

## BUDGETARY SUPPORT UNIT

# "The Financial Regulation of the European Communities – Comparative Study"

BUDGETARY AFFAIRS

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**“The Financial Regulation  
of the European Communities –  
Comparative Study”**

**Final Version**

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## EXECUTIVE SUMMARY

In this executive summary, possible points for improvement in EC practices have been identified on the basis of the findings described in the report:

- In general, our analysis indicates that the provisions on procurement in the EC Financial Regulation and its Implementing Rules can be considered to be stricter than comparable frameworks in Spain, United Kingdom and the United Nations' Organisation, especially for procurements below the thresholds set in EC Public Procurement Directive 2004/18 of 31 March 2004. Grant awarding procedures are not regulated by European legislation;
- Based on our comparison of the financial thresholds and public procurement methods in Spain, UK and the UN, we believe that the intermediary EC financial thresholds between the EC Public Procurement Directive's thresholds and those applying to low value contracts could be simplified. The thresholds should be aimed at defining the requirements (e.g. publication, number of required tenders and so on) in order to ensure competitiveness and objectivity, but with less focus on predefining the specific procurement method to be used between these thresholds. Choosing a procurement method should be more based on an assessment of the characteristics of the works, goods or services that need to be procured and aligned with a specific Value For Money strategy.
- We believe that the threshold for low-value contracts could be set higher, in combination with other innovative measures, such as the use of authorised purchasing cards.
- To improve efficiency in the field of submission of supporting documentation by bidders or by applicants in the grant application process, more use could be made of the following tools:
  - Stimulating the use of a centralised pre-registration process, prior to any tendering or grant application procedure, would have a positive impact on efficiency. Such a process could cover all required information on the legality, stability, viability, capacity and so on of potential bidders and applicants. Currently, the European Commission only centralises vendor or applicant information in the database for Legal Entities Files and Bank Account Files, which are often required after the evaluation process prior to the signature of a contract or agreement. Vendors intending to provide works, goods or services to EC Institutions could be stimulated to go through a pre-registration process, similar to the UN's Global Marketplace database, with the obligation to inform the EC Institutions if the status of the registered vendor or applicant changes. This would limit the requirement to submit extensive supporting documentation for each individual tendering or application process.
  - Stimulating the use of formal quality standards by recognised and independent standardisation bodies, could again be used to limit the need for extensive supporting documents such as financial accounts, especially to keep control of the use of grants by beneficiaries.

The option to make use of these formal quality standards could be stimulated, alongside existing provisions regarding supporting documentation, through the incentive that certain supporting documentation is no longer required when a quality standard issued by a recognised independent standardisation body is provided to the EC. These quality standards should be awarded at enterprise or programme level and be approved by the relevant Institution.

However, for the time being, there are not many standardisation bodies that provide this type of quality standard. Development in this context would need to be



stimulated by the EC. A pilot project could be launched, for example in the context of FP7.

This recommendation is inspired by our extensive experience in auditing EC projects, but on the basis of this study we were unable to identify similar initiatives in Spain or the UK to rationalise the supporting documentation in public procurement and grant processes.

- The provisions under article 138 of the Implementing Rules could be more aimed at defining the *scope* of the procurement and at providing a framework by including the essential elements that need to be considered, such as the attainment of policy objectives, assessment of non-cost and whole-life cost elements. This would address the objective of achieving "Best Value for Money", illustrated by the BVM experience in Australia.

In addition to the obligation to reflect the "Best Value for Money"-principle in the award criteria, the "Best Value for Money"-procedure could be further structured through an obligation by the contracting authority to define an explicit "Best Value for Money"-strategy for substantive procurement contracts (above a certain threshold) or for those that entail a risk in terms of uncertainty of costs. This strategy would need to assess the best way to procure and contract the desired works, goods or services, in relation to the risks involved, and to describe the 3 elements mentioned in the above paragraph.

The "Best Value for Money" principle could be further reflected in the provisions concerning internal audit, whereby the internal audit could help in different stages of the procurement process, varying from giving advice at an early stage in defining the procurement strategy to checking the procurement risk assessment and monitoring the procurement risks on an ongoing basis.

In order to enforce the "Best Value for Money" approach, the EC could also install a "gateway" review process at various stages of the procurement process to support the contracting authority and to enhance assurance on the chosen procurement method, the selected bidder, the implementation and so on.

- The personal responsibility of Authorising Officers seems to lead in some cases to a disproportionate control environment. There is a potential counterproductive impact of an exaggeration of intermediate controls as the tendency may actually be to "dé-responsabiliser" each level. Consequently, the appropriateness of the number of intermediate controls to be put in place should be assessed in proportion to the risks of a grant programme, for example, and the average value of managed grants under this programme. A reporting procedure could be foreseen whereby the proportionality of the control environment needs to be reviewed by the Authorising Officer on an annual basis, similar to the annual Statement on Internal Control (SIC) as used in the UK. Another option is to reinforce the reporting on the appropriateness of the internal control environment in the Annual Activity Reporting (AAR) procedure by providing better guidance to the authorising officers on the reporting requirements regarding this issue;

In view of enhancing transparency, the Authorising Officers could also be urged to define and communicate an annual global procurement strategy, that includes an overall Best Value For Money strategy for his/her Service, and to publish a procurement manual, taking the characteristics of his/her Service into account.

- As the use of electronic means in the procurement or grant awarding procedure is recognised to provide efficiency gains and as this is being stimulated at EU level, the Financial Regulation and Implementing Rules should be assessed for their potential to facilitate this evolution towards electronic means, not only for notifications and publications, but even more for the submission and receipt of tenders or applications, e-invoicing, use of digital signatures and even evaluation of tenders and applications. Many countries in Europe and beyond are taking measures to this end;

- The prior report on “whistle-blowing procedures” that we analysed in the context of this study, proposes to organise a consultation process with staff on this subject issue and advocates consistency between the existing sets of EC rules and bodies. In this consultation process, a Code of Conduct for EU staff members and other instruments of Good Governance should also be discussed. The objective of this process should be to promote a risk communication culture within the institutions.
- On the basis of our analysis, we believe that the organisational architecture of audit and control in the EU Institutions is in line with international standards and is similar to the organization of audit and control in comparable public sector organisations. The different perspectives of external control, internal control and evaluation cover all critical elements related to policy implementation and management of the EC Institutions.

## **1. INTRODUCTION**

### **1.1. Background**

This study should be seen in the context of the inter-institutional debate concerning further improvements of the Financial Regulation of the European Communities. In recent years, the focus in this debate has shifted more towards simplification of the financial rules, while continuing to ensure the principles of control, accountability and objectivity.

To this end, the Directorate General for Internal Policies of the European Parliament decided to launch a comparative study on a number of subject matters of relevant areas that could serve as an input for the ongoing debate and for future reform efforts by the European Parliament in the years to come.

### **1.2. Scope of this Document**

The objective of the document is to provide insight into innovative and simplifying measures and practices regarding a number of specific subject matters from a limited number of EU Member States, International bodies, and other relevant contexts.

The study is very focused around the main questions put forward in the study specifications by the European Parliament. These main questions have been further broken down into specific subject items that constitute the framework for our analysis.

For these items, the corresponding main rules and practices within the United Kingdom, Spain and the UN have been analysed and compared with the financial rules of the European Communities. On the basis of this comparison, innovative or simplifying measures from this selection have been identified and are described in this document.

### **1.3. Approach**

The findings in this report are based on an analysis of the main rules and practices for the specific subject items in Spain, United Kingdom and the UN.

In addition, a number of interviews have been performed in order to enhance our understanding of the concerned rules and practices and to supplement the information from our document analysis. The following interviews have been performed:

- Representatives of European Commission DG BUDGET, Unit D1;
- A representative of OLAF, Unit
- A representative of United Nations Development Programme (UNDP), Inter-Agency Procurement Services Office (IAPSO)
- Representatives of the Spanish National Audit Office ("Comité de auditoria")
- Budget Director of the Madrid Government (Local Government)
- Sub-director of IGAE ("Intervención General del Estado")



## 2. PROVISIONS ON PUBLIC PROCUREMENT AND GRANTS

### 2.1. Introduction

The first subject areas we reviewed were the EC's provisions of the Financial Regulation and Implementing Rules on procurement and grants, focusing on a comparison of the nature and effect of these rules compared to the other frameworks that have been examined.

The focus in our comparison has been on the identification of specific procedures that enhance the speed and efficiency of the procurement and grant process, while still ensuring objectivity, liability and avoidance of conflict of interest.

The aim in this section is to describe the differences between national and EC approaches, and to identify innovative efforts for procurement and grants procedures that achieve enhanced speed and efficiency. These differences are illustrated by means of specific examples.

The main differences in the existing procedures for procurement and grant awarding are described with special attention to the potential for enhancing speed and efficiency. In identifying and analysing these differences, our analysis is structured as follows:

- Type of procurement
- Thresholds and procedures (difference in steps)
- Roles and tasks of actors
- Methods used
- Use of selection and award committees
- Requirements with regard to time limits and document requirements

For *procurement*, above the thresholds of €137,000 (goods & services) and €5,278,000 (works) laid down in the Directive 2004/18 of 31 March 2004, there should in principle not be major divergence between the EU Member States, as they should have implemented the Directive's procedures in their national practices. Under these thresholds, there is more divergence as no harmonising EC directive exists. The Commission's DG BUDGET believes that national procurement practices are more flexible below these thresholds.

However, for *grant* awarding procedures there is no harmonising Directive at EC level.

### 2.2. Differences in procurement with an impact on speed and efficiency

In this section, we describe the relevant differences and points of attention in the procurement systems in Spain, United Kingdom and the United Nations.

## SPAIN

The Spanish procurement procedures are governed in essence by Legislative Royal Decree 2/2000, the revised Public Authorities Contract Law, and the related implementing rules approved by Royal Decree 1098/2001.

Our analysis indicates that there are no significant differences between the EC provisions for procurement and the Spanish rules, especially of a nature that could contribute to enhancing efficiency, or speed up the procurement process. The procurement phases, role of different actors in the assessment and awarding phase, the tendering procedures (open, restricted, negotiated), award criteria (price based or merit based), time limits and requirements do not deviate from the basic procurement provisions at EC level.

However, some differences can be identified in terms of thresholds, and of actors who take part in the expenditure cycle, namely:

- The threshold for low value contracts (without prior publication of notice) is much higher than the EC threshold of €200, for which a simple payment against an invoice is sufficient. The invoice is considered as a contractual document. For construction and public works contracts, this threshold is set at €30,050.61, while the threshold for low value contracts on supplies, services and consulting or technical assistance is set at €12,020.24.
- Above the above mentioned thresholds and below the respective thresholds of €60,101.21 (Construction and public works) and of €30,050.61 (supplies, services and consulting or technical assistance) a negotiated procedure is used with no requirement of prior publication of a notice, but requiring a minimum of 3 bids. When the value of a contract exceeds these thresholds, but is still lower than the threshold of €5,278,227 and €211,129 respectively, negotiated procedures are used with a minimum of 3 bids, but requiring a prior publication of notice in the Spanish Official Journal, "Boletín Oficial del Estado" (BOE) (except in a number of predefined cases<sup>1</sup>).
- As of the thresholds of €5,278,227 and €211,129 an open or restricted procedure (at least 5 with a maximum of 20 tenders) is used with the obligation to publish a prior notice in the BOE and the OJEC.
- When the contract value exceeds the above mentioned low-value thresholds, the awarding authority ("Órgano de contratación") finally decides upon awarding a contract based on an opinion of an assessment panel ("Mesa de contratación"). Similar to the EC practice, the opinion of this assessment panel is followed in most of the cases. However, contrary to the EC Rules, the Spanish rules do not define requirements with regard to the composition of this assessment panel. The awarding authority comprises the concerned Minister(s) or Secretaries of State, legal representatives of the autonomous community bodies ("Comunidades Autónomas") or the Directors-General of the managing bodies and shared services of the Social Security Authorities, similar to the role of the authorizing officer.
- Contracts exceeding a given threshold according to the contract type must be submitted to the "National Audit Office" ("Comité de auditoría") (or equivalent body at autonomous community level) for analysis and control after the award of the contract. For construction works and public service management contracts this threshold is €601,012.10, for supply contracts it is €450,759.08 and for services, consulting, technical assistance and other special administrative contracts it is €150,253.03.

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<sup>1</sup> General Public Authorities Contracts Law of 8 April 1964, Art. 182, 210 and 141

- The use of restricted tendering procedures (above the thresholds mentioned under the second bullet above) is limited in Spain, representing only 1.9% of the National procurement budget. The open procedure is more commonly used.

## UNITED KINGDOM

With regard to innovation and efficiency improvements in the field of public procurement in the UK, the Office for Government Commerce (OGC) (an organization of the HM Treasury<sup>2</sup>) is taking the lead to achieve better value for money across the public sector through a collaborative approach to markets and by encouraging public sector organizations to work together to act as a better coordinated, integrated client. It uses its expertise in support of the Government's target to achieve £8 billion (€11,8 billion) savings through efficient procurement. The OGC provides a wide range of procurement services and guidance. Below are a number of relevant initiatives:

"OGC buying solutions" is an executive agency of the Office of Government Commerce that provides access to more than 500,000 pre-authorised products and services. For these products and services, "OGC buying solutions" supports on a range of framework agreements as well as a number of managed services, including telecommunications, e-mail and web services, energy and eCommerce. "Framework agreement" is considered to be an umbrella term for both

The OGC provides guidance to Government Departments on the achievement of better value for money in procurement. In its guide on value for money, the OGC specifically states that achieving value for money is "not about achieving the lowest initial price", but that it is aimed at defining the optimum combination of whole life costs and quality. It further specifies three ways of achieving better value for money, namely<sup>3</sup>:

1. Reducing the cost of purchasing and the time it takes – the processing overhead;
2. Getting better value for money for the goods and services purchased and improved quality of services;
3. Improving project, contract and asset management.

The OGC further specifies that the value and the type of the specific goods or services to be procured should obviously have an influence on the optimal procurement strategy. It differentiates three categories, namely<sup>4</sup>:

1. **Strategic items**, which are essential for the achievement of a Department's key outputs. This category often requires further development of the specifications with the contractor due to the complexity. Therefore, the optimal procurement strategy needs to allow room for negotiation with bidders to further specify what needs to be supplied and how risks will be shared. Also a focus on the full costs throughout the life of the contract is suggested;
2. **Non-strategic items** are those that are not especially critical for the achievement of a Department's key outputs. The OGC encourages departments to specify these items clearly enough to achieve best value for money in compliance with the defined quality standards;

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<sup>2</sup> HM Treasury is the United Kingdom's Economics and Finance Ministry

<sup>3</sup> National Audit Office (NAO) & Office for Government (OGC), *Getting Value For Money From Procurement*, pg. 14: <http://www.nao.org.uk/guidance/vfmprocurementguide.pdf>

<sup>4</sup> NAO & OGC, o.c., pg. 6-8

3. **Recurrent items** are ad hoc purchases of low value items.

In order to achieve better value for money for the two latter categories, the OGC identifies 3 actions: greater use of electronic commerce; the Government Procurement Card (see below for more detail); and more use of framework agreements.

The OGC has launched a number of initiatives and tools to achieve better value for money in public procurement.

