

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(84) 123 final

Brussels, 9 March 1984

Amendment of the
Proposal for a
COUNCIL REGULATION (ECSC, EEC, Euratom)

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

(Presented by the Commission to the Council in
accordance with the second paragraph of Article 149 EEC
and the second paragraph of Article 119 EAEC)

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Document attached: Formal proposal for the revision of the Financial Regulation

EXPLANATORY MEMORANDUM

I. INTRODUCTION

1. The Commission's original proposal

The Financial Regulation currently applicable to the general budget of the European Communities was adopted on 21 December 1977 and entered into force on 1 January 1978.

Since then three proposals for amendment of the Regulation have been made.

- (a) The first¹ was to amend certain provisions concerning research appropriations and carryovers and to make it possible to include borrowing and lending operations in the budget.

Although the Council approved the first two points on 25 June 1979², it has yet to act on the question of the inclusion in the budget of borrowing and lending operations.

- (b) The second proposal³ was submitted on 23 April 1979; the object was to reduce the "additional period" allowed for the EAGGF Guarantee Section. Although the proposal met with Parliament's approval, the Commission withdrew it on 14 February 1980 because the Court of Auditors disagreed with certain points and because work had then begun on this proposal for a general revision.

- (c) The third proposal for amendment⁴ was submitted on 13 December 1979. The object was to extend the use of the ECU to the general budget of the European Communities in place of the EUA. This proposal was⁵ accepted by the Council in its decision of 16 December 1980.

¹ OJ C 160, 6.7.1978.

² OJ L 160, 28.6.1979.

³ OJ C 116, 9.5.1979.

⁴ OJ C 55, 5.3.1980.

⁵ OJ L 345, 20.12.1980.

At the end of 1980 the Financial Regulation of 21 December 1977 had been in force for three years. Since Article 107 states:

"At three-year intervals the European Parliament and the Council shall examine this Financial Regulation in the light of a proposal from the Commission ..."

the Commission presented a proposal for an amendment (COM(80) 760 final)¹ on 12 December 1980, thereby fulfilling its obligations within the time-limit set.

In accordance with Article 209 EEC, the Council consulted the Court of Auditors and Parliament on 13 January 1981.

The Court of Auditors had already delivered its opinion on 21 May 1981.² Parliament passed a resolution embodying its opinion on the proposal on 12 September 1983.

2. The Commission's amended proposal

The Commission, in accordance with the provisions of the second paragraph of Article 149 EEC, has produced this amended proposal, which takes due account of the opinion of the other institutions consulted.

The Commission has taken the pragmatic approach - which it feels produces a clearer picture and will therefore make it easier for the Council to discuss the issue - of not limiting this explanatory memorandum to the changes to its original proposal but of including, wherever appropriate, the explanations already contained in its proposal of 12 December 1980 so that the whole of the proposal could be presented in one document and thus be more easy to assess.

On the whole the Commission would reiterate its view that the existing Financial Regulation has adequately served its purpose as a statement of the conditions for the establishment and implementation of the budget.

But there are other considerations too: the budget is not immutable, it is in a constant state of evolution; over the years new factors emerge as a result of the interplay between the institutions involved with the budget; and in view of the conditions in which the budget is implemented - both the technical aspects and the constraints imposed by the need for political control - certain provisions of the Financial Regulation must be made more detailed or more explicit. The Commission's view has been amply confirmed by the opinions of both the Court of Auditors and Parliament; this amended proposal

¹ OJ C 119, 21.5.1981. The Commission also presented a proposal concerning the structure of the budget on 15 June 1981 (COM(81) 306 final), published in OJ C 158, 27.6.1981.

² OJ 232, 11.9.1981.

thus largely reflects the amendments or additions suggested by these institutions.

The amendments proposed by the Commission can be summarized as follows:

A. Symmetry in budgetary powers of the institutions

Various provisions of the 1977 Financial Regulation gave effect, in virtually all areas, to the division of budgetary powers between the institutions that derived from the amendment of the Treaty adopted on 22 July 1975. However, the carryover arrangements were not adjusted and today the Council alone still has the last word here. The Commission therefore proposes that this area too should be subject to the same balance, on the basis of the distinction between compulsory and non-compulsory expenditure.

B. Measures to improve relations between the institutions

In the light of various amendments adopted by Parliament, it is proposed that a number of new provisions be included in the Financial Regulation to improve relations between the institutions. These provisions, analysed below, mainly concern the obligation for the Commission to attach a financial statement to its proposals, the indicative nature of the cost estimates entered by the Council in basic acts, the obligation for the Council to continue the usual procedure in response to every preliminary draft supplementary or amending budget, improved organization of relations between the institutions and the Court of Auditors by means of a more rational structure in the annual report and appropriate provisions for the comments (special reports) and, finally, the need for the Commission to supply the budgetary authority with systematic information on the utilization of the advances for the EAGGF Guarantee Section.

C. Special provisions applicable to external aid

The main body of the existing Financial Regulation does not cover the special requirements arising from some forms of external aid, notably aid granted under the protocols signed with certain Mediterranean countries.

It is therefore imperative that a set of special provisions be added to the Financial Regulation for such cases.

D. Need for certain technical improvements and more detailed provisions

Experience in recent financial years has shown that on a number of points the provisions of the existing Financial Regulation are not exhaustive, or, at least, leave room for improvement. These points are the presentation of the budget, transfer arrangements, provisional twelfths and carryovers. The Commission has therefore made appropriate proposals which also take into account the suggestions made by the Court of Auditors and Parliament.

E. Adjustment of dates and deadlines

The Commission feels that a number of dates and deadlines should be changed so that the procedure for presenting and auditing accounts will work better. Appropriate proposals have been made.

F. Other amendments

Finally, the Commission felt that a number of other amendments should be proposed in order to make certain articles clearer.

G. Renewal of the proposal to include borrowing and lending operations in the budget

On 12 June 1978 the Commission proposed a formula for including borrowing and lending operations in the budget in an appropriate manner.

Since this proposal is still pending before the Council and since Parliament refers to it in its opinion, the Commission considers that it should be formally renewed.

II. DETAILS OF PROPOSED AMENDMENTS

A. SYMMETRY OF POWERS: POWER OF PARLIAMENT TO DECIDE ON NON-AUTOMATIC CARRYOVERS IN NON-COMPULSORY EXPENDITURE

One of the aims of the Commission's previous proposal for a general revision of the Financial Regulation (COM(76)210 final of 19 May 1976) was to amend a number of provisions in order to reflect the division of powers between the two arms of the budgetary authority. Accordingly certain amendments were made notably to the procedures for the approval of transfers.

For the sake of consistency the Commission would also have proposed similar arrangements for non-automatic carryovers if it had not at the time, for reasons which the Council and Parliament did not accept, chosen a different approach aimed at dispensing with non-automatic carryovers (see the first indent of the new Article 6(3)(b) in the 1976 proposal).

However, the Council and Parliament rejected the Commission's proposal and, in reinstating the possibility of non-automatic carryovers, simply returned in practice to the situation as it existed under the 1973 Financial Regulation, under which the power to decide on non-automatic carryovers lies solely with the Council.

In the Commission's view this inconsistency needs to be corrected. An appropriate amendment is therefore proposed (Article 7(4)) to give Parliament the power to decide on non-automatic carryovers in respect of non-compulsory expenditure. This is in line with the powers which Parliament already enjoys in respect of such expenditure both in establishing and adopting the budget and in deciding on transfers.

B. MEASURES TO IMPROVE RELATIONS BETWEEN THE INSTITUTIONS

The experience of recent financial years shows that, although progress has already been made in improving relations between the institutions, in particular as a result of the Joint Declaration of 30 June 1982,¹ an effort must still be made in various fields; some appropriate provisions should therefore be embodied in the Financial Regulation for this purpose.

1. Financial statement

In line with the practice agreed informally a number of years ago, the Commission attaches to its proposals with financial implications a financial statement showing the budgetary consequences, including any effects on staff numbers. It would therefore be appropriate to add a provision to this effect to the Financial Regulation as Parliament suggests (new Article 3(1)).

2. Indicative nature of amounts entered in basic acts

In the Joint Declaration of 30 June 1982 the Council decided to avoid laying down "maximum amounts" in basic regulations in order to preserve the full importance of the budget procedure for non-compulsory expenditure.

Parliament proposes that a provision to this effect be included in the Financial Regulation. The Commission backs this suggestion and proposes that the principle be embodied in the new Article 3(2)).

3. Action to be taken by the Council in response to preliminary draft supplementary or amending budgets

The Commission has the right of initiative to propose the initiation of supplementary or amending budget procedure in order to cover requirements. The budgetary authority consists of two arms: Council and Parliament. It is important that each arm of the budgetary authority should be given the possibility, in accordance with the provisions applicable, in particular Article 203 EEC, of stating its position on the Commission proposal.

Experience in recent years has shown that it would be a good idea if the Financial Regulation stated that the Council may not halt

¹ OJ C 194, 28.7.1982.

a supplementary or amending budget procedure once it has been initiated; as far as procedures are concerned, this implies that Parliament must receive formal notice of the Council's position so that the prerogatives conferred on it by the Treaty are preserved. A provision to this effect is proposed in Article 15(5).

Even if the Council felt - in the field of non-compulsory expenditure, for instance (1) - that there was no case for establishing a supplementary or amending budget, it would not, however, be entitled to stop the Parliament - the second arm of the budgetary authority - from seeing the situation in a different light and hence from exercising its right to make the amendments within its powers.

4. Relations between the Court of Auditors and other institutions

The Court of Auditors' annual report and the comments (special reports) which it may make on its own initiative form the cornerstone of external control on which the exercise of political control rests. Suitable remedies should therefore be found for the deficiencies of the present Financial Regulation. The Commission is accordingly taking over most of Parliament's amendments designed to ensure more rational presentation of the annual report (Court's comments to be treated as confidential in the preliminary stage, separate section to be established for each institution and replies to be presented immediately after the final comments). Appropriate provisions are also proposed for the treatment of the special reports (Articles 88 and 90).

5. Systematic information on the use of advances for the EAGGF Guarantee Section

Parliament has recommended that the system of advances - in the form of provisional global commitments - be replaced by a system of "detailed" commitments. However, this suggestion cannot be adopted at present because of the implications of the system of direct management of this expenditure at national level by the paying agencies.

But as it has told Parliament, the Commission is willing to supply the budgetary authority, and in particular Parliament, with all the necessary information on the use to which these advances are to be put. In practice, this information will provide the transparency sought by Parliament with its proposed system of detailed commitments which cannot be put into effect for technical reasons. Article 98(2) therefore contains a new provision to this effect.

(1) A case concerning non-compulsory expenditure would be more significant as regards the fundamental issues than one concerning compulsory expenditure.

C. NEW SPECIAL PROVISIONS APPLICABLE TO EXTERNAL AID

This existing Financial Regulation contains special provisions for certain areas which cannot be covered under the general body of the Regulation. At present there are three such areas: research appropriations (Title VII), EAGGF Guarantee Section appropriations (Title VIII), and appropriations for food aid (Title IX).

These special provisions are necessary because certain specific features of the areas in question require separate rules, relating principally to the implementation of the budget.

For some years now the budget has included appropriations relating to protocols with certain Mediterranean countries and appropriations for non-associated developing countries. Further special provisions should therefore be introduced laying down the specific conditions for the utilization of appropriations in these areas.

The geographic location of the countries concerned, the nature of the aid (grants, special loans, interest rate subsidies, etc.), the decentralized administrative system which has had to be set up in this area, the special conditions for the award of contracts, etc. - all these are specific features which cannot be properly covered by the general body of the Financial Regulation and accordingly require special provisions.

The proposed special provisions included in the attached draft regulation cover the following aspects:

1. basic principles (Article 104 and 105);
2. definition and responsibilities of the executive organs (chief authorizing officer, national authorizing officer, Commission delegate, paying agent) specifically provided for (Articles 106 to 110);
3. special conditions relating to the award of contracts (Articles 111 to 117);
4. audit arrangements (Article 119).

Article 24, which lays down the basic provisions relating to the accounting officer, has been amended to include reference to a new Article 110, which introduces the definition of the "paying agent" necessary for this particular field.

In its common position¹ on the draft basic regulations governing the implementation of these Financial Protocols, the Council recognized that the Financial Regulation needed to be amended to include special provisions for this area. The conciliation procedure with Parliament is still in progress on these draft regulations.

It is therefore essential to fill the gap which currently exists in the Financial Regulation in this respect.

It should be noted that the provisions in question, which are essentially based on the Financial Regulation for the EDF, will constitute suitable rules for when the Fund is included in the budget.

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Up to now, the procedure for implementing financial and technical cooperation has been covered by contractual provisions between the Commission and the State receiving the aid.

In the case of the first financial protocols with the Maghreb and Mashreq countries and financial and technical cooperation with the non-associated developing countries, these provisions have been incorporated in the general clauses of the financing agreements concluded with the countries for each project.

It is essential that these contractual provisions be given a basis in internal Community law and the gap which exists in the Financial Regulation in this respect must be filled.

¹ S/1311/78 (MED 17) (FIN 105), 20.7.1978,
and T/708/78 (NS) (P) (FIN), 13.9.1978.

D. NEED FOR CERTAIN TECHNICAL IMPROVEMENTS AND MORE DETAILED PROVISIONS

Experience acquired over the last few years has convinced the Commission that certain parts of the current text need to be adjusted or expanded.

The opinions of the Court of Auditors and of Parliament largely confirm this need for a text which is more precise on a number of points and more comprehensive.

The main changes are briefly described below:

1. Improvements in the presentation of the budget

The Commission considers it necessary to propose the following innovations:

(a) New structure of general budget

In its proposal of 11 June 1981¹ the Commission had already proposed, for the reasons set out at the time, that the Commission's activities be covered in the general budget by a Section III for administrative appropriations and a Section VI for operating appropriations. The budgetary authority agreed that this distinction was justified and, pending formal amendment of the Financial Regulation, set up a Part A in the budget for the Commission's administrative appropriations and a Part B for its operating appropriations, thus giving practical effect to the Commission's proposal.

However, the Commission now feels that in view of the development of the contents of the budget and the outlook for the future it should recommend broadening the thrust of its 1981 proposal.

It can be said that the Community's operating budget will have an increasingly important role to play and will develop along the following three main lines:

- first, the Community must continue to farther the process of development and internal integration, in particular by means of the various traditional policies which already exist;
- second, if the Community really wishes to advance or simply keep up with today's major economic powers, it must

¹ OJ C 158, 27.6.1981.

make a very considerable effort in the fields of research, development and technological innovation;

- third, the budget must clearly reflect the Community's external policy role, a dimension which will also be developing in future.

The Commission considers it its duty to propose at once the necessary technical adjustments to the budgetary structure to enable it to accommodate all these political roles. It is therefore proposing that the general budget be divided into three sections for operating appropriations to reflect the three main policy areas outlined above. Annex 1 gives an idea of the layout envisaged by the Commission.

(b) Entry of commitment appropriations

Very many budget sectors, namely those which involve multiannual operations, are allocated commitment and payment appropriations. The commitment appropriation is to cover the total cost of a specific multiannual operation from the financial year in which it is initiated: it is thus a reflection of the real cost to the Community of a specific operation.

The present Financial Regulation provides for commitment appropriations to be shown in the budget only on the right-hand pages under "Remarks": this presentation - as experience has shown - is unsatisfactory in several respects, since it does not afford all the budgetary transparency desired.

Commitment appropriations should stand out clearly; it should be possible to find their total amount and to assess them individually and in aggregate for their intended purposes. They represent a specific dimension of the budget which must be clearly distinguishable and highlighted (notably for a comprehensive assessment of the implications and scope of the budget and for the various calculations relating to the maximum rate).

The budgetary authority, on a proposal from the Commission, has therefore already adopted a pragmatic solution in the presentation of recent budgets to provide a clear picture of the dimension of the appropriations for commitments.

Since commitment appropriations are appropriations in their own right, the Commission proposes that the Financial Regulation be amended to specify formally that they should be entered on the left-hand pages of the budget.

This change, which is a definite improvement both for the technical administration of the budget and in the political presentation, affects Article 1(5) and the first indent of Article 20(2)(b)(ba).

(c) Determination of amounts to be entered in the expenditure column (financial year n-2)

Besides the appropriations authorized for the financial year for which it is adopted, the budget - mainly for the sake of comparison - also shows the appropriations authorized for the preceding financial year (financial year n-1) and "the actual expenditure in the last financial year for which the accounts have been closed" (financial year n-2), as required by the last indent of Article 16(2)(b)(ba).

Experience in recent financial years has shown that this provision is not sufficiently clear; it must be decided how this expenditure is determined depending on whether the appropriations are differentiated or non-differentiated, the same approach not being possible because of the different nature of those appropriations. The budgetary authority itself has in fact made this observation.

Another shortcoming of the present arrangements is that there is no provision to show implementation of commitment appropriations; this exists only in respect of payment.

The revised draft Regulation therefore carries new provisions which clarify and amplify the text of the last indent of Article 20(2)(b)(ba). For non-differentiated appropriations the current practice is confirmed. But for differentiated appropriations, new provisions are proposed in order to make good the existing inadequacies and allow the budget to reflect appropriately implementation during financial year n-2.

2. New provisions concerning transfers

The budget is the instrument for estimating and authorizing expenditure. But two important aspects must be borne in mind:

- (i) insofar as the expenditure figure is an estimate - which is worked out between at least some eight months and at most nearly twenty months before specific funds are actually spent - the accuracy of the estimate may obviously include a margin of

approximation which varies from one sector to another: it is, in principle, quite normal then that adjustments should be made while the budget is being implemented;

- (ii) Over and above this purely technical aspect, the budget is not an entirely static instrument, since it may be necessary, because of political developments during the financial year, to switch between operations in progress.

The use of transfers constitutes the standard procedure for adapting the budget to changing circumstances. It is therefore essential that the provisions concerning transfers be sufficiently clear and comprehensive for this procedure to be fully effective.

