

COUNCIL DECISION (EU) 2016/1353
of 4 August 2016
concerning the financial rules of the European Defence Agency and repealing Decision
2007/643/CFSP

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency ⁽¹⁾, and in particular Article 18 thereof,

Whereas:

- (1) On 18 September 2007, the Council adopted Decision 2007/643/CFSP ⁽²⁾ on the financial rules of the European Defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European Defence Agency.
- (2) Following the adoption of Decision (CFSP) 2015/1835, it is necessary to repeal Decision 2007/643/CFSP and establish new financial rules for the European Defence Agency,

HAS ADOPTED THIS DECISION:

TITLE I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This decision lays down the essential financial rules of the European Defence Agency (hereinafter referred to as 'the Agency').

Article 2

Definitions

For the purposes of this Decision, the following definitions apply:

- (a) 'participating Member State' means a Member State which participates in the Agency;
- (b) 'contributing Member States' means the participating Member States which contribute to a particular project or programme of the Agency;
- (c) 'general budget' means the general budget established in accordance with Article 13 of Decision (CFSP) 2015/1835;
- (d) 'additional revenue' refers to additional revenue, the content of which is established in Article 15 of Decision (CFSP) 2015/1835;
- (e) 'Authorising Officer' is the Agency's Chief Executive who exercises the powers defined in Article 10(5) of Decision (CFSP) 2015/1835;
- (f) 'budget' means the instrument which, for each financial year, forecasts and authorises all revenue and expenditure considered necessary for the Agency;

⁽¹⁾ OJ L 266, 13.10.2015, p. 55.

⁽²⁾ OJ L 269, 12.10.2007, p. 1.

- (g) 'control' means any measure taken to provide reasonable assurance regarding the effectiveness, efficiency and economy of operations, the reliability of reporting, the safeguarding of assets and information, the prevention, detection and correction of fraud and irregularities and their follow-up, and the 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. Controls may involve various checks, as well as the implementation of any policies and procedures to achieve the objectives described in the first sentence;
- (h) 'check' means the verification of a specific aspect of a revenue or expenditure operation.

TITLE II

AGENCY'S BUDGET

Article 3

Agency's budget

The Agency's budget shall include the general budget, the budgets associated with activities related to ad hoc projects or programmes as provided for in Chapter IV of Decision (CFSP) 2015/1835 and any budgets resulting from additional revenue.

CHAPTER 1

Budgetary principles

Article 4

Respect for budgetary principles

In accordance with Article 12 of Decision (CFSP) 2015/1835, the Agency's budget shall be established and implemented in accordance with the budgetary principles set out in this Decision.

Article 5

Principles of unity and of budgetary accuracy

1. No revenue shall be collected and no expenditure effected unless booked to a line in the Agency's budget.
2. No expenditure may be committed or authorised in excess of the appropriations authorised by the Agency's budget.
3. An appropriation may be entered in the Agency's budget only if it is for an item of expenditure considered necessary.
4. Interest generated by pre-financing payments made from the Agency's budget shall not be due to the Agency.

Article 6

Principle of annuality

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

2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the financial year or by 31 March of the following year for those legal commitments most of the preparatory stages of which have been undertaken by 31 December.
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years.
4. Given the needs of the Agency and subject to the approval by the Steering Board in accordance with Article 15, the unused appropriations may be entered in the estimate of revenue and expenditure of the following financial year. Those appropriations must be used first.
5. Paragraphs 1 to 4 shall not prevent budgetary commitments for actions extending over more than one financial year being broken down over several years into annual instalments.

Article 7

Principle of equilibrium

1. Revenue and payment appropriations shall be in balance.
2. The Agency may not raise loans within the framework of the Agency's budget.
3. Any budgetary surplus arising from the Agency's general budget in a given financial year shall be considered as a credit available for the participating Member States and returned to them as a deduction from the third contribution of the following financial year.

Article 8

Principle of unit of account

The Agency's 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 shall be authorised to carry out operations in other currencies.

Article 9

Principle of universality

Total revenue shall cover total payment appropriations. All revenue and expenditure shall be entered into the budget in full without any adjustment against each other.

Article 10

Principle of specification

1. Appropriations shall be earmarked for specific purposes at least by title and chapter.
2. The Authorising Officer may transfer appropriations from one chapter to another without limit and from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made.

Beyond the limit referred to in the first subparagraph, the Authorising Officer shall propose to the Steering Board transfers of appropriations from one title to another. The Steering Board shall have three weeks to oppose such transfers. After that time limit they shall be deemed to be adopted.

