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**CORRIGENDUM**

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Proposal for a

**COUNCIL REGULATION**

**on a Financial Regulation applicable to the 9<sup>th</sup> European Development Fund**

(presented by the Commission)

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## EXPLANATORY MEMORANDUM

### 1. A VITAL FACTOR FOR IMPLEMENTING THE EDF - ITS FINANCIAL REGULATION

The successive European Development Funds (EDFs) have been set up by internal agreements concluded between the Member States and then submitted for ratification.

In these agreements the Member States have established the financial resources required to honour the commitments they have made vis-à-vis the African, Caribbean and Pacific States (ACP States) and the financial resources reserved for the Overseas Countries and Territories (OCTs) under association decisions.

By the Internal Agreement of 18 September 2000<sup>1</sup> the Member States set up the 9<sup>th</sup> EDF, which is designed to ensure the financial implementation of:

- the Partnership Agreement concluded with the ACP States in Cotonou (Benin) in 2000<sup>2</sup>;
- the Decision on the association of the OCTs, adopted by the Council in November 2001<sup>3</sup>.

Article 31 of that Internal Agreement states that, "*the provisions for implementing this Agreement shall be the subject of a Financial Regulation adopted, before the entry into force of the ACP-EC Agreement, by the Council, acting by a qualified majority... on the basis of a proposal from the Commission*".

So if operations to assist the ACP States and the OCTs are to get under way, the Financial Regulation also needs to be adopted in good time.

### 2. POLITICAL CONTEXT OF THE NEW EDF: INTERNAL REFORMS AND RECASTING OF THE FINANCIAL REGULATION

The proposal for a new Financial Regulation for the EDF has been drafted in the dynamic context of the internal reform undertaken by the Commission, which includes in particular the revision and modernisation of its financial procedures. The key element of this process is the proposal to recast the Financial Regulation applicable to the general budget of the Communities, which was adopted by the Commission in July 2000 and is now in the final stages of examination by the legislative authority.<sup>4</sup> The European Council wanted the recast Regulation to be finally adopted by the end of 2002.

Since the Financial Regulation applicable to the general budget sets out rules governing financial management and control, its recasting is inextricably linked to

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<sup>1</sup> OJ L 314, 15.12.2000, p. 1.

<sup>2</sup> OJ L 317, 15.12.2000, p. 3.

<sup>3</sup> OJ L 314, 30.11.2001, p. 1 and OJ L 324, 7.12.2001, p. 1.

<sup>4</sup> With a view to the consultations with Parliament, the Council adopted a joint guideline on 22 May 2002 (see 8730/02 FIN 169).

the process of administrative reform. The main aspects of this reform cannot be implemented without substantial amendments to the Financial Regulation.

On a number of points, the same applies to the EDF. The adoption of the new Financial Regulation for the 9<sup>th</sup> EDF presents an opportunity to take into account, as far as is compatible with the legal framework (Cotonou Agreement, Association Decision, Internal Agreement), the amendments made to the Financial Regulation applicable to the general budget.

### **3. MAIN ASPECTS OF THE RECASTING OF THE FINANCIAL REGULATION APPLICABLE TO THE GENERAL BUDGET**

The initial recasting proposal adopted in July 2000<sup>5</sup> and the amended proposal adopted in December 2001<sup>6</sup> were essentially inspired by the following principles:

The recasting of the Financial Regulation is an essential complement to the internal reform process on which the Commission has embarked. The recasting proposal provides a whole legislative framework for key strands of that reform, such as the assertion of the responsibility of authorising officers, under the supervision of an internal audit service, with the abolition of centralised *ex ante* controls (in particular approval of the Financial Controller) as the *quid pro quo*<sup>7</sup>.

However, the recasting exercise goes beyond the objectives identified by the Commission's internal reform and encompasses all the topics currently covered by the Financial Regulation, which is the basic instrument for implementing all aspects of the general budget of the European Communities - from its establishment and execution to its accounting system right through to the external audit procedures and the discharge. The aim of the recasting exercise is therefore to modernise the Commission's management methods in order to make budgetary implementation more effective and to enforce more rigorously the principle of sound financial management.

### **4. THE SPECIAL NATURE OF FINANCIAL MANAGEMENT UNDER THE EDF**

Before considering how the Commission proposes to apply the content of the recasting proposals to the EDF Financial Regulation, it is worth recalling briefly the main features of the system of financial co-operation between the Union and the ACP States and the OCTs.

