

Brussels, 07 July 2021

WK 8984/2021 INIT

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NOTE

From:	Council of the European Union
To:	European Peace Facility Committee
Subject:	EPF Implementing Rules - Act of the Facility Committee

Following the agreement reached by the EPF Committee on 30 June on the joint proposal for the Rules for the implementation of revenue and expenditure financed under the European Peace Facility ('EPF Implementing Rules'), delegations will find attached the corresponding Act of the Committee and the approved Implementing Rules.

This document is being made available for publication in the Public Register of the Council.



Council of the European Union

European Peace Facility
The administrator for operations



European Commission

European Peace Facility
The administrator for assistance measures

Brussels, 07 July 2021

WK 8984 2021 INIT

**ACT of the Facility Committee
EUROPEAN PEACE FACILITY
IMPLEMENTING RULES**

The European Peace Facility Committee,

Having regard to Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528, notably its Articles 11, paragraph 6, and 73 paragraph 3.

Whereas on 30 June 2021 the Facility Committee reached an agreement on the joint proposal for the Rules for the implementation of revenue and expenditure financed under the European Peace Facility ('EPF Implementing Rules')

DECIDES:

Article 1

The Rules for the implementation of revenue and expenditure financed through the European Peace Facility are adopted as set out in the annex to the present Act.

Article 2

The present Decision entered into force on 30 June 2021.

Done at Brussels, on 07 July 2021

Dario MOREIRA

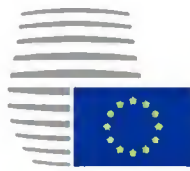
The chair of the EPF Committee

Hilde HARDEMAN

The administrator for assistance measures

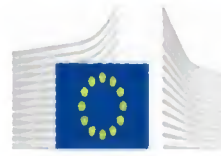
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The administrator for operations



Council of the European Union

European Peace Facility
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European Commission

European Peace Facility
The administrator for assistance measures

EUROPEAN PEACE FACILITY

**Rules for the implementation of
revenue and expenditure financed
under the European Peace Facility**

‘EPF IMPLEMENTING RULES’

Version: 30 June 2021

BOOK 1

**Provisions applicable both to
operations and to assistance measures**

Book 1 - Provisions applicable both to operations and to assistance measures

Chapter 1 Subject matter and general provisions

Article 1. Subject matter

1. These Implementing Rules set out provisions for the implementation of revenue and expenditure financed under the European Peace Facility (“the Facility”) and on the presentation and auditing of the accounts (“Rules”) in accordance with paragraph (6) of Article 11 of Council Decision (CFSP) 2021/509 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528¹ (“the EPF Council Decision”).

2. These Rules supplement the provisions set out in the EPF Council Decision.

Article 2. Relation to Regulation (EU, Euratom) 2018/1046

1. For the purposes of these Rules, references to the applicable provisions of Regulation (EU, Euratom) 2018/1046² (“Financial Regulation”) shall not include procedural provisions which are not relevant to the Facility.

2. Internal references in the Financial Regulation shall not render the provisions referred to indirectly applicable to the Facility.

3. Specific references in these Rules to the provisions of the Financial Regulation are understood to be dynamic references, which include the subsequent amendments to those provisions.

4. The applicability of the Financial Regulation shall not be construed as giving the European Parliament control and information rights on Member States’ contributions to the EPF, or on operating expenditure related thereto, which as EU Member States national contributions fall under the responsibility of national parliaments, nor access to documents relating to such national contributions or expenditure.

Article 3. Definitions

1. The definitions set out in Article 2 of the Financial Regulation shall apply, where relevant.

¹ OJ L 102, 24.3.2021, p. 14.

² Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1.

2. For the purposes of these Rules, the following terms in the Financial Regulation shall be construed as follows:

- (1) 'award procedure' means a procurement procedure, or a procedure for the selection of experts or persons or entities implementing the Facility budget. In case of budget implemented by the administrator for assistance measures it also means a grant award procedure;
- (2) 'basic legal act' means a legal act in the form of a decision by the Council establishing the operation or the assistance measure as referred to in Article 7 of the EPF Council Decision;
- (3) 'budget' means the Facility's budget;
- (4) 'budget appropriations' means resources of the Facility;
- (5) 'contract' means a public contract. In case of budget implemented by the administrator for assistance measures it also means a concession contract;
- (6) 'participant' means a candidate or tenderer in a procurement procedure, an applicant in a grant award procedure, an expert in a procedure for selection of experts, or entity participating in a procedure for implementing the Facility's funds for assistance measures through indirect management pursuant to paragraph (2) of Article 33 of the Council Decision.

The following definitions shall apply to assistance measures:

- (1) 'applicant' means a natural person or an entity with or without legal personality who has submitted an application in a grant award procedure;
- (2) 'application document' means a tender, a request to participate, a grant application;
- (3) 'contribution agreement' means a 'contract with implementing actor' within the meaning of Article 61 of the EPF Council Decision concluded with persons or entities implementing Facility funds through indirect management pursuant to the second paragraph of Article 33 of the EPF Council Decision;
- (4) 'grant' means a financial contribution by way of donation. Where such a contribution is provided under direct management, it shall be governed by Chapter 2 of Title VIII of Book 3 of these Rules;
- (5) 'grant recipient' means a natural person or an entity with or without legal personality with whom a grant agreement has been signed. 'Beneficiary' under point (5) of Article 2 of the Financial Regulation is construed as 'grant recipient' under these Rules;
- (6) 'in-kind contribution' means non-financial resources made available free of charge by third parties to a grant recipient;
- (7) 'method of implementation' means any of the methods of budget implementation referred to in Article 33 of the EPF Council Decision, namely direct management or indirect management;
- (8) 'multi-donor action' means any assistance measure where the Facility's funds for assistance measures are pooled with at least one other donor;
- (9) 'sub-contractor of an implementing actor' means a contractor used by an implementing actor for the implementation of an assistance measure, as referred to in Articles 67 and 68 of the EPF Council Decision.

Article 4. Periods, dates and time limits

Unless otherwise provided in these Rules, Council Regulation (EEC, Euratom) No 1182/71³ shall apply to the deadlines set out in these Rules.

Article 5. Interest on late payment

1. When interest is due in accordance with Article 31 of the EPF Council Decision, the recovery order corresponding to the amount of the default interest shall be issued when that payment is actually received.

2. The interest shall be credited to a bank account referred to in Article 34 of the EPF Council Decision.

3. The interest rate for amounts receivable established in euro not repaid by the deadline specified in the debit note shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the deadline falls, increased by 3.5 percentage points, pursuant to the first paragraph of Article 31 of the EPF Council Decision.

For recoveries in local currency, the interest rate shall be the rate of the central bank of the country issuing the currency in force on the first calendar day of the month in which the recovery order is established, increased by 3.5 percentage points.

4. Interest shall be calculated from the calendar day following the deadline referred to in the third paragraph of this Article up to the calendar day on which the debt is repaid in full. When a payment is late by no more than 30 days, no interest shall be charged. When payment is late by more than 30 days, interest shall be charged for the entire period of the delay. The recovery order corresponding to the amount of the default interest shall be issued when that interest is actually received.

5. In cases where the overall interest rate would be negative it shall be set at zero percent.

Chapter 2 Implementation of an assistance measure by an operation

Article 6. Applicable rules

When the Council decides pursuant to Article 60 of the EPF Council Decision that a specific assistance measure shall be fully or partially implemented by an operation, Books 1 and 2⁴ of these Rules shall apply.

Article 7. Information

Where an assistance measure is fully or partially implemented by an operation and a transfer of funds in accordance with paragraph (3) of Article 29 of the EPF Council Decision has taken place, the administrator for operations shall inform the administrator for assistance measures

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

⁴ Provisions applicable to operations.

about the amount of the funds remained unspent after the implementation of that assistance measure, without prejudice to the reporting obligations of the administrator for operations under point (b) of paragraph (6) of Article 12 and Article 38 of the EPF Council Decision.

BOOK 2

**Provisions applicable to operations and
assistance measures implemented by an
operation**

**Book 2 - Provisions applicable to operations and
assistance measures implemented by an operation**

PART I: FINANCIAL RULES

CHAPTER I: PRINCIPLES AND FINANCIAL ACTORS

REMINDER: EPF Council decision

Article 12 Administrators

Article 13 Accounting officers

Article 14 General provisions applicable to the administrators, the accounting officers and staff

Article 15 Operation Commanders

Article 17 Budgetary principles

Article 32 Principles

Article 50 Common costs incurred in preparation for, or further to, operations or not linked directly to a specific operation.

Article 51 Common costs during the active phase of an operation

Section 1: General organisation

Article 1: Authorising officers

1. Each operation commander, during his or her term in office, shall be the authorising officer of the Title in the Facility's budget dedicated to the operation which he or she commands. Each operation commander shall also be the authorizing officer for the Title of assistance measures (AM), expenditure for nation borne costs (NBC) and expenditure funded from third party financial contributions (TPFC) to be implemented by an operation under his or her command.
2. The administrator for operations shall carry out the duties of authorising officer for the other appropriations in Titles under his/her responsibility.
3. The administrator is the only authority to issue cash calls for Facility and reimbursements of costs pre-financed through Facility, and to charge the interests in arrears due in case of late payment.
4. All the references to the administrator in this Book refer to administrator for operations.
5. Any reference in these Rules to the operation commander applies as well to the force commander or mission force commander, according to the delegations received.

Article 2: Other actors

1. Any headquarters (HQ) where costs are financed through the Facility, shall include an authorising officer by delegation or sub delegation. This authorising officer shall be the head of the budget-finance section (J8), which shall carry out at least three different tasks:

- budget implementation
- contracting
- accounting

Provided that the scale of the headquarters allows it, each task shall be implemented by a dedicated personnel. As a minimum, a dedicated personnel different from the authorising officer shall act as accounting officer of the HQ.

2. The operation commander is responsible for the adequate manning of the above described functions. Where the force generation process does not provide the personnel necessary for the proper operation of the budget-finance section (J8), the operation commander shall recruit civilian personnel, as required, following prior authorisation by the Facility Committee as foreseen in Articles 1.3 and 1.4 of Part VI of these Rules. All personnel shall have the appropriate level of security clearance as determined by the planning documents and the operation commander.

3. During the initial phase of an operation and until the full operational capability of force is declared, the administrator may, at the request of the operation commander, allocate the available resources in qualified personnel to support the financial actors assigned to the operation headquarters. During the operation, the accounting officer for operations shall provide guidance and assistance to the accounting officers of the HQs as required.

4. Imprest administrators may be appointed in accordance with the provisions in Chapter "Imprest Accounts". These actors shall receive adequate support regarding notably the information technology and communications systems necessary to perform their tasks.

Article 3: Appointment of actors, delegations, sub-delegations

1. In any headquarters where expenditure is financed through the Facility, the authorising officers by delegation or sub-delegation, the budget implementation officer, the contracting officer and the accounting officer of the HQ shall be appointed by the commander of the headquarters in question. In consultation with the administrator, the commander of the headquarters in question may also appoint an internal auditor.

2. Member States providing personnel shall ensure they have the necessary professional qualifications and experience in the area of military operations and in finance. Should the personnel provided through force generation not be qualified, the operation commander shall inform the sending State and the administrator.

3. The administrator may lay down administrative rules determining the staff of an appropriate level to whom a commander may delegate the duties of authorising officer, budget

implementation officer or contracting officer, and the conditions applicable notably as regards required professional skills and experience, the scope of the powers delegated and the possibility for the persons to whom these powers are delegated to sub delegate them. The administrator may lay down in administrative rules the conditions, notably regarding required professional skills and experience, applicable to the appointment of the financial officers.

4. The administrator shall be informed, *on his or her request*, of any assessment report on the head of the budget-finance (J8) section in any headquarter the expenditure financed through the Facility. The administrator may provide a contribution to any such assessment, which shall be included in the assessment report on his request.

5. Delegations regarding implementation of expenditure, including procurement and accounting, shall be signed by the operation commander. The administrator shall be notified and shall record these delegations and sub-delegations.

6. Authorising officers, budget implementation officers, and contracting officers by delegation or sub-delegation may act only within the limits set by the instrument of delegation or sub-delegation. An officer by delegation or sub-delegation may be assisted in his/her task by one or more members of staff entrusted, under his/her responsibility, to carry out certain operations necessary for implementation of the budget and presentation of the accounts.

7. Any personnel involved in the financial management and control of transactions, who consider that a decision they are required by their superiors to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules they are required to observe, shall inform the authorising officer by delegation in writing and, if the latter fails to take action, the Force, Mission Force or Operation Commander and, as appropriate, the administrator. In the event of any illegal activity, fraud or corruption which may harm the interests of the Facility, he shall inform the Force, Mission Force or Operation Commander and the administrator.

Article 4: Principle of segregation of duties

The duties of authorising officer and accounting officer shall be segregated and mutually incompatible. The accounting officer shall refuse any order which he or she deems incompatible with the applicable legislation or with the proper discharge of his or her duties. Such refusal shall be notified in writing to the authorising officer and to the administrator.

Article 5: Authorising officers' responsibilities

1. The authorising officers, where appropriate within the limits of the delegation or sub-delegation they have received, shall be responsible for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with.

2. To implement expenditure, the authorising officers by delegation and by subdelegation shall make budgetary commitments and legal commitments, shall validate expenditure and

authorise payments.

3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.

4. The authorising officers by delegation shall put in place, having due regard to the risks associated with the management environment and the nature of the actions financed, the organisational structure and the internal management and control procedures suited to the performance of their duties, including ex ante and ex post verifications. All financial procedures shall be verified by at least one member of staff other than the one who initiated the procedure. The administrator may lay down the standards applicable to such structures and procedures.

5. Each authorising officer by delegation or sub delegation shall provide the authorising officer from whom they have received a delegation or sub delegation with regular reports together with financial and management information as necessary for the authorising officer to discharge their reporting obligations as set out in Articles 10 and 11 in Part I of the present Act.

6. Any authorising officer shall record in a register his or her main administrative decisions, notably decisions regarding:

- (a) any appointment of a person involved in the management of Facility's appropriations or funds;
- (b) any delegation or sub-delegation granted for the implementation of budget;
- (c) the opening or closing of any bank account on behalf of the Facility and any empowerment to sign for transactions on such a bank account;
- (d) any proposal or adoption of a budget or transfer of appropriations;
- (e) any contract they concluded and signed;
- (f) the write-off of equipment financed through Facility;
- (g) any decisions regarding procurement (derogations, award committee decisions, etc.);
- (h) setting the management and internal control procedures as provided by article 7;
- (i) setting administrative rules about the safekeeping of funds;
- (j) creating an imprest account and appointing an imprest administrator as provided by article 38.

Article 6: Head of the budget-finance (J8) section's other tasks

1. The head of the budget-finance (J8) section in any headquarters the common costs of which are financed through Facility shall for the headquarters to which he or she is assigned:

- (a) ensure that funds provided by Facility are kept safely at all times;
- (b) check the eligibility of expenditure to Facility's financing;
- (c) ensure that the rules set out in EPF Council decision, or in the present Rules, and budget, are complied with;
- (d) establish with the relevant local authorities an inventory of fixtures of the buildings and the

pieces of land used by headquarters or forces the common costs of which are financed through Facility, by arrival and upon departure, with the appropriate maps, photographs and other relevant elements of proof;

- (e) give his or her assent to any contract to be financed through the Facility of an estimated value excluding value-added tax exceeding the "higher threshold" referred to in paragraph 1 of Article 4 in Part II of these Rules, or the NATO Financial level D in an operation in an operation with recourse to NATO assets and capabilities;
- (f) keep an inventory of requests for derogations from rules on procurement, indicating the decision on each request and the justifications;
- (g) keep an up-to-date journal of all purchases made and financed through the Facility, indicating for each good or service procured, the date of each purchase and the supplier, identified by his or her name and address and where possible the reference of the contract;
- (h) ensure that an inventory of assets which are Facility's property is kept up-to- date;
- (i) ensure that a check is made at least once every handover/takeover and at the end of each calendar year that these assets are available and properly maintained;
- (j) issue the necessary SOPs to organise the section he or she heads;
- (k) organise the internal control necessary to achieve the goals listed above;
- (l) provide the administrator with the implementation reports foreseen in the rules in force and keep the administrator directly informed of any event or policy that may impact on costs to be financed through Facility.

2. The head of the budget-finance (J8) section in any headquarters the common costs of which are financed through the Facility shall check that the head of the budget-finance (J8) section in subordinate headquarters which are financed through the Facility fulfils the tasks listed in paragraph 1.

Article 7: Management and internal control procedures

The management and internal control systems and procedures shall be designed by each authorising officer within the scope of his/her responsibilities in order to:

- (a) achieve the operational objectives in accordance with the principle of sound financial management;
- (b) comply with the rules and minimum control standards set out in EPF Council Decisions, the Facility Committee Acts and any measures adopted by the administrator or the operation commander and any instructions provided by the accounting officer for operations regarding the implementation of expenditure financed through the Facility;
- (c) safeguard Facility's assets and information; ensure notably that equipment financed through the Facility is properly maintained and listed on the appropriate inventory;
- (d) prevent and detect irregularities, errors and fraud;
- (e) identify and prevent management risks;
- (f) ensure reliable production of financial and management information;
- (g) keep supporting documents relating to and subsequent to budget implementation and budget implementation measures;
- (h) keep documents relating to guarantees received in the context of procurement and keep a

log to enable such guarantees to be adequately monitored.

Article 8: Budget officers' tasks

Budget officers shall assist the authorising officers by delegation or sub-delegation in:

- (a) ensuring that expenditure financed through the Facility is implemented in compliance with the applicable legislation and rules and with the principles of sound and efficient management;
- (b) preparing any necessary proposal for draft budgets, transfers and carryovers of appropriations;
- (c) preparing implementation reports;
- (d) any other tasks which the authorising officer by delegation or sub-delegation deems necessary.

Article 9: Contracting officers' tasks

Contracting officers shall assist the authorising officers by delegation or subdelegation in:

- (a) ensuring that procurement financed through the Facility is performed through the most efficient procedures meeting the operational requirements, in compliance with the applicable legislation and rules and with the principles of sound and efficient management;
- (b) preparing to that effect the documents and acts of procedure necessary to procurement, as required;
- (c) any other tasks which the authorising officer by delegation or sub-delegation deems necessary.

Section 2: Accounting officers

Article 10: Accounting officers' responsibilities

1. The accounting officers shall be responsible, within the scope of their tasks, for:
 - (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
 - (b) keeping the accounts;
 - (c) preparing and presenting :
 - the accounts for the regular reports to the Facility Committee
 - the annual accounts as defined in Chapter X;
 - (d) monitoring the processes pertaining to the acquisition, use and disposal of non-current assets, and collaborating with the J8 Head and in order to ensure the proper keeping of the inventory and its coherence with the accounts.
2. Each accounting officer shall obtain from the authorising officer responsible, who shall guarantee its reliability, all the information necessary for the production of accounts which give

a true image of Facility's' assets and debts and of budgetary implementation.

