

## II

*(Acts whose publication is not obligatory)*

## COUNCIL

**DECISION No 5/2004 OF THE ACP-EC COMMITTEE OF AMBASSADORS  
of 17 December 2004****concerning the Financial Regulation of the Centre for the Development of Enterprise  
(2006/192/EC)**

THE ACP-EC COMMITTEE OF AMBASSADORS,

HAS DECIDED AS FOLLOWS:

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (¹), hereinafter referred to as 'the Agreement' and in particular Article 2(6) of Annex III, thereto,

Having regard to the Internal Agreement of 12 September 2000 between Representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the Agreement,

Having regard to the Financial Regulation applicable to the ninth European Development Fund (9th EDF),

Whereas:

- (1) The Committee of Ambassadors, after the signature of the Agreement, should lay down the Financial Regulation of the Centre for the Development of Enterprise, hereinafter referred to as 'the Centre'.
- (2) The Committee of Ambassadors should lay down the procedures for the adoption of the Centre's budget,

**I. GENERAL PRINCIPLES**

PRINCIPLES OF UNITY, BUDGET ACCURACY, EQUILIBRIUM AND UNIT OF ACCOUNT

*Article 1*

1. All items of revenue and expenditure of the Centre shall be included in estimates based on a costed annual work programme to be drawn up for each financial year and shall be shown in the budget.
2. The revenue and expenditure shown in the budget shall be in balance.

*Article 2*

The budget shall be drawn up and implemented in euro and the accounts shall be presented in euro. However, for cash-flow purposes, the accounting officer and, in the case of imprest accounts, imprest administrators shall be authorised to carry out operations in national currencies of ACP and EU countries.

*Article 3*

1. Revenue shall include the contribution by the EDF, the amount levied in taxes on the salaries, wages and other emoluments paid by the Centre, and other miscellaneous receipts.
2. Revenue shall include contributions from other donors to the budget of the Centre.

<sup>(¹)</sup> OJ L 317, 15.12.2000, p. 3.

3. In accordance with Article 4(3) of its Statutes and Rules of Procedure, the Centre may also manage on behalf of third Parties resources intended for the execution of activities laid down for it in the Agreement. The financial rules applicable to the management of these resources are set out in Article 37 of this Financial Regulation.

*Article 4*

The estimates of expenditure shall include operating and intervention expenditure. A clear distinction shall be made between them.

PRINCIPLE OF ANNUALITY

*Article 5*

1. The financial year shall begin on 1 January and end on 31 December.

2. Appropriations entered in the budget shall be authorised for a period of one financial year.

(a) However, appropriations duly committed during a financial year but not paid by 31 December of that year shall be carried over automatically to the following financial year only. Appropriations carried over in this way shall be clearly identified in the accounts of the current year;

(b) Under certain conditions applicable to long-term projects, the Director may approve the carry-over of appropriations for a second consecutive year. The accounts shall identify appropriations carried over in this way. However, the Director shall inform the Executive Board of his decision at its next meeting;

(c) At the end of each financial protocol of the Agreement, any appropriations committed but not yet paid out shall be carried over automatically to the next financial protocol of the Agreement. Appropriations committed but not yet paid out at the end of the Agreement shall be carried over, but only during the transitional period between this Agreement and the next or, if applicable, the twelve-month winding-up period;

(d) In accordance with the rules applicable to the drawing-up of the budget, appropriations that lapse at the end of one financial year shall be available again for subsequent budgets.

3. If, at the beginning of a financial year, the budget for that year has not been finally adopted, the Director shall, in order to ensure continuity in the operation of the Centre, authorise commitment to, authorisation of and payment of monthly administrative and operating expenditure in accordance with the procedures laid down in this Financial Regulation. Such

monthly expenditure for the current year may not, however, exceed one twelfth of the corresponding appropriations, article by article, approved in the budget for the preceding year.

