



COMMISSION OF THE EUROPEAN COMMUNITIES

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CORRIGENDUM

Annule et remplace la base juridique
du document COM(2004) 85 final
2004/0028 (CNS), du 11.2.2004 (page 4).
Cette correction concerne toutes les versions
linguistiques.

Proposal for a

COUNCIL DECISION

**on the conclusion of the Framework Agreement between the European Community and
the European Space Agency**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. The Framework Agreement between the European Community, on the one part, and the European Space Agency, on the other part, identifies cooperation on space as an area of particular interest and potential, which will contribute to European cohesion and economic growth at the direct service of European citizens.
2. Following the Communication “*Europe and Space: Turning to a new chapter*”¹ of 2000 and the subsequent ESA and EU Council Resolutions on the European Space Strategy, a Joint Task Force was set up by the European Commission and the Executive of ESA.
3. In its report from 2001, the Joint Task assessed all aspects of the co-operation between the European Union and the European Space Agency. The report formed the basis for the Communication of the Commission entitled “*Towards a European Space Policy*”.²
4. One of the main conclusions of the Communication was that a successful development and implementation of a European Space Policy requires the establishment of a formal (Framework Agreement) relation between the European Community and the European Space Agency, which defines the principles and mechanisms of a reinforced co-operation.
5. Accordingly, the Commission adopted on February 14, 2002 a Communication “*Framework Agreement between the European Community and the European Space Agency*”,³ in which it outlined its perception of the main contents of such an agreement and in which it proposed to the council to negotiate such an agreement on behalf of the Community.
6. The Framework Agreement was negotiated in accordance with the EU Council and ESA-Executive mandates,⁴ by the authorized representatives of the two parties.
7. The Commission submitted to the Council a proposal for a Council Decision authorising the signing of the above mentioned Agreement. The Council adopted this decision on October 20, 2003 and the Agreement was signed on November 25, 2003 in Brussels, by the authorized representatives of the two parties.
8. In addition, the Framework Agreement also plays a major role in the development of an European Space Policy, as indicated in the White paper entitled, “*Space: a new European frontier for an expanding Union. An action plan for implementing the European Space policy*”,⁵ issued as a response to the Green paper on a “*European Space Policy*”.⁶
9. This Framework Agreement, to be concluded for a period of four years, shall be automatically extended for subsequent periods of four years unless written

¹ COM(2000) 597

² COM(2001) 718

³ SEC(2002) 155

⁴ doc. 8488/02 RECH 80 RESTREINT and ESA/C-M/CLIV/Res. 1 (Final)

⁵ COM(2003) 673

⁶ COM(2003) 17 final

notification of any of the parties of the intention to terminate it, notification to be due at least one year prior to the expiration of any of the periods of duration.

10. The Agreement is based on the principles of efficiency and mutual benefit in order to avoid any duplication of effort to achieve a coherent and progressive development of an overall European Space Policy.
11. The Agreement provides for:
 - A link between demand for services and applications using space systems in support of the Community policies.
 - Common basis and appropriate operational arrangements.
 - Cooperation mechanisms subject to the applicable laws, tasks and regulations in force on each side, including financial provisions, and in full respect of their institutional settings.
 - Cooperation objectives: securing Europe's independence access to space; ensuring that the European Space Policy takes into particular account the policies pursued by the Community; consolidate the cooperation between the Parties, linking demand and supply and, achieving coherence and synergy of research and development to optimise resources.
12. In the light of the above-mentioned considerations, the Commission proposes that the Council:
 - approves on behalf of the Community, and after consultation of the European Parliament, the Framework Agreement between the European Community and the European Space Agency;
 - notify to the European Space Agency that the procedures necessary for the entry into force of the Agreement have been completed on the part of the European Community.

Proposal for a

COUNCIL DECISION

on the conclusion of the Framework Agreement between the European Community and the European Space Agency

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 170, in conjunction with the first sentence of the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Commission has negotiated on behalf of the Community an Agreement with the European Space Agency;
- (2) The Agreement has been signed on behalf of the European Community, on the 25th November 2003 subject to its possible conclusion at a later date;
- (3) This Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Community and the European Space Agency is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorized to designate the person empowered to deposit on behalf of the European Community the act of approval, as provided for in Article 12, paragraph 1 of the Framework Agreement, in order to express the consent of the Community to be bound.

