

**DECISION**

**ADB(D) 4-2007**

THE ADMINISTRATIVE BOARD OF THE SESAR JOINT UNDERTAKING,  
Having regard to Articles 5.1(h) and 14 of the Statutes;

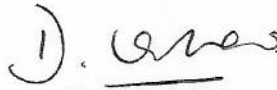
In its ordinary meeting of 3 July 2007, has adopted the following decision:

Article 1

The "Financial regulations of the SESAR Joint Undertaking", annexed to this decision with reference SJU(FR)1.04, are hereby adopted.

Done at Brussels, 3 July 2007

*The Chairman,*

  
Daniel Calleja

**FINANCIAL REGULATIONS  
OF THE  
SESAR JOINT UNDERTAKING**

(Adopted by the Administrative Board on 3 July 2007)

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## TITLE I - Definitions and scope

### Article 1 – Definitions

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For the purposes of the financial regulations:

1. **Regulation** shall mean Council Regulation (EC) n° 219/2007 of 27.02.2007.
2. **Joint Undertaking** shall mean the SESAR Joint Undertaking established by Council Regulation (EC) 219/2007;
3. **Statutes** shall mean the Statutes of the SESAR Joint Undertaking established by Council Regulation (EC) n°219/2007 of 27.02.2007.
4. **Administrative board** shall mean the decision making organ of the SESAR Joint Undertaking defined in Article 2 of the Statutes;
5. **Executive director** shall mean the Executive director of the SESAR Joint Undertaking defined in Article 2 of the Statutes;
6. **Member** shall mean the Members of the SESAR Joint Undertaking defined in Article 1 of the Statutes.
7. **Founding Members** shall mean the Founding Members of the SESAR Joint Undertaking: the European Community and EUROCONTROL.
8. **Appropriations** shall mean budget funding.
9. **Commitment** is the operation reserving the appropriations necessary to cover subsequent payments to honour legal obligations resulting in a charge for the budget.
10. **Payment** refers to cash or bank transfers to the beneficiaries.
11. **Initiation** shall mean the preparation of a financial operation, including the necessary preliminary quality controls.
12. **Ex ante verification** of an operation consists in verifying that an operation is legal and complies with the principle of sound financial management and with the rules of the financial regulations and the implementing rules
13. **Ex post verification** of an operation shall verify the functioning of the processes and assess the overall quality and effectiveness of the internal control systems.
14. **Validation of expenditure** is the actual decision of the competent financial actor confirming and taking final responsibility for a financial operation.
15. **Authorisation of expenditure** is the act whereby the validated expenditure is authorised for payment.

### Article 2 – Scope

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1. Without prejudice to the provisions of the Regulation, these financial regulations establish the essential financial rules of the Joint Undertaking.
2. The financial regulations are adopted and may be modified, on a proposal of the Executive director, by a decision of the Administrative board in accordance to the provisions of the Statutes.

## TITLE II - Budget

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### Chapter 2.1 - General principles and financial actors

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#### *General principles*

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#### **Article 3- General principles**

The establishment and implementation of the budget of the Joint Undertaking (hereinafter referred to as 'the budget') shall comply with the principles of **unity and budget accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency** as provided for in this financial regulations.

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#### **Article 4 - Principles of unity and budget accuracy**

1. The budget is the instrument which, for each financial year, forecasts and authorises the revenue and expenditure considered necessary for the Joint Undertaking.
2. No revenue shall be collected and no expenditure effected unless booked to a heading in the budget.
3. An appropriation must not be entered in the budget if it is not for an item of expenditure considered necessary.
4. No expenditure may be committed or authorised in excess of the appropriations authorised by the budget.

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#### **Article 5 - Principle of annuality**

1. The budget shall contain commitment appropriations and payment appropriations.
2. The appropriations entered in the budget shall be authorised for one financial year which shall run from 1 January to 31 December. However the first exercise will start as soon as the Joint Undertaking is operational in 2007 and will end on the 31<sup>st</sup> December 2008.

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#### **Article 6 - Principle of equilibrium**

1. The budget revenue and payment appropriations must be in balance.
2. Commitment appropriations may not exceed the amount of revenue referred to in Article 8.

**Article 7 - Principle of unit of account**

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The budget shall be drawn up and implemented in euros and the accounts shall be presented in euros. However, for cash-flow purposes, operations may be carried out in national currencies.

**Article 8 - Principle of universality**

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Total revenue shall cover total payment appropriations. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to any specific implementing rules.

**Article 9 - Principle of specification**

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The appropriations in their entirety shall be earmarked for specific purposes by Title and Chapter; the Chapters may be further subdivided into Articles and Items.