PRINCIPLE OF SOUND FINANCIAL MANAGEMENT

*Article 6*

1. Budget appropriations shall be used in accordance with the principle of sound financial management, that is to say economy, efficiency and effectiveness.

2. The principle of economy requires that the resources used by the Centre to implement its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

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

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

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget. Achievement of those objectives shall be monitored by performance indicators for each activity, and information shall be provided to the Executive Board by the Director. This information shall be provided annually at the latest in the documents accompanying the preliminary draft budget and should be provided along with the documents supplied to the Commission justifying the annual amount requested by the Centre from the EDF.

4. In order to improve decision-making, the Centre shall regularly carry out *ex ante* and *ex post* evaluations of programmes or activities in accordance with a multi-annual programme of evaluation to be fixed in agreement with the Commission. Evaluation results shall be included in the documents supplied to the Commission justifying the annual amount requested by the Centre from the EDF.

II. ESTABLISHMENT OF THE BUDGET

*Article 7*

1. Within the limits of the overall budget allocated to the Centre by the financial protocol, increased by possible contributions from other donors, and on the basis of the guidelines laid down by the strategy approved by the Committee, the Director shall draw up a draft annual work programme and related budget. This draft shall be forwarded to the Executive Board no later than 15 July of the year preceding its implementation.

The annual work programme and related budget shall be approved by the Executive Board by 31 July and submitted to the Committee of Ambassadors for adoption. The budget shall be forwarded to the Commission of the European Communities (hereinafter referred to as the Commission), which shall initiate the Community procedures in force as regards the contribution requested from the EDF, on the basis of the separate allocation provided for this purpose.

2. The budget shall only be available for commitment as from the date on which the competent Community authority takes the financing decision on the contribution requested from the EDF. The Centre shall be informed of this decision.

3. The terms and conditions applicable to the contribution from the EDF shall be fixed in a financing agreement signed between the Centre and the Commission.

4. The budget shall include proper estimates of revenue from other donors.

#### Article 8

1. The dates for the payment of the contribution from the EDF shall be fixed in the financing agreement referred to in Article 7(3). The contribution from preceding financial years representing lapsed appropriations shall be deducted.

2. The budget shall be subdivided into titles (budget headings), chapters, articles and items according to the nature or purpose of the revenue or expenditure.

#### Article 9

Where necessary, the Director shall submit a draft supplementary or amending budget, which shall be examined and approved in the same form and according to the same procedures as the budget containing the original estimates.

### III. IMPLEMENTATION OF THE BUDGET

#### Article 10

1. The Director shall implement the budget on his own responsibility, in accordance with the principles set out in section I, and within the limits of the appropriations authorised. He shall report to the Executive Board on the administration of the budget.

2. The authorised appropriations shall be used only in accordance with the principles and rules laid down in the Financial Regulation and in particular the principle of sound financial management as defined in Article 6.

#### Article 11

1. No revenue shall be collected or expenditure effected unless credited to or charged against an appropriate article in the budget.

No expenditure may be committed or authorised in excess of the appropriations authorised for the financial year concerned or of the appropriations carried over from previous financial years.

2. Revenue and expenditure shall be entered in full in the accounts without any adjustment against each other.

— By way of derogation from this rule, the following shall be deducted from the amounts authorised:

(a) fines imposed on a party to a contract;

(b) adjustment of amounts paid in error, which may be achieved by means of deduction when a subsequent validation is effected under the chapter, article and financial year in respect of which the excess payment was made;

(c) the value of vehicles, equipment and installations, taken in part exchange upon purchase of new items of the same kind; the net purchase price shall be entered in the accounts as the historical cost for the valuation of the inventory.

— By way of derogation from this rule, the following may be reused:

(a) refunds of amounts paid in error;

(b) insurance payments received;

(c) proceeds from the sale of vehicles, equipment and installations disposed of when replaced;

(d) proceeds from the sale of the Centre's publications.

