff appropriations corresponding to a full financial year is not affected;
  - (b) the limit of the total number of posts authorised by the establishment plan is not exceeded;
  - (c) the Agency has taken part in a benchmarking exercise with other Union bodies as initiated by the Commission's staff screening exercise.
2. By 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 Agency shall take appropriate measures to respect the limit referred to in point (b) of the second subparagraph of paragraph 1 as soon as possible.

## **TITLE IV IMPLEMENTATION OF THE BUDGET OF THE AGENCY**

### **CHAPTER 1 General provisions**

#### *Article 39*

#### **Budget implementation in accordance with the principle of sound financial management**

1. The director shall perform the duties of authorising officer. He or she shall implement the revenue and expenditure of the budget in accordance with the financial rules of the Agency and the principle of sound financial management under his or her own responsibility and within the limits of the appropriations authorised.
2. Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, the Agency shall participate in fraud prevention activities of the European Anti-fraud Office.

#### *Article 40*

#### **Information on transfers of personal data for audit purposes**

In any call made in the context of grants, procurement or prizes implemented in direct implementation, potential beneficiaries, candidates, tenderers and participants shall, in accordance with Regulation (EU) 2018/1725<sup>10</sup> be informed that, for the purposes of safeguarding the financial interests of the Union, their personal data may be transferred to internal audit services, to the European Court of Auditors, or to the European Anti-Fraud Office and between authorising officers of the Union bodies, the Commission and the executive agencies.

#### *Article 41*

#### **Delegation of budget implementation powers**

1. The director may delegate the powers of budget implementation to staff of the Agency covered by the Staff Regulations, in accordance with the conditions laid down in the financial rules of the Agency adopted by the management board. Those so empowered may act only within the limits of the powers expressly conferred upon them.
2. The delegatee may subdelegate the powers received with the explicit agreement of the director.

#### *Article 42*

#### **Conflict of interests**

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<sup>10</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC Text with EEA relevance (OJ L 295, 21.11.2018, p. 39).

1. Financial actors within the meaning of Chapter 3 of this Title and other persons, including the members of the Management Board, involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action that may bring their own interests into conflict with those of the Agency. They shall also take appropriate measures to prevent a conflict of interest from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interest.

Where there is a risk of a conflict of interest, the person in question shall refer the matter to the competent authority. The competent authority shall confirm in writing, whether a conflict of interest is found to exist. In that case, the competent authority shall ensure that the person concerned ceases all activities in the matter. The competent authority shall take any further appropriate action.

2. For the purposes of paragraph 1, a conflict of interest exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.
3. The competent authority referred to in paragraph 1 shall be the director. If the member of staff concerned is the director, the competent authority shall be the management board or, where the constituent act allows it, the executive board. In case of a conflict of interest involving a member of the management board, the competent authority shall be the management board, exclusive of the member concerned.
4. The Agency shall adopt rules on the prevention and management of conflict of interests and shall publish annually on its website the declaration of interests of the management board members.

## **CHAPTER 2**

### *Article 43*

#### **Method of implementation of the budget of the Agency**

1. The budget of the Agency shall be implemented by the director in the departments placed under his or her authority.
2. In order to facilitate the implementation of their appropriations, the Agency may conclude service-level agreements as referred to in Article 59 of Regulation (EU, Euratom) 2018/1046.
3. Technical expertise tasks and administrative, preparatory or ancillary tasks not involving the exercise of public authority or the use of discretionary powers of judgement may be entrusted by contract to external private-sector entities, where this proves to be indispensable.

## **CHAPTER 3**

### **Financial actors**

#### **SECTION 1**

#### **PRINCIPLE OF SEGREGATION OF DUTIES**

### *Article 44*

#### **Segregation of duties**

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

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

**SECTION 2**  
**AUTHORISING OFFICER**

*Article 45*

**Powers and duties of authorising officer**

1. The authorising officer shall be responsible for implementing revenue and expenditure in accordance with the principle of sound financial management, including through ensuring reporting on performance and for ensuring compliance with the requirements of legality and regularity and equal treatment of recipients of Union funds.
2. The authorising officer shall put in place the organisational structure and the internal control systems suited to the performance of the duties of authorising officer, in accordance with the minimum standards or principles adopted by the management board or, where the constituent act allows it, by the executive board, on the basis of the Internal Control Framework laid down by the Commission for its own departments and having due regard to the risks associated with the management environment, including where applicable specific risks associated to decentralized offices, and the nature of the actions financed.

The establishment of such structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost-effectiveness and performance considerations.

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

3. To implement expenditure, the authorising officer shall make budgetary and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminary steps for the implementation of appropriations.
4. To implement revenue, the authorising officer shall draw up estimates of amounts receivable, establish entitlements to be recovered and issue recovery orders. Where appropriate, the authorising officer shall waive established entitlements.
5. In order to prevent errors and irregularities before the authorization of operations and to mitigate risks of non-achievement of objectives, each operation shall be subject at least to an ex ante control relating to the operational and financial aspects of the operation, on the basis of a control strategy which takes risk and cost-effectiveness into account.