Long years of co-operation, dating from the Yaoundé Conventions of the 1960s and 70s, have produced a system of financial co-operation that is rather special, if not unique - a tendency further accentuated by the fact that it has evolved outside the Community budget and the EDF continues to exist outside the system of own resources.

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<sup>5</sup> COM (2000) 461 final, 17 October 2001.

<sup>6</sup> COM (2001) 691 final 2, 10 January 2002 – the reference here is to the amended proposal.

<sup>7</sup> With a view to the consultations with Parliament, the Council adopted a joint guideline on 22 May 2002 (see 8730/02 FIN 169).

#### 4.1. Parallels between the EDF and the budget

At first sight the system for managing the EDF shares a number of features with the management system applicable to the general budget. The various financial actors (authorising officer, accounting officer, financial controller) play the same roles as regards both expenditure and amounts receivable, since the Financial Regulation for the 8th EDF<sup>8</sup> was inspired by the general Financial Regulation currently in force. One major point they have in common is that operations carried out by the Commission under the EDF are subject to the same rules as the budget as regards external scrutiny by the Court of Auditors and the discharge granted by Parliament on the Council's recommendation.

#### 4.2. Divergences between the EDF and the budget

However, EDF resources are not entered in the general budget, so their financial execution is subject neither to the procedure for establishing the general budget nor to the various mechanisms for implementing it. Each year the Commission provides the Council with "estimates" of commitments and payments for the following financial year, which are indicative. Should the real outturn of commitments or payments not reach the anticipated level, there are no legal consequences for the use of the appropriations concerned.

The EDF is therefore not bound by the same constraints as a budget based on the principle of annuality and the concept of a budgetary "year".

#### 4.3. Methods of EDF management

As regards the method of implementation, the EDF system can be described as a very advanced case of "decentralised management" to use the terminology of the Financial Regulation applicable to the general budget<sup>9</sup>, the powers of implementation being already conferred on the ACP States by the Cotonou Agreement. Most of the funds available are implemented directly by the Member States concerned in the form of specific programmes and projects. The Commission's role includes taking financing decisions on the financing agreements concluded with beneficiary States. Under these agreements, decentralised implementation is carried out largely under their responsibility, although the Commission - through its heads of delegation on the ground and its central departments - provides support and exercises *ex ante* supervision.

This large measure of decentralisation reflects the goals of association and partnership which mark out relations between the ACP countries and the Member States. This is also evident in the joint permanent institutions, which in certain cases have the power to adopt rules that are binding on the partners.

Complex mechanisms and procedures have been developed to such an extent that even the duties of authorising officers are laid down in the Lomé Conventions and in the present Partnership Agreement. Specific provision is made for the very close involvement of the heads of Community delegations in financial management, from the joint preparation of projects through to the endorsement of decisions to award

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<sup>8</sup> OJ L 191, 7.7.1998, p. 53.

<sup>9</sup> See Articles 53 and 165 of the amended proposal COM(2001) 691.

contracts and other requests for funding proposed by the National Authorising officer of the ACP State. There is also a body of rules specific to ACP-EC co-operation concerning the award and performance of contracts<sup>10</sup>.

Financial partnership with non-member countries under the EDF is more developed than in any other expenditure programmes administered by the Commission in the external relations field.

## **5. SCOPE FOR APPLYING THE RECASTING EXERCISE TO THE EDF**

Provided there are no obstacles in the specific legal arrangements governing the EDF, the same reforms will be applied to the financial management of the EDF as to programmes financed from the general budget. The Commission's proposal seeks, as far as possible, to apply the same rules as will apply to the general budget from 1 January 2003, as described in detail below.

### **5.1. Budgetary principles**

In the absence of a budgetary act as defined in Article 4(1) of the Financial Regulation applicable to the general budget, it is not possible to apply the principles of unity, annuality, equilibrium and universality to EDF resources. The principles of specification (Article 3) and transparency (Article 5) are however introduced for the first time and the principle of sound financial management is aligned on the recast Financial Regulation applicable to the general budget (Article 4).

Certain aspects of annuality have, however, been reinforced. Under current regulations the Commission only has to communicate to the Council its "estimates" of expenditure for the forthcoming year. These estimates must now be published in the *Official Journal* (Article 5) and include both commitments and payments (Article 8 - until now only the estimates for payments were mandatory). Every payment order must now also mention the financial year to which it is booked (Article 62).