**Article 10 - Principle of sound financial management**

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

**Article 11 - Principle of transparency**

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1. The budget shall be drawn up and implemented and the accounts presented in compliance with the principle of transparency.
2. The budget of the Joint Undertaking and its amendments shall be published.

*Financial Actors***Article 12 – Authorising officer**

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The authorising officer 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.

**Article 13 - Accounting officer**

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1. The Administrative board shall approve the appointment of an accounting officer who shall be responsible in the Joint Undertaking for:
  - a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
  - b) preparing and presenting the accounts in accordance with the present financial rules;
  - c) keeping the accounts in accordance with the present financial rules;

- d) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information;
- e) treasury management.

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**Article 14 - Principle of segregation of duties**

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

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**Chapter 2.2 - Establishment and structure of the budget**

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**Article 15 - Establishment of the budget**

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1. The budget shall be established in accordance with the provisions of the Statutes.
2. The estimate of revenue and expenditure of the Joint Undertaking shall include:
  - (a) own revenue consisting of all contributions which the Joint Undertaking is authorised to collect by virtue of the tasks entrusted to it;
  - (b) subsidies granted by the European Communities;
  - (c) other revenue including interests;
  - (d) the expenditure of the Joint Undertaking
  - (e) A staff establishment plan setting the number of posts authorised within the limits of the budget appropriations, by grade and by category;
  - (f) where there is a change in the number of persons in post, a statement justifying the request for new posts;

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**Article 16 – Structure of the budget**

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1. The budget shall comprise a statement of revenue and a statement of expenditure.
2. In the statement of revenue the budget shall show:
  - the estimated revenue of the Joint Undertaking for the financial year in question;
  - the estimated revenue for the preceding financial year;
  - the estimated revenue for the following two years;
  - appropriate remarks on each revenue line.
3. In the statement of expenditure the budget shall show:
  - the commitment and payment appropriations for the financial year in question;
  - the commitment and payment appropriations for the preceding financial year;



- the estimated expenditure for the following two years;
- a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;
- appropriate remarks on each subdivision.

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## Chapter 2.3 - Approval of the budget

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### Article 17 – Adoption of the budget

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1. The budget and the staff establishment plan shall be adopted by the Administrative board in accordance with the provisions of the Statutes.
2. Any amendment to the budget, including the staff establishment plan, shall be the subject of an amended budget to be adopted by the same procedure as the initial budget unless otherwise foreseen.

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## Chapter 2.4 - Implementation of the budget

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### Article 18 – General provisions for the implementation of the budget

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1. The Executive director shall perform the duties of authorising officer. He/she shall implement the revenue and expenditure of the budget in accordance with the present financial rules, on his/her own responsibility and within the limits of the appropriations authorised.
2. The authorising officer shall put in place, in compliance with the minimum standards adopted by the Administrative board and having due regard to the risks associated with the management environment and the nature of the action financed, the organisational structure and the internal management and control systems and procedures suited to the performance of his/her duties, including where appropriate ex-post verifications.
3. The initiation and the ex ante and ex post verification of an operation shall be separate functions.
4. The Executive director may delegate his/her powers of budget implementation to staff of the Joint Undertaking. Those so empowered may act only within the limits of the powers expressly conferred upon them.
5. Where powers of budget implementation are delegated or sub-delegated in accordance with paragraph 2, Articles 12, 19 and 20 shall apply *mutatis mutandis* to the authorising officer by delegation or sub-delegation.

**Article 19 - Revenue operations**

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1. 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.
2. The Joint Undertaking shall present to its Members requests for payment of all or part of their contribution under terms and at intervals agreed with them.

**Article 20 - Expenditure operations**

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1. Every item of expenditure shall be committed, validated, authorised and paid.
2. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budget commitment before entering into a legal obligation with third parties.

**Article 21 - Internal audit**

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The Joint Undertaking shall have an internal auditing function which must be performed in compliance with the relevant international standards. This function can be outsourced.

**Article 22 – Carry over of appropriations**

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1. Appropriations which have not been used at the end of the financial year for which they were entered shall automatically be carried over to the next financial year.
2. The Executive director shall inform the Administrative board of the amount and nature of the carry over by end April.
3. Commitment appropriations and payment appropriations for staff related expenditures remaining unused by 31 December shall be automatically cancelled.

