

(Acts adopted under Title V of the Treaty on European Union)

COUNCIL JOINT ACTION 2004/551/CFSP

of 12 July 2004

on the establishment of the European Defence Agency

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 14 thereof,

Whereas:

- (1) On 19 and 20 June 2003 the European Council at Thessaloniki tasked 'the appropriate bodies of the Council to undertake the necessary actions towards creating, in the course of 2004, an intergovernmental agency in the field of defence capabilities development, research, acquisition and armaments'.
- (2) The European Security Strategy endorsed by the European Council identifies the establishment of a Defence Agency as an important element towards the development of more flexible and efficient European military resources.
- (3) The European Defence Agency (the Agency), which should be subject to the Council's authority and open to participation by all Member States, will aim at developing defence capabilities in the field of crisis management, promoting and enhancing European armaments cooperation, strengthening the European defence industrial and technological base (DTIB) and creating a competitive European defence equipment market, as well as promoting, in liaison with the Community's research activities where appropriate, research aimed at leadership in strategic technologies for future defence and security capabilities, thereby strengthening Europe's industrial potential in this domain.
- (4) Relevant policies and strategies should be brought forward, in consultation with the Commission and industry as appropriate, to develop the European DTIB in a balanced fashion, taking into account the strengths of the industrial capacities of the Member States.
- (5) The establishment of the Agency should contribute to the implementation of the Common Foreign and Security Policy (CFSP), in particular the European Security and Defence Policy (ESDP).
- (6) Such an Agency is also envisaged in the draft Treaty establishing a Constitution for Europe.
- (7) The Agency structure should enable it to respond to the requirements of the European Union and its Member States and, where necessary to fulfil its functions, to cooperate with third countries, organisations and entities.
- (8) The Agency should develop close working relations with existing arrangements, groupings and organisations such as Letter of Intent (LoI), Organisation de coopération conjointe en matière d'armement (OCCAR) and Western European Armaments Group (WEAG)/Western European Armaments Organisation (WEAO), with a view to assimilation or incorporation of relevant principles and practices as appropriate.
- (9) The Secretary-General/High Representative (SG/HR), in accordance with Article 26 of the Treaty on European Union (TEU), should have a leading role in the Agency's structure and provide the essential link between the Agency and the Council.
- (10) In the exercise of its role of political supervision and policy-making, the Council should issue guidelines to the Agency.
- (11) When adopting guidelines and decisions in relation to the work of the Agency, the Council should meet in Defence Ministers' composition.
- (12) Any guidelines or decisions adopted by the Council in relation with the Agency's work shall be prepared in accordance with Article 207 of the Treaty establishing the European Community.
- (13) The competences of the Council's preparatory and advisory bodies, notably those of the Committee of Permanent Representatives under Article 207 of the Treaty establishing the European Community, the Political and Security Committee (PSC) and the EU Military Committee (EUMC) shall remain unaffected.
- (14) The National Armaments Directors (NAD) should, in a way to be defined, receive reports and contribute on issues of their competence in preparation of Council decisions relating to the Agency.

- (15) The Agency should have the legal personality necessary to perform its functions and attain its objectives, while maintaining close links with the Council and fully respecting the responsibilities of the European Union and its institutions.
- (16) It should be provided that the budgets administered by the Agency may, on a case-by-case basis, receive contributions towards the non-administrative costs, from the general budget of the European Union, in full respect of the rules, procedures and decision-making processes applicable to it, including Article 28(3) TEU.
- (17) The Agency, while being open to participation by all Member States, should also provide for the possibility of specific groups of Member States establishing ad hoc projects or programmes.
- (18) The Agency should have decision-making procedures allowing it to fulfil its tasks efficiently, while respecting the national security and defence policies of participating Member States.
- (19) The Agency should fulfil its mission in accordance with Article 3 TEU and in full respect of Article 47 TEU.
- (20) The Agency should act in full conformity with the EU security standards and rules.
- (21) In conformity with Article 6 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications. Denmark has therefore not participated in the elaboration and adoption of this Joint Action and shall not be bound by it,

HAS ADOPTED THIS JOINT ACTION:

CHAPTER I

ESTABLISHMENT, MISSION AND TASKS OF THE AGENCY

Article 1

Establishment

1. An Agency in the field of defence capabilities development, research, acquisition and armaments (the European Defence Agency), hereinafter referred to as 'the Agency', is hereby established.
2. The Agency shall act under the Council's authority, in support of the CFSP and the ESDP, within the single institu-

tional framework of the European Union, and without prejudice to the responsibilities of the EU institutions and the Council bodies. The Agency's mission shall be without prejudice to the competences of the European Community, in full respect of Article 47 TEU.