But the current provisions of Article 21 of the Financial Regulation in respect of transfers contain two deficiencies which must be made good:

(a) Technical obstacles

In the first place the current provisions must be expanded to lay down the conditions for possible transfers:

- (i) of remaining commitment appropriations, since obviously it must be possible to transfer remaining appropriations. Commitment appropriations have a lifetime of two years and there is no reason for not being able to do in the second year what can be done in the first;
- (ii) of payment appropriations carried forward automatically (whether they are non-differentiated or differentiated payment appropriations). Insofar as the aim is to erect a structure which will ensure optimum conditions for rational implementation of the budget, it is essential that in certain cases it be possible to transfer carried-over appropriations to meet specific needs;
- (iii) between appropriations that are non-differentiated and those that are differentiated. Material implementation of the budget may well make such a possibility very advantageous.

The shortcomings of the present text must therefore be put right as regards the purely technical aspects, and at the same time, a more comprehensive set of rules must be established, which would afford advantages on the broader political plane of implementing the budget as a whole. The Commission accordingly regards it as essential that obstacles of a technical nature which could hamper the activities of the Communities be removed.

(b) Exercise of decision-making powers

The division of decision-making powers would gain from a new balance reflecting both technical and political requirements.

The following changes appear necessary:

- Transfers within the sections for the Court of Justice and Court of Auditors

In its opinion Parliament proposed that the discrimination which now exists between the provisions applying to the Commission and those applying to the Court of Justice and Court of Auditors be removed. The Commission shares this view and supports the amendment. It therefore proposes that the Court of Justice and Court of Auditors should also be able to take transfer decisions within their respective sections provided that they inform the budgetary authority and the Commission three weeks beforehand.

- Transfers within the same policy area

In the light of the experience gained in recent years, Parliament proposes a new measure which would facilitate and rationalize quite considerably the decision-making process for some transfers.

Although the chapter is the demonstration of the rule of specification at technical level, this is often not the case at political level. In the various fields forming a given policy there are chapters with closely-connected contents. Parliament therefore proposes - and the Commission fully supports this suggestion - that the budgetary authority, when adopting the budget, may, on a proposal from the Commission, draw up lists of chapters between which the Commission may itself decide on any transfers which prove necessary. This measure would rationalize and simplify the conditions for the implementation of the budget.

- Transfers between payment appropriations

The Commission should be able to take decisions itself concerning all transfers between payment appropriations which are differentiated appropriations; such transfers - where nothing political is at stake, since the real dimension of Community participation is constituted by the commitments - are made simply to adjust the estimate, inevitably very relative, to the flow of cash required to cope with actual payments. In view of the cumbersome and costly procedures involved, it is therefore both unnecessary and inappropriate that such transfers should require the approval of the budgetary authority when the budgetary authority, as it happens, has no real authority to wield on the substance.

- Transfers within the EAGGF Guarantee Section

A similar argument must apply in the case of the transfers within the EAGGF Guarantee Section. These transfers are not, strictly speaking, "authorizing" transfers - since they do not make possible any expenditure, which actually derives from application of the rules of the common organization of the various agricultural markets - but "adjusting" transfers. This situation arises from two factors peculiar to the EAGGF Guarantee Section:

- (i) the volume of Guarantee Section expenditure is not determined by the appropriations entered in the budget - with all the inevitable inaccuracy in that field - but from the basic regulations covering the various market organizations. While it must be admitted that in purely formal terms the budget authorizes expenditure, in actual fact in this case it simply reflects or rather records the expenditure.
- (ii) to the substantive consideration made above must be added the procedural or administrative consideration that on the basis of the rules in force expenditure is effected first at national level under the global advances and does not affect the Community budget until some time later (on average two or three months). The transfers therefore enable the inevitable inaccuracies of the estimates to be rectified retrospectively in the accounts.

While confirming that it accepts the role devolving upon it from regulations as regards the management of the Guarantee Section and from its responsibility for maintaining vigilance and keeping up a constant supply of information to the budgetary authority on the development of the situation, the Commission would propose that it be granted the power of decision on the transfers in question for the reasons set out above.

It should be added, however, that this procedure also ensures that Parliament will be given suitable advance information.

The Commission is therefore proposing appropriate amendments to Articles 25, 103 and 118 of the Financial Regulation. Because of the administrative complexity of transfer procedures, it was thought appropriate to include a table comparing the present situation with what is proposed (Annex 2).

3. Additional details concerning implementation of the provisional twelfths arrangement

Experience during the first half of 1980, when the Community had no budget as a result of the rejection by Parliament in December 1979, has shown that it would be beneficial if Article 8 of the Financial Regulation were more detailed and more explicit. The Commission is therefore proposing additional provisions which would make things much easier if the provisional twelfths arrangements had to be used again in future.

These additional provisions may be summarized as follows:

(a) Treatment of "global commitments" under the EAGGF Guarantee Section as "commitments" provided for in Article 9

It is proposed that a provision be added stating explicitly that the "global commitments" under Article 98 be considered - as happened in practice during the first half of 1980 - as "commitments" provided for in Article 9(2)(a). It is quite right that the Guarantee Section should not be deprived of the benefit of the method applied for commitments in all areas of the budget. The fact that the "global commitments" of the Guarantee Section are in reality advances paid to the Member States should not affect the general principle underlying the Financial Regulation: the commitment enables a start to be made and for that reason a quarter of the appropriations for commitment are available in January. The purpose of the advances from the Guarantee Section is basically the same, since they enable Member States to begin financing operations as and when necessary;

(b) Determination of the second of the two limits on expenditure when no budget exists

The basic principle underlying the twelfths arrangements is that of two limits; pending adoption of the budget, appropriations are administered provisionally on a chapter-by-chapter basis and may not exceed the lower of the amounts appearing in

- the budget for the preceding year, taking transfers into account (in order to reflect the actual situation more accurately);
- or the budget (preliminary draft or draft) in preparation.

Two points can be made:

- (i) if the budget is rejected it is not possible to work solely on the basis of the previous year's budget, since the second limit would then not be respected and risks would arise;

- (ii) it should be indicated more clearly than in the present Regulation what document (i.e. stage of the procedure) constitutes the second limit, notably in the event of rejection.

To clarify this the Commission proposes appropriate provisions in the new paragraphs 3 and 4 of Article 9. It should also be pointed out that the twelfths arrangements - for obvious reasons of administrative stability - cannot be uncertain and subject to alteration; i.e. the basic figures must not change as the budget subsequently passes the various stages in the procedure. The figures standing at the end of the financial year are therefore the basis for the application of the twelfths, and no change is possible until the budget is adopted. This is specified in the additional clause entered as Article 9(3).

(c) Technical details for the application of the twelfths arrangements

The new, expanded Article 9(5) contains more detailed provisions which practical application of the twelfths arrangements in 1980 showed to be necessary. It would appear useful to specify that:

- (i) for both commitments and payments the budgetary authority can authorize additional twelfths over and above those automatically available under the existing provisions;
- (ii) these additional twelfths are authorized whole and cannot be split.

(d) Possibility of transferring available allocations

Practical application of the twelfths arrangements in 1980 showed that in some exceptional cases, the only way of dealing intelligently with certain particular situations is by adjusting allocations available under the twelfths arrangements.

The Commission's attitude here is essentially pragmatic. The purpose of the twelfths arrangements is clearly to ensure the vital continuity of activities pending adoption of the budget. The twelfths arrangements must thus never be allowed to cause paralysis, for that would be just the opposite of what an interim measure for continuity was designed to achieve. The Commission is therefore proposing that it be possible to switch available resources from chapter to chapter, such moves being treated procedurally as transfers.

Since the present Regulation neither provides for nor precludes this possibility, a specific provision has been introduced as the new Article 9(6).

(e) Finally, the Commission can endorse Parliament's suggestion that the duration of the twelfths system should be limited as much as possible. Parliament proposed three months but the Commission has reduced this to one month in line with the Joint Declaration of 30 June 1982. In any case, this provision is purely indicative.

4. Carryover of Chapter 100 appropriations

In recent years it has been felt that in certain special cases the possibility should exist for carrying over appropriations entered in Chapter 100: the existing text of the Financial Regulation does not expressly prohibit this, but as nothing is said either way, it remains a grey area.

To take a practical example: the following situation might arise. An appropriation has been entered in Chapter 100 of the budget for year n in the expectation that the Council will take the basic decision enabling that amount to be transferred to the appropriate budget heading; meanwhile, in that same year n the budget for year $n + 1$ is drawn up and approved; in the course of that procedure a set amount is entered under the appropriate heading for year $n + 1$ to allow for continuation of that same activity, assuming that the amount specified in the budget for year n and awaiting transfer to that heading is still there: the amounts specified in years n and $n + 1$ are therefore complementary. Nevertheless it is conceivable either that the Council will not take the basic decision in time, or that the transfer cannot be completed before the end of the year because of the time taken for the procedure: in which case the appropriation entered in Chapter 100 would lapse and the budget estimate for year $n + 1$ would be incorrect.

To cope with this situation - which has in fact already arisen - and with the sole aim of safeguarding the objectives which the budget authority has itself determined when entering these appropriations, it is essential that it be possible to carry over certain appropriations entered in Chapter 100, but solely in cases as described above.

This is a simple case of budgetary logic: for, if this remedy were not available, it would then be necessary during year $n + 1$ either to transfer appropriations or to introduce a supplementary budget in order to recover the appropriation lost from Chapter 100 at the end of the previous year; this would impose a needless procedural burden on each of the institutions concerned.

But in any case the other technical improvements envisaged in the proposal include one to allow transfers of carryovers so that the proposal to permit carryover of appropriations in Chapter 100 should not pose any problem.

5. Amendment of the provisions relating to research, development and technological innovation

Parliament passed an amendment to make the budgetary presentation of appropriations in this sector simpler and more transparent. The Commission shares this desire, as it already stated at the July part-session of Parliament. A brief review of the history of the presentation of research appropriations would help to explain the amendments which the Commission now proposes in the light of changes which have occurred over the years.

Until the beginning of the 1970s the research appropriations were presented in traditional style and the nomenclature was mainly based on the type of expenditure. The research budget, limited to the Euratom sector, was separate up to 1970 and was not incorporated into the general budget, in the form of an annex, until 1971 when the own resources system entered into force. Since then two types of budgetary presentation have applied to this sector:

- The first,¹ which remained in force until 1978, used the "functional" structure for both the establishment of the budget (forming an annex of around 500 pages) and implementation. This presentation was extremely cumbersome and complicated.
- The second,² introduced in 1979, was intended to simplify the budgetary structure in this sector, so that the appropriations could be dealt with in the budgetary procedure.

However, the change made in 1979 has proved inadequate. The current presentation has the following shortcomings:

- (a) It is not sufficiently transparent since it combines elements formally contained in the budget (appropriations entered under the various headings of Chapter 73, tables of equivalence and schedules in the annex) with elements such as the financial plans which are not contained in the budget but which nevertheless constitute the formal structure for implementation of the budget.
- (b) As regards entry in the budget, the staff and administrative appropriations are merged with the operating appropriations, complicating and, in practice, sometimes completely ruling out any examination by the budgetary authority or the exercise of Parliament's right of amendment concerning the various components of the appropriation.

¹ Articles 93 to 103 of the Financial Regulation of 25 April 1973 (OJ L 116, 1.5.1973).

² Financial Regulation of 21 December 1977, as amended by Regulation No 1252/79 of 25 June 1979 (OJ L 160, 28.6.1979).

- (c) This evident complexity in a system which was intended to give this area of appropriations the special flexibility it warrants has given rise to a number of difficulties as regards implementation and has prompted criticism by external audit bodies on the utilization of certain appropriations.
- (d) Finally, the "functional budget" system was designed at a time when, in practice, it applied only to nuclear research which was conducted at Community level by the Joint Research Centre establishments. The scope of this field has now become far wider as a result of the considerable developments which have since occurred.

The Commission therefore feels that, in view of Parliament's amendment, the time has come to amend the provisions of the Financial Regulation to achieve the following main objectives in this sector:

- (a) In view of the increased scope, the Commission proposes that a section of the budget be devoted in future to all "research and development activities and technological innovation" (see D.1(a) above).
- (b) To secure the necessary transparency and thus facilitate the task of the budgetary authority, the staff appropriations for this field are presented in the traditional manner in this section. The operating and administrative appropriations are presented as appropriate for each programme.
- (c) However, the features of this sector demand rules of particular flexibility. This was guaranteed by the present "functional budget" system which provides for some "interchangeability" of available funds. Together with the new more transparent presentation, the flexibility essential to this sector must obviously be maintained. Article 95 contains special provisions to satisfy this requirement.
- (d) The demand for the restoration of correspondence between the budget and the programme decisions is satisfied by:
 - a table of equivalence and the schedules annexed to the budget;
 - an official analytical accounting system which forms an integral part of the accounting system and which will therefore always be at the disposal of internal and external audit bodies.

The new Articles 91 to 96 contain the new provisions proposed by the Commission.

6. Amendment of the provisions relating to the list of posts

Article 20(3) and (4) has been amended and expanded for two reasons:

(a) Half-time work

Article 55a of the Staff Regulations allows Community officials to work half-time: fairly large numbers of staff in the various institutions do in fact do so.

The Commission, for instance, has around 140 staff working half-time at the moment; roughly 68% in the C category, 20% in the language service, 9% in the B category and 3% in the A category.

Establishment posts are, of course, approved by the budgetary authority in order to meet each institution's requirements - which have been scrutinized and justified in detail - and are thus intended to satisfy their manpower needs - assuming that these posts are occupied full-time. Consequently, if the institutions allow staff to work half-time, under present rules this deprives them of some of the total manpower which the budgetary authority intended them to have: i.e. the effect on the Commission at present is as if its list of posts had been cut by around 70.

For the sake of fairness the Commission is proposing that officials working half-time should henceforth be reckoned as filling only half a post in the list of posts: in other words it would seem reasonable that a single post in the budget should be allowed to support two half-time officials.

It should also be added that at present the institutions regularly engage agency staff to compensate for the loss of manpower entailed by half-time working; and agency staff cost more than established officials.

There are therefore good administrative reasons to justify the Commission's proposal, as well as considerations of fairness and sound budgetary management.

(b) Updating of rules on the list of posts for research activities and other changes in presentation

The present text of the second indent of Article 16(2)(c) no longer reflects the real position.

The discrepancy has arisen because Regulation No 2615/76¹ introduced special provisions for research staff, providing in particular for the

¹ OJ L 299, 29.10.1976.

"establishment staff" category to be abolished together and a distinction made between permanent and non-permanent posts.

The Commission is accordingly proposing that the text be adjusted to bring it up to date (see second indent of Article 20(3) of the attached draft Regulation).

The Commission is also taking this opportunity to make a clear presentation of the provisions relating to the various lists of posts contained in the budget.

7. Greater flexibility in the management of the Community's resources

Article 27 of the existing Financial Regulation provided that any surplus (or deficit) from one financial year shall be entered in the budget of the subsequent financial year via an amending budget.

As was already proposed in the last general revision of 19 May 1976¹ it is felt that the balance from the previous financial year should be retained in year $n + 1$. The balance would therefore be entered in the budget for year $n + 2$.

This proposal (contained in the new Article 31) offers the following practical advantages:

- (a) Firstly, assuming a positive balance - i.e. a surplus - which is the usual case, it would be easier to provide for a supplementary budget, should the need arise. The retention of a surplus would lessen the impact of a supplementary budget on Community resources by reducing the nominal size of the contribution which Member States would be asked to provide. The existence of this balance would make for greater flexibility, since it would have a definite stabilizing effect on the budgetary procedure as a whole.
- (b) Secondly, on a practical level, the balance is not known until the revenue and expenditure account has been drawn up, i.e. 1 June.

This inevitably means that the balance cannot in any case be entered in the budget for financial year $n + 1$ during the normal procedure but that recourse must be had to a supplementary budget.

This practical consideration is another reason for retaining the balance until year $n + 2$. It would then be entered in an amending budget drawn up in year $n + 2$.

¹ See COM(76)210 final.

E. ADJUSTMENT OF CERTAIN DATES AND DEADLINES

In the light of past experience and certain objectives, the Commission sees it necessary to propose the changes in dates and deadlines contained in Annex 3.

Special comments should be made concerning the following changes:

1. Bringing forward the date for applying for non-automatic carryovers

It is proposed that requests for non-automatic carryovers (see Article 7(4)) be presented by 31 March so that the decisions taken by the budgetary authority can be incorporated in the revenue and expenditure account in line with the wishes of the Court of Auditors. This is not possible with the present deadlines.

2. Notification of the full list of carryovers

Secondly, it is proposed that the deadline for transmitting the list of automatic carryovers to the budgetary authority be altered; the existing deadline of 1 April cannot be met for practical reasons as items can be entered in the accounts up to 31 March and some time is therefore required before the list can be presented. For this reason the Commission suggests that the date in question be made to coincide with the deadline for the revenue and expenditure account.

In line with Parliament's amendment, the Commission also plans to present a full list containing the commitment appropriations remaining available as well as the non-automatic carryovers.

3. Introduction of formal dates for the procedure for the clearance of EAGGF Guarantee Section accounts

The current Financial Regulation does not lay down any deadline for this procedure although some provisions - which it has not been possible to apply - are contained in Regulation No 729/70 of 21 April 1970. The clearance operations and procedures have proved so laborious in the past that the Court of Auditors and Parliament have amended the current text to create a basis in the Financial Regulation for improving the situation in future.

The Commission endorses the spirit of these amendments but has changed the wording and adjusted the deadlines suggested to make them more feasible in practice in the interest of all the institutions concerned.

F. OTHER AMENDMENTS

In the light of experience acquired, various amendments or additions have been proposed in respect of several articles with a view to making the Financial Regulation clearer.