#### Article 12

1. Transfers from one title to another shall be decided by the Director, except where transfers from or to articles related to staff emoluments are concerned. He shall inform the Executive Board of his decisions at its next meeting.

Transfers from one title to another, where articles related to staff emoluments are concerned, shall be decided by the Executive Board, on the basis of a proposal from the Director.

2. Transfers from one chapter to another and within chapters shall be decided by the Director, who shall inform the Executive Board accordingly.

### Article 13

The revenue of the Centre shall be paid into one or more accounts opened in the name of the Centre.

## IV. FINANCIAL CONTROL

### Article 14

1. The financial control shall be composed of a financial controller and, if necessary, one or more assistant controllers, who must all be experienced in the financial regulations of international organisations.

2. The controller shall report for administrative purposes directly to the Director and the assistant controllers shall report directly to the controller.

3. The controller and the assistant controllers shall be appointed by the Executive Board. The controller and the assistant controllers shall be bound by the Staff Regulations in force. However, any measures relating to disciplinary action, suspension, termination of employment or legal proceedings must be endorsed by the Executive Board, on the basis of a fully substantiated proposal from the Director.

4. Before any operation is authorised by an authorising officer, the operational and financial aspects shall be verified by the financial control. The purpose of this verification shall be to ascertain that:

- (a) the expenditure is in order and conforms to the relevant provisions;
- (b) the principle of sound financial management referred to in Article 6 has been applied.

This verification shall result in the granting or withholding of approval.

The financial control shall withhold its approval if it considers that the above conditions are not fulfilled. In each case where approval is withheld, the financial control shall make a written statement, stating the full reasons therefor, and shall notify the Director.

Except where the availability of the appropriations is in doubt, the Director may, by a decision stating the full reasons therefor and taken on his sole responsibility, overrule such a refusal. This decision shall be final and binding and shall be communicated for information to the financial control. The Director shall

inform the Executive Board of all such decisions in writing at its next meeting.

The financial control shall have access to all the supporting documents and to any other document relating to the expenditure and revenue to be verified. It may carry out verifications on the spot.

5. In carrying out their duties, the controller and the assistant controllers shall enjoy complete independence. They shall not receive any instruction nor have any restriction imposed with regard to carrying out the duties assigned to them by virtue of this Financial Regulation as a consequence of their appointment.

6. The Director may request the financial control to give its opinion on matters relating to the diagnosis, organisation or improvement of the Centre's internal procedures. The Director may also request the financial control to carry out verifications of documents and, where appropriate, on-the-spot verifications to check that operations financed by the budget have been correctly implemented.

7. At the end of each financial year, and no later than 30 April of the following year, the financial control shall prepare an activity report in which it gives its opinion on the financial management and on the implementation of the budget. It shall submit its report to the Director, who shall forward it, along with his comments if necessary, to the Executive Board at its next meeting.

### Article 15

The external auditors referred to in Article 27 shall express independent opinions on the quality of the management and control systems.

## V. ADMINISTRATION OF THE BUDGET

### Article 16

1. The budget of the Centre shall be administered in accordance with the principle that authorising officers and accounting officers are different individuals.

2. The duties of authorising officer, controller and accounting officer shall be mutually incompatible.

3. The appropriations shall be administered by the authorising officer, who alone shall be empowered to enter into commitments regarding expenditure, determine entitlements to be collected and issue recovery and payment orders. Collection and payment operations shall be carried out by the accounting officer.

**Article 17**

1. All measures which may give rise to expenditure payable by the Centre shall be preceded by a proposal for commitment from the authorising officer. The proposal, accompanied by the original supporting documents, shall be sent to the financial control for prior verification.
2. A provisional commitment may be entered into in respect of recurrent expenditure.
3. An account shall be kept of commitments and payment orders.