3. The Agency shall be open to participation by all EU Member States bound by this Joint Action. Member States who wish to participate immediately in the Agency shall notify their intention to do so to the Council and inform the SG/HR at the time of the adoption of this Joint Action.

4. Any Member State wishing to participate in the Agency after the adoption of this Joint Action or wishing to withdraw from the Agency shall notify its intention to the Council and inform the SG/HR. Any necessary technical and financial arrangements for such participation or withdrawal shall be determined by the Steering Board.

5. The Agency shall have its headquarters in Brussels.

Article 2

Mission

1. The mission of the Agency is to support the Council and the Member States in their effort to improve the EU's defence capabilities in the field of crisis management and to sustain the ESDP as it stands now and develops in the future.

2. The Agency's mission shall be without prejudice to the competences of Member States in defence matters.

Article 3

Definitions

For the purpose of this Joint Action:

- 'participating Member States', shall mean the Member States of the European Union who participate in the Agency,
- 'contributing Member States', shall mean the participating Member States of the European Union contributing to a particular project or programme.

Article 4

Political supervision and reporting arrangements

1. The Agency shall operate under the authority and the political supervision of the Council, to which it shall provide regular reports and from which it shall receive regular guidelines.

2. The Agency shall report regularly to the Council on its activities, and shall notably:

- (a) submit to the Council in May each year a report on the Agency's activities during the previous and the current year;
- (b) submit to the Council in November each year a report on the Agency's activities during the current year and provide information on the draft elements for the Agency's work programme and budgets for the following year.

The Agency shall provide the Council in good time with information on important matters to be submitted to the Steering Board for decision.

3. The Council, acting by unanimity, and with advice from the PSC or other competent Council bodies as appropriate, shall issue guidelines annually in relation to the work of the Agency, notably with regard to its work programme. The Agency's work programme shall be established within the framework of these guidelines.

4. Every three years, the Council, acting by unanimity, shall approve a financial framework for the Agency for the following three years. This financial framework shall set out agreed priorities and shall constitute a legally binding ceiling. The first financial framework shall cover the period 2006 to 2008.

5. The Agency may make recommendations to the Council and to the Commission as necessary for the implementation of its mission.

Article 5

Functions and tasks

1. In fulfilling its functions and tasks, the Agency shall respect the competences of the European Community and those of the EU institutions.

2. The Agency's fulfilment of its functions and tasks shall be without prejudice to the competences of Member States in defence matters.

3. The Agency shall work in the following principal fields:

3.1. Development of defence capabilities in the field of crisis management, in particular by:

- 3.1.1. identifying, in association with the competent Council bodies, and utilising the Capability Development Mechanism (CDM), the EU's future defence capability requirements in quantitative and quali-

tative terms (encompassing both forces and equipment);

3.1.2. coordinating the implementation of the European Capabilities Action Plan (ECAP) and any successor plan;

3.1.3. scrutinising, assessing and evaluating against criteria to be agreed by the Member States the capability commitments given by the Member States through the ECAP process, and utilising the CDM;

3.1.4. promoting and coordinating harmonisation of military requirements;

3.1.5. identifying and proposing collaborative activities in the operational domain;

3.1.6. providing appraisals on financial priorities for capabilities development and acquisition.

3.2. Promotion and enhancement of European armaments cooperation, in particular by:

3.2.1. promoting and proposing new multilateral cooperative projects to meet ESDP capabilities requirements as they stand now and develop in the future;

3.2.2. working for coordination of existing programmes implemented by Member States;

3.2.3. assuming, at the request of Member States, responsibility for managing specific programmes (through OCCAR or other programme management arrangements as appropriate);

3.2.4. promoting cost-effective and efficient procurement by identifying and disseminating best practices.