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

FRAMEWORK AGREEMENT

BETWEEN THE EUROPEAN COMMUNITY AND THE EUROPEAN SPACE AGENCY

The European Community,

and

The European Space Agency,

(hereafter also collectively referred to as “the Parties”)

WHEREAS the European Community and the European Space Agency ("ESA") consider that closer cooperation between them will strengthen the peaceful use of space as an important tool to contribute to European cohesion and economic growth and will allow space-related activities to be brought to a wider political, economic, scientific, environmental and social framework more directly at the service of European citizens;

WHEREAS each Party is confident that such cooperation will create added value for the benefit of European citizens;

WHEREAS the Parties recognise that they have specific complementary and mutually reinforcing strengths and are committed to cooperating in an efficient and mutually beneficial manner and to avoiding any unnecessary duplication of effort;

WHEREAS space technology has become a unique and critical technology enabling the Community to address and achieve a large number of the goals of its policies, notably related to information society, transport and environmental protection;

HAVING REGARD TO the various Resolutions adopted by the EU Council⁷ and by the ESA Council⁸ and to the EU Council Conclusions of 10 December 2001, the said two Councils have encouraged the establishment of a framework for cooperation between the Parties, while maintaining their respective distinct tasks and responsibilities;

WHEREAS Decision No 676/2002 of the European Parliament and of the Council of 7 March 2002 on a regulatory framework for radio spectrum policy in the European Community ("Radio Spectrum Decision") is relevant, given that any space systems or applications will depend on the availability of radio frequencies,

⁷ The EU Council Resolutions of 22 June 1998 (OJ C 224, p.1), 2 December 1999 (OJ C 375, p. 1), 16 November 2000, (OJ C 371, p. 2).

⁸ The ESA resolutions of: 23 June 1998: ESA/C/CXXXVI/Res.1 (Final), 11 May 1999: ESA/C-M/CXLI/Res. 1 (Final); ESA/C(2000)67; ESA/C-M/CXLVIII/Res. 1 (Final), 16.11.2000, referring to the European Strategy for Space; ESA/C-M/CLIV/Res. 1 (Final), 15.11.2001; ESA/C-M/CLXV/Res.3 (Final), 27.5.2003.

HAVE AGREED AS FOLLOWS:

ARTICLE 1

Purpose of the Cooperation

The aim of this Framework Agreement is to address the following issues:

1. The coherent and progressive development of an overall European Space Policy. Specifically, this policy shall seek to link demand for services and applications using space systems in support of the Community policies with the supply of space systems and infrastructure necessary to meet that demand.
2. The establishment of a framework providing a common basis and appropriate operational arrangements for an efficient and mutually beneficial cooperation between the Parties with regard to space activities in accordance with their respective tasks and responsibilities and fully respecting their institutional settings and operational frameworks. The cooperation under this Framework Agreement between the Parties aims at:
 - a) securing Europe's independent and cost-effective access to space and the development of other fields of strategic interest necessary for the independent use and application of space technologies in Europe;
 - b) ensuring that the overall European Space Policy takes into particular account the general policies pursued by the European Community;
 - c) supporting Community policies by using space technologies and space infrastructures where appropriate and promoting the use of space systems in support of sustainable development, economic growth and employment;
 - d) optimising the use of expertise and available resources and contributing to the consolidation of the close cooperation between the European Community and ESA, thereby linking the demand and supply of space systems within a strategic partnership;
 - e) achieving greater coherence and synergy of research and development in order to optimise the use of resources available in Europe, including the network of technical centres.

ARTICLE 2

Principles of Cooperation

1. The cooperation between the Parties shall be pursued in the light of the common objectives as defined under Article 1, with due regard to their respective tasks and responsibilities and their respective institutional settings and operational frameworks.
2. Each Party shall take the decisions necessary for the implementation of this Agreement, as described in Article 4, in accordance with its own internal procedures.

