COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 22.07.1998
SEC(1998) 1228 final

COMMISSION WORKING DOCUMENT

ON THE RECASTING OF THE FINANCIAL REGULATION

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I. EXPLANATORY MEMORANDUM

A. INTRODUCTION

1. The Financial Regulation of 21 December 1977 is the main instrument which, pursuant to the principles laid down in the Treaty (Articles 199 to 209), lays down rules for all aspects of the budget of the European Communities:

   - **establishment**: presentation of the preliminary draft by the Commission and adoption by the budgetary authority,

   - **implementation of revenue and expenditure**, including rules on bookkeeping and presentation of accounts,

   - definition of the role and responsibility of **those involved in implementation**: authorising officers for revenue and expenditure, financial controller (internal auditor), accounting officer,

   - monitoring and **control of implementation** including presentation of financial data, control by the Court of Auditors (outside auditor) and by the European Parliament (discharge).

2. The present text of the Financial Regulation was adopted over twenty years ago, since when times have changed enormously with a series of enlargements, financial perspectives forming a framework for the development of the budget (Delors I and II packages) and changes to the institutional structure resulting in the European Union. The 1977 text has been amended repeatedly to take account of the institutional changes (Maastricht, joint financing by the EFTA countries for the EEA) and also to tighten up the management of Community finances, a fundamental aspect of the Delors I package which comes up in a number of the Court of Auditors' observations.

   On this last point, the substantial revision of the Financial Regulation which is in the process of adoption by the Council ("seventh series" of amendments) will lay down the rules to give effect to the second phase of the SEM 2000 (sound and efficient management) programme. The purpose of this revision is to impose stricter discipline in dealing with current commitments and lay down a clearer framework for delegation of powers and subcontracting of tasks connected with implementation of programmes; it also includes a first set of measures designed to modernise bookkeeping and clarify the roles of authorising officer, financial controller and accounting officer.

   It has to be admitted that all these amendments have robbed the 1977 text of some of its coherence and readability.

3. The Court's opinion on the seventh series of amendments (4/97 of 10 July 1997)[1] was not confined to the proposal proper but also included an analysis of the current state of the Financial Regulation and concluded that the time has come **to propose a general overhaul of the Financial Regulation**.

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[1] OJ C 57, 23.2.1998, p. 1.

The idea underlying the Court's thinking is to be found in paragraph 14 of its opinion: "as a result of the successive proposals for revising the Financial Regulation, a good many 'facilities' have been arranged, or allowed to emerge; these discretionary arrangements are regarded as useful for managers ... but tend to run counter to a disciplined approach and hugely complicate the accounting and financial management".

The Commission is aware of this problem. It is prepared to embark on a general overhaul of the Financial Regulation and to present a proposal which takes account not only of the concerns expressed by the Court but also the similar desires frequently expressed by the Council and Parliament in the discharge procedures. This would also be an opportunity to improve the clarity and readability of the Regulation.

In this connection the Personal Representatives Group, set up under the SEM 2000 programme, at its meeting on 10 February 1998, offered its wholehearted support for the procedure and for the general approach suggested by the Commission.

The proposal for the recasting of the Financial Regulation will be one of the legislative items accompanying the new financial perspective for 2000-2006 proposed by the Commission in connection with **Agenda 2000** reflecting its desire for a budgetary policy that it both transparent and rigorous.

B. METHOD AND TIMETABLE

4. In view of the technical complexity and scale of the task, which concerns all areas of Community activity and all the institutions, the Commission believes that the overhaul should be a **two-stage** process.

The first stage is this **working paper**, which is intended to launch the broadest possible interinstitutional discussion on the solutions envisaged by the Commission for recasting the Financial Regulation and allaying the Court's concern.

On the basis of this interinstitutional discussion, the Commission will present a formal proposal in the first quarter of 1999 for adoption by the Council under the procedure laid down in Article 209 of the Treaty, i.e. after the Court of Auditors and the European Parliament have given their opinions.

This proposal for a general overhaul will be separate from the specific proposals currently pending, namely the "seventh series" (on which the Council has already reached a common position) and the "eighth series" ("Amsterdam-Euro", proposal presented by the Commission on 3 April 1998).

C. SUMMARY OF SOLUTIONS ENVISAGED BY THE COMMISSION

5. The Commission's approach is to make a distinction between the problems of substance and the problems of form posed by the Financial Regulation in its present state.

The **comments on matters of substance** concern the following six topics which broadly correspond to the topics identified by the Court of Auditors and are discussed in detail in the second part of this paper:

- statement of the principles of budgetary law,
- the system of appropriations and the concept of commitment,
- the definition of accounting principles,
- the rules on procurement, grants and subcontracting,
- a clearer definition of the role of the budget players,
- management of external aid.

The **comments of form** concern the following two topics which are discussed in detail in part three of this paper. Action on this front is essential from the point of view of coherence of the Regulation and readability for everyday users:

- improvement of the presentation and clarity of the Regulation,
- improved coordination between the Financial Regulation and other instruments of financial law.

(a) Matters of substance

Topic One: Statement of the principles of budgetary law

6. The Commission believes that in this area there should be as few exceptions as possible to the general principles and only where they can be justified on objective grounds and hedged around by safeguards to prevent abuse.

This is the approach also taken by the Court, which calls for strict application of the principles of budgetary law (paragraphs 4 and 16(a) of the opinion), which means imposing tight restrictions on the exceptions allowed (paragraph 1 of the annex to the opinion).

7. On the **principle of unity**, the Commission suggests the following solutions concerning the exceptions to this principle:

- **entry in the budget of the Funds and of borrowing and lending activities**: even if the institutions are still unable to agree on the question of entering the Funds in the budget, the Commission nonetheless argues for more transparency in financial movements relating to such activities, by producing appropriate information in the revenue and expenditure account and balance sheet;

- **negative expenditure**: the Court regards negative amounts, such as negative agricultural expenditure, as a breach of the principle of unity. The Commission believes that can be treated as amounts available for re-use or as revenue which, in the case of the supplementary levy and public storage costs, would be earmarked to improving the situation on the market in question in accordance with arrangements which could be laid down in the specific provisions for the EAGGF Guarantee Section;

- **negative revenue**: it is the Commission's view that "negative revenue" is an aspect of the calculation of own resources and does not constitute budgetary expenditure in the ordinary sense;

- **negative reserve**: the Commission sees this as an advance estimate of appropriations which will lapse, an instrument which the budgetary authority appreciates as an aid to its decisions during the procedure and the Commission therefore recommends that it be retained;

- **integration of the financing of the common foreign and security policy (CFSP) and cooperation in the field of justice and home affairs (JHA)**: the Commission proposes stating expressly that the Financial Regulation applies to operational CFSP and JHA expenditure charged to the budget.

8. On the **principle of universality**, it is proposed that the exceptions of earmarked revenue and re-use be retained but in a more rational form. The Financial Regulation incorporates suitable safeguards for these exceptions which are not in fact criticised by the Court.

9. As regards the **principle of specification**, the Commission takes the view that without restricting the freedom of the budgetary authority to adopt the budget with an appropriate **nomenclature**, a minimum **framework for transfers of appropriations** must be maintained. In this connection the Commission suggests laying down uniform rules for transfers of administrative appropriations for all the institutions.

   The Commission also suggests terminating the special arrangements for transfers of research appropriations for shared-cost action (Article 95) but maintaining the specific arrangements for transfers of EAGGF Guarantee appropriations (Article 104).

10. The existing rules and even the Treaty allow a number of exceptions to the principle of **annuality** to ensure continuity of management, in particular the possibility of carrying over appropriations in certain specific cases.

    Extension of the use of differentiated appropriations to the entire budget should result in particular in the simplification of the carryover arrangements. Decisions on all carryovers of administrative appropriations would be taken by the budgetary authority; but the Commission would like to see a measure of flexibility in this area for reasons of sound financial management. In order to maintain the necessary continuity in management, carryovers of Part B appropriations should always be the responsibility of the Commission, but the basic conditions should be set out in clearer and stricter terms.

11. As regards the principle of **openness**, it is proposed that clearer information be provided on budget implementation and that bookkeeping and the presentation of accounts be improved by highlighting the assets position. The Commission suggests strengthening the definition of the principle of **sound financial management** and including a reference in the Financial Regulation to **evaluation,** which at present receives only a mention in the Financial Regulation and is dealt with in the draft amendments of the regulation laying down the implementing rules for the Financial Regulation.

<u>Topic Two: The system of appropriations and the concept of commitment</u>

12. The Commission agrees with the Court of Auditors that differentiated appropriations, which are designed to finance multiannual operations while complying with the principle of annuality as regards utilisation of budget appropriations, have demonstrated how effective they can be to finance all operations with a view to transparency of commitments and payments and monitoring of the payment schedule. This approach would also deal with the problem of multiannual administrative commitments, for instance for the purchase of buildings.

In this connection, **EAGGF Guarantee** expenditure which is currently financed via national departments or agencies under Article 98 of the Financial Regulation, must be dealt with in a specific title containing appropriate provisions.

As regards the **distinction between Part A (administrative appropriations) and Part B (appropriations for operations)** in the Commission's section of the budget, a matter to which the Court devotes special attention, it is suggested that a Part A be retained to finance the administrative core of the Commission similar to the sections of the budget for the other institutions. Part B would be confined to operations and to various items of expenditure closely connected with operations, with arrangements for presentation and monitoring which offer greater transparency.

The Commission believes that a more integrated approach leading eventually to a merging of Part A and Part B, with a residual Part A for non-operational services, is possible only if the budgetary authority were to agree that budgetary rules should be based on an integrated presentation of the allocation of financial and administrative resources (activity-based budgeting); the matter would first have to be suitably analysed.

As the Court of Auditors points out, the Financial Regulation must also contain a clear definition of the concept of commitment.

The Commission would suggest that the Financial Regulation should define commitment in its various components: decision (global or specific financing decision), accounting entry (recording of the expenditure in the accounts and coverage of the expenditure by an appropriation) and legal act (measure giving rise to the obligation to a third party). The Financial Regulation should provide explicitly for the possibility of dividing up budget commitments under certain specific circumstances.

Topic Three: Definition of accounting principles

13. As well as developing assets accounting, the Commission also proposes laying down **accounting principles** (in particular continuity, prudence, permanence and comparability) in the Financial Regulation to reflect generally accepted accounting principles and Community directives where they are relevant to the public sector, and making the links between budget accounts and general accounts more coherent.

This should provide the basis for evaluation as a means of meeting the objective of sound financial management in the form of "value for money" and cost/effectiveness. This could best be achieved by the eventual adoption of analytical accounting.

As regards the distinction between **payments on account** and **advances**, the payment on account would be defined as a definitive but partial payment not yielding interest for the budget whereas the advance is a cash transfer with any interest it may generate reverting to the budget. In cases where funds continue to belong to the Commission, the assignment of the interest yielded by such funds must be examined on a case-by-case basis, but the objectives of sound management would require that it be allocated to the operation in connection with which it was generated.

This approach takes account of the Court of Auditors' opinion which recommends improving the rules on accounting for assets in the context of the shift of the Community accounting system to assets accounts, a clear definition of advances and payments on account with appropriate accounting treatment and treatment of interest.

14. As regards **payment times**, the Commission would recall that it undertook (SEC(97) 1205) to propose an amendment to the Financial Regulation setting the maximum payment period at 60 days and enshrining the right of the unpaid creditor to claim interest after this period. In this connection the Commission will take care to align its own payment times and interest due on what the proposal for a directive combating late payment in commercial transactions (COM(1998) 126 final) imposes on national public authorities.

Topic Four: Rules on procurement, delegation of tasks to third parties and grants

15. In the field of rules on procurement, the Commission intends first of all to clarify the scope of the agreement on government procurement concluded in the World Trade Organisation in respect of the institutions other than the Council and the Commission, which are signatories to the agreement.

The Commission would then add that the ACPC provides horizontal supervision within the institution to check that authorising officers comply with the rules on the conclusion of contracts, in particular the directives on public contracts. The first question concerns the retention of this horizontal control mechanism as part of a move to bring authorising officers to assume more responsibility and to make procurement subject to the Community directives. The next question is the

threshold for referral to the Committee. The Commission would point out that the threshold currently proposed for the regulation laying down implementing rules for the Financial Regulation (ECU 120 000) corresponds roughly to what is set in the public contracts directives (130 000 special drawing rights). It is also possible, as the Court of Auditors wishes, that the threshold for referral to the ACPC should be set in the Financial Regulation.

The Commission would also suggest laying down uniform rules for contracts relating to JRC activities, subject to a period of review currently in progress, and to consider the possibility of dropping the ACPC-JRC. These contracts would then be referred to the ordinary ACPC, although it would be recognised that some expertise would have to be maintained in the field of research.

The Interinstitutional ACPC introduced in the Financial Regulation in 1990 but never actually set up would be dropped and replaced, for contracts organised jointly by more than one institution, by assignment of powers to the ACPC of the institution designated as lead institution.