**Article 18**

1. The purpose of validation of expenditure by the authorising officer shall be:
  - (a) to verify the existence of the rights of the creditor;
  - (b) to determine or verify the existence and the amount of the debt;
  - (c) to verify the conditions under which payment falls due.
2. Validation of any expenditure shall be subject to the submission of supporting documents showing the creditor's claim and, where appropriate, the service rendered.

**Article 19**

1. Authorisation is the act whereby the authorising officer, by the issue of a payment order, instructs the accounting officer to pay an item of expenditure which he has validated.
2. The payment order shall be accompanied by the original supporting documents, which shall bear or be accompanied by the approval of the authorising officer confirming that the amounts to be paid are correct, that the supplies have been received or that the service has been performed.
3. Copies of the supporting documents, certified as true copies by the authorising officer may, in some cases, be accepted in place of the originals.
4. Payment orders shall be sent to the financial control for prior verification.

**Article 20**

1. Payment is the final action whereby the Centre is discharged of its obligations towards its creditors.

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

3. In the event of a substantive error or of the validity of the discharge being contested or of failure to observe the formalities prescribed by this Financial Regulation, the accounting officer shall immediately inform the authorising officer and the financial control. The Director may require in writing, and on his own responsibility, that payment is made. The Director shall inform the Executive Board of all such decisions in writing at its next meeting.

**Article 21**

1. Payments shall, as a general rule, be made through a bank account, preferably by bank transfer or, where good grounds exist, by cheque. The transactions shall be denominated in euro. In exceptional cases, and if appropriate, another currency may be used.
2. Cheques and bank transfer orders shall bear two signatures, one of which must be that of the accounting officer.
3. For duly substantiated reasons, the Director may authorise cash payments. A receipt shall be obtained in respect of those payments.
4. In the absence of the actual exchange rates used, the conversion rates to be used for the calculation in euro of payments to be made, or of revenue to be collected in local ACP currencies, shall be those in force on the first working day of the month in which the real date of the operation falls, as recorded by the European Central Bank.

**Article 22**

1. For the payment of certain categories of expenditure, imprest accounts may be set up in accordance with the conditions laid down by the Centre.
2. Each decision to grant an imprest account shall be taken by the Director on the basis of a proposal from the staff member in charge of the file. Prior to submission to the Director, each proposal must be approved by the accounting officer and agreed by the financial control.

3. Each decision shall specify:

— the name of the imprest administrator,

- the responsibility of the administrator so designated,
- the maximum amount of the advance,
- the duration of the utilisation of the advance,
- the means whereby supporting documents shall be provided and the time limit for so doing,
- the nature and maximum amount of each item of expenditure.

4. Each payment of an advance must also be preceded by a commitment.

5. The authorising officer and the accounting officer shall take whatever steps are necessary to ensure that clearances in respect of the advances granted are issued for the correct amounts and within an appropriate lapse of time.

#### *Article 23*

1. The Director shall be the authorising officer for the appropriations entered in the budget of the Centre.

2. The Director may delegate some of his duties to staff members under his authority. Each decision to delegate powers shall state the duration and extent of the mandate to act as authorising officer.

3. The Director may delegate certain duties related to implementation to carefully selected appropriate third parties.

#### *Article 24*

1. The accounting officer shall be appointed by the Director with the endorsement of the Executive Board.

2. He shall be responsible in the Centre for:

- (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
- (b) preparing and presenting the accounts in accordance with Article 26;
- (c) keeping the accounts in accordance with Article 26;
- (d) implementing, in accordance with Article 26, the accounting rules and methods and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;

(e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information;

(f) treasury management.

3. The accounting officer shall obtain from the authorising officer, who shall guarantee its reliability, all the information necessary for the production of accounts which accurately represent the Centre's financial assets and budget implementation.

4. Subject to paragraph 5 of this Article and Article 22, the accounting officer is the only person empowered to manage monies and other assets. He shall be responsible for their safe-keeping.

5. The accounting officer may delegate certain tasks to subordinates subject to the Staff Regulations, where this is indispensable for the performance of his duties.