The extent in terms of frequency and intensity of the ex ante controls shall be determined by the authorising officer taking into account the results of prior controls as well as risk-based and cost-effectiveness considerations, on the basis of his or her own risk analysis. In case of doubt, the authorising officer responsible for validating the relevant operations shall, as part of the ex ante control, request complementary information or perform an on-the-spot control in order to obtain reasonable assurance.

6. For the purpose of controls, 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 to constitute a single operation.
7. For a given operation, the verification shall be carried out by staff other than those who initiated the operation. The staff who carry out the verification shall not be subordinate to the members of staff who initiated the operation.
8. The authorising officer may put in place ex post controls to detect and correct errors and irregularities of operations after they have been authorized. Such controls may be organised on a sample basis according to risk and shall take account of the results of prior controls as well as cost-effectiveness and performance considerations.
9. The ex post controls shall be carried out by staff other than those responsible for the ex ante controls. The staff responsible for the ex post controls shall not be subordinate to the members of staff responsible for the ex ante controls.

The ex post controls may take the form of financial audits at the premises of the beneficiaries.

The rules and modalities, including timeframes, for carrying out audits of the beneficiaries shall be clear, consistent and transparent, and shall be made available when signing the grant agreement.

10. Authorising officers and staff responsible for budget implementation shall have the necessary professional skills. They shall respect a specific code of professional standards adopted by the Agency and based on standards laid down by the Commission for its own departments.
11. If a member of staff, involved in the financial management and control of transactions, considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform the director who shall, if the information is given in writing, reply in writing. If the director fails to take action within a reasonable time given the circumstances of the case and in any event within a month or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the relevant panel referred to in Article 143 of Regulation (EU, Euratom) 2018/1046 and the management board in writing.
12. In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, a member of staff or other servant, including national experts seconded to the Agency, shall inform their immediate superior, the director or the management board of the Agency or the European Anti-Fraud Office or the European Public Prosecutor's Office directly. Contracts with external auditors carrying out audits of the financial management of the Agency shall provide for an obligation of the external auditor to inform the director or, if the latter may be involved, the management board of any suspected illegal activity, fraud or corruption that may harm the interests of the Union.

*Article 46*

**Delegation of budget implementation**

Where powers of budget implementation are delegated or subdelegated in accordance with Article 41, the relevant provisions of Article 45 shall apply mutatis mutandis to the authorising officers by delegation or subdelegation.

*Article 47*

**Keeping of supporting documents by authorizing officers**

1. The authorising officer shall set up paper-based or electronic systems for the keeping of original supporting documents relating to budget implementation. Such documents shall be kept for at least five years from the date on which the European Parliament grants discharge for the financial year to which the documents relate.
2. Documents relating to operations not definitively closed shall be kept for longer than provided for in paragraph 1, namely until the end of the year following that in which the operations are closed.
3. Personal data contained in supporting documents shall, where possible, be deleted when those data are not necessary for budgetary discharge, control and audit purposes. Article 88 of Regulation (EU) 2018/1725<sup>11</sup> shall apply to the conservation of data.

*Article 48*

**Consolidated Annual Activity Report**

1. The authorising officer shall report to the management board on the performance of his or her duties in a form of a consolidated annual activity report containing:
  - (a) information on:
    - (i) the achievement of the objectives and results set in the Single Programming Document referred to in Article 32 through the reporting on the set of Performance Indicators;
    - (ii) the action plan to follow-up on the conclusions of the evaluations referred to in paragraph 3 of Article 29 and the report on its progress in accordance with Article 29(4);
    - (iii) the implementation of the body's annual work programme, budget and staff resources referred to in Article 32(5)(c);
    - (iv) the contribution of the Agency to the achievement of the Union political priorities;
    - (v) organisational management and on the efficiency and effectiveness of the internal control systems including the implementation of the body's anti-fraud strategy, the summary of number and type of internal audits carried out by the internal auditor, the internal audit capabilities, the recommendations made and the action taken on these recommendations

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<sup>11</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC Text with EEA relevance (OJ L 295, 21.11.2018, p. 39).

and on the recommendations of previous years, as referred to in Articles 82 and 83;

- (vi) any observations of the Court of Auditors and the actions taken on these observations;
  - (vii) the agreements referred to in Article 7;
  - (viii) the service-level agreements referred to in Article 43;
  - (ix) the acts of delegation and subdelegation referred to in Article 41.
- (b) a declaration of the authorising officer stating whether he or she has a reasonable assurance that unless otherwise specified in any reservations related to defined areas of revenue and expenditure:
- (i) the information contained in the report presents a true and fair view;
  - (ii) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;
  - (iii) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The consolidated annual activity report shall indicate the results of the operations by reference to the objectives set and performance considerations, the risks associated with the operations, the use made of the resources provided and the efficiency and effectiveness of the internal control systems, including an overall assessment of the costs and benefits of controls.

The consolidated annual report shall be submitted to the management board for the assessment.

2. No later than 1 July each year the consolidated annual activity report together with its assessment shall be sent by the management board to the Court of Auditors, to the Commission, to the European Parliament and the Council.
3. Additional reporting requirements may be provided in the constituent act in duly justified cases, in particular when it is required by the nature of the field in which the body operates.