16. In response to the requests from Parliament and the Court for stricter management of **grants**, the Commission suggests including a specific title, like the title on contracts, governing the award of grants and laying down across-the-board rules on openness, award and effective management (*ex ante* and *ex post* publicity, competition, collective assessment and principle of non-exclusive access to grants).

Topic Five: Clearer definition of the role of the players

17. The constant growth in the volume of financial work, the increasing use of computers and, more recently, the implementation of the SEM 2000 programme with the aim of enhancing the responsibility of authorising officers all call for a clearer definition of the role of those involved in budget implementation.

As a result of the SEM 2000 programme, more attention is being paid to **the responsibility of authorising officers,** who conduct the first check of regularity of budget transactions. The role of the **financial controller** is to ensure, by means of an examination of systems or a sample check, that the management and check carried out by the authorising officers satisfy the criteria of regularity, legality and sound financial management.

It should be pointed out in this context that the amendment of the Financial Regulation (seventh series) in progress will, in appropriate cases, authorise sample checks of both commitments and payments, with the financial controller always being in a position to restore systematic checks in risk areas.

The responsibility of the accounting officer is linked more, since the introduction of the formal verification of accounts by the Court (DAS), to the assurance of the reliability of the accounts, in particular as regards electronic processing of financial data. This role is further reinforced by the Treaty of Amsterdam which makes the DAS one of the items to be taken into account for the discharge. In this respect, in line with the amendment of the Financial Regulation (seventh series) in progress, the accounting officer must be given powers to check the

quality and reliability of accounting systems set up by authorising officers. The Commission notes that it enjoys the support of the Court in this field.

Topic Six: Management of external aid

18. The provisions of Title IX must guarantee sound management of appropriations even where external aid is managed on a decentralised basis. The Commission suggests strengthening the provisions on the conclusion of contracts in such a way as to eliminate any ambiguity about the application of the public contracts directives and the Agreement on Government Procurement and the concept of "contracts awarded in the interests of the Commission". This is in response to the criticism of the Court of Auditors on the ambiguous wording of the provisions on payments and contract procedures. Title IX will also have to be reviewed to allow for decentralised management of aid to countries applying for accession.

(b) Problems of form

Topic One: Improving the presentation and clarity of the text

19. As regards the **structure of the text**: the Commission suggests dividing the Regulation in two parts, one containing the provisions constituting the ordinary law (establishment of the budget, implementation, control, accounts), while special provisions (research, external aid, EAGGF, etc.) will be in the second part. It is also suggested that Title I, concerning the general principles, adopt a more explanatory approach by first stating the principles and then setting out the exceptions. The drafting will be revised in the light of the Council resolution on the quality of drafting of Community legislation (elimination of repetitive parts, division into titles, chapters, sections, articles and paragraphs).

20. **Imprecise wording**: the Commission believes that ambiguous expressions ("in principle", "in particular", "as a rule", etc.) should be removed except where they concern an exception to a principle, an example required for the sake of explanation or the difficulty of defining a *de facto* situation in legal terms.

21. **Harmonisation of terms**: in reply to the Court's comment that the terminology must be scrupulously standardised, harmonisation of the terms used in the Financial Regulation is suggested for the concept of commitment (decision, accounting and legal), submission or transmission of documents and the responsibility of the financial controller.

22. Finally the **discrepancies between the different language versions** of the Financial Regulation have been identified by the Court of Auditors and the Commission's Translation Service and will be examined by the lawyer-linguists on completion of the procedure for the adoption of the proposal that the Commission will be presenting on the basis of this working paper.

Topic Two: Better links between the Financial Regulation and other instruments of budgetary law

23. **Relationship between the Financial Regulation and the Treaty or the implementing rules for the Financial Regulation**:[2] while respecting the need for clear explanations and coherence of the text, the Commission proposes retaining the repetition of provisions of the Treaty in the Financial Regulation, which it considers useful. On the other hand, the question arises of the possible transfer of certain provisions of the implementing rules to the Financial Regulation and vice versa and the Commission proposes that the Financial Regulation should contain matters of substance currently dealt with in the implementing rules, such as thresholds for the ACPC and the responsibilities of the accounting officer.

24. Scope of the **Financial Regulation in relation to the "own resources" regulation and sectoral rules**: the Commission suggests retaining the present format of the Regulation which should incorporate neither the "own resources" regulation (which deals with a specific matter) nor sectoral rules (where the relationship with the Financial Regulation is clearly defined by the principle *lex specialis/lex generalis*) nor again the interinstitutional agreements (which must continue to be sources of "soft law").

D. CONCLUSION

25. In this working paper the Commission wishes to demonstrate the importance it attaches to large-scale involvement of the other institutions and the Member States in the overhaul of the Financial Regulation. In view of the general scope of the Financial Regulation, which applies to the entire budget and all the institutions, combined with the ambitious objectives of the overhaul, the Commission is presenting, as the first step, the broad lines of its current thinking. It will ensure that the provisions of the Financial Regulation are in harmony with the current programmes for the reform of financial management (MAP 2000 and Agenda 2000).

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2 Commission Regulation (Euratom, ECSC, EC) No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977 (OJ L 315, 16.12.1993, p. 1.).

II. PROBLEMS OF SUBSTANCE

NOTE

The proposal for a general recasting of the Financial Regulation will have to take account of the amendment of instruments to which the current Financial Regulation refers, for instance to the joint declaration of 30 June 1982 as regards legal bases (Article 22(1)). Account will have to be taken in this connection of the judgment of the Court of Justice of 12 May 1998 in Case C-106/96 and of a possible interinstitutional agreement on the matter of legal bases.

Similarly Title VIII on the EAGGF refers in a number of provisions to Regulation No 729/70 which is in the process of being amended in such a way which will inevitably entail amendments to the provisions of the Financial Regulation. For instance Article 104 Fin. Reg. on the procedure for the transfer of EAGGF-Guarantee appropriations is based on the assumption that these appropriations are for compulsory expenditure; this will no longer be the case in future for "rural development" appropriations, which are non-compulsory. Allowance will have to be made for the fact that compulsory and non-compulsory expenditure exist side-by-side by harmonising the time-limits within which the budgetary authority must take decisions on proposals for transfers of appropriations (e.g. four months regardless of whether it is the Council or Parliament which has the last word).

It should also be borne in mind that the general overhaul proposal will be separate from the proposals for amendment currently being considered (seventh series - proposal COM(96) 351 final and amended proposal COM(97) 542 final - and eighth series - proposal COM(1998) 206 presented on 3 April 1998).

TOPIC ONE

STATEMENT OF THE PRINCIPLES OF BUDGETARY LAW

A. General comment

The study of budgetary law traditionally distinguishes five major principles (unity, universality, specification, annuality and sound financial management) which any system should comply with for reasons of openness, democratic control and optimum management of resources.

While it is true that these fundamental principles are enshrined both in the budgetary law of the Member State and in the system applicable to the general budget of the Communities, they are nonetheless subject, to differing degrees, to exceptions similarly enshrined in legislative instruments and justified by management requirements.

The Commission believes that the exceptions to the principles of budgetary law cannot be eliminated entirely, but appropriate conditions must be imposed on those which are retained.

In its opinion 4/97, the Court recommends that the Financial Regulation impose a strict interpretation of the fundamental principles of budgetary law. In the Commission's view, if this suggestion were to be applied literally, it would take away much of the flexibility required to implement a budget which is becoming increasingly complicated, in particular because of the diversity of the operations financed and the quality criteria which have to be applied to their financing. The Commission believes that it would be better to look for **greater transparency** in the exceptions to the principles rather than to apply them with utmost stringency. In this the Commission will ensure that only the exceptions to the fundamental principles which can be justified by objective requirements are retained and it will eliminate exceptions which, because they are not justified, could be a source of misuse.

B. Unity

The principle of unity is set out in the first paragraph of Article 199 of the Treaty as follows: "all items of revenue and expenditure of the Community ... shall be included in estimates to be drawn up for each financial year and shall be shown in the budget".

The Court finds that this principle is not properly applied and criticises it in its opinion 4/97 on three counts: (a) proliferation of Funds (Guarantee Fund for external operations, European Investment Fund and European Guarantee Fund to encourage cinema and television productions, in the process of being established), (b) treatment of borrowing and lending operations outside the budget and (c) the concept of negative expenditure.

(a) **The Funds**

The issue

This concerns certain Funds, financed in whole (Guarantee Fund for External Actions) or in part (European Investment Fund or Fund to encourage cinema and television productions) from the Community budget. Once set up these Funds involve revenue and expenditure of their own which are not shown in the revenue and expenditure account.

The Court sees these financial mechanisms as paving the way for increasing fragmentation of Community finances and a loss of financial transparency.

However, the Court itself explains the *raison d'être* of these funds: they serve as working capital designed to match budgetary expenditure to final expenditure which inevitably varies as a result of erratic and unforeseeable movements. The Court also admits that the principle of unity is bound to be breached in the case of these Funds, which do not draw their resources exclusively from the Community budget. The Court's criticism is directed principally at the Guarantee Fund for External Actions.

Suggestion

The Commission believes that straightforward budgetisation of the operations carried out from these Funds is not an appropriate solution, given the function underlined above of supplying working capital. The Commission would favour rather ensuring maximum transparency of operations carried out from the Funds.

In this connection it would point out that financial movements and the end-of-year situation of the Guarantee Fund for External Actions already appear in the revenue and expenditure account and the balance sheet. The issue of the Court's right to audit Funds in which the Commission is involved as a shareholder is a separate matter not connected with the principle of unity. For the funds, where the Community simply contributes part of the capital (EIF), the Commission will ensure that the Court is allowed to conduct a proper audit of the sound utilisation of the Community contribution and will send the Court all the documents it receives as a shareholder.

The Commission would also reiterate its call to see the European Development Fund entered in the budget.

(b) **Borrowing and lending**

The issue

The Court criticises the fact that borrowing and lending operations give rise to revenue which is not recorded as such in the general budget.

Suggestion

If the institutions are still unable to come to an agreement on the entry of these operations in the budget, the Commission would point out that Annex II to Part B

of the budget provides detailed information about the borrowing and lending operations guaranteed by the general budget in accordance with Article 20 of the Financial Regulation. It would add that the results of borrowing/lending operations are included in the revenue and expenditure account and the balance sheet (Article 135 of the Financial Regulation).

The Commission would therefore propose seeking ways of achieving a clearer presentation within the existing rules.

(c) **Negative expenditure, revenue and reserves**

The issue

The Court observes that a number of negative amounts appear in the budget: negative expenditure, which is actually revenue, negative revenue, which the Court claims is actually expenditure, and finally negative reserves, which are not used by commitments and payments but offset and cancelled out by transfers of positive, unused appropriations. According to the Court, every negative amount introduces a lack of transparency and makes reading and understanding the budget more difficult.

The Commission agrees that the concept of negative expenditure, the target of the Court's criticism, is contradictory in that it is actually revenue and simply causes confusion for those reading and implementing the budget. What is more, given the amounts of such negative expenditure (which can derive from the decisions on the clearance of the EAGGF accounts and from the supplementary levy), their inclusion in the budget undermines the agricultural guideline, which is defined as the ceiling on agricultural expenditure.

Suggestion

The Commission is prepared to look into the possibility of eliminating negative expenditure. It must be pointed out that the new SINCOM 2 system cannot operate with negative amounts and practical solutions have therefore had to be found to enter these amounts in the accounts.

Negative expenditure derives from a highly complex budgetary mechanism. There are four separate categories of negative expenditure:

- amounts recovered in cases of fraud and irregularities. These amounts are booked to a number of budget items (with the heading "Other") carrying a p.m. For this category the Commission suggests applying arrangements similar to re-use.[3] The new SINCOM 2 system should make it possible to use such amounts almost immediately;

- "profits" which may be made on sales from public storage. They derive essentially from two factors: (a) depreciation in earlier years which exceeds the actual selling price, and (b) entry in the accounts at the

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3 Article 27(2)(a) allows revenue arising from the refund of amounts paid in error to be re-used.

intervention price of quantities supplied as aid to the needy. Although in this second category it is debatable whether the amount actually is revenue, the Commission would suggest applying arrangements similar to re-use, given the link between the amount and the expenditure borne in earlier years by the depreciation items;

- the supplementary levy on milk. This is genuine revenue; however, the link with the expenditure that overproduction of milk would entail is fairly obvious. It should therefore also be treated as earmarked revenue;

- the financial consequences of decisions on the clearance of accounts. The amounts involved are revenue about which the Commission has an open mind. One view is that they should be treated as miscellaneous revenue, since they are recovered several years after they were disbursed. Or it can be argued that it is easy to identify the budget items to which the initial expenditure was charged and so they could be treated as earmarked revenue.

In all these cases, provision must be made for the amount re-used or the earmarked revenue to be offset against the monthly advances paid to the Member States.

If the above approach were to be adopted, Regulations 729/70 (clearance of accounts), and 856/84 and 3950/92 (supplementary levy) and most of the regulations establishing market organisations as regards the other public storage costs would also have to be amended accordingly.