Generally speaking these amendments do not require any special explanation here, except for the following:

1. Article 22 (new Article 26)

Two changes are proposed in line with Parliament's opinion:

(a) Treatment of exchange differences

In accordance with the practice already agreed for the closure of accounts in recent years and in accordance with the provisions of the second indent of the second paragraph of Article 15 of Regulation No 2891/77 which is now being revised, the final exchange gain or loss for a financial year is entered in the balance sheet while the current Article 22(4) states that it should be shown as revenue or expenditure in the execution of the budget.

Since this entry in the budget, in particular on the expenditure side, is not feasible for various reasons - the difficulty in obtaining the necessary funds at the end of the year or the need to resort to the open transfer formula - the obvious solution is to enter it in the balance sheet.

Parliament's proposal was simply to delete the current Article 22(4). The Commission would prefer to keep it, with appropriate amendments.

(b) Repayment of advances

Systems of advance payments have been introduced by the sectoral rules for various policies to improve the effectiveness of the operations involved. However, for various administrative reasons, the Community often has to recover some of these payments, especially where the recipients have not satisfied the required conditions within the time limit set. However, these Community funds must still remain available, notably in the interests of budgetary stability.

Since the present Financial Regulation does not offer an appropriate solution - it provides for the re-entry of these amounts as revenue or for the reutilization arrangements which are, however, complicated and uncertain - a new appropriate provision would be desirable. The Commission has therefore

incorporated Parliament's amendment in Article 26(6).

2. Article 34¹ (Making over of own resources to the Community)

This article, which concerns the making available of own resources, is incomplete. In terms of procedure and bookkeeping, own resources are made available in two separate stages:

- (i) each Member State makes the resources available to the Community on the dates laid down in the relevant rules, by entering them in an account opened in the name of the Commission with the national Treasury;
- (ii) the amounts of the resources must be entered in the official accounts kept by the Commission in execution of the statement of budget revenue.

The rules governing the conversion from ECUs into national currencies and vice versa during these two stages must be made quite clear; Article 34¹ must therefore be amended and expanded so that no possible doubt may exist.

3. Determination and updating of certain amounts connected with contracts under the implementing measures

In its Opinion, Parliament proposed that some of the provisions concerning the ceilings or thresholds in connection with research activities should be dealt with in the implementing measures. The Commission endorses this amendment, especially as it is very laborious to adjust the various amounts by means of the Financial Regulation while the procedure for the implementing measures, which are laid down by a Commission decision, is better suited to the actual situation.

For reasons of consistency and necessity, the Commission therefore proposes that all these various amounts - contained in Articles 52, 54, 56, 57 and 94 of the present text (Articles 58, 60, 62, 63 and 96 of the next text) - should no longer be laid down by the Financial Regulation but should be determined under the Regulation on the implementing measures, to be adopted by the Commission after consulting all the other institutions.

¹ Present Article 30.

4. New general provision on the payment of interest or penalties by defaulters

Point F.1(b) above referred to the budgetary treatment of repayments of certain advances. However, at financial level more generally there is an important problem which the audit bodies have already drawn attention to several times: it is essential to ensure that Community funds are used wisely and to penalize any abuses which may occur.

The Commission therefore considers it necessary to include a new provision to this effect in the Financial Regulation (Article 47).

5. Article 64¹ (Council Directives on public works and supplies)

As is known, the Council has issued two Directives on public contracts - one in 1971 on public works (305/EEC) and the other in 1977 on supplies (62/EEC); the Member States have to comply with them in their national procedures.

It is only right that these Directives should be applicable to Community activities as well.

New provisions should therefore be added to Article 64¹:

- (i) drawing attention to the supplies Directive (which is not mentioned at present);
- (ii) stating that more detailed and explicit provisions will be laid down as "implementing measures" to be adopted by Commission Regulation in accordance with Article 123 (present Article 106) of the Financial Regulation.

6. Article 118 (Food aid)

Under the present Regulation, food aid is dealt with by the same procedures as apply to the EAGGF Guarantee Section.

However, a number of operations involving expenditure are performed by the Commission (and not by the Member States via "paying agents").

¹ Present Article 58.

It should therefore be specified that this expenditure is not implemented in accordance with the special provisions governing the Guarantee Section and Food Aid in general, but according to the rules laid down in the main body of the Financial Regulation.

This provision can be found in Article 116 of the attached draft (new paragraph 3).

G. RESTATEMENT OF THE PROPOSAL TO INCLUDE BORROWING AND LENDING OPERATIONS IN THE BUDGET

On 12 June 1978 the Commission proposed a solution for including borrowing and lending operations in the general budget of the European Communities.¹

This proposal was approved by the Court of Auditors and by Parliament but was not accepted by the Council, which at the time was unable to agree on a common position for conciliation with Parliament.

In restoring the provisions concerning these operations in its opinion, Parliament wanted to reopen discussion of this proposal. The Commission has always upheld the proposal and also considers that it should be formally reintroduced so that it can finally be adopted in this general revision of the Financial Regulation. For the record, Annex 4 contains the explanatory memorandum set out in COM(78) 263 final of 12 June 1978.

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On page 43 of COM(83) 500 final of 28 July 1983 containing a series of proposals concerning the common agricultural policy, the Commission proposed that the EAGGF Guarantee Section appropriations which had not been used at the end of the financial year should be automatically carried over to the EAGGF Guarantee Section for the following year.

The Commission therefore reserves the right to draw up a formal proposal to this effect when necessary in the light of the general progress in the revision of the common agricultural policy.

¹ COM(78) 263 final (OJ C 160, 6.7.1978).

Finally, the Commission would like to see the horizontal consolidation of financial rules, a measure which is also desired by the other bodies concerned, especially Parliament. In particular, the Financial Regulation should include all the provisions concerning the making available and management of own resources (at present in Regulation No 2891/77).

Since these provisions are currently being revised and will soon have to be adapted again once the new decision on own resources has been adopted, the Commission reserves the right to propose this consolidation as soon as it is objectively feasible.

ANNEXES

- ANNEX 1 : New layout of the budget for operating appropriations
- ANNEX 2 : Provisions governing transfers - comparison
- ANNEX 3 : Comparison of dates
- ANNEX 4 : Explanatory memorandum of the proposal of 12 June 1978
to include borrowing and lending operations in the
budget

NEW LAYOUT OF THE BUDGET FOR OPERATING APPROPRIATIONS

- SECTION VI : INTERNAL DEVELOPMENT OF THE COMMUNITIES
(Common agricultural and fisheries policies, appropriations for operations in the social, regional and industrial sectors, appropriations for transport, environmental and consumer protection and the cultural sector, repayments, specific aids to the Member States, loan guarantees and miscellaneous)
- SECTION VII : RESEARCH AND DEVELOPMENT ACTIVITIES AND TECHNOLOGICAL INNOVATION
(Appropriations for operations in research, energy, technology and innovation and scientific and technological information)
- SECTION VIII : COOPERATION WITH DEVELOPING AND OTHER NON-MEMBER COUNTRIES
(Food aid, cooperation with non-associated developing countries, cooperation with developing and other non-member countries, cooperation with Mediterranean countries, operation of delegations in developing countries, European Development Fund)

PROVISIONS GOVERNING TRANSFERS (ARTICLE 25 OF THE FINANCIAL REGULATION)

COMPARISON

A. PRESENT SITUATION

COMMISSION SECTION		COUNCIL AND PARLIAMENT SECTIONS	OTHER SECTIONS (COURT OF JUSTICE AND COURT OF AUDITORS)
Sector	Procedure		
I. GENERAL FRAMEWORK			
Part A Titles 1 and 2	(a) It takes decisions concerning transfers between items and articles. (b) It takes decisions concerning transfers between chapters, within titles, two weeks after informing the budgetary authority.	They take decisions concerning all transfers within their own sections. They inform the Commission of their decisions.	They submit transfers between items and articles to the Commission, which takes decisions. They submit proposals for transfers from one chapter to another to the Commission for transmission to the budgetary authority.
Part B Titles 1 and 2 (EAGGF Guarantee Section)	(a) It takes decisions concerning transfers between items and articles up to 31 March. (b) It makes proposals to the Council - which takes decisions up to 31 March - concerning transfers from one chapter to another. Parliament is informed of these transfers.		
Food Aid	It takes decisions concerning transfers from one article to another up to 31 March.		
Other titles	(a) It takes decisions concerning transfers between items and articles. (b) It makes proposals to the budgetary authority concerning all transfers between chapters.		
Research appropriations (Chapter 73)	Ad hoc flexibility: "functional budget" (see Articles 86 to 94).		
<ol style="list-style-type: none"> Transfers of appropriations carried over <ul style="list-style-type: none"> non-differentiated appropriations differentiated appropriations (= payment appropriations). Transfers of commitment appropriations remaining. Distinction in the procedure between transfers of commitment appropriations and transfers of payment appropriations (appropriations for the current financial year). Transfers between differentiated appropriations and non-differentiated appropriations. 		No specific provisions in the existing Regulation.	

B. SITUATION RESULTING FROM THE PROPOSAL

COMMISSION SECTION		COUNCIL AND PARLIAMENT SECTIONS	OTHER SECTIONS (COURT OF JUSTICE AND COURT OF AUDITORS)
Sector	Procedure		
I. GENERAL FRAMEWORK PROPOSED			
Part A Titles 1 and 2	No change (apart from the advance notice to be given to Council and Parliament: three weeks instead of two).	No change.	They take decisions on transfers within their section after informing the Council, Parliament and the Commission three weeks in advance.
Part B Titles 1 and 2 (EAGGF Guarantee Section)	(a) All transfers, including those between chapters, are effected by the Commission, after the Fund Committee has been consulted up to 31 March. (b) The Commission informs the budgetary authority 15 days before taking transfer decisions.		
Food Aid	- Transfers between articles are effected up to 31 March. - Articles 105(3) and 120(7) provide for the principle of "communicating doors" between the EAGGF Guarantee Section and Food Aid.		
Other titles	On a proposal from the Commission, the budgetary authority may draw up a list of chapters with mutually transferable allocations (= transfer decisions to be taken by the Commission).		
Research approps	Ad hoc flexibility (see Article 97).		
II. FLEXIBLE APPROACH PROPOSED TO OVERCOME TECHNICAL OBSTACLES			
<ol style="list-style-type: none"> Transfers of appropriations carried over <ul style="list-style-type: none"> non-differentiated appropriations differentiated appropriations (payment appropriations) Transfers of appropriations for commitment remaining <ul style="list-style-type: none"> between items and articles between chapters Distinction in the procedure between (appropriations of the current financial year) <ul style="list-style-type: none"> transfers of commitment approps transfers of payment approps Transfers between differentiated appropriations and non-differentiated appropriations 		These transfers are allowed. Decisions are to be taken by the budgetary authority or the Commission in accordance with their respective powers (see point I). : Decisions on all transfers (between items, articles and chapters) to be taken by the Commission. : Decisions on all transfers (between items, articles and chapters) to be taken by the budgetary authority.	

COMPARISON BETWEEN PRESENT DATES AND PROPOSED DATES

	<u>Present situation</u>	<u>Proposal</u>	<u>Change</u>
. Deadline for contracting commitments	31 December	31 December	No change
. Deadline for payment authorizations to reach financial control	31 December	31 December	No change
. Deadline for payment authorizations to reach accounting officer	Not provided for	10 January	New
. Deadline for the accounting officer to execute payments	15 January	15 January	No change
. Closure of accounts for the EAGGF Guarantee Section	31 March	31 March	No change
. Information from other institutions for the revenue and expenditure account	1 April	1 March	One month earlier
. Applications for non-automatic carryovers	21 April	31 March	20 days earlier
. List of automatic carryovers	1 April ¹	31 May	60 days later
. Drawing-up of the revenue and expenditure account	1 June	1 June	No change
. Presentation of the Court of Auditors' "comments"	15 July	15 July	No change
. Presentation of the institutions' replies	31 October	31 October	No change
. Final dispatch of the Court of Auditors' report	30 November	30 November	No change
. Presentation by Member States of the annual amending accounts for the clearance of the EAGGF Guarantee Section	Not provided for ²	by 30 June of "n+1"	New
. Commission decision on clearance	Not provided for ²	by 30 November of "n+2"	New

¹ This date is a mistake in the present system; it cannot be complied with since the EAGGF Guarantee Section accounts run until 31 March.

² By the Financial Regulation.

Explanatory memorandum
of the proposal of 12 June 1978
on the inclusion of borrowing and
lending operations in the budget

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(78) 263 final

Brussels, 12 June 1978

Proposal for a

COUNCIL REGULATION (EURATOM, ECSC, EEC) "

amending the Financial Regulation of

21 December 1977

applicable to the General Budget of the European Communities

(submitted to the Council by the Commission)

COM(78) 263 final

EXPLANATORY MEMORANDUM

During the conciliation procedure in November and December 1977 on the draft amendments of the Financial Regulation, it was agreed that new amendments would be proposed by the Commission in the second quarter of 1978 to take account of the three principle problems which arose during the conciliation:

-
- the improve the budgetary presentation of borrowing and lending operations;
-

BORROWING AND LENDING OPERATIONS

1. Current method of entry in the budget¹

Until now, because these operations are by definition self-balancing, the Budgetary Authority has entered a heading for each financial instrument under both the expenditure and the revenue sides of the General Budget, giving the heading a token entry accompanied by a remark which is binding in nature and supplemented by an Annex with the details of the operations carried out.

Nevertheless, from the point of view of the Budgetary Authority, this method does not give the required transparency as concerns the repayment of sums borrowed and lent and the payment of costs.

¹ The 1978 text is shown although some changes have since been made to its presentation.

From the point of view of the original lenders of the funds, the method does not define how the guarantee provided by the Communities would operate so that the obligations contracted could be met out of own resources.

In the light of experience gained in extending this type of operation over the last few financial years¹ the method requires certain improvements.

2. Commission proposal

In application of Article 199 of the EEC Treaty (which states that "all items of revenue and expenditure of the Community shall be shown in the Budget"), the Commission now proposes to add a second part to the General Budget and include in this the headings concerned with borrowing and lending. These give the following facts for the financial year in question, the current financial year and the one prior to that:

- the annual amounts of borrowing and related lending;
- annual capital repayments to the Community, and by the Community to the original lenders;
- annual interest payments due to the Community, and paid by the Community to the original lenders;
- annual instalments payable against the emission costs paid once and for all by the Community, and the sums due annually to the Community to cover the cost of managing these borrowing and lending operations as well as, on the expenditure side, payment of the same costs by the Community.

¹ In addition to the 1959 Agreement between Euratom and Eximbank there are the following operations:

Under the Regulation of 17 February 1975 the Council authorized the Commission to raise loans intended to help Member States overcome balance of payments difficulties caused by the rise in the price of oil products. On 29 March 1977 the Council then decided to authorize the Commission to raise loans with a view to contributing to the financing of nuclear power stations. On 30 January 1978 the Commission submitted a draft decision to the Council authorizing the Commission to raise loans with a view to generating investment in the Community.

3. Authorization to raise loans

The entry in Part II of the General Budget of the sums involved in borrowing and lending operations and capital and interest payments constitutes the authorization - within the limits fixed by the basic Regulation - to raise loans, lend on the funds thus received and pay off the capital, interest and costs annually.

Generally speaking, beneficiaries of lending-on operations will repay the Community in time for the latter to be able in its turn to repay the original lenders. Nevertheless, where a debtor is unable to pay in time, the Commission is authorized immediately to pay the sums which fall due.

Payments of this type might necessitate a transfer or the introduction of a supplementary budget, and provision has therefore been made to keep in Part I - on both the expenditure and the revenue sides - the present budget headings which, provided with a token entry, could if necessary be used to record any expenditure not covered by repayments from beneficiaries of lending-on operations, and any revenue resulting from the Communities exercising their right to proceed against defaulters.

Combining the procedures described in the preceding paragraphs with that of entering in Part II of the Budget the sums representing the authorization for the Commission to contract and repay loans, as well as the obligation arising out of Article 1(4) of the Financial Regulation as amended by this Regulation - namely to enter the necessary appropriations in successive budgets - constitutes a clearer and more convincing guarantee for the original lenders.

In order to cover the possibility that the transactions authorized may not be carried out before the end of the financial year, it is proposed that the authorisations written into Part II of the Budget but not used shall be automatically carried forward to the following year.

4. Scope of the new method of presentation in the Budget

For the Commission the new method of presenting this operation in the Budget entails the delicate task of providing some sort of estimates

for operations which do not lend themselves easily to rigid forecasts.

On the one hand, potential beneficiaries apply for loans because of the advantageous terms offered: the need to take up loans on terms best suited to the requirements of the beneficiary sector at times considerably restricts the choice on the capital market. On the other hand, any premature announcement of an intention to borrow can put the borrower at a disadvantage on the capital market where discretion and the ability to keep up with changing situations in the market are synonymous with effectiveness. Moreover, the Commission, unlike a bank, does not have funds which would allow it to adjust the terms of lending to what the customer can afford.

In spite of these difficulties, and in the interests of sound and effective financial management, greater clarity and legal certainty in the Budget, the Commission considers that a distinct section of the Budget should be devoted to the appropriations relating to borrowing and lending operations.

Thanks to this new formula, which draws on ideas expressed repeatedly by the European Parliament¹, the Budgetary Authority will have at its disposal a body of information enabling it to exercise to the full its powers of authorization and control.