The Authorising Officer shall inform the Steering Board of all transfers carried out under the first subparagraph. Proposals for transfers and transfers carried out 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.

Article 11

Principle of sound financial management

1. Appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by the Agency in the pursuit of its activities are made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency concerns the best relationship between resources employed and results achieved.

The principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results.

Article 12

Internal control of budget implementation

1. The Agency's budget shall be implemented in compliance with effective and efficient internal control.
2. For the purposes of the implementation of the Agency's budget, internal control is defined as a process applicable at all levels of management and designed to provide reasonable assurance of achieving the following objectives:
 - (a) effectiveness, efficiency and economy of operations;
 - (b) reliability of reporting;
 - (c) safeguarding of assets and information;
 - (d) prevention, 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.
3. Effective and efficient internal control shall be based on best international practices and include, in particular, the elements laid down in Article 32(3) and (4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽¹⁾, taking into account the structure and size of the Agency, the nature of the tasks entrusted to it and the amounts and financial and operational risks involved.

⁽¹⁾ 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).

*Article 13***Principle of transparency**

1. The Agency's budget shall be established and implemented and the accounts presented in accordance with the principle of transparency.
2. Subject to Article 35(3) of Regulation (EU, Euratom) No 966/2012, the Agency's budget, including the staff establishment plan and amending budgets, as adopted, shall be published on the internet site of the Agency within four weeks of their adoption.

TITLE III

PROVISIONS APPLICABLE TO THE GENERAL BUDGET

CHAPTER 1

Financial planning*Article 14***The general budget**

1. By 31 March each year, the Head of the Agency shall provide the Steering Board with a preliminary estimate of the draft general budget for the following year.
2. By 30 June each year, the Head of the Agency shall propose a revised preliminary estimate of the draft general budget for the following year, together with the draft three-year Planning Framework to the Steering Board.
3. By 30 September each year, the Head of the Agency shall propose the draft general budget together with the draft three-year Planning Framework to the Steering Board. The draft shall include:
 - (a) the appropriations deemed necessary:
 - (i) to cover the Agency's running, staffing and meeting costs;
 - (ii) for procuring external advice, notably operational analysis, essential for the Agency to discharge its tasks, and for specific activities for the common benefit of all participating Member States;
 - (b) a forecast of the revenue needed to cover expenditure.
4. The Steering Board shall aim to ensure that the appropriations referred to in point (a)(ii) of paragraph 3 represent a significant share of the total appropriations referred to in paragraph 3. Those appropriations shall reflect actual needs and shall allow for an operational role for the Agency.
5. The draft general budget shall be supported by detailed justifications and a staff establishment plan.
6. The Steering Board, acting by unanimity, may decide that the draft general budget shall, furthermore, cover a particular project or programme where this is clearly for the common benefit of all participating Member States.
7. The appropriations shall be classified in titles and chapters grouping expenditure by type or purpose, subdivided as necessary into articles.
8. Each title may include a chapter entitled 'provisional appropriations'. Those appropriations shall be entered where there is uncertainty, based on serious grounds, about the amount of appropriations needed or the scope for implementing the appropriations entered.

9. Revenue shall consist of:
- (a) contributions payable by the participating Member States based on the gross national income (GNI) scale;
 - (b) other revenue, including deductions from Staff remuneration and interest yielded on the Agency's bank accounts.

The draft general budget shall carry lines to accommodate earmarked revenue and, wherever possible, shall indicate the amount foreseen.

10. The Steering Board, acting by unanimity, shall adopt the draft general budget by 31 December of each year. When doing so, the Steering Board shall be chaired by the Head of the Agency, or by a representative appointed by the Head of the Agency, or by a member of the Steering Board invited to do so by the Head of the Agency. The Chief Executive shall declare that the budget has been adopted and notify the participating Member States.

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

Article 15

Amending budget

1. In the case of unavoidable, exceptional or unforeseen circumstances, the Chief Executive may propose a draft amending budget to the Steering Board.
2. The draft amending budget shall be drawn up, proposed, and adopted and notification given in accordance with the same procedure as the general budget. The Steering Board shall act with due account to the urgency of those circumstances.