### **SECTION 3** **ACCOUNTING OFFICER**

#### *Article 49*

#### **Powers and duties of the accounting officer**

The management board shall appoint an accounting officer who shall be responsible in the Agency for:

- (a) properly implementing payments, collecting revenue and recovering amounts established as being receivable;
- (b) preparing and presenting the accounts in accordance with Title X;
- (c) keeping the accounts in accordance with Title X;

- (d) implementing the accounting rules 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;
- (f) treasury management.

With respect to the tasks referred to in point (e) of the first subparagraph, the accounting officer shall be empowered to verify at any time compliance with the validation criteria.

#### *Article 50*

##### **Appointment and termination of duties of the accounting officer**

1. The management board shall appoint an accounting officer, covered by the Staff Regulations, who shall be completely independent in the performance of his or her duties. The accounting officer shall be chosen by the management board on the grounds of his or her particular competence as evidenced by diplomas or by equivalent professional experience.

2. Two or more Union bodies may appoint the same accounting officer. In such case, they shall make the necessary arrangements in order to avoid any conflict of interest.

The Agency may also agree with the Commission that the accounting officer of the Commission shall also act as accounting officer of the Agency.

Union bodies may also entrust the accounting officer of the Commission with part of the tasks of an accounting officer of the Union body, taking into account the cost-benefit analysis referred to in Article 28.

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

The trial balance accompanied by a hand-over report shall be transmitted by the accounting officer who is terminating his or her duties or, if it is not possible, by a member of staff in his or her department to the new accounting officer.

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

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

#### *Article 51*

##### **Accounting rules**

The accounting officer of the Agency shall apply the rules adopted by the accounting officer of the Commission based on internationally accepted accounting standards for the public sector.

For the purposes of the first paragraph of this Article, Articles 80 to 84 and 87 of Regulation (EU, Euratom) 2018/1046 shall apply. Articles 85 and 86 of Regulation (EU, Euratom) 2018/1046 shall apply *mutatis mutandis*.

**SECTION 4**  
**IMPREST ADMINISTRATOR**

*Article 52*

**Imprest accounts**

Article 88 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 53*

**Creation and administration of imprest accounts**

Where imprest accounts are set up by the Agency, Article 89 of Regulation (EU, Euratom) 2018/1046 shall apply.

**CHAPTER 4**  
**Liability of financial actors**

**SECTION 1**  
**GENERAL RULES**

*Article 54*

**Withdrawal of delegation of powers to and suspension of duties of financial actors**

Article 90 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 55*

**Liability of the financial actors for illegal activity, fraud or corruption**

Article 91 of Regulation (EU, Euratom) 2018/1046 shall apply.

**SECTION 2**  
**RULES APPLICABLE TO AUTHORISING OFFICERS**

*Article 56*

**Rules applicable to authorising officers**

Article 92 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 57*

**Treatment of financial irregularities on the part of a member of staff**

Article 93 of Regulation (EU, Euratom) 2018/1046 shall apply.

**SECTION 3**  
**RULES APPLICABLE TO ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS**

*Article 58*

**Rules applicable to accounting officers**

Article 94 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 59*

**Rules applicable to imprest officers**

Article 95 of Regulation (EU, Euratom) 2018/1046 shall apply.

**CHAPTER 5**  
**Revenue operations**

*Article 60*

**Request for payment**

The Agency shall present to the Commission requests for payment of all or part of the annual Union contribution pursuant to Article 16(6) under terms and at intervals agreed with the Commission.

*Article 61*

**Treatment of interest**

The interest generated by funds paid to the Agency by the Commission by way of the contribution shall not be due to the budget of the Union.

*Article 62*

**Estimate of amounts receivable**

Article 97 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 63*

**Establishment of amounts receivable**

Article 98 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

*Article 64*

**Default interest**

Article 99 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 65*

**Authorisation of recovery**

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

*Article 66*

**Rules on recovery**

Paragraphs 1 to 6 of Article 101 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

*Article 67*

**Recovery by offsetting**

Article 102 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

*Article 68*

**Recovery procedure failing voluntary payment**

Article 103 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 69*

**Additional time for payment**

Article 104 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 70*

**Limitation period**

Article 105 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

*Article 71*

**Specific provisions applicable to fees and charges**

Where the Agency collects fees and charges referred to in point (b) of Article 6(3), an overall provisional estimate of such fees and charges shall be included in the Single Programming Document referred to in Article 32.

Where fees and charges are entirely determined by legislation or decisions of the management 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 Agency's entitlement shall be registered. The accounting officer shall keep a list of all debit notes and provide the number of the debit notes and the global amount in the Agency's report on budgetary and financial management.

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

The Agency shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety. However, in exceptional circumstances, a service may be provided without prior payment of the corresponding charge or fee. In cases where service has been provided without prior payment of the corresponding charge or fee, Articles 63 to 70 shall apply.