II

(Preparatory Acts)

COMMISSION

Amendment of the proposal for a Council Regulation amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (1)*COM(84) 123 fin.**(Submitted by the Commission to the Council in accordance with the second paragraph of Article 149 of the EEC Treaty and the second paragraph of Article 119 of the Euratom Treaty on 15 March 1984)*

(84/C 97/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Treaty establishing the European Economic 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 proposals from the Commission,

Having regard to the opinion of the European Parliament (2),

Having regard to the opinions of the Court of Auditors (3),

Whereas the conciliation provided for in the Joint Declaration of 4 March 1975 of the European Parliament, the Council and the Commission (4) took place in a Conciliation Committee:

Whereas Article 107 of the Financial Regulation of 21 December 1977 (5), as amended by Regulation (ECSC, EEC, Euratom) No 1252/79 (6) and Financial Regulation 80/1176/EEC, Euratom, ECSC (7) provides for the said Financial Regulation to be examined by the European Parliament and the Council in the light of a proposal from the Commission;

Whereas, in view of the evolution of the general budget of the European Communities and of the application of the Financial Regulation of 21 December 1977 since its entry into force, it is necessary to adjust many of the provisions of the said Financial Regulation;

Whereas the general budget of the European Communities has increased in size over the years and whereas it is now the centre of attention at Community level;

Whereas, as far as appropriations falling within the present Section III of the budget are concerned, the time has come to introduce a more uniform and rational presentation, to ensure political transparency of appropriations and to increase the number of headings available; whereas, to this end, the present Section III should be reserved for staff and administrative appropriations and several sections introduced, as required, for operating appropriations, taking into account changes in the contents of the budget and future prospects;

(1) OJ No C 119, 21. 5. 1981, p. 1.

(2) OJ No C 277, 17. 10. 1983, p. 64.

(3) OJ No C 232, 11. 9. 1981, p. 1; OJ No C 122, 13. 5. 1982, p. 7.

(4) OJ No L 356, 31. 12. 1977, p. 1.

(5) OJ No C 89, 22. 4. 1975, p. 1.

(6) OJ No L 160, 28. 6. 1979.

(7) OJ No L 345, 20. 12. 1980, p. 23.

Whereas the budgetary presentation of the borrowing and lending operations should be improved and greater transparency achieved by including estimates and authorizations for these operations in a separate part of the budget; whereas the borrowing and lending operations involve commitments which the Communities must honour; whereas these operations have accordingly been entered in the general budget to give clear expression to the Communities' undertaking to use budget funds to meet the obligations arising from the borrowing contracts if the recipients of the loans default or are late with their repayments;

Whereas, in order to cover all the appropriations entered in the general budget of the European Communities, the Financial Regulation should be extended to include the special provisions required for the budgetary management of Community external aid;

Whereas it is necessary to produce a more transparent presentation of the appropriations for research, development and technological innovation and to introduce appropriate rules for this presentation;

Whereas, in the light of experience and in the interests of greater flexibility in the management of the Communities' own resources, any surplus or deficit from one financial year should be entered, for the purposes of adjustment, in the budget of the next but one financial year;

Whereas, in the light of the experience acquired since its entry into force, it is necessary to make more detailed or revise certain provisions of the Financial Regulation of 21 December 1977, notably in respect of the presentation of appropriations in the general budget, the arrangements for provisional twelfths, transfers and carryovers, and the introduction of formal deadlines for the clearance procedure for the EAGGF, Guarantee Section, and for food aid;

Whereas, in order to improve interinstitutional relations, the Financial Regulation should include provisions on the procedure for supplementary and amending budgets, the establishment of the financial statement to accompany proposals, the indicative nature of the estimates of the financial cost of operations provided for in legal acts, improvements to the organization of relations between the institutions and the Court of Auditors and the information to be given to the budgetary authority on the utilization of advances from the EAGGF Guarantee Section;

Whereas, in connection with the repayment of Community aids, the Financial Regulation should contain provisions on the payment of interest and the imposition of penalties when these funds have been misused;

Whereas, since the cost of living is rising constantly, it has become essential that, for the determination of certain amounts in connection with the awarding of contracts, reference be made to the measures for the implementation of this Regulation, so that these amounts can be adjusted by what is, technically speaking, a more appropriate legislative procedure,

HAS ADOPTED THIS FINANCIAL REGULATION:

Article 1

The Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, as amended by Council Regulation (ECSC, EEC, Euratom) No 1252/79 of 25 June 1979 and Council Financial Regulation 80/1176/EEC, Euratom, ECSC of 16 December 1980, is amended as follows:

1. *Article 1 (1)*. The second subparagraph is replaced by the following:

'For the purposes of this Financial Regulation, the revenue and expenditure of the Communities shall comprise:

- the administrative expenditure of the European Coal and Steel Community and the corresponding revenue,
- the revenue and expenditure of the European Economic Community, in particular loans raised, loans granted and repayments and related costs,
- the revenue and expenditure of the European Atomic Energy Community which may be credited to or charged against the budget pursuant to the Euratom Treaty and to the measures taken in implementation thereof, in particular loans granted and related costs and repayments of loans raised and related costs.'

2. *Article 1*. Paragraphs 2, 3, 4 and 5 are replaced by the following text:

'(2) The appropriations entered in the budget shall be authorized for the duration of one financial year. They shall constitute the upper limit of expenditure which may be paid or authorized during each financial year.'

Expenditure may not be authorized for a period going beyond the financial year.

(3) Administrative expenditure arising from contracts which have been concluded in accordance with local usage for periods going beyond the financial year and expenditure for repayment of loans raised and related costs shall be charged to the budget for the financial year in which it is effected.

(4) The implementation of multiannual activities may give rise to commitment appropriations and payment appropriations.

Commitment appropriations shall cover, for the current financial year, the total cost of the legal obligations entered into for activities whose implementation extends over more than one financial year.

Payment appropriations shall cover expenditure arising from commitments entered into in the current financial year and/or preceding financial years.

(5) The entries intended for multiannual activities and consisting of commitment and payment appropriations shall be shown in the budget as follows:

- the commitment appropriation authorized for the financial year concerned and the payment appropriation considered necessary for the same financial year shall be entered under the appropriate heading;
- the estimated annual payment appropriations required for subsequent financial years shall be set out against the commitment appropriations in an indicative schedule in the remarks column.

(6) The multiannual activities in respect of which a distinction is to be made between commitment appropriations and payment appropriations shall be determined during the budgetary procedure.

3. *The following new Article 3 is added:*

'(1) Where proposals submitted to the Council and Parliament may have budgetary consequences, including significant changes in the number of posts, the Commission shall draw up a financial statement.

In the case of multiannual operations, this financial statement shall contain the estimated schedule of annual requirements of appropriations and posts.

(2) Estimates relating to costs or staff requirements in legislative acts other than the general budget shall be merely indicative.'

4. *Article 3 becomes Article 4. This Article is replaced by the following:*

(1) Subject to Article 26, all revenue and expenditure shall be entered in full in the budget and in the accounts without any adjustment against each other.

(2) Total revenue shall cover total appropriations; revenue shall not be assigned to a specific purpose.

However, certain revenue shall not be used for any other purpose, notably:

- financial contributions from Member States to certain research programmes pursuant to Article 4 (6) of the Decision of 21 April 1970 on own resources;
- revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts, bequests;
- contributions to Community activities from non-Member States or various bodies;
- revenue from third parties in respect of work carried out at their request;
- the proceeds of loans raised, the repayment of loans granted from these proceeds and related costs.

(3) The total appropriations referred to in paragraph 2 shall be the total non-differentiated appropriations and payment appropriations.

(4) The Commission may accept any donation made to the Communities, and in particular foundations, subsidies, gifts and bequests.

The Commission may accept donations which may involve some financial charge only subject to prior authorization from Parliament and the Council, which shall act on the matter within two months of the date of receipt of the request from the Commission. If no objection has been made within this period, the Commission shall take a final decision in respect of acceptance.'

5. *Article 4 becomes Article 5. The present text becomes paragraph 1 and the following paragraph 2 is added:*

'(2) No expenditure may be committed or authorized in excess of the authorized appropriations, without prejudice to Article 26 (2).'

6. *Article 5 becomes Article 6.* The last three paragraphs are replaced by the following:

'The readjustment of entries in respect of value added tax own resources or, if appropriate, of financial contributions, which under the third subparagraph of Article 10 (3) of the Regulation is carried out following the final adoption of a supplementary or amending budget, shall be entered in the accounts for the financial year of the supplementary or amending budget in question.

The allotted appropriations shall be used solely to cover expenditure properly entered into and paid in the financial year for which they were granted, save as otherwise provided in Articles 7, 93 and 101, and to cover the debts relating to preceding financial years for which no appropriation was carried forward.

The commitments shall be entered in the accounts on the basis of the commitments contracted up to 31 December.

The expenditure of a financial year shall be entered in the accounts for that year on the basis of the expenditure for which authorization reached the financial controller not later than 31 December and the accounting officer not later than the following 10 January, and for which payment was effected by the accounting officer not later than 15 January.

By way of derogation from the two preceding subparagraphs, the expenditure of the EAGGF, Guarantee Section, and expenditure on food aid shall be taken into account for a financial year in accordance with the rules laid down in Articles 100 and 118.'

7. *Article 6 becomes Article 7.* This Article is replaced by the following:

'The following rules shall govern the utilization of appropriations:

1. In the case of budget headings where there is no distinction between commitment appropriations and payment appropriations:
 - (a) appropriations relating to remunerations and allowances of members and staff of the institutions may not be carried over;
 - (b) a decision may be taken to carry over to the next financial year only the portion of the other appropriations still uncommitted at the close of the financial year;

(c) appropriations in respect of payments still outstanding by virtue of commitments duly entered into before the close of the financial year shall be carried over automatically to the next financial year only.

2. In the case of budget headings where a distinction is made between commitment appropriations and payment appropriations:

(a) commitment appropriations not committed at the end of the financial year for which they were entered in the budget shall remain in existence for the following financial year without prejudice to the provisions of Article 92 (4);

(b) payment appropriations which have not been used at the end of the financial year for which they were entered shall be carried over automatically to the next financial year only.

3. In the case of appropriations which were entered in the budget chapter containing "provisional appropriations" and which remain available at the close of the financial year:

(a) appropriations in respect of staff and administrative expenditure (Titles 1 and 2) may not be carried over;

(b) appropriations in respect of other expenditure may be carried over to the next financial year only.

4. In the case of appropriations on which a decision to carry over may be taken, the Commission shall submit to the budgetary authority, not later than 31 March, the duly substantiated requests to carry over appropriations made by Parliament, the Council, the Court of Justice, the Court of Auditors and by the Commission itself.

The Council shall consult Parliament and, acting by qualified majority, shall decide on the requests to carry over appropriations in respect of expenditure necessarily resulting from the Treaties or acts adopted in accordance therewith.

Parliament shall consult the Council and act on the requests to carry over appropriations in respect of expenditure other than that necessarily resulting from the Treaties or acts adopted in accordance therewith.

If no decision is taken by the budgetary authority within six weeks, the requests to

carry over appropriations shall be deemed to have been approved.

5. Unused revenue and appropriations available at 31 December arising from the specific revenue referred to in Article 4 (2) shall be carried over automatically.

Commitments entered in Part II of the budget shall be carried over to the next financial year automatically where the operations authorized have not been effected by the end of the financial year.

6. The following appropriations shall lapse at the end of the year:

(a) appropriations from the previous financial year:

- commitment appropriations remaining in existence which have not been committed, subject to the provisions of Article 92 (4);
- appropriations carried over automatically which have not been paid;
- appropriations carried over by decision of the budgetary authority which have been neither committed nor paid;

(b) appropriations of the financial year which have not been carried over.

7. The appropriations for the Guidance Section of the European Agricultural Guidance and Guarantee Fund and for the European Regional Development Fund may be used by way of exception to finance projects for which they were not initially committed, under the conditions laid down in Regulations (EEC) No 3171/75 ⁽¹⁾, (EEC) No 355/77 ⁽²⁾ and (EEC) No 214/79 ⁽³⁾.

8. Parliament and the Council shall be provided, for their information, before 31 May, with a list of the commitment appropriations remaining in existence, the automatic carryovers and the appropriations carried over by decision of the budgetary authority.

9. For the purpose of implementing the budget, the utilization of appropriations carried over shall be shown separately, by

article, in the accounts for the current financial year.'

8. *Article 7 becomes Article 8.* The first and second subparagraphs become paragraphs 1 and 2. The third subparagraph is replaced by the following:

'(3) Expenditure relating to rents or certain associated expenditure which is payable in advance in accordance with provisions laid down by law or contract may give rise to payments from 20 December onwards to be charged to the appropriations for the next financial year.

(4) Advances, in respect of the following financial year, within the meaning of Articles 98 and 118 to finance the expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund and expenditure on food aid may be paid from 10 December onwards if the budget for the following financial year has been adopted at that date. Otherwise advances may not be paid until after final adoption of the budget, without prejudice to the procedures laid down in Article 9. The funds thus paid shall be used having regard to the rules laid down in Articles 98 and 118.

(5) The loans authorized in Part II of the budget may be granted only against the proceeds of the borrowing operations.'

9. *Article 8 becomes Article 9.* This Article is replaced by the following:

'(1) If the budget is not finally adopted at the beginning of the financial year, Article 78b of the ECSC Treaty, Article 204 of the EEC Treaty and Article 178 of the Euratom Treaty shall apply to commitment and payment of expenditure already approved in principle in the last budget duly adopted.

An item of expenditure shall be considered as having been approved in principle in the last budget duly adopted if it could have been charged to a specific budget heading under the financial year concerned.

- (2) (a) Commitments may be entered into in respect of any chapter:

- for up to one-quarter of the total appropriations entered in the relevant chapter for the preceding financial year, account being taken of all transfers, plus one-twelfth for each completed month,
- without exceeding the appropriations provided for in the draft

⁽¹⁾ OJ No L 315, 5. 12. 1975, p. 1.

⁽²⁾ OJ No L 51, 23. 2. 1977, p. 1.

⁽³⁾ OJ No L 35, 9. 2. 1979, p. 1.

budget or, in the absence thereof, in the preliminary draft budget.

The global provisional commitments of the EAGGF, Guarantee Section, referred to in Article 98 shall be treated as commitments for the purposes of these provisions.

(b) Payments may be made monthly in respect of any chapter:

- up to one-twelfth of the total appropriations entered in the chapter concerned for the preceding financial year, account being taken of all transfers,
- as long as this measure does not have the effect of placing at the disposal of the Commission, for any month, appropriations in excess of one-twelfth of those provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.

(3) The draft budget referred to in paragraphs 2 (a) and 2 (b) above shall be the draft in the form in which it stands at the start of the financial year when the provisional twelfth arrangements began to be applied.

(4) Where the absence of a budget is due to the rejection of the draft budget, by Parliament as provided for by Article 78 (8) of the ECSC Treaty, Article 203 (8) of the EEC Treaty and Article 117 (8) of the Euratom Treaty, the appropriations referred to in the second indent of paragraph 2 (a) and in the second indent of paragraph 2 (b) shall be those entered in the rejected draft budget or, where appropriate, in the new draft budget drawn up, following the rejection decision, before the start of the financial year.

(5) If the continuity of Community activities and administrative needs so require:

(a) for compulsory expenditure, the Council, acting by a qualified majority, may, at the request of the Commission and after consulting Parliament, authorize simultaneously two or more provisional twelfths for both commitments and payments in addition to those automatically made available under paragraph 2 (a) and 2 (b);

(b) for non-compulsory expenditure, the second subparagraph of Article 78 (b) (2) of the ECSC Treaty, the third paragraph of Article 204 of the EEC Treaty and the third paragraph of Article 178 of the EAEC Treaty shall apply.

The additional twelfths shall be authorized in whole and may not be split.

Where this procedure is to be applied, the annual amount authorized for each chapter as twelfths may not exceed the amount in the chapter of the budget for the previous year, account being taken of transfers, or the amount in the chapter of the draft budget or, in the absence thereof, the preliminary draft budget.

(6) If, for a given chapter, the expenditure required to prevent any interruption of Community action in the sector concerned cannot be met by application of the procedures referred to in paragraphs 2 to 5, appropriations available under the twelfths arrangements may, on a proposal from the Commission, be transferred between chapters.

Decisions on the proposal for transfer shall be taken in accordance with the procedure laid down in Article 78b (2) of the ECSC Treaty, Article 204 of the EEC Treaty and the third paragraph of Article 178 of the Euratom Treaty.

If, however, in the case of transfers involving both expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith and other expenditure, the Council and Parliament disagree on the amount to be transferred, the smaller of the amounts accepted by one of the two institutions shall be deemed to have been approved. Where one of the institutions rejects the principle of the transfer, such transfer shall not be made.

(7) The decisions referred to in the preceding paragraphs shall specify the requisite measures in respect of resources for the purposes of this Article.

(8) The budgetary authority shall seek to limit the period for which the system of provisional twelfths is applied.

10. *Article 9 becomes Article 10.* The following second subparagraph is added:

'Publication shall, under normal circumstances, take place within one month of the final adoption of the budget.'

11. *Article 10 becomes Article 11.* The second subparagraph of paragraph 1 becomes paragraph 2, paragraph 2 becomes paragraph 3, paragraph 3 becomes paragraph 4 and is replaced by the following:

'(4) Any conversion between the ECU and a national currency shall be effected in accordance with the special provisions referred to in Article 123.'

12. *Title II.* The heading is replaced by the following:

**'TITLE II
ESTABLISHMENT AND STRUCTURE
OF THE BUDGET'**

13. *Section 1.* The heading is replaced by the following:

**'SECTION 1
ESTABLISHMENT OF THE BUDGET'**

14. *Article 11 becomes Article 12.* The second paragraph is replaced by the following:

'The Economic and Social Committee shall, for 1 June, forward to the Council an estimate of its revenue and expenditure for the following year.'

15. *Article 12 becomes Article 13.* This Article is replaced by the following:

'(1) The Commission shall, in the preliminary draft budget which it shall place before the Council not later than 1 September of each year:

- draw up a general statement of revenue of the Communities, and consolidate the estimates referred to in Article 12;
- draw up the second part of the budget containing the borrowing and lending operations.

It shall at the same time forward the preliminary draft budget to Parliament.

(2) The Commission shall prepare a general introduction to the preliminary draft budget. This introduction shall contain in particular:

- (a) financial tables covering the entire budget; and

- (b) as regards the Commission sections:

- a definition of the policies justifying the requests for appropriations,
- an explanation of the changes in appropriations from one financial year to the next,
- a detailed statement on borrowing and lending policy.

(3) Each of the sections of the preliminary draft budget shall be preceded by an introduction prepared by the institution concerned. The Commission shall prepare a single introduction to its sections.