6. The instrument of delegation shall lay down the tasks entrusted to the subordinates and their rights and obligations.

#### *Article 25*

1. The recovery of any sum due to the Centre shall give rise to the issue of a recovery order by the authorising officer. Recovery orders shall be submitted to the internal control body for prior verification.

2. The accounting officer shall assume responsibility for recovery orders forwarded to him by the authorising officer.

3. A receipt shall be issued in respect of all cash payments made to the accounting officer or imprest administrator.

#### **VI. ACCOUNTS, FINANCIAL STATEMENTS, AUDIT, COURT OF AUDITORS, OLAF**

#### *Article 26*

1. The accounts shall be kept in euro, by the double entry method and on the basis of the calendar year. They shall show all revenue and expenditure from 1 January to 31 December of each year and shall include the original supporting documents.

The accounts shall be closed at the end of the financial year to enable the Centre's financial statements to be drawn up.

2. Entries shall be made on the basis of an accounting system comprising a nomenclature of budgetary items which makes a clear distinction between the accounts that permit the balance sheet to be drawn up and those that permit the revenue and expenditure account to be drawn up. These entries may be recorded in a computerised system, which will make it possible to draw up a general monthly balance. All imprests shall be entered in a suspense account and cleared no later than the end of the following financial year, except in the case of standing imprests.

3. When the authorising officer, the controller and the accounting officer consider by mutual agreement that the system offers guarantees that satisfy requirements in terms of security, the Centre may use electronic processing.

4. The separate accounts kept for the resources managed on behalf of third Parties, as provided for in Article 37, shall be consolidated in the balance sheet and the revenue and expenditure account of the Centre.

5. The Centre shall draw up a balance sheet and a revenue and expenditure account no later than 31 March of year N + 1.

The balance sheet shall show the assets and liabilities of the Centre at 31 December of year N.

The revenue and expenditure account shall include:

(a) a revenue table comprising:

- expected receipts from the EDF based on approved commitments of the current year and those carried over from previous years,
- actual receipts from taxes on salaries and from interest earned,
- other actual receipts;

(b) an expenditure table comprising:

- actual payments on commitments of the year carried over from previous financial years,
- actual payments or commitments charged against the budget of the year N,
- a summary table showing actual payments for furniture, equipment and other inventory items,

— authorised commitments to be carried over to the following financial year.

(c) notes on the financial statements comprising:

- accounting principles applied,
- summary tables of appropriations committed, paid, cancelled or carried over in respect of the preceding and current years,
- detailed notes and calculations in support of the line items in the statements.

6. Each quarter a statement shall be drawn up showing the situation as regards implementation of the current budget and use of the appropriations carried over; this statement shall be certified by the financial control and forwarded to the Executive Board.

#### Article 27

1. The Executive Board shall appoint a firm of auditors of international repute for a period of three years from a list of at least three proposed firms in order to audit the financial statements of the Centre. However, the same firm of auditors cannot be appointed for more than three consecutive years.

2. The auditors shall audit the books and the cash held at the Centre, verify that the inventories and balance sheets have been drawn up in a proper manner and in good faith, in accordance with proper accounting procedures, and ensure that the information regarding the accounts of the Centre is correct.

The purpose of the audit shall be to establish that all revenue due has been received and all expenditure incurred in a lawful and proper manner and that the financial management has been sound.

The auditors shall certify that the financial statements have been drawn up in a proper manner according to international accounting standards, and that they represent a true and fair view of the financial position of the Centre.

3. The auditors shall advise the Centre 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 auditors shall be responsible for:

- (a) assessing the suitability and effectiveness of internal management systems and the performance of the Centre in implementing programmes and actions by reference to the risks associated with them; and
- (b) assessing the suitability and quality of the internal control systems applicable to every budgetary implementation operation.

4. The auditors shall perform their duties on all the Centre's activities and units. They shall enjoy full and unlimited access to all information required to perform their duties.