### **5.2. Financial actors and procedures; function of internal auditor**

The rules applying to financial actors (authorising officer, accounting officer: see Articles 10-11 and 18-37) will be exactly the same as those in the Financial Regulation applicable to the general budget, as will the basic rules for the validation, authorisation and payment of expenditure (Articles 56-69). The rules concerning amounts receivable and the recovery of debts are aligned on those in the rules applicable to the general budget (Articles 42-48). The internal auditor is given the same functions with regard to the EDF as he enjoys in relation to the general budget (see Articles 70-72).

Expenditure already committed under previous EDFs will continue to be managed under the previous financial regulations, but with the exception of centralised *ex ante* financial control which will be discontinued in favour of the new regulation (Article 132). The internal reform will therefore fully encompass the EDF, making it

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<sup>10</sup> Decision 3/90 of 29 March 1990 of the ACP-EEC Council of Ministers adopting general regulations and general conditions, OJ L 382, 31.12.1990, p. 1.

possible to apply - within the Commission - a uniform system across all the expenditure it manages, while respecting the specific duties of the authorising officer as recognised in the ACP-EC Agreement.

### **5.3. Commitment of expenditure and methods of management**

The same definitions of the different types of management which exist under the recast Financial Regulation applicable to the general budget are applied to the EDF (see Articles 13-17). The most important category is decentralised management by the ACP states (Article 14). There is also a smaller category of centralised management by the Commission (Article 15) under which the same rules regarding externalisation will apply as for the budget. The rules on the commitment of expenditure (Articles 49-55) are differentiated according to the type of management concerned:

- under centralised management by the Commission, the commitment of expenditure is governed by exactly the same rules as the budget (Articles 49-54, and the same deadlines for implementation apply (Article 54));
- under decentralised management, the financing agreement with the ACP partner State is subject to the same basic rule (conclusion within the deadline of N+1, year N being the year of the financial commitment made by the Commission). Thereafter, the individual legal commitments which implement the financing agreement should also respect the deadline of 3 years for contractualisation following the financial commitment.

As with the reforms under the recasting of the Financial Regulation applicable to the general budget, implementation of these new rules will have some impact on the Commission's internal organisation and its human resources. The Commission will do its utmost to ensure effective implementation of the new management system, which entails new tasks for its departments both at headquarters and in local delegations. It reserves the right to make all the necessary proposals, including provisions in the Internal Agreement, to ensure it has enough resources at its disposal for administrative expenditure on implementing the EDF.

These proposals should also help achieve other objectives laid down in the Commission communication on the reform of the management of external assistance (SEC(2000) 814 of 16 May 2000). One of the aims should be to ensure that ACP delegations are successfully integrated into the decentralisation process.

### **5.4. Contracts and grants**

It is not appropriate to use the EDF Financial Regulation to define the rules applicable to contracts financed by EDF resources. The reason for this is twofold. First, the Cotonou Agreement itself contains extensive rules (Articles 20-31 of Annex IV). Second, the Cotonou agreement reserves the rules on contracts to a specific instrument to be adopted by the joint ACP-EC Council of Ministers (Article 28 of Annex IV). The same provision specifies, however, that the ACP rules must respect EC rules. The Commission has already proposed the specific instrument for ACP contracts (COM(2002)183 final of 12 April). It proposed to take the existing 1999 RELEX manual on contracts as a basis for negotiation with the ACP countries. Article 3 of the draft ACP-EC decision will allow the ACP rules to be adapted to

ensure they conform to the new Financial Regulation applicable to the general budget once it enters into force in January 2003.

In this proposal for the EDF Financial Regulation, the Commission therefore confines itself (Articles 73-79) to certain essential definitions and a reference to the rules which will be adopted by the ACP-EC Council of Ministers (Article 75).

As regards grants, under centralised management by the Commission exactly the same rules will apply as for the general budget (Articles 82-94). Under decentralised management, where the ACP countries award grants, the Commission shall promote the application of the same standards (Article 95).

In line with an undertaking given in the 2000 discharge procedure, the proposal contains rules applicable to direct labour operations (“*marchés en régie*”) where work normally subject to procurement rules is conducted directly by the ACP State, that is by its ministries or agencies (Articles 80-81). A particular problem posed by this method of implementation is that the ACP States often have recourse to technical assistance offices (TAOs) and this is allowed by the Cotonou Agreement (Article 35(1) of Annex IV). However, Article 81 of the proposal requires the Commission to ensure that the contracts between an ACP State and a TAO contain a series of minimum guarantees. Moreover, where the Commission acts on behalf of the ACP State, the recourse to a TAO will still be prohibited, just as if the Commission was acting on its own behalf (Article 80(3)).