(4) The preliminary draft budget shall be accompanied by working documents containing the following information:

- (a) in respect of staff:

- for each category of staff, a detailed list of budgetary posts and numbers of persons in post on the date of the submission of the preliminary draft budget, indicating their distribution by grade and administrative unit (or principal operational unit for the establishments of the Joint Research Centre),
- where a change in the number of persons in post is proposed and in particular the creation of new posts, a statement justifying such changes;

(b) in respect of subsidies to the bodies set up pursuant to the Treaties or acts adopted in accordance therewith, and having legal personality, an estimate of revenue and expenditure prefaced by an explanatory statement drawn up by the bodies concerned.

5. The Commission shall also attach to the preliminary draft budget:

- an analysis of the financial management for the preceding financial year, as provided for in Article 80, and a balance sheet of assets and liabilities of the Communities as at 31 December of the preceding financial year, as provided for in Article 81, and
- an opinion on the estimates of the other institutions; this opinion may contain different estimates, accompanied by the reasons therefor.'

16. *The following new Article 14 is added:*

'1. The Commission may, on its own initiative or if requested by Parliament, the Council,

the Court of Justice or the Court of Auditors, present to the Council a letter of amendment to the preliminary draft budget necessitated by the receipt of new information which was not available at the time the preliminary draft was established.

However, save in very exceptional circumstances, the Commission must send such letter of amendment to the Council at least 30 days before the first reading of the draft budget by Parliament, and the Council must send a letter of amendment to the draft budget to Parliament at least 15 days before the said first reading.

2. If circumstances arise which it could not have taken into account when establishing the draft budget, the Council may, if necessary, send to Parliament a letter of amendment to the said draft under the conditions laid down in the second subparagraph of paragraph 1.'

17. *The following new Article 15 is added:*

'(1) In the event of unavoidable, exceptional or unforeseen circumstances, the Commission may submit preliminary draft supplementary and/or amending budgets. Also, particularly to enable policies to be adapted, the Commission may submit preliminary draft amending budgets which do not alter the total amount of the annual budget and to which the corresponding necessary draft Regulations would be attached.

Preliminary draft supplementary budget means any proposal which would alter the total amount of appropriations and hence of revenue or which would give rise to one or more new operations without, however, increasing the total amount of appropriations.

Preliminary draft amending budget means any proposal which would not change or would reduce total appropriations or revenue and which involves internal financial or technical changes to the budget.

(2) Preliminary draft supplementary and/or amending budgets shall be subject to the provisions of Article 78 of the ECSC Treaty, Article 203 of the EEC Treaty and Article 177 of the Euratom Treaty.

They shall be submitted, examined, established and finally adopted in the same form and according to the same procedure as the budget whose estimates they are amending. They must be substantiated by reference to the latter.

(3) All preliminary draft supplementary and/or amending budgets must, as a general rule, be forwarded to the Council by the date laid down for the submission of the preliminary draft budget for the following financial year.

The competent authorities shall discuss them in the light of their urgency.

(4) Requests for supplementary and/or amending budgets from Parliament, the Council, the Court of Justice or the Court of Auditors shall be forwarded by the Commission to the budgetary authority. The Commission may attach a dissenting opinion.

(5) Where the Commission proposes a preliminary draft supplementary and/or amending budget, the Council must present a draft supplementary and/or amending budget.

(6) Preliminary draft and draft supplementary and/or amending budgets shall be accompanied by justifications and information available on the implementation of the current budget at the time of their establishment.

(7) Preliminary draft supplementary and/or amending budgets shall take into account the transfers approved up to the time of their establishment.'

18. *Article 13 becomes Article 16.*

19. *Article 14 becomes Article 17.* This Article is replaced by the following:

'(1) The budget shall be adopted in accordance with Article 78 of the ECSC Treaty, Article 203 of the EEC Treaty and Article 177 of the Euratom Treaty.

This decision shall have the effect of determining the rate of VAT allocated to the Community budget, calculated from an estimate of the base.

(2) The final adoption of the budget shall, from 1 January of the following financial year or from the date of the adoption if it is later than 1 January, bind immediately each Member State to make over to the Commission the payments due as specified in the texts in force.'

20. *The following new Article 18 is inserted:*

'The Commission and the budgetary authority may agree to bring forward certain dates for

the adoption and forwarding of the preliminary draft and draft budgets. This agreement may not, however, have the effect of reducing or delaying the periods allowed for consideration of these texts under Article 78 of the ECSC Treaty, Article 203 of the EEC Treaty and Article 177 of the Euratom Treaty.'

21. *Section II.* The heading is replaced by the following:

'SECTION II
STRUCTURE AND PRESENTATION OF THE
BUDGET'

22. *Article 15 becomes Article 19:*

- (a) Paragraph 1 is replaced by the following:

'(1) The budget shall consist of two parts:

Part One shall contain:

- a general statement of the revenue of the Communities,
- separate sections subdivided into statements of revenue and expenditure of Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors. The Commission shall have one section for staff and administrative appropriations, and several sections, as required, for operating appropriations. The revenue and expenditure of the Economic and Social Committee shall be entered in the section dealing with the Council and presented in the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget and subject to the same rules.

Part Two shall contain:

- borrowing and lending operations.'

- (b) In the final line of paragraph 4 'Article 21' is replaced by 'Article 25'.

- (c) Paragraph 5 is replaced by the following:

'(5) A statement of revenue and expenditure in respect of the Office for Official Publications of the European Communities, established in accordance with Article 120 (2) shall be attached to the Commission section relating to staff and administrative appropriations.'

23. *Article 16 becomes Article 20.* This Article is replaced by the following:

'The budget shall show:

1. In the general statement of revenue:
 - the rate of value added tax (VAT) and the estimated base from which it is derived, and the estimated revenue of the Communities for the financial year in question, divided into titles, chapters, articles and items.
 - the revenue for the preceding financial year, divided into titles, chapters, articles and items,
 - appropriate remarks on each subdivision.

2. In the Commission sections and the section for each of the other institutions:
 - (a) as regards the statement of revenue:
 - the estimated revenue for each institution for the financial year in question, divided into titles, chapters, articles and items, following a decimal classification system,
 - the revenue entered in the budget for the preceding financial year and the revenue established for the last financial year for which accounts have been closed, using the same decimal classification,
 - appropriate remarks on each revenue heading;
 - (b) as regards the statement of expenditure:
 - (ba) in the case of the various items, articles, chapters and titles:
 - the appropriations made available for the financial year in question, these appropriations being the commitment appropriations and the payment appropriations for the budget headings for which this distinction has been agreed,
 - the appropriations made available for the preceding financial year,
 - the actual expenditure in the last financial year for which the accounts have been closed, determined as follows:
 - for the budget headings where the distinction between commitment appropriations and pay-

ment appropriations has not been made:

- actual payments in the last financial year for which the accounts have been closed plus the carry-overs to the next financial year;
- for the headings where the distinction between commitment appropriations and payment appropriations has been made:
 - in commitments: commitments entered into during the financial year against appropriations for that financial year and against appropriations remaining from the preceding financial year;
 - in payments: payments effected during the financial year against appropriations for the financial year and against appropriations carried over from the preceding financial year;

(bb) in the case of the appropriations intended for the implementation of multiannual activities and consisting of commitment appropriations and payment appropriations: in the remarks column, an indicative schedule of the payments relating to the financial year concerned and subsequent financial years;

(bc) appropriate remarks on each subdivision. These remarks shall include:

- basic legal instrument, where one exists,
- all such explanations as may be necessary concerning the nature and purpose of the appropriations.

3. As regards total staff:

- for each section of the budget, a list of posts fixing the number of permanent

and temporary posts for each grade in each category and in each service authorized within the limits of the budget appropriations.

The staff of the Supply Agency and the European Agency for Cooperation shall be shown separately in the Commission's list of posts;

- a list of posts paid from the research and development and technological innovation appropriations, classified by category and grade and distinguishing between permanent and non-permanent staff, authorized within the limits of the budget appropriations.

As regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget. The list of posts must specify the number of highly qualified technical or scientific personnel who are accorded special advantages under the Staff Regulations applicable to these officials,

- a list of posts fixing the number of posts for each grade in each category in:
 - the Office for Official Publications,
 - the European Centre for the Development of Vocational Training,
 - the European Foundation for the Improvement of Living and Working Conditions.

The list of posts shall show next to the number of posts authorized for the financial year the number authorized for the preceding year.

4. The list of posts shall constitute an absolute limit for each institution; no appointment may be made in excess of the limit set.

In cases of half-time work authorized by the appointing authority in accordance with Article 55a of the Staff Regulations of officials of the European Communities, a post in a given grade may serve for the assignment of two officials of the same grade or of a lower grade. Such assignment shall automatically terminate when the authorization expires.

5. As regards borrowing and lending operations:

in Part Two, two titles divided into chapters, articles and items, accompanied by appropriate remarks.

These remarks shall, in particular, contain an undertaking that the Communities will use their funds to meet the obligations arising from borrowing contracts if the recipients of loans default or are late with their repayments.

Title One shall contain:

- authorizations for loans to be raised in the financial year concerned;
- estimates of capital repayments and interest payments to be made to the Community by recipients of loans granted;
- estimates of the contributions by recipients towards the costs of borrowing and lending operations;
- the revenue entered in the budget for the preceding financial year and the revenue established for the last financial year for which the accounts have been closed, broken down in the same way.

Title Two shall contain:

- authorizations for loans to be granted in the financial year concerned;
- appropriations for capital repayments and interest payments on loans raised;
- appropriations to cover the costs of borrowing and lending operations;
- appropriations entered in the budget for the preceding financial year and the actual expenditure in the last financial year for which the accounts have been closed, broken down in the same way.'

24. *Article 17 becomes Article 21.*

25. *Article 18 becomes Article 22.* Paragraph 3 is replaced by the following:

'(3) With the exception of decisions overruling the Financial Controller provided for in Articles 26, 28, 39, 49 and 52, the Commission and each of the other institutions may delegate their powers in accordance with the conditions laid down by their internal rules of procedure and within the limits which they themselves lay down in the act of delegation.

Those so empowered may act only within the limits of the powers expressly conferred upon them.

The acts of delegation shall be communicated to all the parties concerned in accordance with the implementing measures provided for in Article 123.'

26. *Article 19 becomes Article 23.* This Article is replaced by the following:

Each institution shall appoint a financial controller.

He shall be responsible for monitoring:

- the commitment and authorization of all expenditure,
- the establishment and collection of all revenue.

The financial controller shall be consulted on all accounting systems applied by the institution to which he is attached. He shall have access to the information contained in these accounts.

Monitoring shall be carried out by that official by means of inspection of the files relating to expenditure and revenue and, if necessary, on the spot.

The financial controller may be assisted in his duties by one or more assistant financial controllers.

The special rules applicable to such officials, which shall be laid down in the implementing measures provided for in Article 123, shall be such as to guarantee that they are independent in the performance of their duties. Their appointment, their promotion, and disciplinary measures or transfer, and any interruption or termination of appointment by whatever procedure shall be the subject of reasoned decisions to be forwarded, for information, to Parliament, the Council and the Court of Auditors,

The persons concerned and the institutions to which they belong may institute proceedings before the Court of Justice.

27. *Article 20 becomes Article 24.* This Article is replaced by the following:

'In each institution, the collection of revenue and the payment of expenditure shall be carried out by an accounting officer.

This accounting officer shall be appointed by the institution.

Without prejudice to the system provided for in Articles 4 and 5 of Regulation (EEC) No 729/70 on the financing of the common agricultural policy, and subject to the second paragraph of Article 53 on payments procedures, to Article 54 on imprests and to Article 110 on the financing of external aid of the Financial Regulation, the accounting offi-

cer alone is empowered to manage monies and other assets. He shall be responsible for their safekeeping.

The accounting officer shall be responsible for preparing the financial statements provided for in Articles 78, 79, 80 and 81 of this Regulation.

He may be assisted in his duties by one or more assistant accounting officers, appointed under the same conditions as the accounting officer.

The special rules applicable to the accounting officer and to assistant accounting officers shall be laid down in the implementing measures provided for in Article 123.'

28. *Article 21 becomes Article 25.* This Article is replaced by the following:

'(1) Appropriations shall be earmarked for specific purposes by chapter, article and item.

(2) Parliament, the Council, the Court of Justice and the Court of Auditors may transfer appropriations from one chapter to another, from one article to another and from one item to another within their own sections of the budget.

The Court of Justice and the Court of Auditors shall inform the budgetary authority and the Commission three weeks before making such transfers.

(3) The Commission may, within its own sections of the budget:

(a) transfer appropriations from one item to another and from one article to another within each chapter;

(b) transfer appropriations from one chapter to another within each of the titles relating to staff expenditure and administrative expenditure. It shall inform the budgetary authority three weeks before making such transfers;

(c) transfer payments appropriations from one chapter to another;

(d) transfer appropriations entered in the chapter of the budget containing the provisional appropriations to the budget heading for which they were initially earmarked provided that the suspensive condition that originally gave rise to entry of the appropriations in this special chapter has been satisfied. It shall inform the budgetary authority three weeks before making such transfers.

(4) The budgetary authority may enter in the budget one or more lists of chapters between which the Commission may make transfers

from one chapter to another during the year after informing the budgetary authority three weeks in advance.

(5) Without prejudice to the transfers which it may make on its own authority in accordance with paragraph 3 above, the Commission may make proposals to the budgetary authority for transfers from one chapter to another.

(6) The budgetary authority shall take decisions on transfers of appropriations as follows:

(a) in the case of proposals for transfers relating to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council shall, after consulting Parliament, act by a qualified majority within six weeks, except in urgent cases. Parliament shall deliver its opinion within such time as will permit the Council to be apprised of it and to act within the time limit indicated. Where the Council does not act within this time limit, the proposals for transfers shall be deemed to be approved;

(b) in the case of proposals for transfers relating to expenditure other than that necessarily resulting from the Treaties or from acts adopted in accordance therewith, Parliament shall, after consulting the Council, act within six weeks, except in urgent cases. The Council shall deliver its opinion within such a time as will permit Parliament to be apprised of it and to act within the time limit indicated. Where Parliament does not act within this time limit, the proposals for transfers shall be deemed to be approved;

(c) proposals for transfers relating both to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, and to other expenditure shall be deemed to be approved if neither the Council nor Parliament has decided otherwise within six weeks of the date on which the two institutions received the proposals;

(d) if, in the case of the proposals for transfers referred to in the preceding subparagraph, Parliament and the Council reduce the proposal for a transfer by different amounts, whichever is the smaller of the amounts accepted by one of the two institutions shall be deemed to be approved. Where only one of the institutions rejects the principle of the transfer, such transfer shall not be made.

(7) For the purposes of this Article the Commission sections shall be treated as a single section.

(8) The appropriations which may be transferred shall be as follows:

- non-differentiated appropriations for the current financial year and non-differentiated appropriations carried over,
- commitment appropriations for the current financial year and commitment appropriations remaining from the preceding financial year,
- payment appropriations for the current financial year and payment appropriations carried over.

(9) Appropriations may also be transferred, by decision of the budgetary authority, between headings where a distinction is made between commitment appropriations and payment appropriations and headings where no such distinction is made.

(10) Every proposal for a transfer within a chapter or from one chapter to another shall be subject to the approval of the financial controller, who shall certify that the appropriations are available.

(11) Appropriations may be transferred only to budget headings for which the budget has authorized appropriations or carried a token entry.

(12) This Article shall apply to the appropriations corresponding to revenue earmarked for a specific purpose under Article 4 (2) only as long as the revenue is not used for any other purpose.

(13) Transfers within the titles of the budget devoted to the EAGGF, Guarantee Section, appropriations shall be the subject of special provisions under Article 103 of this Regulation.

(14) No transfer shall be made between Parts I and II of the budget.'

29. *Article 22 becomes Article 26:*

(a) The words introducing the items in paragraph 1 are replaced by the following:

'1. By way of derogation from Article 4, the following deductions may be made from all bills, invoices or statements, which shall then be passed for payment of the net amount:'

(b) The words introducing the items in paragraph 2 are replaced by the following:

'2. By way of derogation from Articles 4 and 5, the following sums may be re-used under the heading to which the initial expenditure was charged:'

(c) Subparagraph (g) of paragraph 2 is replaced by the following:

'(g) proceeds from the sale of vehicles, equipment and installations and scientific and technical apparatus, equipment and materials which are being replaced or scrapped.'

(d) Paragraphs 3 and 4 are replaced by the following:

'(3) By way of derogation from Article 4, repayments made by third parties may be deducted from expenditure in cases where the institution has effected a payment for which it is legally liable to the creditors but where all or part thereof has been paid on behalf of those third parties.

(4) By way of derogation from Article 4, adjustments may be made in respect of exchange differences occurring in budget operations. The final gain or loss shall be entered in the balance for the year.'

(e) The following new paragraph 6 is added:

'(6) Where recipients of Community aid repay advances to the general budget, such amounts shall be re-entered under the budget heading to which the original expenditure was charged.'

30. *Article 23 becomes Article 27:*

(a) Paragraph 1 is replaced by the following:

'(1) All measures which may give rise to or modify a debt due to the Communities must be preceded by a proposal from the competent authorizing officer. Such proposals shall be forwarded to the financial controller of the institution for his approval and to the accounting officer for provisional registration. They shall mention, in particular, the type of revenue, the estimated amount thereof, the budget heading to which it is to be booked and the name and description of the debtor. The purpose of the approval of the financial controller shall be to establish that:

(a) the revenue is booked to the correct budget item;

(b) the proposal is in order and conforms to the relevant provisions, in particular of the budget and of the regulations and also of all acts made in implementation of the Treaties and of the

regulations, and to the principles of sound financial management.

Forward proposals may be made in respect of certain items of current revenue in accordance with the implementing measures provided for in Article 123.

The financial controller may withhold his approval if he considers that the conditions laid down in paragraph 1 (a) and (b) above are not met.