3. Bearing in mind the nature of space technologies and infrastructures, both Parties, in implementing this Agreement, shall take into account their security dimension.

ARTICLE 3

Fields of Cooperation

1. The Parties have identified the following specific fields of cooperation:
 - science
 - technology
 - earth observation
 - navigation
 - communication by satellite
 - human space flight and micro-gravity
 - launchers
 - spectrum policy related to space.
2. The Parties may identify and develop new fields for cooperation.

ARTICLE 4

Implementation

1. For the implementation of this Agreement each Party shall undertake, in compliance with its own prerogatives, legal instruments and procedures, such actions as are required to achieve the purpose of the cooperation provided for in Article 1.
2. Such actions shall aim at fostering the utilisation of space research and development and space applications in the public and private sectors, the promotion of the adoption of legislative, regulatory and standardisation measures in this sector, the funding and carrying out of joint initiatives pursuant to Article 5.
3. Each Party shall refer to the competencies and capabilities of the other, whenever an action is necessary, to pursue the purpose of the cooperation, and shall provide the other Party with expertise and support in its own specific fields of competence.

ARTICLE 5

Joint initiatives

1. Subject to paragraph 3, the joint initiatives to be carried out by the Parties may take, without being limited to, the following forms:
 - a) the management by the ESA of European Community space-related activities in accordance with the rules of the European Community;
 - b) the participation by the European Community in an optional programme of the European Space Agency, in accordance with Article V.I.b of the ESA Convention;
 - c) the carrying out of activities which are coordinated, implemented and funded by both Parties;
 - d) the creation by the Parties of bodies charged with pursuing initiatives complementary to research and development activities, such as the provision of services, the promotion of operators formation and the management of infrastructures;
 - e) the carrying out of studies, the organisation of scientific seminars, conferences, symposia and workshops, the training of scientists and technical experts, the exchange or sharing of equipment and materials, the access to facilities, and the support of visits and exchanges of scientists, engineers or other specialists.

2. When the implementation of a joint initiative requires a detailed definition, it shall be provided for in specific arrangements to be entered into between the Parties. Whenever applicable, such specific arrangements should include at least:
 - a) the overall mission definition;
 - b) a description of the objectives;
 - c) a consolidated set of user requirements;
 - d) a work plan;
 - e) an appropriate management scheme;
 - f) the role and financial implications of the Parties;
 - g) an industrial policy scheme;
 - h) budgetary aspects;
 - i) rules of intellectual property rights, rules of ownership including the transfer of ownership, the implementation principles including voting rights, and the participation by third Parties.

Both Parties shall work out guiding principles in addition to these specific arrangements as soon as possible.

3. Any financial contribution made by one Party in accordance with a specific arrangement shall be governed by the financial provisions applicable to that Party. Under no circumstances shall the European Community be bound to apply the rule of "geographical distribution" contained in the ESA Convention and specially in Annex V thereto. Compliance with the rules relating to financial control and auditing of the Party contributing to the joint initiatives, or of both Parties in case of joint contribution, shall apply to any joint activity.

ARTICLE 6

Consultation and information

1. The Parties shall consult each other regularly in order to coordinate their activities to the fullest extent. Each Party shall inform the other of any initiatives within its own decision-making process, in the fields of cooperation under Article 3, which may be of interest to the other Party.
2. The Parties shall exchange all information at their disposal which may be required for the implementation of this Agreement, subject to their respective rules.
3. Except when otherwise provided, the Parties shall not disclose any information exchanged in connection with this Agreement to any persons other than those employed by them or officially entitled to handle such information nor shall they use it for commercial purposes. Such disclosure shall extend only so far as may be necessary for the purpose of this Agreement set out in Article 1 and shall be in strict confidence.

ARTICLE 7

External dimension of the cooperation

1. Each Party shall inform the other of its activities of an international dimension which may be of interest to the other Party.
2. Whenever appropriate a Party may, in relation to any matters relevant to its international activities, consult the other Party.
3. Once a specific arrangement has been concluded between the parties in accordance with Article 5, the external aspects of this joint activity vis-à-vis third parties shall be pursued jointly by the parties in accordance with that specific arrangement.