CHAPTER 2

Financial actors and budget implementation in accordance with the principle of sound financial management

Article 16

Powers and duties of the Authorising Officer

1. The Chief Executive shall perform the duties of Authorising Officer. The Authorising Officer shall implement the general budget in accordance with these financial rules and the principle of sound financial management, under his own responsibility and within the limits of the authorised appropriations. The Authorising Officer shall be responsible for ensuring compliance with the requirements of legality and regularity.
2. The Chief Executive may delegate the powers of budget implementation to staff of the Agency, covered by Council Decision (EU) 2016/1351 ⁽¹⁾ (hereinafter referred to as 'the Staff Regulations of the Agency'), in accordance with the conditions laid down in these financial rules. Those so empowered may act only within the limits of the powers expressly conferred upon them.

⁽¹⁾ Council Decision (EU) 2016/1351 of 4 August 2016 concerning the Staff Regulations of the European Defence Agency and repealing Decision 2004/676/EC (see page 1 of this Official Journal).

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 entities or bodies.

4. The Chief Executive, having due regard to the risks associated with the management environment and the nature of the action financed, shall propose to the Steering Board and put in place the organisational structure and the internal control systems suited to the performance of his/her duties. The establishment of such structure and systems shall be supported by a risk analysis which takes into account their cost-effectiveness.

The Steering Board shall give its assent to decisions related to the organisational structure of the Agency.

The Chief Executive may establish an expertise and advice function designed to help him or her control the risks involved in his or her activities.

5. The Authorising Officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge to the Agency in respect of implementation of the general budget for the year concerned.

6. Article 31 of Decision (CFSP) 2015/1835 shall apply to the treatment of personal data.

Article 17

Ex ante controls

1. Each operation shall be subject at least to an *ex ante* control based on a desk review of documents and on the available results of controls already carried out relating to the operational and financial aspects of the operation.

Ex ante controls shall comprise the initiation and the verification of an operation.

Initiation and verification of an operation shall be separate functions.

2. Initiation of an operation shall be understood as all the operations which are preparatory to the adoption of the acts implementing the Agency's budget.

3. *Ex ante* verification of an operation shall be understood as all the *ex ante* checks put in place by the Authorising Officer in order to verify the operational and financial aspects. For a given transaction, the verification shall be carried out by staff other than those who initiated the operation.

4. *Ex ante* controls shall verify the coherence among supporting documents requested and any other information available.

The extent in terms of frequency and intensity of the *ex ante* controls shall be determined by the Authorising Officer taking into account risk-based and cost-effectiveness considerations. In case of doubt, the Authorising Officer responsible for validating the relevant payment shall request complementary information or perform an on-the-spot control in order to obtain reasonable assurance as part of the *ex ante* control.

The purpose of the *ex ante* controls shall be to ascertain that:

- (a) the expenditure and revenue are in order and comply with the applicable provisions;
- (b) the principle of sound financial management set out in Article 11 has been applied.

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.

Article 18

Ex post controls

1. The Authorising Officer may put in place *ex post* controls to verify operations already approved following *ex ante* controls. Such controls may be organised on a sample basis according to risk.

The *ex post* controls may be carried out on the basis of documents, and where appropriate, on the spot.

2. The *ex post* controls shall be carried out by staff other than that responsible for the *ex ante* controls. The staff responsible for the *ex post* controls shall not be subordinate to the members of the staff responsible for the *ex ante* controls.

Staff responsible for controlling the management of financial operations shall have the necessary professional skills.

Article 19

Annual reporting

The Chief Executive shall report annually to the Steering Board on the performance of his or her duties. For this purpose, the Chief Executive shall submit the annual accounts of the Agency respecting the time limits set out in Article 44.

The annual accounts of the Agency shall be composed of different sections, in particular:

- (a) the activity report, which shall describe major aspects of the financial year;
- (b) the financial statements;
- (c) the budget implementation report.

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

The final accounts shall contain financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, the Chief Executive has reasonable assurance that:

- (a) the information contained in the report presents a true and fair view;
- (b) 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;
- (c) the control procedures put in place give the necessary assurance concerning the legality and regularity of the underlying transactions. The activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems, including an overall assessment of the costs and benefits of controls.

*Article 20***Financial statement**

1. The financial statements shall be presented in euro and shall comprise:
 - (a) the balance sheet and the statement of financial performance, which represent all assets and liabilities, the financial situation and the economic result at 31 December of the preceding year; they shall be presented in accordance with the accounting rules referred to in Article 39;
 - (b) the cash-flow statement showing amounts collected and disbursed during the year and the final treasury position;
 - (c) the statement of changes in net assets presenting an overview of the movements during the year in reserves and accumulated results.
2. The notes to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the Agency's activities.