## **5.5. Accounts, Court of Auditors and discharge**

The provisions on the accounts (Articles 96-111) and on control and discharge procedures (Articles 112-120) apply the same rules and deadlines as those contained in the recast Financial Regulation applicable to the general budget.

As regards the Court's powers of access, in addition to the provisions of Article 115, Article 52(4) lays down, on the model of the Financial Regulation applicable to the general budget, that all financing agreements must include the right of the Court to have access to all contractors and sub-contractors financed by the EDF and the acceptance of this right is a pre-condition for financing (Article 115(6)).

Another issue in these provisions concerns the rules to be applied to the European Investment Bank. The Internal Agreement (Article 32) gives the Commission responsibility for presenting the accounts of the EDF to the Council. However, the same agreement entrusts the management of the EDF Investment Facility including interest-rate subsidies to the European Investment Bank (see Articles 121-128).

Article 9 makes clear what the respective responsibilities of the EIB and the Commission are under the terms of the Financial Regulation. Article 112 refers to the possibility of updating the tripartite agreement between the Commission, the Court of Auditors and the EIB.

The provisions concerning the contributions of the Member States (Articles 39-41), the accounts, and the control and discharge procedures have therefore been drafted to reflect this new division of responsibilities.

## **6. CONCLUSIONS**

The Commission has every hope that, by applying to the EDF the same reforms as those contained in the Financial Regulation applicable to the general budget, the financial management of the EDF can become more transparent and more efficient over the long term. This intention of the Commission should also be seen in the context of the eventual inclusion of the EDF in the general budget, an objective to which the Commission remains attached.

For the reasons set out above, the Commission proposes that the attached Financial Regulation applicable to the EDF be adopted.

Proposal for a

## COUNCIL REGULATION

### on a Financial Regulation applicable to the 9<sup>th</sup> European Development Fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000<sup>1</sup>,

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ("Overseas Association Decision")<sup>2</sup>,

Having regard to the Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States signed in Cotonou (Benin) on 23 June 2000 and the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies, and in particular Article 31 thereof<sup>3</sup>,

Having regard to the proposal from the Commission<sup>4</sup>,

Having regard to the opinion of the Court of Auditors<sup>5</sup>,

Having regard to the opinion of the European Investment Bank<sup>6</sup>,

Whereas:

- (1) It is necessary to determine the detailed rules for the payment of contributions by the Member States to the 9<sup>th</sup> European Development Fund (hereinafter "the EDF"), set up by the Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the Partnership Agreement between the African, Caribbean and Pacific States and the European Community and its Member States signed in Cotonou (Benin) on 23 June 2000, and to the allocation of

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<sup>1</sup> OJ L 317, 15.12.2000, p. 3.

<sup>2</sup> OJ L 314, 30.11.2001, p. 1.

<sup>3</sup> OJ L 317, 15.12.2000, p. 355.

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

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

<sup>6</sup> OJ C [...], [...], p. [...].

financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies (hereinafter “the Internal Agreement”).

- (2) It is necessary to lay down the conditions in accordance with which the Court of Auditors must exercise its powers in respect of the EDF.
- (3) Rules should be laid down for the treatment of any balances remaining from previous EDFs, in particular as regards the detailed arrangements for their transfer to the 9<sup>th</sup> EDF, their allocation to the various co-operation instruments provided for by the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (hereinafter “the ACP-EC Agreement”) or by the Overseas Association Decision, and the rules applicable for their implementation.
- (4) It is necessary to ensure consistency as between this Regulation and the measures adopted by the Commission for the implementation of the Overseas Association Decision
- (5) It is appropriate to ensure the proper, prompt and efficient execution of programmes and projects financed under the ACP-EC Agreement and to establish management procedures which are transparent and easy to apply, and which facilitate the decentralisation of tasks and responsibilities.
- (6) Decision [...] of the ACP-EC Council of Ministers of [...] on the implementation of Articles 28, 29 and 30 of Annex IV to the Cotonou Agreement<sup>7</sup> has specified the general regulations and general conditions applicable to works, supply and service contracts financed by the European Development Fund, as well as the rules governing procedure, conciliation and arbitration in relation to such contracts.
- (7) It is necessary to establish the detailed rules in accordance with which the Chief Authorising Officer of the EDF, to be appointed by the Commission with responsibility *inter alia* for the clearance of expenditure under the EDF, must, in close co-operation with the National Authorising Officer, make such arrangements as prove necessary to ensure the proper execution of operations.
- (8) As far as possible, Council Regulation (EC, Euratom) No .../... of [...] on the Financial Regulation applicable to the general budget of the European Communities<sup>8</sup> must, as the cornerstone of the reform of the Commission's internal management, be taken into account in drawing up the Financial Regulation for the EDF, particularly with a view to the possible integration of EDF resources into the general budget of the Communities. In the light of the experience acquired from the implementation of this Regulation, the Commission may propose amendments thereto,