At all events, it would be possible to make provision in the specific title of the Financial Regulation dealing with the EAGGF Guarantee Section for adjustments to the general rules applicable to earmarked revenue or re-use to allow for the specific requirements in this area.

Negative revenue is made up of the administrative costs (10%) deducted by Member States for the collection of own resources. The Commission agrees that the term "negative revenue" is rather unfortunate but believes that these amounts cannot be treated in the same way as Community expenditure, as they constitute a reduction in revenue which is deducted at source by Member States and shown in the budget for information purposes.

Negative revenue must therefore be retained for reasons of transparency and the Commission believes that this is an appropriate way of showing these amounts in the budget.

As regards the negative reserve, the Commission agrees that this instrument is not above criticism from the point of view of correct budget procedure but would point out that it was introduced by the budgetary authority as a means of negotiation between the two arms to bring about the conclusion of the procedure. What is more, it is in actual fact an advance estimate of appropriations that will not be used during the year and will therefore lapse.

(d) Expenditure on common foreign and security policy and cooperation in the field of justice and home affairs

Acting unanimously, the Council can (Articles J.11 and K.8) decide that operational expenditure on the common foreign and security policy (CFSP) and cooperation in the field of justice and home affairs (JHA) should be charged to the Community budget. When the Amsterdam Treaty enters into force it will be the rule for such expenditure to be financed by the Community budget (Articles J.18 and K.13).

Despite the special distribution of the roles of the institutions provided for in Titles V and VI of the Treaty on European Union, the Financial Regulation applies to implementation of CFSP or JHA expenditure. When CFSP and JHA operational expenditure is charged to the budget, it has to be the Financial Regulation which governs implementation. It must be stressed that the appropriations for these two areas are entered in the Commission's section of the budget and that neither the Treaty nor the Interinstitutional Agreement on financing the CFSP calls into question the powers conferred on the Commission by Article 205 of the Treaty to implement the budget.

The Commission would suggest, however, to make matters entirely clear, that it be expressly stated that the Financial Regulation applies to such expenditure. This would involve expanding the second indent of the second subparagraph of Article 1(2) to state that the revenue and expenditure of the Communities includes operational expenditure under the common foreign and security policy and cooperation in the field of justice and home affairs when this expenditure is charged to the general budget of the European Communities.

C. Universality

The issue

The principle of universality provides that all revenue is used without distinction to finance all expenditure. This means that all revenue and expenditure must be entered in full in the budget without any adjustment against each other, and that no revenue should be intended to cover specific expenditure.

The rule of not earmarking expenditure for specific purposes was not enshrined in the Treaty and it is the Financial Regulation which lays down both the rules and the exceptions to them. Article4(2) states this principle ("total revenue shall cover total expenditure") but also provides that certain revenue should be used for a specific purpose, giving a non-exhaustive ("notably") list of **earmarked revenue**.

The possibility of **re-using** certain categories of revenue (Article 27(2)) is a second exception to the principle of universality. In this case the list of revenue available for re-use is exhaustive (points (a) to (h)).

The Court did not criticise these two exceptions to the principle of universality. The Commission believes that these exceptions are justified on the grounds of the link which exists between certain items of revenue and certain items of expenditure.

Suggestion

The Commission can see no reason for amending the provisions of the Financial Regulation concerning application of the principle of universality. The Commission would suggest updating the list of earmarked revenue in Article 4 to include interest on blocked accounts and exchange gains. It would also suggest that the repayment of payments on account (Article 7(7) Fin. Reg.) and the restoration of lapsed appropriations (Article 7(6) Fin. Reg.) should be covered by the same legal arrangements as re-use (see E below).

D. Specification

The issue

The concept of specification relates to the specific purpose for which each appropriation is authorised. This principle demands that the budgetary authority should give detailed explanations of the purposes for which appropriations are authorised, thus establishing a regulatory framework in the shape of a **budget nomenclature** which the Commission, in implementing the budget, is bound to abide by. The purpose of specification is to avoid any confusion - in both authorisation and implementation - between different appropriations.

The Court argues that the exception to the principle of specification comes from the possibility of **transferring appropriations**: estimates and authorisations do not always correspond to the real needs which emerge at the implementation stage, and the possibility is provided of transferring appropriations from one item to another, by taking appropriations from the items where they are no longer required and transferring them to items where there is a greater need.

The principle of specification and transfers of appropriations are expressly enshrined in the Treaty and the Financial Regulation.

The principle is laid down in the third paragraph of Article 202 of the Treaty ("appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 209") and by Article 19(2) of the Financial Regulation.

The exception (transfers of appropriations) is expressly enshrined in the third paragraph of Article 205 of the EC Treaty ("within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 209, transfer appropriations from one chapter to another or from one subdivision to another") and by Articles 26, 95 and 104 Fin. Reg.

The Court maintains that compliance with the principle of specification is inadequate. The first reason for this is that the budget remarks are too vague about the conditions governing the use of appropriations, with the result that the Commission can choose which item to charge expenditure to depending on availability of appropriations. The second reason given by the Court is that the nomenclature is not uniformly detailed as regards the breakdown of appropriations into titles, chapters, articles and items with specific arrangements for research appropriations where the scale of the subdivisions affected by transfers of research appropriations is out of line with that generally applicable (see Article 95).

Items carrying very small amounts exist alongside others carrying several billion ecus which, claims the Court, are quite simply budgets within the budget.

Finally the Court argues that transfer arrangements which are too broad, by allowing transfers which are not authorised by the budgetary authority, can undermine transparency by reducing the normative value of the budget as it was voted, in particular for operating appropriations. For administrative appropriations, on the other hand, the Court envisages giving institutions greater freedom to determine the optimal allocation of the resources at their disposal and suggests that all the institutions should be subject to the same arrangements for transfers.

Suggestion

The Commission believes that strict and absolute application of the principle of specification would be neither possible nor desirable. As was seen above, the Treaty itself provides for the possibility of transfers of appropriations (third paragraph of Article 205). The budgetary law of a number of countries[4] provides, with various degrees of strictness in application, both for the principle of specification and for transfers of appropriations.

As regards the **budget nomenclature**, the Commission agrees with the Court that the list of subdivisions (titles, chapters, articles and items) must be harmonised. Determination of the degree of detail of the nomenclature (should it always go down to the level of items or can it stop at articles or chapters) and the size of the allocations to each heading are, however, matters for which the budgetary authority alone is competent.

It would not seem appropriate for the Financial Regulation to impose restrictions on the budgetary authority's freedom to draw up the budget nomenclature. This reflects how the budgetary authority wishes to allocate appropriations to any given operation. It is a matter best dealt with in an agreement between the two arms of the budgetary authority, if they should consider it necessary. The Interinstitutional Agreement would therefore be the most suitable instrument for defining in more uniform terms the degree of specification of titles, chapters, articles and items, as requested by the Court.

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4 F (Article 14 of the *loi organique relative aux lois de finances* (ord. No 59-2, 2 January 1959);
D (Article 15 HGrG and 20 BHO);
UN (Reg. 4.5 Fin. Rules 3).

All the same, the Commission acknowledges that the way the institutions have applied Article 26 Fin. Reg. in practice has given rise to a proliferation of transfers of appropriations which in some cases can remove all substance from the budget allocations decided by the budgetary authority. In this connection the thinking which has started on a possible revision of the "omnibus transfer" (Notenboom procedure) is also an indication of the **increased concern about the undermining of the specification principle caused by excessive transfers of appropriations.**

In this connection the Commission is prepared to take up the Court's approach which is to distinguish between the arrangements for transfers of administrative appropriations - which concern all institutions and for which the Financial Regulation allows them a free hand in management - and the arrangements for transfers of operating appropriations for which more detailed monitoring is appropriate so that the wishes of the budgetary authority as expressed in the budget established are not undermined by a proliferation of transfers.

The Commission believes that the procedures for administrative appropriations should be harmonised for all the institutions: each institution should be given the power to take decisions on transfers between chapters within each title of its own section. Any other transfer (between titles) would have to be approved by the budgetary authority. The requirement laid down in the second subparagraph of Article 26(2) and Article 26(3)(b) that the budgetary authority be informed three weeks before a transfer is made could be either dropped or changed to *ex post* information: what is the point of informing an institution in advance about a transfer if that institution is not entitled - as is the case at present - to block this transfer? This approach would satisfy the Court.

For reasons of effective management the Commission would like to retain its present powers **concerning operating appropriations** (i.e. transfers between articles within each chapter), as laid down in the third paragraph of Article 205 of the Treaty and Article 26(3) of the Financial Regulation.

The Court judges this freedom to make transfers to be excessive. It would like the arrangements to be reviewed, which would mean that all transfers between articles (whether or not within the same chapter) would require the approval of the budgetary authority. The Commission cannot endorse this approach which is contrary to the third paragraph of Article 205 of the Treaty. It does, however, agree that in all cases the **grounds for requests for transfers of appropriations must be properly spelled out.**

Improvements are possible in this matter in terms of programming, time limits and presentation of grounds. It should be possible, however, to make these improvements within the Commission's internal organisational rules or, where appropriate, in interinstitutional arrangements rather than in the Financial Regulation.

Thought should also be given to the question of retaining paragraph 7 of Article 26 which requires that every proposal for a transfer should be submitted for the approval of the financial controller to certify that appropriations are available. The availability of appropriations is now automatically guaranteed by the computerised management system (SINCOM) and therefore the financial controller's approval is not necessary (cf. topic 5 concerning those involved in implementation) This step could therefore be dropped.

As regards the question of whether or not the **two special arrangements** for transfers of appropriations - research and technological development (Article 95) and EAGGF Guarantee (Article 104) - should be retained, the Court is particularly critical of the special arrangements for transfers concerning research and calls for it to be dropped. The Commission would be open to a suggestion of simplification in this area. It could envisage abandoning the special arrangements for shared-cost action. On the other hand it feels that the special arrangements for transfers of JRC appropriations should be retained in view of the new competitive approach introduced by the fourth framework programme, which requires that the JRC be given greater autonomy to transfer appropriations.

The special Article 104 arrangements for EAGGF Guarantee transfers could be retained since this involves subjecting Commission decisions on transfers between articles to a "comitology" procedure provided for in Article 13 of Regulation 729/70 on the financing of the CAP which, given that such expenditure is compulsory, guarantees control over these transfers equivalent to that of Council bodies.

These specific EAGGF Guarantee arrangements will still, of course, have to allow for the new measures to be financed (rural development, veterinary measures, FIFG, etc.) which will constitute non-compulsory expenditure and will therefore be subject to approval by Parliament after the Council has been consulted.

The final issue is that of the constitution of **reserves**. What is required here is that clearer conditions should be laid down for resorting to the budget instrument constituted by reserves, which is what the Commission proposed in its report on the application of the Interinstitutional Agreement (COM(1998) 165 final of 18 March 1998).

The Commission would suggest inserting in Article 19 Fin. Reg. that appropriations may be entered in reserve only in the following two situations:

- where no legal basis exists for the operation concerned when the budget is established,

- where it is not certain that the appropriations entered under the operational headings are sufficient and it may be necessary to increase them at some point in the year.

E. Annuality

The annuality rule applies to the forecasting and implementation aspects of the budget exercise and means that budget appropriations are used within a given year. In the case of the Community the budget year is the same as the calendar year.

If applied strictly, this rule would result in **all** appropriations not used at 31 December (end of the budget year) lapsing. However, natural management requirements would not allow the use of appropriations to be subject strictly to this annual framework; there must be some exceptions to the annuality rule or some flexibility in its application. Such exceptions are the additional periods, carryovers of appropriations, the commitment appropriations made available again and the re-use of amounts deriving from payments on account which are repaid.

Present rules

The annuality principle is enshrined in a number of places in the EC Treaty: the first paragraph of Article 199 provides that all items of revenue and expenditure must be included in estimates "for each financial year"; Article 202 adds that expenditure is authorised "for one financial year"; finally Article 203(1) provides that "the financial year shall run from 1 January to 31 December".

The Treaty also provides for the possibility of exceptions to the annuality rule: to begin with the first paragraph of Article 202 states: the expenditure shown in the budget shall be authorised for one financial year, **unless the regulations made pursuant to Article 209 provide otherwise**". And the second paragraph of that article adds "in accordance with conditions to be laid down pursuant to Article 209, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only".

The following exceptions are allowed by the Financial Regulation to the annuality rule:

(1) Additional periods

The Financial Regulation provides for three "additional periods" which are ad hoc extensions of the financial year beyond the twelve months of the calendar year:

- Payments (ordinary arrangements)

  Payments must be authorised by no later than 31 December by which date they must have reached the financial controller. But the accounting officer has until 15 January of the following year to make the payments (sixth paragraph of Article 6).

- Imprest accounts

  Expenditure corresponding to payments made up to 31 December from imprests may be entered in the accounts for the previous year up to 15 February of the following year (Article 54(2)).

- EAGGF Guarantee

  Because of the time required to transpose at Community level the figures supplied by Member States, an extra month is allowed for entering EAGGF Guarantee expenditure in the accounts (up to 31 January of the following year; Article 101).