- First of all, it has launched the "Gateway Review Process", which is mandatory. This is a review of a procurement project at key decision points by a team of experienced people (independent of the project team) on behalf of the project sponsor. The purpose is to ensure that the project is justified and that the proposed procurement approach is likely to achieve value for money. During the project life cycle, five gates (reviews) have been defined that typically take 3 to 4 days. The reports produced by this review team are intended as advice and guidance for the project sponsor.

After the definition of the business need and the preparation of the business case, a first gateway review is done to confirm the business justification. The definition of the procurement strategy is followed by a second review that aims to confirm the suitability of the procurement method and the source of supply. The third gateway review, after the tendering process, provides a confirmation of the appropriateness of the investment decision. The final two reviews are performed after the award of the contract: one covers the implementation, while the other assesses the operational benefits that accrue later.

The composition of the review teams depends on the size of the projects. For large complex projects, the review team leader is appointed on the advice of OGC together with a review team independent of the department. For medium-risk projects, an independent team leader is appointed to lead a review team drawn from independent departmental staff. For low-risk projects, departments appoint the independent leader and team members from within the department. The Senior Responsible Owner (SRO) uses a Project Profile Model to determine the level of risk associated with a project. Typically the size of these teams varies between three and five people.<sup>5</sup>

- Second, the OGC stimulates departments to make use of the European Foundation for Quality Management (EFQM) Excellence Model as a means to assess the extent to which their organisations' approach to all activities, including procurement, is soundly-based, likely to promote continuous improvement and value for money and to identify strengths and areas for improvement.<sup>6</sup>
- A third interesting initiative aims at stimulating Departments to conduct 90% of low value procurement electronically. In order to measure the progress and the extent to which the process is electronic, a measurement tool has been developed to assist the Departments in attaining this objective.<sup>7</sup>

In addition, several E-commerce initiatives haven been launched or are being piloted in order to simplify or speed up all stages of procurement and to provide better management information for better procurement decisions. These initiatives cover the following<sup>8</sup>:

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<sup>5</sup> NAO & OGC, o.c., pg. 62-63 and [http://www.ogc.gov.uk/what\\_is\\_ogc\\_gateway\\_review.asp](http://www.ogc.gov.uk/what_is_ogc_gateway_review.asp)

<sup>6</sup> NAO & OGC, o.c. , pg. 64-65

<sup>7</sup> NAO & OGC, o.c. , pg. 66

<sup>8</sup> NAO & OGC, o.c. , pg. 22

- Government Procurement Card: a VISA purchasing card is given to designated staff to order goods and services by telephone, fax, written purchase order, in person or through e-Commerce. Cardholders use their cards subject to controls agreed between the organisation and their card issuing bank that will prescribe financial limits. A consolidated invoice is settled by one payment or through a direct debiting arrangement;
- Internet: Electronic Catalogues (for example G-CAT and S-CAT) with information on suppliers, goods and services, prices, approved by the OGC Buying Solutions Agency (This web-based procurement tool connects suppliers and their catalogues with government buyers and their demands. Buyers can easily compare prices and specifications and then operate the entire procurement process through the online system), e-procurement systems covering the whole life cycle, e-tendering for the electronic submission of tenders. Supply2.gov.uk is a dynamic new government-backed service designed specifically to give companies easy access to lower-value contract opportunities (typically worth under £100,000) offered by the public sector.

## UNITED NATIONS

The basic financial regulation of the UN<sup>9</sup> provides the broad legislative directives governing the financial management of the United Nations. A revised Financial Regulation has been effective since 1 January 2003. This basic Financial Regulation provides no detailed directives in terms of procurement thresholds, timelines and procedures. It is mainly focused on the financing, execution governance and controls, e.g. audit requirements, at a general level, and confines itself to defining some broad general procurement principles.

The UN's Procurement Manual<sup>10</sup>, on the other hand, is the most detailed source of procurement rules and regulations. The last update of the Procurement Manual dates from January 2004, following a major review of UN procurement procedures carried out since the manual's previous edition in 1998. The provisions of the Procurement Manual should be seen as complementary to the general provisions of the UN's Financial Regulation, and are intended to provide detailed guidelines to United Nations' personnel who undertake requisition and procurement functions, but the manual is not intended to be exhaustive. Exceptions can be made to the manual's provisions, when necessary and in the best interests of the UN.

The procedures for procurement used in UN bodies vary somewhat amongst the UN Agencies as each UN agency has its own mandate and procurement requirements. The UN's Procurement Manual puts the following typical procurement thresholds and procedures forward.<sup>11</sup>

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<sup>9</sup> *United Nations' Financial Regulations* : The revised Financial Regulations were approved by the General Assembly in its decision 57/573 of 20 December 2002 and were effective from 1 January 2003: <http://fb.unsystemceb.org/reference/19/>,

<sup>10</sup> United Nations, Department of Management Office of Central Support Services, Procurement Service, *United Nations' Procurement Manual*, August 2006, Rev. 3

<sup>11</sup> *United Nations' Procurement Manual*, pg. 101- 107

Type	Threshold	Requirements
<i>Low value contracts</i>	\$2,500 (approx. €2,000)	Competitive bidding not required Procurement officer (or an authorized officer) makes individual direct purchases
<i>Informal method of solicitation</i>	\$30,000 (approx. €23,500)	For procurement of simple, uncomplicated goods with standard and firm specifications Request for Quotation (RFQ) is required 10 to 25 working days for submission of quotations Contract awarded to lowest bidder
<i>Formal method of solicitation</i>	exceeding \$30,000	Invitation to Bid (ITB) for the procurement of goods and services with standard and firm specifications 30 working days for the submission of Bids Contract awarded to lowest bidder
	exceeding \$30,000 – below \$200,000 (approx. €155,000)	Request for Proposal (RFP) for procurement of deliverables that cannot be quantitatively or qualitatively expressed in sufficient detail to allow an ITB 30 to 60 working days for the submission of Proposals Only the requisitioner undertakes a technical evaluation, after which the procurement officer opens and evaluates the commercial bid.
	Exceeding \$200,000	Request for Proposal (RFP) for procurement of deliverables that cannot be quantitatively or qualitatively expressed in sufficient detail to allow an ITB Negotiation required with a competitive range of the most responsive candidates (no less than 2 qualified proposers) Technical evaluation committee within the requisitioning office is established with at least 2 members, one from the requisitioning office and another qualified staff member from the UN. Presentation to the Headquarters Committee on Contracts (HCC) is required. Contract awarded to the bidder that was most responsive to the requirements, based on the best-value-for-money proposition, not necessarily the lowest cost ("Best and Final Offer").

Another interesting element is the fact that the UN makes use of a pre-registration process for potential vendors. In general, a vendor can only bid on UN opportunities after completing the UN



Global Marketplace (UNGM) registration process.<sup>12</sup> That process includes many questions regarding business size, location(s), products/services, ownership, countries in which products/services are delivered, and some questions regarding past activities (e.g., legal proceedings) of the company and its principals. Many hard-copies (e.g., articles of incorporation) are required in this registration process.

A lot of the UN Agencies rely on the UN Global Marketplace (UNGM) database of active and potential vendors, which is available to all procurement personnel for the identification and invitation of approved vendors. This tool is used to shortlist vendors for competitive bidding and registration is a pre-requisite for a lot of UN Bodies to be considered to enter into contract with the UN. A Vendor Database Officer (or local Vendor Database Officer) bears the overall responsibility for the administration and maintenance of the vendor database.

For those companies that cannot register online, the Vendor Database Officer is responsible for the submission of the Vendor Registration Application form. A Vendor Database Officer (or local Vendor Database Officer) bears the overall responsibility for the administration and maintenance of the vendor database.

The UN Global Marketplace database is maintained by the UN's Procurement Service and potential vendors are urged to pre-register via this common web-based tool. Each OAH or Mission can also maintain a local database, next to the UN Global Marketplace. This database (supplemented by local databases for OAH or Missions) is used by the procurement function to identify suitable, potential vendors during the "Solicitation phase" in the procurement procedure. Vendors responding to a request for "Expressions of Interest", who are not UN registered Vendors, are added to the list of invitees of the solicitation documents only after being accepted for provisional registration. They are directed to the UNGM website.

In the on-line registration process, potential suppliers are asked to provide the following information:

- The supplier's address information, mailing address and contact information (Required)
- The supplier's financial information, bank information (Required)
- General company information (Required), detailed company information and quality assurance certifications (Optional)
- The supplier's exports to top 10 countries for each of the last 3 years (this section also applies to service providers, as well as suppliers of goods. Service suppliers should indicate in which countries they have provided services), recent contracts with UN Agencies, National, Regional or Local level and disputes with UN Organizations in the last 3 years (Required)
- The supplier's Member organizations (Optional)
- Selection of at least one UN Agency selection (Required). The supplier needs to respond to UN Agency specific questions (Required)
- UN procurement staff use UNCCS codes that classifies the types of goods and services. The supplier is asked to indicate the right codes. (Required)
- To supply to a UN Agency, the potential vendors also need to accept the "General Terms and Conditions for the procurement of goods and services".

The registration of a vendor is evaluated on the basis of the UN's predefined evaluation criteria (specified in the procurement manual) by the Vendor Registration Officer of the UN Agency/Agencies selected by the vendor, after which the registered vendor is accepted. The

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<sup>12</sup> [www.unmg.org](http://www.unmg.org)

minimum standards before acceptance are: completed registration steps in the UNGM, relevance of the products/services, copy of certificate of incorporation (only for private companies), information on the financial reliability/stability of the applicant (e.g. balance sheet), general information about the firm and its services and a letter of reference from at least three clients in the last year. These standards are less stringently verified when the vendor only provides goods or services less than 10.000\$ per purchase order or contract. Disqualified applicants may request a review by the Chief UN Procurement Service or his equivalent in the Mission, who finally decides on the basis of a recommendation of the Vendor Registration Committee.

Once a company is successfully registered and bids on opportunities, individual proposals generally include "representations and certifications" to address certain concerns, e.g. a company does not manufacture land mines or allow socially unacceptable behaviours or illegal acts by its employees. Those "representations and certifications" are almost always self-certifications, which mean that the signing party on behalf of the proposing company is certifying the truth of the representation. Seldom are other documents required. Exceptions may include proof of insurance, but even that may be handled at the time of contracting rather than bidding.

Vendors are obliged to immediately inform the UN in writing (letter, fax or update of their profile in the UNGM) about any substantial change, otherwise they can be suspended or removed from the Database. Procurement Officers also need to inform promptly the Vendor Registration Officer of any substantial change of the vendor's status. Every 6 months registered vendors are required by the UNGM to confirm that the information submitted to the UNGM is still valid.<sup>13</sup>

Other interesting developments on the UN's Agenda with regard to improvement actions of its procurement processes:

- The UN Procurement Service is currently reviewing the criteria for evaluating the financial viability of candidates, as it recognises that the financial statements submitted by vendors are not necessarily providing reliable data and are difficult to analyze in view of the different accounting standards.<sup>14</sup>
- The vast majority of UN Bodies are still in an initial phase of implementing an e-procurement system. Most of them only go as far as publishing procurement information on-line and providing useful links. However, the Inter-Agency Procurement Service Office (IAPSO) is the most advanced UN organisation and has developed its own application, called UNWebBuy e-commerce, that carries out all its procurement steps. Registered customers can access the product catalogues and create their own quotations online, while vendors can check and change catalogue and products data.
- In the report of the Secretary-General on "Investing in the United Nations: for a stronger Organization worldwide: detailed report on Procurement reform", the Secretary-General reports that the UN is further investing in e-Procurement tools and that one of the e-procurement tools that will be further expanded in the short term is the use of electronic catalogues for ordering products against system contracts.

The UN Secretariat is currently also making use – and is enhancing the use - of purchasing cards for low-value procurement such as subscription services, spare parts and consumables that may be processed by cardholders which reduces the transaction costs for numerous small purchases currently being processed through Purchase Orders.<sup>15</sup>

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<sup>13</sup> *United Nations' Procurement Manual*, pg. 39

<sup>14</sup> General Assembly, *Investing in the United Nations: for a stronger Organization worldwide: detailed report*, Report of the Secretary-General, Addendum, Procurement reform, 14 June 2006, Ref. A/60/846/Add.5, pg. 17

<sup>15</sup> General Assembly, o.c., pg. 26

## VALUE FOR MONEY

The State Department of Public Works (Government of Queensland, Australia) has issued a series of "Better Purchasing Guides" that provide guidelines for an improved procurement policy. Its procurement policy is outcome-driven, through emphasis on achieving value for money. In its guidelines concerning the evaluation of the value for money aspect of bids, the Department distinguishes 3 main factors, namely<sup>16</sup>:

- Contribution to the advancement of Government's priorities;
- Non-Cost factors;
- Cost related factors.

In the concerned guidelines a classification of purchases is made according to two criteria, namely the "difficulty of securing supply of goods and services" and the relative expenditure of the procurement against the total procurement expenditure of the department or agency.

For those procurement expenditures that have a high relative weight in the total procurement expenditure, the recommendation is to determine the contribution to the advancement of Government's priorities for significant purchases. The basis for this should be incorporated in the selection criteria at the evaluation stage of offers/tenders.

The analysis of non-cost factors is particularly required for those purchases that have a high weight in the total procurement expenditure and/or are difficult to procure. The criteria put forward for deciding which offer provides the best value for money are the following:

- Fitness to the purpose;
- Technical and financial issues, both product/service and supplier related, such as technical performance, reliability, economic life, maintainability and supplier capability;
- Risk exposures;
- Benefits to be obtained from the purchase;
- Availability of maintenance and support;
- Compliance with specifications.

Apart from the above mentioned non-cost factors, the guide stresses the importance of not only considering the pure cost of the purchase itself, but also of factoring in the assessment elements of whole-of-life costs (acquisition, operation, maintenance, alteration, support and disposal costs) and transaction costs, which are all internal costs for the management of the whole process to the department or agency.

The Department of Public Works admits that there is no standard formula possible for the assessment of the above elements, but it recommends to reflect the relative importance of the above three factors (contribution to the advancement of Government's priorities, non-cost factors and cost factors) in the specifications, the evaluation criteria, the weighting of these criteria and the Department's overall acquisition strategy.

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<sup>16</sup> Queensland Government, Department of Public Works, *Better Purchasing Guide, Value For Money*, July 2000, [http://www.qgm.qld.gov.au/00\\_downloads/bpg\\_value.pdf](http://www.qgm.qld.gov.au/00_downloads/bpg_value.pdf)

## USE OF ELECTRONIC MEANS IN PROCUREMENT PROCESSES

The Norwegian Ministry of Modernisation has drawn up a strategy paper on electronic procurement processes<sup>17</sup> in the context of new procurement regulations (eNorway 2009) and has included a list of actions to implement. Norway is recognized to be one of the lead countries in Europe for e-procurement.

One of the objectives in its strategy is to ensure that by 2009 at least 25% of the public procurement would be done on an electronic basis, in part or in whole. The intention is to facilitate that the whole chain of electronic submission and publication of notifications, publication of tenders, submission and receipt of tenders, evaluation and award of contracts and invoice handling.

All EU Member States are also taking measures and launching initiatives to make more use of electronic means in their procurement processes, instigated partly by the new EC procurement directives that promote the concept. For example, we refer to the initiatives of the UK discussed above and others such as the Public Procurement register<sup>18</sup> in Estonia, the e-Tenders website<sup>19</sup> in Ireland and the "E-vergabe"<sup>20</sup> in Germany.