**Article 23 - Conflict of interests**

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1. All financial actors within the meaning of Articles 12, 13 and 18 shall be prohibited from taking any measures of budget implementation which may bring their own interests into conflict with those of the Joint Undertaking. Should such a case arise, the actor in question must refrain from such measures and refer the matter to the competent authority.
2. There is a conflict of interests where the impartial and objective exercise of the functions of an actor in the implementation of the budget or an internal auditor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.
3. The competent authority referred to in paragraph 1 shall be the immediate superior of the Member of staff concerned. If the Member of staff is the Executive director, the competent authority shall be the Administrative board.

## TITLE III - Contributions from Members

### Article 24 – Contributions from Members

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1. The financing of the Joint Undertaking shall come from contributions in cash and in kind from its Members in accordance to the provisions of Article 12 of the Statutes.
2. The valuation of in kind contributions shall be performed on the basis of transparent procedures. In kind contributions shall be assessed by independent experts on the basis of their actual value and utility for carrying out the tasks of the Joint Undertaking in accordance with its work programme and shall be specified in the Membership agreements.
3. The Executive director shall carry out periodic assessments of Members' contributions. These assessments shall cover the evaluation of the actual contributions delivered and progress achieved in respect of initial estimates and the adaptation of the committed contributions in relation to any modification of the work programme.

## TITLE IV - Procurement

### Article 25 – General provisions

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1. The principal objective of the Joint Undertaking's procurement policy is to ensure that value for money is achieved in all purchasing activity. The procurement policy will also promote open and effective competition, offer full and fair opportunities to all qualified providers and enhance the SESAR Joint Undertaking's research, development and technical capabilities.
2. The Joint Undertaking is subject to the broad principles of the procurement rules applicable to the general budget of the European Communities by virtue of being a company funded by public money.
3. All procurement contracts let by the Joint Undertaking and by its members, in fulfilment of their membership agreements, shall be concluded in written form following a procurement procedure and in full compliance with the principles of transparency, proportionality, equal treatment and non-discrimination.
4. Procurement contracts comprise:
  - a. supply contracts;
  - b. works contracts;
  - c. service contracts.
5. The Joint Undertaking may conclude framework contracts with one or more economic operators for the purpose of establishing the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. The provisions

concerning the award procedure and advertising under this Title shall apply to framework contracts.

6. The procurement procedures, evaluation process and negotiations relating to the offers shall remain confidential and shall be documented in writing.
7. Full implementing rules regarding tendering procedures shall be established by the Executive director and approved by the Administrative board.

#### **Article 26 - Procurement procedures**

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1. Procurement procedures launched by the Joint Undertaking shall take one of the following forms:
  - a) the open procedure;
  - b) the restricted procedure;
  - c) the negotiated procedure;
  - d) competitive dialogue.
2. All procurement contracts shall be put out to competitive tender with sufficient advertising to enable the market to be opened up to competition except when use is made of the negotiated procedure or the restricted procedure.
3. The thresholds below which the Joint Undertaking may either use the negotiated procedure, the restricted procedure or simply pay costs against invoices shall be determined in the implementing rules.
4. Where the value of the contract exceeds the thresholds referred to in paragraph 3, the negotiated procedure may be used in exceptional circumstances such as in situations of extreme urgency due to unforeseeable events and contracts which may, for technical or artistic reasons or for reasons connected with the protection of exclusive rights, be executed only by one particular economic operator.
5. In cases where the Joint Undertaking is not objectively able to define the technical means capable of satisfying the needs or objectives or able to specify the legal or financial make-up of the project, it may make use of the competitive dialogue referred to in Article 29 of Directive 2004/18/EC.

#### **Article 27 - Preparation of calls for tenders**

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1. A full, clear and precise description of the subject of the contract must be given in the documents relating to the call for tenders.
2. The exclusion criteria for elimination, the selection criteria for evaluating the capability of candidates or tenderers and the award criteria for evaluating the content of the tenders shall be defined in advance and set out in the call for tender.

**Article 28 - Publication of calls for tenders**

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1. All contracts exceeding the thresholds defined in the implementing rules shall be published in the *Official Journal of the European Communities*. Contracts with a value below the thresholds provided for above shall be advertised as appropriate.
2. The publication of calls for tender and awarding of Contracts shall ensure fair conditions of competition to all economic operators interested in the contract. This will be achieved through:
  - a) Non-discriminatory description of the subject-matter of the contract;
  - b) Equal access for economic operators from all EU and non EU Member States;
  - c) Appropriate time-limits;
  - d) Transparent and objective approach.
3. While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers must satisfy conditions ensuring transparency and equal treatment. They may not lead to amendment of the conditions of the contract or the terms of the original tender.
4. The Joint Undertaking 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.