HAS ADOPTED THIS REGULATION:

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<sup>7</sup> OJ [...]

<sup>8</sup> OJ L [...] of [...], p. [...].

# **PART ONE MAIN PROVISIONS**

## **TITLE I GENERAL PROVISIONS**

### **CHAPTER 1**

#### **SUBJECT MATTER AND SCOPE**

##### *Article 1*

1. This Regulation lays down the rules for the establishment and financial implementation of the resources of the 9<sup>th</sup> European Development Fund (hereinafter “the EDF”).
2. Unless otherwise specified, references in this Regulation to the ACP States shall be deemed to refer also to the bodies or representatives defined in Articles 13 and 14 of Annex IV to the ACP-EC Agreement, which they may duly mandate to exercise their responsibilities under that Agreement.

### **CHAPTER 2 PRINCIPLE OF THE UNIT OF ACCOUNT**

##### *Article 2*

The resources of the EDF shall be established and implemented in euros and the accounts shall be presented in euros.

However, for the treasury management purposes referred to in Article 27 of this Regulation, the accounting officer may carry out operations in euros, in other currencies and in national currencies.

### **CHAPTER 3 PRINCIPLE OF SPECIFICATION**

##### *Article 3*

The resources of the EDF shall be earmarked for specific purposes according to the main instruments of co-operation, that is to say, for support for long-term development, support for co-operation and regional integration, and the Investment Facility.

In respect of the African, Caribbean and Pacific States, hereinafter “the ACP States”), those instruments are laid down by the Financial Protocol set out in Annex I to the ACP-EC

Agreement. Earmarking of resources shall also be based on the provisions of the Internal Agreement and shall take account of the non-allocated reserve provided for in Article 2(2) of that Agreement and of the resources reserved for costs linked to implementation under Article 4 thereof.

In respect of the Overseas Countries and Territories, hereinafter “the OCTs”, those instruments are laid down in Annex II A to the Overseas Association Decision. Earmarking of those resources shall also take account of the non-allocated reserve provided for in Article 3(3) of that Annex and of the resources reserved for studies or technical assistance measures under Article 1(1)(c) thereof.

## **CHAPTER 4 PRINCIPLE OF SOUND FINANCIAL MANAGEMENT**

### *Article 4*

1. EDF resources shall be used in accordance with the principles of sound financial management, that is to say, in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used for the pursuit of activities be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency is concerned with the best relationship between resources employed and results achieved.

The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

3. Objectives shall be set and achievement of those objectives shall be monitored by means of measurable indicators. To that end, the use of EDF resources must be preceded by an *ex ante* evaluation of the operation to be undertaken with a view to ensuring that the intended results justify the means deployed.
4. Programmes or operations shall be periodically examined, particularly in relation to the estimates of calls for contributions referred to in Article 39(1), so that it can be established that they are justified.

## **CHAPTER 5 PRINCIPLE OF TRANSPARENCY**

### *Article 5*

1. The resources of the EDF shall be established and implemented and the accounts presented in compliance with the principle of transparency.

2. The annual estimates of commitments and payments under Article 10 of the Internal Agreement, together with the EDF accounts referred to in Article 96 of this Regulation, shall be published in the *Official Journal of the European Communities*.

## **TITLE II**

### **COMPOSITION AND STRUCTURE OF EDF RESOURCES**

#### **CHAPTER 1**

#### **COMPOSITION OF EDF RESOURCES**

##### *Article 6*

1. The EDF shall consist of:
  - a) the amount laid down in Article 1 of the Internal Agreement;
  - b) pursuant to Article 1(2)(b) of the Internal Agreement, any balances remaining from previous EDFs as defined in Title I of Part Three of this Regulation.
2. The revenue accruing from interest on the appropriations referred to in paragraph 1 deposited with the paying agents in Europe referred to in Article 37 of Annex IV to the ACP-EC Agreement shall be credited to one or more bank accounts opened in the name of the Commission, and shall be used in accordance with Article 9 of the Internal Agreement and with this Regulation.
3. The breakdown of allocations laid down by the ACP-EC Agreement and by the Internal Agreement is indicated in the Annex to this Regulation for information purposes.