3. The accounting officers of the HQs shall comply with the rules, standards and deadlines set out by the accounting officer for operations.

Article 11: Management of monies and other assets

With the exception of imprest administrators, accounting officers are alone empowered to manage monies and other assets. They shall be responsible for their safekeeping in line with the provisions of Article 19 of these Rules, including the Asset Policy.

Article 12: Expenditure incurred on the basis of the reference amount before appropriations for the operation have been entered in the budget

1. The operation commander shall provide the administrator with a record of the expenditure financed through the Facility in accordance with Article 51 paragraph 2 of the EPF Council Decision before appropriations for the operation have been entered in the budget. This record shall show a breakdown of expenditure in accordance with the standard budget structure provided for operations. It shall be provided every month and no later than one month after the period which it concerns.

2. When appropriations for the operation have been entered in the budget, the expenditure incurred in accordance with Article 51 paragraph 2 of the EPF Council Decision shall be charged to the budget.

3. The monthly report foreseen in Article 51 paragraph 4 shall include:

- (a) tables showing the implementation of the reference amount of the operation, in accordance with the standard budget structure provided for operations; expenditure tables summing up the appropriations allocated, the budgetary commitments and legal commitments executed as well as payments made;
- (b) the accounts for the expenditure pre-financed and reimbursed in accordance with article 48 of the EPF Council Decision for the operation, drawn up in the same form as the previous subparagraph, as appropriate;
- (c) information about contracted civilian personnel.

Article 13: Expenditure incurred after appropriations for the operation have been entered in the budget

1. The budgetary commitment and the legal commitment shall be adopted by the same authorising officer, save in duly substantiated cases.

2. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer shall first make a budgetary commitment before entering into a legal obligation with third parties.
3. No payment shall be made that is not covered by a budgetary commitment.
4. The quarterly report foreseen in Article 38 of the EPF Council Decision shall be provided by each operation commander to the administrator no later than one month after the end of the period which it concerns.

This report shall include at least:

- (a) tables showing the implementation of the budget of the operation, in accordance with the standard budget structure for operations; expenditure tables summing up the appropriations allocated, the budgetary commitments and legal commitments executed as well as payments made; revenue tables showing the interests received, the proceeds for sales if any, and miscellaneous revenue;
 - (b) information about contracted civilian personnel filling positions listed in the Operation SOR and about locally hired civilian personnel.
5. Pursuant to article 38 of the EPF Council Decision the administrator presents a report to the Facility Committee on the revenue and expenditure implemented since the beginning of the financial year. Such report shall be presented no later than six weeks after the end of the period which it concerns, in the same form as one defined in paragraph 4 above. In this report the administrator shall include, as appropriate an evaluation of any related risks.

Article 14: Payments

1. Payment shall be made on production of proof that the relevant action is in accordance with the provisions of the contract and, save for payments on account, after the relevant action has been performed. Intermediate payments may however be made in accordance with progress in the relevant action.
2. Payments for the purchase of goods, services or works shall be made on production of:
 - (a) the request for the goods, services or works or the references of the relevant contract;
 - (b) the invoice to be paid or, in exceptional cases where no invoice can be obtained, a certificate signed by the officer responsible for the purchase; such a certificate shall indicate the reason why no invoice could be obtained;
 - (c) except in the case of payments on account or intermediate payments, a certificate that the good was delivered, the service rendered or the works achieved, signed by the officer responsible for verifying delivery; whenever it happens, those certificates shall mention the payments for intelligence services or information; the record must protect the safety of the intelligence's source;

(d) in the case of intermediate payments, a certificate of progress made in the relevant action signed by the officer responsible for the purchase and by the supplier.

3. Any payment made on funds administered by the Facility shall require the joint signature of an authorising officer and an accounting officer, acting within the scope of their responsibility.

4. However, when operational constraints preclude the presence of an authorising officer and an accounting officer in theatre, the administrator and the operation commander, each in their field of competence, may deviate from the rules in paragraphs 1, and 2 insofar as the rules of the Member State, the Union institution or the international organisation to whom the implementation of expenditure financed through the Facility has been entrusted, or the present Rules, so provide. In such circumstances, an imprest account may be established.

Article 15: Electronic authorisation

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

Article 16: Electronic documents

Records and documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only.

Where electronic versions exist, no originals shall be required where such documents meet the applicable legal requirements in order to be considered as equivalent to originals and to be relied on for audit and legal purposes.

CHAPTER II: MANAGEMENT OF FUNDS

REMINDER: EPF Council decision, Article 34 Bank accounts

Article 17: Opening of bank accounts

1. Each operation headquarters which has been offered by a Member State for future EU operations shall permanently have its own bank account on behalf of the Facility to receive, keep and manage the funds to be provided by the Facility.

2. In other cases, the operation commander shall open one or more bank accounts on behalf of the Facility to receive, keep and manage the funds provided by the Facility for the operation which he commands.

3. Any commander responsible for a subordinate headquarter, shall ensure that funds provided by the Facility, when deposited with a bank, are kept on specific bank accounts opened and

used solely for that purpose.

Article 18: Deposits and currencies in operations

1. Funds administered on behalf of the Facility by a person in the area of operations who has received a delegation to that effect:

(a) shall preferably be deposited with a first-rate financial institution with its head office in a Member State, in euro, in a current or short-term account;

(b) In duly warranted circumstances, and after approval of the administrator, accounts may be opened at financial institutions with head office outside the Member State ; deposits may be opened in currencies other than euro, in a current or short-term account;

(c) may be kept and transported in cash where no financial institution operates in the host nation or may offer sufficient guarantees;

(d) may be deposited or kept and transported in a currency other than the euro where the euro is not accepted for payments in the operation theatre;

2. Balances deposited or kept in a currency other than the euro may not exceed the amounts necessary to pay for foreseeable expenditure in the area of operations.

3. In any case, all possible efforts shall be made to reduce the risk for funds administered on behalf of the Facility. Recourse to financial institutions with their head offices in third states, to cash and to currencies other than the euro shall be reduced to the minimum operationally necessary.

4. Exchange gains and losses shall be entered into the budget.

5. Information on the bank and cash balances, including a breakdown by currency, shall be included in the periodical implementation reports to the Facility Committee.

Article 19: Security of funds in cash

1. Funds provided by the Facility and transported or kept in cash shall be protected by the following security measures:

(a) where the Status of Forces agreement so allows, funds shall be escorted by an appropriate and sufficient number of armed personnel; Rules of Engagement shall be kept in due account with respect to the use of weapons by the escort party;

(b) funds shall be kept in a locked safe; the safe's keys and code shall be known by one person; a second set of keys and a copy of the code shall be kept in a sealed envelope by the commander in charge of the headquarter to which the funds are provided; the safe's code shall be changed at least every six months and each time a new person takes charge.

2. Based on operational constraints, the authorising officer may authorise derogations from the rules in paragraph 1.

CHAPTER III: TRANSFERS OF APPROPRIATIONS

REMINDER: EPF Council decision, Article 20 Transfer of appropriations

Article 20: Information on transfers requested by the operation commander

1. When the operation commander deems a transfer of appropriations necessary for the operation, they shall make a proposal to the administrator, accompanied by the relevant justifications including, where appropriate, an indication of the urgency.
2. The administrator shall inform the operation commander of the decision reached by him or her or by the Facility Committee in accordance with Article 20 paragraph 1 of EPF Council decision.

Article 21: Information on transfers made by the operation commander

The operation commander shall report to the Facility Committee during the second and the fourth months following the launching of the operation which he or she commands on the transfers of appropriations he has made pursuant to Article 51 paragraph 5 of the EPF Council decision, if any, and the justifications thereof.

CHAPTER IV: CARRYOVER OF APPROPRIATIONS

REMINDER: EPF Council decision, Article 21 Carryover of appropriations

Article 22: Role of the operation commander concerning the carryover of appropriations

1. By 15 February of the following financial year, the operation commander shall submit to the administrator any proposals for the carryover of non-committed appropriations from the preceding financial year.
2. By 15 February of the following financial year, the operation commander shall submit to the administrator any proposal for the carryover of committed appropriations from the preceding financial year..

Article 23: Use of appropriations carried over

1. Committed appropriations, which have been carried over, shall be used solely for the purpose for which they have been committed.
2. Where appropriations have been carried over once and have not been committed at the end of the financial year to which they have been carried over, or where they are de-committed, they shall be cancelled.

CHAPTER V: EXPENDITURE OPERATIONS

REMINDER: EPF Council Decision,

Article 17 Budgetary principles

Article 18 Annual budget

Article 19 Amending budgets

Article 22 Split commitments

Article 32 Principles

Article 33 Methods of implementation

Article 24: Overview of expenditure procedures

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

Article 25: Definitions

1. The budgetary commitment is the operation reserving the appropriations necessary to cover future payments that will ensue from legal commitments.
2. The legal commitment is the act whereby the authorising officer enters into or establishes an obligation which results in a charge.
3. Payments appropriations include the payments to be made in the current financial year on legal commitments that have been concluded in the current financial year or in the previous financial years.
4. Commitment appropriations shall cover the total cost of legal obligations which can be entered into during the current financial year for activities which will lead to payments in the current and / or future financial years.
5. Appropriations for commitments in a given year may differ from payments in the budget of that year due to multiannual contracts and projects which span more than just the current year.
6. It is considered that payments have been made when funds have been debited from a bank account or transferred to a third party in cash. It is considered that payments are received when the funds have been credited to a bank account or received from a third party in cash.

Section 1: Commitment of expenditure

Article 26: Rules of procedure applicable to commitments

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer shall first make a budgetary commitment before entering into a legal obligation with third parties.
2. The budgetary commitment and the legal commitment shall be adopted by the same authorising officer, save in duly substantiated cases which shall be stated in a report.
3. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments. Where the budgetary commitment is thus divided into annual instalments, the legal commitment shall stipulate this.
4. The legal commitments entered into for actions extending over more than one financial year and the corresponding budgetary commitments shall, include a specific implementation plan for the payment appropriations set in compliance with the principle of sound financial management.
5. Global budget commitments made during a financial year 'n' shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year 'n'.
6. The amount of each individual legal commitment adopted following a global commitment shall, prior to signature, be registered by the authorising officer in the budgetary accounts and booked to the global commitment.
7. Subject to paragraph (3) above, individual legal commitments relating to individual or provisional budgetary commitments shall be concluded by 31 December of year 'n'.
8. The budgetary commitments not legally committed which are not multiannual (split commitment) and have not led to payment by 31 December of a year 'n' and which have not been carried over to the next financial year by a decision by the administrator or the Facility Committee, shall be "de-committed" by the authorising officer.

Article 27: Checks by the authorising officer before a commitment is made

1. When adopting a budgetary commitment, the authorising officer shall ensure that:
 - (a) the expenditure has been charged to the correct item in the budget;
 - (b) the appropriations are available;
 - (c) the expenditure conforms to the provisions of the EPF Council Decision, of the budget, of the present provisions and the applicable legislation;
 - (d) the principle of sound financial management, i.e. efficiency, economy and effectiveness, is complied with.

2. When registering a legal commitment, the authorising officer shall ensure that:
 - (a) the commitment is covered by the corresponding budgetary commitment;
 - (b) the expenditure is regular and conforms to the provisions of the Council Decision, of the budget, of the present provisions and the applicable legislation;
 - (c) the principle of sound financial management is respected.

Section 2: Validation and authorisation of expenditure

Article 28: Validation of expenditure

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 in which payment is due.

Article 29: Authorisation of expenditure

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

Section 3: Payment of expenditure

Article 30: Different types of payments

1. Payment shall in principle be made on production of proof that the relevant action has been performed and when occurring in the framework of a contract, is in accordance with its provisions.
2. However, apart from the ex-post payment of the entire amount due, when necessary, payments of the amount due may be made in any of the following ways:
 - (i) payment on account, which may be divided into a number of payments;
 - (ii) one or more interim payments;
 - (iii) payment of the balance of the amounts due.
3. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 2 at the time they are made.

Article 31: Rules of procedure applicable to payments

1. Payment of expenditure shall be made by the accounting officer within the limits of the funds available.
2. Payments other than those made from an imprest account as provided for in the section on Imprest Accounts shall require the joint signature of an accounting officer or an accounting officer by delegation or sub delegation and the authorising officer or an authorising officer by delegation or sub delegation.

Section 4: Time limits for expenditure operations

Article 32: Standard time limits

1. Save for staff expenditure and where the contract provides otherwise, sums due shall be paid within no more than *thirty* calendar days from the date on which an admissible payment request is registered by the authorised department of the authorising officer; the date of payment shall be understood to mean the date on which the relevant bank account is debited.
2. The payment request is not admissible if at least one essential requirement defined at article 28 is not met.

Article 33: Suspension of time limits

1. The authorising officer may suspend the time limit for payment by informing creditors, at any time during the period referred to in article 32 paragraph 1, that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced.
2. If information comes to the notice of the authorising officer which puts in doubt the eligibility of expenditure appearing in a payment request, the authorising officer may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The authorising officer shall inform the beneficiary in question as soon as possible.
3. Time for the purposes of the remainder of the payment period shall begin to run again from the date on which the properly formulated payment request is first registered.

Article 34: Rules applicable to claims

1. Claims shall be submitted for payment to the operation commander (with a copy to the administrator) or, before or after the active phase, to the administrator only as soon as possible but in any event not later than 12 months after the services were fully rendered or the purchases made. Any Participating State shall, to the extent possible, inform the operation commander of

the fact that it intends to make the claim and its modalities before respective services or items were provided.

2. The operation commander shall verify that the expenditures covered by the claims were made and are in line with the operation documents, EPF Council decision and the relevant Framework Participation Agreement.

3. For the deployment and redeployment cost of personnel and their individual equipment, the Operation Commander shall establish a lump sum cost for each Participating State, unless it is excluded in accordance with the relevant Framework Participation Agreement, which shall reflect the deployment and redeployment cost with civilian means from the respective capital to the headquarters taking into consideration rotation planning, cost efficiency and Part V of these rules. This lump sum shall be paid to each Participating State, upon request and on the basis of actual deployment.

4. The deployment of other material and equipment from the Air or Sea Port(s) of Embarkation (APOE or SPOE) - as determined in the OPLAN/MPlan - to the final destination (FD) and redeployment cost from the final destination to the APOD or SPOD shall be eligible for common funding. In case of (re)deployment by land, the transfer of authority shall be used instead of POE(D). The operation shall reimburse the Participating State for the transportation costs, unless it is excluded in accordance with the relevant Framework Participation Agreement, upon request and on the basis of actual deployment, but only up to the amount that would have been incurred had the operation provided those services taken into consideration the rotation planning, costs efficiency and Part V of these rules.

5. Claims related to communication costs between eligible headquarters and between eligible headquarters and directly subordinate forces (services and purchases) shall be valid only if the Operation Commander has provided prior authorisation for such acquisition or service.

6. Claims linked to Role 2 and 3 medical facilities at theatre operational level, such as airports and disembarkation ports approved in the OPLAN/MPlan, shall be valid only if the operation commander has provided prior authorisation for such expenditure. Claims linked to Medevac shall be valid if the operation commander has provided prior authorisation except for urgent cases where it was not possible to obtain prior authorisation. In such cases the operation commander shall be informed as soon as possible of the expenditure.

7. The operation commander shall communicate these rules to all States participating in the operation.

CHAPTER VI: REVENUE OPERATIONS

REMINDER: EPF Council Decision

Article 23 Recovery of funds

Article 26 Determination of contributions

Article 32 Principles

Article 35: Establishment of amounts receivable

1. Establishment of an amount receivable is the act by which the authorising officer:
 - (a) verifies that the receivable exists;
 - (b) determines or verifies the reality and the amount of the receivable;
 - (c) verifies the conditions in which the receivable is due.
2. For any amount receivable established according to paragraph 1, a recovery order shall be submitted to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer.
3. Amounts wrongly paid shall be recovered as revenue assigned to the purpose for which the payment had been made. Appropriations for the same amount and purpose shall be entered into the budget.

Article 36: Authorisation of recovery

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

Article 37: Recovery

1. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer. He or she shall exercise due diligence to ensure that the Facility's revenue is received and shall see that its rights are safeguarded.
2. Amounts to be recovered shall, whenever possible, be offset by an unpaid legitimate claim, where the debtor and claimant are one and the same.
3. Where the authorising officer is planning to waive recovery of an established amount receivable, he or she shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality. The waiver decision shall be substantiated.

CHAPTER VII: IMPREST ACCOUNTS

Article 38: Conditions of use of imprest accounts

1. Imprest accounts may on an exceptional basis be set up for the payment of expenditure, where it is in operational terms materially impossible or highly inefficient to carry out payment operations by budgetary procedures, and where:

(a) it is not possible to establish an authorising officer and an accounting officer where the expenditure is to take place;

or

(b) numerous payments need to be made on the same type of expenditure, whilst no individual item of expenditure exceeds EUR 5 000.

2. The imprest administrator may provisionally validate and pay expenditure, within the limits set in the decision establishing the imprest account and under the authority of the authorising officer.

3. The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer, on a duly substantiated proposal from the authorising officer. That decision shall set out the respective responsibilities and obligations of the imprest administrator and the authorising officer. During the initial phases of an operation, in situations where the J8 section may not be fully established and properly manned, the administrator and the accounting officer for operations may act, upon request, as the authorizing officer and the accounting officer of the HQ in order to set up an imprest account until an operation J8 section is adequately manned.

4. Amendment of the operating terms for an imprest account shall also be the subject of a decision by the accounting officer on a duly substantiated proposal from the authorising officer.

5. Any decision to set up an imprest account, appoint an imprest administrator or amend the operating terms for an imprest account shall be notified to the administrator within seven days.

6. The administrator shall be informed through the regular implementation reports on imprest accounts, notably of the limits set in accordance with paragraph 2 above.

Article 39: Conditions governing creation and payment

1. The decision setting up an imprest account and appointing an imprest administrator and the decision amending the operating terms for an imprest account shall specify in particular:

(a) the maximum amount which may be initially provided as an imprest, and its purpose;

(b) whether a bank account or post office giro account is to be opened in the name of the Facility or whether expenditure may be paid in cash;

(c) the nature and maximum amount of each item of expenditure which may be paid by the imprest administrator to third parties or collected from them;

(d) the frequency with which supporting documents shall be produced, the procedure for producing them and the arrangements for transmitting them to the authorising officer for

settlement;

- (e) the procedure to be followed if the imprest has to be replenished;
- (f) that imprest transactions shall be settled by the authorising officer by no later than the end of the following month, so that the accounting balance and the bank balance can be reconciled;
- (g) the period of validity of the authorisation given to the imprest administrator by the accounting officer ;
- (h) the identity of the appointed imprest administrator;
- (i) the accounting software to be used to record the financial transactions realised by the imprest administrator.

2. In proposals for decisions setting up imprest accounts the authorising officer shall ensure that:

- (a) priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;
- (b) imprest accounts are used only in substantiated cases.