*Article 21***Budgetary implementation report**

The budgetary implementation report of the Agency shall include the general budget, and budgets associated with ad hoc activities and additional revenue; and shall be presented in euro. The structure of the budgetary implementation report shall be the same as that of the budget itself.

It shall consist of:

- (a) a report which aggregates 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 report.

*Article 22***Protection of the financial interests of the Agency**

1. 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 hierarchy 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 Chief Executive in writing who shall also reply in writing. If the Chief Executive fails to take action 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 Head of the Agency.

2. In the event of any illegal activity, fraud or corruption which may harm the interest of the Agency or of its members, the member of staff shall inform the authorities and bodies designated by the applicable legislation. The College of Auditors as well as any external auditors carrying out financial audits of the Agency shall inform the Authorising Officer of any suspected illegal activity, fraud or corruption which may harm the interest of the Agency or its members.

*Article 23***Accounting officer**

1. The Steering Board shall appoint an accounting officer covered by the Staff Regulations of the Agency, who shall be totally independent in the performance of his or her duties within the Agency and responsible to the Steering Board. The accounting officer shall be responsible in the Agency for:

- (a) properly implementing payments, collecting revenue and recovering amounts established as being receivable;
- (b) keeping, preparing and presenting the accounts in accordance with Chapter 6 of this Title and with Articles 19, 20 and 21;
- (c) implementing, in accordance with Chapter 6 of this Title, the accounting rules and the chart of accounts;
- (d) validating systems laid down by the Authorising Officer to supply or justify accounting information; in this respect, the accounting officer shall be empowered to verify compliance with validation criteria at any time;
- (e) treasury management.

2. The accounting officer shall obtain from the Authorising Officer all the information necessary for the production of accounts which give a true and fair view of the Agency's financial situation and of budgetary implementation. The Authorising Officer shall guarantee the reliability of that information.

3. Before the adoption of the accounts by the Chief Executive, the accounting officer shall sign them off, thereby certifying that he or she has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Agency.

For the purpose of the first subparagraph, the accounting officer shall verify that the accounts have been prepared in accordance with the accounting rules referred to in Article 39 and that all revenue and expenditure is entered in the accounts.

The authorising officer or his/her delegates shall remain fully responsible for the proper use of the funds they manage, the legality and regularity of the expenditure under their control and the completeness and accuracy of the information forwarded to the accounting officer.

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

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

Subject to paragraph 4, only the accounting officer shall be empowered to manage cash and cash equivalents. The accounting officer shall be responsible for their safekeeping.

4. The accounting officer may, in the performance of his or her duties, delegate certain tasks to staff members subject to the Staff Regulations of the Agency where this is indispensable for the performance of his or her duties in accordance with the financial rules of the Agency.

5. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his or her duties by the Steering Board. In such a case, the Steering Board shall appoint an interim accounting officer.

*Article 24***Liability of the financial actors**

1. Articles 16 to 26 are without prejudice to any liability under criminal law which the financial actors may incur as provided for in the applicable national law and in the provisions in force concerning the protection of the Agency's financial interests and the fight against corruption involving Union officials or officials of Member States.
2. Each Authorising Officer and accounting officer shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations of the Agency. In the event of illegal activity, fraud or corruption which may harm the interest of the Agency or of its members, the matter shall be submitted to the authorities and bodies designated by the applicable legislation, in particular to European Anti-Fraud Office (OLAF).
3. Any member of the staff may be required to compensate, in whole or in part, any damage suffered by the Agency as a result of serious misconduct on his or her part in the course of or in connection with the performance of his or her duties. The appointing authority shall take a reasoned decision after completing the formalities laid down by the applicable legislation with regard to disciplinary matters.
4. As regards liability of authorising officers, Article 73(1) and (2) of Regulation (EU, Euratom) No 966/2012 shall apply.

*Article 25***Conflict of interests**

1. Financial actors within the meaning of Chapter 2 of Title III and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control, shall not take any action which may bring their own interests into conflict with those of the Agency.

Where such a risk exists, the person in question shall refrain from such actions and shall refer the matter to the Chief Executive who shall confirm in writing whether a conflict of interest exists. The person in question shall also inform his or her immediate supervisor. If the actor is the Chief Executive, he or she must refer the matter to the Head of the Agency.