ARTICLE 8

Coordination and facilitation of cooperative activities

1. The coordination and facilitation of cooperative activities under this Agreement shall be accomplished by regular joint and concomitant meetings of the Council of the European Union and of the Council of ESA at ministerial level ("Space Council").
2. The objectives of the joint and concomitant meetings shall include the following:
 - a) providing orientations supporting the achievement of the objectives of this Agreement and identifying actions required;
 - b) making recommendations, in particular related to the main elements of the specific arrangements;
 - c) advising the parties on ways to enhance cooperation consistent with the principles set out in this Agreement;
 - d) reviewing the effective and efficient functioning of this Agreement.
3. A Secretariat shall assist the concomitant meetings and shall elaborate the initiatives deriving from the implementation of this Agreement. The Secretariat shall implement the guidelines provided by the concomitant meetings of the two Councils. The Secretariat shall establish its own rules of procedure and be composed of officials of the Commission of the European Communities and of the ESA Executive. The Parties shall undertake, in accordance with their respective rules and procedures, to contribute to the required administrative support.
4. Without prejudice to the Parties' internal decision-making procedures, the Secretariat shall consult on a regular and informal basis high-level representatives of the Member States of the European Community and of the European Space Agency, with the purpose of reaching common understanding on issues related to the implementation of this Agreement.

ARTICLE 9

Exchange of personnel

1. The Parties may second members of their staff to each other for specified periods in order to share expertise and develop mutual understanding.
2. Rules for the implementation of this Article shall be established by the Secretariat, as referred to in Article 8, and be agreed to in the form of a specific arrangement under this Framework Agreement.

ARTICLE 10

Public relations

1. The Parties undertake to coordinate in advance their public-relations, press and media activities concerning any joint public activities relating to subjects covered by this Agreement.
2. In all relevant media activities, the role of each Party in this Agreement shall be clearly identified and mentioned.
3. The detailed arrangements for implementing public relations activities provided for in this Article shall be adopted jointly.

ARTICLE 11

Settlement of disputes

1. Any disputes which may arise between the Parties relating to the interpretation or application of this Agreement shall be submitted for direct negotiations within the Secretariat.
2. If it is not possible to settle the dispute in accordance with paragraph 1, either of the two Parties may notify the other of the appointment of an arbitrator. The other Party shall then appoint its own arbitrator within a period of two months. The arbitrators shall then appoint a third arbitrator within one month.
3. The arbitrators' decisions shall be taken by majority vote.
4. The award of the Arbitration Tribunal shall be final and binding on the Parties.
5. Each Party to the dispute shall take the appropriate steps required to implement the arbitrators' decisions.

ARTICLE 12

Entry into force, duration, amendments and termination

1. This Agreement shall enter into force on the date of the last written communication by which the Parties notify each other that their respective internal procedures necessary for its entry into force have been completed.
2. This Agreement shall remain in force for four years from the date of its entry into force. It shall be automatically extended for subsequent periods of four years unless either of the Parties notifies the other Party in writing, at least one year before the expiry of any of its periods of duration, of its intention to terminate it.

This Agreement shall terminate upon the expiry of twelve months after the receipt of written notification by one Party sent by the other Party.

3. The termination or expiry of this Agreement shall not affect the validity of the specific arrangements entered into between the Parties in accordance with Article 5, which shall remain in full force and effect until the terms for their execution or termination take place.
4. This Agreement shall be amended only by written agreement between the Parties.
5. This Agreement is not intended to modify or supersede any previous agreements entered into between the Parties, which shall remain in full force and effect in accordance with their own terms and provisions.

ARTICLE 13

Signature and authenticity

This Agreement shall be drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Norwegian, Portuguese, Spanish and Swedish languages, each of these texts being equally authentic.