A majority of EU Member States currently use these electronic means for making procurement notifications and publications public<sup>21</sup>.

However, Member States using electronic means for the submission and receipt of tenders and for the evaluation and award of contracts are still a small minority. Impeding factors in using electronic means in these procurement phases include the security aspect (use of electronic signatures, data integrity, confidentiality) and the technological investments that are required. In addition, the body of rules also needs to be assessed in order to further facilitate the use of electronic means for the receipt of tenders, for evaluation or for the receipt of electronic invoices. Initiatives are being taken in this direction. For example, in Denmark, an Act on electronic invoicing came into force on 1 February 2005 and has resulted in significant growth in the use of electronic invoices.

## SUMMARY OF FINANCIAL THRESHOLDS REGARDING PUBLIC PROCUREMENT AND MAIN OBSERVATIONS

The following 2 pages provide two overview tables that summarise the main observations for this section. The first table provides a comparison between the main financial thresholds defined in the EC Financial Regulation, Spain, 2 UK Government Departments and United Nations, while the second table summarises our most important observations.

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<sup>17</sup> Ministry of Modernisation, *Strategy and actions for the use of electronic business processes and electronic procurement in the public sector, A follow-up to eNorway 2009 – the digital leap*, Oslo, October 2005

<sup>18</sup> <http://riigihanked.riik.ee/>

<sup>19</sup> <http://www.etenders.gov.ie/>

<sup>20</sup> <https://www.evergabe-online.de>

<sup>21</sup> See the detailed reports and external studies on [http://ec.europa.eu/internal\\_market/publicprocurement/e-procurement\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/e-procurement_en.htm)

Value	EC Financial Regulation	Spain	UK (Department of Trade and Industry) <sup>22</sup>	UK (Department of Transport) <sup>23</sup>	United Nations Organisation
<p>Low Value</p> <p>High Value</p>	<= 200€: Simple payment against invoice	<12.020,24€ (30.050,61€ for Works): direct purchase	500€ (750€ approx.) without competition	Up to £1,000 (1.490€ approx.): a single oral quote	<2.000€ (approx.): competitive bidding not required, direct purchase
	<= 3.500€: only one single tender required;		VISA-card enabling purchases to be made from VISA-compliant firms. £500 to £10,000 (14.900€ approx.): at least three or more written quotations.	£1,001 to £3,000 (4.500€ approx.): min. 3 oral quotes	
	<=25.000€: Negotiated procedure with at least 3 candidates;	<30.050,61€ (60.121,21€ for Works): Open procedure with at least 3 candidates (No requirement to be published);	For amounts above £10,000 formal competitive tendering	£3,001 to £25,000 (37.000€ approx.): min. of 3 written quotes based on written specifications	<23.500€ (approx.) for goods: Informal method of solicitation (Request for quotations)=(Open procedure);
	<=60.000€: Negotiated procedure with at least 5 candidates	>30.050,61€ (60.121,21€ for Works) and <137.000€: Negotiated procedure with at least 3 candidates + requirement to be published		£25,001 to £50,000 (74.300€ approx.): min. of three formal competitive tenders	>23.500€ (approx.) and <155.000€ for goods and services with standard and firm specifications: Invitation to Bid (ITB) (=Open procedure);
	<137.000€ (211.000€ for Research and 5.278.000€ for Works): Call for expressions of Interest (Restricted procedure)			£50,001 up to EU/WTO Threshold: Normally three to five formal competitive tenders	>23.500€ and <155.000€ (approx.) for procurement with more complicated specifications: Request for Proposal (RFP)
	>= 137.000€ (211.000€ for Research and 5.278.000€ for Works): Open or Restricted procedure	Same EC rules apply (EC Public Procurement Directives), but the use of restricted procedures is limited		Same EC rules and preferred use of the Restricted Procedure. Same EC rules apply (EC Public Procurement Directives)	Same EC rules apply (EC Public Procurement Directives)

<sup>22</sup>PASS, Guidance 4B, 2006, *Selling to the Department of Trade and Industry – A guide for Suppliers*, <http://www.bipsolutions.com/docstore/supplierguidances/Guidance4b-2006.pdf>

<sup>23</sup> [http://dft.g2b.info/public/how\\_we\\_buy\\_policy.htm](http://dft.g2b.info/public/how_we_buy_policy.htm)

<p>Procurement legislative framework</p>	<ul style="list-style-type: none"> <li>• EC: Financial Regulation, Implementing Rules and EC Public Procurement Directives</li> <li>• Spain: Based on unitary national legislation and transposition of EC Public Procurement Directives in national legislation;</li> <li>• UK: No centralised legislation on public procurement, except for the transposition of EC Directives in national legislation.</li> <li>• UN: General principles in UN's Financial Regulations and specific rules in UN's Procurement Manual.</li> </ul>
<p>Procurement method</p>	<ul style="list-style-type: none"> <li>• EU: Free choice above EC PP thresholds, "below-thresholds" methods predefined on the basis of thresholds;</li> <li>• Spain: Extensive use of open procedures, restricted procedures used to a lesser extent;</li> <li>• UK: Free choice on the use of open or restricted procedures, as depending on the value for money strategy;</li> <li>• UN: Use of open or restricted procedures depends on the complexity of the procurement.</li> </ul>
<p>Requirement of an assessment panel</p>	<ul style="list-style-type: none"> <li>• EC: Requirement when the value of contracts is above 60.000€ and has to be composed of at least 3 persons, representing 2 organisational entities and no hierarchical link;</li> <li>• Spain: Above low value contracts, opinion of an assessment panel required, however no requirements on the composition of the assessment panel;</li> <li>• UN: Technical evaluation committee is established above the threshold of approx. 155.000€ with at least 2 members, one from the Requisitioning office and another qualified staff from the UN.</li> </ul>
<p>Other points of attention</p>	<ul style="list-style-type: none"> <li>• Spain/UK Departments/UN: thresholds for low value contracts are set higher than EC low value contracts;</li> <li>• UK: Much more focus on achieving best value for money for defining the optimal procurement strategy. "Gateway Review Process" assists in assuring the achievement of best value for money;</li> <li>• UK: Use of VISA purchasing cards for low value procurement;</li> <li>• UN: Pre-registration process and tool for potential vendors.</li> </ul>



### 2.3. Differences in grant awarding with an impact on speed and efficiency

In this section, we describe the main differences and points of attention in the grant awarding systems of Spain and the United Kingdom, compared to the Commission's approaches.

#### SPAIN

The main rules regarding grant awarding procedures are governed by the General Grants Law 38/2003 and the related implementing rules, approved by Royal Decree 887/2006.

We were unable to identify significant differences between the main Spanish provisions and the EC Financial Regulations, especially in the context of enhancing the efficiency or speed.

Grant awarding procedures are set on the basis of the specific rules for each type of grant programme. The grants can be classified in two different types, namely grants awarded under *competitive application procedures* (following an invitation for the submission of applications, the awarding entity awards the grant to the beneficiaries that meet the requirements in the rules governing the grant) and *directly awarded grants* (the objective and legal regime of this type of grant, the beneficiaries and the types of aid available, the award procedure and the accreditation system are defined in the specific rules governing this type of grants).

The procedure for award of grants and the payment thereof comprises a large number of steps, which are more extensive in the case of grants awarded under competitive arrangements. The following typical steps can be identified:

- Establishment of a Strategic plan by the grant-awarding body that includes the objectives and duration of the grant, as well as an estimate of expenditure and the sources of financing.
- Approval of the rules governing the award process of the grants, which are being published in the BOE, and approval of the budget.
- After completion of these phases, either the regulation establishing the direct award procedure will be approved or a call for proposals will be launched, which will be followed by the typical steps of evaluation and assessment of the applications against the requirements.
- A list of selected proposals will be proposed by an evaluation body, followed by a final award by the competent body, creating a grant entitlement for the beneficiaries, who are notified of the final decision.
- Once the grant has been awarded and throughout the period stipulated in the related rules, the use of the awarded grant will be monitored. The following typical steps comprise the follow-up phase after the award: submission of supporting documents by the beneficiaries and checking their compliance with the terms and conditions imposed; monitoring of the achievement of the targets envisaged in the award decision, verification of the adequacy of the documentary supports, of performance of the activity, and of compliance with the objectives by the awarding entity (or, where appropriate, the cooperating entity), interim or balance payments of the awarded grant (subject to the documentary support from the beneficiary evidencing performance of the activity or project and/or attainment of the objectives).
- The awarded grants and names of beneficiaries are also published by the awarding entity in the above mentioned official journal.

- In the event of non-compliance with the terms and conditions of the grant agreement and under the circumstances provided for by law, the beneficiaries may have to refund the grant amounts received, in the cases and under the conditions stipulated by law, and/or this could give rise to a payment of a penalty for the infringements defined by law (with the corresponding penalties stipulated therein).

Similar to the EC level practice, the beneficiaries have to meet the typical requirements, such as complying with the rules and objectives of the grant agreement, providing the requested supporting documents, allowing financial control and audit, report of other grants, archiving the documents evidencing the use of the funds received and so on.

However, the requirement for an external audit report in the application phase does not exist. EC rules require external audit reports above €300,000 for grants supporting actions and €70,000 for grants to operating costs.

The final decision on the award of grants falls under the authority of the concerned Minister(s), Secretaries of State or to the Presidents or Directors-General of the concerned public authorities.

In Spain use is also made of intermediary entities (public or private bodies, agencies or other legal entities) that act in the name and on behalf of the grant awarding entity. These are, in the vast majority of cases, banks which pay the beneficiaries and receive/check the beneficiaries' documentation.

## UNITED KINGDOM

In this section a number of approaches to administration of grant programmes in the UK are presented, highlighting the essential points of attention.

With regard to grants in the field of Culture, the responsible Government Department is the Department for Culture, Media and Sport (DCMS)<sup>24</sup>. There are various methods by which the Arts are funded in the UK. These include: Arts Council England (ACE) funding (ACE is responsible for England but there similar bodies in Scotland, Wales and Northern Ireland), business sponsorship, EC funding, Lottery funding and trusts and foundations.

Another body responsible for the distribution of cultural grants is the Heritage Lottery Fund. (HLF)<sup>25</sup>. Since it has been set up by the Parliament in 1994, the HLF has awarded £3 billion (€4,4 billion) to more than 15,000 projects across the UK. It runs eight different grant programmes. The grants vary in the amount of money that can be awarded, who can apply for them as well as what the grant can be used for. The most important points of attention are the following:

- Under the "Awards for All" scheme (grants varying from £300 to £10,000 (€444 to €14,800)) applicants are informed of the decision on their application within 8 weeks of making their application;
- Under other schemes, such as the "Your Heritage" scheme, "Heritage" scheme and "Repair grants for places of worship" schemes, with high grant amounts, use is made of a two-stage process, starting with a pre-application stage to assess the suitability of the application. After completion of the two-step process, applicants are informed within 6 months of the application closing date (except for the "Your Heritage" grants for which a time limit of 3 months applies).

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<sup>24</sup> <http://www.culture.gov.uk>

<sup>25</sup> <http://www.hlf.org.uk/English>

With regard to grants in the field of research, the "Office of Science and Innovation" (OSI) is responsible, i.a. for investments (with Research Councils) in research and research infrastructure, for the promotion of partnerships and for the preparation of future strategy. The OSI is responsible for the allocation of the Science budget (£3 billion (€4.44 billion) per year) via 8 Research Councils<sup>26</sup>.

These Research Councils are responsible for the day-to-day decisions and specifically for the decisions regarding research funding. Government has no involvement in the particular projects to be funded: it only determines the framework, e.g. the budget allocated to each Research Council.

In order to decide on the funding of research projects (on a competitive basis), these Research Council base their decision on an independent peer review, composed of a number of senior academics or "peers" in the concerned research field, from UK and abroad. These "peers" are nominated by others active in research, along with other appropriately nominated panel members.

For example, the "Engineering and Physical Sciences Research Council" (EPSRC)<sup>27</sup> relies on peer review panels to reach a priority funding order by agreeing an overall grade for each funding proposal. These proposals have been independently refereed by experts nominated by the applicants and the EPSRC. Each panel member will be nominated to a number of proposals to summarise and to lead the discussions. The most important criterion is the scientific quality of the proposals, but other criteria are taken into account such as ability, viability and planning. From this list, the final decision is made by the Council.

These peer review panels are also used to evaluate the final reports of the funded projects.

Another point of attention, is the issue of the certification requirements set by Grant Paying Bodies. The Audit Commission<sup>28</sup> provides general certification instructions to the local government grant paying bodies, from which the following can be learned.

Arrangements for certification by authorities and auditors, where appropriate, are needed to provide grant paying bodies with the assurance that the funds have been used for the intended purpose and in accordance with the relevant terms and conditions. It is clearly stated that this level of assurance should be proportionate through an assessment of the assurance required in relation to a particular scheme.

The Audit Commission lists those cases where an auditor's certificate will not be required<sup>29</sup>:

- are for small amounts;
- relate to expenditure that is regular or predictable over time;
- have few conditional provisions and no complex terms;
- provide few opportunities for claimant fraud; and
- are subject to other monitoring or reporting arrangements that provide assurance to the grant-paying body.

The certification work needs to be in accordance with the value of the amount claimable over the lifetime of a project. When this value is below the threshold of £50,000 (€74,000) there is no need

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<sup>26</sup> <http://www.dti.gov.uk/science/research-councils/index.html>

<sup>27</sup> <http://www.epsrc.ac.uk/default.htm>

<sup>28</sup> The Audit Commission is an independent public body responsible for ensuring that public money is spent economically, efficiently, and effectively in the areas of local government, housing, health, criminal justice and fire and rescue services

<sup>29</sup> <http://www.audit-commission.gov.uk/reports/NATIONAL-REPORT.asp?CategoryID=&ProdID=FD6B63AD-1C56-4d9d-AD5E-D89AE1C19482&SectionID=sect3#>

for an auditor's certificate of the claims and returns, regardless of any statutory certification requirement or any certification requirement set out in the grant terms and conditions.

When the total value is between the above threshold and £100,000, the auditor's work is limited to agreeing the form entries to underlying records, not the eligibility of expenditure.

For those projects above the £100,000 threshold, the auditor will first assess the control environment and to decide the reliance on it. Where the auditor decides that the control environment is reliable, the auditor's work is limited to the above testing. When this is not the case, the auditor will undertake all necessary tests of the certification instruction and use the assessment of the control environment to inform decisions on the level of testing.<sup>30</sup>

## USE OF QUALITY STANDARDS / LABELS FOR GRANT BENEFICIARIES

Based on our extensive audit experience on EC funded projects, we believe that the promotion of quality standards (or labels) could foster the implementation of best control practices in the way projects co-financed by public authorities are managed by the grant beneficiaries.

The main purpose of such quality standards is to make the management of grant beneficiaries accountable for establishing, evaluating and monitoring the effectiveness of controls over financial reporting to the public authorities in connection with projects funded with public money. Donors including the EU should be given the assurance that the funds have been effectively and efficiently used for their intended purpose, and have been used in compliance with the funding rules.