3.3. Working to strengthen the DTIB and for the creation of an internationally competitive European Defence Equipment Market in particular by:

3.3.1. developing relevant policies and strategies, in consultation with the Commission and industry as appropriate;

3.3.2. pursuing EU-wide development and harmonisation of relevant rules and regulations (particularly by an EU-wide application of relevant rules of the LoI Framework Agreement).

3.4. Enhancement of the effectiveness of European Defence Research and Technology (R & T), in particular by:

- 3.4.1. promoting, in liaison with the Community's research activities where appropriate, research aimed at fulfilling future defence and security capability requirements and thereby strengthening Europe's industrial and technological potential in this domain;
- 3.4.2. promoting more effectively targeted joint defence R & T, drawing on the experience of relevant elements of the WEAG and the WEAO;
- 3.4.3. coordinating and planning joint research activities;
- 3.4.4. catalysing defence R & T through studies and projects;
- 3.4.5. managing defence R & T contracts;
- 3.4.6. working in liaison with the Commission to maximise complementarity and synergy between defence and civil or security related research programmes.

Article 6

Legal personality

The Agency shall have the legal personality necessary to perform its functions and attain its objectives. Member States shall ensure that the Agency enjoys the most extensive legal capacity accorded to legal persons under their laws. The Agency may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings. The Agency shall have the capacity to conclude contracts with private or public entities or organisations.

CHAPTER II

ORGANS AND STAFF OF THE AGENCY

Article 7

Head of the Agency

1. The Head of the Agency shall be the SG/HR for the CFSP.
2. The Head of the Agency shall be responsible for the Agency's overall organisation and functioning and shall ensure that the guidelines issued by the Council and the decisions of the Steering Board are implemented by the Chief Executive, who shall report to him/her.

3. The Head of the Agency shall present the Agency's reports to the Council as referred to in Article 4(2).

4. The Head of the Agency shall be responsible for the negotiation of administrative arrangements with third countries and other organisations, groupings or entities in accordance with directives given by the Steering Board. Within such arrangements, as approved by the Steering Board, the Head of the Agency shall be responsible for establishing appropriate working relations with them.

Article 8

Steering Board

1. A Steering Board composed of one representative of each participating Member State, authorised to commit its government, and a representative of the Commission, shall be the decision-making body of the Agency. The Steering Board shall act within the framework of the guidelines issued by the Council.

2. The Steering Board shall meet at the level of the Ministers of Defence of the participating Member States or their representatives. The Steering Board shall in principle hold at least two meetings each year at the level of Ministers of Defence.

3. The Head of the Agency shall convene and chair the Steering Board's meetings. If a participating Member State so requests, the Head of the Agency shall convene a meeting within one month.

4. The Head of the Agency may delegate the power to chair the Steering Board's meetings at the level of the representatives of the Ministers of Defence.

5. The Steering Board may meet in specific compositions (such as National Defence Research Directors, National Armaments Directors, National Defence Planners or Policy Directors).

6. The Steering Board meetings are attended by:

- the Chief Executive of the Agency or his/her representative,
- the Chairman of EUMC and the NAD of the EU Presidency, or their representative.

7. The Steering Board may decide to invite, on matters of common interest:

- the NATO Secretary-General,

- the Heads/Chairs of other arrangements, organisations or groupings whose work is relevant to that of the Agency (such as LoI, WEAG/WEAO, OCCAR),
- as appropriate, representatives of other third parties.

Article 9

Tasks and powers of the Steering Board

1. Within the framework of the guidelines of the Council referred to in Article 4(1), the Steering Board:

- 1.1. approves the reports to be submitted to the Council;
- 1.2. approves, on the basis of a draft submitted by the Head of the Agency, and no later than 31 December of each year, the Agency's annual work programme for the following year;
- 1.3. adopts the Agency's general budget no later than 31 December of each year within the limits set in the Agency's financial framework as decided by the Council;
- 1.4. approves the establishment within the Agency of ad hoc projects or programmes in accordance with Article 20;
- 1.5. appoints the Chief Executive and his/her deputy;
- 1.6. decides that the Agency may be entrusted by one or more Member States with the administrative and financial management of certain activities within its remit in accordance with Article 17;
- 1.7. approves any recommendation to the Council or the Commission;
- 1.8. adopts the Agency's rules of procedure;
- 1.9. may amend the financial provisions for the implementation of the Agency's general budget;
- 1.10. may amend the rules and regulations applicable to the contractual staff and national seconded experts;
- 1.11. determines the technical and financial arrangements regarding Member States' participation or withdrawal referred to in Article 1(4);
- 1.12. adopts directives regarding the negotiation of administrative arrangements by the Head of the Agency;