**CHAPTER 6**

**Expenditure operations**

*Article 72*

**Financing decisions**

1. A budgetary commitment shall be preceded by a financing decision. Administrative appropriations may be implemented without a prior financing decision.
2. The annual and multi-annual work programmes of the Agency included in the single programming document referred to in Article 32 shall be equivalent to a financing decision for the activities it covers, provided that the elements set out in Article 32(2) and (3) are clearly identified. A multiannual financing decision shall specify that the implementation of the decision is subject to the availability of budget appropriations for the respective financial years after the adoption of the budget or as provided for in the system of provisional twelfths.
3. The financing decision shall also set out the following:

- (a) for grants: the type of applicants targeted by the call for proposals or direct award and the global budgetary envelope reserved for the grants;
- (b) for procurement: the global budgetary envelope reserved for procurements;
- (c) for prizes: the type of participants targeted by the contest, the global budgetary envelope reserved for the contest and a specific reference for prizes with a unit value of EUR 1 000 000 or more.

*Article 73*

**Expenditure operations**

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

At the end of the periods referred to in Article 75, the unused balance of budgetary commitments shall be decommitted.

When executing operations, the authorising officer shall ensure that the expenditure complies with the Treaties, the budget, this Regulation and other acts adopted pursuant to the Treaties as well as with the principle of sound financial management.

2. The authorising officer shall make a budgetary commitment before entering into a legal commitment with third parties.

The first subparagraph shall not apply to legal commitments concluded following a declaration of a crisis situation in the framework of a business continuity plan, in accordance with the procedures adopted by the Agency.

3. The authorising officer shall validate expenditure by accepting that an item of expenditure is charged to the budget of the Agency, after having checked the supporting documents attesting the creditor's entitlement as per the conditions set in the legal commitment when there is a legal commitment. For this purpose, the authorising officer responsible shall:

- (a) verify the existence of the creditor's entitlement;
- (b) determine or verify the reality and the amount of the claim through the endorsement "certified correct";
- (c) verify the conditions according to which payment is due.

Notwithstanding the first subparagraph, the validation of expenditure shall also apply to interim or final reports not associated with a request for payment in which case the impact on the accounting system will be limited to the general accounts.

4. The validation decision shall be expressed through electronically secured signature in accordance with Article 146 of Regulation (EU, Euratom) 2018/1046 by the authorising officer or by a technically competent member of staff, duly empowered by a formal decision of the authorising officer or, exceptionally, for paper workflow, take the form of a stamp incorporating that signature.

With the endorsement "certified correct", the authorising officer or a technically competent member of staff, duly empowered by the authorising officer, shall certify that:

- (a) for the pre-financing: the conditions required in the legal commitment for the payment of the pre-financing are met;

- (b) for interim and balance payments in contracts: the services provided for in the contract have been properly provided, the supplies properly delivered or that the work has been properly carried out;
- (c) for interim and balance payments in grants: the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement including, where applicable that the costs declared by the beneficiary are eligible.

In the case referred to in point (c) of the second subparagraph, cost estimates shall not be deemed to comply with the eligibility conditions set out in Article 186(3) of Regulation (EU, Euratom) 2018/1046. The same principle shall also apply for interim and final reports not associated to a payment request.

- 5. In order to authorize the expenditure, the authorising officer shall, after having verified that the appropriations are available, issue a payment order to instruct the accounting officer to pay an amount of expenditure that has been previously validated.
- 6. Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, the authorising officer may, subject to that officer's risk analysis, order the application of a direct debit system from an imprest account.

#### *Article 74*

### **Types of budgetary commitments**

- 1. Budgetary commitments shall fall into one of the following three categories:
  - (a) individual: when the recipient and the amount of the expenditure are known;
  - (b) global: when at least one of the elements necessary to identify the individual commitment is still not known;
  - (c) provisional: to cover routine administrative expenditure where either the amount or the final payees are not definitively known.
- 2. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the constituent act or basic act so provides or where they relate to administrative expenditure.
- 3. A global budgetary commitment shall be made on the basis of a financing decision.

The global budgetary commitment shall be made at the latest before the decision on the recipients and amounts is taken and, where implementation of the appropriations concerned involves the adoption of a work programme, at the earliest after that programme has been adopted.
- 4. The global budgetary commitment shall be implemented by the conclusion of one or more legal commitments.
- 5. Each individual legal commitment adopted following a global budgetary commitment shall, prior to signature, be registered by the authorising officer in the budgetary accounts and booked to the global budgetary commitment.
- 6. Provisional budgetary commitments shall be implemented by entering into one or more legal commitments giving rise to an entitlement to subsequent payments.

However, in cases relating to expenditure on staff management, they may be implemented directly by payments.

*Article 75*

**Time limits for commitments**

1. Without prejudice to Articles 73(2) and 109(2) legal commitments relating to individual or provisional budgetary commitments shall be entered into by 31 December of year n, year n being the one in which the budgetary commitment was made.
2. Global budgetary commitments shall cover the total cost of the corresponding legal commitments concluded up to 31 December of year n+1.
3. At the end of the periods referred to in paragraphs 1 and 2, the unused balance of such budgetary commitments shall be decommitted by the authorising officer.
4. The individual and provisional budgetary commitments for actions extending over more than one financial year shall, except in the case of staff expenditure, have a final date for implementation set, in accordance with the conditions in the legal commitments to which they refer, and taking into account the principle of sound financial management.
5. Any parts of budgetary commitments that have not been executed by payments six months after the final date for implementation shall be decommitted in accordance with Article 14.
6. The amount of a budgetary commitment for which no payment within the meaning of Article 76 has been made within two years of the signing of the legal commitment shall be decommitted, except where that amount relates to a case under litigation before judicial courts or arbitral bodies or where there are special provisions laid down in sector-specific rules.