The public authorities could provide incentives to the grant beneficiaries to make them accountable for sound management of public funds. Like Basel 2 in the financial sector, incentives could be given to the targeted organisations for improving internal control. For instance, if a label recognised by a public authority is awarded to those organisations, they might:

- Be exempted from providing audit certificates or from providing supporting documents throughout the project life cycle;
- Obtain a financial contribution from the authorities for having such standards implemented, e.g. for SMEs and non-profit organisations.

Ultimately, the use of such standards could help both the grant beneficiaries and public authorities discharge their duties more smoothly.

Such standards must be specifically designed for the assessment of the internal controls devoted to project management and cost allocation with the aim to come to a truly integrated and focused control framework. Consequently, general purpose quality standards/ labels such as the ISO 9000 series are not expected to be suitable for increasing the confidence in the way public funds are managed. To our knowledge, the Vinçotte<sup>31</sup> company, who specialise in certification and accreditation services is currently developing a set of standards to provide more assurance to public donors on the way grants and public funds are used and that a first release of those standards should be made public during the summer 2007. We are not aware of any other similar initiative.

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<sup>30</sup><http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/FD6B63AD-1C56-4d9d-AD5E-D89AE1C19482/CertificationInstructionCIA01.pdf>

<sup>31</sup> In partnership with DEKRA

These standards should focus on the way key activities and processes surrounding the EU funded projects are subject to best practices aimed at guaranteeing the effective and efficient use of the funds and the compliance with the funding rules.

The activities subject to certification should include, for instance:

- Organisational structure,
- Project management,
- Procurement,
- Budgeting,
- Cash management,
- Bookkeeping,
- Cost accounting
- Financial reporting,
- Filing/ archiving,
- IT.

These standards should focus on the "project management life cycle" and include all the key dimensions of such a cycle, for example: time management, cost management, quality management, communication management, procurement management and so on.

Below is a small sample of possible control objectives/best practices on which such standards could be based:

- Time records are accurately maintained for all the projects;
- Budget is established and maintained for all the projects and each significant component;
- Actual results are tracked on a timely and accurately basis;
- Outlays are compared to budget on a regular basis and any significant variances are identified and brought by the project manager to the attention of the management;
- Allocation bases (e. g. costs allocated based on direct personnel costs) used to allocate indirect costs to the projects are properly approved and documented;
- Policies and procedures related to purchasing are documented;
- Purchase orders are placed only for approved requisitions.

Coordination activities should be addressed in case of consortia, and the activities of the subcontractors could also be included in the scope.

To a great extent, the development of these standards could be inspired through prominent internal control frameworks, such as the COSO framework developed by the Committee of Sponsoring Organisations of the Treadway Commission<sup>32</sup>, project management best practices and from guidelines developed by national authorities.

As these standards have not been developed so far, apart from the initiative taken by Vinçotte and DEKRA, they should preferably be developed by either public bodies or private organisations

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<sup>32</sup> COSO was originally formed in 1985 to sponsor the National Commission on Fraudulent Financial Reporting, an independent private sector initiative which studied the causal factors that can lead to fraudulent financial reporting and developed recommendations for public companies and their independent auditors, for the SEC and other regulators, and for educational institutions.

("standardisation bodies") which accredit certification organisations responsible for the testing of the compliance of grant beneficiaries with these standards. Those standardisation bodies should be independent from these certification organisations and from the grant beneficiaries themselves.

In order to initiate the development process for these standards, the EC could define the general framework and guiding principles for the development and use of these standards and could promote and stimulate standardisation bodies to develop them. It is not recommended that the EC imposes its own standards or adopts existing standards, as long as the practices are not stabilised. In our view, the role of the public authorities is to promote the use of best practices and standards developed by reputable public and private standardisation bodies.

Once these standards have been developed, the EC can approve the labels that comply with the framework and the guiding principles and maintain a central register of approved labels. Grant beneficiaries holding one of these approved labels would then be eligible for the predefined exemptions and financial support.

As a first step in this process, the EC could define in the Financial Regulation or in the Implementing Rules the objective, optional approach and conditions for the use of this type of label. For example, it could be stipulated that these labels should be compliant with the 3E requirements (Economy, Efficiency and Effectiveness) and/or recognised internal control frameworks (e.g. COSO), compliant with the Financial Regulation and Implementing Rules, approved at central level by the EC or by an authorised body and subject to independent reviews.

In that respect, the certification firms should be accredited by a standardisation body only if they satisfy strict requirements and implement training and quality assurance programmes. The activities of the certification firms should therefore be subject to monitoring by such standardisation bodies.

In any case, the detailed standard definition and description of key processes including accreditation, training and certification should be provided to the authorities.

We suggest to have such quality labels awarded at the enterprise level or at programme<sup>33</sup> levels and not at the project level. Ex-post controls can be performed by the certification firms on a sample of projects.

The use of these standards could be the subject of a pilot phase. For example, the new FP7 could be a good opportunity to implement this idea on a voluntary basis and to offer the possibility to grant beneficiaries to be exempted from audit certification of the cost statements submitted to the Commission and other supporting documents<sup>34</sup>. The implementation and testing of this new approach could be co-funded, for example for certain target groups that have more difficulties to implement such an approach.

## SUMMARY OF MAIN OBSERVATIONS

The table on the following page provides an overview of the main observations made in this section.

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<sup>33</sup> Reference is made to a set of projects developed by a department/ unit or pursuing similar objectives

<sup>34</sup> A standard paragraph could be foreseen in the grant agreements stipulating that it is allowed to deviate from the standard obligations, when the grant beneficiary is holder of an EC approved quality label.



<p>Spain</p>	<ul style="list-style-type: none"> <li>• No significant differences on main rules of national legislation;</li> <li>• No requirement for an external audit report in the application phase (EC Rules: requirement for supporting actions grants above €300.000 and €70.000 for operating grants);</li> <li>• Use of intermediary entities (e.g. banks) for payment and control of beneficiaries.</li> </ul>
<p>United Kingdom</p>	<ul style="list-style-type: none"> <li>• Large variance in grant programmes and rules depend on grant programme;</li> <li>• For research grants, use is made of Research Councils for day-to-day decisions and peer reviews for assessment and evaluation of projects;</li> <li>• Guidelines on thresholds and procedure for certification. Certification work needs to be in accordance with the value of the amount claimable over the lifetime of the project (under €74.000 certification not required, above €150.000 the auditor needs to assess the internal control environment and then decide if a full audit is required).</li> </ul> <p>EC Rules stipulate that an Authorising Officer may demand an external audit of accounts and that this requirement is compulsory for pre-financing and interim payments of grants above €750.000 (per financial year) or balance payments of €150.000 ( €75.000 for operating grants).</p>
<p>Quality labels</p>	<ul style="list-style-type: none"> <li>• Quality labels on the control environment of public grant beneficiaries, and the use thereof in grant schemes, currently do not exist;</li> <li>• Needs to be an open and voluntary system, but stimulated via the exemptions of requirements. Support for particular organisations could be co-funded.</li> <li>• Approach:             <ol style="list-style-type: none"> <li>1. Option to be incorporated in the Financial Regulation or Implementing Rules;</li> <li>2. Promotion towards standardisation bodies;</li> <li>3. Central register of accepted quality labels;</li> <li>4. Pilot-phase, for example in the new FP7.</li> </ol> </li> </ul>

## 2.4. Financing possibilities for one-off events

The subject area in this section is the set of financing possibilities for one-off events under the main body of rules for procurement and grants.

The aim was to identify means to facilitate and accelerate the financing of one-off events under the grants and procurement provisions.

One-off events can be considered as non recurrent or extra-ordinary items that are not foreseen in advance and that are not repeated in the normal programming and financing cycles.

One way to administer one-off events is through framework contracts on which basis a specific purchase order could be easily issued within the European Commission. Below the threshold of €60,000 and €137,000 a negotiated procedure / call for expressions of interest can be used, while accelerated procedures (with justified urgency) can be used for items of higher cost.

To handle one-off financing requirements under the grants provisions of the EC, the only exception to the rule that grants should normally be the subject of an annual programme, are the grants for crisis management aid and humanitarian aid operations. The annual grants programme is implemented through the publication of calls for proposals, except in duly substantiated cases of urgency or where the characteristics of the beneficiary leave no other choice for a given action. No call for proposals is required for cases of humanitarian aid, in exceptional and duly substantiated emergencies, to bodies with a de jure or de facto monopoly or to bodies identified by a Commission document and in crisis situations. Specific dispositions in the basic act highlighting urgency are required and such cases are subject to substantiated justification by means of the nature of the basic document behind the grant programme.

### SPAIN

The financing possibilities for one-off events under Spanish procurement and grant rules are as limited as those pertaining at EC level. Special fast-track procedures can only be used in the cases explicitly mentioned in the procurement and grants rules, mostly in exceptional cases or in situations of urgency. The following two procedures are foreseen<sup>35</sup>:

- Urgent procedures that lead to a shortening of the prescribed deadlines. However, the standard procedural formalities still need to be complied with. The essential element required in order to make use of this urgent procedure is a declaration justifying the urgency made by the contracting authority.
- Emergency procedures: this is an exceptional procedure which, in certain prescribed circumstances, such as catastrophic events, situations which entail a big danger or needs affecting National Defence such as floods, wars... allow for a suspension of some or all of the required formalities, which must however be validated at a later date.

For procurement, a fast-track process is foreseen that is applied for cases where the public authorities need to act immediately in the event of calamities or crisis situations that create a serious danger for national security.

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<sup>35</sup> The concerned articles are Art. 72, 140.1.c, 141.d and f, 159.2. b and c, 182.d and h, 209.c, 210.c and g of the Revised General Public Authorities Contracts Law, and art. 72 of the General Public Authorities Contracts Regulations.

When any of the circumstances stipulated by law arise, there is no obligation to comply with the normal procurement rules. The contracting authority may procure what is necessary and may freely award a contract without being subject to the normal formal requirements. The decision to adopt a fast-track procedure will entail the retention or modification of funds and, at the same time, the authorisation by the Ministry or competent body. Once the steps have been carried out the necessary verification and expense approval processes will be fulfilled.

In the Spanish procurement rules, the negotiated procedure is also considered to be an extraordinary procedure as it can only be used in specific cases. There are a number of exceptional situations that can lead to the use of negotiated procedures without requiring a prior publication of a notice, which are similar to those defined in the concerned EU Implementing Rules<sup>36</sup>. These situations are:

- Exceptional cases (valid for contracts for construction works, services, consulting or technical assistance) where the nature or risk of the project does not allow estimating an overall cost.
- Emergency cases, arising from events that could not be foreseen by the contracting authority and are not attributable to it, that demand prompt action and for which the fast-track procedure can not be complied with.
- In cases with a high level of secrecy, that are restricted or where the protection of the interests of National security are at stake.<sup>37</sup>

As regards the award of grants, the General Grants Law stipulates that the standard procedure for awarding grants will be ruled by call for proposals arrangements, however, in exceptional situations grants can be awarded directly.<sup>38</sup>

In these exceptional cases, grants can be awarded directly where public, social, economic, humanitarian or other reasons exist that make it difficult for beneficiaries to be awarded through public tender rules.<sup>39</sup>

The exceptional or extraordinary procedures referred to above mean that some or all of the required formalities under the standard procedures do not have to be complied with. Logically, this speeds up the procurement or grant awarding process and provides more flexibility and speed for action.

The State budget also includes a contingency fund (2% of total spending) that can be used only in circumstances that could not be foreseen during the budget approval process and that do not depend on the discretionary powers of the government. Consequently, specific programmes or policies initiated by government can not make use of this contingency fund.<sup>40</sup> Government has to submit a quarterly report to the Budget Committees of Parliament on the use of the contingency fund.

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<sup>36</sup> General Public Authorities Contracts Law, Art. 141

<sup>37</sup> The concerned articles are Art. 72, 140.1.c, 141.d and f, 159.2. b and c, 182.d and h, 209.c, 210.c and g of the Revised General Public Authorities Contracts Law, and art. 72 of the General Public Authorities Contracts Regulations.

<sup>38</sup> General Grants Law, Art. 22

<sup>39</sup> General Grants Regulations, Art. 55.2

<sup>40</sup> General Budgetary Law, Art. 50 and X, *Special Issue: The Legal Framework for Budget Systems: An International Comparison*, in: OECD Journal on Budgeting, Volume 4: No 3, 2004, p. 396

## UNITED KINGDOM

Apart from the possibilities on the basis of framework contracts and cases of urgency, our research with regard to government ministries' financing possibilities of one-off events in the UK shows that:

- Smaller one-off events such as conferences, anniversary celebrations, etc. are expected to be included in the budget (the Departmental Expenditure Limit spending "DEL") at the start of the year and voted for by parliament. The DEL is planned and controlled on a tri-annual basis in Spending Reviews. These three year budgets and end-year flexibility (departments may carry forward unspent DEL provisions from one year to the next) provide a stable basis for departments to plan their operations in this timeframe;
- Larger events that cannot be reasonably foreseen such as the foot and mouth disease outbreak, cannot be predicted and are of a sufficient size that they cannot be covered by a re-allocation within the same request for resources. Instead, there are two options: the department must approach Parliament to request that money is transferred from one resource request to another, or for extra funding, or both.

In addition, the Appropriation Acts limit the way in which resources can be used by describing how the amounts should be attributed to the particular departmental Requests for Resources (RfRs) in order to finance specified services. These Acts provide statutory authority for all departmental expenditure. Without these, such expenditure is illegal.<sup>41</sup>

Over-expenditure may lead to an excess vote, that may result in an appearance by the Accounting Officer before the Public Accounts Committee (PAC), where the Accounting Officer would need to account for the excess.<sup>42</sup>

Similar to Spain, the UK also makes use of a contingency fund, amounting to 2% of the authorised supply expenditure of the previous year, which may be used for expenditure above the parliamentary limits that have not been voted yet by Parliament.<sup>43</sup>

## UNITED NATIONS

With regard to unforeseen and extraordinary expenses, the basic Financial Regulations of the United Nations stipulate that authorisation thereof is required from the Under-Secretary-General for Management, who reports to the General Assembly on the status of this type of commitments.<sup>44</sup>

The basic Financial Regulations also stipulate a number of exceptions whereby the formal methods of solicitation do not have to be complied with, apart from the case where the value of the procurement is below the predefined threshold. These exceptions are, for example<sup>45</sup>:

- When no competitive marketplace exists for the requirement;

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<sup>41</sup> [http://www.hm-treasury.gov.uk/media/D56/33/pss\\_aud\\_supply.pdf](http://www.hm-treasury.gov.uk/media/D56/33/pss_aud_supply.pdf)

<sup>42</sup> [http://www.hm-treasury.gov.uk/media/94836/Copy\\_of\\_%20Accountability\\_Chocolate.pdf](http://www.hm-treasury.gov.uk/media/94836/Copy_of_%20Accountability_Chocolate.pdf)

<sup>43</sup> Contingencies Fund Act of 1974 and OECD Journal on Budgeting, Volume 4: No 3, 2004, pg. 431

<sup>44</sup> *United Nations' Financial Regulations*, rule 102.7

<sup>45</sup> *United Nations' Financial Regulations*, rule 105.16

- When there has been a previous determination or there is a need to standardise the requirement;
- When offers for identical products and services have been obtained competitively within a reasonable period and the prices and conditions offered remain competitive;
- When, within a reasonable prior period, a formal solicitation has not produced satisfactory results;
- When there is an exigency for the requirement;
- When the proposed procurement contract relates to obtaining services that cannot be evaluated objectively;
- When the Under-Secretary-General for Management otherwise determines that a formal solicitation will not give satisfactory results and provides written authorisation to the Procurement Office;

In the UN's Procurement Manual, procurement officers are recommended to use the above exceptions with caution.