The superior authority of the institution may, by a decision stating the full reasons therefor and on its sole responsibility, overrule this refusal. This decision shall be enforceable; it shall be communicated for information to the financial controller. The superior authority of each institution shall inform the Court of Auditors of all such decisions within one month.'

- (b) In the last line of the first subparagraph of paragraph 2 'Article 106' is replaced by 'Article 123'.

31. *Article 24 becomes Article 28:*

- (a) The third subparagraph of paragraph 1 is replaced by the following:

'The accounting officer shall inform the authorizing officer and the financial controller of any revenue not recovered within the time limits laid down. If necessary, he shall initiate the recovery procedure.'

- (b) The third subparagraph of paragraph 2 is replaced by the following:

'If approval is withheld, the superior authority of the institution may, by a decision stating the full reasons therefor, and on its sole responsibility, overrule this refusal. This decision shall be final and binding; it shall be communicated for information to the financial controller. The superior authority of each institution shall inform the Court of Auditors of all such decisions within one month.'

- (c) In paragraph 4 'Article 106' is replaced by 'Article 123'.

32. *Article 25 becomes Article 29.*

33. *Article 26 becomes Article 30.* This Article is replaced by the following:

'(1) Estimates of the own resources and, if appropriate, of the contributions referred to in Article 4 (2), (3) and (6) of the Decision of 21 April 1970 to be paid by the Member States

shall be entered in the budget, expressed in ECU. They shall be made available in accordance with Council Regulation (EEC, Euratom, ECSC) No 2891/77, and with Article 32 of this Financial Regulation.

(2) The Commission shall inform the budgetary authority of any material delay or any other difficulty in making revenue available.'

34. *Article 27 becomes Article 31.* This Article is replaced by the following:

'The balance from each financial year, calculated in accordance with Article 15 of Council Regulation (EEC, Euratom, ECSC) No 2891/77, shall be entered as revenue in the case of a surplus or expenditure in the case of a deficit in a supplementary or amending budget in the second financial year following the financial year in question.

However, if the situation requires, a decision may be taken to enter all or part of this balance in advance in a supplementary or amending budget in the financial year immediately following the financial year in question.'

35. *Article 28 becomes Article 32:*

- (a) Paragraph 1 is replaced by the following:

'(1) The contributions provided for in Article 4 (6) of the Decision of 21 April 1970 for the financing of certain supplementary research programmes shall be paid over as follows:

- seven-twelfths of the amount shown in the budget not later than 31 January,
- the remaining five-twelfths not later than 15 July.

(2) If the budget is not finally adopted before the start of the financial year, the contributions provided for in paragraph 1 shall be based on the amount shown in the draft budget, as referred to in Article 9 (3) and (4) of this Regulation or, if this does not exist, in the preliminary draft budget.'

- (b) Paragraphs 2 and 3 become paragraphs 3 and 4.

36. *Article 29 becomes Article 33.* This Article is replaced by the following:

'The Commission shall, four times a year, present to Parliament and the Council a report on the implementation of the budget and of any supplementary or amending budgets and on the Communities' financial situation, covering both revenue and expenditure. This report shall also give details of the utilization of

appropriations carried forward from previous financial years.

This report shall at the same time be sent to the Court of Auditors.'

37. *Article 30 becomes Article 34.* This Article is replaced by the following:

'(1) The Member States shall credit the amounts due to the account of the Commission with the financial organizations referred to in Article 9 (1) of Council Regulation (EEC, Euratom, ECSC) No 2891/77 in their national currency in accordance with the following provisions:

- (a) the own resources referred to in Article 2 (a) and (b) of the Decision of 21 April 1970 (agricultural levies and customs duties) and the balance of VAT resources referred to in Article 10 (4) of Council Regulation (EEC, Euratom, ECSC) No 2891/77, both amounts expressed in national currency, shall be credited to the abovementioned account as they stand;
- (b) the own resources accruing from VAT referred to in Article 4 (1) of the Council Decision of 21 April 1970, the amounts of which are expressed in ECU in the general budget of the European Communities and, where appropriate, the financial contributions based on GNP and the adjustments to such contributions provided for in Article 10 (5) and (6) of Council Regulation (EEC, Euratom, ECSC) No 2891/77 shall be converted at the rate for the ECU applying on the first working day following the fifteenth of the month preceding the final date for entry in the said account;
- (c) the financial contributions referred to in Article 4 (6) of the Decision of 21 April 1970 (for the financing of supplementary research programmes) shall be converted at the rate from the ECU applying on the last but one working day of the month preceding the final date for entry in the said account;
- (d) all other contributions or additional payments referred to in Article 32 (3) of this Financial Regulation shall be converted in accordance with whichever of the methods laid down at (a) to (c) above applies to the case to which, depending on their nature, such contributions or additional payments correspond.

(2) The Commission shall enter the amounts credited to the account referred to in paragraph 1 in its accounts kept in implementation of the statement of revenue for the general budget of the European Communities on the basis of the rate for the ECU applying for the month in respect of which the entry is made.'

38. *Article 31 becomes Article 35.*

39. *Article 32 becomes Article 36:*

- (a) In paragraph 2 'Article 96' is replaced by 'Article 98'.
- (b) In paragraph 3 'Article 106' is replaced by 'Article 123'.

40. *Article 33 becomes Article 37.* In the final line 'Article 106' is replaced by 'Article 123'.

41. *Article 34 becomes Article 38:*

- (a) The first paragraph becomes paragraph 1.
- (b) The second paragraph is replaced by the following:
 - '(2) Approval may not be conditional.
 - (3) The procedures for implementing this Article shall be determined by the implementing measures provided for in Article 123.'

42. *Article 35 becomes Article 39:*

- (a) In the first paragraph 'Article 34' is replaced by 'Article 38'.
- (b) The second and third paragraphs are replaced by the following:
 - 'If approval is withheld and the authorizing officer maintains his proposal, this refusal shall be referred for a decision to the superior authority of the competent institution among those listed in the first two paragraphs of Article 22.

Except where the availability of the appropriations is in doubt, the said superior authority may, by a decision stating the full reasons therefor and on its sole responsibility, overrule this refusal. This decision shall be enforceable; it shall be communicated for information to the financial controller. The superior authority of each institution shall inform the Court of Auditors of all such decisions within one month.'

43. *Article 36 becomes Article 40.*

44. *Article 37 becomes Article 41:*

- (a) In paragraph 1 'Article 106' is replaced by 'Article 123'.

- (b) Paragraph 2 is deleted.
(c) Paragraph 3 becomes paragraph 2.
45. *Article 38 becomes Article 42.*
46. *Article 39 becomes Article 43.*
47. *Article 40 becomes Article 44.* The third indent is replaced by the following:
'— the amount to be paid (in figures and words), expressed in national currency or ECU.'
48. *Article 41 becomes Article 45.* In the first paragraph 'Article 106' is replaced by 'Article 123' and 'Article 59' is replaced by 'Article 65'.
49. *Article 42 becomes Article 46:*
(a) The second paragraph is replaced by the following:
'The authorizing officer may grant advances if a provision laid down by regulation specifically provides therefor.'
(b) In the third paragraph 'Article 106' is replaced by 'Article 123'.
(c) In the fourth paragraph 'Article 49' is replaced by 'Article 54'.
50. *The following new Article 47 is added:*
'*Article 47*
(1) Interest shall be due on any amount paid to recipients of Community aid:
— either as an advance,
— or under the normal validation procedure, which gives rise to repayment to the general budget.
Furthermore, where Community funds have been wrongfully obtained, kept or used, the Commission may impose penalties.
(2) The procedure for implementing the above measures shall be laid down in an implementing regulation adopted by the Council on the basis of Article 209 of the EEC Treaty.'
51. *Article 43 becomes Article 48.*
52. *Article 44 becomes Article 49.* 'Article 35' is replaced by 'Article 39'.
53. *Article 45 becomes Article 50.*
54. *Article 46 becomes Article 51.*
55. *Article 47 becomes Article 52.*
56. *Article 48 becomes Article 53.* In the second paragraph 'Article 106' is replaced by 'Article 123'.
57. *Article 49 becomes Article 54:*
(a) In the first paragraph 'Article 106' is replaced by 'Article 123'.
(b) The following new second paragraph is added:
'Only the accounting officer may replenish the imprest accounts, save in exceptional cases defined in the implementing measures.'
(c) The second paragraph becomes the third paragraph.
58. *The following new title is added:*
'SECTION IV
MANAGEMENT OF POSTS'
59. *The following new Article 55 is added:*
'1. Within each institution the following shall be established:
(a) a table of posts;
(b) an organization chart with a diagram of the organization of the departments.'
60. *Title IV.* The title of Section I is replaced by the following:
'SECTION I
CONTRACTS FOR THE SUPPLY OF GOODS AND SERVICES; CONTRACTS FOR PURCHASE, LEASE AND HIRE'
61. *Article 50 becomes Article 56.* Paragraph 1 is replaced by the following:
'1. Contracts for the purchase or hiring of buildings or goods, for the provision of services or for the performance of construction work shall be in writing. Apart from contracts relating to buildings, all such contracts shall be concluded following an automatic public tendering or discretionary tendering procedure.
However, contracts may be made by private treaty in the circumstances referred to in Article 58.
Contracts may be made against invoice or bill of costs in the cases provided for in Article 63.'
62. *Article 51 becomes Article 57.* In paragraph 3 'Article 106' is replaced by 'Article 123'.
63. *Article 52 becomes Article 58:*
(a) Item (a) is replaced by the following:

'where the contract for the purchase or hiring of goods, for the provision of services or for building works is within the limit laid down in the implementing measures provided for in Article 123, the institution concerned being bound, however, as far as possible and by all appropriate means, to enable suppliers who are likely to be able to supply the goods and services in question to compete;'

- (b) In item (b) 'Article 51' is replaced by 'Article 57'.

64. *Article 53 becomes Article 59.*

65. *Article 54 becomes Article 60.* This Article is replaced by the following:

'Each institution shall set up its own advisory committee on procurements and contracts to express an opinion on contracts before the authorizing officer takes a decision.

Details of the operation of this committee and the limit values for the contracts on which it is to be consulted shall be laid down in the implementing measures provided for in Article 123.'

66. *Article 55 becomes Article 61.* In the first paragraph 'Article 54' is replaced by 'Article 60'.

67. *Article 56 becomes Article 62:*

(a) First paragraph: 'Article 106' is replaced by 'Article 123'.

(b) The third paragraph is replaced by the following:

'Within the limit laid down by the implementing measures provided for in Article 123, the provision of security shall be obligatory. A guarantee may be retained until final acceptance.'

68. *Article 57 becomes Article 63:* This Article is replaced by the following:

'Contracts may be made against invoice or bill of costs within the limits laid down by the implementing measures provided for in Article 123.'

69. *Article 58 becomes Article 64.* This Article is replaced by the following:

'Without prejudice to the provisions laid down in this Financial Regulation, when concluding contracts referred to in this Regulation, each

institution shall comply with the Directives (1) adopted by the Council, pursuant to the Treaty establishing the European Economic Community, in respect of public works and supplies, whenever the amounts involved are equal to or greater than the amounts provided for in those Directives.

The implementing measures provided for in Article 123 shall include the supplementary provisions which may be required in order to implement this Article.'

70. *Article 59 becomes Article 65.* The first paragraph is replaced by the following:

'Permanent inventories showing the quantity and value of all movable and immovable property belonging to the Communities shall be kept in accordance with a model drawn up by the Commission. Only movable property exceeding a specific value laid down in the implementing measures provided for in Article 123 shall be entered in those inventories.'

71. *Article 60 becomes Article 66.* In the first paragraph 'Article 106' is replaced by 'Article 123'.

72. *Article 61 becomes Article 67.* The first paragraph is replaced by the following:

'A statement or record shall be drawn up by the authorizing officer and authenticated by the financial controller whenever any property in the inventory is sold, given away free of charge, scrapped, hired out, or missing on account of loss, theft or any other reason.'

73. *Article 62 becomes Article 68.* In the first paragraph 'Article 59' is replaced by 'Article 65'.

74. *Article 63 becomes Article 69.* This Article is replaced by the following:

'The accounts shall be kept in ECU by the double entry method, on the basis of the calendar year. They shall show all revenue and expenditure for the financial year. They shall be authenticated by supporting documents. The revenue and expenditure account and the balance sheet shall be drawn up in ECU.

However, when debts or commitments are in national currency, the accounting system

(1) The following Directives were in force at the time this Regulation was drawn up:

(a) Public works: Directive 71/305/EEC, as amended by Directive 78/669/EEC;

(b) Supplies: Directive 77/62/EEC.

should make it possible, where necessary, for them to be recorded in the national currency as well as in ECU.'

75. *Article 64 becomes Article 70.* This Article is replaced by the following:

'The chart of accounts shall make a clear distinction between budgetary accounts and cash accounts.

It shall comprise two parts:

- (a) accounts of budgetary expenditure and revenue, which show the detailed implementation of the budget;
- (b) the balance sheet accounts, which disclose the assets of the institutions.

The detailed conditions for the establishment and operation of the chart of accounts for transactions relating both to assets and to the implementation of the budget shall be determined by the implementing measures provided for in Article 123.

These accounts shall make it possible to draw up an annual balance of assets and a monthly statement of revenue and expenditure by chapter and article.

These statements shall be forwarded to the financial controller, the authorizing officer, and the Court of Auditors.'

76. *Article 65 becomes Article 71:*

- (a) In the first paragraph 'Articles 96 and 102' is replaced by 'Articles 98 and 118'.
- (b) In the second paragraph 'the third paragraph of Article 42' is replaced by 'the third paragraph of Article 46'.

77. *Article 66 is deleted.*

78. *Article 67 becomes Article 72.*

79. *Article 68 becomes Article 73:* This Article is replaced by the following:

'Authorizing officers who, when establishing entitlements to be recovered or issuing recovery orders, entering into a commitment of expenditure or signing a payment order do so without complying with this Financial Regulation and the implementing measures, shall render themselves liable to disciplinary action and, where appropriate, to payment of compensation. The same shall apply if they omit to draw up a document establishing a debt or if they neglect to issue recovery or payment

orders or are, without justification, late in issuing them, thereby rendering the institution liable to civil action by third parties.'

80. *Article 69 becomes Article 74.*

81. *Article 70 becomes Article 75:*

- (a) In the first subparagraph of paragraph 1 'the third paragraph of Article 46' is replaced by 'the third paragraph of Article 51'.
- (b) In the second subparagraph of paragraph 3 'Article 106' is replaced by 'Article 123'.
- (c) The third subparagraph of paragraph 3 becomes paragraph 4.
- (d) Paragraph 4 becomes paragraph 5.

82. *Article 71 becomes Article 76.*

83. *Article 72 becomes Article 77.*

84. *Article 73 becomes Article 78.* This Article is replaced by the following:

'The Commission shall draw up, not later than 1 June of the following year, a consolidated revenue and expenditure account of the general budget of the European Communities for the financial year ended 31 December. The consolidated revenue and expenditure account shall include:

1. a table of revenue including:
 - estimated revenue for the financial year,
 - amendments to the revenue estimates as a result of supplementary or amending budgets and additional revenue as specified in the second subparagraph of Article 4 (2),
 - entitlements established in the course of the financial year,
 - entitlements still to be collected from the preceding financial year,
 - revenue collected during the financial year and revenue carried over pursuant to Article 7 (5),
 - amounts still to be collected at the end of the financial year.

Statements shall be attached to this table showing revenue carried over pursuant to Article 7 (5) and, where appropriate, the balances and gross amounts of the operations referred to in Article 26 (2);

2. tables showing the changes in appropriations for the financial year and, with a distinction being made between commitment

appropriations, payment appropriations and non-differentiated appropriations, indicating:

- initial appropriations,
 - any changes made by means of supplementary or amending budgets,
 - any changes made to appropriations by means of transfers,
 - final appropriations for the financial year,
 - appropriations remaining or carried over under Article 7;
3. tables showing the use of the appropriations allocated for the financial year and, with a distinction being made between commitment appropriations, payment appropriations and non-differentiated appropriations, indicating:
- commitments entered into and chargeable to the financial year,
 - payments made and chargeable to the financial year,
 - settlement of the commitments of the financial year and calculation of the sums still to be paid at the close of that financial year,
 - commitment appropriations remaining under Articles 7 and 92 (4),
 - payment appropriations carried over under Article 7,
 - non-differentiated appropriations carried over under Article 7,
 - appropriations lapsing.
- Where appropriate, a statement shall be attached to this table showing the balances and gross amounts of the operations referred to in Article 26 (2);
4. tables showing the use of the appropriations available from previous financial years and indicating:
- the amount of appropriations remaining or carried over, a distinction being made between commitment appropriations, payment appropriations and non-differentiated appropriations,
 - commitments entered into and chargeable to available commitment appropriations,
 - payments made against payment appropriations and non-differentiated appropriations which have been carried over,
 - settlement of sums still to be paid at the close of the preceding financial

year and calculation of the sums still to be paid at the end of the current financial year,

- amount lapsing, a distinction being made between commitment appropriations, payment appropriations and non-differentiated appropriations;
5. tables showing capital operations and debt management and indicating:
- loans raised,
 - capital repayments, interest payments and costs received in respect of loans granted,
 - loans granted,
 - capital repayments and interest and costs paid in respect of loans raised,
 - Community indebtedness.'

85. *Article 74 becomes Article 79.* This Article is replaced by the following:

'Each institution shall, not later than 1 March, transmit to the Commission, after submitting it to its financial controller, the information required for drawing up the revenue and expenditure account and the balance sheet, together with a contribution to the analysis of the financial management referred to in Article 80.'

86. *Article 75 becomes Article 80.*

87. *Article 76 becomes Article 81.* This Article is replaced by the following:

(1) The Commission shall draw up, not later than 1 June, a consolidated balance sheet of assets and liabilities of the Communities as at 31 December of the preceding financial year. A statement, showing the movements and balances of the accounts, drawn up on the same date, shall be attached thereto.