  Apart from these three additional periods, an exceptional arrangement concerning revenue is the advance payment in year n of own resources corresponding to January of year $n + 1$ pursuant to Article 10(2) of Regulation 1552/89 (second paragraph of Article 6 Fin. Reg.).

(2) Carryovers

The carryover arrangements are laid down in Article 7 of the Financial Regulation: both for non-differentiated appropriations (paragraph 1) and for differentiated appropriations (paragraph 2), the general rule is that appropriations not used at the end of the financial year lapse.

Under no circumstances may appropriations relating to remunerations and allowances of members of staff of the institutions and provisional appropriations be carried over.

Under the present system of appropriations, the possibilities and arrangements for carryovers differ according to whether the appropriations are **non-differentiated** or **differentiated.**

(3) Appropriations made available again

Article 7(6) of the Financial Regulation provides that where commitments are cancelled, as a result of total or partial non-implementation of the projects for which the appropriations were earmarked, in any financial year after that in which the commitment appropriations were entered in the budget, the appropriations concerned will, as a rule, lapse, but the Commission may decide, at the start of the following year, that the appropriations may be made available again in certain circumstances.

(4) Repayment of payments on account

Article 7(7) of the Financial Regulation provides that revenue deriving from the repayment of payments on account is to be entered in suspense accounts. At the start of each financial year the Commission may decide to re-use this revenue in the heading from which the original expenditure was made.

The possibility of re-using revenue deriving from the repayment of payments on account is an exception both to the principle of annuality (since the appropriations available in year $n + 1$ are increased by revenue accruing in year n) and to the principle of universality (since this revenue is allocated to the heading from which the original expenditure was made, instead of being entered as miscellaneous revenue).

The issue

The Court criticises the "complex array" of carryovers, whether automatic or simply a possibility for the Commission, which, it claims, undermines the principle of annuality and should, in the main, be abolished. The Court is particularly critical of the possibility of justifying carryovers in cases where "the appropriations provided for the headings concerned in the budget for the following year do not cover requirements" (Article 7(1)(a) and (2)(b)), since, if the budgetary authority has not provided appropriations with the same purpose for the following year, this clearly demonstrates its determination to terminate the measures in question.

The Commission agrees that the provisions of the Financial Regulation governing carryovers and the restoration of appropriations are drafted in vague terms which leave a great deal to the Commission's discretion. The Financial Regulation allows carryovers in

the case of items where preliminaries have been "virtually completed" at 31 December or where the Council has adopted a basic instrument "towards the end of the year" or when the appropriations provided in the budget for the following year "do not cover requirements". The Financial Regulation also uses other expressions such as "compelling needs", "as a rule", the Commission "assesses in the light of requirements" when it is "essential to carry out the programme originally planned", etc.

Suggestion

It is the Commission's view that carryovers cannot be ruled out altogether since provision is made for them in the second paragraph of Article 202 of the Treaty. Similarly, the "additional periods" discussed above are a technical arrangement for applying the principle of annuality and there can be no questioning their legality.

The Commission therefore proposes that the Commission should retain competence for adopting decisions on carryovers (differentiated appropriations), and appropriations to be made available again and re-used, **but that the texts be re-drafted to eliminate all ambiguity concerning the circumstances in which appropriations can be carried over, made available again or re-used**: clearer definitions should be given of what is meant by "operations for which preliminaries have been virtually completed", or when the adoption of the legal basis by the Council can be considered "late", what exactly is meant by "repayment of advances by recipients of Community aid", what are "projects", "programmes", "operations", etc.[5] The substantive conditions for using these techniques need to be defined more strictly, in particular Article 7(6) (appropriations made available again) which in future will be very important for the Structural Funds if the re-entry in the budget is no longer allowed as proposed by the Commission in Agenda 2000.

The Commission proposes that decisions on all carryovers of administrative appropriations should be taken by the budgetary authority. However, it would be a good idea to introduce rather more flexible arrangements for carryovers of administrative appropriations. Without this flexibility, the tendency is at all costs to spend residual amounts at the end of the year (which have often not been committed because of end-of-year procedural logjams), a practice hardly consistent with sound management of resources.

It is also unclear whether there is any point in maintaining the special arrangements for non-automatic carryovers of non-differentiated appropriations committed after 15 December for equipment, supplies and works, for which the only argument would appear to be that it is tradition. The difficulty in carrying over appropriations for purchases of equipment, work and supplies committed after 15 December places authorising officers before the choice of spending at all costs or seeing the appropriations lapse. If these appropriations could be carried over like all others, authorising officers would be able to use them in a manner more consistent with sound financial management.

As regards the re-use of revenue deriving from the **repayment of payments on account (Article 7(7)), this could be regarded as the same as re-use**. As was seen above this is

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5 On this point see part 3 *Problems of form*.

an exception to the rule of universality rather than the rule of annuality. In actual fact, revenue deriving from the repayment of payments on account is dealt with in very much the same way as revenue deriving from the refund of amounts paid in error against budget appropriations (Article 27(2)(a)).

The difference between these two cases is very slight, consisting solely of the fact that in the case of repayment of payments on account, the original payment was perfectly licit at the outset and it is only because the beneficiary fails to use the sums properly that they are claimed back, whereas in the case provided for in Article 27(2)(a), the payment was wrong at the outset.

This purely notional difference is no reason why the legal arrangements should not be the same. The Commission would accordingly suggest that Article 7(7) be deleted and that revenue deriving from the repayment of payments on account be included under Article 27(2)(a) (revenue available for re-use).

This same treatment (re-use) could also be applied to **appropriations made available again** when commitments are cancelled (Article 7(6)) which would mean that the appropriations concerned do not have to be blocked until the start of the following year. This would ensure harmonised treatment of what are essentially much the same circumstances.

F. Disclosure, openness and sound financial management

(a) Disclosure and openness

The issue

In its opinion 4/97 the Court maintains that the principle of disclosure is not respected in the accounts as published, which do not show the same detail as the budget. It also criticises, from the angle of openness, the JRC's accounting system that is outside the budget.

Suggestion

The Commission would suggest enhancing openness in the establishment of the budget, its implementation and in publication of the accounts.

At the establishment stage the Commission would suggest restoring the strict one-month deadline for publication of the budget by deleting the term "normally" in Article 10.

At the implementation stage it is planned to tighten the requirements concerning grounds for transfers and carryovers and to overhaul the omnibus transfer (Notenboom) procedure (see D above).

Reference should also be made to the amendments that the Commission suggests for enhancing openness in the management of funds and borrowing/lending operations (see B above).

The question of the publication of accounts will be considered under Topic Three (accounting principles).

The special JRC accounting system will disappear with the introduction of SINCOM 2 on 1 October 1998.

(b) Sound financial management

The issue

The Commission takes the view that this principle must be reinforced by defining it clearly and by attaching greater importance to the financial statement and evaluation, the instruments for applying this principle.

The Court made no comments about sound financial management in its opinion 4/97.

Suggestion

The Commission would first suggest defining the principle of sound financial management in Article 2 of the Financial Regulation by reference to the principles of economy, efficiency and effectiveness and specifying in the same article that the results of periodic reviews of operations must be made available before any decision to extend or amend an operation and must accompany proposals for decisions to extend or amend an operation.

To show that the resources to be mobilised match the objective pursued, the content of the financial statement should be extended to cover details of requirements in appropriations and staff (Article 3(2) Fin. Reg.).

Finally, the Commission would suggest that a reference to the need for regular evaluation be included in the Financial Regulation.

TOPIC TWO

THE SYSTEM OF APPROPRIATIONS AND THE CONCEPT OF COMMITMENT

A. Appropriations

1. Administrative appropriations and operating appropriations

The issue

The March 1990 revision of the Financial Regulation enshrined (Article 19(1)) the distinction, within the Commission section of the budget, between a Part A for the staff and administrative expenditure of the institution and a Part B for operating expenditure. This distinction between Parts A and B is a classification according to purpose and had in fact existed since 1981 under the third paragraph of Article 202 of the Treaty which allows expenditure to be classified according to nature or purpose.

In opinion 4/97 the Court is critical, on the grounds of specification, of the use of operating appropriations for administrative expenditure which ought to come under Part A of the Commission section of the budget. It recommends that either a clear distinction be made between Parts A and B, ruling out any charging of administrative expenditure to Part B appropriations, or taking the view that all resources must serve clearly stated purposes and, in that case, all appropriations must be considered to be operating appropriations. It also stresses the transparency in the charging of administrative expenditure to operational items, a subject which it recently discussed in its sectoral letter of 25 March 1998 on the administrative expenditure of the Phare and Tacis programmes.

Suggestion

The Commission does not agree with the Court's view that charging administrative expenditure to Part B is in breach of the specification principle. Both the Treaty (third paragraph of Article 202) and the Financial Regulation (Article 19(2)) require that expenditure be classified according to nature **or** purpose. The administrative expenditure charged to Part B can therefore be considered to be expenditure classified according to purpose (and not nature), which satisfies the requirements of the Treaty and the Financial Regulation.

The Commission does, however, agree that the situation to which the Court draws attention is anomalous as regards the presentation of appropriations and the distinction between Part A and Part B required by Article 19 of the Financial Regulation.

There are many reasons why this has come about. First of all, even though the distinction between Part A and Part B existed *de facto* since the 1981 budget, it was not formally recognised until the amendment of the Financial Regulation in 1990, and hence the legality of administrative appropriations included in appropriations for operations, could not be questioned. What is more, authorising officers have been facing difficulties as a result of the need to finance new operations without the necessary administrative

appropriations being available. Finally, the budgetary authority has been responsible for the increase in the number of headings involving administrative appropriations within Part B through the remarks to the budget items.

In the new situation created by Article 19 Fin. Reg., the budgetary authority was obliged to tidy up the presentation of the Commission's section of the budget. In the 1991 budget, most of the Part B items carrying administrative appropriations were grouped together in Title A4 and Subsection B8. Subsequently Subsection B8 was re-integrated in Part A.

However, the budgetary authority did not include administrative expenditure relating to research in this exercise, because of the specific provisions concerning research in Title VII of the Financial Regulation; likewise the mini-budgets for the Structural Funds were also excluded, as the budgetary authority felt that the discipline imposed by the remarks to the budget headings concerned and by the specific Fund regulations was sufficient.

Apart from these two cases other administrative appropriations could be charged to operating items via remarks allowing the heading to cover certain administrative expenditure (studies, experts, conferences) "directly linked to the achievement of the objective of the action of which they form an integral part, excluding expenditure concerning the management of these actions or general administration".

In 1997 the Commission's Inspectorate-General (IGS) inspected the use made of technical assistance bureaus. The IGS report revealed that because the appropriations in Part A were inadequate, in particular as a result of the conversion of appropriations to posts, it was not possible to charge to Part A all administrative expenditure linked to programmes. In its recommendations the IGS proposes that tasks entrusted to such bureaus to assist the Commission in implementing Community programmes or policies should be considered accessories to these programmes/policies. The costs involved in paying for the services of these bureaus should therefore be charged in full to the budget heading for the programme/policy in Part B. The IGS argued that in addition to charging such expenditure to Part B the Commission should give an undertaking to be fully open about such expenditure and to provide the budgetary authority with a regular detailed report about these activities and their impact in terms of financial and human resources.

Three solutions could be envisaged.

The first (clear and absolute distinction between Parts A and B and hence total elimination of mini-budgets) is, on the face of it, relatively simple: all administrative appropriations (personnel costs, running costs, studies, consultants, technical assistance bureaus) existing in Part B would first have to be identified and then entered in Part A, allocated to the same policy if necessary (research - which would mean revising Title VII of the Financial Regulation - Structural Funds, external aid, etc.). But if the system is to work and the situations encountered in the past are not to arise again, a completely unambiguous definition of "administrative appropriations" must first be found. In addition, there would have to be a guarantee that these appropriations, located entirely in Part A, were adequate, in order to remove any temptation to use operating appropriations to cover administrative expenditure. In particular this would mean revising the ceiling for heading 5 of the financial perspective. It would also require closer scrutiny of the booking of expenditure when the budget is implemented.

A second solution would be to drop the distinction between Part A and Part B (amendment of Article 19(1) of the Financial Regulation) and allocate all available appropriations to individual policies. This would be an interesting solution if the Commission were to decide to present an entirely activity-based budget. The first step would have to be a study of the feasibility and benefits of such an option, and a clear definition of all the human and other administrative resources required to undertake the Commission's activities.

The Commission suggested a third approach in its draft revision of the rules for implementing the Financial Regulation,[6] which involves accepting that some administrative expenditure can appear in Part B, but laying down clear conditions for using these appropriations and enhancing openness in management.

In line with the principles of integrated resources management (SEM 2000) the Commission will give further consideration to a proposal for structural reform of the budget and in particular the possible introduction of activity-based budgeting. This would involve assigning to each activity the operating appropriations and the administrative resources required for that activity. This would amount to applying to all areas what already exists, to some extent, in the area of research with its allocation accounts.