The Manual further provides clarifications on the interpretation of these exceptions<sup>46</sup>. For example:

With regard to the offers for identical products and services, this exception can be applied when these deliverables had been subject to a complete procurement process and the original contract has not been awarded longer than 120 days prior to the new contract. In addition, a limitation has been defined on the number of contracts that can be awarded to the same contractor, using this exception.

What concerns the exception in case of exigency, the procurement manual defines the concept of exigency as "an exceptional compelling and emergent need, not resulting from poor planning or management or from concerns over availability of funds, that will lead to serious damage, loss or injury to property or persons if not addressed immediately".

In these exceptional cases, the procurement officer has to justify in writing the use of a method other than formal solicitation (on the basis of an informal method of solicitation or direct negotiation) and should ensure that the award of a contract to a vendor is based on an offer that substantially conforms to the requirement at an acceptable price.

Most of these exceptions are comparable with the exceptions summed up in the EC's Implementing Rules on the use of Negotiated procedures, for example the exception of exigency, lack of competitive marketplace or the lack of satisfactory results.

## SUMMARY OF MAIN OBSERVATIONS

The table on the following page provides an overview of the main observations made in this section.

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<sup>46</sup> *United Nations' Procurement Manual*, o.c., pg. 61-64

Spain	<ul style="list-style-type: none"> <li>• Similar limited possibilities of financing of one-off events;</li> <li>• Urgent procedures and emergency procedures are defined, with an impact on the standard procedural requirements to be followed;</li> <li>• Justification is required;</li> <li>• Contingency fund foreseen of 2%.</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>• Similar limited possibilities of financing of one-off events;</li> <li>• The way in which funds can be used is defined through the appropriation acts;</li> <li>• Justification is required;</li> <li>• Contingency fund foreseen of 2%.</li> </ul>
United Nations	<ul style="list-style-type: none"> <li>• A number of exceptions have been defined whereby the formal methods of solicitation do not have to be followed. Amongst these exceptions, there exists the possibility to procure products and services when identical offers have been obtained competitively within 120 days prior to the new contract;</li> <li>• Justification is required.</li> </ul>



### 3. DEMOCRATIC CONTROL ON THE BUDGET EXECUTION

This section deals with the aspect of democratic control by the budgetary authority (more specifically the National Parliaments) on the budget implementation by the executive branch. It describes the approaches in Spain and the UK on how the democratic control of Parliaments is ensured during the execution of the budget in the running budget year.

#### SPAIN

In line with standard practice, the Parliament has to approve the draft State budget, foreseen before the start of the new budget year. The parliamentary debate takes place between 1 October and 31 December. In the plenary session of the House of Representatives, amendments to the draft State budget are discussed and approved. The adopted state budget is sent back to government. The approval procedure in the Senate is the same.

During the budget year N, according to the Spanish legislation, the Secretary of State for Finance and Budgets has to send a report each quarter on the execution of the General State Budget and the evolution of the main aggregate budget figures. He presents his report three times a year before the Budget Committee. However, this debate is very general and does not allow for detailed monitoring of the budget execution.

After closure of a budget year, the General Controller of State Administration (GCSA) must prepare the consolidated general accounts ("Cuenta General del sector público administrativo") by 31 August in the year following the concerned budget year and send it to government for approval. The consolidated general accounts must then be presented to the Court of Auditors (CA) ("Tribunal de Cuentas") two months after their completion, before 31 October. The CA must examine and verify the consolidated general accounts within six months after the date they were received.<sup>47</sup> Once the examinations and verifications have been concluded, CA sends its report with recommendations to the Parliament, to which it is directly accountable.

Once Parliament has received the report on the consolidated general accounts from the Court of Auditors, the Joint Committee for the Relations with the Court of Auditors<sup>48</sup> ("Comisión Mixta") prepares its opinion. Representatives of each parliamentary group may take the floor and are entitled to a right of reply. The debate is followed by a period of three days in which resolution proposals may be made to the committee. The committee's opinion together with the approved proposals are submitted to the House of Representatives and the Senate. If no agreement between the two Chambers can be reached, the House of Representatives has the final decision.

If Parliament decides not to approve the Court of Auditors' report, the Court shall be notified and must present a new, modified report.

The parliamentary control process is finalised through the publication of the final approval of the Parliament in the "Official Parliament Gazette" and the "Official State Gazette". This "a posteriori" budgetary control process takes a long time and typically the process is finalised in Spring of N+2.

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<sup>47</sup> General Budget Law 47/2003, art. 132

<sup>48</sup> The Joint Committee is composed of 22 members of the House of Representatives ("Congreso") and 17 members of the Senate ("Senado") (Rule of the House of Representatives & the Senate of March 3, 1983)

The annual activity report is usually presented in the spring of the year following the concerned budget year and provides further information on how the budget has been spent, but not an exhaustive analysis.

Monthly budget execution information is provided to the Budget Committees of the House of Representatives and of the Senate<sup>49</sup> and the Parliament has the possibility to request a special report from the Court of Auditors in the event of unusual or urgent cases.

Other possibilities for parliamentary control on the budget execution during a budget year can be performed through the Budget Committees by using standard parliamentary mechanisms such as:

- Requests for information: these consist of a presentation by one of the members of Government on the issue at hand on which members of parliament may pose questions and make observations. Although they are called "informative sessions" they are in reality debates.
- Questions and formal requests for explanation. Specific timing is foreseen for these questions on the agenda for each session. The questions need to have a specific subject-matter. However, this procedure is slow, as the written responses take a long time before they are presented.
- Propositions: these are defined as the notification of irregularities brought to light in the course of inspection procedures. However, this is not used frequently and there are no ordinary, specified procedures whereby it can be carried out.

## UNITED KINGDOM

In the UK, there is no one single, parliamentary budget committee dedicated to the approval of the budget and the control during execution. The examination of the budgetary strategy and expenditure is divided among various "Select Committees" of the House of Commons (permanent committees) and this task is included in the global mandate of permanent committees for each, specific government Department. The Liaison Committee, comprising all chairmen of the select committees, decides which Select Committee reports will be presented in the plenary sessions.<sup>50</sup>

Alongside these departmental committees, the Public Accounts Committee (PAC) is focused on the ex-post control of the budget execution. The PAC is empowered to call persons, e.g. Accounting Officers, to report on specific issues, and is considered to be one of the most influential parliamentary committees. The PAC is responsible for the follow-up of the recommendations of the National Audit Office, e.g. value-for-money reports.

H.M. Treasury, the UK Finance Ministry, prepares the draft budget, which is approved by the Cabinet, after which it is presented to the House of Commons in a formal speech on "Budget Day", typically in March or April, resulting in a comprehensive finance bill (including tax measures). This finance bill may be amended by the House of Commons, while in the House of Lords only a debate is held on the bill, after which the bill receives royal assent.

Main supply estimates are the means of obtaining from Parliament the legal authority to consume the resources and to execute the budget on the agreed spending programmes for the concerned budget year (1 April to 31 March). The main estimates are typically presented to the Parliament after the beginning of the budget year to which they relate. This procedure is known as the

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<sup>49</sup>General Budget Law 47/2003, Art. 135

<sup>50</sup> OECD Journal on Budgeting, Volume 4: No 3, 2004, p. 414

“Supply procedure”.<sup>51</sup> However, a number of constraints limit a detailed control of the main estimates by the House of Commons.

Parliament gives statutory authority for the consumption of resources by Consolidated Fund Acts and an annual Appropriation Act. The Appropriation Acts limit the way in which resources sought in Supply Estimates can be used, by prescribing how the overall amounts are to be appropriated to particular departmental Requests for Resources (RfRs) in order to finance specified services. A statement for each RfR setting out such purposes in functional terms is included in the Estimates and is referred to as the ‘ambit’. The ambits are reproduced in the Appropriation Act. Expenditure other than on such purposes is illegal.<sup>52</sup>

At given moments in the year revised and/or Supplementary Estimates are presented to the Parliament asking for approval for any necessary additional resources or revisions to the Main Estimates. This is done when additional resources are required or revisions need to be made to the Main Estimates, typically in the Summer (June), Winter (November) and the following Spring (February).

During the budget year, the Treasury has to prepare a pre-budget report and a debt management report for the House of Commons and, although legally not required, monthly estimates of the main public sector statistics are issued, based on information from departments.<sup>53</sup>

At the end of the financial year (around July) the Public Expenditure Outturn White Paper is presented to Parliament, providing provisional outturn figures for public expenditure by departments. The Comptroller and Auditor General (C&AG) sends an annual report to the Treasury which then presents the accounts and the concerned report before the House of Commons.

To conclude, the House of Commons does not have any powers to make changes to the expenditure. In addition, the control over the expenditure of the budget is split between the different, departmental Select committees, as an integral part of their mandate. However, the use of ambits set out the purposes for which resources should be used.

## SUMMARY OF MAIN OBSERVATIONS

The table on the following page provides an overview of the main observations made in this section.

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<sup>51</sup> [http://www.hm-treasury.gov.uk/documents/public\\_spending\\_and\\_services/parliamentary\\_supply\\_estimates/pss\\_pse\\_index.cfm](http://www.hm-treasury.gov.uk/documents/public_spending_and_services/parliamentary_supply_estimates/pss_pse_index.cfm)

<sup>52</sup> [http://www.hm-treasury.gov.uk/media/D56/33/pss\\_aud\\_supply.pdf](http://www.hm-treasury.gov.uk/media/D56/33/pss_aud_supply.pdf)

<sup>53</sup> OECD Journal on Budgeting, Volume 4: No 3, 2004, p. 433

<p style="text-align: center;">Spain</p>	<ul style="list-style-type: none"> <li>• Budget approval procedure similar to EC practice;</li> <li>• Secretary of State for Finance and Budget has to report to the Budget Committee on the budget execution on a quarterly basis;</li> <li>• Court of Auditors directly accountable to the Parliament – A joint committee for the relations with the Court of Auditors involved in ex-post control;</li> <li>• Standard parliamentary mechanisms are applied, such as requests for information and formal requests during budget year.</li> </ul>
<p style="text-align: center;">United Kingdom</p>	<ul style="list-style-type: none"> <li>• One budget committee does not exist, departmental select committees examine the budget strategy and expenditure;</li> <li>• Public Accounts Committee focuses on ex-post control;</li> <li>• Budget year starts on 1 April and ends on 31 March;</li> <li>• Main supply estimates are used as authorisation by Parliament to execute the Budget. Use of “ambits” to limit the way in which resources can be used.</li> </ul>

## 4. ROLE AND RESPONSIBILITIES OF FINANCIAL ACTORS

The purpose of this section is to explain the main roles and responsibilities of the financial actors in the budget execution process within the Member States examined. The focus is put on the legal responsibility and liability of officials, rather than on an exhaustive description of the financial circuits.

Next to the legal responsibility and liability of officials this section provides clarification on the segregation of duties and on how avoidance of conflict of interests is ensured.

### 4.1. Financial circuits and financial actors

#### SPAIN

The financial circuits are in a generally centralised structure, with a clear separation between the administration managing the financed action and the administration verifying and executing the payments.

The first step in the expenditure life cycle<sup>54</sup> is the prior approval of the expenditure, called authorisation, which entails the internal decision of the expense paymaster to allocate a budget to a specific action. Approval is the act by which authorisation is granted for a specific expenditure, where the totality or part of the budgetary credit is set aside. This specific action is put forward by Directors-General in an expenditure proposal. This process results in an certification report ("RC" document)(certifying that credits are available) and an authorisation document ("Document A"), authorising the expenditure allocated to the specific action for that year (and, when applicable, to subsequent years). This internal authorisation does not determine any rights and is revocable.

After the approval of the expenditure the establishment of budgetary commitments results in a legal obligation for the Public Finance Authority ("Hacienda Pública estatal") towards third parties. The proposal for commitment is verified by the paymaster services and in a document "D" approving the budgetary commitment, which is forwarded to the accounting officer for recording.

Another important step in the expenditure life cycle is the acknowledgement of the obligation by the Public Finance Authority that accepts the credit charged, that arise from the approval of expenditure and the establishment of the budgetary commitment. The obligation on the part of the Public Finance Authority is acknowledged after documentary evidence of the asset purchased or the provision of the service or works, in accordance with the rules whereby the expense was approved and undertaken originally. Once the obligation has been acknowledged an "OK" document is generated.

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<sup>54</sup> The description is based on the General Budget Law 47/2003, (Articles 73 et sic) (<http://www1.worldbank.org/publicsector/pe/BudgetLaws/Spain.doc>), Royal Decree 2188/1995, developing the internal control system exercised by the Spanish State Auditing Agency and the Order of the Ministry of the Economy and Finance, approving the Accounting Procedure Rules that are to be followed in executing State budgets (Accounting Procedure Rules).

The last important step in the expenditure life cycle is the establishment of a payment order. The payment request is submitted by the managing administration to the paymaster, who acts as the liaison between the administration managing the expense and the treasury department that executes the payment. The paymaster verifies the supporting documents and the request, and issues a payment order to the Cash Payment Service to execute the payment, that will also verify the payment order and the payee.

The following major controls are foreseen during the expenditure lifecycle:

- Prior verification of the procedures that acknowledge rights with financial impact, such as the approval of the commitment;
- Control of the acknowledgement of obligations and verification of the expenditure;
- Control of the formalities of the order of payment;
- Substantive control of the payment itself.

There are two forms of controls during the expenditure life cycle, namely a control of formalities on the basis of supporting documents (checking formal requirements and compliance with the decisions taken) and substantive controls, aimed at the actual and efficient use of the allocated funds.

What concerns the prime responsible government functions with the authority to establish and authorise a commitment or to settle expenditure, the following main actors can be identified.

Their delegated powers can be further decentralised by means of a Royal Decree ordered by the Council of Ministers, or on the basis of the terms stipulated in the relevant regulations.

- The Ministers or Heads of other Government Bodies responsible for the use of specific funds in the General State Budget in the policy field for which they are responsible;
- The Presidents or Directors of the Autonomous Communities;
- The Directors of the Management Bodies and Common Services of the Social Security responsible for the expenditure that is specific to their policy field for which they are responsible.
- The Director General of the Treasury and Financial Policy is empowered to discharge the functions of the State Paymaster General, who reports to the Ministry of Economy and Finance. The Director General assumes the functions of the Authorising Officer of State Payments.<sup>55</sup>
- The Director General of the Social Security General Treasury is empowered to discharge the functions of Paymaster General of the Management Bodies and the Common Services of the Social Security, who are reporting to the Ministry of Work and Social Affairs. The Director General undertakes the functions of Authorising Officer for payments of management entities and common services of Social Security.<sup>56</sup>

To avoid conflict of interest in the expenditure life cycle, the Spanish system makes a clear separation between the management procedures and the control procedures, for which bodies that are entirely independent from each other are responsible.

The independence between these functions is guaranteed, as the delegation of authority is clearly defined:

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<sup>55</sup> General Budget Law 47/2003, Art. 75

<sup>56</sup> Id.