3. The imprest administrator may make legal commitments and payments to third parties on the basis and within the limits of:

- (a) the decision setting up the imprest account;
- (b) prior budget commitments signed by the authorising officer;
- (c) the positive residual balance of the imprest account, in cash or at the bank.

4. Payments from imprest accounts may be made by bank credit transfer, cheque or other means of payment, notably in cash and in a currency other than the euro.

5. Payments made shall be followed by formal final validation decisions and/or payment orders signed by the authorising officer.

Article 40: Choice of imprest administrators

Imprest administrators shall be chosen from officers or non commissioned officers, civilians of an equivalent rank in the chain of command, staff subject to the Staff Regulations of officials of the EU or staff subject to the Conditions of Employment of other servants of the EU. Imprest administrators shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.

Article 41 : Endowment of imprest accounts

1. The accounting officer shall make payments endowing imprest accounts and shall monitor all activity related to those accounts. Imprests shall be paid to the bank account designated for the imprest or in cash. They may be paid in a currency other than the euro, within the limits of foreseeable expenditure during the next two months.
2. Imprest accounts may also be endowed directly by miscellaneous local revenue such as that arising from:
 - (a) sales of equipment;
 - (b) miscellaneous repayments;
 - (c) interest.
3. The imprest shall be settled, in terms of expenditure or miscellaneous or assigned revenue, in accordance with the decision setting up the imprest account. The amounts in question shall be taken into account by the authorising officer when subsequently authorizing the replenishment of the imprest accounts concerned.
4. In order, in particular, to avoid any exchange losses, the imprest administrator may make transfers between different bank accounts relating to the same imprest.
5. Any expenditure made or revenue received through an imprest account may not be offset against expenditure when reported.

Article 42: Checks by authorising officers and accounting officers

1. The imprest administrator shall keep an account of the funds at their disposal, in cash and at the bank, and of payments made and amounts received, in accordance with the rules and on the instructions given by the accounting officer. Statements of that account shall be accessible at all times to the authorising officer and a list of transactions together with supporting documents shall be sent by the imprest administrator to the authorising officer for settlement of the imprest operations:
 - (a) either at the end of the imprest administrator's mission if it lasts less than a month;
 - (b) or each month, within thirty days following the end of the month.
2. The accounting officer shall carry out, or have carried out by a person in the same department or in the authorising department specially empowered for that purpose, checks, which should normally be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time-limit set. The accounting officer shall communicate the findings of those checks to the authorising officer.

CHAPTER VIII: EXPENDITURE NOT INCLUDED IN COMMON COSTS

REMINDER: EPF Council decision

Article 48 Management by the Facility of expenditure not included in common costs (NBC)

Article 49 Management by the Facility of pre-financing and expenditure not included in common costs to facilitate the initial deployment

Article 31 Interest on late payment

Article 43: Management of pre-financing of expenditure not included in common costs (NBC) in the early phase of an operation

1. The administrator proposes pre-financing to the Facility Committee based on the information provided by the operation. The head of the budget-finance (J8) section assists with the preparation of the proposal and defines what expenses exactly are to be pre-financed and for what period of time. By default, the pre-financing is only possible until the standard pre-financing from the participating states is paid (NBC) unless the Facility Committee decides otherwise.
2. Where the Facility Committee approves the pre-financing the administrator transfers respective amount(s) from the Facility common costs to the operation's NBC account.
3. The operation pays the pre-financing amount(s) back to the Facility budget in line with the conditions approved by the Facility Committee.

Article 44: Late payment interest for the payments in National Borne Cost scheme

When the interest calculated according to the methodology in Book I, Article 5 for the late payments to the participants in the nation borne costs scheme is below 10 EUR, the recovery order shall not be issued.

CHAPTER IX: MANAGEMENT OF THIRD PARTY FINANCIAL CONTRIBUTIONS AND ASSISTANCE MEASURES IMPLEMENTED BY AN OPERATION

REMINDER: EPF Council decision

Article 30 Management by the Facility of voluntary financial contributions

Article 60 Implementation of an assistance measure by an operation

Article 45: Management of third party contribution

1. The administrator proposes an administrative arrangement to the Facility Committee based on the information provided by the donor and/or the operation.
2. The head of the budget-finance (J-8) sections assist in drafting the details of the agreement.

This arrangement shall contain the following elements:

- the purpose of the contribution
- the costs to be covered by the contribution
- the specific management modalities (including auditing, reporting, and the accountability of the operation commander to the Facility Committee).

3. When managing the third party contribution, a separate set of subaccounts for each project or financial contribution shall be established. Separate bank account(s) are to be opened for the management of cash.

4. The use of the contribution may be subject to internal and external audit in accordance with Articles. 41 and 42 of the EPF Council Decision.

5. The operation commander shall provide the administrator every three months with a report on the expenditures related to the use of the contribution since the beginning of the financial year. The administrator shall present the report to the Facility Committee and the contributor according to art. 38 of the EPF Council Decision.

Article 46: Implementation of an assistance measure by an operation

1. When an assistance measure is approved to be implemented by an operation, it constitutes a separate title in the budget.

2. When managing the assistance measures, a separate set of subaccounts shall be established for each assistance measure. Separate bank account(s) are to be opened for the management of cash.

3. Unless otherwise provided in the basic act, the implementation of the assistance measure is subject to Book 1 and Book 2 of these Rules, including the rules on procurement, accounting and asset management and is subject to internal and external audit in accordance with Articles 41 and 42 of the EPF Council Decision.

4. The operation commander shall provide the administrator every three months with a report on the expenditures related to the implementation of the assistance measure since the beginning of the financial year. The administrator shall present the report to the Facility Committee according to art. 38 of the EPF Council Decision.

CHAPTER X: ACCOUNTING

REMINDER: EPF Council Decision

Article 13 The accounting officers

Article 39 Accounts

Article 43 Presentation of annual accounts and budget outturn

Article 54 Accounting

Article 47: Accounting principles and standards

1. The Facility prepares its financial statements on the basis of the European Union Accounting Rules in force.

Where strictly necessary, due to the specific nature of military operations, the accounting officer shall diverge from the European Union Accounting Rules 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. The Facility Committee shall be informed of any such deviation. Where an accounting rule diverges materially from the European Union Accounting Rules, the notes to the financial statements shall disclose this fact and the reasons for it.

Article 48: Structure of the accounts

1. The accounts shall be presented in euros and shall comprise:

(a) The budgetary outturn established from the cash accounting, which sets out all budgetary operations for the period in terms of revenue and expenditure ; the structure in which it is presented shall be the same as that of the budget itself ; the expenditures tables sum up the appropriations allocated, the budgetary commitments and legal commitments executed as well as payments made ; the revenue tables show the contributions, the interests received, the proceeds from sales if any, and miscellaneous revenue ;

(b) Financial statements based on EU accounting rules.

Article 49: Entries in the accounts

1. Entries shall be made using the double entry method, whereby any movement or variation recorded in the accounts shall be represented by an entry establishing an equivalence between the amount debited and the amount credited in the various accounts affected by that entry.

2. The euro counterpart of a transaction denominated in a currency other than the euro shall be calculated and entered in the accounts. Balances in foreign currencies which can be revalued shall be revalued at least each time the accounts are closed. The rate to be used for conversion between the euro and another currency to draw up the balance sheet at a given date shall be that of the last working day and shall be obtained from INFOREURO.

Article 50: Accounting records

All accounting records shall specify the origin, content and booking reference of each data item and the references of the relevant supporting documents.

Article 51: Supporting documents

1. Each entry shall be based on a dated and numbered supporting document, produced on paper or on a medium which guarantees the reliability of its content.
2. Operations of the same type, carried out in the same place and on the same day may be summarised in a single supporting document.

Article 52: Validation of entries

1. Entries in the journal and in an inventory ledger shall be made final by means of a validation procedure prohibiting any change or deletion of the entry.
2. A closure procedure designed to freeze the chronology of records and guarantee their inviolability shall be implemented at the latest before the final financial statements are presented.

Article 53: Inventories

1. Under the authority of the competent authorising officer, and under supervision by the head of the relevant budget-finance (J8) section, each authorising officer by delegation or sub-delegation shall establish, with the assistance of the relevant accounting officer, a system of property inventory for the assets for which he or she has responsibility.
2. That inventory system shall supply all the information required for keeping the accounts and safeguarding the assets in line with Facility's Asset Policy in force for operations.

Article 54: Provision of information to the accounting officer for operations

By 31 March each year, each operation commander shall provide the accounting officer for operations with the signed accounts and annexes referred to in Article 48 of the present Rules for the previous year for the operation which they command.

Article 55: Accounting information system

1. Except in duly warranted circumstances approved by the Facility Committee following a proposal by the administrator, the operation commander shall use the accounting and asset management system provided by the Facility. The administrator shall inform the Facility Committee in advance when he or she considers that such circumstances exist.
2. For the use of the Facility accounting and asset management system, personnel shall undertake necessary training in order to acquire the appropriate knowledge, skills, and competencies.

CHAPTER XI: INTERNAL AUDIT

REMINDER: EPF Council Decision Article 41

Article 56: Internal controls

The annual internal audit report under paragraph 5 of article 41 of EPF Council decision shall be presented to the Facility Committee by 31 March each year, in the presence of the accounting officer for operations, of the operation commander and, as necessary, of the College of Auditors.

CHAPTER XII: LIABILITY OF THE FINANCIAL ACTORS

REMINDER: EPF Council Decision Art 16 Liability

Article 57: Withdrawal of a delegation or sub delegation

1. Without prejudice to any disciplinary action, authorising officers by delegation and sub delegation may at any time have their delegation or sub delegation withdrawn temporarily or definitively by the authority which granted them the delegation or sub delegation.
2. Without prejudice to any disciplinary action, accounting officers may at any time be suspended temporarily or definitively from their duties by the authority which granted them the delegation or sub delegation.
3. Without prejudice to any disciplinary action, imprest administrators may at any time be suspended temporarily or definitively from their duties by the authority which appointed them.

Article 58: Criminal-law liability

1. The present provisions are without prejudice to the criminal-law liability which each authorising officer, accounting officer, contracting officer, budget implementation officer or imprest administrator may incur as provided in the applicable national law and in the provisions in force on the fight against corruption involving officials of the European Union or officials of Member States.
2. In the event of illegal activity, fraud or corruption which may harm the interests of the Facility, the competent national authorities of the officer concerned shall be provided without delay with full information to allow for disciplinary action or prosecution in accordance with the applicable law.

PART II: RULES ON PROCUREMENT

CHAPTER I

SCOPE AND PRINCIPLE

Article 1. Scope

Procurement to be financed or pre-financed under the Facility shall be through contracts concluded on behalf of the Facility in order to obtain, against payment of a price, the supply of movable or immovable assets, the provision of services or the execution of works, through purchase, lease, rental or hire purchase, with or without an option to buy.

Article 2. Principle

Procedures shall be directed to ensuring, through fair and open competition, the most efficient procurement meeting operational requirements of operations. All staff involved in procurement procedures, notably contracting authorities, shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

An economic operator is any natural person or legal person, including a public entity, or a group of such persons, which offers to supply products, execute works, or provide services or supply immovable property.

CHAPTER II

CHOICE OF PROCEDURES

Article 3. Geographical scope

1. Equal treatment shall be granted in procurement procedures to economic operators established in a Member State and from the following countries:
 - (a) Iceland, Liechtenstein, Norway (EEA) ;
 - (b) Albania , Chile, Republic of North Macedonia, Mexico and Montenegro.

Procurement procedures shall also be open to economic operators from Aruba Canada, Hong Kong Special Administrative Region of the People's Republic of China, Israel, Japan, Singapore, South Korea, Switzerland, Taiwan, the United Kingdom and the United States of America when they aim at awarding contracts above the higher threshold as defined in Article 4.

2. Procurement procedures for common costs and Nation Borne Costs of an operation shall

also be open to economic operators from the host state and neighbouring states which share common borders with the host states.

Article 4. Thresholds

1. For the purpose of the present Act, the "higher threshold" shall be:
 - (a) 300.000 euro for supplies and for services;
 - (b) 5.000.000 euro for infrastructure works.
2. For the purpose of the present Act, the "lower threshold" shall be 30.000 euro.
3. For the purpose of the present Act and unless otherwise specified, value and price shall refer to the value or price excluding the value added tax .

Article 5. Outsourcing of military capabilities

1. When the operation commander has requested a military capability which could not be obtained in the force generation process, he or she may propose the outsourcing of this capability.
2. No outsourcing of such a military capability may be undertaken before it has been authorized by the Facility Committee.
3. The procurement procedure for the outsourcing of military capabilities, when authorised, shall comply with the provisions of the present Act, including provisions on derogations.

Article 6. Standard procedures

1. Contracts with an estimated value exceeding the "higher threshold" shall be awarded through:
 - (a) a competitive dialogue, or
 - (b) an open or restricted tender procedure in accordance with the contracting authority's decision.
2. Contracts with an estimated value between the "lower threshold" and the "higher threshold" shall be awarded through one of the following procedures:
 - (a) a tender procedure, which may be open or restricted in accordance with the contracting authority's decision, or
 - (b) a negotiated procedure with at least three candidates being consulted.
3. Contracts with an estimated value below the "lower threshold" as defined in Article 4, shall be awarded through one of the following procedures:

- (a) whenever possible, a negotiated procedure with at least three candidates being consulted, or
- (b) where necessary, a single source negotiated procedure.

4. Invoices for procurements of less than 5.000 euro may be paid directly, without prior acceptance of a tender.

Article 7. Permanent derogations

1. Procurement may be through a contract already awarded by a Member State, an EU institution or an international organisation, a Facility Framework contract or administrative arrangement in accordance with the rules and procedures applicable to procurement for this State, institution, organisation or the Facility instead of through the standard procurement procedures mentioned in Article 6.
2. Where recourse is made to a central purchasing body, the Facility procurement procedures shall be deemed to have been complied with where this central purchasing body complies with legislation in conformity with Directive 2014/24/EU or with Directive 2009/81/EC.
3. The choice of a bank to which funds provided through the Facility shall be entrusted may be made through a negotiated procedure without publication of a contract notice, with, wherever possible, at least three candidates meeting the conditions set out at Part I - Article 18 of these Financial Rules being consulted.
4. Procurement may be through a negotiated procedure with or without publication of a contract notice and wherever possible at least three candidates being consulted for transportation.
5. Buildings and pieces of land shall wherever possible be obtained from public authorities free of charge in accordance with the SOFA. However, where this is not possible, the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property, or concerning rights thereon, may be through a negotiated procedure with the landlord of the site which meets operational requirements.
6. In a new operation, until the force reaches its full operational capability, due to the extreme urgency which then prevails, the authorising officer may decide that procurement shall be through a negotiated procedure, with or without publication of a contract notice, and with, wherever possible, at least three candidates being consulted.
7. Procurement outside the European Union through an imprest account may be from a single source, under the conditions set out in the decision setting up the imprest account.

Article 8. Specific prior authorizations for derogations from Standard Procedures

1. Save where permanent derogations are granted by Article 7, a specific prior authorization shall be necessary to:

- (a) derogate from the rules on geographical scope set out in Article 3;
- (b) derogate from the provisions of Article 6 on the choice of procedures;
- (c) resort to Article 10 for contracts declared to be secret or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the Union or one or more of its Member States so requires;
- (d) derogate from the provision in Article 27 that contracts shall be in writing;
- (e) when the contract is to be implemented outside the European Union.

2. A specific prior authorization may be granted by:

- (a) the head of the budget-finance section of the EU Headquarter concerned when the intended purchase has a value estimated to be less than 300.000 euros;
- (b) the administrator when the intended purchase has a value estimated to be at least 300.000 euros but less than 1.000.000 euros;
- (c) the Facility Committee when the intended purchase has a value estimated to be at least 1.000.000 euros.

- 3. Where no head of the budget-finance section in the EU Operation Headquarter has been appointed, the administrator may grant the necessary prior specific authorizations in accordance with paragraph 2 (a).
- 4. In cases of extreme urgency referred to in Article 9 paragraph B (1b), the administrator may grant the necessary prior specific authorizations.
- 5. Where a derogation is authorized, it shall be duly motivated and the necessary justifications shall be documented in the file, notably with a view to ensuring a proper audit trail.

Article 9 - Derogation from the Standard Procedures as per Article 6 of these rules

A. Cases where a specific prior authorization may be granted for a negotiated procedure with, whenever possible, at least three candidates, being consulted, for intended purchases of an estimated value exceeding the "higher threshold"

- 1. Contracting authorities may award contracts by negotiated procedure after having published a contract notice with, whenever possible, at least three candidates being consulted, in the following cases:
 - (a) when no or unsuitable tenders or no requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the original procurement documents are not substantially altered and on condition that a report is sent to the Administrator if he so requests; a tender shall be considered unsuitable where it does not relate to the subject matter of the contract and a request to participate shall be considered unsuitable where the economic operator is in an exclusion situation referred to in Article 16 or does not meet the selection criteria;
 - (b) in the event of irregular or unacceptable tender, in response to an open or restricted procedure or a competitive dialogue insofar as the original procurement documents are

not substantially altered.

A tender shall be considered irregular in any of the following cases:

- (i) when it does not comply with the minimum requirements specified in the procurement documents;
- (ii) when it does not comply with the requirements for submission as set out in Article 34;
- (iii) when the tenderer is rejected because either 1) it has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information, or 2) it was previously involved in the preparation of documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition, that cannot be remedied otherwise;
- (iv) when the contracting authority has declared the tender to be abnormally low as set out in Article 36.

A tender shall be considered unacceptable in any of the following cases:

- (i) when the price of the tender exceeds the contracting authority's maximum budget as determined and documented prior to the launching of the procurement procedure;
- (ii) when the tender fails to meet the minimum quality levels for award criteria.

Contracting authorities need not publish a contract notice where they include in the negotiated procedure all the tenderers which satisfy the selection criteria except those who submitted a tender abnormally low and do not fulfil the exclusion criteria.

- (c) with regard to works, supplies or services fulfilling one or more of the following criteria:
 - (i) where the needs of the contracting authority cannot be met without the adaptation of a readily available solution;
 - (ii) the works, supplies or services include design or innovative solutions;
 - (iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, complexity or the legal and financial make-up of the contract or the risks attached to the subject matter of the contract;
 - (iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, as set out in Article 21.
- (d) for concessions contracts and service contracts like health care and cultural services, legal services, catering and security services.

2. In the cases referred to in paragraph 1, contracting authorities shall negotiate with tenderers the tenders submitted by them in order to adapt them to the requirements which they have set in the contract notice, the specifications and additional documents, if any, and to seek out the best tender.
3. During the negotiations, contracting authorities shall ensure the equal treatment of all tenderers. In particular, they shall not provide information in a discriminatory manner which may give some tenderers an advantage over others.
4. Contracting authorities may provide for the negotiated procedure to take place in

successive stage in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the procurement documents.

B: Cases where a specific prior authorization may be granted for a single source procedure for intended purchases of an estimated value exceeding the "lower threshold", including exceeding the "higher threshold".

