



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EC, ECSC, Euratom)

**amending the Financial Regulation of 21 December 1977 applicable to the  
general budget of the European Communities**

(presented by the Commission)



## EXPLANATORY MEMORANDUM

Since the comprehensive reform in March 1990,<sup>1</sup> there have been seven Commission proposals for amendments to the Financial Regulation, each one a response to a specific event: these include the adoption of the Maastricht Treaty and the entry into force of the agreement on the European Economic Area, the conclusions of the Edinburgh European Council, the adoption of the Fourth Framework Research and Technological Development Programme, each of these events necessarily having an impact on the text of the Financial Regulation. Of the seven proposals, five have already been adopted by the Council,<sup>2</sup> while the Commission decided to withdraw a proposal on the treatment of budget balances.<sup>3</sup> The seventh proposal, which is concerned with applying the conclusions of the plan to improve financial management (SEM 2000), is currently under consideration by the Council.<sup>4</sup>

In its opinion 4/97, regarding this last Commission proposal, the Court of Auditors stated that this series of amendments to the Financial Regulation had made the text increasingly incoherent and that it should undergo a general review in order to clarify the fundamental principles on which it must rest. This would involve an almost total rewrite of the Regulation with very significant changes to the substance of the document.

It is clear to the Commission that such a reworking of the Financial Regulation is a long-term task because it first requires a consensus to be reached between the institutions on the principles which should serve as a foundation for the financial rules. The Commission proposes to begin work on this at once and will submit its conclusions to the other institutions.

However, other events have occurred which require selective amendments to the Financial Regulation before there can be any comprehensive reworking of it.

First, the start of the third phase of economic and monetary union involves the introduction of the euro, replacing both the ecu and the national currencies of the participating Member States as the common currency of these countries. The introduction of the euro will be accompanied by a "stability and growth pact" designed to avoid excessive public sector deficits in the Member States which are participating in the euro.

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<sup>1</sup> Council Regulation No 610/90 (Euratom, ECSC, EEC) of 13 March 1990, OJ L 70, 13.3.1990.

<sup>2</sup> Regulation No 1923/94 of 25.7.94, OJ L 198, 30.7.94.  
Regulation No 2730/94 of 31.10.94, OJ L 293, 12.11.94.  
Regulation No 2333/95 of 18.9.95, OJ L 240, 7.10.95.  
Regulation No 2334/95 of 18.9.95, OJ L 240, 7.10.95.  
Regulation No 2335/95 of 18.9.95, OJ L 240, 7.10.95.  
Regulation No 2444/97 of 22.9.97, OJ L 340, 11.12.97.

<sup>3</sup> COM(93) 683 final of 21 December 1993, withdrawn by Commission decision of 25 June 1997.

<sup>4</sup> COM(96) 351 final of 26 July 1996.

Second, the Treaty of Amsterdam, signed on 2 October 1997, repealed Protocol No 16 of the Maastricht Treaty on the Economic and Social Committee and the Committee of the Regions, which provides for a common organisational structure for the two bodies.

These events justify the amendment of the Financial Regulation and are the basis for this proposal for specific revisions to it.

In particular, replacement of the ecu by the euro at a fixed parity of 1:1 on 1 January 1999<sup>5</sup> will inevitably impact on the Community budget: the instrument for drawing up the budget will no longer be the ecu but the euro, and any reference to the ecu in the Financial Regulation must be replaced by a reference to the euro. This is the case with Articles 11(1) and (2), 19(5), 31, 33(5), 44, 69 and 111 of the Financial Regulation.

But the euro is different from the ecu in that it is also a currency in its own right, going well beyond the concept of the ecu as a "basket" of currencies. Therefore, rather than considering it a simple description, as was the case with the ecu, we need to provide for the rights and obligations of the Community to be expressed and executed in euros - without prejudice to the specific provisions resulting from the application of sector-specific legislation governing revenue or expenditure - since the euro will also be the national currency of the participating Member States (Article 11(3)).

However, since certain Member States will not be participating in the euro at the start of the third stage, the Financial Regulation must keep its references to national currencies, specifying that these are the national currencies of the Member States which are not participating in the euro. This is the reason for the proposed amendments to Articles 11(4) and 35.