- Management procedures are carried out by the so called "Active Administration", i.e. by the Ministers and Heads in charge of other Government Bodies, by the Presidents or Directors of the state's Autonomous Communities, by the Directors of the Management Bodies and Common Services of the Social Security, by the Director General of the Treasury and Financial Policy or by the Director General of the Social Security General Treasury;
- Control procedures, which entail the *monitoring* of the phases comprising the management procedures, are performed by the Spanish State Auditing Agency, specifically the General State Auditor or the authorized auditors, none of whom reports either in theory or in practice to the bodies responsible for the management procedures.

The avoidance of conflicts of interest in the procedure of executing expenditure is also ensured through the segregation of the duties of the Paymaster (discharged by the Director General of the Treasury and Financial Policy or the Director General of the Social Security General Treasury) and of the "Payer" (discharged by the Cash Payment Services).

This segregation has always prevailed in Spanish financial administration and constitutes a generally accepted internal control mechanism.

## UNITED KINGDOM

UK Government Ministries consume resources that are financed from amounts voted by Parliament through "Supply Estimates", within the framework that is set by the Treasury. They present their annual accounts to Parliament, which are audited by the Comptroller and Auditor General (C&AG) to verify, inter alia, whether departments are obtaining value for money.

No resources can be properly committed or expenditure incurred without the approval of the Treasury. In practice, the Treasury delegates the authority to enter into commitments and to spend within predefined limits to departments. Through this delegated authority and below the authorised levels a department can make commitments and incur expenditure without specific prior approval from the Treasury. However, there are certain categories of spending proposals which override any delegated authority and which must be submitted to the Treasury.

On the basis of the Government Resources and Accounts Act 2000, the Treasury appoints a Principal Accounting Officer (the permanent secretary or permanent head of a department) and one or more Additional Accounting Officers, when needed. The role of a Principal Accounting Officer in the UK administration can be compared with the role of the Authorising Officer Delegated in European Institutions with some additional tasks of the EC Accounting Officer.

Under the minister, it is the Principal Accounting Officer who has personal responsibility for the overall organisation, management and staffing of the department and for the department-wide procedures in financial and other matters. The Principal Accounting Officer will delegate authority within his/her department, but cannot disclaim responsibility. He/she bears personal responsibility for:

- The propriety and regularity of the public finances for which he/she is answerable;
- The keeping of proper accounts;
- Prudent and economical administration;
- Efficient and effective use of all the available resources.

The Accounting Officer is responsible for the preparation of the department's resource accounts and their transmission to the Comptroller and Auditor General (C&AG). An Accounting Officer may be expected to be called upon to appear before the Public Accounts Committee (Parliament

Committee) to provide evidence arising from the examinations of the C&AG regarding the economy, efficiency and effectiveness of the use of resources.<sup>57</sup>

Next to the accounts, he/she will also sign the annual Statement on Internal Control (SIC) which provides, a summary, inter alia of the ways how risks have been identified, evaluated and controlled, and a confirmation that the effectiveness of the system of internal control has been reviewed and have been discussed with the required bodies.<sup>58</sup>

The Accounting Officer, as head of a department, is responsible for the overall organisation, management and staffing of his or her department. The head of department is assisted by experienced senior managers to advise on key aspects of the department's operations and to assist in the discharge of the Accounting Officer's duties. The Accounting Officer determines the distribution of responsibilities across these senior managers of the department taking the nature and structure of the department into account.<sup>59</sup>

The departments are encouraged to delegate authority within their organisation in line with the principles of effective financial management. This means that authority should be delegated to the point where decisions can be taken most efficiently. It is for departments to decide how much authority they sub-delegate to individual managers in the light of the Accounting Officer's own responsibilities.<sup>60</sup>

## UNITED NATIONS

Within the United Nations, authority is delegated to named individuals. The UN's basic Financial Regulations do not allow the subdelegation of authority that has been assigned on a personal basis. There is a debate about the wisdom of having its Directors and Assistant Secretary-Generals, etc. reviewing and approving routine administrative actions.

All commitments and expenditures require at least two authorising signatures, one by the certifying officer and one by the approving officer. The certifying officer certifies all commitments and expenditures in order to ensure that resources are used in accordance with the purpose for which those resources were approved and are compliant with the principles of efficiency and effectiveness, the Financial Regulations and Rules of the United Nations. Following certification, the approving officer approves the establishment of obligations, the recording of expenditures in the accounts and the processing of payments.<sup>61</sup>

Both functions are designated by the Under-Secretary-General for Management on a personal basis and cannot be further delegated. These functions can not be combined in one and the same person.

The certifying officer is responsible for the account(s) pertaining to a section or subsection of an approved budget and he/she must maintain detailed records of all obligations and expenditures against the accounts for which he/she has delegated responsibility.

The approving officer is responsible for approving the establishment of obligations or the execution of payments (ensure that the payments are properly due, in accordance with the

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<sup>57</sup> <http://www.government-accounting.gov.uk/current/frames.htm>, section 4.2. & 4.3.

<sup>58</sup> <http://www.government-accounting.gov.uk/current/frames.htm>, section 21.3.

<sup>59</sup> <http://www.government-accounting.gov.uk/current/frames.htm>, section 4.2. & 4.3.

<sup>60</sup> <http://www.government-accounting.gov.uk/current/frames.htm>, section 2.4.

<sup>61</sup> *United Nations' Financial Regulations*, Rule 105.4 – 105.7.

contract, agreement, and in accordance with the purpose for which the relevant financial obligation was established). The approving officers must maintain detailed records and must submit any supporting documents, explanations and justifications requested by the Under-Secretary-General for Management.

There is a clear segregation of responsibilities between the requisitioning entities and the procurement entities within the UN. The procurement officers can enter into contractual obligations for the purchase of goods or services, while the requisitioners, the budget holders, are responsible for the identification and specification of the needs of the Organisation.

Consequently, for the award of procurement contracts, only the procurement officer, that acts as approving officer within his/her individual authority/financial limits, can commit the UN to contractual obligations, or authorise, change or amend any contract or purchase orders. At headquarters, it is only the Procurement Service within the UN Secretariat that holds the procurement authority.

For Peacekeeping Missions and other Missions, this authority is subdelegated by the Assistant Secretary-General (ASG) to the Director of Administration (DOA) or the Chief Administrative Officer (CAO) of the Office away from headquarters, who can delegate procurement authority directly to the Chief Procurement Officer and individual procurement officers or assistants on an individual basis.<sup>62</sup>

For contracts above the \$200,000 threshold, for which a recommendation of the Headquarters Committee on Contracts (HCC) is required, an Assistant Secretary-General in the Department of Management (ASG/DM) must sign. This threshold is also under review in order to allow the HCC to concentrate more on strategically important and complex proposals.

For Field missions, in the case that the value exceeds the specific threshold, \$75,000, it is the Chief Administrative Officer or Director of Administration that awards the contract, after approval by the Local Committee on Contracts (LCC).<sup>63</sup> Above the threshold of \$200,000 the additional approval of the ASG/DM is required, subsequent to the recommendation of the HCC.

With regard to the specific delegations authorised, at headquarters, the Under Secretary General delegates contractual signing authority to officials within the Procurement Service of the UN on an individual basis for the following financial thresholds<sup>64</sup>:

<b>Function</b>	<b>Threshold of delegated procurement authority</b>
Chief of the UN Procurement Service	For \$200,000 (approx. €150.000) or less, without review by the HCC, and unlimited for procurements recommended by the HCC and approved by the Assistant Secretary-General
Chiefs of Procurement Sections within the UN Procurement Service	For \$150,000 (approx. €115.000) or less
Procurement Officer (Grade P4)	For \$75,000 (approx. €57.000) or less
Procurement Officer (Grade P3)	For \$50,000 (approx. €38.000) or less

<sup>62</sup> [http://www.un.org/Depts/ptd/pdf/pm\\_31august2006\\_english.pdf](http://www.un.org/Depts/ptd/pdf/pm_31august2006_english.pdf): *United Nations' Procurement Manual*, August 2006, pg. 13-14

<sup>63</sup> *United Nations' Procurement Manual*, pg. 112

<sup>64</sup> *United Nations' Procurement Manual*, pg. 15

Procurement Officer (Grade P2)	For \$25,000 (approx. €19.000) or less
Procurement Assistant (G5 to G7)	For \$7,500 (approx. €5.700) or less

For Missions and Offices away from headquarters, the delegations are organised in the same way as above, with the same thresholds and functions, except for the Chief of the UN Procurement Service and the Chiefs of Procurement Sections. The corresponding functions in field missions are respectively the Chief Administrative Officer and the Chief Procurement Officer. In addition, in case of the unlimited threshold for contractual obligations above \$200.000, the procurement must first be approved by the Assistant Secretary-General of the Office of Central Support Services at Headquarters, after the recommendation by the HCC.

## SUMMARY OF MAIN OBSERVATIONS

The table on the following page provides an overview of the main observations made in this section.

	EU	Spain	UK	UN
Delegation:	Delegation by the College of Commissioners	Delegation by Royal Decree by the Council of Ministers	Delegation by H.M. Treasury	Delegations of certification or authorisation powers by the Under-Secretary-General for Management
Main actors:	<ul style="list-style-type: none"> <li>-Authorising Officer Delegated: Director-General or Head of Service – personal responsibility;</li> <li>-Authorising Officer Sub-delegated: Director or Head of Unit;</li> <li>-Accounting Officer: responsible for implementation of payments, collection of revenue and recovery, and maintaining, preparation of accounts,...</li> </ul>	<ul style="list-style-type: none"> <li>-Authorising Officers Delegated: Ministers or Heads of Service: authorisation of expenditures;</li> <li>-Paymaster Office: approval of expenditures;</li> <li>-Accounting Officer: recording of expenditures.</li> </ul>	<ul style="list-style-type: none"> <li>-Principal Accounting Officers: Permanent secretary or head of a Department;</li> <li>-Delegates further authority within his department, but cannot disclaim responsibility;</li> <li>-Experience, senior manager assist Accounting Officer;</li> <li>Signs an annual Statement on Internal Control (SIC)</li> </ul>	<ul style="list-style-type: none"> <li>-Certifying officer (within requisitioning unit): certifies expenditures;</li> <li>-Approving officer (e.g. procurement officer): approves expenditures within clearly defined thresholds;</li> <li>-“Head-Office Contracts Committee” and “Local-Office Contracts Committee” for large contracts</li> </ul>
Segregation:	<p>Ex-ante verification (operational and financial)</p> <p>Authorisation</p>	Segregation between the “Paymaster” and “Payer”	Principles of effective financial management to be respected in further delegation of authority	Segregation between the requisitioning entities and the procurement entities.

## 4.2. Sanctions against and liabilities of financial actors

This section provides information on how the subject issues of liabilities and sanctions of the main financial actors are dealt with in Spain and the UK. It explains the responsibility of the financial actors in particular, as regards to sanctions, either administrative or disciplinary, or as regards to their liability to payment of compensation.

### INTRODUCTION

In 2004 the Commission adopted Guidelines for applying Article 22 of the Staff Regulation on financial liability of officials. These guidelines detail three conditions to be met simultaneously in order to apply Article 22 of the Staff Regulations: failure to fulfil a legal obligation, damage resulting from this failure and serious personal misconduct.

The guidelines also give details on the extent of redress. In case of deliberate misconduct, a full redress should be sought. In case of serious misconduct involving gross negligence, it is possible to consider only part of the damage.

Finally the guidelines set the procedure for invoking the liability of an official and how to implement a decision based on Article 22.

Since each Institution can define its own guidelines for applying Article 22 there is a risk of inconsistency of the rules. This might result in a situation where different rules apply in the same failure to fulfil a legal obligation under the same conditions depending on the Institution.

In addition to the general rules as laid down in the EU Staff Regulation each authorising officer, accounting officer or imprest administrator in the European Commission may be liable to disciplinary action and payment of compensation if guilty of **specific forms of misconduct** defined in the Financial Regulation. The procedures to be followed in such a case are in accordance with the procedures in the Staff Regulation.

In the cases of infringements of the financial rules (Financial Regulation, its implementing rules and any other provision on financial management and scrutiny of transactions) a specialised Financial Irregularities Panel will provide the Commission's Appointing Authority with the necessary expertise to make decisions. The Financial Regulation defines forms of misconduct for the specific categories of financial actors. In the following situations the financial actor may render himself liable to disciplinary action and/or payment of compensation:

1. Authorising officer (by delegation and subdelegation):
  - He/she omits to draw up a document establishing a debt;
  - He/she neglects to issue a recovery order, or is late in issuing it.
2. Accounting officer:
  - He/she loses or damages monies, assets and documents in his/her keeping;
  - He/she wrongly alters bank accounts or postal giro accounts;
  - He/she recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
  - He/she fails to collect revenue due.



### 3. Imprest officer:

- He/she loses or damages monies, assets and documents in his/her keeping;
- He/she can not provide proper supporting documents for the payments he/she has made;
- He/she makes payments to persons other than those entitled;
- He/she fails to collect revenue due.

When the Appointing Authority decides to initiate a disciplinary procedure it is obliged to hear the staff member involved. Disciplinary measures, other than warning or reprimand, must be proposed to the Disciplinary Board. The Board will investigate the case (including hearing the staff member, calling of witnesses and other steps as appropriate) and send a reasoned opinion to the Appointing Authority. It is up to the Appointing Authority to decide on the specific sanction(s).

In this study we will focus on **following aspects regarding sanctions and liability**:

- Sanctions that apply to financial actors in the expenditure life cycle;
- Different types of sanctions (administrative as well as disciplinary);
- Liability, and protection against liability, of financial actors regarding payment of compensations;
- Procedures to apply a sanction or to enforce a payment of compensation;
- The role of criminal justice versus administrative/internal governance.

## SPAIN

The Spanish law system distinguishes three types of sanctions that can be imposed on public servants:

### 1. Disciplinary sanctions<sup>65</sup>

The decree makes a distinction based on the seriousness of the offence and mentions three categories of offences:

- (1) Very serious offences (such as publication or misuse of official secrets, any act of discrimination in terms of race, sex, religion, ...)
- (2) Serious offences (such as lack of obedience to superiors, causing damage to activities, material or documents)
- (3) Minor offences (such as absence without justification)

These infringements can give rise to the following penalties:

- (a) removal from service
- (b) suspension from duty
- (c) transfer with change of residence
- (d) proportional deduction of income

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<sup>65</sup> Royal Decree 33/1986 regarding the disciplinary regime regulation relating to public servants

(e) a warning (only a minor offence can be corrected by this kind of sanction)

The procedure to impose a disciplinary sanction is always launched by a specific resolution appointing an investigator and a secretary. The procedure must always be notified to the public servant involved who also has a right to be heard.

After investigation, a resolution is proposed by the investigator resolving, in a reasoned manner, all of the issues considered. This resolution is proposed to the body competent to impose the sanction (depending on the sanction this is the Council of Ministers (in case of a removal from service), the minister to whom the servant is assigned or the ministry's deputy secretary).

Irrespective of the administrative appeals against the resolution the accused may appeal to a court of administrative law.