Where a conflict of interest is found to exist, the person in question shall cease all activities in the matter. The Chief Executive, or the Head of the Agency in the event that the conflict of interest concerns the Chief Executive, 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 shared interest with a recipient.

*Article 26***Segregation of duties**

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

CHAPTER 3

Internal audit

Article 27

Appointment, powers and duties of the internal auditor

1. The Agency shall have an internal audit function which shall be performed in compliance with the relevant international standards.
2. The internal auditor may neither be the Authorising Officer nor the accounting officer.
3. The internal auditors 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 budget implementation operation.
4. The internal auditor shall perform his or her duties in relation to all activities and departments of the Agency. The internal auditor shall enjoy full and unlimited access to all information required to perform his or her duties. The internal auditor shall take note of the annual report of the Chief Executive and any other pieces of information identified.
 5. The internal auditor shall draw up an annual audit plan and submit it to the Chief Executive.
 6. The internal auditor shall take note of the report of the Authorising Officer under Article 19 and of any other pieces of information identified.
 7. The internal auditor shall report to the Chief Executive on his or her findings and recommendations.

The internal auditor shall also report in any of the following cases:

- critical risks and recommendations have not been addressed,
- there are significant delays in the implementation of the recommendations made in the previous years.

The Chief Executive shall ensure the regular monitoring of the implementation of audit recommendations.

Each year the Chief Executive shall send to the Steering Board a report containing a summary of the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations. The Steering Board shall examine the information and whether the recommendations have been implemented fully and in a timely manner.

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 28

Independence of the internal auditor

The independence of the internal auditor, the liability of the internal auditor for action taken in the performance of his or her duties and the right for the internal auditor to bring an action before the Court of Justice of the European Union shall be determined in accordance with Article 100 of Regulation (EU, Euratom) No 966/2012.

CHAPTER 4

Revenue and expenditure operations

Article 29

Implementation of revenue

1. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and recovering undue amounts. It shall also include the possibility of waiving established entitlements where appropriate.
2. Amounts wrongly paid shall be recovered.

If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the Authorising Officer and immediately launch the procedure for effecting recovery by any means offered at law, including where appropriate, by offsetting and, if this is not possible, by enforced recovery.

Where the Authorising Officer plans to waive or partially waive recovery of an established amount receivable, he or she shall ensure that the waiver is in order and is in accordance with the principles of sound financial management and proportionality. The waiver decision shall be substantiated. The waiver decision shall state that action has been taken to secure recovery and the points of law and fact on which it is based.

The accounting officer shall keep a list of amounts due to be recovered. The Agency entitlements shall be grouped in the list according to the date of issue of the recovery order. The accounting officer shall also indicate decisions to waive or partially waive recovery of established amounts. The list shall be added to the Agency's annual accounts.

3. Any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with Article 83 of Commission Delegated Regulation (EU) No 1268/2012 ⁽¹⁾.
4. Entitlements of the Agency in respect of third parties and entitlements of third parties in respect of the Agency shall be subject to a limitation period of five years.

⁽¹⁾ 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).

*Article 30***Member States' contribution to the Agency's general budget**

1. The determination of contributions where the GNI scale is applicable shall be as follows:
 - (a) where the GNI scale is applicable, the breakdown of contributions between the Member States from which a contribution is due shall be determined in accordance with the gross national product scale as specified in Article 41(2) of the Treaty on European Union and in accordance with Council Decision 2007/436/EC, Euratom ⁽¹⁾ or any other decision which may replace it;
 - (b) the data for the calculation of each contribution shall be those set out in the 'GNI own resources' column in the 'Summary of financing of the general budget by type of own resource and by Member State' table appended to the latest budget of the Union. The contribution of each Member State from which a contribution is due shall be proportional to the share of that Member State's GNI in the total GNI aggregate of the Member States from which a contribution is due.
2. The schedule for payment of contributions shall be as follows:
 - (a) the contributions intended to finance the Agency's general budget shall be paid by the participating Member States in three equal instalments, by 15 March, 15 June and 15 October of the financial year concerned. The Agency shall send call for contribution letters to the participating Member States at least 60 days in advance of the instalment dates;
 - (b) when an amending budget is adopted, the necessary contributions shall be paid by the participating Member States within 60 days of dispatch of the call for contributions;
 - (c) each Member State shall pay the bank charges relating to the payment of its own contributions;
 - (d) if the annual budget is not approved by 30 November, the Agency may issue, at the request of a Member State, an individual provisional call for contributions for that Member State to be paid within 60 days of dispatch of the call for contribution.