(2) These documents shall be submitted to the financial controller.'

88. *Article 77 becomes Article 82.*

89. *Article 78 becomes Article 83.* This Article is replaced by the following:

'(1) The Court of Auditors and its members may, in carrying out the task of the Court, be assisted by officers of the Court. The Court itself or one of its members shall notify the

authorities with which the delegated officer is to work of the tasks delegated to him.

(2) Parliament, the Council and the Commission shall inform the Court of Auditors, as soon as possible, of all decisions and measures taken pursuant to Articles 4 (4), 7 (4), 9, 17 (1) and 25.

(3) The institutions shall transmit to the Court of Auditors any rules of procedure in respect of financial matters.

(4) The Court of Auditors shall be informed of the appointment of authorizing officers, financial controllers, accounting officers and administrators of imprest accounts and of the acts of delegation or appointment under Articles 22, 23, 24 and 54.'

90. *Article 79 becomes Article 84.* The phrase:

'subject to Article 19 of Council Regulation (EEC, Euratom, ECSC) No 2891/77 and to Article 80 of this Financial Regulation' is replaced by 'subject to Article 18 of Council Regulation (EEC, Euratom, ECSC) No 2891/77 and to Article 85 of this Financial Regulation.'

91. *Article 80 becomes Article 85.* This Article is replaced by the following:

'The audit carried out by the Court of Auditors shall be based on records and, if necessary, performed on the spot. Its purpose shall be to establish that all revenue has been received and all expenditure incurred in a lawful and proper manner having regard to the provisions of the Treaties, the budget, the Financial Regulations and all other acts adopted pursuant to the Treaties, and that the financial management has been sound.

For the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 87, all documents and information relating to the financial management of the departments or bodies subject to its inspection; it has the power to make inquiries of any official responsible for a revenue or expenditure operation, and to use any of the auditing procedures appropriate to those departments or bodies.

The Court of Auditors, in order to obtain all the necessary information for the performance of the task entrusted to it by the Treaties and the acts adopted pursuant thereto, may be present, at its request, during the operations carried out by the Commission pursuant to Articles 8 and 9 of Regulation (EEC) No 729/70 and Articles 17 and 18 of Regula-

tion (EEC, Euratom, ECSC) No 2891/77. This measure shall also apply to the inspection of any fund set up by the Communities.

At the request of the Court of Auditors, each institution shall authorize outside persons to permit the Court to make any checks to ensure that external data correspond to the accounts.'

92. *Article 81 becomes Article 86.*

93. *Article 82 becomes Article 87.* The final paragraph is replaced by the following:

'The granting of Community funds to beneficiaries outside the institutions shall be subject to the agreement in writing by the recipients to an audit being carried out by the Court of Auditors on the utilization of the amounts granted.'

94. *Article 83 becomes Article 88.* This Article is replaced by the following:

'The annual report of the Court of Auditors provided for in Article 78 of the ECSC Treaty, Article 206a of the EEC Treaty and Article 180a of the Euratom Treaty shall be governed by the following provisions:

(1) The Court of Auditors shall transmit to the Commission and the institutions concerned, by 15 July at the latest, any comments which are, in its opinion, of such a nature that they should appear in the annual reports. These comments must remain confidential. Each institution shall address its reply to the Court of Auditors by 31 October at the latest. The replies of the institutions other than the Commission shall be forwarded simultaneously to the Commission.

(2) The annual report shall contain an assessment of the soundness of financial management.

(3) The annual report shall comprise a section for each institution. Each section shall contain all the comments of the Court of Auditors on the relevant institution. The replies of each institution shall be published immediately following the comments relating to that institution.

(4) The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other institutions, by 30 November at the latest, its annual report accompanied by the replies, and it shall ensure publication thereof in the *Official Journal of the European Communities*.'

95. *Article 84 becomes Article 89.* This Article is replaced by the following:

'(1) Parliament, upon a recommendation from the Council, acting by a qualified majority, shall, before 30 April of the next year, give a discharge to the Commission in respect of the implementation of the budget. If that date cannot be met, Parliament or the Council shall inform the Commission of the reasons for the postponement.

(2) The European Parliament shall deliver its opinion on the discharge, in particular on the basis of all revenue and expenditure of the Communities audited by the Court of Auditors.

(3) The financial controller shall take account of the comments made in the decisions giving discharge.

(4) The institutions shall take all appropriate steps to act on the comments appearing in the decisions giving discharge.

(5) At the request of Parliament or the Council, the institutions shall report on the measures taken in the light of these comments and, in particular, on the instructions given to those of their departments which are responsible for the implementation of the budget. Such reports shall also be transmitted to the Court of Auditors.

(6) Without prejudice to the reports provided for in paragraph 5, the institutions must give an account, in an annex to the revenue and expenditure account for the financial year during which the discharge is given, of the measures taken in the light of the comments in the decisions giving discharge.

(7) If Parliament decides to postpone the discharge the Commission must as rapidly as possible remove any obstacles to the discharge decision.

(8) Supporting documents pertaining to the accounts and the preparation of the revenue and expenditure account and the balance sheet shall be kept for a period of five years following the date of the decision giving discharge in respect of the implementation of the budget.

However, the documents relating to transactions not finally closed shall be kept for longer than the said period until the end of the year following the year in which such transactions are finally closed.'

96. *Article 85 becomes Article 90.* This Article is replaced by the following:

'(1) The Court of Auditors may also, at any time, submit observations on specific questions and deliver opinions at the request of one of the institutions of the Communities.

(2) It shall transmit any observations made to the institutions or body concerned.

The institution concerned shall have two and a half months in which to inform the Court of Auditors of any comments it wishes to make on the observations in question.

Should the Court of Auditors decide to have such observations published in the *Official Journal of the European Communities*, it shall include after them any comments submitted by the institution or institutions concerned.

(3) If the opinions referred to in paragraph 1 do not relate to proposals for legislation or draft legislation on which it has been consulted, the Court of Auditors shall not publish them unless the institution which has requested the opinion and the institution concerned agree. In this case, these opinions shall be accompanied by the replies of the institution or institutions concerned.'

97. *Title VII.* The title is replaced by the following:

'TITLE VII

SPECIAL PROVISIONS APPLICABLE TO RESEARCH AND DEVELOPMENT AND TECHNOLOGICAL INNOVATION'

98. *Articles 86 to 94* are deleted and are replaced by the following:

'Article 91

'The provisions of this title shall apply, by way of derogation from the provisions of this Regulation, to appropriations for research and development and technological innovation activities, in particular those under programmes adopted by the Council pursuant to Article 7 of the Euratom Treaty and Article 235 of the EEC Treaty, and any other activities in this field, notably services performed in third-party accounts.

Article 92

(1) The appropriations relating to the above activities, including those to cover the staff and administrative expenditure provided for in the corresponding decisions, shall be entered in as many titles as are required within a specific section of the general budget.

(2) The nomenclature of the title relating to staff expenditure shall correspond to that of expenditure of the same type in all the institutions; it may, however, include certain additional headings corresponding to expenditure specific to the activities referred to in this title.

(3) The appropriations entered in the title relating to staff expenditure shall be non-differentiated appropriations; the appropriations for operating and administrative expenditure in the other titles shall be differentiated appropriations.

(4) — By way of derogation from Article 7 (2) (a), the commitment appropriations shall remain valid until the close of the financial year following that in which the programme adopted by the Council ends.

— The commitment appropriations for other activities shall remain in existence for the following financial year in accordance with Article 7 (2) (a) of this Regulation.

(5) Staff appropriations which are available because the actual number of staff is temporarily lower than the number authorized may be used only for expenditure to make up the staff shortage.

The title relating to staff expenditure shall therefore contain a heading to which expenditure on replacements may be charged. This heading, which shall carry a token entry, shall be allocated funds that are available during the financial year by means of transfers in accordance with Article 95 (1) (a).

Article 93

For each of the titles, there shall be attached to the specific section containing the appropriations referred to here:

- a table of equivalence breaking down these appropriations by programme and by instruments of implementation;
- an indicative schedule of commitments and payments indicating the planned rate for utilizing the appropriations for each programme.

Article 94

(1) Analytical expenditure accounts shall be drawn up in respect of the implementation of the programmes referred to in Article 91. These accounts must enable the expenditure allocated to each programme from the budget to be identified.

(2) These accounts shall show the correspondence between expenditure and the cost of the main instruments of implementation such as:

- staff;
- general technical services and administration;
- scientific and technical services and major installations;
- the operating appropriations specific to the objectives.

(3) The detailed procedures for drawing up these analytical accounts shall be determined by the implementing measures provided for in Article 123.

Article 95

By way of derogation from Article 25, the following provisions shall apply to transfers:

1. The Commission is authorized to take decisions on:
 - (a) all transfers within the title relating to staff expenditure;
 - (b) transfers from one item to another, from one article to another and from one chapter to another in each of the titles relating to operating and administrative expenditure;
 - (c) all transfers of payment appropriations within and between the titles relating to operating and administrative expenditure.
2. The budgetary authority shall take decisions on the following in accordance with the procedures laid down in Article 25:
 - (a) transfers between the title relating to staff expenditure and the titles relating to operating and administrative expenditure;
 - (b) transfers of commitment appropriations between the titles relating to operating and administrative expenditure.

Article 96

With regard to the award of contracts in the fields falling under this title, the implementing measures provided for in Article 123 may lay down special provisions on the operation and on the determination of the powers of the advisory committee on procurements and contracts and on the limit values determining the procedure for concluding contracts.

99. *Article 95 becomes Article 97.* This Article is replaced by the following:

'This title shall apply to the operations of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, in accordance with Regulation (EEC) No 729/70 of 21 April 1970.

In accordance with Article 4 (2) of this Regulation, the Commission shall place the necessary appropriations for these operations at the disposal of the Member States.

The operations of the EAGGF, Guarantee Section, shall normally be effected through the authorities or bodies referred to in Article 4 (1) of Regulation (EEC) No 729/70, under the implementing provisions adopted pursuant to Article 5 (3) of the said Regulation.

Special operations which the Commission manages directly, shall be implemented in

accordance with the rules laid down in Title III of this Regulation.'

100. *Article 96 becomes Article 98.* This Article is replaced by the following:

'(1) Global provisional commitments shall be entered into, corresponding to the advances to be made to the Member States, in respect of the appropriations for the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

The Commission decisions fixing the amounts of these advances in accordance with Article 5 (2) (a) of Regulation (EEC) No 729/70 shall constitute global provisional commitments. The approval of the financial controller shall have the sole purpose of establishing that these commitments correspond to the amount of the advances decided by the Commission after consultation with the EAGGF Committee, and that they are within the limits of the total amount of appropriations entered in the Guarantee Section of the European Agricultural Guidance and Guarantee Fund.

Payment of the advances shall be made within the limits of the amounts so committed. The appropriations made available for advances shall be to cover exclusively expenditure which has given rise to payment in the Member States between 1 January and 31 December of the financial year in question.

(2) Every month, at the same time as granting the advances, the Commission shall inform Parliament and the Council of the breakdown by chapter of expenditure corresponding to the advances granted. It shall include whatever information which it considers appropriate.'

101. *Article 97 becomes Article 99.* This Article is replaced by the following:

'(1) Expenditure effected by authorities and bodies under Article 4 of Regulation (EEC) No 729/70 shall be the subject of a commitment by chapter, article and item, and shall also be charged as a payment, after examination of the statements forwarded by the Member States in accordance with the provisions laid down pursuant to Article 5 (3) of the said Regulation, and after the approval of the financial controller.

Subject to Article 100, the commitment shall be entered into within two months following receipt of the statements forwarded by the Member States. The charging as a payment shall, in general, be carried out within the same period.

(2) The commitments provided for in this Article shall be deducted from the global provisional commitments referred to in Article 98.

(3) This Article shall apply without prejudice to the clearance of accounts provided for in Article 101 of this Regulation.'

102. *Article 98 becomes Article 100.*

103. *Article 99 becomes Article 101.* This Article is replaced by the following:

'(1) The object of the clearance of the accounts provided for in Article 5 (2) (b) of Regulation (EEC) No 729/70 shall be:

- to determine the amount of expenditure effected in each Member State during the financial year in question and acknowledged as being to the account of the EAGGF,
- to determine the amount of the funds remaining available in the Member States.

Not later than 30 June of the year following the financial year in question the Member States shall, for the purpose of clearance of the accounts, send to the Commission summary annual accounts for the financial year ended, amending where necessary the monthly accounts. These summary accounts shall be accompanied by the appropriate reports drawn up by the competent audit and control departments and dealing with the expenditure referred to in the Articles relating to expenditure covered by the clearance.

If the accounts of a paying agency or department have not reached the Commission by 30 June, the Commission may clear the accounts of that agency or department solely on the basis of the financial statements referred to in Article 5 (1) (a) of Regulation (EEC) No 729/70 as described by implementing measures⁽¹⁾ adopted pursuant to Article 5 (3) of the said Regulation.

(2) On the basis of the abovementioned accounts or statements and of the findings of audits of documents and on the spot under the terms of Article 9 of Regulation (EEC) No 729/70, the Commission, after consulting the Fund Committee referred to in Article 13 of the Regulation, shall clear the accounts not later than 30 November of the second year following the financial year in question.

⁽¹⁾ Regulation (EEC) No 380/78 of 30 January 1978, OJ No L 56, 27. 2. 1978.

(3) The Commission shall transmit the clearance decisions to the Member States and publish them in the *Official Journal of the European Communities*.

(4) The outcome of the clearance decision, i.e. any difference which may exist between the total expenditure charged to the accounts for a financial year pursuant to Articles 99 and 100 and the total expenditure established by the Commission when clearing the accounts shall be charged, under a single article, as over- or under-expenditure to the financial year in which the accounts are cleared. However, if the procedures required for this purpose — transfers or a supplementary or amending budget — cannot be completed by the end of the year, the clearance decision shall be charged as soon as possible to the following financial year.'

104. *Article 100 becomes Article 102.* This Article is replaced by the following:

'(1) Global provisional commitments which have been made for a financial year in accordance with Article 98 and which have not been specifically committed under the budget nomenclature in accordance with Article 99 by 31 March of the following financial year, shall be released under the original financial year.

(2) A global provisional commitment corresponding to the amount released shall be made from the appropriations for the current financial year.'

105. *Article 101 becomes Article 103.* This Article is replaced by the following:

'(1) Appropriations made available in one chapter of expenditure may not be allocated to another chapter of expenditure.

(2) Transfers from one chapter to another and transfers within a chapter shall be made by decision of the Commission in accordance with the procedure provided for in Article 13 of Regulation (EEC) No 729/70, which must be completed not later than 31 March.

(3) The procedure referred to in paragraph 2 shall also apply to transfers between the EAGGF Guarantee chapters and the food-aid chapter, in so far as such transfers are made necessary by changes, in relation to the appropriations authorized, in the parts of the expenditure chargeable to the respective chapters.

(4) The Commission shall inform the budgetary authority of such transfers 15 days in advance.'

106. *Title IX.* This title is replaced by the following:

'TITLE IX
SPECIAL PROVISIONS APPLICABLE
TO EXTERNAL AID
SECTION I
GENERAL PROVISIONS

Article 104

(1) Subject to derogation, the provisions of Titles I to VI and XI shall apply to foreign aid financed from the Community budget, in so far as they are not incompatible with the express provisions of this title.

(2) The appropriations assigned by the Community to its development cooperation policy shall be used either under global cooperation agreements of a contractual nature or as aid granted unilaterally.

(3) These appropriations may be earmarked for grants, special loans, risk capital, or interest rate subsidies, and shall be paid out by the Commission, which may confer on the European Investment Bank authority on behalf of the Community to administer a part thereof.

This provision shall not prejudice audit powers of the Court of Auditors under Article 206a of the Treaty.

(4) The appropriations paid out by the Commission shall be used in accordance with the following provisions.

(5) The amount of special loans and risk capital granted shall be shown in the balance sheet provided for in Article 81.

Article 105

(1) A financing agreement shall be drawn up between the Commission, acting for the Community, and the government or the competent authority of the recipient State in respect of any investment project on which the Commission takes a financing decision.

(2) The financing agreement shall determine the financial commitment of the Community for the measure concerned. No item of expenditure in excess of this amount may be charged to the budget without an additional commitment in accordance with the terms of Article 107.

(3) In addition, a loan contract shall be drawn up between the Commission, acting for the Community, and the borrower in respect of any investment project financed by a special loan.

SECTION II EXECUTIVE AGENTS

Article 106

Where finance is provided by the Community under a global cooperation agreement, the disbursement of funds shall, as a rule, be entrusted to a chief authorizing officer, a national authorizing officer, a Commission delegate and a paying agent, as specified below.

Article 107

(1) The Commission shall perform the functions of chief authorizing officer, which shall be to ensure that financing decisions are carried out and to be responsible for the management of resources. In this capacity it commits, clears and authorizes expenditure.

(2) The chief authorizing officer, in close cooperation with the national authorizing officer, shall ensure that participants in tendering procedures can compete on an equal footing, that there is no discrimination and that the tender selected is economically the most advantageous. In particular, he shall approve the terms of the invitation to tender before it is issued, be apprised of the results of the examination of the tenders, and approve the proposal for the award of the contract, save where such powers are conferred on the Commission delegate.

(3) The chief authorizing officer shall make any adjustments and take commitment decisions which prove necessary to ensure the proper execution of approved projects and programmes in the best economic and technical conditions.

(4) Decisions concerning additional commitments to cover any amounts in excess of the allocation for a project shall be taken:

- by the procedures for the adoption of financing decisions, where the excess is more than 15 % of the initial commitment set in the financing decision,
- by the chief authorizing officer, where

excess is 15 % or less of the initial commitment set in the financing decision.

Article 108

(1) The Government of the recipient State shall appoint a national authorizing officer to represent the national authorities in all operations relating to projects financed by the Community.