5. After the close of each financial year the auditors shall draw up a report by 30 June at the latest. This report shall be forwarded to the Director, who shall in turn forward it, with his comments if necessary, to the Executive Board. The Executive Board shall then forward the report to the Committee with its recommendations.

On the basis of this report and the financial statements, the Committee shall give the Director a discharge in respect of the implementation of the budget.

#### *Article 28*

The Commission, the Court of Auditors and OLAF may undertake checks on the financing received by the Centre from the EDF in accordance with the EDF Financial Regulation. The Court of Auditors may check that revenue has been received and expenditure incurred in a lawful and proper manner and that the provisions of the Agreement and those of the Financial Regulation of the ninth EDF have been respected.

#### **VII. RESPONSIBILITIES OF THE AUTHORISING OFFICERS, ACCOUNTING OFFICER, ASSISTANT ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS**

#### *Article 29*

Authorising officers who, when determining entitlements to be recovered, issuing recovery orders, entering into a commitment of expenditure or signing a payment order, violate this Financial Regulation, shall render themselves liable to disciplinary action and, where appropriate, to payment of compensation. The same shall apply if they fail to draw up a document establishing a debt or if they neglect to issue recovery orders or are late in

issuing them without justification. Such liability may only be invoked when the violation was committed intentionally or was the result of serious negligence on their part.

#### *Article 30*

1. The accounting officer and assistant accounting officers shall render themselves liable to disciplinary action and, where appropriate, to payment of compensation as regards payments made by them in violation of Article 19.

They shall render themselves liable to disciplinary action and to payment of compensation as regards any loss or damage of the monies, assets and documents in their keeping, where such loss or damage was caused intentionally or was the result of serious negligence on their part.

Under the same conditions, they shall be responsible for the correct execution of orders received by them in respect of the use and the administration of the bank accounts, and in particular:

- (a) where they recover or pay amounts that are not in conformity with the corresponding recovery or payment orders;
- (b) where they make payments to persons other than those entitled.

2. Imprest administrators shall render themselves liable to disciplinary action and, where appropriate, to payment of compensation in the following cases:

- (a) where they cannot provide proper supporting documents for payments made by them;
- (b) where they make payments to persons other than those entitled.

Imprest administrators shall be liable to disciplinary action and to payment of compensation in respect of any loss or damage of the monies, assets and documents in their keeping, where such loss or damage was caused intentionally or was the result of serious negligence on their part.

#### *Article 31*

1. The accounting officer, assistant accounting officers and imprest administrators shall be insured against the risks inherent in their respective duties.

The Centre shall cover the insurance costs relating thereto. It shall specify the categories of staff members serving as accounting officers, assistant accounting officers and imprest administrators, as well as the conditions subject to which it will cover the insurance costs borne by the said staff members to guard against the risks inherent in their respective duties.

2. Special allowances shall be granted to the accounting officer, assistant accounting officers and imprest administrators. The level of these allowances shall be laid down in a regulation drawn up by the Centre. The amounts corresponding to these allowances shall be credited each month to an account opened by the Centre on behalf of each of these staff members in order to establish a guarantee fund for the purpose of covering any loss for which the person concerned might render himself liable, insofar as such a loss has not been covered by refunds from insurance companies.

The credit balance in these guarantee accounts shall be paid to the persons concerned after the end of their appointment as accounting officer, assistant accounting officer or imprest administrator and after they have received the final discharge in respect of their management.

3. The discharge to the accounting officer, assistant accounting officers and imprest administrators will be given by the Director, based on the external auditors' report within two years after the closing of the financial year concerned.

### Article 32

The liability to payment of compensation and to disciplinary action of the authorising officer, accounting officer, assistant accounting officers and imprest administrators shall be determined in accordance with the Staff Regulations of the Centre.