As for the "stability and growth pact", the Council has introduced a mechanism designed to avoid excessive public sector deficits in the Member States that are participating in the euro.<sup>6</sup> This mechanism consists of the obligation for a Member State which has an excessive deficit and is not making the adjustment effort recommended by the Council to make a non-interest-bearing deposit with the Commission. If the Member State does not correct its excessive deficit in the two years following the decision requiring it to make a deposit, the Council can decide to convert the deposit into a fine. It has been decided that these fines, and the interest that may have accrued on the deposits, must be redistributed between the Member States participating in the euro which do not have an excessive deficit.

It was also agreed that these sums, while they have a specific purpose, (distribution between those Member States without an excessive debt), should pass through the Community budget so that the operations can be monitored in a totally transparent fashion.

It is therefore necessary to amend the second subparagraph of Article 4(2), to add a new indent expressly stating that these amounts constitute earmarked revenue, and it is also

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<sup>5</sup> Council Regulation No 1103/97 (EC) of 17 June 1997, OJ L 162 of 19.6.1997, p.1.

<sup>6</sup> Council Regulation No 1467/97 (EC) of 7 July 1997, OJ L 209 of 2.8.1997, p.6.

proposed that a new Article 126a be created describing the exact technique of accounting for these sums in the Community budget, on both the revenue side and the expenditure side. This technique is comparable to what is already laid down for participation by third parties in Community activities (Articles 124 *et seq.*), for which reason it is proposed that a new section be created in Title XI of the Financial Regulation. The final result of these operations will be entirely neutral as it is only the entry of the amounts in the statement of revenue which gives rise to appropriations becoming available in the statement of expenditure. Article 28a also needs to be adapted to take into consideration cases which might arise where a Member State appeals to the Court of Justice against a decision by the Council to impose a fine. The amounts involved in a penalty will therefore only be taken into account when there is no further possibility of appeal and the penalty becomes definitive.

A final point to take into consideration is the fact that Article 2, point 59 of the Treaty of Amsterdam repeals Protocol No 16 of the Treaty on European Union on the Economic and Social Committee and the Committee of the Regions, which provided for a common organisational structure for the two Committees. Consequently, the references to this common organisational structure (the third indent of the third subparagraph of Article 19(1), the first indent of Article 20(3), the second subparagraph of Article 22(2), and second subparagraph of Article 22(5), the first paragraph of Article 24, the second paragraph of Article 25 and the second subparagraph of Article 26(2) of the Financial Regulation) must be deleted. A budget section must also be created for each of these two bodies.

As regards the date of entry into force of this amendment of the Financial Regulation, it should be timed to coincide with the entry into force of the Treaty of Amsterdam.

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**Proposal for a Council regulation (EC, ECSC, Euratom)  
amending the Financial Regulation of 21 December 1977 applicable to the  
general budget of the European Communities**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78h thereof,

Having regard to the Treaty establishing the European Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Court of Auditors,

Having regard to the opinion of Parliament,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Whereas the conciliation provided for by the Joint Declaration of 4 March 1975 by Parliament, the Council and the Commission has taken place in a conciliation committee;

Whereas it is necessary to amend the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities,<sup>1</sup> hereinafter "Financial Regulation", in order to take account of the entry into force of the Treaty of Amsterdam of 2 October 1997, the implementation of the third phase of economic and monetary union and the adoption of Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure;<sup>2</sup>

Whereas the Treaty of Amsterdam provides for the repeal of Protocol No 16 of the Treaty on European Union on the common organisational structure for the Economic and Social Committee and the Committee of the Regions;

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<sup>1</sup> OJ L 356, 31.12.1977, p. 1. Regulation last amended by Council Regulation 2444/97 (EC) of 22 September 1997 (OJ L 340, 11.12.1997, p. 1).

<sup>2</sup> OJ L 209, 2.8.1997, p. 6.

Whereas, in accordance with Regulation No 1103/97 on certain provisions relating to the introduction of the euro,<sup>3</sup> all references to the ecu are replaced by references to the euro at the rate of one euro to one ecu; whereas, in accordance with Regulation .../97 of .... 1998<sup>4</sup> on the introduction of the euro, the euro will be the currency of the participating Member States starting from 1 January 1999;

Whereas, during the transition period (from 1.1.1999 to 31.12.2001), any reference in this regulation to the euro must, as a general rule, also be read as a reference to the euro as a currency unit as specified in the second sentence of Article 2 of Regulation .../97 of .... 1998;<sup>5</sup>

Whereas, following the adoption by the Council of the abovementioned Regulation No 1467/97, a mechanism must be provided for ensuring that the revenue from payment by the Member States of fines imposed by the Council is allocated for distribution of the amounts in question between the Member States participating in the system which do not have an excessive deficit, while guaranteeing that the requirements of budgetary transparency in those operations are met,

HAS ADOPTED THIS REGULATION:

### **Article 1**

The Financial Regulation is amended as follows:

1. After the first indent in the second subparagraph of Article 4(2), the following new indent is inserted:

“ - interest on the deposits and fines referred to in Section 4 of Council Regulation (EC) No 1467/97,<sup>6</sup> in accordance with Article 126a”.