## 2. **Financial sanctions**<sup>66</sup>

Financial sanctions are not fines or penalties but merely remedy for the damage caused. For financial liability to occur, an infringement of the laws on budget and accounting applicable to the public sector must take place. The General Budget Law specifies the following infringements:

- (1) causing a deficit in or misappropriation of public funds;
- (2) managing funds and other rights belonging to the Public Finance Authority, without applying the provisions regulating their calculation, collection or deposit in the Treasury;
- (3) making commitments for expenses, settling obligations and order payments without sufficient credit to carry them out in breach of this law or the applicable budget law;
- (4) giving rise to reimbursement payments
- (5) not justifying the investment of funds mentioned in art. 78 and 79 of the General Budget Law and General Grants Law
- (6) any other act or resolution in breach of this law, in the cases established in art. 176 of the law

These infringements can give rise to the obligation to indemnify for the damage or loss caused, regardless of the criminal or disciplinary sanctions that may also apply.

The reimbursement procedure is initiated by the Court of Auditors in case (1) or by an administrative procedure in all other cases. Appeal against a resolution for indemnity can be made before the Chamber of Justice of the Court of Auditors within two months from the day following its notification. The Judicial Review Chamber hears cassation appeals.

The General Budget Law specifies financial liability. When the infringement is wilful the liability extends to all known damage and losses caused. In the case of gross negligence the servant is only liable for the damage and loss that are a direct consequence of the unlawful act.

The organic Court of Auditors law contains various grounds for exemption from financial liability:

- due obedience;

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<sup>66</sup> Title VII of the General Budget Law and the Court of Auditors law

- breach by another person of their specific obligations;
- lack of human or material resources to fulfil the obligations. This shall release parties from secondary liability, although in this case the burden of proof lies with the suspect.

The General Budget Law also provides an exemption in case the imprest officer or the auditor has recorded in a written observation that the act or resolution is unfounded or unlawful.

### 3. Criminal sentencing<sup>67</sup>

There is a specific criminal law section on the misappropriation of public funds. Two forms of misappropriation by authorities or public servants are liable to penalty:

- Theft of public funds: this infringement is punished by a prison sentence, a suspension from employment or a fine, depending on the type of theft (e.g. heavier punishment when cultural heritage is stolen)
- Use of public funds for a purpose other than public service: this infringement is punished with suspension from employment. If the person involved does not return the funds the same punishments apply as for theft of public funds.

In addition to the above, the General Budget Law also stipulates a penalty regime applicable to the beneficiaries and cooperating entities of misappropriation of public funds. Penalties can both be monetary and non-monetary (e.g. exclusion of possibility to obtain grants or to enter into contract with the public authorities).

It must be noted that financial sanctions constitute merely *remedy* for the damage caused and are compatible with the two other types of sanctions (disciplinary and criminal) which serve as *punishments*.

## UNITED KINGDOM

The Accounting Officers can be subject to a formal inquiry on advice from the appropriate Minister regarding disciplinary issues. The rules are set out in the "Guide to the Scrutiny of Public Expenditure".

An Accounting Officer can be called upon to appear before the Public Accounts Committee (PAC) (Parliament Committee) to provide evidence. These hearings sometimes involve questions about the conduct of officials with regard to regularity or propriety issues. The purpose of these hearings is not only to have more clarity on the facts, but is also aimed at the implication of allocating individual criticism or blame. The PAC does not act as a disciplinary tribunal and does not pursue their own investigation. When an official giving evidence to the PAC is suddenly confronted with a question regarding his/her conduct or that of another named official, than the official should indicate that he/she wishes to seek instructions of his Minister.

In the disciplinary matters, it is the Minister who has to look into the matter and who has to initiate a formal inquiry, when necessary (principle of Ministerial accountability). This formal inquiry into the conduct and behaviour of individual officials and consideration of disciplinary

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<sup>67</sup> General Criminal Code and general Budget Law

action is performed within the Department, taking the concerned procedures and the appropriate safeguards for the individual into account.

The Minister has to inform the PAC on the results of the formal inquiry and the measures that have been taken to correct the situation and to avoid recurrence. The evidence to the Committee on this matter is provided by the Minister or a senior official designated by the Minister, not by the official(s) in question.

In disciplinary and employment matters, the Accounting Officer is obliged to see to it that no individual or identifiable details are made public in order to prevent damage to an individual's reputation. When the PAC would need such details, this information needs to be dealt with in a closed session and on an understanding of confidentiality.

The following principles have to be followed in the case of disciplinary proceedings:

- Information will not be given about Departmental disciplinary proceedings until the hearings are complete;
- When hearings have been completed, the Department will inform the PAC of their outcome in a form which protects the identity of the official(s) concerned;
- Where more detail is needed to enable the Committee to discharge its responsibilities, such detail will be given but on the basis of a clear understanding of its confidentiality;
- The Committee will thereafter be given an account of the measures taken to put right what went wrong and to prevent a repeat of any failures which have arisen from weaknesses in the Departmental arrangements.<sup>68</sup>

Administrative penalties can be levied against organisations that not complied with the relevant guidelines. The National Audit Office (NAO) has a role in applying sanctions in that they will qualify an organisation's accounts if the organisation has incurred expenditure outside its reit. This qualification could lead to an appearance before the PAC.

With regard to Fraud, the Treasury's Fraud Report 2005-2006 of November 2006 provides a classification of the different types of reported fraud and an analysis of their occurrence in UK Government Departments. It also outlines the typical steps in a fraud investigation process. The main ones are described below:

- Ensuring that actions to take if fraud is discovered are clearly described in the organisation's Fraud Response Plan;
- Appointment of a Fraud Investigation Officer to take the lead in the investigation (usually a senior manager);
- Deciding at an early stage the action to be taken with persons under suspicion and whether suspension or dismissal is necessary. Arrangements for interviewing suspects have to be made and, when criminal proceedings are initiated, the Police must be involved;
- Setting up adequate measures to protect the business throughout the process (controlling media);

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<sup>68</sup>[http://www.hm-treasury.gov.uk/documents/financial\\_management/governance\\_government/scrutiny\\_of\\_public\\_expenditure.cfm](http://www.hm-treasury.gov.uk/documents/financial_management/governance_government/scrutiny_of_public_expenditure.cfm), Giving Evidence Before the PAC, section 4.27 to 4.30

- Initiating a thorough review of all operating procedures in the areas affected by the fraud.<sup>69</sup>

Specific examples in the concerned report demonstrate the role that the criminal justice system and internal procedures play in applying sanctions in fraud cases.

## **SUMMARY OF MAIN OBSERVATIONS**

The table on the following page provides an overview of the main observations made in this section.

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<sup>69</sup> [http://www.hm-treasury.gov.uk/media/D18/C1/fraud\\_report2005-06.pdf](http://www.hm-treasury.gov.uk/media/D18/C1/fraud_report2005-06.pdf) : HM Treasury, Fraud Report 2005-06, An Analysis of Reported Fraud in Government Departments, November 2006

<p style="text-align: center;">Spain</p>	<ul style="list-style-type: none"> <li>• The Spanish law system distinguishes three types of sanctions that can be imposed on public servants (disciplinary sanctions, financial sanctions, criminal sentencing)</li> <li>• The procedure to impose a disciplinary or a financial sanction has an administrative stage and (in case of appeal) a stage in court. Criminal sentencing is of course dealt with by a court.</li> <li>• In addition to the sanctions on public servants, financial actors face specific sanctions specified in the General Budget Law.</li> </ul>
<p style="text-align: center;">United Kingdom</p>	<ul style="list-style-type: none"> <li>• In disciplinary matters, it is the Minister who has to look into the matter and who has to initiate a formal inquiry.</li> <li>• Administrative penalties can be levied against organisations that do not comply with the relevant guidelines.</li> </ul>



## 5. INTERNAL CONTROL AND AUDIT

### 5.1. Introduction

Before describing the observations in this matter it is important to distinguish the different actors and concepts related to internal control and audit.

**Internal control** is carried out by management and staff and is integrated into the regular management structures and operation processes and procedures, it is part of management. **Internal audit** is independent from management. Its main task is to perform independent assessments of management's internal control, risk management and governance, and provide recommendations for improvements.

In the Commission internal audit is carried out by the Internal Audit Service (IAS), a horizontal service that reports directly to the College. In addition each service has an Internal Audit Capability (IAC) that reports directly to the Director General.

The **external audit** function in the European institutions is carried out by the European Court of Auditors. Its mission is to audit independently the collection and spending of European Union funds and, through this, to assess the way that the European institutions discharge these functions. The Court examines whether financial operations have been properly recorded, legally and regularly executed and managed so as to ensure economy, efficiency and effectiveness. In undertaking its work, the Court aims to contribute to improving the financial management of European Union funds at all levels, so as to ensure maximum value for money for the citizens of the Union.

Another essential part of modern public management related to transparency, accountability and cost-effectiveness is **evaluation**. Within the Commission it is the responsibility of operational DGs and Services to regularly evaluate the activities they manage. Evaluation typically focuses on some, or all, of the following key issues:

- **Relevance:** to what extent are the objectives of a public intervention (project, programme or policy) appropriate regarding the needs perceived and the problems the intervention is meant to solve?
- **Effectiveness:** what effects (impacts) have been obtained by the intervention and, in particular, have these effect contributed to the achievement of the objectives of the intervention?
- **Efficiency (cost-effectiveness):** how economically have the various inputs been converted into outputs and results? Were the (expected) effects obtained at a reasonable cost?
- **Utility:** do the impacts achieved by an intervention correspond to the needs identified and the problems to be solved?
- **Sustainability:** will the effects achieved last in medium or long term?

In relation to this comparative study, the European Parliament has put forward the following aspects regarding audit:

1. **Monitoring of efficiency:** audit should not only focus on compliance with regulations and the reliability and integrity of financial information. In public management the focus of audit (and evaluation) is likewise on the "quality" of spending. In other words, is the organization using its resources in an efficient and effective way in order to realize its objectives. Other principles are used in these performance related audits.

2. **Recommendations and follow-up:** the mission of audit is to assess the internal control system and, more in general, the performance of an organisation. In accordance with international standards, a report of internal audit suggests actions to management to tackle weaknesses in the current activities. Implementing these recommendations contributes to the objective of internal audit of bringing about continuous improvement to the organisation and its activities.
3. **Impact of the audit performed:** in both public and private sectors audit and risk management are more and more experienced by management as an instrument to manage and to control an organisation and to create added value for the stakeholders. This philosophy is changing the way internal audit and internal control are organised.

## 5.2. Comparative observations

### SPAIN

Like in most European countries the Spanish Court of Auditors is responsible for the external control of the public sector financial and economical activities. The main internal audit body is the General Inspectorate of Economic Activities (“Inspeção-Geral das Actividades Económicas”) (IGAE)<sup>70</sup> and is part of the Ministry for Economy (“Ministério da Economia”). The IGAE acts in compliance with the principles of independence and internal hierarchy.

The activities performed by the IGAE include:

- Substantive Audit: this audit is performed prior to the approval of the use of public funds. It is carried out in two ways: as formal audit which consists of verifying the correct application of regulations and as substantive audit which consists of verifying the correct use of funds (relates to the objective of the funds).

Each year the IGAE submits a general report to the Council of Ministers with the most relevant results.

- Ongoing financial control: this control is exercised over the central government services, the social security management entities and others. Besides verification of the appropriate recording and accounting of the transactions, this control consists of an effectiveness control. This means that the usefulness of the service or investment is analysed as well as compliance with the objectives of the related program without such control being able to issue an opinion on political decisions.

A comprehensive report is compiled each year of the results of the ongoing financial control activities performed during the year. The ongoing financial control activities to be performed in the next year and the specific scope for them are determined in the annual ongoing financial control plan compiled by IGAE. This plan may be modified during the year where justified.

- Public auditing: this consists of the subsequent, systematic verification of economic and financial operations of the state public sector by applying the selective review procedures contained in the auditing standards and instructions issued by the IGAE.

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<sup>70</sup> [http://www.igae.pap.meh.es/Internet/Cln\\_Principal/ClnSEPG/Organizacion/OrganigramaWAI.htm](http://www.igae.pap.meh.es/Internet/Cln_Principal/ClnSEPG/Organizacion/OrganigramaWAI.htm)

With regards to the kind of audits, we can find different categories:

- a. *Compliance audit*: The IGAE performs the compliance audit of those bodies and entities of the state public sector that are included in the annual Audit Program, comprising a selective verification that budgetary management, contracting, personnel, revenues and the management of subsidies, as well as any other aspect of the economic and financial activity of the audited entities, comply with the law.
- b. *Operations audit*: The Spanish State Auditing Agency performs audits on the operations of those bodies and entities in the state public sector that are included in the annual Audit Program, with the scope established therein, through the following types of audit:
  - (1) Audit of budgetary programs;
  - (2) Audit of systems and procedures, consisting of an exhaustive analysis of the administrative financial management procedures;
  - (3) Audit of economy, effectiveness and efficiency, consisting of the independent and objective evaluation of the level of effectiveness, efficiency and economy achieved in the use of public funds.
- c. *Audit of agreements-programmes and monitoring of financial equilibrium programmes*: In cases where the contributions to be made by the State are conditional upon the fulfilment of certain objectives, the amount or performance of certain financial aggregates or on certain macroeconomic assumptions being met, the Spanish State Auditing Agency shall perform an audit with the purpose of verifying whether the payment proposal submitted by the body stipulated in the agreement complies with the predefined conditions.
- d. *Audit of the account of state taxes*: The audit of the account of state taxes and the funds of other authorities and public bodies managed by the State Tax Agency shall be performed annually, in accordance with the procedure established for such purpose by the Spanish State Auditing Agency.
- e. *Audit of the service provider companies of the Social Security*: The public audit of the service provider companies shall be performed through the Social Security Auditing Agency with respect to the management of welfare actions referred to in the General Social Security Law (Article 77RCL1994\1825).
- f. *Audit of privatisations*: The Spanish State Auditing Agency shall perform the audit of each sale of shares that entail a loss of voting control over state business companies. Such audits are performed on the statement of transaction revenues and expenses and on the explanatory report on the aspects of the transaction that must be issued.

In case of a disagreement by the management body with an objection made as result of an audit prior to the approval of an act or prior to the use of public funds (see "Audit function"), a special procedure is foreseen. If an objection is made by another authorised audit function (e.g. social security auditing agency) the IGEA is responsible for resolving the disagreement and its resolution is compulsory for the bodies involved. If the initial objection was made by the IGEA the Council of Ministers is responsible for adopting a final resolution.

## OECD

An article on recent international trends in control was published in volume 4, number 2 of the OECD Journal on Budgeting in 2004. "Public Sector Modernisation: Modernising Accountability and Control"<sup>71</sup> by Michael Ruffner and Joaquin Sevilla provides an insight into changes over the past two decades.

The main trend in OECD countries is the move from a system where payments were approved in advance by a controller outside the department that would be spending the money, to a more balanced system of external and internal control where some control has been devoted to the spending agency or department's management. The latter now has greater autonomy to decide how best to use its resources to perform its functions effectively, reliably and in compliance with relevant regulations. The centralised system emphasised ensuring that all spending was legal and complied with regulations. The devolved system has the advantage of ensuring that the use of resources seeks to achieve the priorities and objectives of the agency or the department.

The **fundamental challenge** to control systems is managing the move from a situation where managers are above all expected to conform to rules to one where they are given flexibility to achieve wider goals. In other words, the model of control is moving from a fundamental distrust of management to a system that values management and relies on it to take calculated risks and make decisions based on performance.

OECD countries are increasingly focussing on the **performance of the public sector**. Performance-oriented budgeting and management requires government to specify clearly the objectives and expected outcomes of a project before allocating resources to it and to develop performance measures that will enable the success or otherwise of the project to be assessed.