## VIII. PROCUREMENT PROCEDURES AND OTHER PROVISIONS

### Article 33

#### A. APPLICABLE PROCUREMENT RULES

The award of contracts to be concluded by the Centre for the supply of goods and services shall be governed by the provisions of this Article, supplemented as necessary by the provisions of the Agreement and the General Regulations adopted on its basis by the ACP-EC Council of Ministers and by the rules concerning the award of contracts in the Financial Regulation applicable to the EDF; i.e. the candidates must be nationals of Member States of the Community or of the ACP States, except in duly substantiated cases accepted by the Director.

In the event of conflict, the rules referred to under A, shall apply.

#### B. DEFINITIONS

For the purposes of this Article the following definitions shall apply:

##### 1. 'direct agreement'

Procedure in which the Centre consults the candidate of its choice and negotiates the terms of the contract with him;

##### 2. 'simplified procedure'

Procedure without prior publication of a notice and terms of reference in which only candidates (a minimum of three) invited by the Centre may submit tenders;

##### 3. 'negotiated procedure'

Procedure without prior publication of a notice and terms of reference in which the Centre consults the candidate or candidates of its choice and negotiates the terms of the contract with one or more of them. One or more of the conditions set out in point C.1(e) below must apply;

##### 4. 'restricted invitation to tender without publication of a notice'

Procedure in which only candidates invited by the Centre on the basis of its data file of suppliers may submit a tender in response to terms of reference prepared by the Centre;

##### 5. 'restricted invitation to tender with publication of a notice'

Procedure in which only candidates invited by the Centre may submit a tender in response to the notice and terms of reference published by the Centre;

##### 6. 'open invitation to tender'

Procedure in which any natural or legal person or group thereof may submit a tender in response to the notice and terms of reference published by the Centre.

## C. CONTRACTS WITH SUPPLIERS OF GOODS AND SERVICES

## 1. Supply contracts

- (a) Contracts relating to the purchase or hire of supplies, equipment or movable property shall be concluded following an open tender. The candidates must be nationals of Member States of the Community or of the ACP States, except in duly substantiated cases accepted by the Director;
- (b) The contracts may be concluded by direct agreement (a single offer) when the total amount of the contract does not exceed EUR 4 999;
- (c) They are concluded by a simplified procedure, with at least three suppliers being consulted, when the total amount of the contract is between EUR 5 000 and EUR 29 999;
- (d) They are concluded after a restricted invitation to tender to at least three candidates, without publication of a notice, when the total amount of the contract is between EUR 30 000 and EUR 149 999.
- (e) They may be concluded by a negotiated procedure, after agreement by the Director and on the basis of a duly-substantiated file, when the amount of the contract exceeds EUR 4 999 and one or more of the following conditions applies:
  - for reasons of urgency that are not attributable to the Centre,
  - when there are specifically technical and duly substantiated reasons,
  - when the contract is for ancillary supplies, services or work that, for technical reasons, cannot be separate from the main contract,
  - when the invitation to tender has proved unsuccessful.

The conditions in which the derogations referred to in (e) may be approved shall be specified in an internal directive drawn up by the Executive Board, which shall be informed of any such decisions immediately.

## 2. Contracts for the provision of services

- (a) Contracts relating to the provision of services shall be concluded following a restricted invitation to tender to at least three candidates. These candidates must be nationals of Member States of the Community or of the ACP States, except in duly-substantiated cases accepted by the Director.