2. Article 11 is replaced by the following:

#### **“Article 11**

1. The budget shall be drawn up in euros.
2. The euro shall be the single currency as defined in Regulation (EC) No .../97 of ..... 1998 on the introduction of the euro.<sup>7</sup>

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<sup>3</sup> OJ L 162, 19.6.1997, p. 1.

<sup>4</sup> [OJ C 236, 2.8.1997, p. 7]

<sup>5</sup> [OJ C 236, 2.8.1997, p. 7]

<sup>6</sup> OJ L 209, 2.8.1997, p. 6.

<sup>7</sup> [OJ C 236, 2.8.1997, p. 7]

3. Without prejudice to specific provisions deriving from the application of sector-specific rules governing either revenue or expenditure, the rights and obligations of the Communities shall be expressed and executed in euros.
  4. Conversions between the euro and the currencies of the Member States which have not adopted the euro shall be made at the exchange rate applicable on the day of the operation; derogations from this principle may be permitted in exceptional cases, in accordance with the implementing rules referred to in Article 139.”
3. Article 19(1) is amended as follows:
    - a) in the first subparagraph, the second indent is replaced by the following:

“- separate sections subdivided into statements of revenue and expenditure of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions.”
    - b) the third subparagraph is deleted.
  4. In paragraph 5 of Article 19, “ECU” is replaced by “EUR”.
  5. In the first indent of Article 20(3), “the staff of the Economic and Social Committee, the Committee of the Regions and their common organisational structure shall be shown separately in their specific section” is deleted.
  6. Article 22 is amended as follows:
    - a) in paragraph 2, the second subparagraph is deleted;
    - b) in paragraph 5, the second subparagraph is deleted.
  7. In the first paragraph of Article 24, “The Economic and Social Committee and the Committee of the Regions shall appoint a financial controller by common agreement” is deleted.
  8. In the second paragraph of Article 25, “The Economic and Social Committee and the Committee of the Regions shall appoint an accounting officer by common agreement” is deleted.
  9. In the second subparagraph of Article 26(2), “- the two latter each with regard to the part which relates to it and by common agreement with regard to the common organisational structure -” is deleted.
  10. In the first subparagraph of Article 28a, after “imposed by the Commission”, the words “or the Council” are added.
  11. In Article 31, “ecus” is replaced by “euros”.
  12. In Article 33(5), “ecu” is replaced by “euro”.



13. Article 35 is replaced by the following:

**“ Article 35**

The Commission shall, every three months, send each Member State which has not adopted the euro a statement indicating the transfers effected in that Member State's national currency into another currency and vice versa”.

14. In the third indent of Article 44, “ecus” is replaced by “euros”.

15. In Article 69, “ecus” is replaced by “euros”.

16. In Article 111(2) and (3), “ecus” is replaced by “euros”.

17. Under Title XI, the following new section Ia is inserted:

**“Section Ia**

**PROVISIONS APPLICABLE TO THE SANCTIONS REFERRED TO IN  
SECTION 4 OF COUNCIL REGULATION (EC) No 1467/97<sup>8</sup>**

**Article 126a**

The budgetary structure for the proceeds of the sanctions referred to in Section 4 of Council Regulation (EC) No 1467/97 is as follows:

- a) the statement of revenue shall carry a budget heading to receive the amounts of each sanction imposed by the Council on a Member State in accordance with Section 4 of Council Regulation (EC) No 1467/97;
- b) in parallel, and without prejudice to Article 28a, commitment and payment appropriations shall be entered in a heading in the statement of expenditure to match these amounts in the statement of revenue. These appropriations shall cover the repayments provided for in Article 16 of Council Regulation (EC) No 1467/97”.

**Article 2**

This Regulation shall enter into force on 1 January 1999.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the Council,  
The President

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<sup>8</sup> OJ L 209, 2.8.1997, p. 6.

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