When payment is made within the deadline and received by the Agency no more than 10 days exceeding the deadline, no interest as stipulated in Article 29.3 shall be due to the Agency. When payment is late by more than 10 days, late interests shall be charged for the entire delay.

*Article 31***Implementation of expenditure**

1. To implement expenditure, the Authorising Officer shall make budgetary commitments and legal commitments, validate expenditure and authorise payments and undertake the preliminary steps for the implementation of appropriations.
2. A budgetary commitment is the operation by which the appropriation necessary to cover subsequent payments to honour legal commitments is reserved. A legal commitment is the act whereby the Authorising Officer enters into or establishes an obligation which results in a charge. Budgetary commitments and legal commitments shall be adopted by the same Authorising Officer, except in duly justified cases.

Budgetary commitments shall fall into one of the following categories:

- (a) individual: the budgetary commitment is individual when the beneficiary and the amount of the expenditure are known;

⁽¹⁾ Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ L 163, 23.6.2007, p. 17).

- (b) global: the budgetary commitment is global when at least one of the elements necessary to identify the individual commitment is still not known;
- (c) provisional: the budgetary commitment is provisional when it is intended to cover routine administrative expenditure and either the amount or the final payees are not definitively known.

Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the basic act so provides or where they relate to administrative expenditure.

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

The validation of expenditure is the act whereby the Authorising Officer:

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

Authorisation of expenditure is the act by which the Authorising Officer, having verified that the appropriations are available, instructs the accounting officer to pay the validated expenditure.

4. In respect of any measure which may give rise to expenditure chargeable to the Agency's budget, the Authorising Officer shall make a budgetary commitment before entering into a legal commitment with third parties.

5. Year one of the Agency's three-year Planning Framework shall provide for the authorisation by the Steering Board for the operational expenditure of the Agency on the activities it covers, provided that the elements set out in this paragraph are clearly identified.

The Planning Framework shall comprise detailed objectives and expected results. It shall also contain a description of the action(s) to be financed and an indication of the amount allocated to each action.

Any substantial amendment to year one of the Agency's three-year Planning Framework shall be adopted by the same procedure as the initial Planning Framework.

The Steering Board may delegate the power to make non-substantial amendments to the Planning Framework to the Authorising Officer of the Agency.

Article 32

Time limits

The payment of expenditure must be carried out within the time limits specified in and in accordance with Article 92 of Regulation (EU, Euratom) No 966/2012 and Article 111 of Delegated Regulation (EU) No 1268/2012.

CHAPTER 5

Implementation of the budget

Article 33

Procurement

1. As regards procurement, Title V of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraphs 2 and 3 of this Article.

2. For contracts with a value between EUR 60 000 and the thresholds laid down in Article 118 of Regulation (EU, Euratom) No 966/2012 the procedure set out in Delegated Regulation (EU) No 1268/2012 for contracts with a low value not exceeding EUR 60 000 may be used.

3. The Agency may conclude a contract, without having recourse to a public procurement procedure, with the European Commission, the interinstitutional offices, the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94 ⁽¹⁾ and with other Union bodies for the supply of goods, provision of services or performance of work that the latter provide.

Article 34

Joint procurement

1. 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 or agencies.

2. In the context of collaborative activities with Member States, such as those referred to in Chapter IV of Decision (CFSP) 2015/1835, the Agency may use joint procurement procedures.

3. In the case of a joint procurement procedure between the Agency and the contracting authority from one or more Member States, the procedural provisions applicable to the Agency shall apply.

Where the share pertaining to or managed by the contracting authority of one or more Member States in the total estimated value of the contract is equal to or above 50 %, or in other duly justified cases, the procedural rules of Directive 2014/24/EU of the European Parliament and of the Council ⁽²⁾, Directive 2009/81/EC of the European Parliament and of the Council ⁽³⁾, or any other legal act of the Union which may be applicable in light of the subject matter in question, shall apply.

4. The Agency may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs. In such case, Article 133 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis*.

Article 35

Experts

For the selection of experts, the Agency may apply the provisions of Article 287 of Delegated Regulation (EU) No 1268/2012, subject to any specific procedure laid down in the basic act of the programme the implementation of which is entrusted to the Agency. Such experts shall be paid on the basis of a fixed amount announced in advance and shall be chosen on the basis of their professional capacity.

External experts shall be selected on the basis of skills, experience and knowledge appropriate to carry out the tasks assigned to them and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interest.