**Article 29 - Opening and selection of offers**

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1. All requests to participate and tenders submitted before the closing date shall be opened by a tender opening board that is established to open and verify the admissibility of the tenders received.
2. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee.
3. A written record of the evaluation and ranking of requests to participate and tenders declared to satisfy the requirements shall be drawn up and dated. It shall be kept for future reference.

**Article 30 - Contract award**

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1. The authorising officer shall decide to who the contract is to be awarded, in compliance with the selection and award criteria laid down in advance in the documents relating to the call for tenders and the procurement rules.
2. Contracts will be awarded on the basis of:
  - a) the lowest price tender, or
  - b) most economically advantageous tender, where it is specified that in addition to price other criteria will be considered such as operating costs, servicing costs, level of after sales service, technical assistance, technical merit, environmental characteristics.
3. The final choice of the selected tender shall be duly justified in writing.
4. The Joint Undertaking shall notify all candidates or tenderers whose applications or tenders are rejected of the grounds on which the decision was taken and all tenderers whose tenders are

admissible and who make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

5. Contracts may not be awarded to candidates or 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) find themselves in one of the conditions of exclusion.

#### **Article 31 -Contractual provisions**

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1. The acceptance of an offer shall lead to the conclusion of a written contract.
2. The Joint Undertaking may require contractors to lodge a guarantee in advance in order to:
  - a) ensure full performance of the contract;
  - b) limit the financial risks connected with payment of pre-financing.
3. Notwithstanding the provisions of Article 10 of the Statutes,
  - a) Contracts shall:
    - be concluded at firm, non-revisable prices or, in case of incentive-driven contracts, at firm, non-revisable ceiling prices;
    - provide that if the contractual period for performance is exceeded, the contractor shall incur a penalty and in addition may be liable for liquidated damages;
  - b) The duration of a contract, including extensions shall be established so as not to preclude the opening to competition of the contract within a reasonable time limit.

## **TITLE V - Accounting**

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### **Chapter 5.1 - Maintenance and presentation of accounts and inventory records**

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#### **Article 32 - General principles**

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The accounts must comply with the financial rules and be accurate and comprehensive and present a true and fair view:

- a) as regards the financial statements, of the balance sheet, profit and loss accounts, entitlements and obligations not shown in the balance sheet and cash flow;

- b) as regards reports on budgetary implementation, of revenue and expenditure operations.

#### **Article 33 - Structure of accounts**

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1. The annual accounts of the Joint Undertaking shall comprise:
  - a) the financial statements of the Joint Undertaking;
  - b) the reports on implementation of the budget of the Joint Undertaking.
2. The accounts of the Joint Undertaking shall be accompanied by a report on budgetary and financial management during the year.

#### **Article 34 - Presentation of accounts**

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1. The financial statements shall be drawn up in accordance with the generally accepted accounting principles and in accordance with the accounting rules and plan of account provisions applicable under Belgian law, namely:
  - a) going concern basis;
  - b) prudence;
  - c) consistent accounting methods;
  - d) comparability of information;
  - e) materiality;
  - f) no netting;
  - g) reality over appearance;

#### **Article 35 - Property inventories**

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1. A permanent ad valorem inventory of the Joint Undertaking shall be kept. The minimum value for items to be entered into the inventory shall be 2.000 Euro.
2. All acquisitions for a value greater than the one indicated above shall be entered immediately in the inventory.

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## **Chapter 5.2 - Auditing and approval of accounts**

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#### **Article 36 – External auditing**

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1. The Court of Auditors shall scrutinise the accounts of the Joint Undertaking in accordance with Article 15.5 of the Statutes.

2. The Joint Undertaking shall afford the Court of Auditors all the facilities and give it all the information, which the Court may consider necessary for the performance of its task.
3. The Joint Undertaking shall send the Court of Auditors the internal financial rules it adopts.

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**Article 37 - Approval of accounts**

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The Administrative board shall be responsible for approving the accounts.

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**Chapter 5.3 - Protection of public financial interests**

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**Article 38 – Controls by founding Members**

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In order to ensure that public financial interests are protected, the founding members may carry out controls on their contributions to the Joint Undertaking.

## TITLE VI - Transitional and final provisions

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**Article 39 – Entry into force**

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The financial regulations shall enter into force on the date of its adoption by the Administrative board.

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**Article 40 - Implementing rules**

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The Administrative board shall, as far as necessary, adopt detailed rules for implementing the financial regulations on a proposal from the Executive director.

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**Article 41 – Transitional provisions**

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Until the Executive director is appointed, his/her functions in relation to the financial regulations may be carried out provisionally by the Chairman of the Administrative board, in accordance with the Rules of procedure of the Administrative board.