##### *Article 7*

The amount laid down in Article 4 of the Internal Agreement shall be reserved for the financing of costs linked to implementation incurred by the Commission in the framework of the ACP-EC Agreement. It shall be utilised in accordance with the principles set out in Article 9 of the Internal Agreement.

Those resources shall be used *inter alia* to reinforce the administrative capacities of the Commission and its Delegations in order to ensure the smooth preparation and implementation of operations financed from the EDF.

## **CHAPTER 2**

### **CONTRIBUTIONS TO THE EDF**

#### *Article 8*

1. Each year, the Commission shall establish and communicate to the Council, by 15 October at the latest, a statement of the payments to be made in the following financial year and a schedule of the calls for contributions. In so doing, the Commission shall take into account the estimates submitted to it by the European Investment Bank (EIB), in accordance with Article 121 concerning operations, including interest rate subsidies, managed by the EIB.

The Commission shall justify the amount requested on the basis of its capacity to deliver the proposed level of resources effectively. The EIB shall justify the amount requested on the basis of its operational requirements. The Council shall decide on those justifications and on each call for contributions in accordance with the rules referred to in Article 10 of the Internal Agreement and laid down in Article 39 of this Regulation.

2. As regards balances remaining from previous EDFs which are transferred to the 9<sup>th</sup> EDF in accordance with Article 6, the contributions of each Member State shall be calculated in proportion to the contribution of that State to the EDF in question.
3. The Commission's annual estimates of contributions shall cover:
  - (a) its estimates of commitments for the following financial year, and those of the EIB;
  - (b) its estimates of commitments and disbursements for each of the four years following the year relating to the call for contributions, and those of the EIB. The schedule shall be approved and reviewed annually by the Council.
4. Should the contributions prove insufficient to meet the EDF's actual needs in the financial year in question, any supplementary payments may be decided upon in accordance with Article 10(4) of the Internal Agreement.
5. Payments of contributions by the Member States shall be made in accordance with Article 39.

# **TITLE III**

## **IMPLEMENTATION OF EDF RESOURCES**

### **CHAPTER 1**

#### **GENERAL PROVISIONS**

##### *Article 9*

1. The Commission shall assume the Community's responsibilities defined in Article 57 of the ACP-EC Agreement and in the Overseas Association Decision. To that end, it shall undertake the financial implementation of operations carried out with EDF resources allocated in the form of non-repayable aid, excluding interest rate subsidies, and make payments in accordance with this Regulation.

In applying this Regulation, the Commission shall act on its own responsibility and within the limits of the resources allocated.

2. The EIB, acting on behalf of the Community, shall manage the Investment Facility, as well as interest rate subsidies, and shall conduct operations thereunder, in accordance with the rules set out in Part Two. In that context, the Bank shall act on behalf of and at the risk of the Community.

The EIB shall undertake the financial implementation of operations carried out by means of loans from its own resources, where applicable combined with interest rate subsidies drawn from the EDF's grant resources.

3. The provisions of this Part, together with those of Part Three, shall apply exclusively to the financial implementation of the EDF resources managed by the Commission. Those provisions may not be interpreted as giving rise to any obligations on the Commission's part in respect of the financial implementation of EDF resources managed by the EIB.

##### *Article 10*

The Commission may, within its own departments, delegate its powers to implement EDF resources, in accordance with the conditions laid down by this Regulation and within the limits set by the Commission in the instrument of delegation. Delegates may act only within the limits of the powers expressly conferred upon them.

##### *Article 11*

All financial actors as defined in Chapter 3 shall be prohibited from taking any measures implementing EDF resources which may bring their own interests into conflict with those of the Community. Should such a case arise, the actor in question must refrain from such measures and refer the matter to the competent authority.