Contracting authorities may also award public contracts through a negotiated procedure without publication with, if necessary, a single source:

1. where works, supplies or services can only be provided by a single economic operator when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement and for any of the following reasons:
 - (a) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may be awarded only to a particular economic operator;
 - (b) the protection of exclusive rights, including intellectual property rights, must be ensured;
2. insofar as is strictly necessary when, for reasons of extreme urgency brought about by events unforeseeable by the contracting authorities in question, including in the event of early termination of a contract, the time limits for other procedures cannot be complied with. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority or his staff involved in the procurement process; the Administrator will be informed about the circumstances invoked if so requested;
3. for public supply contracts:
 - (a) for additional deliveries by the original supplier which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire material having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts as well as that of recurrent contracts may not, as a general rule, exceed three years;
 - (b) for supplies quoted and purchased on a commodity market;
 - (c) for the purchase of supplies on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national laws or regulations.
4. for public service contracts, when the contract concerned follows a design contest and must, under the applicable rules, be awarded to the successful candidate or to one of the successful candidates; in the latter case, all successful candidates must be invited to participate in the negotiations;
5. for works contracts and public service contracts:
 - (a) for additional works or services not included in the project initially considered or in

the original contract but which have, through unforeseen circumstances, become necessary for the performance of the works or services described therein, on condition that the award is made to the economic operator performing such works or services:

- i. when such additional works or services cannot be technically or economically separated from the original contract without major inconvenience to the contracting authorities (interchangeability and interoperability),
or
- ii. when such works or services, although separable from the performance of the original contract, are strictly necessary for its completion;
or
- iii. when a change of contractor would cause substantial duplication of costs for the contracting authority.

However, the aggregate value of contracts awarded for additional works or services may not exceed 50 % of the amount of the original contract.

- (b) or new works or services consisting in the repetition of similar works or services entrusted to the economic operator to whom the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded after publication of a contract notice subject to the conditions hereafter.

However, the aggregate value of contracts awarded for new works or services may not exceed 50 % of the amount of the original contract

As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authorities in the procedures to procure them.

This procedure may be used only during the three years following the conclusion of the original contract.

Article 10 - Secret, special security measures and protection of essential interests of the EU or its Member States

1. Derogations from the present Rules may be granted by a prior specific authorization granted in accordance with Article 8, where a contract is declared to be secret, where its performance must be accompanied by special security measures or when the protection of essential interests of the European Union or one or more of its Member States so require.
2. These derogations and special security measures shall be kept strictly to the minimum necessary. They shall in principle alter the procurement procedures solely regarding publicity. They shall as much as possible preserve genuine competition and comply with

the principles of proportionality, equal treatment and non-discrimination.

3. Such derogations may notably entail that, by derogation from other provisions in the present Act:
 - (a) publication shall consist in notices being forwarded to the Member States of the European Union which shall inform potential candidates;
 - (b) special security measures or other requirements, notably regarding standards to be complied with or homologations required, shall be included in the technical specifications.
4. Any documents issued in the context of such derogations shall bear the necessary classification markings in accordance with applicable EU and national rules.

Article 11. Cancellation of procedures

The contracting authority may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation. The decision must be substantiated and be brought to the attention of the candidates or tenderers.

CHAPTER III

RULES APPLICABLE TO ALL PROCEDURES

Section 1 - Rules for contracting authorities

Article 12. Estimated value of contracts and lots

1. The calculation of the estimated value of a public contract shall be based on the total amount payable, net of value-added tax, as estimated by the contracting authority. This calculation shall take account of the estimated total amount, including any form of option and any renewals of the contract. The estimate shall be made at the latest when the contracting authority launches the procurement procedure. No works project or proposed purchase of a certain quantity of supplies, services and/or works may be subdivided to allow for a different procedure.
2. Whenever appropriate, technically feasible and cost efficient, contracts shall be awarded in the form of separate lots within the same procedure. Where the subject matter of the contract is subdivided into several lots, each one being the subject of an individual contract, the total value of all lots shall be taken into account for the overall evaluation pursuant to the applicable threshold. Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tender, a single contract covering those lots may signed.

Article 13. Confidentiality of information provided by candidates

Without prejudice to the provisions of the present Act, in particular those relating to the advertising of awarded contracts and to the information to candidates, the officers involved in procurement procedures shall not disclose information forwarded to them by economic operators which those have designated as confidential; such information includes, in particular, technical or trade secrets and the confidential aspects of tenders.

Article 14. Fiscal exemptions

The authorizing officers and the contracting officers shall ensure that any procurement financed through the Facility benefits from the fiscal exemptions provided for by the Decision of the Representatives of the Member States meeting within the Council concerning privileges and immunities granted to the Facility, the applicable SOFA and international agreements in force.

Section 2 - Conditions for economic operators

Article 15. Security clearances

1. The contracting authority responsible for a contract, acting under the authority of the operation commander, shall determine the security clearances required and shall check the eligibility of candidates and their personnel against these criteria. The requirement shall be specified in the bidding documentation.
2. Candidates may provisionally participate in a procurement procedure and a tenderer may be awarded a contract pending receipt of the necessary security clearances in due time.

However, no contract may be signed if the tenderer has not given proof that the required security clearances have been awarded to them and/or to the personnel involved in the execution of the contract, as necessary.

Article 16. Exclusion of participants from procurement procedures

1. Participants shall be excluded from participation in a procurement procedure if:
 - (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
 - (c) they have been guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards or the profession to which the entity belongs proven by any means which the contracting authority can justify;
 - (d) they have not fulfilled obligations relating to the payment of social security

contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

- (e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or terrorist financing, child labour or other offences concerning trafficking of human beings, or any other illegal activity defined as follows:
 - i. cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;
 - ii. cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997;
 - iii. cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council;
 - iv. cases of money laundering or terrorists activities as defined in Articles 1, 4 and 5 of Council Directive 2015/849;
 - v. cases of child labour or other offences concerning trafficking of human beings as referred to in Article 2 of Directive 2011/36/EU .
- (f) following another procurement procedure or grant award procedure financed by the budget of the European Union or through the Facility, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations;
- (g) they do not have adequate resources to perform the contract, or the ability to obtain them;
- (h) they are not able to comply with the required delivery or performance schedule, taking into consideration all existing commercial and business commitments.

2. Participants must certify that they are not in one of the situations listed in paragraph 1. The contracting officer shall as much as possible assess whether participants are not in one of the situations listed in paragraph 1.

3. In the cases referred to in paragraph 1, the candidates or tenderers shall be excluded from all contracts and grants for a minimum of one year and a maximum of two years from the time when the infringement is established, as confirmed after an adversarial procedure with the contractor, or from the date of notification of the judgement, if any.

This period may be extended to five years in the event of a repeat offence within five years of the first infringement or the first judgment.

4. Contracts may not be awarded to tenderers who, during the procurement procedure:

- (a) are subject to a conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the

contracting authority as a condition of participation in the contract procedure or fail to supply this information;

- (c) were previously involved in the preparation of procurement documents used in the award procedure where this entails a breach in the principle of equality of treatment.

Article 17. Financial guarantees required from contractors

1. In all procedures, a guarantee shall be required in return for the payment of prefinancing exceeding 300 000 euros. The guarantee shall be released as and when the pre-financing is deducted from interim payments or payments of balances to the contractor in accordance with the terms of the contract.
2. For contracts of a value exceeding 300.000 euro, a performance guarantee depending on a risk analysis performed by the authorizing officer may be required from the tenderer upon signing contracts for supplies, services and works for an amount set in the tender file and corresponding to 5 to 10 % of the total value of the contract. This shall remain valid at least until final acceptance of the supplies and works or until the services have been rendered. If the contract is not properly performed, a proportion of the guarantee shall be retained in proportion to the seriousness of the damage suffered. Such a guarantee may be required for other contracts. Prior to the conclusion of such a contract, the authorising officer shall perform a risk analysis to assess the need for such a performance guarantee. This analysis will outline the reasons for applying or not the performance guarantee in accordance with Article 5.6 g) of the Financial Rules part I related to the authorizing officers' responsibilities as well as the alternative measures applied instead, in case no performance guarantee will be applied.
3. The performance guarantee may be constituted by deductions from payments as and when they are made. It may be replaced by an amount withheld from the final payment in order to constitute a guarantee until final acceptance of the services, supplies or works.

Where suppliers, contractors or service providers are required to lodge a guarantee in advance, it must be for an amount and a period that are sufficient for it to be activated. The guarantee shall be supplied by a bank or an authorised financial institution. It may be replaced by a joint and several guarantee by a third party. The guarantee shall be denominated in euro or in the currency of the contract they cover. It shall have the effect of making the bank or financial institution or the third party stand as irrevocable collateral security, or first-call guarantor of the contractor's obligations.

Article 18. Acceptable evidence from participants or tenderers

1. Requirements on participants to demonstrate that they are not in one of the situations described in Article 16 shall be kept in proportion to the risk involved, taking into account actual possibilities and operational needs.

2. Participants and tenderers shall provide a solemn statement, duly signed and dated, stating that they are not in one of the situations referred to in Article 16.
 - (a) For contracts awarded with a value equal or greater than 300.000 euro, the contracting authority shall require, as satisfactory evidence that the candidate or tenderer is not in one of the situations described in subparagraph a., b. or e. of Article 16, paragraph 1, production of a recent extract from the judicial record or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.
 - (b) For contracts with a value less than 300.000 euro, the Contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require them to provide the evidence as described above.
3. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in subparagraph d. of Article 16, paragraph 1, a recent certificate issued by the competent authority of the State concerned.
4. Where no such certificate is issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.
5. Depending on the national legislation of the country in which the tenderer or candidate is established, the documents referred to in paragraphs 1 and 2 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.
6. Participants shall without delay inform the contracting authority of any changes in the situations as declared.
7. Where appropriate, the contracting authority may request the same declarations referred to paragraph 2 signed by a subcontractor or any other entity on whose capacity it intends to rely, as the case may be.

Article 19. Possible penalties on participants or tenderers

The contracting authority may impose a financial penalty to a participant with whom a legal commitment (a direct contract or a purchase order) has been entered into and who is in a situation of exclusion as referred to Article 16. The amount of the financial penalty shall not exceed 10% of the total value of the legal commitment.

Article 20. Suspension, termination of contracts in the event of errors or irregularities

1. Contracts shall be suspended or cancelled when it is necessary to verify whether

presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible.

2. A substantial error or irregularity shall be any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the Facility's budget.

Section 3 - Specifications, selection criteria and proof of economic operators' capacities

Article 21. Technical Specifications

1. Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering. Technical specifications shall include the characteristics required for works, supplies or services, including minimum requirements, so that they fulfil the use for which they are intended by the contracting authority.
2. The characteristics referred to in paragraph 1 shall include, where applicable to the particular procurement procedure:
 - (c) the quality levels;
 - (d) environmental and climate performance;
 - (e) design for all requirements (including accessibility for disabled people);
 - (f) the levels and procedures of conformity assessment;
 - (g) fitness for use;
 - (h) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
 - (i) for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve.
3. The technical specifications shall be formulated as follows:
 - (a) by reference to European standards, or to European technical approvals or common technical specifications, where such exist, to international standards or to other technical reference material produced by European standards bodies or, failing this, their national equivalents. Every reference shall be followed by the expression "or equivalent"; or
 - (b) in terms of performance or of functional requirements; they shall be sufficiently detailed to enable tenderers to determine the purpose of the contract and the contracting authorities to award the contract; or
 - (c) by a mixture of those two formulation methods.

4. Where the contracting authorities make use of the possibility of referring to the specifications referred to in subparagraph a. of paragraph 3, they may not reject a tender on the grounds that it does not comply with those specifications if the tenderer or candidate proves, to the satisfaction of the contracting authority, by any appropriate means, that the tender meets in equivalent manner the requirements set.
5. Where the contracting authorities make use of the possibility provided for in subparagraph b. of paragraph 3, of prescribing specifications in terms of performance or of functional requirements, they may not reject a tender which complies with a national standard transposing a European standard, a European technical approval or common technical specifications, an international standard or technical reference material produced by a European standards body, if those specifications relate to the necessary performance or functional requirements.
6. Save in exceptional cases, duly warranted by the subject of the contract, those specifications may not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production which would have the effect of favouring or eliminating certain products or economic operators. Where it is not possible to provide a sufficiently detailed and intelligible description of the subject of the contract, the reference shall be followed by the expression "or equivalent".

Article 22. Candidates' economic, financial, technical and professional capacities

The contracting authority may require candidates and tenderers to meet minimum economic and financial capacity as well as minimum professional and technical capacity levels. The extent of the information required for a specific contract must be related and proportionate to the subject matter of the contract.

Article 23. Proof of economic and financial capacity

1. Proof of economic and financial capacity may be furnished by one or more of the following documents:
 - (a) appropriate statements from banks or evidence of professional risk indemnity insurance;
 - (b) the presentation of balance sheets or extracts from balance sheets for at least the last two financial years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established;
 - (c) a statement of overall turnover and turnover concerning the works, supplies or services covered by the contract during a period which may be no more than the last three financial years.
2. If, for some exceptional reason which the contracting authority considers justified, the tenderer or candidate is unable to provide the references requested by the contracting

authority, they may prove their economic and financial capacity by any other means which the contracting authority considers appropriate.

Article 24. Technical and professional capacity

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraph 2. In procurement procedures for supplies requiring siting or installation operations, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.
2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of one or more of the following documents:
 - (a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;
 - (b) a list:
 - i. of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;
 - ii. of the works carried out in the last five years, with the sums, dates and places. The list of the most important works shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;
 - (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
 - (d) a description of the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
 - (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
 - (f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
 - (g) a statement of the average annual personnel level and the number of managerial staff of the service provider or contractor in the last three years;
 - (h) an indication of the proportion of the contract which the service provider may intend to subcontract;
 - (i) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

Where the services or supplies referred to in subparagraph b. i. of this paragraph are provided to contracting authorities, evidence of performance shall be in the form of certificates issued or countersigned by the competent authority.

Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

Article 25. Selection criteria

1. The contracting authorities shall draw up clear and non-discriminatory selection criteria.
2. The following selection criteria shall apply in every procurement procedure:
 - (a) the eligibility of the tenderer or candidate to take part in the procedure, checks having been carried out on the possible grounds for exclusion referred to in Article 16;
 - (b) criteria for assessing their financial, economic, technical and professional capacity.
The contracting authority may lay down minimum capacity levels below which it cannot select candidates.
3. Any tenderer or candidate may be asked to prove that they are authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorization, or entry in the VAT register.
4. The contracting authorities shall specify in the contract notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.
5. The information requested by the contracting authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.
6. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

These other entities shall comply with all the security clearances provided in Article 16.

Section 4 – Contracts

Article 26. Form of contracts

1. A contract shall be in writing and shall consist in a commitment and specifications. The performance of the contract shall not start before it is signed.

2. The commitment shall be:
 - (a) either a document established by the buyer and signed by the parties;
 - (b) or a signed document in which the candidate describes his offer or proposal and accepts the conditions set out by the contracting authority; the commitment shall then be signed by the contracting authority.
3. The contract shall include:
 - (a) the identification of the parties, including the Facility
 - (b) the justification of the signatory acting on behalf of the Facility, by reference to the delegation awarded by the operation commander or the administrator and, where appropriate, the opening and evaluation committee's deliberations;
 - (c) the aim of the contract;
 - (d) the precise legal basis for contracting, with reference to the relevant Articles in the present Act;
 - (e) the list of documents which are part of the contract, in a priority order determined by the parties, which prevails in case of contradiction between successive documents;
 - (f) the price or the modalities of its calculation;
 - (g) the dates of performance;
 - (h) the conditions for acceptance of the supplies, services or works;
 - (i) the potential liquidated damages for late, on or bad performance and their terms and conditions for implementation;
 - (j) the terms of payment;
 - (k) the date or the duration of the contract and conditions for termination of the contract;
 - (l) the date when the contract is notified;
 - (m) any other relevant element.

Article 27. Law applicable and conditions to include in contracts

1. Belgian courts shall be competent for any legal dispute when the above methods of redress have been exhausted.
2. Whenever possible, contracts to be financed through the Facility shall provide that:
 - (a) the contract shall be terminated without compensation when the forces are withdrawn from theatre or the headquarter concerned is closed, as appropriate;
 - (b) the contract may be terminated or altered without compensation when the forces or headquarter are reduced.

Article 28. Firm price or price subject to modification

1. The documents relating to the invitation to tender shall clearly state whether a firm, non-revisable price must be quoted.
2. If that is not the case, the documents relating to the invitation to tender shall lay down the conditions and/or formulas for revision of prices during the lifetime of the contract. In such

cases the contracting authority shall take particular account of:

- (a) the object of the procurement procedure and the economic situation in which it is taking place;
- (b) the type of tasks and contract and their duration;
- (c) its financial interests.

Article 29. Framework contracts

1. A framework contract is a contract concluded between a contracting authority and an economic operator for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular as regards the duration, subject, prices, conditions of performance and the quantities envisaged.
2. The contracting authority may also conclude multiple framework contracts, which are separate contracts with identical terms awarded to a number of suppliers or service providers. The contract notice shall specify the maximum number of operators with whom the contracting authority will conclude contracts.
3. The duration of framework contracts may not exceed four years, save in exceptional cases justified in particular by the subject of the framework contract. Specific contracts based on the framework contracts shall be awarded in accordance with the terms of the framework contract. When concluding specific contracts, the parties shall not substantially deviate from the framework contract. Specific contracts based on framework contracts shall be preceded by a budgetary commitment.
4. Contracting authorities may not make undue use of framework contracts or use them in such a way that the purpose or effect is to prevent, restrict or distort competition.
5. Where a framework contract is concluded with a single economic operator, contracts based on that contract shall be awarded within the limits of the terms laid down in the framework contract.

For the award of those contracts, contracting authorities may consult the operator party to the framework contract in writing, requesting it to supplement its tender as necessary.

6. Where a framework contract is concluded with several economic operators ("multiple framework contract"), the latter must be at least three in number, insofar as there is a sufficient number of economic operators to satisfy the selection criteria and/or of admissible tenders which meet the award criteria.

Contracts based on framework contracts concluded with several economic operators may be awarded either:

- (a) by application of the terms laid down in the framework contract without reopening competition, or
- (b) where not all the terms are laid down in the framework contract, when the parties are

again in competition on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, other terms referred to in the specifications of the framework contract, in accordance with the following procedure:

- i. for every contract to be awarded, contracting authorities shall consult in writing the economic operators capable of performing the contract;
 - ii. contracting authorities shall fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;
 - iii. tenders shall be submitted in writing, and their content shall remain confidential until the stipulated time limit for reply has expired;
 - iv. contracting authorities shall award each contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specifications of the framework contract.
7. A multiple framework contract with reopening of competition shall be concluded with at least three economic operators provided that there is a sufficient number of admissible tenders. Tenders are considered admissible if found suitable, regular and acceptable as defined in Article 9.A.1.
8. When awarding a specific contract through reopening of competition among the contractors, the contracting authority shall consult them in writing and fix a time limit which is sufficiently long to allow specific tenders to be submitted. The contracting authority shall award each specific contract to the tender who has submitted the most economically advantageous specific tender on the basis of the award criteria set out in the procurement documents relating to the framework contract.