*Article 76*

**Types of payments**

1. Payment of expenditure shall be made by the accounting officer within the limits of the funds available.
2. Payment shall be made on production of proof that the relevant action is in accordance with the contract, the agreement or the basic act and shall cover one or more of the following operations:
  - (a) payment of the entire amount due;
  - (b) payment of the amount due in any of the following ways:
    - (i) pre-financing providing a float, which may be divided into a number of payments in accordance with the principle of sound financial management; such pre-financing shall be paid either on the basis of the contract, the grant agreement or the basic act, or on the basis of supporting documents which make it possible to check that the terms of the contract or agreement in question are complied with;

- (ii) one or more interim payments as a counterpart of a partial execution of the action or performance of the contract. It may clear pre-financing in whole or in part, without prejudice to the provisions of the basic act;
- (iii) payment of the balance of the amounts due where the action or contract is completely executed.

The payment of the balance shall clear all preceding expenditure. A recovery order shall be issued to recover unused amounts.

3. A distinction shall be made in budgetary accounting between the different types of payment referred to in paragraph 2 at the time each payment is made.
4. The accounting rules referred to in Article 51 shall include the rules for clearing the pre-financing in the accounts and for the acknowledgment of the eligibility of costs.
5. Pre-financing payments shall be cleared regularly by the authorising officer responsible, according to the economic nature of the project and, at the latest, at the end of the project. The clearing shall be performed on the basis of information on costs incurred or confirmation of the conditions for payment being fulfilled in accordance with Article 125 of Regulation (EU, Euratom) 2018/1046 as validated by the authorising officer in accordance with Article 73(3) of this Regulation.

For grant agreements or contracts above EUR 5 000 000, the authorising officer shall obtain at each year-end at least the information needed to calculate a reasonable estimate of the costs. That information shall not be used for clearing the pre-financing, but may be used by the authorising officer and the accounting officer to comply with Article 82(2) of Regulation (EU, Euratom) 2018/1046.

For the purposes of the second subparagraph, appropriate provisions shall be included in the legal commitments entered into.

#### *Article 77*

### **Time limits for payments**

The payment of expenditure shall be carried out within the time limits specified in, and in accordance with Article 116 of Regulation (EU, Euratom) 2018/1046.

## **CHAPTER 7 Internal auditor**

#### *Article 78*

### **Appointment and powers and duties of the internal auditor**

1. The Agency shall have an internal auditing function that shall be performed in compliance with the relevant international standards.
2. The internal audit function shall be performed by the Commission's internal auditor. The internal auditor may be neither authorising officer nor accounting officer neither of the Agency nor of the Commission
3. 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, for:

- (a) 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;
  - (b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each operation for implementation of the budget of the Agency.
4. The internal auditor shall perform his or her duties in relation to all the Agency's activities and departments. He or she shall enjoy full and unlimited access to all information required to perform his or her duties, if necessary on the spot access, including in the Member States and in third countries.
  5. The internal auditor shall take note of the consolidated annual activity report of the authorising officer and any other pieces of information identified.
  6. The internal auditor shall report to the management board and the director of the Agency on his or her findings and recommendations. The Agency shall ensure that action is taken with regard to recommendations resulting from audits.
  7. The internal auditor shall also report in any of the following cases:
    - (a) critical risks and recommendations have not been addressed;
    - (b) there are significant delays in the implementation of the recommendations made in previous years.

The management board or, where the constituent act allows it, the executive board, and the director shall ensure regular monitoring of the implementation of audit recommendations. The management board or, where the constituent act allows it, the executive board shall examine the information referred to in Article 48(1)(a) and whether the recommendations have been fully and timely implemented.

Each Union body shall consider whether the recommendations made in the reports of its internal auditor are suitable for an exchange of best practices with the other Union bodies.

8. The Agency shall make available the contact details of the internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.
9. The reports and findings of the internal auditor shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.

#### *Article 79*

#### **Independence of the internal auditor**

1. The internal auditor shall enjoy complete independence in the conduct of his or her audits. Special rules applicable to the internal auditor shall be laid down by the Commission and shall be such as to guarantee that the internal auditor is completely independent in the performance of his or her duties, and to establish the internal auditor's responsibility.

2. The internal auditor may not be given any instructions nor be restricted in any way as regards the performance of the functions which, by virtue of his or her appointment, are assigned to him or her under the Financial Regulation.

*Article 80*

**Establishment of internal audit capability**

1. The management board or, where the constituent act allows it, the executive board may establish, with due regard to cost effectiveness and added value, an internal audit capability that shall perform its duties in compliance with the relevant international standards.

The purpose, authority and responsibility of the internal audit capability shall be provided for in the internal audit charter and shall be subject to the approval of the management board or, where the constituent act allows it, of the executive board.

The annual audit plan of an internal audit capability shall be drawn up by the Head of internal audit capability taking into consideration, inter alia, the director's assessment of risk in the Agency.

It shall be reviewed and approved by the management board or, where the constituent act allows it, by the executive board.

The internal audit capability shall report to the management board and the director on his or her findings and recommendations.