## *Article 12*

1. In accordance with the procedures laid down for financing proposals in Articles 24(1) and (3) of the Internal Agreement, and in order to speed up those procedures, the Commission shall submit financing proposals concerning the authorisation of overall amounts allocated to the financing of the activities referred to in Article 16(7) of Annex IV to the ACP-EC Agreement. After the proposal has been adopted, the Commission may take financing decisions on the basis of the global authorisation.
2. The financing proposals referred to in paragraph 1 must specify the objectives and, where appropriate, the intended impact of the Community contribution. They must also describe the viability of the activities, previous experience and earlier evaluations, and coordination with other donors.

## **CHAPTER 2 METHODS OF IMPLEMENTATION**

### *Article 13*

The Commission shall undertake the financial implementation of EDF resources by means of decentralised management with the ACP States in accordance with the conditions set out in the ACP-EC Agreement and applying the breakdown of responsibilities provided for in Article 57 of that Agreement and Articles 34, 35 and 36 of Annex IV thereto.

The Commission shall undertake the financial implementation of EDF resources by means of decentralised management with the OCTs in accordance with the conditions set out in the Overseas Association Decision and in the measures implementing that Decision.

In certain specific cases provided for in the ACP-EC Agreement, in the Internal Agreement, in the Overseas Association Decision and in the measures implementing that Decision, the Commission may undertake the financial implementation of EDF resources by centralised management.

In certain specific cases provided for in the ACP-EC Agreement, in the Internal Agreement, in the Overseas Association Decision and in the measures implementing that Decision, the Commission may undertake the financial implementation of EDF resources by means of joint management with international organisations.

EDF resources may also be associated with funds from other sources in order to achieve a joint objective.

### *Article 14*

1. In the context of decentralised management, the Commission shall undertake the financial implementation of EDF resources in accordance with the detailed rules laid down in paragraphs 2, 3 and 4.
2. The Commission and the beneficiary ACP States or OCTs shall:

- (a) check regularly that the operations financed by the EDF have been properly implemented;
  - (b) take appropriate measures to prevent irregularities and fraud and if necessary bring prosecutions to recover funds wrongly paid.
3. In order to ensure that funds are used in accordance with the applicable rules and within the limits of powers thereby conferred upon it, the Commission shall implement clearance of account procedures or financial correction mechanisms enabling it to discharge its obligations under the ACP-EC Agreement, in particular under Article 34(1) of Annex IV thereto, and under the Overseas Association Decision, in particular under Articles 20 and 32 thereof, for the clearance of expenditure financed from EDF resources.

The implementation by ACP States and OCTs of operations financed from EDF resources shall be subject to Commission scrutiny, which may be exercised by prior approval, by *ex post* checks or by a combined procedure, in accordance with the provisions of the ACP-EC Agreement, the Overseas Association Decision and the measures implementing that Decision.

4. Depending on the degree of decentralisation provided for in the ACP-EC Agreement and in the Overseas Association Decision and the measures implementing that Decision, the Commission shall strive to encourage the beneficiary ACP States and the OCTs to adhere, when exercising the powers entrusted to them under the ACP-EC Agreement and under the Overseas Association Decision, to the principle of sound financial management set out in Article 4, in particular the progressive application of the following criteria:
- (a) effective segregation of the duties of authorising officer and accounting officer;
  - (b) existence of an effective system for the internal control of management operations;
  - (c) separate procedures for the presentation of accounts showing the use made of EDF resources;
  - (d) existence of an independent, public or private external audit system;
  - (e) transparent, non-discriminatory procurement procedures which prevent any conflict of interests;
  - (f) in the case of the direct-labour operations referred to in Article 80(2), adequate provisions for the management and scrutiny of imprest accounts and for the definition of the responsibilities of the imprest administrator and the accounting officer.

For the purposes of applying the first subparagraph, the Commission shall, in agreement with the beneficiary ACP States and OCTs, incorporate appropriate provisions in the financing agreements referred to in Article 52(3).

## Article 15

1. Where the Commission implements EDF resources on a centralised basis, implementing tasks shall be performed either directly in its departments or indirectly, in accordance with paragraphs 2 to 7 of this Article and with Articles 16 and 17.
2. The Commission may not entrust to third parties its implementing powers under the ACP-EC Agreement or the Overseas Association Decision where those powers involve a large measure of discretion implying political choices.

The first subparagraph shall apply in particular to the financing decisions provided for in Article 52(2).

3. Subject to the limits laid down in paragraph 2, the Commission may entrust tasks involving the exercise of public authority, in particular financial implementation tasks, to:
  - (a) the executive agencies referred to in Article 16;
  - (b) national bodies governed by public law or private sector bodies with a public service mission and offering adequate financial guarantees for the implementation of the tasks assigned to them within the framework defined in this paragraph.