CHAPTER IV

CONDUCT OF PROCEDURES

Section 1 - Provisions applicable to the conduct of all procurement procedures

Article 30a. Preparation of a procurement procedure

1. Before launching a procurement procedure, the contracting authority may conduct a preliminary market consultation with a view to preparing the procedure and informing economic operators of their procurement plans and requirements. For this purpose, advice from independent experts or authorities or from market participants may be sought and accepted. This advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

2. In the procurement documents, the contracting authority shall identify the subject matter of the procurement providing a description of its needs and the characteristics required of the works, supplies or services to be bought.

Article 30b. Procurement documents

3. An invitation to tender shall be established for each procurement procedure. Depending on the procedure chosen the procurement documents shall contain some or all of the provisions below.
4. Where the present Act provides that a contract notice shall be published, the publication shall be governed by the provision set out in article 32. For procedures where no publication is required, the relevant invitation to tender shall be sent directly to the participating economic operators.
5. The invitation to tender or to negotiate shall at least:
 - (a) specify the rules governing the lodging and presentation of tenders, including in particular the closing date and time for submission, any requirement as to the use of a standard reply form, the documents to be attached, including those in evidence of financial, economic, technical and professional capacity referred to in Articles 24 to 26, the address to which they must be sent and the language or languages in which the tenders must be drawn up;
 - (b) state that submission of the tender implies acceptance of the specifications and of the general terms and conditions referred to in paragraph 1 to which the tender relates and that this submission binds the contractor to whom the contract is awarded during performance of the contract;
 - (c) specify the period during which a tender will remain valid and may not be modified in any respect;
 - (d) forbid any contact between the contracting authority and the tenderer during the procedure, save exceptionally to correct clerical errors or clarify the nature of the contract, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit.
 - (e) In order to maintain secrecy and to avoid any difficulties where tenders are sent by letter, the invitation to tender must include the following provision: "Tenders must be submitted in a sealed envelope itself enclosed within a second sealed envelope. The inner envelope must bear, in addition to the name of the department to which it is addressed, as indicated in the invitation to tender, the words Invitation to tender - Not to be opened by the mail service. If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across that tape."
6. The specifications shall at least:
 - (a) specify the exclusion and selection criteria;
 - (b) specify the award criteria and their relative weighting or, where weighting is not possible for objective reasons, their decreasing order of importance, which shall also

- apply to variants if they are authorised in the contract notice ;
- (c) set out the technical specifications referred to in Article 21, including any relevant plans and the planned timetable for performance of the contract;
 - (d) if variants are authorized the minimum requirements which they must meet;
 - (e) state whether any fiscal exemption or other privileges and immunities apply;
 - (f) specify the evidence of access to contracts, as set out in Article 19;
 - (g) the requirement to indicate in which country the tenderers are established and to present the supporting evidence normally acceptable under the law of that country.
7. The model contract shall in particular:
- (a) specify the liquidated damages for failure to comply with its clauses;
 - (b) specify the details which must be contained in invoices or in the relevant supporting documents;
 - (c) specify the law applicable to the contract and the competent court for hearing disputes;
 - (d) specify the currency of the contract;
 - (e) specify that the contractor shall comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international social and environmental conventions listed in Annex X to Directive 2014/24/EU;
 - (f) specify whether the transfer of intellectual property rights will be required
 - (g) include a price schedule (to be completed by the tenderer);
 - (h) state that the price quoted in the tender is firm and non-revisable, or lay down the conditions or formulas for revision of prices during the lifetime of the contract;
 - (i) be accompanied by a bank (or similar) guarantee form for the tender, payment of advances and proper performance if required.

Article 31. Information on procurement documents

1. If all the invitation to procurement documents are freely, fully and directly accessible by electronic means, the contract notice shall give the Internet address at which those documents can be consulted.

In such cases any additional documents and information shall also be made freely, fully and directly accessible as soon as they are supplied to all the economic operators who have requested the specifications or expressed interest in submitting a tender.
2. Where contracting authorities do not offer unrestricted and full direct access by electronic means, the specifications and supplementary documents shall be sent to economic operators within six days of the request to participate, provided that the request was made in good time before the deadline for the submission of tenders.
3. Provided it has been requested in good time, additional information relating to the specifications shall be supplied simultaneously to all economic operators who have requested the specifications or expressed interest in submitting a tender no later than six days before the deadline for the receipt of tenders or, in the case of requests for information

received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request.

4. If, for whatever reason, the specifications and the additional documents or information cannot be supplied within the time limits set in paragraphs 1 and 2, or where tenders can be made only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time limits for receipt of tenders shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. That extension shall be advertised in appropriate manner, in accordance with the arrangements set out in this Article.

Article 32. Publication and advertisement

Prior information notice

1. The contracting authority may make known its intentions of planned procurement for the financial year through the publication in the Official Journal of the European Union of a prior information notice. It shall cover a period equal to or less than 12 months from the date on which the notice is sent to the Publication Office of the European Union.

The contracting authority may take the option of shortening the time limits for the receipt of tenders in open or restricted procedures as referred to in Article 33 paragraph 1 a. and b.

2. Paragraph 1 shall not apply to negotiated procedures without the prior publication of a contract notice.

Call for expression of interest

3. A call for expression of interests may be published in the Official Journal of the European Union as a means of preselecting candidates who may be invited to submit tenders in future restricted tender procedures or negotiated procedures over a period of time.
4. The list drawn up following a call for expressions of interest shall be valid for no more than three years from the date on which the notice is sent to the Office for Official Publications of the European Union. Any interested person may submit an application at any time during the period of validity of the list, with the exception of the last three months of that period. Where a specific contract is to be awarded, the contracting authority shall invite either all candidates entered on the list or only some of them, on the basis of objective and non-discriminatory selection criteria specific to that contract, to submit a tender.

Contract notice and award notice

5. Where the present Act provides that a notice shall be published, i.e. for open and restricted tenders and negotiated tenders subject to the derogation described in article 9, the Office for Official Publications of the European Union shall ensure publication in the Official

Journal of the European Union no later than twelve calendar days after their dispatch.

6. That period shall be reduced to seven calendar days after their dispatch if the contracting authority uses its electronic system for filling out the standard forms and limits free text in the standard forms to 500 words.
7. In addition, contracts may be advertised in any other way, notably in electronic form or through the general, local or/and specialized press. Any such advertising shall refer to the notice published in the Official Journal of the European Union, if one has been published, and may not precede the publication of that notice, which alone is authentic.
8. Such advertising may not introduce any discrimination between candidates or tenderers nor contain details other than those contained in the contract notice, if one has been published.

Other provisions

9. Where it is likely that candidates can be found in theatre and where the present Act provides that a contract notice or an award notice must be published, publication shall be made in the Official Journal of the European Union and through the local and/or specialized press.
10. In addition, information shall as much as possible be given to the local chambers of commerce and industry or other local business associations, as appropriate.
11. Where the operation HQ has its own specific website, all notices shall also be published on this website.
12. Pre-information notices, calls for expression of interest, contract notices and award notices, when they have been published in the Official Journal of the European Union, may be published through the CSO platform.

Contracts of an estimated total value below the "higher threshold"

13. Contracts of an estimated total value below the "higher threshold" mentioned at Article 4, paragraph 1, shall be advertised by appropriate means, chosen by the contracting authority, in order to ensure competitive tendering and impartiality in the procurement procedure. Such advertising may notably be through the local or specialized press and on the website of the operation HQ, if it has a website.

Article 33. Time limits for procedures

1. Unless otherwise specified time limits, running from the date following the date of publication of the contract notice to the Official Journal of the European Union, shall be as follows:
 - (a) in open procedures:
 - i. the minimum time limit for receipt of tenders shall be no less than fifty days;
 - (b) in restricted procedures:

- i. the minimum time limit for receipt of requests to participate shall be no less than thirty- days from the date following that on which the contract notice is published;
 - ii. the minimum time limit for the receipt of tenders shall not be less than 50 days following the date the invitation letter is sent;
 - (c) in negotiated procedures with publication of a contract notice:
 - i. the minimum time limit for receipt of a request to participate shall not be less than thirty- days from the date of dispatch of the letter of invitation;
- 2 the time limit for the receipt of tenders shall be set by the contracting authority taking into account in particular the complexity of the contract and the time required for drawing up tenders The time limits shall be longer than the minimum time limits set out in this article where tenders can only be drawn up after a visit to the site or after an on the spot consultation of the documents supporting the procurement documents. The time limits shall be prolonged by five days in case the contracting authority does not offer direct access free of charge by electronic means to the procurement documents. The contracting authority may reduce the time limits for receipt of tenders by five days for the open or restricted procedures if it accepts that tenders may be submitted by electronic means.
3. Without prejudice to Article 9, paragraph 1 b on extreme urgency, where duly substantiated urgency renders impracticable the time limits laid down in the present Act for restricted procedures or for negotiated procedures with prior publication of a contract notice, the following time limits may be set, by the Contracting authority, expressed in calendar days:
 - (a) for a restricted tender procedure:
 - i. a time limit for the receipt of requests to participate which may not be less than fifteen days from the date on which the contract notice was sent for publication, or not less than ten days if the notice was sent by electronic means;
 - ii. a time limit for the receipt of tenders which may not be less than ten days from the date of the invitation to tender.
 - (b) for a negotiated procedure with prior publication of a contract notice:

a time limit for the receipt of requests to participate which may not be less than fifteen days from the date when the contract notice was sent for publication, or not less than ten days if the notice was sent by electronic means.

Article 34. Submission of tenders

Candidates may submit tenders to the contracting authority by all means of communication provided that the date and time of their receipt can be acknowledged beyond doubt and that the confidentiality of tenders is preserved. One envelope shall contain the required information on the candidate and another envelope shall contain the tender.

Article 35. Opening of requests to participate and tenders

1. All requests to participate and tenders that satisfy the requirements of Articles 34 or 42.2

shall be opened. However, the opening committee shall reject:

- (a) requests to participate and tenders which do not comply with the time limit for receipt, without opening them;
- (b) tenders already open when they are received, without examining their content.

2. The authorising officer shall appoint committees to open and to evaluate the tenders. These committees can have the same composition.
3. The committees shall be made up of at least three persons representing at least two branches of the headquarter concerned with no hierarchical link between them. Those persons shall avoid any conflict of interests.
4. The authorising officer may appoint an expert to assist and advise the evaluation committee. The authorising officer shall ensure that the expert is not in a situation of conflict of interest by requesting from him a signed declaration of absence of conflict of interest. The expert cannot be a member of the committee.
5. One or more members of the opening committee shall initial the documents proving the date and time of despatch of each tender.

The members of the committee shall also initial:

- (a) either each page of each tender; or
 - (b) the cover page and the pages containing the financial details of each tender, the integrity of the initial tender being guaranteed by any appropriate technique employed by a department that is independent of the authorising department.
6. The members of the committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which satisfy the requirements and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 36.

Article 36. Abnormally low tenders

1. If, for a given contract, the price or costs proposed in a tender appear to be abnormally low, the contracting authority shall, before rejecting such tenders on that ground alone, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements, after due hearing of the parties, taking account of the explanations received.
2. The contracting authority may, in particular, take into consideration explanations relating to:
 - (a) the economics of the manufacturing process, of the provision of services or of the construction method;
 - (b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;

- (c) the originality of the tender;
- (d) compliance of the tenderer or its subcontractors with applicable obligations in the fields of environmental, social and labour law;
- (e) the possibility of the tenderer obtaining State aid in compliance with applicable rules.

The contracting authority shall only reject the tender where the evidence supplied does not satisfactorily account for the new low price or costs proposed. The contracting authority shall reject the tender where it has established that the tender is abnormally low because it does not comply with applicable obligations in the fields of environmental, social and labour law.

3. Where the contracting authority establishes that a tender is abnormally low as a result of State aid provided, it may reject the tender on that ground alone only if the tenderer is unable to prove, within a reasonable time determined by the contracting authority, that the aid in question has been awarded definitively and in accordance with the procedures and decisions specified in the European Union rules on State aid.

Article 37. Outcome of the procedure

The contracting authority shall decide to whom the contract is to be awarded on the basis of the ranking by the evaluation committee.

Article 38. Failure of the procedure

Where no tender meets the criteria set out in the published notices or the invitation to tender, the contracting authority shall inform every candidate that the tender procedure has failed. The contracting authority shall then decide either to start a new tender procedure or request a prior specific authorization to resort to a negotiated procedure in accordance with Articles 9 or 10 if applicable.

Section 2 - Provisions related to open and restricted procedures

Article 39. Choice between open and restricted procedures

1. Calls for tender shall be open where all interested economic operators may submit a tender.
2. Calls for tender shall be restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria referred to in Article 24 and invited, simultaneously and in writing, by the contracting authorities may submit a tender.
3. The authorising officer responsible for the procedure shall choose between an open and a restricted procedure.

Article 40. Requests to participate in restricted procedures

1. Requests to participate may be forwarded to the contracting authority by all means of communication provided that the date and time of their receipt can be acknowledged beyond doubt.

Where requests to participate are made by phone, a written confirmation must be sent before expiry of the time limit set for their receipt.

2. The contracting authority shall invite, simultaneously and in writing, the selected candidates to submit a tender. The selection phase may be repeated for each individual contract or may involve drawing up a list of potential candidates.
3. The number of candidates invited to submit a tender may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria. The contracting authority may also provide for a maximum number of twenty candidates, depending on the subject of the contract and on the basis of objective and non- discriminatory selection criteria. In such cases, the range and criteria shall be indicated in the contract notice or the call for expressions of interest.
4. In any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.

Article 41. Evaluation of requests to participate and tenders

1. All requests to participate and tenders declared as satisfying the requirements of Article 34 respectively Article 42(2) shall be evaluated and ranked by the evaluation committee on the basis of the exclusion, selection and award criteria announced in advance.
2. Requests to participate and tenders which do not satisfy all the minimum technical requirements set out in the supporting procurement documents to the invitations to tender or the minimum level of quality laid down therein shall be eliminated.
3. No negotiation with candidates is permitted in open or restricted tender procedures. However, the evaluation committee may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within a specified time-limit.
4. The contracting authorities may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors.

Section 3 - Negotiated procedures

Article 42. General Rules

1. In negotiated procedures, the contracting authorities shall consult tenderers of their choice

who satisfy the selection criteria laid down in Article 23, and negotiate the terms of the contract with one or more of them.

2. Where a contract notice has to be published, as referred to in Article 32, the time limit for receipt of a request to participate shall be in accordance with Article 33. The requests to participate may be forwarded to the contracting authority by any means which ensures that the date of receipt is known with certainty and that confidentiality is preserved. The contracting authority shall simultaneously and in writing invite the candidates it has selected to negotiate.

The number of candidates invited to negotiate may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria. In any event, save in single source procedures, the number of candidates invited to tender must be sufficient to ensure genuine competition.

Article 43. Conduct of the negotiated procedure

1. The contracting authority shall negotiate with tenderers the initial and any subsequent tenders or parts thereof, except their final tenders, in order to improve their content. The minimum requirements and the criteria specified in the procurement documents shall not be subject to negotiation.
2. During the negotiation, the contracting authorities shall ensure equal treatment for all tenderers.
3. A contracting authority may award a contract on the basis of the initial tender without negotiation where it has indicated in the procurement documents that it reserves the possibility to do so.
4. The evaluation committee shall:
 - (a) evaluate whether at least one offer meets the technical specifications;
 - (b) evaluate whether the negotiation is unlikely to produce better results and can be closed;
 - (c) evaluate and rank the offers received during the negotiation.

Section 4 - Competitive dialogue

Article 44. General rules

In the case of particularly complex contracts, contracting authority may make use of the competitive dialogue in accordance with this Article. A public contract shall be awarded on the sole basis of the award criterion for the best value for money.

Article 45. Conduct of the procedures

1. The contracting authority shall publish a contract notice setting out their needs, and

requirements, the award criteria and an indicative time frame which they shall define in that notice and/or in a descriptive document.

2. The contracting authority shall open, with the candidates selected in accordance with the relevant provisions applicable to open or restricted procedures, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs. They may discuss all aspects of the contract with the chosen candidates during this dialogue.
3. During the dialogue, the contracting authority shall ensure equality of treatment among all tenderers. In particular, it shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. The contracting authority may not reveal to the other participants solutions proposed or other confidential information communicated by a candidate participating in the dialogue without his/her agreement.
4. The contracting authority may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or the descriptive document. The contract notice or the procurement documents shall indicate that recourse may be had to this option. The contracting authority shall continue such dialogue until it can identify the solution or solutions, if necessary after comparing them, which are capable of meeting its needs.
5. Having declared that the dialogue is concluded and having so informed the participants, the contracting authority shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project. These tenders may be clarified, specified and fine-tuned at the request of the contracting authority. However, such clarification, specification, fine-tuning or additional information may not involve changes to the basic features of the tender or the call for tender, variations in which are likely to distort competition or have a discriminatory effect.
6. The contracting authority shall assess the tenders received on the basis of the award criteria laid down in the contract notice or the procurement documents and shall choose the most economically advantageous tender in accordance with Article 49.
7. At the request of the contracting authority, the tenderer identified as having submitted the best value for money tender may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination.
8. The contracting authorities may specify prices or payments to the participants in the dialogue.

CHAPTER V

RECORD OF PROCEDURES AND POST-AWARD INFORMATION TO CANDIDATES AND TENDERERS

Article 46. Informing candidates and tenderers and standstill period after the signature of the contract

1. The contracting authority shall as soon as possible inform all candidates and tenderers simultaneously and individually by electronic means of decisions reached concerning the outcome of the procedure after any of the relevant stages :
 - (a) the opening phase for the cases referred to in Article 35(1);
 - (b) the decision taken on the basis of exclusion and selection criteria in procurement procedures organised in two separate stages;
 - (c) the (non-) award decision referred to in Article 50;
 - (d) the decision to abandon the procurement or cancel the procurement procedure referred to in Article 11.

The above information shall be given in writing, upon request, to the Administrator, in particular decisions reached concerning the conclusion of a framework contract or the award of the contract, including the grounds for any decision not to conclude a contract or to relaunch a procurement procedure.

When informing the successful tenderer, the contracting authority shall specify that the decision notified does not constitute a commitment on its part and, if applicable, of the period of standstill to be respected before the contracting authority can sign the contract.

2. A standstill period of 10 days shall run from either the following dates:
 - the day after the simultaneous dispatch of the notifications to successful and unsuccessful tenders by electronic means;
 - the day after the award notice has been published in the Official Journal of the European Union.