The Commission's view is that it could only embark on this course if the budgetary rules could be based on an integrated presentation of the allocation of financial and administrative resources (activity-based budgeting). This is a *sine qua non* for envisaging the merger of Parts A and B of the budget nomenclature and the corresponding solutions would have to be written into the Financial Regulation. A residual Part A would still have to be kept for non-operational services.

The Commission is continuing to consider the possibility of an integrated presentation of the budget to be adopted in the longer term as explained above.

For the immediate future, the Commission would suggest adopting the intermediate solution based on retention of Parts A and B with conditions being attached to the possibilities of charging support expenditure to Part B appropriations.

Authorisation to book administrative expenditure to operating appropriations would have to be subject to the following criteria:

- the basic regulations governing the operation in question should allow administrative and technical support expenditure to be booked to operating appropriations as is the case for research and Structural Funds mini-budgets. In this way the budgetary authority and the legislative authority would be fully aware that this possibility exists and they would have approved it. A standardised presentation of the basic instrument (e.g. annex to the decision) could be envisaged;

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6 SEC(96) 1356 final of 5 September 1996. Article 5a of the draft revised implementing rules reads "no administrative expenditure may be charged to Part B, with the exception of expenditure which is incidental to the operational measure and which is authorised, by way of exception, in the remarks accompanying the heading concerned".

- the possibility of booking administrative and technical support expenditure to operating appropriations must be guided by the principle of sound financial management;

- a ceiling (a percentage or an absolute amount) should be set in the financial allocation for the operation to restrict the administrative and technical support expenditure that can be booked to operating appropriations;

- the administrative tasks financed from operating appropriations should not involve the exercise, by non-regular staff, of any authority belonging to the European public service (see Topic Four below).

Given the importance of these criteria, they ought to appear in the Financial Regulation.[7]

2. Differentiated and non-differentiated appropriations

The issue

The Community budget originally contained non-differentiated appropriations, i.e. appropriations for which amounts had to be committed and paid in the course of the same year. Appropriations of this type are still used for the institutions' administrative expenditure.

With the introduction of multiannual operations (external aid, research, Structural Funds), the operating appropriations have gradually been differentiated with the commitment appropriation recording the full amount of expenditure foreseeable over a number of years while the payment appropriation covers actual expenditure in each year concerned and thus complies with the principle of annuality. As explained below, since 1990, for the sake of simplicity and openness, all operating appropriations except those for agriculture (Title B1 of the budget) have been differentiated. The advantage of this is that a single system is used for planning, recording and monitoring operating expenditure.

The Court finds inconsistencies in the system of appropriations and in particular cases where non-differentiated appropriations are used as differentiated appropriations, for instance to finance the construction of a building. It recommends a uniform system of appropriations which should all be of the differentiated type.

Suggestion

The Commission agrees wholeheartedly with the Court in this matter and would point out that changes in the type of appropriations (differentiated or non-differentiated) is an accurate reflection of the desire to take into account the reality of the obligations covered by the budget when these obligations extend over a number of years.

It is an interesting exercise to trace the four stages in the development of European budgetary law to accommodate the financing of multiannual operations.

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[7] This approach will require amendment of Article 5a of the draft revision of the implementing rules mentioned in the previous footnote.

Stage 1: The Euratom Treaty

Two approaches were used, one after the other:

- First approach (Euratom) 1961-71

This approach is defined in two provisions:

Article 176 of the Euratom Treaty

Without giving a real definition, this provision equates commitment appropriations with a series of items constituting a separate unit and forming a "coherent whole";

Article 4 of the 1961 Financial Regulation for research appropriations

This Article expands on the above Treaty provision and sets up the system employed by Euratom from 1961 to 1971. This system is based on four concepts:

- the programme decision, broken down by objectives,
- the "series of items" constituting a separate unit and forming a coherent whole,
- the "annual proportion" of the commitment appropriation, constituting the upper limit that the Community is authorised to commit each year,
- the payment appropriation.

- Second approach (Euratom) 1971-76

This second approach is based on Article 3 of the 1971 Financial Regulation for research appropriations and Article 95 of the 1973 General Financial Regulation.

This second approach made two fundamental changes in the definition of commitment appropriation used in this area:

- the first change was to alter the concept of "series of items": this was replaced by a "multiannual global allocation" corresponding to the total of each allocation by programme objective. The purpose of this change was to enter in the budget immediately the total allocation planned by the programme for each objective;
- the second change was to equate "commitment appropriation" and "full coverage for the legal obligations that the Community can incur".

This second change produced a logical approach (full coverage of the cost of the multiannual operation) to the commitment appropriation, as this definition, in principle, ruled out any division into "annual proportions" (a feature of the first approach).

Stage 2: Gradual introduction of "differentiation" in the EEC budget

This was a gradual process. It came about in three transitional stages in certain specific areas:

EAGGF Guidance (= use of non-differentiated appropriations, but carried over "automatically" for five years)

For the EAGGF Guidance Section non-differentiated appropriations were used to cover multiannual commitments. The total amount was committed and, as payments were then made over a period extending over a number of years, the appropriations corresponding to the commitments entered into but still outstanding were "carried over automatically" for up to five years. After five years, "non-automatic carryovers" had to be used. What this amounted to in practice was a system of "camouflaged" differentiated appropriations, but with the drawback of the carryover arrangements. It was not the best solution as appropriations and resources were mobilised before they were really needed.

Social Fund (= first step towards introducing the concept of commitment appropriation in the EEC budget: 1973)

The first timid attempt, in formal terms, to introduce the concept of commitment appropriation came with Articles 104 and 105 of the 1973 Financial Regulation which referred to "authorisation of commitments" for the Social Fund.

No definition of authorisation is given, but the approach is time-based: the appropriation for year *n* was to be entered, together with authorisations of commitments for *n + 1* and *n + 2*.

ERDF (= first formal but sectoral introduction of commitment appropriations in the EEC budget: 1975)

With the establishment of the Regional Fund in March 1975, the 1973 Financial Regulation was amended to include a special provision setting up differentiated appropriations (commitment appropriations and payment appropriations) for the Regional Fund alone.

The definition used for this purpose was rather vague, having the clarity neither of the first Euratom approach (annual proportion) nor of the second Euratom approach (total coverage of the legal obligations). It is a pragmatic definition which simply specifies that the commitment appropriation is the "upper limit" on expenditure that the Community may commit.

Stage 3: Generalisation of the use in the budget of differentiated appropriations for multiannual operations

The 1977 Financial Regulation reflects the awareness of the need to have differentiated appropriations for multiannual operations so that what is authorised in the budget - both for commitments and for payments - corresponds as accurately as possible to real requirements.

The feature of this system is the logical approach of the commitment appropriation, which is intended to cover the total cost of the legal obligations entered into for operations extending over more than one financial year (see third subparagraph of Article 1(4)).

It is therefore a coherent restatement of the 1971 and 1973 Euratom definition (but with no reference to the concept of "series of items" as this does not apply to EEC spending as Euratom-type programme decisions did not exist at the time: the situation has changed, however, following the Single Act and the insertion of Articles 130f to 130q in the EEC Treaty).

On the basis of this provision in the 1977 Financial Regulation, the commitment appropriation should be used for any operation to be implemented over more than one year and should cover the total cost of the legal obligations entered into during the year for which the commitment appropriation was granted.

In practice the Commission's guiding rule in the past for drawing up the preliminary draft budget was as follows:

- non-differentiated appropriations are used for items where the commitment is made in year *n* and the total payment is made in n and/or no later than *n + 1*. In this case the automatic carryover from *n* to *n + 1* will cover the entire operation;

- differentiated appropriations must be used for headings where the commitment is made in *n* but payment may still come after the end of *n + 1*. In this case the automatic carryover - possible for one year only - is no longer sufficient. The appropriation must, therefore, be differentiated.

The ideal, of course, would be for the commitment appropriation - and hence the commitment entered into - to cover the total cost of obligations involved in multiannual operations. The reality, however, is that the system must be adjusted in its application as a result of the constraints imposed by the amounts available in the budget.

The Commission takes the view that the uniform system of differentiated appropriations provides a clearer picture of obligations covered by the Community budget and makes possible substantial savings in resources in the successive planning, implementation and audit stages.

For some items of expenditure which are not of a multiannual nature or which are multiannual in nature but not predictable (salaries), the differentiation can be limited to a single year (in this case the amount for commitment is the same as the amount for payment each year).

For the EAGGF Guarantee Section, where expenditure is managed on the basis of non-differentiated appropriations, the Commission would suggest making appropriate arrangements in the title of the Financial Regulation specifically devoted to that section (Title VIII).

These appropriate arrangements would involve introducing differentiation of EAGGF Guarantee appropriations but with commitment appropriations equal to payment appropriations, commitments made on the basis of expenditure declared by Member States' paying agencies and carryovers of payment appropriations to the following year automatic where they are to cover outstanding commitments.

B. The concept of commitment

The issue

Nowhere in the Community's financial legislation is the concept of commitment expressly defined. The concept itself covers different operations, creating confusion which is detrimental to sound and efficient budgetary management. The Treaty makes no reference to the concept while the Financial Regulation, in Article 36, simply states that "in respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer must draw up in advance a proposal for commitment and may not enter into any legally binding commitment with third parties until the financial controller has given approval". Article 51 of the Commission Regulation laying down detailed rules for the implementation of certain provisions of the Financial Regulation, to which the above Article 36 refers, states that "before taking any measure which may give rise to expenditure, the competent authorising officer must present the financial controller with a commitment proposal".

The Court notes in this connection that a commitment has a legal aspect (legal commitment) and a budgetary aspect (budget or book commitment), and each of them may be either global or specific. The Court recommends that the terminology used should be clarified and criticises the drafting of Article 36 Fin. Reg.

Suggestion

As regards the definition of commitment, the Commission feels that two lessons can be learned from the passages of the Financial Regulation and its implementing rules dealing with commitment. First of all it is for the authorising officer to adopt the measure giving rise to expenditure and the commitment proposal. The Financial Regulation states implicitly, and the implementing rules explicitly, that it is the same person who proposes the measure giving rise to expenditure and the commitment proposal. The instruments also show that before expenditure can be effected a basic decision must first be taken (termed "measure which may give rise to expenditure"), followed by an accounting act (budget or book commitment termed "proposal for commitment" in Article 36(1) Fin. Reg.) and finally an act whereby the institution contracts a debt with the recipient (legal commitment).

The conclusion is that there are three aspects to the concept of commitment: the decision aspect, the accounting aspect and the legal aspect.

The Commission would therefore suggest the following definition for insertion in the Financial Regulation:

By commitment is meant the institution's spending decision, the recording of this decision and the assumption of the consequences.

It breaks down into the commitment decision, the book commitment and the legal commitment.

The commitment decision consists in the adoption of the global or specific financing decision.

The book commitment consists in the accounting operations for recording the expenditure in the accounts and covering it by the relevant appropriation following the commitment decision.

The legal commitment is the act whereby the institution enters into an obligation to third parties and contracts a debt.

Sometimes the commitment decision coincides with the legal commitment: e.g. certain Commission decisions already entail a legal obligation to third parties, as in the case of decisions on the provisional application of fisheries agreements adopted by the Commission.

Budget implementation involves commitment, in its above three aspects, authorisation and validation of expenditure, establishment of claims and production of recovery orders. In this respect, these three aspects of commitment form an integral part of budget implementation for which the Commission is responsible under Article 205 of the Treaty.

The possibility of delegating the power to adopt such acts is an entirely different matter, coming under the rules of procedure. There can be no doubt that the book commitment and the legal commitment can be delegated. On the other hand, it is not certain that this can be done for the commitment decision. One answer could be found in the distinction between global commitment decisions and specific commitment decisions. Commission decisions of principle determining overall financial allocations by country, by area of action or by general projects/programmes (global commitments) would have to be taken by the Commissioners themselves, whereas individual financing decisions, which divide up the overall financial allocation in accordance with criteria determined by the Council and/or the Commission (specific commitments) could be delegated down to the appropriate level.

In this connection the Commission is pleased that the Court can see the usefulness of the distinction between global commitments and specific commitments. The Commission believes that the distinction between legal commitments (global or specific) and budgetary commitments (global or specific) must be enshrined in the Financial Regulation.

The Commission would add that hitherto the global commitments referred to in Article 36(2) Fin. Reg. gave rise to direct payments, on the basis of contracts, specific commitments which were never recorded in the central accounts, thereby detracting from the reliability and informative value of the accounts and hampering the monitoring of implementation. The obligation to be imposed by the new Article 1(7), which will be inserted under the seventh series of amendments, to book specific commitments to the initial global commitment by no later than year $n + 1$ is therefore a clear step forward.

A further rationalisation of the Article 36(2) procedure can be envisaged as regards, for instance, the approval and validation of a global commitment relating to a decision of principle which must necessarily already have been approved by the financial controller.

The Financial Regulation should provide that:

– the institutions may not enter into legal obligations with financial implications which are directly enforceable by third parties, without first having checked that these

obligations are lawful and comply with the regulations and the principles of sound financial management;

- any legal instrument binding on the institution and generating a financial entitlement directly enforceable by third parties must first be covered by an entry against the appropriate budget item in order to reserve the necessary funds which will release the institution from this legal obligation (budgetary commitment).