1.13. approves the ad hoc arrangements referred to in Article 23(1);

1.14. concludes the administrative arrangements between the Agency and third parties referred to in Article 25(1);

1.15. approves the annual accounts and balance sheet;

1.16. adopts all other relevant decisions relating to the fulfilment of the Agency's mission.

2. The Steering Board shall take decisions by qualified majority. The votes of the participating Member States shall be weighted in accordance with Article 23(2) TEU. Decisions to be adopted by the Steering Board by qualified majority shall require at least two thirds of the votes of the participating Member States. Only the representatives of the participating Member States shall take part in the vote.

3. If a representative of a participating Member State in the Steering Board declares that, for important and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. That representative may refer the matter, through the Head of the Agency, to the Council with a view to issuing guidelines to the Steering Board, as appropriate. Alternatively, the Steering Board, acting by qualified majority, may decide to refer the matter to the Council for decision. The Council shall act by unanimity.

4. The Steering Board, on a proposal from the Chief Executive or from a participating Member State, may decide to set up:

- (a) committees for the preparation of administrative and budgetary decisions of the Steering Board, composed of delegates of the participating Member States and a representative of the Commission;
- (b) committees specialised in specific issues within the Agency's remit. These committees shall be composed of delegates of the participating Member States and, unless the Steering Board decides otherwise, a representative of the Commission.

The decision to establish such committees shall specify their mandate and duration.

Article 10

The Chief Executive

1. The Chief Executive, and his/her Deputy, are appointed by the Steering Board on a proposal from the Head of the Agency for three years. The Steering Board may grant a two-year extension. The Chief Executive, and his/her Deputy, shall act under the authority of the Head of the Agency and in accordance with the decisions of the Steering Board.

2. The Chief Executive, assisted by his/her deputy, shall take all necessary measures to ensure the efficiency and effectiveness of the Agency's work. He/she is responsible for the oversight and coordination of the functional units, in order to ensure the overall coherence of their work. He/she shall be the head of the Agency's staff.

3. The Chief Executive is responsible for:

- 3.1. ensuring the implementation of the Agency's annual work programme;
- 3.2. preparing the work of the Steering Board, in particular the draft annual work programme of the Agency;
- 3.3. ensuring close cooperation with and providing information to the Council preparatory bodies, notably the PSC and the EUMC;
- 3.4. preparing the draft annual general budget to be submitted to the Steering Board;
- 3.5. preparing the reports referred to in Article 4(2);
- 3.6. preparing the statement of revenue and expenditure and implementing the Agency's general budget and the budgets of ad hoc projects or programmes entrusted to the Agency;
- 3.7. the day-to-day administration of the Agency;
- 3.8. all security aspects;
- 3.9. all staff matters.

4. Within the work programme and the general budget of the Agency, the Chief Executive shall be empowered to enter into contracts and to recruit staff. The Chief Executive shall be the authorising officer responsible for the implementation of the budgets administered by the Agency.

5. The Chief Executive shall be accountable to the Board.

6. The Chief Executive shall be the legal representative of the Agency.

Article 11

Staff

1. The staff of the Agency, including the Chief Executive, shall consist of contract and statutory staff members recruited from among candidates from all participating Member States on the broadest possible geographical basis, and from the EU institutions. The staff of the Agency shall be selected by the Chief Executive on the basis of relevant competence and expertise and through fair and transparent competition procedures. The Chief

Executive shall publish in advance details of all available positions and the criteria relevant to the selection process. In all cases, recruitment shall be directed to securing for the Agency the services of staff of the highest standard of ability and efficiency.

2. The Head of the Agency, upon a proposal from the Chief Executive and following consultation with the Steering Board, shall appoint the staff of the Agency at senior management level.