LEGISLATIVE FINANCIAL STATEMENT

Policy area(s): Research and Development

Activit(y/ies): Space

TITLE OF ACTION: PROPOSAL FOR A COUNCIL DECISION ON CONCLUSION OF THE FRAMEWORK AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE EUROPEAN SPACE AGENCY

1. BUDGET LINE(S) + HEADING(S)

BGUE-B2004-08 01 05 03

Other Management expenditure for Research

2. OVERALL FIGURES

2.1. Total allocation for action (Part B): 0.168€ million for commitment

The only direct cost implication of the Framework Agreement (details see below) derives from the intention of both Parties, as indicated in Article 5, to negotiate guiding principles for future joint initiatives. The corresponding new negotiations are expected to last until the end of 2004.

2.2. Period of application:

The Framework Agreement between the European Community and the European Space Agency is intended to last at least for four years.

2.3. Overall multiannual estimate of expenditure:

- (a) Schedule of commitment appropriations/payment appropriations (financial intervention) (*see point 6.1.1*)

€ million (*to three decimal places*)

	2004	2005	2006	2007			Total
Commitments	0.042	0.042	0.042	0.042			0.168
Payments	0.042	0.042	0.042	0.042			0.168

- (b) Technical and administrative assistance and support expenditure(*see point 6.1.2*)

Commitments							
Payments							

Subtotal a+b							
Commitments							
Payments							

(c) Overall financial impact of human resources and other administrative expenditure
(see points 7.2 and 7.3)

Commitments/ payments	0.864	0.864	0.864	0.864			3.456
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TOTAL a+b+c							
Commitments	0.906	0.906	0.906	0.906			3.624
Payments	0.906	0.906	0.906	0.906			3.624

2.4. Compatibility with financial programming and financial perspective

(YES) Proposal is compatible with existing financial programming.

(NO) Proposal will entail reprogramming of the relevant heading in the financial perspective.

(NO) Proposal may require application of the provisions of the Interinstitutional Agreement.

2.5. Financial impact on revenue:⁹

(YES) Proposal has no financial implications (involves technical aspects regarding implementation of a measure)

OR

(NO) Proposal has financial impact – the effect on revenue is as follows:

(NB All details and observations relating to the method of calculating the effect on revenue should be shown in a separate annex.)

(€ million to one decimal place)

Budget line	Revenue	Prior to action [Year n-1]	Situation following action							
			[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5]		
	<i>a) Revenue in absolute terms</i>									
	<i>b) Change in revenue</i>	Δ								

⁹ For further information, see separate explanatory note.

(Please specify each budget line involved, adding the appropriate number of rows to the table if there is an effect on more than one budget line.)

3. BUDGET CHARACTERISTICS

Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
Non-comp	Non-diff	NO	YES	YES	No 3

4. LEGAL BASIS

Article 170 of EC-Treaty

Article 300 of EC-Treaty

5. DESCRIPTION AND GROUNDS

5.1. Need for Community intervention ¹⁰

5.1.1. Objectives pursued

Europe needs to develop and implement a European Space Policy, a task that depends critically on the co-operation between the European Union and the European Space Agency.

Therefore, it is proposed to conclude the negotiated and signed Framework Agreement between the European Community and the European Space Agency, which establishes for the first time joint goals and formal working relations.

5.2. Action envisaged and budget intervention arrangements

Regular meetings will be organized with the European Space Agency and with Member States in order to assess the implementation of this Agreement. The organisation of a “European Space Council is envisaged”.

5.3. Methods of implementation

According to the terms of the Framework Agreement and in particular Article 4.

6. FINANCIAL IMPACT

The only costs arising from the initiative is Commission internal personnel and mission costs.

¹⁰ For further information, see separate explanatory note.

Funding of the Commission's personnel and mission costs necessary for the negotiation of the model agreements shall be provided using the funds reserved to the Horizontal Activities of the DG RTD and within its global budget envelope.