If necessary, the contracting authority may suspend the signature of the contract for additional examination if this is justified by requests or comments made by unsuccessful candidate or tenders or by any relevant information received during this period. In the case of suspension, all the candidates or tenders shall be informed within three working days following the suspension decision.

Where the contract or framework contract cannot be signed with the successful envisaged tender, the contracting authority may award it to the following best tender.

The period set out above shall not apply in the following cases:

- any procedure where only one tender has been submitted;
- specific contracts based on framework contract;
- negotiated procedure without publications.

3. Where the contract is a document signed by the parties, it shall be notified to the successful candidate. Where the contract is an offer accepted by the contracting authority, acceptance shall be notified to the successful candidate. Notification may be by all means which ensures that the date of receipt by the other party is known beyond doubt. The contract takes effect on that date, unless it provides for another date.
4. On request, the contracting authority shall as soon as possible inform:
 - (a) any unsuccessful candidate of the reasons for the rejection of their request to participate,
 - (b) any unsuccessful tenderer of the reasons for the rejection of his tender, including but not limited to,
 - i) for the cases referred to in Article 21, paragraphs 4 and 5, the reasons for its decision of non-equivalence;
 - ii) its decision that the works, supplies or services do not meet the minimum level set for performance or functional requirements referred to in Article 21.1 or the minimum level of quality for the award criteria referred to in Article 49.8;
 - iii) its decision to declare the tender abnormally low referred to in Article 36.
 - (c) any tenderer who has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework contract and, the price paid or contract value, whichever is appropriate. The time taken may in no circumstances exceed 15 days from receipt of the written request.
5. However, the contracting authority may decide to withhold certain information referred to in paragraph 1 where its release would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of economic operators, or might prejudice fair competition between them.

Article 47. Award criteria

1. All contracts concluded on behalf of the Facility shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination.
2. Contracts shall be awarded in one of the following two ways:
 - (a) Lowest price or cost : in which case the contract is awarded to the tender which, while being in order and satisfying the conditions laid down, quotes the lowest price;
 - (b) under the best-value-for-money procedure.
3. The lowest price or cost procedure shall whenever possible take into account all costs to be incurred over the life-cycle of the supply, service or work over the planned duration of the operation.
4. The tender offering the best value for money shall be the one with the best price- quality

ratio, taking into account criteria justified by the subject of the contract such as the price quoted, technical merit, functional characteristics, environmental characteristics, running costs, profitability completion or delivery times, after-sales service and technical assistance.

5. The contracting authority shall specify, in the contract notice and in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the best value for money tender.
6. The weighting applied to price in relation to the other criteria must not result in the neutralisation of price in the choice of contractor.
7. If, in exceptional cases, weighting is technically impossible, particularly on account of the subject of the contract, the contracting authority shall merely specify the decreasing order of importance in which the criteria are to be applied.
8. The contracting authority may lay down minimum levels of quality. Tenders below those levels of quality shall be rejected.

Article 48. Award decisions

1. For every contract or framework contract awarded of a total estimated value exceeding "the lower threshold" mentioned at Article 4, paragraph 2, the contracting authority shall draw up a written decision based on the results of the evaluation, which shall include at least the following:
 - (a) the name and address of the contracting authority, the subject-matter and value of the contract, or framework contract;
 - (b) the names of the successful candidates or tenderers and the reasons for their selection;
 - (c) the names of the candidates or tenderers rejected and the reasons for their rejection;
 - (d) the reasons for the rejection of tenders found to be abnormally low;
 - (e) the name of the successful tenderer and the reasons why this tender was selected and, if known, the share of the contract or framework contract which the successful tenderer intends to subcontract to third parties;
 - (f) for negotiated procedures, the circumstances referred to in Articles 6, or 9 which justify the use of these procedures;
 - (g) any prior specific authorization granted during the procurement procedure in accordance with Article 8;
 - (h) as far as the competitive dialogue is concerned, the circumstances as laid down in Article 46 justifying the use of this procedure;
 - (i) if necessary, the reasons why the contracting authority has decided not to award a contract or framework contract. The contracting authorities shall take appropriate steps to document the progress of award procedures conducted by electronic means. The decision, or the main features of it, shall be communicated to the Administrator if he so requests.

The reasons for rejection of candidates shall be based, but not exclusively, on

- i) misrepresentation of the information required as a condition for participating in the procedure or the candidate has failed to supply that information;
 - ii) previous involvement in the preparation of documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition, that cannot be remedied otherwise or without counter-proof by the tenderer involved;
 - iii) non-compliance with the (minimum level of) selection criteria and with the exclusion criteria as in Article 16(1);
 - iv) non-compliance with the minimum requirements of the technical specifications as in Article 21(1);
 - v) non-compliance with the minimum level of quality for the award criteria as in Article 49(8);
 - vi) inadmissibility of the tender as in Article 9.A.1, i.e. unsuitable, irregular or unacceptable.
2. This decision shall be recorded in the register kept by the authorising officer in accordance with Article 5 of Part I of the present Act.
 3. The register will contain, for each contract signed or abandoned:
 - (a) request to procure, the approval of it by the relevant authorities and the expected planning
 - (b) procurement procedure followed and any derogation associated with
 - (c) identification of all candidates and tenderers
 - (d) number of offers received
 - (e) decisions taken and the composition of the committees
 - (f) information published and exchanged with the candidates or tenderers
 - (g) evaluation of the supplier's performance
 - (h) link with the budget and the payments

Article 49. Publication of a contract award notice

1. A contracting authority which has awarded a contract or concluded a framework contract with a total value exceeding the "higher threshold" mentioned at Article 4, paragraph 1, shall send a notice of the results of the award procedure for publication in the Official Journal of the European Union within 30 days of the award of the contract or the conclusion of the framework contract.
2. In the case of framework contracts concluded in accordance with Article 29 the contracting authorities are not bound to send a notice of the results of the award procedure for each contract based on that framework contract.
3. Certain information on the contract award or the conclusion of the framework contract may be withheld from publication where release of such information would impede law enforcement or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators, public or private, or might prejudice fair

competition between them.

Article 50. Procurement chain

The head of the budget-finance section (J8) of any headquarter the common costs or Nation Borne Costs of which are financed or pre-financed through the Facility shall lay down rules organising the procurement chain in the headquarter. Those rules shall notably determine:

- (a) the persons responsible for each step in procurement procedures, from the request until final acceptance;
- (b) the procedure for accepting services and goods delivered or works achieved of a value exclusive value-added tax exceeding the "lower threshold" mentioned at Article 4, paragraph 2.

Article 51. Project committee

1. The commander of any headquarter the common costs of which are financed through the Facility or the Nation Borne Costs are pre-financed through the Facility shall set up an advisory committee for examining and managing projects, notably regarding infrastructure and purchases of a value exceeding the "higher threshold" mentioned at Article 4, paragraph 1.
2. When examining a particular infrastructure or procurement project, this committee shall include at least the head of the headquarters' branch responsible for this project and the head of the budget-finance section (J8).
3. This committee shall advise the authorizing officer. The minutes of its meetings shall be in writing.

PART III: RULES APPLICABLE TO EXPENDITURE FINANCED THROUGH THE FACILITY IN EU MILITARY OPERATIONS WHERE HEADQUARTERS ARE PROVIDED BY EU MEMBER STATES

Article 1: Principle

1. In EU military operations where EU Member States provide headquarters, each headquarters shall apply to expenditure financed through the Facility the rules applicable to the implementation of expenditure financed by the State which provides the headquarters.

However, the provisions in EPF Council decision and in these Rules, shall prevail.

PART IV: RULES APPLICABLE TO EXPENDITURE FINANCED THROUGH THE FACILITY IN EU MILITARY OPERATIONS WITH RECOURSE TO NATO ASSETS AND CAPABILITIES

Article 1: Principle

1. In EU military operations with recourse to NATO assets and capabilities, Facility's financial provisions as set by EPF Council decision and these Rules shall apply to expenditure financed through the Facility.
2. However,
 - for the operations already launched, or
 - when implementation of Facility's implementing rules and use of the Facility accounting and asset management system cannot be applied, implementation of common expenditure can be entrusted to NATO, which then shall apply the rules applicable to its own expenditure as provided for in Article 33 paragraph 7 of the EPF Council decision.
3. The financial provisions applicable to recourse to NATO assets and capabilities, in accordance with paragraphs 1 and 2, shall be set out in a technical agreement between the involved NATO HQ and the Facility.
4. In any event, the provisions in EPF Council decision, in Part I and the articles 2, 3 and 4 of Part IV of these Rules shall prevail.

Article 2: Policy

Whenever possible, procurement for exclusive EU use shall be made through EU headquarters, EU Member States or EU bodies.

Article 3: Geographical scope

1. Equal treatment shall be granted in procurement procedures to economic operators, established in a Member State and the following countries:
 - (a) Turkey ;
 - (b) Iceland, Liechtenstein, Norway (EEA);
 - (c) Albania, Chile, Republic of North Macedonia, Mexico and Montenegro.
2. Procurement procedures shall also be open to economic operators from Aruba, Canada, Hong Kong Special Administrative Region of the People's Republic of China, Israel, Japan, Singapore, South Korea, Switzerland, Taiwan, the United Kingdom and the United States of

America when they aim at awarding contracts which:

- (a) have a value exclusive of value-added tax estimated to be more than 300.000 euro and concern supplies or services, or
- (b) have a value exclusive of value-added tax estimated to be more than 5.000.000 euro and concern public works.

3. Procurement procedures for expenditure of an operation shall also be open to economic operators from the host state and the neighboring states which share common borders with the host states

Article 4: Derogations

1. Authorisation for a derogation from the provisions in Articles 1 or 3 may be granted:

- (a) up to NATO Financial level D, by the EU Force Headquarter Financial Controller;
- (b) above NATO Financial level D and up to NATO Financial level E, by the EU Operation Headquarter Financial Controller;
- (c) above NATO Financial level E, by the Facility Committee.

2. Where a derogation has been authorised:

- (a) procurement for the operation to be financed through the Facility shall be made through the most efficient procurement process meeting the operational requirement and subject to audit trail;
- (b) in any event, the number of candidates invited to negotiate shall as much as possible be sufficient to ensure genuine competition;
- (c) the number of suppliers invited to tender may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria.

PART V: TRAVEL EXPENDITURE

Article 1: Principle

1. In EU military operations where EU Member States provide headquarters, each headquarters shall apply to mission expenditure financed through the Facility the rules applicable to the mission expenditure financed by the State which provides the headquarters.
2. In EU military operations with recourse to NATO assets and capabilities, NATO financial rules shall apply to mission expenditure financed in common through the Facility.
3. Rules applicable to mission expenditure incurred by the Council General Secretariat shall apply to mission expenditure incurred by Council Secretariat officials travelling for an operation, when such expenditure are financed in common through the Facility.
4. Rules applicable to mission expenditure incurred by the EEAS shall apply to mission expenditure incurred by the Operation Centre, when activated, and by EEAS officials travelling for an operation, when such expenditure are financed in common through the Facility.
5. In case a situation arises which is not covered by paragraphs 1-4, the administrator shall define the applicable rules according to best practices. The administrator shall transmit these rules to the Facility Committee.

Article 2: Travel by civil air

Travel by civil air shall be in the economy class, except in the following cases:

- (a) for missions shorter than one week where a direct flight is to last at least 6 hours;
- (b) where it is more economical to travel by other means, taking into account the cost for luggage;
- (c) when specific security rules related to the transport of classified material do not allow it;

The annual maximum amount spent for flying business class shall however be limited to 10 % of the total travelling budget.

PART VI: RULES APPLICABLE FOR THE RECRUITMENT OF THE CIVILIAN PERSONNEL

Article 1: Principles

1. The Facility, acting in its legal capacity may enter into employment contracts, as "the employer", and this shall be reflected in all related contracts.
2. Recruitment and contracting is done by an authorising officer, i.e. the administrator or the operation commander or by the holder of a delegation or sub-delegation granted for this specific purpose.
4. Civilian contracts can only be concluded within the limits of the budget for civilian posts agreed by the Facility Committee. For this purpose all draft operational budgets shall be accompanied by a table indicating the number and the category of civilian personnel to be employed, as well as the foreseen contract duration. All costs (including pension costs, possible allowances and expenses, etc.) shall be reflected in the budget or the explanatory documentation provided to the Facility Committee.
5. In addition to the provisions of Article 1.3 above, any recruitment of a contracted civilian to fill a position listed on the Operation Statement of Requirement (SOR) shall be specifically authorised by the Facility Committee.

Article 2: Selection and recruitment

The recruitment processes shall be transparent and competitive. As a principle, recruitment shall be open to all citizens of all EU Member States, to third States participating in the operation and where applicable to the host Nation. When an operation is recruiting key staff(e.g. Head of Branch), the operation shall invite a representative of the administrator to the interviews for the recruitment.

Article 3: Salary

The authorising officer, when negotiating the salaries of civilian personnel, shall take into account the principle of sound financial management. In addition the authorising officer shall take into account all relevant parameters, including the domestic salary conditions and the overall cost for the employer. Salaries of personnel in similar positions working for other EU entities (e.g. EU Delegation) present in the area of operations shall be considered.

Article 4: Contract type and duration

The authorising officer shall decide on the contract duration taking into account operational requirements, the duration and winding up phase of an operation and with a view to sound

financial practice. The choice of the type of contract (e.g. definite or indefinite) shall be justified and presented to the Facility Committee. If contractual obligations (e.g. notice period) imply potential liabilities for future budgets, this shall be indicated.

Article 5: Legislation and conformity

1. The authorising officer shall ensure conformity of the contract with the SOFA, the national and/or local legislation and, where appropriate, applicable collective labour agreements. The authorising officer shall seek wherever necessary (e.g. EU delegations, local authorities, contracted lawyers) the advice and assistance in regard to the knowledge of the local labour law.
2. The authorising officer shall pay specific attention to the form (e.g. definite or indefinite duration) and language of the contracts and to the options for their termination, in order to minimize the financial risks. No employment contract shall be signed until the person concerned has provided a security clearance or has initiated the procedure to obtain such clearance, at the level required for his or her future position, and a certificate which proves that he/she is medically fit for the position.
3. The authorising officer shall respect the notice periods in the employment contracts.

PART VII: ASSET POLICY

Article 1 - Introduction

Purpose

1. These provisions are designed to meet the inventory management requirements inherent in the EPF Council Decision and these Rules.
2. Each authorising officer by delegation or sub delegation shall keep an inventory showing the quantity and value of all assets entrusted to him/her, and shall check that entries in the inventory correspond to the actual situation at least annually.
3. In order to do so, the Facility needs to set up a system of inventories supplying all the information required for keeping the accounts and safeguarding assets.

Scope

4. All assets purchased with funding by the Facility are subject to these provisions.
5. These provisions relate to the inventory and management of the assets of the Facility, held by the operations or at central level (hereafter: Titles). They comply with and complement the accounting rules applicable to assets.
6. An authorising officer may, in his or her field of competence and in accordance with the rules in force, supplement these provisions by Standard Operation Procedures.
7. Exceptions to and derogations from these provisions are subject to a request by the authorising officer to the Facility Committee.

Article 2 - The basic principles

Fixed asset

1. The fixed assets belonging to the different Titles of Facility (hereinafter "assets") may consist of tangible and intangible assets.
2. A fixed asset is any item or right intended for use for a period longer than one year, and from which future economic benefits are expected.
3. A fixed asset is said to be tangible if it has physical substance. It is intangible if it is without physical substance. However, for the purposes of the current policy, software shall be treated as normal tangible assets under the CIS category CIS/Software. The different categories of assets entered on Facility statement of financial position are found in ANNEX I.

Inventory

4. Asset management is ensured by keeping and monitoring two types of inventories: financial and operational.
5. The financial inventory involves maintaining a detailed list of the assets and their current book value which belong to the Title and which are therefore entered on the assets side of the balance sheet in the Titles' fixed-assets accounts.
6. An asset is entered on the assets side of the balance sheet where:
 - (a) its normal usable life is more than 12 months and
 - (b) it is not a consumable and
 - (c) its initial value is above € 420.
7. The operational inventory involves maintaining a list of assets for the purposes of sound operational management and user accountability, even if their purchase value is below the threshold for entry in the financial inventory.
8. The entering of assets in the operational inventory is decided on by the authorising officer within his or her field of competence, depending on the asset class and monitoring required, having consulted the administrator (when appropriate). However, the following guidelines on which assets to include shall serve as a guide:
 - (a) All assets in the financial inventory,
 - (b) No assets with an initial value below the lower threshold of € 130,
 - (c) Sensitive items, such as consumer electronics, above the lower threshold.

Asset Management System (AMS)

9. The system that provides the information necessary for keeping accounts and safeguarding assets is a combination of different IT tools used within the Facility, hereafter called asset management system (AMS). The AMS contributes to drawing up the financial statements and conducting periodical physical checks.
10. All assets belonging to the Titles are inventoried in the AMS, which ensures the unity of entry of the assets belonging to the Facility.

Article 3 - Roles and Responsibilities

Authorising officers

1. The authorising officers in collaboration with the accounting officer are responsible for the acquisition, inventorying and monitoring of the assets they have acquired.
2. The authorising officer is responsible for:
 - (a) receiving assets and entering the master data in the AMS

- (b) validating and updating the assets belonging to the Titles in the financial and operational inventories,
- (c) the purchase, identification and location of the assets belonging to the Titles,
- (d) planning and monitoring physical checks and overall asset relocation,
- (e) planning and monitoring the disposal of assets,
- (f) supplying, at the request of the accounting officer for operations, the information necessary for monitoring the financial inventory.

Responsible branch

3. The authorising officers shall be assisted in the monitoring and management of their assets by the responsible branches of the general staff of the operation, namely J6 for the ICT assets, J2 for classified assets and J4 for all other assets.

- (a) The responsible branches assist their authorising officer with the operational maintenance and management of assets. They are responsible for, inter alia:
- (b) installation, labelling, assembly and repair of assets,
- (c) physical monitoring of assets,
- (d) physical inventory checks of assets.

Disposal committee

4. The authorising officer shall set up a disposal committee for the disposal of assets, which shall at least include the authorising officer, accounting officer and the head of the responsible branch concerned.

5. The disposal committee is responsible for the disposal of assets defined in Chapter 7.

Role of administrator and accounting officer for operations

6. The accounting officer for operations coordinates the keeping and management of the financial inventories of the different Titles and their consolidation.

7. The accounting officer for operations is responsible for:

- (a) coordinating, checking, updating and circulating the rules on financial inventory management in force within the Facility,
- (b) training, supporting and advising on the correct application of these provisions and other rules on financial inventory management in force
- (c) defining and checking the structure and the asset nomenclature in the AMS inventory database,
- (d) checking and monitoring the financial inventory of assets in AMS,

8. The administrator shall coordinate the keeping and management of the operational inventory of the different titles. Furthermore, he shall also manage the software and hardware required to maintain the AMS.