3. The Agency's staff shall consist of:

- 3.1. personnel recruited directly by the Agency under fixed-term contracts, selected among nationals of participating Member States. The Council, acting by unanimity, shall approve the regulations applicable to such staff. The Steering Board shall, within one year of the adoption of this Joint Action, review and amend, as necessary, these regulations;
- 3.2. national experts seconded by participating Member States either to posts within the Agency organisational structure or for specific tasks and projects. The Council, acting by unanimity, shall approve the rules applicable to such experts. The Steering Board shall, within one year of the adoption of this Joint Action, review and amend, as necessary, these rules;
- 3.3. Community officials seconded to the Agency for a fixed period and/or for specific tasks or projects as required.

CHAPTER III

BUDGET AND FINANCIAL RULES

Article 12

Budgetary principles

1. Budgets, drawn up in euro, are the acts which for each financial year lay down and authorise all the revenue and expenditure administered by the Agency.

2. The appropriations entered in a budget are authorised for the duration of a financial year which begins on 1 January and ends on 31 December of the same year.

3. For each budget, revenue and expenditure must be balanced. All revenue and expenditure shall be entered in full in the relevant budget without any adjustment against each other.

4. The budget shall contain differentiated appropriations, which shall consist of commitment appropriations and payment appropriations and non-differentiated appropriations.

5. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year. However, commitments may be made globally or in annual instalments. Commitments shall be entered into the accounts on the basis of the legal commitments entered into up to 31 December.

6. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years. Payments shall be entered in the accounts on the basis of the budget commitments up to 31 December.

7. The revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year.

8. Neither revenue nor expenditure may be implemented other than by allocation to a heading in the budget and within the limit of the appropriations entered there.

9. Appropriations shall be used in accordance with the principles of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.

Article 13

The general budget

1. The Head of the Agency shall provide the Steering Board by 30 June each year with an overall estimate of the draft general budget for the following year, fully respecting the limits set down in the financial framework.

2. The Head of the Agency shall propose the draft general budget to the Steering Board by 30 September each year. The draft shall include:

(a) the appropriations deemed necessary:

- (i) to cover the Agency's running, staffing and meeting costs;
- (ii) for procuring external advice, notably operational analysis, essential for the Agency to discharge its tasks, and for specific research and technology activities for

the common benefit of all participating Member States, notably technical case-studies and pre-feasibility studies;

(b) a forecast of the revenue needed to cover expenditure.

3. The Steering Board shall aim to ensure that the appropriations referred to in paragraph 2(a)(ii) shall represent a significant share of the total appropriations referred to in paragraph 2. These appropriations shall reflect actual needs and shall allow for an operational role for the Agency.

4. The draft general budget shall be accompanied by a detailed staff establishment plan and detailed justifications.

5. The Steering Board, acting by unanimity, may decide that the draft general budget shall furthermore cover a particular project or programme where this is clearly for the common benefit of all participating Member States.

6. The appropriations shall be classified in titles and chapters grouping expenditure together by type or purpose, subdivided as necessary into articles.

7. Each title may include a chapter entitled 'provisional appropriations'. These appropriations shall be entered where there is uncertainty, based on serious grounds, about the amount of appropriations needed or the scope for implementing the appropriations entered.

8. Revenue shall consist of:

(a) miscellaneous revenue;

(b) contributions payable by the Member States participating in the Agency based on the gross national income (GNI) scale.

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

9. The Steering Board shall adopt the draft general budget by 31 December of each year within the Agency's financial framework. When doing so, the Steering Board shall be chaired by the Head of the Agency, or by a representative appointed by him/her from within the General Secretariat of the Council, or by a member of the Steering Board invited to do so by him/her. The Chief Executive shall declare that the budget has been adopted and notify the participating Member States.

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

Article 14

Amending budgets

1. In the case of unavoidable, exceptional or unforeseen circumstances, the Chief Executive may propose a draft amending budget within the limits set down in the financial framework.
2. The draft amending budget shall be drawn up, proposed, and adopted and notification given in accordance with the same procedure as the general budget, within the limits set down in the financial framework. The Steering Board shall act with due account to the urgency.
3. In the situation where the limits set down in the financial framework would be considered insufficient due to exceptional and unforeseen circumstances, taking also in full account rules set out in Article 13(2) and (3), the Steering Board will submit the amending budget for adoption by the Council, acting by unanimity.