- (b) The contracts may be concluded by direct agreement when the total cost of the services to the Centre does not exceed EUR 4 999.
- (c) The contracts are concluded by a simplified procedure, with at least three suppliers being consulted, when the total cost of the services to the Centre is between EUR 5 000 and EUR 199 999. However, for contracts between EUR 150 000 and EUR 199 999 the consultation shall take place on the basis of detailed terms of reference.
- (d) The contracts are concluded by a negotiated procedure after agreement by the Director and on the basis of a duly substantiated file, when the amount of the contract exceeds EUR 4 999 and one or more of the conditions set out in point C. 1(e) applies.
- 3. The contractor shall be selected on the basis of the price quoted, evidence of professional competence, experience and financial soundness, and the time limit proposed for completion of the contract.
- 4. Contracts shall be drawn up exclusively in euro.
- 5. In cases where the services covered by points 1 and 2 are split up into several contracts, it is the total cost of the services that must be taken into consideration in application of this Article.
- 6. In specific cases, the Centre may delegate the organisation of the simplified procedures and invitations to tender to an external body, provided that the choice of the companies contacted, the terms of reference and the selection of the contractor remain its responsibility or, in the event of co-financing, the joint responsibility of the Centre and the other co-financiers.

## Article 34

The Centre may make financial contributions to initiatives of enterprises, entrepreneurs, intermediaries and service suppliers, as follows:

- 1. The Centre may contribute to the cost of services for eligible projects for which the financing and management responsibility are incumbent on a natural or legal person who is a national of a Member State of the Community or of an ACP State and who has submitted a request for assistance to the Centre.

2. The Centre shall assess the cost of the services, the choice of suppliers, evidence of professional competence, experience and financial soundness, the time limit for completion of the work, and the expected impact of the programme proposed by the beneficiary. To that end, it shall use a weighted list of criteria similar to that which the Commission uses to manage the EDF, adjusted to fit the Centre's objectives.
3. If he is subcontracting, the beneficiary shall comply with Article 33.
4. The agreements shall be drawn up exclusively in euro.
5. The methods of applying these contributions shall be set out in an internal directive.

#### Article 35

1. A permanent inventory shall be kept of all movable and immovable property belonging to the Centre. Only movable property whose value is EUR 350 or more shall be entered in the inventory. The inventory number shall be entered on each invoice before the latter is paid.
2. Any sale of movable property and equipment of a unit purchase value in excess of EUR 1 000 shall be suitably advertised, in accordance with an internal directive to be drawn up by the Director.
3. A record signed by both the Director and the person responsible for the equipment and certified by the internal control shall be drawn up whenever any property or article in the inventory is disposed of, scrapped or is found to be missing on account of loss or theft, or for any other reason.
4. The Centre shall keep a physical and an accounting inventory, which shall be reconciled on a regular basis. This reconciliation shall be cleared by the internal control body.

#### Article 36

This Financial Regulation shall be applicable in full to the Centre's decentralised structures.

#### IX. MANAGEMENT ON BEHALF OF THIRD PARTIES

##### Article 37

1. The Centre may also manage resources intended for the execution of activities laid down for it in the Agreement on

behalf of third Parties. The list of these resources shall be given in an annex to the budget of the Centre.

2. This Financial Regulation shall be applicable to the management of these resources.

However, the management of the other resources made available by the Commission shall be governed by the financial provisions laid down in the agreement signed by the Commission and the Centre. If there are no such provisions, this Financial Regulation shall remain applicable.

3. Proper estimates of the expenses that will be financed by these resources shall also be annexed to the budget of the Centre. A clear distinction shall be made between operating and intervention expenses.

4. Separate accounts shall be kept for the management of these resources on behalf of third Parties.

5. The financial statements of each fund managed by the Centre on behalf of a third Party shall include a balance sheet and a revenue and expenditure account, indicating the situation as at 31 December of the financial year concerned. They shall be certified in accordance with the provisions of the agreement signed between the Centre and the donor.

If there are no such provisions, the certification shall be carried out by the financial control of the Centre.

6. These financial statements shall be attached as an annex to the financial statements of the Centre.

#### Article 38

The ACP States, the Member States and the Community shall be bound, each to the extent to which it is concerned, to take the measures necessary to implement this Decision.

#### Article 39

This Decision shall enter into force on 1 January 2005.

Done at Brussels, 17 December 2004.

For the ACP-EC Committee of Ambassadors

The Chairman

T. J. A. M. de BRUIJN