⁽¹⁾ Council Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union (OJ L 314, 7.12.1994, p. 1).

⁽²⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁽³⁾ Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

*Article 36***Grants**

As regards grants, Title VI of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to any specific provisions of the constituent instrument.

*Article 37***Prizes**

1. As regards prizes, Title VII of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraph 2 of this Article.
2. Contests for prizes with a unit value of EUR 10 000 or more may only be published if they are provided for in the Planning Framework of the Agency.

*Article 38***Indication of means of redress**

1. Where a procedural act of an Authorising Officer adversely affects the rights of an applicant or tenderer, beneficiary or contractor, it shall contain an indication of the available means of administrative and/or judicial redress for challenging this act.
2. In particular, the nature of the redress, the body or bodies before which it can be brought, as well as time limits for their exercise shall be indicated.

CHAPTER 6

Accounting*Article 39***Rules governing the accounts**

The Agency shall set up an accounting system providing accurate, complete and reliable information in a timely manner.

The accounting officer of the Agency shall adopt rules based on internationally accepted accounting standards for the public sector. The accounting officer may diverge from those standards if he or she considers this necessary in order to give a true and fair view of the assets and liabilities, charges, income and cash flow. Where an accounting officer diverges materially from those standards, the notes to the financial statements shall disclose this fact and the reason for it.

*Article 40***Accounting principles**

The financial statements shall present information, including information on accounting policies, in a manner that ensures it is relevant, reliable, comparable and understandable. The financial statements shall be drawn in accordance with Article 39.

*Article 41***Accounting system**

1. The accounting system shall consist of general accounts and budgetary accounts. The accounts shall be kept in euro on the basis of the calendar year.
2. The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the Agency.
3. The budgetary accounts shall provide a detailed record of the implementation of the Agency's budget. They shall record all budgetary revenue and expenditure operations.

*Article 42***Inventories**

The Agency shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting its property. The Agency shall check that entries in the inventory correspond to the actual situation.

*CHAPTER 7****External audit and combating fraud****Article 43***External audit**

1. The Steering Board shall appoint a College of Auditors to perform the external audit function of the administrative and operational budgets, financial accounts and financial statements of the Agency. The audit shall be conducted in conformity with accepted international standards on auditing and, subject to approval by the Steering Board, in accordance with additional terms of reference.

At least every three years, the College shall provide independent assurance and advice to the Steering Board that activities of the Agency have been carried out in compliance with the principles of sound financial management. To perform that task, the College may resort to temporary additional staff, in agreement with the Steering Board.

2. The College of Auditors shall be composed of at least three auditors from different participating Member States, supported by staff nominated by the College. That staff member may remain as long as the member of the College of Auditors who nominated him or her remains in office.
3. The members of the College of Auditors shall be appointed for a period of three subsequent audits. A fair rotation amongst the participating Member States wishing to send auditors shall be ensured.
4. The Steering Board shall appoint the College of Auditors from candidates proposed by the participating Member States. The candidates shall preferably be members of the highest national audit institution of the participating Member States and offer adequate guarantees of security and independence. They shall be available to carry out tasks on behalf of the Agency as needed. In carrying out those tasks:
 - (a) the members of the College and their support staff shall continue to be paid by their audit body of origin and shall only receive reimbursement of their mission expenses from the Agency on the same basis as provided for in the rules of the Agency;

- (b) they shall neither request, nor receive instructions other than from the Steering Board; within its audit mandate, the College of Auditors and its members shall be completely independent and solely responsible for the conduct of the external audit;
- (c) they shall report on their task only to the Steering Board;
- (d) they shall check that revenue and expenditure administered by the Agency has been implemented in conformity with the applicable legislation and the principles of sound financial management.

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

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

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

8. On the proposal by the Chief Executive or by one of the Member States, the Steering Board may decide on case-by-case basis to use other external bodies for special reviews in coordination with the assignment of the College of Auditors.

9. In specific cases, national audit authorities of participating Member States can, at their own cost and with the agreement of the Steering Board, obtain any information and inspect any documents they deem necessary for auditing of the respective national share or reporting to government and parliament, without infringing on the other participating Member States and the responsibilities of the College of Auditors and in compliance with the rules of the Agency, in particular data protection rules.

Article 44

Annual audit and discharge of the Agency budget

1. By 31 March following the end of the financial year, the Chief Executive shall submit to the College of Auditors, for examination and their opinion, a draft of the annual accounts of the Agency as referred to in Article 19.