(2) The national authorizing officer shall submit invitations to tender to the Commission for agreement before issuing them. On the basis of the decisions thus endorsed and in close cooperation with the chief authorizing officer and with the delegate referred to in Article 107 where such a delegate has been appointed, the national authorizing officer shall issue invitations to tender, receive tenders, preside over the examination of tenders and establish the results of the tendering procedure.

(3) He shall transmit to the Commission for agreement the results of the examinations of the tendering procedure and a proposal for the award of the contract. He shall sign contracts and riders thereto and estimates and notify the Commission thereof. For contracts, riders thereto and estimates, the Commission shall enter into individual commitments in accordance with the procedures laid down in Articles 36 to 39. Individual commitments shall be set against the commitments under the financing agreements provided for in Article 105 (2).

(4) The national authorizing officer shall clear and authorize expenditure against appropriations committed by the Commission. He shall remain financially liable to the Commission until the Commission clears the operations for the execution of which he is responsible.

Article 109

(1) For the purposes of applying the agreement or convention between the Community and the recipient State, and in respect of the appropriations for which it is the authorizing officer, the Commission may be represented in the recipient State by a delegate approved by that State.

(2) At the request of the recipient State, the delegate shall give technical assistance in preparing and appraising projects.

(3) The delegate shall, regularly, and in certain cases acting on special instruction from the Commission, inform the authorities of the State to which he has been appointed of Community activities which may directly concern cooperation between the Community and that State.

(4) While operations are in progress the delegate shall verify, on the basis of documents and on the spot, that the work or services comply with their description in the financing agreements, contracts or estimates.

For these purposes he shall approve all payment authorizations issued by the national authorizing officer. This approval shall not constitute clearance by the Commission of the operation concerned, within the terms of Article 110 (7), and shall not discharge the national authorizing officer from his liability under Article 108 (4). The delegate shall be bound to comply with this Financial Regulation in the performance of his duties.

The delegate shall be responsible to the Commission for failure to observe the provisions of this Regulation or serious misconduct or negligence in the performance of his duties.

Article 110

(1) For payments in a currency other than that of the recipient State, the Commission shall make payment direct for services provided in connection with projects financed with grant aid.

(2) For payments in the currency of the recipient State, accounts denominated in the currency of a Member State shall be opened on behalf of the Commission with the recipient State's central bank, which shall exercise the functions of paying agent.

(3) The accounts referred to in paragraph 2 shall be replenished to meet actual cash requirements. Transfers shall be made in the currency of a Member State and converted into the currency of the recipient State as payments fall due, at the exchange rate ruling on the day of payment.

(4) The paying agent shall not be remunerated for his services; no interest shall be paid on the funds deposited.

(5) Within the limits of the funds available, the paying agent shall make the payments authorized after verifying that the supporting documents provided are substantively accurate and in order, and that the discharge is valid.

(6) At regular intervals, and at least once a quarter, the paying agent shall send the Commission a statement of expenditure effected, together with supporting documents.

(7) Payments made in the currency of the recipient State shall be subject to a clearance procedure before they are finally charged to the budget appropriations. Clearance shall consist of an examination by the competent department of the Commission and by the financial controller to establish that validation, authorization and payment have been properly effected.

SECTION III AWARD OR CONTRACTS

Article 111

By way of derogation from Title IV of this Financial Regulation, the award of contracts financed by the Community shall be governed by the following provisions.

Article 112

The procedure to be followed prior to the award of works, supply or service contracts, or the conclusion of technical cooperation contracts, shall be specified in the technical and administrative provisions annexed to the financing agreement, subject to the following principles.

Article 113

1. Participation in tendering procedures shall be open on equal terms to all natural persons and firms coming within the scope of application of the Treaty and to all natural persons and firms in the recipient State.

The specifications shall therefore require tenderers to state their nationality and to present the supporting evidence normally acceptable under their own law.

2. By way of exception, it may be decided, by mutual agreement between the Commission and the recipient State, to allow nationals of non-member countries to compete for contracts financed by the Community.

3. For financial and technical cooperation projects in favour of non-associated developing countries funded from the budget appropriations earmarked for that purpose, eligibility to participate in tendering procedures and contracts may be extended to other developing countries which have received Community aid from these appropriations in the current financial year and the two preceding years.

Article 114

The Commission and the relevant authorities of the recipient State shall take the necessary implementing measures to ensure that participants in tendering procedures and other procedures for the award of contracts financed by the Community can compete on an equal footing.

To this end, without prejudice to Article 115, care shall be taken in particular to:

- (a) ensure advance publication in reasonable time of invitations to tender in the *Official Journal of the European Communities* and the official journal of the recipient State;
- (b) eliminate any discriminatory practice or technical specification liable to hamper participation on equal terms by all natural or legal persons of the Member States and of the recipient State.

Article 115

In urgent cases or where the nature, small scale or particular characteristics of certain works or supplies so warrant, the relevant authorities of the recipient State may, by agreement with the Commission stating the reasons therefor, exceptionally authorize:

- the award of contracts after restricted invitations to tender,
- the conclusion of contracts by private treaty,
- the performance of contracts through public works departments.

Article 116

The Commission and the relevant authorities of the recipient State shall ensure that

Articles 114 and 115 are observed for each operation and that the tender selected is economically the most advantageous, with due regard notably to the price, utilization costs, technical value, the qualifications of and the guarantees offered by the tenderers, the nature and conditions of execution of the works or supplies.

The Commission and the relevant authorities of the recipient State shall ensure that all the selection criteria are specified in the invitation to tender dossier.

The result of invitations to tender shall be published at the earliest possible date in the *Official Journal of the European Communities*.

Article 117

(1) For technical cooperation projects, service contracts shall be concluded with a consultancy bureau, a consultant engineer or an expert. Such contracts shall be made by private treaty or, where justified on technical, economic or financial grounds, following competitive tendering.

(2) For each technical cooperation project the Commission shall select one or more candidates according to criteria guaranteeing their qualifications, experience and independence and taking into account their availability for the proposed project.

Where a private treaty procedure is used and the Commission has selected a number of candidates, the recipient State shall choose freely which of these candidates it wishes to deal with.

Where a tendering procedure is used, the contract shall be awarded to the candidate who, in the opinion of the Commission and the State concerned, has entered the economically most advantageous bid.

(3) Service contracts shall, as a rule, be prepared, negotiated and concluded by the relevant authorities of the recipient State, with the agreement and assistance of the Commission delegate.

However, they may be prepared, negotiated and concluded by the Commission where they relate to urgent, short-term expert services in connection with the preparation, appraisal, execution or utilization of projects, or where

special provisions in the financing agreements referred to in Article 105 (1) so stipulate.

SECTION IV FOOD AID

Article 118

(1) Every food-aid programme shall as soon as possible be made the subject of a proposal for commitment in accordance with the procedure laid down in Articles 36 to 39.

The advances paid to Member States shall be entered globally against the abovementioned commitments; the sum set aside for the commitments may not be exceeded.

(2) Expenditure effected by the Member States using the funds advanced by the Commission pursuant to Article 3 of Regulation (EEC) No 2681/74 shall be entered as payments following examination of the statements transmitted by the Member States in accordance with the implementing measures under Article 5 of the abovementioned Regulation and approval by the financial controller.

Subject to paragraph 3 of this Article, expenditure shall be entered as payments within two months of receipt of the statements transmitted by the Member States.

This Article shall apply without prejudice to the clearance of accounts provided for in Article 8 of Regulation (EEC) No 249/77.

(3) Articles 36 to 53 shall apply as regards the commitment and payment of expenditure effected by the Commission direct, particularly in respect of purchases on the world market, the occasional transport or storage of goods, or quality controls on products supplied.

(4) The Commission may decide, up to 31 March of the following financial year, to transfer appropriations from one article to another within the chapter relating to food aid.

(5) Expenditure shall be taken into account in respect of a financial year on the basis of payments made up to 31 December by the departments referred to in Article 3 of Regulation (EEC) No 2681/74 provided that their authorization has reached the accounting officer by 31 March following.

(6) Any differences between the expenditure charged to the accounts of a financial year pursuant to paragraph 5 above and that established by the Commission when clearing the accounts as provided for in Article 8 of Regulation (EEC) No 249/77 shall be entered in the

accounts as over- or under-expenditure in respect of the financial year in which the clearance took place.

However, if the procedures required for this purpose — transfers or a supplementary and/or amending budget — cannot be completed by the end of the year, the clearance decision shall be charged as soon as possible to the following financial year.

(7) The provisions of Article 103 (3) shall apply to transfers made necessary by changes in relation to the appropriations authorized, in the parts of the expenditure chargeable to the EAGGF Guarantee chapters and the food-aid chapter.

SECTION V AUDITING OF ACCOUNTS

Article 119

(1) Each agreement for the financing of an investment project and each agreement relating to a food-aid operation shall make express provision for the Court's power of audit.

(2) Should the Court of Auditors wish to carry out audits on the territory of recipient States, or States in which recipients are located, it shall do so by agreement with the relevant authorities of the State concerned. Such audits would be limited to the inspection arrangements implemented pursuant to the provisions governing Community aid and would not apply in respect of the execution arrangements which are the responsibility of the national authorizing officer.

107. *Article 103 becomes Article 118.* Paragraphs 2, 3 and 4 are replaced by the following:

'(2) The appropriations for the Office, the total amount of which shall be entered under a special budget heading within the section of the budget relating to the Commission concerning appropriations for staff and administration shall be set out in detail in an annex to that section. The appropriations shown under this specific budget heading may be transferred in accordance with the conditions set out in Article 25.

The annex shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.

The appropriations entered in that annex shall cover all the financial requirements of the

Office in the performance of its duties in the service of the Community's institutions.

(3) Where necessary, the estimates may be adjusted during the financial year by the Management Committee of the Office, which shall decide on the transfer required within the annex as a result of such adjustments. It shall inform the budgetary authority three weeks before effecting transfers from one chapter to another.

(4) The remarks relating to the specific budget heading under which is entered the total appropriation for the Office shall show an estimate of the cost of services rendered by the Office to each of the institutions.

The total costs of these services shall correspond to the total expenditure shown in its statement of expenditure.'

108. *The following new Article 121 is added:*

'The financial rules of Community bodies with legal personality which receive subsidies from the general budget shall take over as far as possible the provisions of this Regulation and diverge from it only when their specific operational requirements warrant.'

109. *Article 104 becomes Article 122.*

110. *Article 105 is deleted.*

111. *Article 106 becomes Article 123.* This Article is replaced by the following:

'After consulting the other institutions, whose opinions must be given within two months, the Commission shall adopt measures for implementing this Financial Regulation. It shall inform all the institutions of these provisions.'

112. *Article 107 becomes Article 124.* This Article is replaced by the following:

'Amendments to this Financial Regulation, proposed by the Commission, shall be adopted by the Council after conciliation with the European Parliament.'

113. *Article 108 becomes Article 125.* This Article is replaced by the following:

'Appropriations for the Guidance Section of the European Agricultural Guidance and Guarantee Fund entered in the budget for the financial year 1976 and in the budgets of earlier financial years shall be carried over under the following conditions:

- (a) where they relate to payments remaining due under commitments, they shall be carried over automatically for a period of five years reckoned from 31 December of the financial year during which they were committed;
- (b) upon expiry of that period, the Commission may submit to the Council and forward to Parliament, by 31 March, the lists of appropriations remaining committed, for which a duly substantiated request for carryover is being made. The decision shall be taken in accordance with Article 7 (4).'

114. *The following new Article 126 is added:*

'Until the entry into force of the implementing measures provided for in Article 123, the limit values to be specified in the implementing measures for Articles 58, 60, 62, 63 and 96 shall be as follows:

- Article 58, first paragraph, subparagraph (a): the limit below which contracts may be made by private treaty shall be 12 000 ECU;
- Article 60: the limit above which the powers of the Advisory Committee on Procurements and Contracts take effect shall be 36 000 ECU;
- third paragraph of Article 62: the threshold for compulsory security shall be 350 000 ECU;
- Article 63: the limits below which contracts may be made against invoice or bill of costs shall be 600 ECU and 1 500 ECU respectively for expenditure outside the provisional places of work;
- Article 96: the limit below which contracts may be made by private treaty shall be 60 000 ECU.'

115. *Article 109 becomes Article 127.* This Article is replaced by the following:

'The following shall be repealed:

- the Financial Regulations of 25 April 1973 ⁽¹⁾, 18 March 1975 ⁽²⁾, 21 December 1977 ⁽³⁾, 25 June 1979 ⁽⁴⁾ and 16 December 1980 ⁽⁵⁾;
- all other provisions contrary to this Financial Regulation.'

⁽¹⁾ OJ No L 116, 1. 5. 1973, p. 1.

⁽²⁾ OJ No L 73, 21. 3. 1975, p. 45.

⁽³⁾ OJ No L 356, 31. 12. 1977, p. 1.

⁽⁴⁾ OJ No L 160, 28. 6. 1979, p. 1.

⁽⁵⁾ OJ No L 345, 20. 12. 1980, p. 23.

Article 2

1. In Articles 22, 23, 27, 28, 36, 37, 38, 45, 46, 53, 57, 60, 62, 65, 66 and 75 ⁽¹⁾ the references to former Article 106 concerning implementing measures shall be understood as being to Article 123.

2. The name 'the European Parliament' in the present text of the Financial Regulation is replaced by Parliament.

⁽¹⁾ New numbers.

Article 3

References to provisions of the Financial Regulation of 21 December 1977 shall be understood as being to the corresponding provisions as amended by this Regulation.

Article 4

This Regulation shall enter into force on

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

THIRTY YEARS OF COMMUNITY LAW

More than 30 years have elapsed since Robert Schuman's declaration of 9 May 1950 and the signature on 18 April 1951 of the Treaty of Paris establishing the European Coal and Steel Community. The time has come for the European Community to take stock. Both as a unique economic and human experiment, and as a reality endowed with powerful legal instruments, this singular phenomenon needs to be examined from the standpoint of history.

The establishment of the Community was completed with the conclusion of the Treaties of Rome creating the European Economic Community and the European Atomic Energy Community. Its institutions have undergone several stages of development, including the merger of the executives, the creation of own resources, the extension of Parliament's budgetary powers and the creation of a Court of Auditors. At the same time the Community was putting into effect the fundamental principles of free movement of goods, persons, services and capital, and developing the common policies which are laid down in the Treaties or which proved necessary in order to attain, in the course of the operation of the common market, one of the objectives of the Community. On two occasions it has been enlarged by the accession of further European States, first Denmark, Ireland and the United Kingdom, and subsequently Greece. It has also commenced negotiations with a view to the admission of Spain and Portugal.

The progress made by the Community is reflected in a vast range of legislation binding on Member States, firms and individuals, and in the body of case-law built up by the Court of Justice in Luxembourg.

The Commission wished to provide a work of reference for lawyers which did not assume any familiarity with questions of Community law. It asked eminent specialists in the subject from the various Member States to make individual contributions to *Thirty years of Community law* so as to trace the development of the Community, summarize the progress achieved in the various sectors and examine the difficulties which the Community has had to face. Each author was allowed the fullest freedom of expression. Neither the Commission nor readers will necessarily share all the points of view expressed, but they will at least have the benefit of a full and frank discussion.

Published in: Danish, Dutch, English, French, German, Italian.

Greek, Portuguese, Spanish: in preparation.

ISBN 92-825-2652-6
CB-32-81-681-EN-C

Price (excluding VAT) in Luxembourg: ECU 15,00 BFR 670 IRL 10,30
UKL 8,50 USD 15,50

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THE PROFESSIONS IN THE EUROPEAN COMMUNITY
Towards freedom of movement and mutual recognition of qualifications

J.-P. de CRAYENCOUR

Aside from establishing a common market, one of the tasks of the European Community is to promote closer relations between the States belonging to it (Article 2 of the Treaty of Rome). One of the means of achieving this end is the free movement of persons.

This freedom of movement concerns *inter alia*, the professions. Members of the professions will be able to play their part in European integration and put their independent and responsible services at the disposal of a wider clientele in the Community only if obstacles standing in the way of freedom of the professions, whether it takes the form of the right of establishment or the freedom to provide services, are removed.

As the professions are generally highly regulated, this freedom of movement can only be satisfactorily achieved if certain of the regulations governing them, such as those relating to training requirements and professional ethics, are harmonized to some degree.

Existing rules and regulations in the various Member States could be reviewed in the light of any such harmonization and of changes in society, while paying due attention to the values of independence and responsibility which are a feature of the professions, with a view to promoting European integration.

The aim of this booklet on 'The professions in the European Community — Towards freedom of movement and mutual recognition of qualifications' is to highlight the benefits to be derived from free movement and the manner in which it can be properly implemented. It describes the legal process involved, suggests how harmonization might be realized and underlines the steps to be taken to achieve the most urgent objective, namely mutual recognition of diplomas. Finally, it outlines what has been achieved thus far and what remains to be done.

J.-P. de CRAYENCOUR — Born in London on 16 July 1915. Belgian — Studied law at Louvain. Pupil lawyer at the Brussels bar, then Director of the Study Centre of the National Federation of Small Firms. Administrator and General Secretary of the International Study Institute of Small Firms (classes moyennes). Worked in the Office of the Minister for Small Firms and Traders in 1958. Joined the Commission of the European Communities on 1 March 1959 and worked in the Directorate for the Right of Establishment. Head of Division on 1 June 1959. Retired on 1 May 1973. Founded the Secrétariat européen des professions libérales, intellectuelles et sociales (SEPLIC — headquarters in Brussels). Married with seven children. Chairman/founder of the Confédération nationale des associations de parents, 1956. Capitaine-commandant de réserve honoraire in the First Regiment of the 'Guides', prisoner of war, war volunteer, resistance movement participant.

Published in: Danish, Dutch, English, French, German, Greek, Italian, Portuguese, Spanish.

The Greek version is not yet available.

ISBN 92-825-2791-3

Catalogue number: CB-33-81-061-EN-C

Price (excluding VAT) in Luxembourg: ECU 5,50 BFR 240 IRL 3,80
UKL 3,10 USD 6

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