## UNITED KINGDOM

The audit function in the UK is performed by 4 different bodies. Hereafter we describe the role and responsibility of each body.

### 1. Internal audit

Internal Audit<sup>72</sup> provides an independent and objective opinion to the Accounting Officer on risk management, control and governance. This opinion will normally take the form of a narrative summarising relevant strengths and weaknesses and their implications. An Accounting Officer needs to be adequately informed of the effectiveness of their internal control system in order to prepare the Statement of Internal Control. In terms of accountability to Parliament, which is the primary line of accountability of the Accounting Officer, it is clear that the Committee of Public Accounts does not accept lack of knowledge of weaknesses in control as an adequate defence for the realisation of risk which could have been controlled or for risk taking which has not been well managed. The Accounting Officer therefore needs a reliable and evidenced opinion on risk, control and governance.

It is important to note that the Internal Audit opinion does not supersede the Accounting Officer's personal responsibility for risk, control and governance and as long as internal audit work is

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<sup>71</sup> <http://www.oecd.org/dataoecd/48/43/35934179.pdf>

<sup>72</sup> This in the definition of Internal Audit in the "Government Internal Audit Standards (GIAS).

demonstrably conducted in accordance with the Standard on Due Professional Care there can be no question of internal auditors being responsible for control failures.

*Specific topics:*

A. Internal audit and fraud:

Audit procedures alone, even when performed with due professional care, cannot guarantee that fraud will be detected. Internal audit has no responsibility for the prevention or detection of fraud. Managing the risk of fraud is the responsibility of line management. However internal auditors should be alert in all their work to risks and exposures that could allow fraud.

Line management may establish a functionally independent fraud detection and prevention organisation. Where they establish a separate fraud unit, the *relationship* between this organisation's head and the Head of Internal Audit *should be formally defined*.

B. Internal audit and value for money<sup>73</sup>

Internal audit can make a contribution in improving value for money in the procurement context. The focus of their work is not solely on quantitative and financial measures of performance but also effectiveness such as the quality of service which departments get from their procurement.

With *longer term contracts* Internal Audit is particularly concerned that the whole life cycle of the procurement from the purchase of goods and services to their disposal or termination represents value for money.

Internal audit's examination of procurement may be part of a planned, regular cycle or in response to an unforeseen occurrence. Options include:

- A Multiannual audit: every few years internal audit may carry out a complete review of the overall procurement function;
- An Annual programme: selected procurement issues, policies and systems agreed for specific study;
- In-year studies: unplanned, urgent or emerging issues where audit can assist in resolving problems or taking advantage of opportunities;

In addition to this, Internal Audit can help at the *different stages and levels of the procurement process*:

- Pre-emptive, advisory role: helping to ensure that appropriate and sufficient procurement competence is involved at an early stage in policy developments and in major procurement projects, and that procurement options are fully considered by the project manager/sponsor and the steering group;
- Risk assessment: checking that a procurement risk assessment has been carried out by project teams in accordance with Treasury guidelines, that risks are monitored on an ongoing basis and that corrective action is taken where appropriate;
- Gateway review: internal audit may be involved in checking that gateway reviews are carried out at appropriate stages in the life of a project or procurement;

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<sup>73</sup> The NAO report entitled "Getting Value for Money from Procurement"

- Post-implementation review: on completion and/or at agreed stages in the life of a long-term contract to examine whether planned value for money benefits are being achieved and risks are being effectively managed.,

## 2. Audit committees<sup>74</sup>

Accounting Officers cannot know the detail of everything that is going on in the organisation – so they need a means of gaining assurance about what is going on, and further assurance about the robustness of the assurance mechanisms that are in place. Knowing that there are assurances available about the way in which the organisation is conducting its business, and knowing that these assurances are robust and reliable, is also the best preparation an Accounting Officer can have for being held to public account.

The main method of gaining these assurances is through an Audit Committee which carries out its work by reviewing and challenging the assurances which are available to the Accounting Officer, the way in which these assurances are developed, and the management priorities and approaches on which the assurances are premised. Whilst there is a range of detailed responsibilities which might be assigned to the Audit Committee, it is not the task of an Audit Committee to substitute for the executive function in the management of Internal Audit, risk management, corporate governance, stewardship reporting, control and risk self-assessment, or any other review or assurance function. However the Audit Committee should offer opinions or recommendations on the way in which such management is conducted.

Some of the principles applying to the Audit Committees are:

- The objectivity of the advice given is enhanced if the Audit Committee is chaired by a non-executive or independent external member.
- In bodies which have insufficient non-executive Management Board members, appropriate individuals should be sought for appointment as independent external members of the Audit Committee.
- The number of members on the Audit Committee should ideally be in the range of three to five members. The Accounting Officer (or Chief Executive) and the Principal Finance Officer (or Finance Director) should normally attend meetings, as should the Head of Internal Audit and the External Audit representative.
- The Head of Internal Audit and the senior member of the external audit team should have right of access to the Audit Committee.

## 3. National Audit Office<sup>75</sup>

The National Audit Office (NAO) scrutinises public spending on behalf of Parliament. The NAO is totally independent of Government and is headed by the Comptroller and Auditor General (C&AG).

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<sup>74</sup> [http://www.hm-treasury.gov.uk/media/8D2/62/audit\\_committee\\_handbook2003.pdf](http://www.hm-treasury.gov.uk/media/8D2/62/audit_committee_handbook2003.pdf). This is a handbook prepared to provide those responsible for establishing and appointing Audit Committees, and members of Audit Committees, with support in their respective roles. It contains a description of the principles of having an Audit Committee as well as model terms of reference, suggested questions they should ask and a competency framework.

<sup>75</sup> More information on [www.nao.gov.uk](http://www.nao.gov.uk)



The role of the Comptroller and Auditor General (C&AG), as head of the National Audit Office (NAO), is to report to Parliament on the spending of central government money. NAO conducts financial audits of all government departments and agencies and many other public bodies, and report to Parliament on the value for money with which these bodies have spent public money. Their relations with Parliament are central to their work, and they work closely with the Committee of Public Accounts. They also work closely with other public audit bodies that have a role in other areas of public expenditure.

*A. Financial Audit:*

The C&AG is required to form an opinion on the accounts, as to whether they are free from material mis-statements. The C&AG is also required to confirm that the transactions in the accounts have appropriate Parliamentary authority. If the NAO identify material mis-statements, the C&AG will issue a qualified opinion. Where there are no material errors or irregularities in the accounts, the C&AG may nonetheless prepare a report to Parliament on other significant matters. Such reports may be considered by the Committee of Public Accounts of the House of Commons. Even if no report is made, the NAO will still, where appropriate, write a letter to the management of a body outlining where improvements in their systems could be made. Such 'management letters' often lead to significant changes.

*B. Value for Money Audit:*

Both external audit and internal audit should be concerned that value for money is achieved and that appropriate controls are in place so that expenditure is reliably recorded. In designing control, it is important that both the control in place and the cost of applying it is proportional to the risk. It is normally sufficient to design control to give a *reasonable assurance* of confining likely loss within the risk appetite of the organisation.

External and internal audit can also make an important contribution by adopting a forward looking and constructive approach to:

- Reviewing how departments and agencies determine the need for goods and services and how they procure them. This review enables audit to identify how this might be done better;
- Highlighting good procurement practice backed up by practical examples;
- Supporting well managed risk taking and innovation that is likely to lead to sustainable improvements in both the cost of procurement and the quality of the goods and services purchased;
- Ensuring that departments and agencies have overall organisational and management capability to undertake large, novel and contentious projects.

The NAO's strategy is to carry out a series of studies from time to time on procurement as part of their statutory remit to report to Parliament on the economy, efficiency and effectiveness with which departments use their resources, and as part of their general support to improve value for money from procurement.

In order to achieve more efficient "joined-up" audit, the NAO draws on the work of internal audit wherever practical. They use staff with a wide range of professional expertise, bringing in outside consultants where necessary.



#### 4. Audit Commission<sup>76</sup>

The Audit Commission appoints independent auditors to local government, health and criminal justice organisations, and regulates the work they do. Most of these auditors are employees of the Audit Commission. The rest come from private firms.

They also inspect public services and report back to the public on the results. Through inspections of local services they assess their quality and cost effectiveness, and help local authorities to continually improve.

In cases of serious underperformance by a local authority the Commission has the power to recommend that the Secretary of State uses his or her discretion to give direction to an authority.

## UNITED NATIONS

The Office of Internal Oversight Services (OIOS) is responsible for conducting independent internal audits in conformity with generally accepted auditing standards. Internal auditor reviews, evaluates and reports on the use of financial resources and on the effectiveness, adequacy and application of internal financial control systems, procedures and other relevant internal controls.

In this report we highlight specific items relating to internal audit in the UN that might be of interest for the services of the EU institutions.

### 1. Monitoring recommendations<sup>77</sup>

In order to streamline monitoring of the implementation of recommendations, OIOS launched a single recommendation database, known as Issue Track, in February 2006. Issue Track replaced seven disparate databases that had been used by the Office in the past.

The new instrument will not only improve OIOS reporting to the General Assembly and the Secretary-General on the implementation status of recommendations but it will also allow OIOS to differentiate each action efficiently, based on its implementation time frame.

As a next step, the entities audited by the OIOS will be able to conduct an online dialogue via web browser to discuss their progress in implementing each recommendation. This new feature will contribute to increasing the programme managers' ownership of and responsibility for the implementation of recommendations and will improve overall implementation rates.

### 2. A more structured and focused mechanism to assess risks

The Office is responsible for providing services to a wide range of diverse and complex operations that are constantly changing. It is imperative that OIOS remains current on these changes and that it has a mechanism in place to ensure that emerging issues and potential exposures are identified.

In June 2006 the Office launched a systematic risk-assessment methodology to develop risk-based workplans resulting in oversight priorities. To complete this ambitious exercise, OIOS will require external assistance, a full-time risk assessment focal point and dedication by many staff beyond their normal duties.

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<sup>76</sup> Based on information on [http:// www.audit-commission.gov.uk/aboutus/whatwedo](http://www.audit-commission.gov.uk/aboutus/whatwedo)

<sup>77</sup> Based on the Report of the activities of the OIOS Part I, 15 August 2006.

To better focus its resources on the areas of highest risk, the Office must work in partnership with the management of the entities to which it provides services.

Once completed (expected by the end of 2007), the risk assessment will provide OIOS with a structured framework to justify the areas that it views as representing the highest risk to the organisation as well as a means to identify the resources required to conduct the assignments to address them.

Through its resource allocation, the organisation will be able to determine its risk tolerance, that is, the level of risk it is willing to accept. If resources are insufficient to cover all areas some areas could be left without or with limited oversight coverage.

## **SUMMARY OF MAIN OBSERVATIONS**

The table on the following page provides an overview of the main observations made in this section.

<p>Spain</p>	<ul style="list-style-type: none"> <li>• The internal audit body performs audits:               <ul style="list-style-type: none"> <li>○ Prior to the use of public funds</li> <li>○ On an ongoing basis (appropriate recording of transactions and effectiveness control)</li> <li>○ Public auditing (compliance audit, operations audit, ...)</li> </ul> </li> </ul>
<p>United Kingdom</p>	<ul style="list-style-type: none"> <li>• The audit function is performed by 4 different bodies.</li> <li>• Internal audit has a strong focus on improving procurement value for money.</li> <li>• Internal audit can help at different stages and levels of the procurement process.</li> <li>• The National Audit Office strategy is to carry out a series of studies on procurement as part of their statutory remit to report to Parliament.</li> </ul>
<p>United Nations</p>	<ul style="list-style-type: none"> <li>• Two important projects were launched recently in the internal audit office:               <ul style="list-style-type: none"> <li>○ Streamlining the monitoring of recommendations</li> <li>○ A more structured and focused mechanism to assess risks</li> </ul> </li> </ul>

## 6. REPORTING REQUIREMENTS IN CASE OF IRREGULAR EVENTS, CORRUPTION OR FRAUD

In the Staff Regulation there are specific requirements in force in the event a staff member is faced with an irregular or illegal activity, including **fraud or corruption**. These reporting requirements are generally referred to as whistleblowing rules. On top of these whistleblowing rules article 60(6) of the Financial Regulations defines the reporting obligations in case a member of staff involved in financial management or control of transactions is required by his/her superior to apply or to agree to a decision he/she considers to be **irregular or contrary to the principles of sound financial management**.

In May 2006 a study called "*Whistleblowing rules: Best practice; assessment and revision of rules existing in EU institutions*" was presented to the European Parliament's Committee on Budgetary Control. This comprehensive study explains the concept of whistleblowing and its importance notably for risk management. It reports different approaches from UK, USA and from other law traditions. From this it distills 18 elements constituting Best Practices and which can be used for benchmarking. The current rules on whistleblowing in EU institutions are described and discussed in their context. The assessment against the benchmarks leads to proposals for a revision of these rules.

Since the Whistleblowing report covers at great length all issues related to events of suspicion of fraud or corruption this comprehensive study does not intend to repeat the work already done.

The main recommendations put forward in the study are:

- A turn-around in the internal risk communication culture needs to be achieved as soon as possible. The disclosure of risk information is meant to raise attention and not to criticise a person.
- The organisational framework can be constructed to facilitate or to impede risk communication. The study has shown that in spite of all the good intentions laid into the current rules there can be no doubt that these very rules impede proper risk communication in the EU institutions. There is a mechanism that stresses only a duty to report. The Institutions promise no more than not to react negatively, if officials comply with these rules. This cannot be seen as an encouragement. Furthermore the duty to report is so described that it seems virtually impossible to comply "honestly and reasonably".
- The paper describes the best practice as it should be adapted by a large international organisation such as the EU Institutions. The 18 points of this best practice can serve as a model to start a consultation process with staff and seek the necessary adaptations at the interfaces with other existing EU rules and bodies.

The goal is to organise risk communication in such a way that the risk information reaches the person or unit where it can be properly assessed and dealt with, at an early stage. Risk communication needs to be welcomed and put to use in the risk management cycle (e.g. during risk assessment by internal audit) so that potential whistleblowers know that disclosing their knowledge will be useful and will not lead to adverse reactions or negative consequences for them.

In case a member of staff considers a decision as irregular or contrary to the principles of sound financial management he/she should seek written confirmation from his immediate superior (this obligation is not different from the general provision defined in the Staff Regulation on irregular activities). If the decision is confirmed the staff member informs the authorising officer by

delegation of the decision in question. If the authorising officer does not quash the decision nor confirms it, the staff member shall inform **the Financial Irregularities Panel**.

The Financial Irregularities Panel is an advisory board intended to provide the Appointing Authority with the necessary expertise on financial irregularities. It is up to each European Institution to organise its Panel. The Commission has done so in Commission Decision C(2003)2247/2.

In cases of financial error or suspected irregularity which do not involve fraud, the Director-General of the department concerned will, before initiating a disciplinary procedure, submit the case to the panel. This panel will consider whether there are systemic shortcomings and, if so, the relevant role of the person responsible for the management and control system. The panel has an advisory role and it is an intermediary step between the detection of an irregularity and the launching, if appropriate, of a formal disciplinary procedure. The official involved has the right to be heard by the panel.

On the basis of our consultation we have not observed boards with a directly similar function to the Financial Irregularities Panel in other Member States or within organisations similar to the EU Institutions.