2. If the internal audit capability of a single Union body is not cost-effective or is not able to meet international standards, the Union body may decide to share an internal audit capability with other Union bodies functioning in the same policy area.

In such cases the management board or, where the constituent act allows it, the executive board of the concerned Union bodies shall agree on the practical modalities of the shared internal audit capability.

3. The internal audit actors shall cooperate efficiently through exchanging information and audit reports and, where appropriate, establishing joint risk assessments, and carrying out joint audits.

The management board or, where the constituent act allows it, the executive board, and the director shall ensure regular monitoring of the implementation of internal audit capability's recommendations.

**TITLE V  
COMMON RULES**

*Article 81*

**Forms of Union bodies' contributions**

1. Union bodies' contributions shall help achieve a Union policy objective and results specified and may take any of the following forms:
  - (a) financing not linked to costs of the relevant operations based on:
    - (i) the fulfilment of conditions set out in sector specific rules or Commission Decisions or;

- (ii) the achievement of results measured by reference to previously set milestones or through performance indicators.
- (b) reimbursement of eligible costs actually incurred;
- (c) unit costs, which cover all or certain specific categories of eligible costs which are clearly identified in advance by reference to an amount per unit;
- (d) lump sums, which cover in global terms all or certain specific categories of eligible costs which are clearly identified in advance;
- (e) flat-rate financing, which covers specific categories of eligible costs, which are clearly identified in advance, by applying a percentage;
- (f) a combination of the forms referred to in points (a) to (e).

Union bodies' contributions under points (c), (d) and (e) of the first subparagraph of this paragraph shall be established in accordance with Article 181 of Regulation (EU, Euratom) 2018/1046 or sector specific rules. Union bodies' contributions under point (a) of the first subparagraph of this paragraph shall be established in accordance with Article 181 of Regulation (EU, Euratom) 2018/1046, sector specific rules or a Commission decision.

2. When determining the appropriate form of a contribution, the potential recipients' interests and accounting methods shall be taken into account to the greatest extent possible.
3. The authorising officer responsible shall report on financing not linked to costs pursuant to points (a) and (f) of the first subparagraph of paragraph 1 of this Article in the annual activity report referred to in Article 48.

*Article 82*

**Cross-reliance on assessments**

Article 126 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

*Article 83*

**Cross-reliance on audits**

Article 127 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 84*

**Use of already available information**

Article 128 of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 85*

**Cooperation for protection of the financial interests of the Union**

Article 129 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

*Article 86*

**Information to the Commission on cases of fraud and other financial irregularities**

Without prejudice to its obligations pursuant to Article 8(1) of Regulation (EU, Euratom) No 883/2013<sup>12</sup> and Article 24(1) of Council Regulation (EU) 2017/1939<sup>13</sup>, the Agency shall inform the Commission without delay on cases of presumed fraud and other financial irregularities.

Moreover, it shall inform the Commission of any completed or ongoing investigations by the European Public Prosecutor's Office or the European anti-Fraud Office (OLAF), and of any audits or controls by the Court of Auditors or the Internal Audit Service (IAS), without endangering the confidentiality of the investigations.

Where the Commission's responsibility to implement the Union's budget may be affected or in cases involving a potentially serious reputational risk for the Union, the EPPO and/or OLAF shall inform the Commission without delay of any ongoing or completed investigation, without endangering its confidentiality and effectiveness.

*Article 87*

**Early-detection and exclusion system**

Section 2 of Chapter 2 of Title V of Regulation (EU, Euratom) 2018/1046 shall apply.

*Article 88*

**Rules on procedures, management and e-government**

Section 1 and section 3 of Chapter 2 and Chapter 3 of Title V of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

**TITLE VI**

**PUBLIC PROCUREMENT AND CONCESSIONS**

*Article 89*

**Common provisions**

As regards procurement, Title VII of Regulation (EU, Euratom) 2018/1046 and Annex 1 thereof shall apply, subject to Article 90.

The Agency may be associated, at its request, as contracting authority, in the award of Commission or interinstitutional contracts and with the award of contracts of other Union bodies.

*Article 90*

**Procurement procedures**

The Agency may conclude a service level agreement as referred to in paragraph 2 of Article 43 without having recourse to a public procurement procedure.

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<sup>12</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p;1).

<sup>13</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

The Agency may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs. In such case, Article 165 of Regulation (EU, Euratom) 2018/1046 shall apply.

## **TITLE VII GRANTS AND PRIZES**

### *Article 91*

#### **Grants**

Where the Agency may award grants in accordance with the constituent act or by delegation of the Commission pursuant to Article 62(1)(c)(iv) of Regulation (EU, Euratom) 2018/1046, the relevant provisions of Title VIII of Regulation (EU, Euratom) 2018/1046 shall apply.

### *Article 92*

#### **Prizes**

Where the Agency may award prizes in accordance with the constituent act or by delegation of the Commission pursuant to Article 62(1)(c)(iv) of Regulation (EU, Euratom) 2018/1046, the relevant provisions of Title IX of Regulation (EU, Euratom) 2018/1046 shall apply.