9. The administrator is responsible for:
- (a) coordinating, checking, updating and circulating the rules on operational inventory in force within the Facility,
 - (b) training, support and advice to the authorising officers on the correct application of these provisions and other rules on operational inventory,
 - (c) checking and monitoring the operational inventory of assets in AMS,
 - (d) making available and maintaining the AMS,
 - (e) making available and maintaining the IT equipment necessary for inventory management.

Article 4 - Entry of Assets

1. All assets, as defined in chapter 2, belonging to the Facility shall be entered in the inventory database in AMS, whatever their nature.
2. Entry in the inventory consists in creating an identification record for the asset, to which an identification number is assigned, in order to include it in the asset master data.
3. Supporting documents relating to the entry of an asset in the inventory shall be retained by the authorising officer of each Title.

Asset master data

4. When receiving an asset, the authorising officer shall create the asset master data in AMS. The total of all asset master data constitutes the inventory database.
5. The mandatory minimum data in AMS shall contain:
- (a) the inventory number
 - (b) the category of the asset which shall determine the rate of depreciation
 - (c) the description of the asset,
 - (d) its location,
 - (e) the implementation date¹ of the asset
 - (f) the initial value of the asset
 - (g) the invoice number(s) related to the acquisition of the asset in order to provide a link to the accounting system
6. The asset category shall be based on the general asset nomenclature drawn up by the accounting officer for operations, defined in ANNEX I. The authorising officer of the HQ may submit a request, stating reasons, for an asset class to be added or changed.

¹ The implementation date is the date the asset enters into use. Theoretically this is when it should start depreciating. In case it is impractical to track the implementation date the invoice date can be used, and in case the acquisition involves more than one invoice, then the date of the last invoice should be taken.

Inventory number

1. When the asset master data are first saved, the asset shall be assigned a unique inventory number based on a specific syntax "aaaabbccccc".

- (a) representing the year of purchase,
- (b) the title of the operation in the Facility's budget and
- (c) an iterative number for the assets purchased that year.

As an example, the first item purchased by EUTM Somalia in 2014 would then have a number 2014120001.

7. The inventory number is converted into a barcode printed on a label affixed to the asset throughout its lifetime, to enable it to be identified and located.

Article 5 - Identification of Assets

1. All assets delivered are received by the responsible branch in the operation, which shall validate the physical reception of assets. Subsequently, the authorising officer shall enter the master data as described above at the moment of delivery.

2. The assets are made identifiable by affixing barcode labels. These identifiers attached to assets throughout their lifetime state its inventory number and the latter's representation in the form of a barcode.

3. Authorising officers are responsible for monitoring labelling. Two copies of the identifier are affixed to the asset. One of them shall be visible and immediately accessible. The other one, the spare one, shall be affixed on a protected spot. If a label is missing or damaged, it shall be replaced.

2. In exceptional cases where it may prove difficult or inadvisable to affix an identifier to certain assets, the authorising department shall maintain, and keep updated a register containing the asset's identifier and possibly a photograph of the asset. The assets concerned are primarily:

- (a) assets in certain asset classes (e.g. land, buildings, software),
- (b) assets of small size.

Article 6 - Locations of Assets

1. Authorising officers are responsible for monitoring the location of the assets under their responsibility.

2. The location of the asset indicates the general location address of the asset in alphanumeric form. It shall be composed of the country in which the asset is located followed by the capital in abbreviated form. As an example, an asset in the MFHQ of EUTM RCA, located in Bangui in Central African Republic shall thus have a location of, RCA-BGF.

3. An authorising officer shall be free to add additional locational information.

4. A location shall be attributed to an asset. This database entry makes it possible to ascertain that an asset is present in a given location, on a given date. The last address entered in the AMS corresponds to the location of the asset.

5. Any movement of an asset from one location to another shall be notified to the authorising officer and the physical location of the asset shall be updated in the AMS.

Article 7 - Disposal of Assets

3. The disposal of an asset belonging to the Facility consists of deleting it from the AMS and carrying out its physical removal.

4. The decision to dispose of an asset is taken when it is observed to fail to serve its purpose. There are numerous possible reasons for such a situation, namely:

- (a) obsolescence (disuse),
- (b) age (disrepair),
- (c) faults (breakdown),
- (d) disappearance (theft, loss, confiscation),
- (e) destruction (fire),
- (f) internal policy.

A. Disposal decision

5. It is up to the disposal committee of each relevant Title to decide whether an asset shall be eligible for disposal.

6. At least once a year, the authorising officer shall convene the disposal committee in order to review the inventories and act accordingly.

7. The justification for any disposal shall be recorded in the meeting minutes of the disposal committee. The administrator shall receive a copy of these meeting minutes.

8. The decision to dispose of an asset, validated by the disposal committee, requires the authorising and accounting officers to update the AMS and the responsible branch to proceed to physically remove the disposed asset from the premises if required.

9. In the following cases any proposal by the disposal committee to dispose of an asset shall be subject to the approval of the Facility Committee:

- (a) to dispose of an asset with an initial value equal or greater than 130 000 euro.
- (b) to dispose of an asset by means of voluntary free transfer, as defined in paragraph 12 of this Article.
- (c) a proposal for the final destination of the assets of the operation with a view to the winding up of the operation.

B Type of disposal

10. When the disposal committee decides that an asset should be disposed of, it shall specify whether the asset is to be scrapped, transferred free of charge or sold.

Scrapping

11. Scrapping is the simple decommissioning of the asset. It applies to assets that cannot be disposed of to third parties or which are registered as having disappeared. It includes the following situations:

- (a) Loss. This includes loss due to theft or destruction of an asset. Any disposal of assets as a result of loss shall be clearly recorded and validated by the disposal committee. Each loss shall be accompanied by an explanatory statement of the responsible branch of the asset. It shall be up to the disposal Committee to decide if any follow up investigations need to be done depending on the value of the asset and the circumstances of the loss.
- (b) Recycling. Assets which have come to the end of their life and can serve no possible use to anyone else shall be recycled when possible in the appropriate way.
- (c) Destruction. Assets of an operation that at one point contained sensitive or classified information shall be destroyed. The disposal committee shall review and approve any items proposed for destruction taking sound financial management and operational requirements into consideration.

Transfer free of charge

12. The transfer of an asset free of charge is the transfer of the asset's ownership where the outcome of that operation entails neither capital gain nor capital loss of assets for the organisation.

13. Assets may be transferred to other operations, subject to approval of the authorising officer of both operations and the administrator.

14. Voluntary free transfer, donation, of assets:

- (a) Donation to charity: For certain assets the costs and effort involved in selling the asset, such as transportation, repair or determining its value, shall outweigh the potential benefits. For this reason a donation is a cost-efficient way to dispose of assets an operation no longer needs.
- (b) Donation to host country: For any donation to a host country, it is important that the disposal committee clearly defines the conditions under which this shall happen and that it shall be beneficial to the operation in terms of its relations to the host nation. In making the decision, the operation shall take care not to be exposed to any future claims or costs related to their donation. A donation of assets that a host country cannot afford to maintain or use shall not be considered in this instance. The authorising officer shall seek guidance from other actors in the theatre of operations if such a donation is warranted.

Sale

15. The transfer of an asset against payment is the transfer of ownership of that asset to a third party with capital gain or loss of assets for the organisation. It may be linked to a contract of sale or purchase or to any other contractual arrangement that transfers ownership.

16. Assets shall be disposed of at market value, regardless of their accounting value. For any asset that the operation wishes to sell, a market value shall be determined. Sale may be realised through public/private auctions, direct sale to a Member State, third state or another public entity in keeping with the principles of sound financial management and avoiding any conflicts of interest.

Article 8 - Monitoring of Assets

Monitoring of financial inventory

1. The accounting officer of the HQ shall on a quarterly basis compare in AMS the assets added with the accountancy postings and correct any errors if required.
2. Depreciation and amortisation shall be calculated on a monthly basis and booked at least annually on the basis of the information provided in the AMS by the local accounting officer in collaboration with the accounting officer for operations.
3. The asset categories and their respective useful life are defined in ANNEX I. The authorising officer may submit a request to the accounting officer for operations, stating reasons, for the useful life of an asset class to be changed.

Monitoring of operational inventory

4. The AMS shall at all times be able to provide a listing of the assets which belong to the Facility and specify their locations. The authorising officers shall check that the inventory entries correspond to reality. Any discrepancy shall be corrected in the AMS.
5. At least once a year the authorising officer in collaboration with the responsible branches shall conduct a physical inventory check.
6. The aim of monitoring the physical inventory check is to verify the physical existence of each asset and its conformity with the corresponding entry in the AMS.
7. It is recommended that the physical inventory check is done before the end of September, so that searches and any corrections can be completed before the end of the year.
8. A report of the outcome shall be notified to the disposal committee for further handling if required.

ANNEX I: Categories of Assets and Related Depreciation Rates

Asset category	Useful life
Land	∞ (not depreciated)
Buildings and infrastructure	10 years
Plant, machinery, tools and temporary structures in theatre	5 years
Furniture	2 years
Vehicles	3 years
CIS <ul style="list-style-type: none"> • Audio-visual • Miscellaneous • Network • PC • Peripheral • Software • Telecoms • Classified 	2 years
Other assets	To be determined

Software that come pre-installed on hardware shall be regarded as contribution to the value of that hardware and not separately inventoried, e.g. the purchase of a computer with an operating system installed shall be regarded as a single item for the inventory under the category CIS/PC.

BOOK 3

Provisions applicable to assistance measures

Book 3 – Provisions applicable to assistance measures

TITLE I GENERAL PROVISIONS AND FINANCIAL ACTORS

Chapter 1 General provisions

Article 1. Rules applicable to assistance measures

Unless provided for otherwise by the EPF Council Decision or by Books 1 or 3 of these Rules, the Financial Regulation (EU, Euratom 2018/1046) shall apply to assistance measures funded under the Facility.

Chapter 2 Financial actors

Article 2. Authorising officer for assistance measures

When the Commission carries out via its services the function of administrator and so of an authorising officer for assistance measures, Article 72, paragraphs (1) to (5) of Article 73, Articles 74 and 75 of the Financial Regulation shall apply.

Article 3. Accounting officer for assistance measures

1. When the accounting officer of the Commission performs the tasks of the accounting officer of the Facility for assistance measures, points (a) and (c) to (f) of the first sub-paragraph of paragraph (1) of Article 77, paragraphs (3) and (4) of Article 78, paragraphs (1) to (3) of Article 80, Article 81, paragraphs (2) to (10) of Article 82, and Articles 83 to 86 of the Financial Regulation shall apply.

2. For the purpose of point (d) of paragraph (4) of Article 13 of the EPF Council Decision, where the accounting officer of the Commission acts as the accounting officer for assistance measures the accounting rules referred to in paragraphs (1) to (3) of Article 80 of the Financial Regulation shall apply to the Facility's resources for assistance measures. Those rules shall be applied to the Facility while taking into account the specific nature of its activities.

Article 4. Bank accounts

1. For the purpose of paragraphs (4) and (5) of Article 34 of the EPF Council Decision, Member States' and voluntary contributions for the implementation of assistance measures shall be credited to a special account entitled 'European Commission — EPF Receipts' communicated by the accounting officer for assistance measures.

2. With reference to point (b) of paragraph (4) of Article 34 of the EPF Council Decision, Member States' contributions shall be used to make the necessary payments for assistance measures.

3. When the accounting officer of the Commission ensures the treasury management for assistance measures, Articles 85 and 86 of the Financial Regulation shall apply.

Article 5. Rules applicable to imprest accounts

Wherever imprest accounts are used for the implementation of an assistance measure under the responsibility of the administrator for assistance measures, Articles 88, 89 and 95 of the Financial Regulation shall apply.

Article 6. Liability of financial actors

Articles 90 to 94 of the Financial Regulation shall apply.

TITLE II BUDGET AND BUDGETARY PRINCIPLES

Article 7. Budgetary principles

The budget for assistance measures shall be established and implemented in accordance with the following principles:

- unity and budgetary accuracy,
- annuality,
- equilibrium,
- unit of account,
- specification,
- sound financial management,
- transparency,

as set out in this Book.

Article 8. Principles of unity and budgetary accuracy

1. For each financial year, the budget shall forecast and authorise all revenue and expenditure considered necessary for the assistance measures funded under the Facility.
2. Points (a), (b) and (e) of paragraph (2), paragraphs (4) and (5) of Article 7, and Article 8 of the Financial Regulation shall apply.
3. In line with paragraph (5) of Article 7 of the Financial Regulation, paragraph (2) of this Article shall not prevent appropriations being committed globally or budgetary commitments being made in annual instalments, as respectively provided for in paragraph (1) of Article 37 of this Book and in Article 22 of the EPF Council Decision.

Article 9. Principle of annuality

1. The appropriations for assistance measures entered in the budget shall be authorised for a financial year which shall run from 1 January to 31 December of the same year.
2. The revenue for assistance measures of a financial year shall be entered in the accounts for that year on the basis of the amounts collected during it and of those collected in advance according to paragraph (11) of Article 29 of the EPF Council Decision.
3. Commitments shall be entered in the accounts for a financial year on the basis of the legal commitments entered into up to 31 December of that year. However, the global budgetary

commitments shall be entered in the accounts for a financial year on the basis of the budgetary commitments up to 31 December of that year.

4. Payments shall be entered in the accounts for a financial year on the basis of the payments made by the accounting officer by 31 December of that year.

Article 10. Carryover of appropriations and decommitments as regards assistance measures

1. With regard to point (a) of paragraph (4) of Article 21 of the EPF Council Decision, the administrator for assistance measures shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.

2. Non-differentiated appropriations legally committed at the end of the financial year shall be paid until the end of the following financial year.

3. Provisional appropriations as referred to in paragraph (6) of Article 18 of the EPF Council Decision shall not be carried over.

4. Appropriations corresponding to revenue from voluntary financial contribution by a Member State or a third party, as referred to in Article 30 of the EPF Council Decision, shall be carried over automatically in accordance with the relevant administrative arrangement, in the meaning of Article 22 of Book 3 of these Rules.

5. For the purpose of point (b) of paragraph (4) of Article 21 of the EPF Council Decision, paragraphs (1) and (2) of Article 13 of the Financial Regulation shall apply.

Article 11. Principle of equilibrium

Revenue and payment appropriations for assistance measures shall be in balance.

Article 12. Principle of unit of account

1. The budget as regards assistance measures shall be drawn up and implemented in euro and the accounts shall be presented in euro.

2. Article 19 of the Financial Regulation shall apply.

Article 13. Principle of specification

Without prejudice to Article 20 of the EPF Council Decision as regards transfers of appropriations, appropriations for assistance measures shall be earmarked for specific purposes by titles which shall be subdivided into chapters and articles.

Article 14. Principle of sound financial management and performance, and internal control

1. The Facility's appropriations for assistance measures shall be used in accordance with the principle of sound financial management, and thus be implemented respecting the principles laid down in paragraph (1), points (a) and (b) of paragraph (2), and paragraph (3) of Article 33 of the Financial Regulation.

2. Articles 34 and 36 of the Financial Regulation shall apply.

Article 15. Principle of transparency

1. The budget as regards assistance measures shall be established and implemented and the accounts presented in accordance with the principle of transparency.
2. Paragraph (1) of Article 37 and Article 38 of the Financial Regulation shall apply.
3. The administrator for assistance measures shall manage the publication of the accounts and of the titles of the budget concerning assistance measures.

Article 16. Structure of the budget as regards assistance measures

1. The revenue and expenditure of the Facility as regards assistance measures shall be classified according to their type or the use to which they are assigned.
2. The Facility's budget shall not contain negative revenue.

TITLE III IMPLEMENTATION OF REVENUE FOR ASSISTANCE MEASURES

Article 17. Revenue for assistance measures

1. Revenue for assistance measures shall be used to finance specific items of expenditure.
2. Revenue from contributions payable by the contributing Member States within the meaning of point (a) of paragraph (7) of Article 18 of the EPF Council Decision shall be treated in accordance with Articles 25 to 29 thereof.
3. Other revenue, including third party contributions and revenue within the meaning of point (b) of paragraph (7) of Article 18 of the EPF Council Decision (with the exception of the budget outturn from the previous year) shall be made available automatically, both as commitment appropriations and as payment appropriations, when that revenue has been received by the Facility.
4. For revenue based on voluntary financial contribution by a Member State, within the meaning of Article 30 of the EPF Council Decision, commitment appropriations may be made available upon the conclusion of the administrative arrangements referred to in Article 22 of this Book, and payment appropriations, when such revenue have been received by the Facility.
5. Article 27 of the Financial Regulation shall apply.

Article 18. Estimate and establishment of amounts receivable

1. Articles 97 and 98 of the Financial Regulation shall apply.
2. With regard to paragraph (3) of Article 97 of the Financial Regulation, the reference to own resources shall be understood as referring to the Member States' contributions referred to in Article 26 of the EPF Council Decision.

Article 19. Default interest

Without prejudice to any specific provisions deriving from the application of specific regulations, any amount receivable not repaid on the deadline specified in the debit note shall bear interest in accordance with Article 5 of Book 1 of these Rules.

Article 20. Authorisation of recovery

1. The administrator for assistance measures shall, by issuing a recovery order, instruct the accounting officer responsible to recover an amount receivable which that authorising officer responsible has established ('the authorisation of recovery').
2. The administrator for assistance measures may formally establish an amount as being receivable from persons other than Member States by means of a decision which shall be enforceable within the meaning of Article 299 of the Treaty on the Functioning of the European Union¹ pursuant to paragraph (4) of Article 40 of the EPF Council Decision.
3. The revenue shall be entered in the budget in accordance with Article 23 of the EPF Council Decision.

Article 21. Rules on recovery

1. Paragraphs (1) to (4) and (6) of Article 101 and Articles 102, 103, 105, 106 and 109 of the Financial Regulation shall apply.
2. The administrator for assistance measures shall inform the Facility Committee each year of the waivers of recovery granted by it as part of its financial reports.

Article 22. Management of voluntary financial contributions for assistance measures

1. For the purpose of the administrative management of a voluntary financial contribution by a Member State or a third party as referred to in Article 30 of the EPF Council Decision, the administrator for assistance measures shall propose to the Committee an administrative arrangement, in the form of a transfer agreement, based on information provided by the contributor(s).
2. Any voluntary contribution may only be used in accordance with paragraphs (4) and (5) of Article 30 of the EPF Council Decision, and may be subject to internal and external audit in accordance with Chapter 6 therein.

Article 23. Reimbursements and compensatory interests

1. Where reimbursements are due to Member States, Article 29 of the EPF Council Decision shall apply.
2. When an amount is to be reimbursed by the Facility following a judgment of the Court of Justice of the European Union or as a result of an amicable settlement, the interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union on the first calendar day of each month. The interest rate shall not be negative. The interest shall run from the date of payment of the amount to be reimbursed until the date at which the reimbursement is due. In cases where the overall interest rate would be negative, it shall be set at zero percent.

¹ OJ C 326/47 of 26.10.2012.