A final aspect is worth mentioning: cases where, in accordance with the sectoral rules applicable or with the legal commitment (e.g. certain international agreements), the budgetary commitment is made in **annual tranches**. This is the case with the Structural Funds, for instance, where multiannual legal obligations (Community support frameworks) are not covered in the entirety by a budgetary commitment, but by partial budgetary commitments. The same would apply to trans-European networks in the Commission's last proposal.

The possibility of splitting budgetary commitments is not offered by the Financial Regulation but by specific regulations (e.g. the Structural Funds regulation). Article 1(4) of the Financial Regulation does, however, state: "Commitment appropriations shall cover, for the current financial year, the total cost of the legal obligations entered into for operations whose implementation extends over more than one financial year".

In order to bring the Financial Regulation into harmony with the sectoral provisions which authorise the use of annual tranches, the Commission takes the view that the Financial Regulation should make explicit provision for the possibility of splitting up budgetary commitments when the legal obligation exceeds a certain amount and when it extends over a number of budget years, the two parameters to be specified in the sectoral regulation applicable. This splitting of the budgetary commitment should be incorporated in the legal instrument concluded with the third party, so that the legal commitment will coincide with the budgetary commitment. The Commission believes that in these circumstances the splitting of the budgetary commitment is justified by the principle of sound financial management.

TOPIC THREE

DEFINITION OF ACCOUNTING PRINCIPLES

A. Accounts

It is the Commission's intention that the Financial Regulation should state the principles governing the keeping of accounts and the presentation of financial statements with a distinction being made between budget accounts and general accounts. It also suggests reviewing the provision relating to reporting on the implementation of the budget, to bring it into line with actual practice, and to improve the drafting of the provisions on the presentation of accounts.

(a) Accounting principles

The Commission does not think that it would be sufficient to define accounting principles by simply referring to the fourth and seventh accounting directives which are concerned with the accounts of private companies. The Commission is more in favour of identifying in the Financial Regulation, by reference to generally accepted accounting principles and the Community accounting directives where they are relevant to the public service context, the principles on which the general accounts (as defined below) are based:

- the principle of continuity of activities,
- the principle of prudence which means assets are not overvalued and liabilities are not undervalued,
- the principle of consistent accounting methods,
- balance sheet data must be understandable, relevant, reliable and comparable from one year to the next, so as to give a true and fair picture of the financial situation.

(b) Distinction between general accounts and budget accounts

The Financial Regulation should state that the accounts are made up of general accounts and budget accounts. The general accounts, using the double entry method, record all revenue and expenditure for the year and are designed to give a picture of assets and liabilities in the form of a balance sheet at 31 December. They must be assets-oriented. The general accounts could also comprise, as set out in the section on the system of appropriations (Topic Two), analytical accounts which would establish the accounting framework to serve as a basis for assessing, in accordance with Article 2 Fin. Reg., whether the resultant benefits are in proportion to the resources applied.

The budget accounts, on the other hand, are used for detailed monitoring of budget implementation and are used to produce the revenue and expenditure account and the reports on implementation of the budget referred to in Article 34 of the Financial Regulation.

(c) Reporting on implementation of the budget

Article 34 of the Financial Regulation should be amended to take account of current reporting practices on budget implementation: transmission to the budgetary authority and to the Court of monthly figures for all appropriations, aggregated at chapter level with information about the utilisation of appropriations carried over, made available again and re-used and transmission of a report on implementation to the same institutions three times a year.

(d) Presentation of the accounts

Articles 78 et seq should make a clearer distinction between the various types of information making up the financial statements: analysis of financial management, revenue and expenditure account and balance sheet.

It is suggested that the Financial Regulation should specify the purpose of the institutions' financial statements. This purpose is to:

- present the nature of their activities;
- explain the arrangements for financing their activities;
- provide information on the way in which operations have been carried out.

The Financial Regulation should also state that in order to provide a true and fair picture the financial statements must meet the requirements of:

- clarity,
- comprehensibility,
- comparability from one year to the next,
- relevance of the information.

The Financial Regulation should also state that the revenue and expenditure account and consolidated balance sheet are published in the Official Journal together with the statement of assurance issued by the Court of Auditors in accordance with Article 188c of the Treaty.

(e) Harmonisation of accounting methods between institutions

The Commission would point out that an interinstitutional agreement on inventories will be concluded in 1998. It has been negotiated between the accounting officers of the institutions by the Commission's accounting officer on the basis of the inventory regulation adopted by the Commission on 22 January 1997. The Commission accounting officer will also provide the accounting officers of the other institutions in 1998 with an accounting and consolidation manual.

B. Definition of advances and payments on account

The Commission has found, as has the Court, that various instruments of financial law (and not just the Financial Regulation) use the concepts of advances and payments on account interchangeably (e.g. regulations on the Structural Funds). These are, however, different concepts and there is a need for clarification.

The Commission believes that the confusion comes from the fact that both are flat-rate part-payments which, taken in isolation, do not correspond to any supply or service which can be identified in its entirety.

Payments on account are definitive, part-payments made either in a contractual framework or under an obligation laid down in a regulation. As the payments are definitive, the funds become the property of the third party. Of course, if the third party fails to perform the counterpart obligations properly, he will have to repay the institution an equivalent amount, plus any interest, in accordance with the rules governing the relationship with the institution.

Advances, on the other hand, are amounts temporarily made available to a beneficiary to cover expenditure incurred in performing an activity on behalf of the institution (e.g. advances on mission expenses, imprests or technical assistance bureaus - such as those used under ECIP, MEDIA and similar programmes - for payments they must make to final beneficiaries, where the sums they receive in consideration for their services are definitive payments and hence, where appropriate, payments on account are made). In such cases beneficiaries must account for the correct use of this amount which remains the property of the institution.

In this connection payments under the EAGGF and the Structural Funds can be treated as payments on account, as can preliminary payments to subcontractors for implementing certain Community policies, provided that, in the latter case, amounts still to be paid to final beneficiaries are entered as assets outside the balance sheet.

The distinction is essential as regards interest yielded, since, as a rule, interest on advances accrues to the Community whereas interest on payments on account does not (see below). It is also important for the purposes of the accounts (Article 71 Fin. Reg.).

All the institutions' financial rules and regulations should be reviewed from this angle.

C. Treatment of interest

If the above line is taken (interest will accrue to whoever owns the funds generating the interest), the only problem which would still appear to exist is that of where such interest should be booked, as the Court maintains that in all cases it should constitute miscellaneous revenue.

The Commission believes that the decision on where it should be booked should be taken on a case-by-case basis, bearing in mind the incentive this can provide for improving management. In the case of advances paid to subcontractors, for instance, the Commission has preferred to allocate such interest to the projects in question (Article 22(4a) new, seventh series).

It would seem more consistent with sound and efficient management for interest yielded by sums intended for a specific measure to benefit this measure as this would incite

authorising officers to try to earn as much interest as possible. The amount and disbursement schedule of funds should, where appropriate, take account of this assignment of interest.

D. Computerised procedures

Computerised tools will be playing an ever bigger role in budget implementation. The Commission believes that Article 23 of the Financial Regulation is the best place to accommodate this development as regards supporting documents and signatures or approvals, since this provision refers to the more detailed rules to be inserted in the implementing rules for the Financial Regulation.

The Court makes the point that computerisation of management must not result in its right of access to supporting documents being restricted.

This legitimate concern of the Court does not, in the Commission's view, require an amendment to the Financial Regulation but should be dealt with in an agreement between the two institutions with due regard for their respective responsibilities.

E. Payment times

The issue

The communication which the Commission adopted on 10 June 1997 on "payment times and default interest" (SEC(97) 1205 final) calls on DG XIX to "present a draft proposal for the revision of the Financial Regulation and, if necessary, its implementing rules which will enshrine the right of creditors who are not paid on time to receive interest. The Commission will at the same time consider whether this might be extended to cover all types of relations between the institutions and third parties, along the lines of practice in the Member States"[8] (point 16 of the communication).

The Commission is also planning to bring the arrangements applicable to payments made by the institutions into line with what will be provided in the directive on late payments in commercial transactions which, in the Commission's proposal (COM(1998) 126 final) imposes tougher conditions as regards due dates (60 days from the date of invoice, 21 days in the case of written contracts) and interest (ECB rate plus 8 percentage points).

Suggestion

A new provision should therefore be added to the Financial Regulation on payment times and interest due from the Community in the event of late payment.

This might involve no more than stating the principle of a due date and of payment of interest where the payment time is exceeded, the length of the payment period and the interest rate being specified in the implementing rules for the Financial Regulation.

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[8] It should be noted that "practice in the Member States" referred to in the communication is not uniform. Some Member States provide for payment of interest only in certain areas (public procurement: L, tax refunds: B) whereas others provide for it in all areas (F, IRL) or even make it automatic (E).

The Commission proposes that the scope of the abovementioned Commission communication should be extended to cover all payments, officials and public authorities being at present excluded from entitlement to interest on late payments.

TOPIC FOUR

RULES GOVERNING CONTRACTS, DELEGATION OF TASKS AND GRANTS

A. Contracts

With a view to rationalisation and greater consistency in the Community institutions' procedures for the award of contracts, the Commission considers that the main provisions on this subject in the Financial Regulation should, by analogy, be more firmly based on the directives on public contracts and the Agreement on Government Procurement concluded within the WTO.

In accordance with its communication on public procurement in the European Union of 11 March 1998 (COM(1998) 143 final), the Commission will explore possible ways of monitoring more closely compliance with the principles and rules applying to public procurement.

(a) The role of the ACPC

The Advisory Committee on Procurement and Contracts (ACPC) was set up by the Financial Regulation at a time when the public contracts directives did not exist and when it seemed appropriate to have a centralised, collective instrument to watch over contracts planned by authorising officers in each institution, with a view to harmonising procurement practices and policies.

Since then additional legislation on procurement has been passed at Community level (public contracts directives) and world level (Agreement on Government Procurement) and the role of the authorising officer has been enhanced. In this new environment, what the ACPC does is now more of a check that procurement procedures are in order and comply with the regulations.

Given this fundamental change, the Commission believes that the time has come to consider whether the special ACPC procedure actually needs to continue or whether it should not be changed to a support and advisory service for authorising officers. What is more, the current review of the Commission's organisational structure could result in far-reaching changes to present procedures. All this could require changes to the arrangements under Article 63 Fin. Reg.

Should it be decided to retain the present procedure of referring contracts to an ACPC as provided in Article 63 Fin. Reg., the Commission would propose the changes set out below.

(b) Threshold for referral to the ACPC

The Court recommends that consideration should be given to whether the threshold at which cases must be referred to the ACPC should be included in the Financial Regulation rather than the implementing rules.

The Commission's general view is that the thresholds should be contained in a legal instrument which can be quickly adjusted when necessary. This position is shared by the

legislator, since the Financial Regulation refers to the Regulation laying down the implementing rules - a Commission Regulation - for the establishment of thresholds.

However, the Commission agrees with the Court about the importance of the threshold for referral to the ACPC. The proposal for a revision of the Regulation laying down detailed rules for the implementation of the Financial Regulation (part of the seventh series of amendments) fixes this threshold at ECU 120 000. This new threshold will then be very close to the ECU 133 914 (SDR 130 000) fixed for the publication of public service, public supply and public works contracts by European Parliament and Council Directive 97/52/EC of 13 October 1997 and the Agreement on Government Procurement concluded within the World Trade Organisation (WTO).

The Commission therefore suggests that the threshold for referral to the ACPC should be brought into line with the thresholds applied in the directives coordinating public service, supply and works contracts.

(c) ACPC-JRC

In order to simplify and standardise procedures and preserve the unity of the Commission's procurement policy, the Commission is planning, at the end of the current trial period, to abolish the specific ACPC for JRC activities (ACPC-JRC) as its continued existence is not justified by the specific nature of the contracts concluded by the JRC in relation to the activity of other Directorates-General in the Commission.

Furthermore, Article 92(4) of the Financial Regulation already insists that the ordinary ACPC should be consulted in respect of the JRC's competitive activities. The Commission therefore proposes that the second indent of Article 97(1) of the Financial Regulation (and Article 116 of the Regulation laying down implementing rules) on the ACPC-JRC should be deleted.

(d) Abolition of specific thresholds

The threshold for referral of contracts financed from research and technological development appropriations to the ACPC could be brought into line with the normal threshold for referral.

Similarly, reference to specific limit values "determining the conditions for concluding contracts" could be deleted. The public contracts directives do not make any distinction between scientific and other contracts.

This amendment would require deletion of the first indent of Article 97(1) of the Financial Regulation (and Article 110 of the Regulation laying down implementing rules).

(e) Abolition of the ACPC's powers in connection with the purchase of buildings

For the record (as this matter comes essentially under the Regulation laying down detailed rules for the implementation of the Financial Regulation), the Commission considers that purchases of immovable property should no longer need to be referred to the ACPC (Article 63 Fin. Reg., Article 111(a) of the implementing rules) in view of the

limited number of these contracts and the interdepartmental buildings procedure which exists.