## **TITLE VIII OTHER BUDGET IMPLEMENTATION INSTRUMENTS**

### *Article 93*

#### **Remunerated external experts**

Article 237 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

### *Article 94*

#### **Non remunerated experts**

Article 238 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

### *Article 95*

#### **Membership fees and other payments of subscriptions**

Article 239 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

### *Article 96*

#### **Other instrument**

Article 240 of Regulation (EU, Euratom) 2018/1046 shall apply mutatis mutandis.

**TITLE IX**  
**ANNUAL ACCOUNTS AND OTHER FINANCIAL REPORTING**

**CHAPTER 1**  
**Annual accounts**

**SECTION 1**  
**ACCOUNTING FRAMEWORK**

*Article 97*

**Structure of the accounts**

The annual accounts of the Agency shall be prepared for each financial year that shall run from 1 January to 31 December. Those accounts shall comprise the following:

- (a) the financial statements of the Agency;
- (b) the budget implementation reports of the Agency.

*Article 98*

**Financial statements**

1. The financial statements shall be presented in euro and in accordance with the accounting rules referred to in Article 51 of this Regulation and shall comprise the following:
  - (a) the balance sheet which presents all assets and liabilities and the financial situation prevailing on 31 December of the preceding financial year;
  - (b) the statement of financial performance that presents the economic result for the preceding financial year;
  - (c) the cash-flow statement showing amounts collected and disbursed during the financial year and the final treasury position;
  - (d) the statement of changes in net assets presenting an overview of the movements during the year in reserves and accumulated results.
2. The financial statements shall present information, including information on accounting policies, in a manner that ensures it is relevant, reliable, comparable and understandable.
3. The notes to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 of this Article and shall supply all the additional information prescribed by the accounting rules referred to in Article 51 of this Regulation and the internationally accepted accounting practice where such information is relevant to the Agency's activities.

The notes shall contain at least the following information:

- (a) accounting principles, rules and methods;
- (b) explanatory notes, supplying additional information not contained in the body of the financial statements, which is necessary for a fair presentation of the accounts.

4. The accounting officer shall, after the close of the financial year and up to the date of transmission of the general accounts, make any adjustments that, without involving disbursement or collection in respect of that year, are necessary for a true and fair view of those accounts.

*Article 99*

**Budget implementation reports**

1. The budget implementation reports shall be presented in euro and shall be comparable year by year. They shall consist of:
  - (a) reports which aggregate all budgetary operations for the year in terms of revenue and expenditure;
  - (b) explanatory notes, which shall supplement and comment on the information given in the reports.
2. The structure of the budget implementation reports shall be the same as that of the budget of the Agency itself.
3. The budget implementation reports shall contain:
  - (a) information on revenue, in particular changes in the revenue estimates, the revenue outturn and entitlements established;
  - (b) information showing changes in the total commitment and payment appropriations available;
  - (c) information showing the use made of the total commitment and payment appropriations;
  - (d) information showing commitments outstanding, those carried over from the preceding financial year and those made during the financial year.
4. The budget result shall consist of the difference between:
  - (a) all the revenue collected in respect of that financial year;
  - (b) the amount of payments made against appropriations for that financial year increased by the amount of the appropriations for the same financial year carried over.

The difference referred to in the first subparagraph shall be increased or decreased on the one hand, by the net amount of appropriations carried over from previous financial years that have been cancelled and, on the other hand, by:

- (a) payments made in excess of non-differentiated appropriations carried over from the previous financial year, as a result of change in euro rates;
- (b) the balance resulting from exchange gains and losses during the financial year, both realised and non-realised.

*Article 100*

**Supporting documents**

Each entry into the accounts shall be based on appropriate supporting documents in accordance with Article 47 of this Regulation.

**SECTION 2**  
**ANNUAL ACCOUNTS TIMETABLE**

*Article 101*

**Provisional accounts**

1. The accounting officer of the Agency shall send the provisional accounts to the accounting officer of the Commission and to the Court of Auditors by 1 March of the following year.
2. The accounting officer of the Agency shall also provide by 1 March of the following year the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format laid down by the latter.

*Article 102*

**Approval of the final accounts**

1. In accordance with Article 246 of Regulation (EU, Euratom) 2018/1046, the Court of Auditors shall, by 1 June, make its observations on the provisional accounts of the Agency.
2. The accounting officer of the Agency shall provide, by 15 June, the required accounting information to the accounting officer of the Commission, in the manner and format laid down by the Commission, with a view to drawing up the final consolidated accounts.
3. On receiving the Court of Auditors' observations on the provisional accounts of the Agency, the accounting officer shall draw up the final accounts of the Agency in accordance with Article 49 of this Regulation. The director shall send them to the management board, which shall give an opinion on these accounts.
4. The director shall send the final accounts, together with the opinion of the management board, to the accounting officer of the Commission, the Court of Auditors, the European Parliament and the Council, by 1 July of the following financial year.
5. The accounting officer of the Agency shall also send to the Court of Auditors, with a copy to the accounting officer of the Commission, a representation letter covering those final accounts. The representation letter shall be established at the same date at which the final accounts of the Agency are drawn up.

The final accounts shall be accompanied by a note drawn up by the accounting officer, in which the latter declares that the final accounts were prepared in accordance with this Title and with the applicable accounting principles, rules and methods.

A link to the pages of the website where the final accounts of the Agency are disclosed shall be published in the Official Journal of the European Union by 15 November of the following year.