Article 15

Earmarked revenue

1. The Agency may receive in its general budget as earmarked revenue for a specific purpose financial contributions to cover costs other than those referred to under Article 13(2)(a)(i):
 - (a) from the general budget of the European Union on a case-by-case basis, in full respect of the rules, procedures and decision-making processes applicable to it;
 - (b) from Member States, third countries or other third parties.
2. Earmarked revenue may only be used for the specific purpose to which it is assigned.

Article 16

Contributions and reimbursements

1. Determination of contributions where the GNI scale is applicable
 - 1.1. Where the GNI scale is applicable, the breakdown of contributions between the Member States from whom a contribution is required shall be determined in accordance with the gross national product scale as specified in Article 28(3) TEU and in accordance with Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources⁽¹⁾, or any other Council Decision which may replace it.
 - 1.2. The data for the calculation of each contribution shall be those set out in the 'GNI own resources' column in the 'Summary of financing of the general budget by type of own resource and by Member State' table appended to the latest budget adopted by the European Communities. The contribution of each Member State from whom a contribution is due shall be proportional to the share of that Member State's GNI in the total GNI aggregate of the Member States from whom a contribution is due.
2. Schedule for payment of contributions
 - 2.1. The contributions intended to finance the general budget shall be paid by the participating Member States in three equal instalments, by 15 February, 15 June and 15 October of the financial year concerned.
 - 2.2. When an amending budget is adopted, the necessary contributions shall be paid by the Member States concerned within 60 days from dispatch of the call for contributions.
 - 2.3. Each Member State shall pay the bank charges relating to the payment of its own contributions.

Article 17

Management by the Agency of expenditure on behalf of Member States

1. The Steering Board, on a proposal from the Chief Executive or a Member State, may decide that the Agency may be entrusted by Member States, on a contractual basis, with the administrative and financial management of certain activities within its remit.

⁽¹⁾ OJ L 253, 7.10.2000, p. 42.

2. The Steering Board, in its decision, may authorise the Agency to enter into contracts on behalf of certain Member States. It may authorise the Agency to collect the necessary funds from these Member States in advance to honour the contracts entered into.

Article 18

Implementation of the budget

1. The financial provisions applicable to the Agency's general budget shall be adopted by the Council, acting by unanimity. The Steering Board shall, within one year of the adoption of this Joint Action, review and amend these provisions, as necessary.

2. The Steering Board, acting on a proposal from the Chief Executive, shall as necessary adopt the implementing rules regarding the implementation and control of the general budget, notably as regards public procurement, without prejudice to relevant Community rules. The Steering Board shall ensure, in particular, that security of supply and protection both of defence secret and intellectual property rights requirements are taken into account in a proper manner.

3. The financial provisions and rules referred to in this Article are not applicable to ad hoc projects and programmes as referred to in Articles 20 and 21.

Article 19

Initial budget 2004 and budget for 2005

1. The initial general budget for the financial year 2004, focused on start-up arrangements, shall be as shown in the financial statement to be submitted with the Joint Action. The first financial year shall begin one day after the entry into force of this Joint Action.

2. The initial general budget shall be financed by contributions from the participating Member States payable as soon as possible and in any case no later than within 45 days from despatch of the calls for contributions by the Head of the Agency, Secretary-General of the Council of the European Union.

3. The general budget for the financial year 2005 shall be adopted by the Steering Board with the approval of the Council, acting by unanimity.

CHAPTER IV

AD HOC PROJECTS OR PROGRAMMES AND ASSOCIATED BUDGETS

Article 20

Approval of ad hoc projects or programmes and ad hoc budgets associated with them (Category A)

1. One or more participating Member States or the Chief Executive may submit to the Steering Board an ad hoc project or programme within the Agency's remit, which shall presume general participation by the participating Member States. The Steering Board shall be informed of the ad hoc budget, if any, to be associated with the proposed project or programme, as well as of potential contributions by third parties.

2. All participating Member States shall in principle contribute. They shall inform the Chief Executive of their intentions in this regard.