2. By 30 June following the end of the financial year, the College of Auditors shall submit to the Chief Executive its annual audit report containing the opinion and observations of the College on the draft annual accounts referred to in paragraph 1.

3. By 15 July following the end of the financial year, the Chief Executive shall submit to the Steering Board the final audited annual accounts and the audit report accompanied by the Agency's replies.

4. By 30 October following the end of the financial year, the Steering Board shall approve the audited annual accounts and grant the discharge to the Chief Executive and the accounting officer for the financial year.

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

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

Article 45

OLAF

1. OLAF 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 ⁽¹⁾ and Council Regulation (Euratom, EC) No 2185/96 ⁽²⁾ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Agency in connection with a grant or contract funded by the Agency.

2. Without prejudice to paragraph 1, contracts, agreements and decisions of the Agency shall contain provisions expressly empowering the College of Auditors and OLAF to conduct audits and investigations, according to their respective competences.

TITLE IV

SPECIFIC PROVISIONS APPLICABLE TO ADDITIONAL REVENUE

Article 46

Additional revenue

1. Within the framework of its mission in accordance with Article 2 of Decision (CFSP) 2015/1835, the Agency may receive Additional Revenue for a specific purpose:

- (a) from the general budget of the Union on a case-by-case basis, in full respect of the rules, procedures and decision-making processes applicable to it;
- (b) from Member States, third countries or other third parties, unless the Steering Board decides otherwise within one month of receiving such information from the Agency.

2. The revenue referred to in paragraph 1 may only be used for the specific purpose to which it is assigned.

3. The additional administrative costs related to the management of the additional revenue shall be covered, where relevant, by the budget associated with the additional revenue itself.

4. The provisions of Chapters 2 to 7 of Title III are applicable to additional revenue unless the relevant agreement(s) provide for different rules, which in any case shall comply with the budgetary principles established in Title II.

5. Any budgetary surplus arising from any Additional Revenue at the end of the implementation period shall be considered as a credit available for the entities having contributed to it and returned to them. They may be also used for other specific purposes as established in the relevant agreement(s) or, unless the Steering Board decides otherwise within one month of receiving such information from the Agency, as proposed by the concerned entity.

⁽¹⁾ 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).

⁽²⁾ 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).

6. The accounting officer shall adopt appropriate measures to ensure that use of the additional revenue and of the corresponding appropriations is monitored separately. Therefore, contributions resulting from additional revenues shall be accounted separately and used in accordance with the specific purpose to which they are assigned. For the sake of transparency, they will also be placed on separate bank accounts. In addition, they will be shown separately within the budgetary implementation report of the Agency as established in Article 21.

TITLE V

SPECIFIC PROVISIONS APPLICABLE TO THE BUDGETS ASSOCIATED WITH AD HOC ACTIVITIES

Article 47

Management by the Agency of budgets associated with ad hoc activities

1. The Steering Board, following a proposal from the Chief Executive or a Member State, may decide that the Agency may be entrusted by Member States with the administrative and financial management of certain activities within its remit in accordance with Chapter IV of Decision (CFSP) 2015/1835.
2. The Steering Board, in the context of Agency ad hoc projects and programmes, may authorise the Agency, under the conditions set out in the arrangements governing the activities in question, to enter into contracts and grant agreements, and collect the necessary contributions from those Member States in advance, taking into consideration budgetary constraints of the Member States, to honour such contracts and grant agreements.
3. The provisions of Chapters 2 to 7 of Title III of this Decision shall apply to the ad hoc activities established in accordance with Articles 19 or 20 of Decision (CFSP) 2015/1835, unless the basic act(s) of the programme or the project provide for different rules, which in any case shall comply with the budgetary principles established in Title II of this Decision.
4. Any budgetary surplus arising from any ad hoc project or programme shall be considered as a credit available for the participating Member States and any other entity having contributed to it and returned to them at the end of the implementation period or used for the other specific purposes as established in the relevant agreement(s) or decided by the concerned Member State or entity.

TITLE VI

FINAL PROVISIONS

Article 48

Amendments

Any reference to Regulation (EU, Euratom) No 966/2012 shall also be construed to take into account the amendments thereto.

Article 49

Repeal of Decision 2007/643/CFSP

Decision 2007/643/CFSP is repealed.

*Article 50***Entry into force**

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 4 August 2016.

For the Council
The President
M. LAJČÁK