6. The director shall send the Court of Auditors a reply to the observations made in its annual report by 30 September of the following financial year at the latest. The replies of the director shall be sent to the Commission at the same time.

**CHAPTER 2**  
**Budgetary and other financial reporting**

*Article 103*

**Annual report on budgetary and financial management**

1. Each Agency shall prepare a report on budgetary and financial management for the financial year.
2. The director shall send the report to the European Parliament, the Council, the Commission and the Court of Auditors, by 31 March of the following financial year.
3. The report referred to in paragraph 2 shall give an account, both in absolute terms and expressed as a percentage, at least, of the rate of implementation of appropriations together with summary information on the transfers of appropriations among the various budget items.

**TITLE X**  
**EXTERNAL AUDIT, DISCHARGE AND COMBATTING FRAUD**

*Article 104*

**External audit**

1. An independent external auditor shall verify that the annual accounts of the Agency properly present the income, expenditure and financial position of the Agency prior to the consolidation in the final accounts of the Commission.  
  
Unless otherwise provided for in the constituent act, the Court of Auditors shall prepare a specific annual report on the Agency in line with the requirements of Article 287(1) of the Treaty on the Functioning of the European Union.  
  
In preparing that report, the Court of Auditors shall consider the audit work performed by the independent external auditor referred to in the first subparagraph and the action taken in response to the auditor's findings.
2. The Agency shall send to the Court of Auditors the budget of the Agency, 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.
3. The scrutiny carried out by the Court of Auditors shall be governed by Articles 254 to 259 of Regulation (EU, Euratom) 2018/1046.

*Article 105*

**Timetable of the discharge procedure**

1. The European Parliament, upon a recommendation from the Council, shall, before 15 May of year N+2 save where otherwise provided in the constituent act, give a discharge to the director in respect of the implementation of the budget for year N. The director shall inform the management board of the observations of the European Parliament contained in the resolution accompanying the discharge decision.
2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the director of the reasons for the postponement.

3. If the European Parliament postpones the decision giving a discharge, the director, in cooperation with the management board, shall make every effort to take measures as soon as possible to remove or facilitate removal of the obstacles to that decision.

*Article 106*

**The discharge procedure**

1. The discharge decision shall cover the accounts of all the revenue and expenditure of the Agency, the budget result and the assets and liabilities of the Agency 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 Agency. It shall also examine the annual report made by the Court of Auditors, together with the replies of the director of the Agency, any relevant special reports by the Court of Auditors in respect of the financial year concerned 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 director shall submit to the European Parliament, at its request, in the same manner as provided for in Article 261(3) of Regulation (EU, Euratom) 2018/1046 any information required for the smooth application of the discharge procedure for the financial year concerned.

*Article 107*

**Follow-up measures**

1. The 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 director shall report on the measures taken in the light of those observations and comments. The director shall send a copy thereof to the Commission and the Court of Auditors.

*Article 108*

**On-the-spot checks by the Commission, the Court of Auditors and OLAF**

1. The EU body shall grant Commission staff and other persons authorised by it, as well as the Court of Auditors, access to its sites and premises and to all the data and information, including data and information in electronic format, needed in order to conduct their audits.
2. The European Anti-Fraud Office may carry out investigations including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the

Council<sup>14</sup> and Council Regulation (Euratom, EC) No 2185/96<sup>15</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union.

## **TITLE XI ADMINISTRATIVE APPROPRIATIONS**

### *Article 109*

#### **Administrative appropriations**

1. Administrative appropriations shall be non-differentiated appropriations.
2. Administrative expenditure 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 Agency of the financial year in which it is effected.
3. Expenditure which is to be paid in advance pursuant to legal or contractual provisions 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 Article 11(2) shall not apply.

### *Article 110*

#### **Specific provisions regarding building projects**

Articles 266 and 267 of Regulation (EU, Euratom) 2018/1046 shall apply.

## **TITLE XII TRANSITIONAL AND FINAL PROVISIONS**

### *Article 111*

#### **Information requests by the European Parliament, the Council and the Commission**

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

### *Article 112*

#### **Adoption of the new financial regulation of the Agency**

Each body referred to in Article 70 of Regulation 2018/1046 shall adopt new financial rules at the latest by 1 July 2019 or, in any event, within six months of the date on which a body falls within the scope of Article 70 of that Regulation, following the granting of a contribution

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<sup>14</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p;1).

<sup>15</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p.2).

charged to the budget. Until the date of application of the new financial rules, the Agency's current financial rules shall apply. The Agency shall publish its financial rules on its website.

*Article 113*

**Repeal**

Decision No 22/2013 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 12 December 2013 on the adoption of the Financial Regulation for the Agency for the Cooperation of Energy Regulators is repealed with effect from 1 January 2019. However, Articles 32 and 47 of the above-mentioned Decision No 22/2013 shall continue to apply until 31 December 2019.

*Article 114*

**Entry into force**

This Regulation shall enter into force on the day following that of its adoption. It shall apply from 1 January 2019. However, Articles 32 and 48 of this Regulation shall apply from 1 January 2020.

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

Done at Ljubljana, 21 June 2019

*For the Administrative Board*

*The Chair*

*Dr. R. JORDAN*