3. The Steering Board shall approve the establishment of the ad hoc project or programme.

4. The Steering Board, on a proposal from the Chief Executive or from a participating Member State, may decide to set up a committee to supervise the management and implementation of the ad hoc project or programme. The committee shall be composed of delegates from each of the contributing Member States and, when the Community contributes to the project or programme, a representative of the Commission. The decision of the Steering Board shall specify the committee's mandate and duration.

5. For the ad hoc project or programme, the contributing Member States, meeting within the Steering Board, shall approve:

- (a) the rules governing the management of the project or programme;
- (b) where appropriate, the ad hoc budget associated with the project or programme, the key for contributions and the necessary implementing rules;
- (c) participation of third parties in the committee referred to in paragraph 4. Their participation shall be without prejudice to the decision-making autonomy of the EU.

6. Where the Community contributes to an ad hoc project or programme, the Commission shall participate in the decisions referred to in paragraph 5, in full respect of the decision-making procedures applicable to the general budget of the EU.

*Article 21***Approval of ad hoc projects, or programmes and ad hoc budgets associated with them (Category B)**

1. One or more participating Member States may inform the Steering Board that they intend to establish an ad hoc project or programme within the Agency's remit, and where appropriate the ad hoc budget associated with it. The Steering Board shall be informed of the ad hoc budget, if any, to be associated with the proposed project or programme, and details, if relevant, on human resources for such project or programme, as well as of potential contributions by third parties.

2. In the interest of maximising opportunities for cooperation, all participating Member States shall be informed of the ad hoc project or programme, including the basis upon which participation might be expanded, in a timely manner so that any participating Member State who wishes to do so may express an interest in joining. Moreover, the initiator(s) of the project or programme will endeavour to make their membership as wide as possible. Participation will be established on a case-by-case basis by the initiators.

3. The ad hoc project or programme shall then be regarded as an Agency project or programme, unless the Steering Board decides otherwise within one month of receiving the information foreseen in paragraph 1.

4. Any participating Member State which, at a later stage, wishes to participate in the ad hoc project or programme shall notify the contributing Member States of its intentions. The contributing Member States, within two months of receiving this notification, shall decide among themselves, having due regard to the basis set out when participating Member States are informed of the project or programme, on the participation of the Member State concerned.

5. The contributing Member States shall take amongst them the decisions necessary for the establishment and implementation of the ad hoc project or programme and, where appropriate, the budget associated with it. Where the Community contributes to such a project or programme, the Commission shall participate in the decisions referred to in this paragraph in full respect of the decision-making procedures applicable to the general budget of the EU. The contributing Member States shall keep the Steering Board informed, as appropriate, of developments relating to such project or programme.

*Article 22***Contributions from the general budget of the European Union to ad hoc budgets**

Contributions from the general budget of the EU may be made to the ad hoc budgets established for ad hoc projects or programmes referred to in Articles 20 and 21.

*Article 23***Participation of third parties**

1. Third parties may contribute to a particular ad hoc project or programme, established in accordance with Articles 20 or 21, and to the budget associated with it. The Steering Board shall, acting by qualified majority, approve as necessary ad hoc arrangements between the Agency and third parties for each particular project or programme.

2. For projects established under Article 20, the contributing Member States meeting within the Steering Board shall approve any necessary modalities with the relevant third parties relating to their contribution.

3. For projects established under Article 21, the contributing Member States shall decide any necessary modalities with the relevant third parties relating to their contribution.

4. Where the Community contributes to an ad hoc project or programme, the Commission shall participate in the decisions referred to in paragraphs 2 and 3.

CHAPTER V

RELATIONS WITH THE COMMISSION*Article 24***Association with the Agency's work**

1. The Commission is a member of the Steering Board without voting rights and shall be fully associated with the work of the Agency.

2. The Commission, on behalf of the Community, may also participate in projects and programmes of the Agency.

3. The Agency shall establish the necessary administrative arrangements and working relations with the Commission, in particular with a view to exchanging expertise and advice in those areas where the activities of the Community have a bearing on the Agency's missions and where the activities of the Agency are relevant to those of the Community.