It should also be pointed out that the public contracts directives and the Agreement on Government Procurement do not apply to this type of contract.

(f) Award of contracts on an interinstitutional basis

The provisions entered in the Financial Regulation in 1990 (second paragraph of Article 63) and in the implementing rules in 1993 (Articles 117 to 121) did not lead to the establishment of an interinstitutional ACPC for contracts common to all the institutions because of the rigidity resulting from its composition and the procedure for its implementation. For the purposes of transparency, the Commission proposes that Article 63 of the Financial Regulation be amended and Articles 117 to 121 of the implementing rules be deleted so that a different framework may be provided for contracts which are common to a number of institutions. Two solutions could be considered in this connection.

The first solution, which the Commission prefers for reasons of interinstitutional cooperation, would be to appoint one institution to take the lead role in the procedure for awarding a contract which is common to a number of institutions. The ACPC of the institution appointed would act as the interinstitutional ACPC and be assisted by a representative from the ACPC of each of the institutions involved in the contract.

The second solution, going no further than the mutual recognition of opinions, would be to stipulate that the lead institution would give an opinion common to the institutions involved in the contract. The ACPCs of the other institutions involved would be informed of the common opinion and would no longer have to express an opinion of their own on the contract.

(g) Procedure for the submission of tenders

For the record (as this matter comes under the Regulation laying down detailed rules for the implementation of the Financial Regulation), the Commission considers that Article 103 of the implementing rules should also take account of the growing use made of private or semi-public messenger services in the submission of tenders and that the date on which the tender is submitted should then be specified.

B. Delegation of tasks to outsiders

In the section on "misuse of subcontracting", the Court criticises the delegation of public authority powers to outsiders such as consultants or technical assistance bureaus.

Now that Article 22(2a) has been inserted under the seventh series of amendments to reserve the exercise of public service tasks to the Community institutions, the Commission considers that the delegation of tasks to outsiders has become far more restrictive in content.

It should therefore be examined whether the concept of tasks involving the European public service conforms to the current reflections on technical assistance bureaus.

The Commission will ensure in its internal instructions (code of conduct on outside staff) and in its contracts that the only tasks entrusted to outside persons are those which may be delegated.

C. Award of grants

The Commission suggests that a specific title be inserted in the Financial Regulation for the award of grants.

The contents are based on the Commission communication of 14 July 1998 on the award and monitoring of Community grants. The Commission suggests that the following points be included:

(a) **Definition of the concept of grant support:** a grant is any direct non-commercial payment by the Community to promote a European Union policy. This definition excludes expenditure on the institution's staff, loans and participations, and contracts.

(b) Statement of the award **principles**: **transparency,** *ex ante* **publication,** *ex post* publication of grants awarded, non-exclusive access to grants, **collective assessment** of proposals by a committee made up of the institution's staff; **exceptions** in cases of spontaneous grants in connection with innovatory and pilot projects. In the *ex post* publicity of grants awarded, all spontaneous grants will be identified.

(c) Principles of **programming** and **legal base**. Reference to this legal base **for the award procedure**, the actual procedure will continue to come under the **sectoral regulations,** with due allowance for the wide range of fields. The Financial Regulation will have to lay down standard rules for grants for cases where the legal base says nothing about the award criteria.

(d) Principle of **co-financing** by the recipient bodies; **exceptions** for bodies which pursue an objective of general European interest and which are mentioned in the budget comments, and for indirect research action.

(e) The Court's **control** of recipients of grants is already governed by Article 87 Fin. Reg., but provisions must also be laid down for the control to be exercised by the institution awarding the grant.

TOPIC FIVE

CLEARER DEFINITION OF THE ROLE OF THOSE INVOLVED IN IMPLEMENTATION

Changes in the role of the three players

The Community budget is implemented in accordance with the principle that the functions of the three officials involved are separate: the authorising officer, the financial controller and the accounting officer are mentioned in the Treaty itself (Article 209(c)) and their positions are independent and mutually incompatible.

In accordance with the second paragraph of Article 21 of the Financial Regulation, the appropriations are administered by the authorising officer who alone is empowered to enter into commitments regarding expenditure, establish entitlements to be collected and issue recovery orders and payment orders. The authorising officer thus initiates budget implementation; he is the starting point for all decisions relating to the use of the appropriations entered in the budget.

Once the decision has been taken and given concrete shape with the issue of commitment proposals, payment orders, forward estimates and recovery orders, the financial controller has to give a guarantee to the institution which appointed him that all these operations comply with the principles and rules governing implementation of the Community budget. Under the rules in force, the financial controller's intervention takes the form of prior approval of all the financial operations conducted by the authorising officer.

The purpose of this prior approval is to ensure that the instrument in question complies with a number of principles depending on the type of instrument (Article 28(1) for forward estimates, 28(2) for recovery orders, 38 for commitment proposals and 47 for payment orders).

Once approved by the financial controller, the operation is recorded by the accounting officer, who keeps the accounts and who is also responsible for collection and payment (third paragraph of Article 21).

Historical developments and the rules governing these three players divide the main responsibility between the authorising officer, as the person taking all the decisions on the use of appropriations, and the financial controller, who, by checking operations in complete independence, must approve each of these operations. The accounting officer checks that payments do constitute a discharge (Article 51 of the Financial Regulation) and guarantees the objectiveness of the accounts (a role recognised only in the implementing rules). His role is thus limited to actually carrying out the operations prepared for him by the other two players.

Authorising officer

The reforms planned by the Commission in this field, which are broadly in keeping with the approach proposed by the Court, are targeted primarily on the authorising officer. The authorising officer will, of course, retain responsibility for decision-making in connection

with revenue and expenditure involving the use of appropriations placed at his disposal by the budgetary authority. However, he will no longer be able to rely on a systematic control of all his actions by another official. In other words, the authorising officer will assume the main responsibility for the legality of his actions and for compliance with the principles of sound financial management since he will no longer be sure that his actions will be reviewed by the financial controller before they take effect. The Commission has taken a step in this direction under SEM 2000 by setting up financial units in all the Directorates-General to act as a financial counterweight to decisions taken by the operational units and thus serve as an initial filter within the authorising department itself.

In particular, and taking account of the financial controller's new role as the official responsible for the institution's internal audit, the authorising officer must be fully liable for decisions on the commitment and payment of expenditure and the proper establishment of entitlements by ensuring that these operations are fully consistent with the Financial Regulation.

If different persons carry out different parts of the commitment operation (i.e. the decision, legal and accounting aspects - see Section B of Topic Two above), the responsibilities of each person must be defined since it may be that only one of these three components is called into question.

Financial controller

The current system of systematic prior approval, which also involves a certain dilution of responsibility (the authorising officer can rely on the financial controller having approved the operation proposed) and the overlapping of control powers between the financial controller and the accounting officer (particularly as regards the control of payment orders), is now changing with the modernisation of management and the introduction of electronic bookkeeping. There is a definite need for these changes in view of the annual growth in the number of operations to be processed.

In the seventh series of amendments, the Commission has proposed making explicit provision for the possibility that the financial controller may conduct prior control of operations by means of sample checks, while allowing him the right to restore or maintain systematic advance control in high-risk sectors. The financial controller is also given the broader role as the institution's internal auditor.

Once the Council has adopted the seventh series of amendments, the prior approval of commitment proposals and payments orders can be based on a sample check. In high-risk sectors the control of commitments and payments will be systematic.

The financial controller is thus changing his control instruments, abandoning the compulsory filter for all instruments in favour of a minimum filter system and controls based more on the effectiveness of the management systems used by the authorising officer and accounting officer. Logically, this change should have repercussions for the other players in budget implementation since it will lead to clarification of their respective powers.

Accounting officer

In view, amongst other things, of the responsibilities of the authorising officer and the financial controller in this area, the accounting officer's responsibility for the objectiveness of the accounts should be redefined to cover all aspects of their reliability. He should also have the powers necessary to ensure that they are reliable. These powers assumed a special dimension with the introduction of the statement of assurance by the Maastricht Treaty and will be further enhanced by the Amsterdam Treaty, which makes the statement one of the items to be taken into account for the discharge.

Apart from the accounting officer's involvement in drawing up the inventories and local management systems used by the authorising officers (see proposal on the seventh series of amendments to the Financial Regulation), the rules should take account of the controls which are already conducted automatically by the management system (SINCOM) under the accounting officer's authority, as in the case of the availability of appropriations.

The accounting officer should be in a position to ensure that payment constitutes valid discharge, for the proper registration of commitments, forward estimates and recovery orders, for the validation, registration and proper execution of payments, for treasury management, for the collection of revenue and recovery of entitlements, for the management of the third parties ledger, for the reliability and objectiveness of bookkeeping and of the presentation of the financial statements and for the quality of information in local management systems used in support of the aggregated data in the budget and general accounts.

As regards recovery of entitlements, a provision should be entered to the effect that recovery should be effected in the first instance by setting the amount off against amounts due to the same beneficiary.

TOPIC SIX

MANAGEMENT OF EXTERNAL AID

A. Title IX of the Financial Regulation

The issue

Title IX Fin. Reg. is based substantially on the development cooperation policy conducted by DG VIII within the framework of the EDF, particularly when it refers to national authorising officers and paying agents. These provisions have not been inspired by the new policies in favour of central and eastern Europe, let alone by operations under the common foreign and security policy (see Section B below).

It cannot be denied that there have been a number of management problems in connection with external relations. In particular, the Court notes the ambiguous wording of the provisions of Title IX relating to the award of contracts and the fact that the Title is ill-suited for the procedures to implement the Phare and Tacis programmes. As regards the latter point, the Commission stated in Agenda 2000 that it wished to continue to decentralise implementation of external aid to the recipient states and was strongly supported by Parliament.

Suggestion

As regards the **procedures for the award of contracts**, the Commission would point out that the current amendment of the Financial Regulation (seventh series) brings the system for the award of contracts in this sector into line with the obligations which the Community entered into under GATT, resulting in a stricter framework for the application of Title IX.

The sectoral regulations in this field (Phare, Tacis, Meda, etc.) also contain specific financial provisions which, as a *lex specialis*, accompany and supplement the provisions of Title IX applying to the management of external aid. Article 7 of the Tacis Regulation of 18 July 1993 and Article 8 of the Meda Regulation of 23 July 1996 contain provisions on the award of contracts which supplement those provided for by Title IX of the Financial Regulation.

The Commission suggests that Title IX of the Financial Regulation be amended as regards the award of contracts by introducing two improvements to eliminate the ambiguities criticised by the Court:

- Section III of Title IX (Award of contracts) should be revised to state that the public contracts directives and the Agreement on Government Procurement may be applicable.

- Application of Article 119 of the Financial Regulation raises a number of difficulties in interpreting the term "contracts awarded in the interests of the Commission", which is a condition for the application of the provisions contained in Section I of Title IV of the Financial Regulation. To overcome this problem, it is suggested that the term

"awarded in the interests of the Commission" be replaced by different wording such as "awarded with a view to providing support for Commission departments".

As regards the **decentralised management of external aid**, it should be pointed out that decentralising implies the transfer of the powers of budget implementation to the authorities of the recipient states. The Commission will make an overall payment to the payment authority appointed by the recipient state and the aid will then be shared out by this state (call for tenders, award of contracts, payment to final beneficiary) in the same way as the aid granted to the Member States under the Structural Funds.

Decentralisation differs from devolution, which involves the delegation of the powers of authorising officer to Commission representatives in the recipient country instead of to officials at the institution's headquarters, whereas decentralisation involves delegating these powers direct to the authorities of the recipient country. While devolution does not require changes to the rules, decentralisation could come up against the structural provisions of Title IX of the Financial Regulation, which does not authorise the transfer of management powers to the recipient state but only to the EIB or other organisations and then only in part (Article 105(3)).

To implement the aid, in the form of financing agreements with the recipient states (as in the case of the accession partnerships), the Commission must approve each invitation to tender and each proposal for the award of a contract (Articles 108(2) and 109(2) and (3)), which is not feasible with the volume of external aid, particularly in connection with enlargement.

Finally, Article 111(7) on the clearance of payments made in local currency before being booked to the budget appropriations is ill-suited for direct payments.

The Commission therefore suggests that a new section be inserted in Title IX authorising decentralised management of external aid by way of exception to the abovementioned provisions. This amendment of Title IX would not prevent similar provisions on decentralisation from being incorporated in sectoral regulations on external aid.

The Commission would also suggest expressly stating in Title IX that it also applies to the implementation of **humanitarian aid** and humanitarian projects.

B. Common foreign and security policy

The issue

When dealing with the principle of unity (above), the Commission stated that the Financial Regulation applied to the implementation of operating expenditure under the common foreign and security policy and cooperation in the field of justice and home affairs whenever this expenditure is charged to the Community budget. The next question which arises is whether a specific title should be set up, whether the ordinary provisions should be applied or, in the case of operating expenditure under the common foreign and security policy, whether Title IX applies.