6.1. Total financial impact on Part B - (over the entire programming period)

- 1) Meetings in Paris every second month (with 5 people attending)
6 * 5 * 1000 € = 30000 €
- 2) Organisation of 6 meetings in Brussels (1000 € expected for each)
6 * 1000 € = 6000 €
- 3) Organisation of a European Space Council 6000 €

6.1.1. Financial intervention

Commitments (in € million to three decimal places)

Breakdown	2004	2005	2006	2007	[n+4]	[n+5 and subs. Years]	Total
Action 1	0.042	0.042	0.042	0.042			0.168
Action 2							
etc.							
TOTAL	0.042	0.042	0.042	0.042			0.168

6.1.2. *Technical and administrative assistance, support expenditure and IT expenditure (commitment appropriations)*

	[Year n]	[n+1]	[n+2]	[n+3]	[n+4]	[n+5 and subs. years]	Total
1) Technical and administrative assistance							
a) Technical assistance offices							
b) Other technical and administrative assistance: - intra muros: - extra muros: <i>of which for construction and maintenance of computerised management systems</i>							
Subtotal 1							
2) Support expenditure							
a) Studies							
b) Meetings of experts							
c) Information and publications							
Subtotal 2							
TOTAL							

6.2. Calculation of costs by measure envisaged in Part B (over the entire programming period)¹¹

(Where there is more than one action, give sufficient detail of the specific measures to be taken for each one to allow the volume and costs of the outputs to be estimated.)

Commitments (in € million to three decimal places)

Breakdown	Type of outputs (projects, files)	Number of outputs (total for years 1...n)	Average unit cost	Total cost (total for years 1...n)
	1	2	3	4=(2X3)
<u>Action 1</u> - Measure 1 - Measure 2 <u>Action 2</u> - Measure 1 - Measure 2 - Measure 3 etc.				
TOTAL COST				

If necessary explain the method of calculation

7. IMPACT ON STAFF AND ADMINISTRATIVE EXPENDITURE

The Commission will mainly use the existing staff resources of the Space Policy Unit RTD/H4 (4A, 1B, 2C and 7 END). However resources for the implementation of the Agreement stemming from internal redeployment in DG RTD will be reported.

The needs for human and administrative resources shall be covered within the allocation granted to the managing DG in the framework of the annual allocation procedure.

¹¹ For further information, see separate explanatory note.

7.1. Impact on human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources		Total	Description of tasks deriving from the action
		Number of permanent posts	Number of temporary posts		
Officials or temporary staff	A	1	3 (1 existing, 2 additional required within existing RTD resources)	4	<i>Development of the joint initiatives, (Art.5), support to the management structure (Art. 8)</i>
	B		1 (additional required within existing RTD resources)	1	<i>Documentation, archiving</i>
	C		3 (2 existing, 1 additional required within existing RTD resources)	3	<i>Administrative Support</i>
Other human resources					
Total		1	7	8	

7.2. Overall financial impact of human resources

Type of human resources	Amount (€)	Method of calculation *
Officials	1A	1 * 108000
Temporary staff	Existing in H4 1A + 2C	3 * 108000
	Required within existing in RTD 2A + 1B + 1C	4 * 108000
Other human resources (specify budget line)		
Total	864000	864000

The amounts are total expenditure for twelve months.

7.3. Other administrative expenditure deriving from the action

Budget line (number and heading)	Amount €	Method of calculation
Overall allocation (Title A7)		
A0701– Missions		
A07030 – Meetings		
A07031 – Compulsory committees ¹		
A07032 – Non-compulsory committees ¹		
A07040 – Conferences		
A0705 – Studies and consultations		
Other expenditure (specify)		
Information systems (A-5001/A-4300)		
Other expenditure - Part A (specify)		
Total		

The amounts are total expenditure for twelve months.

¹ Specify the type of committee and the group to which it belongs.

I.	Annual total (7.2 + 7.3)	864000 €
II.	Duration of action	4 years
III.	Total cost of action (I x II)	3456000 €

8. FOLLOW-UP AND EVALUATION

8.1. Follow-up arrangements

A yearly assess the implementation of the Framework Agreement in the fields defined in Article 3. Consultation between the parties is regulated in Article 6. Coordination is regulated by Article 8.

8.2. Arrangements and schedule for the planned evaluation

Each one of the parties will yearly assess the effectiveness of the application of this agreement. Article 12 applies.

9. ANTI-FRAUD MEASURES

In order to prevent risk of fraud or irregularity, the Commission, will, if needed or requested, carry out financial audits, in particular when doubts will raise on the financial aspects of the implementation of this Agreement.