4. Necessary arrangements to cover a contribution, on a case-by-case basis, from the general budget of the EU under Articles 15 and 22, shall be established between the Agency and the Commission by mutual agreement, or between the contributing Member States and the Commission by mutual agreement.

CHAPTER VI

RELATIONS WITH THIRD COUNTRIES, ORGANISATIONS AND ENTITIES*Article 25***Relations with third countries, organisations and entities**

1. For the purpose of fulfilling its mission, the Agency may enter into administrative arrangements with third States, organisations and entities. Such arrangements shall notably cover:

- (a) the principle of a relationship between the Agency and the third party;
- (b) provisions for consultation on subjects related to Agency's work;
- (c) security matters.

In so doing, it shall respect the single institutional framework and the decision-making autonomy of the EU. Each such arrangement shall be concluded by the Steering Board upon approval by the Council, acting by unanimity.

2. The Agency shall develop close working relations with the relevant elements of OCCAR, the LoI Framework Agreement, and WEAG/WEAO with a view to incorporate those elements or assimilate their principles and practices in due course, as appropriate and by mutual agreement.

3. Reciprocal transparency and coherent development in the field of capabilities shall be ensured by the application of CDM procedures. Other working relations between the Agency and relevant NATO bodies shall be defined through an administrative arrangement referred to in paragraph 1, in full respect of the established framework of cooperation and consultation between the EU and NATO.

4. With a view to facilitating their possible participation in projects and programmes and within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with organisations and entities other than those mentioned in paragraphs 2 and 3.

5. With a view to facilitating their possible participation in specific projects and programmes and within the framework of arrangements referred to in paragraph 1, the Agency shall be entitled to establish working relations with third countries.

6. The non-EU WEAG members shall be provided with the fullest possible transparency regarding the Agency's specific projects and programmes with a view to their participation therein as appropriate. A consultative committee shall be set up for this purpose, to provide a forum for exchanging views and information on matters of common interest falling within the scope of the Agency's mission. It shall be chaired by the Chief Executive or his/her representative. It shall include a representative of each participating Member State and a representative of the Commission, and representatives of the non-EU WEAG members in accordance with modalities to be agreed with them.

7. Upon request, other non-EU European NATO members may also participate in the Consultative Committee referred to in paragraph 6, in accordance with modalities to be agreed with them.

8. The Consultative Committee referred to in paragraph 6 may also serve as a forum for dialogue with other third parties on specific matters of mutual interest within the Agency's remit, and may serve to ensure that they are kept fully informed of developments in matters of common interest and of opportunities for future cooperation

CHAPTER VII

MISCELLANEOUS PROVISIONS*Article 26***Privileges and immunities**

Privileges and immunities necessary for the performance of the duties of the Agency, the Chief Executive and its staff shall be provided for in an agreement between participating Member States.

*Article 27***Review clause**

The Head of the Agency shall present no later than three years from the entry into force of this Joint Action or upon the entry into force of the Treaty establishing a Constitution for Europe, whichever is the earlier, a report to the Steering Board on the implementation of this Joint Action, with a view to its possible review by the Council.

*Article 28***Legal liability**

1. The contractual liability of the Agency shall be governed by the law applicable to the contract concerned.

2. The personal liability of staff towards the Agency shall be governed by the relevant rules applying to the Agency.

*Article 29***Access to documents**

Upon a proposal by the Chief Executive, the Steering Board shall adopt rules on public access to the documents of the Agency, taking into account the principles and limits laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾.

*Article 30***Security**

1. The Agency shall apply the Council's security regulations set out in Decision 2001/264/EC ⁽²⁾.
2. The Agency shall ensure appropriate security and speed in its external communications.

*Article 31***Language regime**

The language regime of the Agency shall be established by the Council, acting by unanimity.

*Article 32***Transitional measures**

The SG/HR shall take the necessary measures for the operational setting-up of the Agency. For this purpose, he/she may also exercise the powers granted to the Chief Executive under this Joint Action until his/her appointment.

Article 33

This Joint Action shall enter into force on the day of its adoption.

Article 34

This Joint Action shall be published in the *Official Journal of the European Union*.

Done at Brussels, 12 July 2004.

For the Council

The President

B. BOT

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

⁽²⁾ OJ L 101, 11.4.2001, p. 1.