Suggestion

The Commission's view is that expenditure under the common foreign and security policy and cooperation in the field of justice and home affairs should be subject to the general provisions of the Financial Regulation whenever this expenditure is charged to the Community budget, without their being any need for a specific title.

In the case of operating expenditure under the common foreign and security policy, the Commission considers that Title IX applies whenever this expenditure takes the form of external aid. The Commission would therefore suggest that Article 105(1) be amended to specify that Title IX applies in this case.

III. PROBLEMS OF FORM

TOPIC ONE

IMPROVING PRESENTATION AND CLARITY

A. STRUCTURE AND DRAFTING OF THE FINANCIAL REGULATION

(a) Drafting of the Financial Regulation

The drafting of the Financial Regulation needs to be reviewed since, like the budget for which it sets rules of establishment and implementation, it covers the whole range of Community activity and therefore has to be adjusted when activities change in accordance with amendments to the Treaty. Article 140 also states that the Financial Regulation should be examined at three-year intervals to bring it into line with the budgetary and legislative situation.

The problems of drafting which need to be examined relate to the structure of the Financial Regulation and the clarity of its drafting.

(b) Structure of the Financial Regulation

The Financial Regulation is currently divided into three extremely uneven parts. Part I (Provisions applicable to the general budget of the European Communities) consists of 133 articles and 12 titles, some of which are divided into sections, Part II (Provisions applicable to borrowing and lending operations by the European Communities) contains four articles and Part III (Transitional and final provisions) six articles.

This structure can be improved in three ways:

First, the present division into parts should be dropped, since this is not justified by the volume of the articles in each part nor by the subject matter (the contents of Parts II and III are not substantially different from the subject matter dealt with in the titles of Part I).

A new Part I should then be restored containing only the provisions generally applicable ("Common provisions"). Titles VII to XII of the current Part I and the current Part II containing special provisions will form Part II ("Special provisions").

Finally, reference should be made to the standard structure laid down in the Council resolution of 8 June 1993 on the quality of drafting of Community legislation, which calls for a division into chapters, sections, articles, and paragraphs.

From the point of view of structure, emphasis must also be placed on the coherence of Title 1 (General principles), which must define the objective of the Financial Regulation in relation to the objectives mentioned in Article 209 of the Treaty (establishing and implementing the budget, presenting accounts, responsibility of officers, auditing accounts), establish the principles and list the exceptions.

(c) Clarity of drafting

In this case, emphasis must be placed on the definition of the terms used (e.g. the meaning of the word budget in Article 1(1) or the word payment in Article 51), the

division of articles by subject matter (e.g. Article 49 relating to the interest owed by recipients of undue payments should not be included in the subsection on authorisation) and the identification of the powers of all officials responsible for budget implementation.

Cases of needless repetition must also be eliminated.[9]

(d) Suggested presentation

If revised as suggested, the Financial Regulation would be structured as follows:

PART I: COMMON PROVISIONS

TITLE I	GENERAL PROVISIONS (Articles 1 to 11, 26, 27 and 32)
TITLE II	ESTABLISHMENT AND STRUCTURE OF THE BUDGET (former Articles 12 to 20)
TITLE III	IMPLEMENTATION OF THE BUDGET (former Articles 21 to 55, with the exception of Articles 26, 27 and 32)
TITLE IV	CONCLUSION OF CONTRACTS, INVENTORIES, ACCOUNTS (former Articles 56 to 72)
TITLE V	RESPONSIBILITIES OF AUTHORISING OFFICERS, FINANCIAL CONTROLLERS, ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS (former Articles 73 to 77)
TITLE VI	PRESENTING AND AUDITING ACCOUNTS (Articles 78 to 90)
TITLE VII	TRANSITIONAL AND FINAL PROVISIONS (former Articles 138 to 143)

PART II: SPECIAL PROVISIONS

TITLE I	SPECIAL PROVISIONS APPLICABLE TO THE EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND, GUARANTEE SECTION (former Articles 98 to 104)
TITLE II	SPECIAL PROVISIONS APPLICABLE TO FINANCIAL

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9 One example is the final subparagraph of Article 7(2) ("Provisional appropriations may not be carried over") which duplicates the second subparagraph of Article 7(1) and should therefore be deleted.

Another example is the second subparagraph of Article 34(2) ("The budgetary authority may examine these reports") which duplicates the first paragraph which states that the report should be sent to Parliament and the Council, i.e. the two arms of the budgetary authority.

PARTICIPATION BY THIRD PARTIES AND OUTSIDE BODIES IN COMMUNITY ACTIVITIES (former Articles 124 to 132)

TITLE III SPECIAL PROVISIONS APPLICABLE TO RESEARCH AND TECHNOLOGICAL DEVELOPMENT APPROPRIATION (Articles 91 to 97)

TITLE IV SPECIAL PROVISIONS APPLICABLE TO EXTERNAL AID (former Articles 105 to 120)

TITLE V SPECIAL PROVISIONS APPLICABLE TO THE MANAGEMENT OF APPROPRIATIONS RELATING TO STAFF SERVING IN OFFICES AND SUBOFFICES IN THE COMMUNITY AND IN DELEGATIONS OUTSIDE THE COMMUNITY AND TO THEIR ADMINISTRATION (former Articles 121 and 123)

TITLE VI SPECIAL PROVISIONS RELATING TO THE OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES (former Article 133)

TITLE VII PROVISIONS APPLICABLE TO BORROWING AND LENDING OPERATIONS BY THE EUROPEAN COMMUNITIES (former Articles 134 to 137)

B. IMPRECISE FORMULATION

The Financial Regulation contains a number of expressions that could be considered rather vague.

The Court criticised these expressions in its opinion No 4/97 of 10 July 1997: "Many of the expressions it uses are vague or, by their wording, introduce 'grey' areas in legal terms. Expressions such as 'in particular', 'where appropriate', 'if need be', 'as a rule', 'in principle', 'endeavour', 'exceptionally' and others of the same ilk are to be found by the score. The main drawback of these expressions is that at the same time as laying down a rule, they also lay down the possibility of derogating from it, without specifying the cases where such a derogation would be permitted."

This analysis is only partly correct. The Commission shares the Court's concern to tighten up the way in which the provisions of the Financial Regulation are expressed. However, it should be pointed out that use of the expressions noted by the Court can be justified on three grounds:

- **statement of exceptions to a principle**, the only justification mentioned by the Court: when Article 7 states that appropriations not used at the end of a financial year "shall, as a rule, lapse", it is expressing a principle, that of budget annuality. The article then sets out exceptions to this principle ("however, a decision may be taken to carry over appropriations") and describes the circumstances under which the appropriations may be carried over.

- **explanation:** when Article 4(3) states that the Commission may accept any donation made "and in particular foundations, subsidies, gifts and bequests", it explains this concept by taking the most frequent examples as an illustration. This list is not exhaustive since the concept may cover a broad range of legal forms in accordance with the different national laws.

- **the difficulty of giving legal expression to a *de facto* situation.** When Article 7(2)(a) refers to "operations for which preliminaries have been virtually completed at 31 December but for which accounting commitments have not yet been made", the Financial Regulation is pinpointing an actual situation which, according to the legislator, requires an exception to the principle of budget annuality in a case which cannot be described more precisely.

In the other cases the Commission intends to suggest stricter and thus more precise formulation.

TOPIC TWO

IMPROVED COORDINATION BETWEEN THE FINANCIAL REGULATION AND THE OTHER FINANCIAL PROVISIONS

A. CONCEPT OF THE FINANCIAL REGULATION WITHIN THE MEANING OF ARTICLE 209 OF THE TREATY

In recommending in paragraph 12 of its Opinion No 4/97 that the primacy of the Financial Regulation in the hierarchy of the legal texts derived from the Treaties should be restored and that the procedure stipulated in Article 209 of the Treaty should be respected for this purpose, the Court is suggesting that the concept of the Financial Regulation should be examined within the meaning of the Treaty. It should be noted in this connection that the Financial Regulation of 21 December 1977 implements only points (a) and (c) of Article 209 of the EC Treaty which refer to the procedure for establishing and implementing the budget and for presenting and auditing accounts and to the responsibility of authorising officers and accounting officers. Point (b), which relates to own resources, is covered by a different regulation. Although, strictly speaking, only a regulation which specifies the procedure for establishing and implementing the budget and for presenting and auditing accounts should be considered a Financial Regulation, there appears to be no justification for questioning the method chosen to implement Article 209. In other words, there is some logic in incorporating into the Financial Regulation not only the subject matter referred to in Article 209(a) but also related topics coming under Article 209(c) (responsibility of the Financial Controller, authorising officers and accounting officers). However, there is not the same link as regards own resources, which are only one specific aspect of budget execution on the revenue side and which may legitimately be covered by an instrument other than the Financial Regulation.

Nor would there appear to be grounds for questioning the **unity of the regulation** implementing points (a) and (c) of Article 209, as there were before the Financial Regulation of 25 April 1973 which merged the then existing Financial Regulations on the establishment and implementation of the budget and on the presentation and auditing of accounts.[10] Indeed, even if Article 209(a) refers to "financial regulations" in the plural, it is preferable, for reasons of transparency, to have a single instrument containing all the rules applicable to a single budget.

The unity of the Financial Regulation is, however, undermined by the proliferation of budget provisions in sectoral regulations such as Regulation No 729/70 of 21 April 1970 on the financing of the common agricultural policy and Regulation No 2052/88 of 24 June 1988 on the tasks of the Structural Funds which contain financial provisions on

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10 Financial Regulations:
- of 30 July 1968 on the establishment and implementation of the budget of the European Communities and on the responsibility of authorising officers and accounting officers (OJ L 199, 10.8.1968);
- of 15 December 1969 laying down the procedures for presenting and auditing accounts (OJ L 326, 29.12.1969)

commitments, payments and controls.[11] The same considerations apply mutatis mutandis to external relations and the ever-increasing volume of sectoral rules governing them (e.g. management of the Phare and Tacis programmes).

This leads to the question of whether these specific provisions should be incorporated in the Financial Regulation, which would in the first place require the establishment of a list. The obvious desire for consistency would call for this solution although practical reasons (not to call into question sectoral rules based on separate legal bases) recommend the opposite solution, which is what is proposed. At all events, the sectoral rules, as *lex specialis*, must not run counter to the Financial Regulation and, where applicable, should be linked to it.

A similar question which arises is whether the provisions contained in political instruments such as the interinstitutional agreements and the joint declarations should be incorporated in the Financial Regulation. The main provisions concerned are the joint declaration of 30 June 1982 on various measures to improve the budgetary procedure and the Interinstitutional Agreement of 29 October 1993 on budgetary discipline and improvement of the budgetary procedure. These provisions relate to topics coming under the Financial Regulation (budgetary procedure, the distinction between compulsory and non-compulsory expenditure, legal bases), but in general they are not legal instruments[12] and are not adopted in accordance with the same procedure as the Financial Regulation, the Court not being involved. There thus appears to be no justification for including these provisions in the Financial Regulation. The impact which amendments to the Interinstitutional Agreement have on the Financial Regulation and which must be incorporated in it is another matter.

B. LINKS BETWEEN THE FINANCIAL REGULATION AND OTHER FINANCIAL PROVISIONS

The Financial Regulation is the basic instrument of secondary legislation for financial and budgetary law. It is intended to given further regulatory detail to the financial provisions contained in Article 188c (the Court's external audit powers) and Articles 199 to 209 of the Treaty.

There appears to be no reason for criticising the wording of the Financial Regulation on this point. Any duplication between the Treaty and the Financial Regulation (e.g. the principle of annuality set out in Article 203(1) of the Treaty is repeated in Article 6 of the Financial Regulation) can be justified by the desire for internal consistency within the Financial Regulation.

Attention should be drawn in this connection to cases where the provisions of the Financial Regulation on the procedure for the establishment of the budget refer to provisions in the Treaty. Article 9 refers to Article 204 as regards provisional twelfths, Article 15 refers to Article 203 as regards the procedure for establishing supplementary and amending budgets, Article 16 refers to the same provision for the ordinary budget and Article 17 again refers to

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[11] See also Tugendhat-Murphy agreement on the consultation of the Court of Auditors under Article 209 of the Treaty on any provision derogating from the Financial Regulation.

[12] See Case 34/86 *Council v Parliament*: [1986] ECR 2155.

the same provision for adoption of the budget. These references appear justified for reasons of economy (there is no point in reproducing the text of the Treaty which is exhaustive on these points).

Links between the Financial Regulation and the implementing rules raise the same type of problem. Many of the provisions in the Regulation laying down the implementing rules reproduce the text of the Financial Regulation (e.g. Article 52 takes over Article 36(2) of the Financial Regulation). This question must be examined should the implementing rules be rewritten. On the other hand, the Financial Regulation sometimes refers to the implementing rules in connection with basic questions which are only mentioned in the Financial Regulation (e.g. Article 123 of the Financial Regulation on administrative appropriations outside the Community) or dealt with in brief (Articles 69 to 72 on the accounts). In both these cases, the provisions contained in the implementing rules should be incorporated in the Financial Regulation. In any event, the implementing rules will be reviewed after the reworked Financial Regulation is adopted.