TITLE IV IMPLEMENTATION OF EXPENDITURE FOR ASSISTANCE MEASURES

Article 24. Implementation in accordance with the principle of sound financial management

1. The administrator for assistance measures shall implement the revenue and expenditure of the Facility for assistance measures in accordance with the provisions of Books 1 and 3 of these Rules, under its own responsibility and within the limits of the Facility's resources.
2. The Member States shall cooperate with the administrator for assistance measures so that the Facility's resources are used in accordance with the principle of sound financial management and performance.

Article 25. Use of appropriations

1. Appropriations entered in the budget for any assistance measure shall only be used if a basic legal act has been adopted in the form of a decision by the Council establishing the assistance measure in accordance with Article 7 of the EPF Council Decision.
2. By way of derogation from paragraph (1), a basic legal act shall not be required in the cases referred to in paragraph (1) of Article 7 of the EPF Council Decision.
3. The financing of measures for the preparation of an assistance measure under Article 57 of the EPF Council Decision shall cover the incremental costs authorised by the Council referred to in Annex III to the EPF Council Decision.
4. Appropriations entered in the general part of the budget for assistance measures referred to in point (c) of paragraph (3) of Article 18 of the EPF Council Decision shall be implemented by the administrator for assistance measures under its administrative autonomy in compliance with the EPF Council Decision and with the budget.

Article 26. Delegation of budget implementation powers

For the purpose of paragraph (3) of Article 32 of the EPF Council Decision, paragraph (1) of Article 60 of the Financial Regulation shall apply.

Article 27. Conflict of interests

Article 61 of the Financial Regulation shall apply.

Article 28. Methods of implementation

1. The administrator for assistance measures shall implement the Facility's budget in any of the following ways:
 - (a) directly ('direct management'), by its departments; or
 - (b) indirectly ('indirect management'), by entrusting Facility's budget implementation tasks to implementing actors designated by the Council according to paragraph (2) of Article 33 of the EPF Council Decision.
2. For the purposes of direct management, the administrator for assistance measures may use the instruments referred to in Title VIII of this Book.

3. The administrator for assistance measures shall be responsible for the implementation of the Facility's budget in accordance with Article 24 of this Book and Article 20 of the EPF Council Decision and shall not delegate those tasks to third parties, where such tasks involve a large measure of discretion implying political choices.

The administrator for assistance measures shall not, through procurement contracts, outsource tasks involving the exercise of public authority and discretionary powers of judgement.

TITLE V. FINANCIAL REPORTS, ACCOUNTS AND AUDIT FOR ASSISTANCE MEASURES

Chapter 1 Financial reports

Article 29. Financial reports for assistance measures

1. The financial reports referred to in Article 38 of the EPF Council Decision shall also provide details on the use of appropriations for assistance measures carried over as well as on the waiving of recovery referred to in paragraph (2) of Article 21 of this Book.

2. The reports referred to in paragraph (1) shall inform the financial aspects of the report on the implementation of assistance measures referred to in Article 63 of the EPF Council Decision. The administrator for assistance measures, with the support of the responsible accounting officer, shall update the relevant financial information to be included in it.

Chapter 2 Annual accounts

Article 30. Financial year

The annual accounts of the Facility referred to in Article 39 of the EPF Council Decision as regards assistance measures shall be prepared for each financial year, which begins on 1 January and ends on 31 December of the same year.

Article 31. Structure of the accounts and accounting standards

1. The annual accounts as regards assistance measures shall comprise: (a) the financial statements presented in euro; (b) the report on financial implementation of assistance measures.

2. When the accounting officer of the Commission is the accounting officer for assistance measures, Articles 80 and 243 of the Financial Regulation shall apply and the financial statements of assistance measures shall be established accordingly.

3. Each entry in the accounts shall be based on appropriate supporting documents.

Chapter 3 Controls and audit

Article 32. General rules applicable to controls

1. For the purpose of paragraph (2) of Article 40 of the EPF Council Decision, the persons responsible for auditing revenue and expenditure of assistance measures shall meet the requirements and shall abide by the standards and ethical rules set by the Commission for

auditing revenue and expenditure related to the EU external action, in particular as regards the confidentiality of the information and the protection of the data of which they become aware during their audit task.

2. When the nature of the audit work so requires, the persons responsible for the audit may be requested to have received, before carrying out their task, clearance for access to classified information up to at least ‘SECRET UE/EU SECRET’ level, or equivalent clearance from a Member State or NATO.

Article 33. Rules applicable to the internal auditor for assistance measures

1. With reference to Article 41 of the EPF Council Decision, when the internal auditor of the Commission is the internal auditor of the Facility for assistance measures, Articles 118 to 122 of the Financial Regulation shall apply.

2. For the purpose of the annual report to the Committee on the internal audit, referred to in paragraph (6) of Article 41 of the EPF Council Decision, the internal auditor for assistance measures shall submit an annual internal report to the administrator for assistance measures, indicating the number and type of internal audits carried out, the observations and recommendations made, and the actions taken on those recommendations.

Article 34. External auditing

The external auditing of the revenue and expenditure arising from the implementation of assistance measures shall be carried out in accordance with Articles 42 and 43 of the EPF Council Decision.

TITLE VI. EXPENDITURE OPERATIONS FOR ASSISTANCE MEASURES

Article 35. Financing decisions

1. The commitment of expenditure shall be preceded by a financing decision adopted by the Commission. The financing decisions shall be annual or multiannual.

The first sub-paragraph of this Article shall not apply in the case of support expenditure as referred to in point (c) of paragraph (3) of Article 18 and in Annex II of the EPF Council Decision, in so far as the support expenditure cannot be entered in the titles in the budget for the assistance measure to which it relates.

2. The financing decision shall be adopted, as appropriate, as soon as possible after the adoption of the basic legal act referred to under Article 7 of the EPF Council Decision.

Where, in accordance with Articles 57 and 58 of the EPF Council Decision, the Council has authorised, without the prior adoption of a basic legal act, the funding of preparatory measures for an assistance measure or of urgent measures pending a decision on an assistance measure, the financing decision shall be adopted as soon as possible after the Council has authorised or approved such measures.

The financing decision shall indicate the total amount it covers and shall contain a description of the actions to be financed. It shall specify:

- (a) the basic legal act or the act of the Council which authorises preparatory measures or approves urgent measures, and the budget line;
- (b) the objectives pursued and the expected results;
- (c) the methods of implementation;
- (d) any additional information required by the EPF Council Decision, the basic legal act or by the relevant act of the Council referred to under point (a) of this sub-paragraph (such as scope, duration, conditions for the implementation of the assistance measure and maximum costs authorised for the urgent measure).

3. Points (a), (b) and (f) of the third paragraph and paragraphs (4) and (5) of Article 110 of the Financial Regulation shall apply.

Article 36. Expenditure operations for assistance measures

1. For the purpose of the second sub-paragraph of paragraph (2) of Article 32 of the EPF Council Decision, every item of expenditure shall be committed, validated, authorised and paid.
2. Article 111 of the Financial Regulation shall apply.

Article 37. Types of budgetary commitments

1. Budgetary commitments shall be individual, global or provisional, and shall be implemented in accordance with Article 112 of the Financial Regulation.
2. In line with paragraph (2) of Article 112 of the Financial Regulation, budgetary commitments for assistance measures extending over more than one financial year may be broken down over several years into annual instalments as referred to in Article 22 of the EPF Council Decision, or where they relate to support expenditure.

Article 38. Time limits for commitments for assistance measures

1. Article 114 of the Financial Regulation shall apply to legal commitments for assistance measures relating to individual or provisional budgetary commitments and to global budgetary commitments for assistance measures.
2. Support expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the Facility budget for the financial year in which it is effected.

Article 39. Types of payments for assistance measures and time limits

Article 115 and paragraphs (1) to (5) of Article 116 of the Financial Regulation shall apply.

With regard to paragraph (5) of Article 116 of the Financial Regulation, the interest rates shall be those referred to in Article 5 of Book 1 of these Rules.

TITLE VII. RULES FOR DIRECT AND INDIRECT MANAGEMENT

Chapter 1 Common rules applicable to direct and indirect management

Article 40. General provisions

Articles 124 to 128, Articles 130 to 133, Articles 135 to 144, Article 146, paragraph (1) of Article 147 and Article 148 of the Financial Regulation shall apply to direct and indirect management, except where specified otherwise in these Rules.

For the purposes of direct management, paragraphs (1) and (3) to (6) of Article 149 and Articles 150 to 153 of the Financial Regulation shall also apply, except where specified otherwise in these Rules.

For the purposes of indirect management, Articles 154 to 158 of the Financial Regulation shall also apply, except where specified otherwise in these Rules.

Article 41. Cooperation for protection of the financial interests of the Facility

1. Article 129 of the Financial Regulation shall apply.

2. In any contract award procedure, potential recipients, candidates, tenderers and participants shall, in accordance with Article 70 of the EPF Council Decision, be informed that, for the purposes of safeguarding the financial interests of the Facility, their personal data may be transferred to the internal and external auditors of the Facility, to the European Anti-Fraud Office (OLAF),² to the European Public Prosecutor's Office (EPPO) in respect of its competence pursuant to Regulation (EU) 2017/1939,³ and between authorising officers of the Facility.

Chapter 2 Indirect management

Article 42. Assessment of the capacity of implementing actors

1. The assessment of the capacity of implementing actors as regards financial management, referred to in Articles 61 and 66 of the EPF Council Decision, shall be made in accordance with the principles laid down in paragraphs (1) and (4) of Article 154 of the Financial Regulation, in a proportionate way and with due consideration for the nature of the action and the financial risks involved.

2. Prior to the designation of an implementing actor or, when relevant, of a grant recipient, the administrator for assistance measures shall advise on and confirm to the Council its capacity to implement the assistance measure, acting in line with the requirements of paragraphs (3) and (5) of Article 33 of the EPF Council Decision. If such capacity cannot be confirmed, the administrator shall indicate to the Council any other possible ways of implementing the measure.

² 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.

³ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1.

3. Implementing actors which have been assessed by the administrator for assistance measures in accordance with paragraph (2) of Article 66 of the EPF Council Decision shall inform the administrator for assistance measures without delay if any substantive changes are made to their rules, systems or procedures which may impact the reliability of the assessment.

4. When implementing actors, who may apply the rules applicable to the implementation of their own expenditure pursuant to paragraph (7) of Article 33 and paragraph (5) of Article 66 of the EPF Council Decision, participate in a call for proposals they shall comply with the rules of the call for proposals referred to in Chapter 2 of Title VIII of this Book. In such a case, the authorising officer for assistance measures may sign a contribution agreement instead of a grant agreement.

Article 43. Provision of information by implementing actors exempted from assessment

Where, in accordance with paragraph (8) of Article 66 of the EPF Council Decision, no assessment is carried out, the administrator for assistance measures may request the implementing actor to provide the information necessary to ensure protection of the financial interests of the Facility in line with paragraphs (1) and (9) of Article 66 thereof, in particular information necessary for the application of points (b) to (d) of paragraph (2) of Article 67 of the EPF Council Decision, and information about its rules and procedures for the management of procurement and grants.

The administrator may rely on this information when advising on and confirming the capacity of the implementing actor in line with Article 33 of the EPF Council Decision and when concluding the contribution agreement with the implementing actor.

Article 44. Contribution agreements with implementing actors

1. When the administrator for assistance measures concludes contribution agreements with implementing actors as referred to in paragraph (4) of Article 61 of the EPF Council Decision, Articles 61, 65, 67 and 68 of the EPF Council Decision, as well as this Chapter shall apply.

2. Contribution agreements concluded in accordance with Article 61 of the EPF Council Decision shall lay down the terms for the implementing actors to provide the administrator for assistance measures with the regular financial reports, the accounts of the expenditure and the management declaration referred to in points (e) and (g) of paragraph (2) of Article 67 of the EPF Council Decision, as well as the regular reports on the implementation of assistance measures referred to in point (a) of paragraph (3) of Article 68 of the EPF Council Decision. Those terms shall be set in a way to allow the administrator for assistance measures to timely present to the Facility Committee the regular financial reports and the annual accounts referred to, respectively, in Article 38 and paragraph (1) of Article 43 of the EPF Council Decision.

3. The opinion of an independent audit body referred to in point (g) of paragraph (2) of Article 67 of the EPF Council Decision shall establish whether the accounts give a true and fair view, whether the control systems in place function properly, and whether the underlying transactions are managed in accordance with the provisions of the relevant contract signed with an implementing actor. The opinion shall also state whether the audit work casts doubt on the assertions made in the management declaration referred to in point (g) of paragraph (2) of Article 67 of the EPF Council Decision.

Such opinion may be incorporated in the final report if the action implemented is limited to 18 months.

4. In case of implementation of an assistance measure with a network the contract signed by the administrator shall include provisions as regards the legal and financial responsibility of the lead partner for the management of funds and the organisation of the network, as well as provisions governing the change of the lead partner during the implementation of the measure.

Article 45. Obligations of implementing actors

1. In line with paragraph (2) of Article 154 of the Financial Regulation, implementing actors entrusted with the implementation of the Facility's funds for assistance measures shall respect the principles of sound financial management, transparency, non-discrimination and visibility of Union action.

2. Implementing actors shall ensure that no funds or economic resources are made available, directly or indirectly, to or for the benefit of entities, individuals or group of individuals, designated by the EU as subject to restrictive measures in the lists provided at www.sanctionsmap.eu.⁴

3. Implementing actors will ensure that the implementation of the assistance measures takes place in full compliance with paragraph (4) of Article 68 of the EPF Council Decision, including the principles set out in paragraph (2) of Article 56 and in point (c) of paragraph (2) of Article 33 thereof.

Article 46. Implementation of the Facility's funds for assistance measures under indirect management

1. Contribution agreements shall clearly define the responsibilities and obligations of the person or entity implementing the Facility's funds for assistance measures, including the obligations set out in Articles 67 and 68 of the EPF Council Decision and in Article 41 of this Book, and the conditions for payment of the contribution.

2. Point (a) of the first sub-paragraph and the second sub-paragraph of paragraph (2), and paragraphs (4) to (6) of Article 155 of the Financial Regulation shall apply.

3. Where the Commission services carry out the function of the authorising officer for assistance measures and an assistance measure is implemented in indirect management, without prejudice to the responsibilities of the contracting authorities, the authorising officer for assistance measures shall, where necessary, recover amounts due from the contracting authorities' recipients in accordance with Articles 18, 20 and 21 of this Book, including by means of a decision enforceable under the same conditions as those laid down in Article 299 of the Treaty on the Functioning of the European Union. The relevant contribution or financing agreement shall contain provisions to that end.

Article 47. Conditions applicable to sub-contractors of the implementing actors

1. For the purpose of the implementation of Articles 67 and 68 of the EPF Council Decision, any contribution agreement with an implementing actor shall contain provisions by which the implementing actor undertakes to ensure that all sub-contractors possess the appropriate operational and financial capacity for implementing an assistance measure, under conditions equivalent to those applying to the implementing actor.

⁴ Note that the Official Journal of the European Union (OJ) is the official source of EU law and, in case of conflict, its content prevails over that of the EU Sanctions Map.

2. The contribution agreements referred to in the first paragraph shall provide that the implementing actor undertakes to ensure that at least the obligations and principles established in the provisions hereunder apply to all sub-contractors:

- (a) paragraph (2) point (c) of Article 33, paragraph (2) of Article 35, paragraph (3) of Article 40, paragraph (5) of Article 41, paragraph (5) of Article 43, paragraph (1) of Article 67, Article 68, Article 69 and paragraph (2) of Article 72 of the EPF Council Decision;
- (b) Articles 27, 41 and 45 of this Book.

3. All information necessary to demonstrate how the requirements above have been met shall be provided by the implementing actor within the reports referred to in paragraph (2) of Article 61 and in paragraph (3) of Article 68 of the EPF Council Decision.

Article 48. Financing agreements with beneficiaries

For the part of the assistance measure implemented indirectly with the beneficiary or the bodies or agencies it has designated, the financing agreement pursuant to paragraph (5) of Article 62 of the EPF Council Decision shall, in addition to the elements referred to in paragraph (6) of Article 155 of the Financial Regulation, clearly define the roles and responsibilities of the beneficiary in the implementation of the funds. The financing agreement shall also determine the rules and procedures to be applied by the beneficiary when implementing the Facility's funds, including the obligations set out in Article 41 of this Book and the conditions for payment of the contribution.

Chapter 3 Direct management

Article 49. Contracts concluded in direct management

Contracts concluded in direct management shall respect the principles reflected in the provisions referred to in Article 47 of this Book, as relevant.

TITLE VIII. PROCUREMENT AND GRANTS FOR THE IMPLEMENTATION OF ASSISTANCE MEASURES

Chapter 1 Provisions applicable to procurement

Article 50. Procurement

1. Title VII of the Financial Regulation, including Annex I therein, shall apply to the procurement procedures as regards assistance measures.

Chapter 2 of Title VII of the Financial Regulation shall apply to contracts awarded by the Commission on the Facility's own account.

Chapter 3 of Title VII of the Financial Regulation shall apply to contracts awarded by the administrator for assistance measures for the purpose of Article 35 of the EPF Council Decision.

2. The authorising officer may allow, in accordance with the requirements of paragraph (2) of Article 179 of the Financial Regulation, third-country nationals, other than those referred to in paragraph (1) therein, to tender for contracts. The authorising officer may consider that the

necessary exceptional circumstances in this respect are in place whenever such participation would be needed for the effective implementation of the assistance measure, while taking due regard of any limitations inherent in the nature and objectives of an assistance measure and the requirements of the EPF Council Decision and the basic legal act.

Article 51. Framework contracts, inter-institutional procurement and joint procurement

1. For the purpose of the framework contracts referred to in paragraph (4) of Article 37 of the EPF Council Decision, Article 1 of Annex I of the Financial Regulation shall apply.
2. For the implementation of the Facility's expenditure for assistance measures, the Commission, as the responsible administrator, may participate in the inter-institutional procurement and joint procurement referred to in Article 165 of the Financial Regulation.

Chapter 2 Provisions applicable to grants

Article 52. Grants

For the purpose of the award and implementation of grants referred to in Article 36 of the EPF Council Decision, Articles 180 to 205 of the Financial Regulation, with the exception of paragraph (5) of Article 198, shall apply.

Article 53. Eligibility criteria

In applying Article 197 of the Financial Regulation concerning eligibility criteria for grants, the authorising officer for assistance measures shall observe the following principles:

- (1) Without prejudice to any limitations inherent in the nature and objectives of an assistance measure as provided for in the EPF Council Decision and in the relevant basic legal act, participation in grant award procedures shall be opened without limitations to all natural persons and legal persons, and to international and regional organisations.
- (2) Eligibility may be restricted with regard to the nationality, geographical location or nature of applicants where such restrictions are justified on account of the specific nature and the objectives of the assistance measure or subsequent actions or if necessary for the preservation of the security and defence interests of the Union and of its Member States.

Article 54. Guarantee fee subsidies

Guarantee fee subsidies may be provided in accordance with Title VIII of the Financial Regulation.