In the case, referred to in point (b) of the first subparagraph, of programmes or projects co-financed by the Member States or their implementing bodies and reflecting the priorities laid down in the Country Co-operation Strategies provided for in Chapter III of the Internal Agreement and in Article 20 of the Overseas Association Decision, the Commission may entrust responsibility for managing Community aid to Member States or to their implementing bodies. The Commission may draw on the EDF resources provided for in Article 1(2)(a)(i) and (ii) of the Internal Agreement in order to pay financial compensation for the administration costs incurred.

Implementing tasks may be entrusted to the bodies referred to in point (b) of the first subparagraph only if a prior analysis shows that the delegation of such tasks is the best way of meeting the requirements of sound financial management, if the principle of non-discrimination is applied and if the visibility of the Community's contribution is fully guaranteed. The implementing tasks thus delegated must not give rise to conflicts of interests. If the analysis indicates that the delegation of tasks will meet the needs of sound financial management, the Commission shall request the opinion of the EDF Committee provided for in Article 21 of the Internal Agreement before proceeding to implement such delegation. The EDF Committee may also give its views on the planned application of the selection criteria.

The financial guarantees referred to in point (b) of the first subparagraph shall apply *inter alia* to the full recovery of any amounts payable by the bodies concerned.

4. Where indirect methods of implementation are used, as provided for in paragraph 3, the implementing tasks entrusted must be clearly defined and supervised. The bodies responsible for implementation shall:

- (a) conduct regular checks to ensure that the operations to be financed have been implemented correctly;
  - (b) take appropriate measures to prevent irregularities and fraud and if necessary bring prosecutions to recover funds lost, wrongly paid or badly used.
5. The decisions, referred to in paragraph 3, entrusting implementing tasks shall cover all appropriate arrangements for ensuring the transparency of operations carried out and must provide for:
- (a) an independent external audit;
  - (b) an effective internal control system for management operations;
  - (c) accounting arrangements for those operations and procedures for the presentation of the accounts which will enable the correct use of EDF resources to be ascertained and the true extent of that use to be reflected in the accounts;
  - (d) procurement and grant award procedures which comply with the provisions of Titles IV and VI.

The Commission may accept that the audit, accounting and procurement systems of the national bodies referred to in paragraph 3 are equivalent to its own, with due account for internationally accepted standards.

6. The Commission shall ensure periodic supervision, evaluation and control of the implementation of the tasks entrusted to the bodies referred to in paragraph 3. The European Anti-Fraud Office (OLAF) shall enjoy the same powers with regard to such bodies as it does with regard to Commission departments. The bodies in question shall adopt the necessary measures to help OLAF carry out internal investigations. Any act undertaken by such bodies for the financial implementation of EDF resources, and in particular any decision or any contract concluded by them, must specifically provide for the same controls as Article 52(4).
7. The Commission may not entrust measures implementing funds deriving from EDF resources, such as payment and recovery, to external private sector entities or bodies other than those referred to in point (b) of the first subparagraph of paragraph 3.

The tasks which the Commission may entrust by contract to external private sector entities or bodies other than those referred to in point (b) of the first subparagraph of paragraph 3 shall be technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary power.

#### *Article 16*

The executive agencies shall be legal persons under Community law created by Commission decision, to which power may be delegated to implement all or part of a Community programme or project on behalf of the Commission and on its responsibility, in accordance with the Council Regulation laying down the statute for executive agencies to be entrusted with certain tasks relating to the management of Community programmes.

### *Article 17*

In the context of joint management with international organisations, the latter shall, in their accounting, audit, control and procurement procedures, apply standards which offer guarantees equivalent to internationally accepted standards. The implementation by international organisations of operations financed from EDF resources shall be subject to scrutiny by the Commission. Such scrutiny shall be exercised by prior approval, by *ex post* checks or by a combined procedure.

## **CHAPTER 3 FINANCIAL ACTORS**

### **SECTION 1: PRINCIPLE OF SEGREGATION OF DUTIES**

#### *Article 18*

1. The duties of authorising officer and accounting officer shall be segregated and mutually incompatible.
2. Save where otherwise indicated, references in this Regulation to the authorising officer or to the authorising officer responsible shall be deemed to refer to the Commission's authorising officers defined in Section 2. References to the accounting officer shall be deemed to refer to the Commission's accounting officers defined in Section 3.

### **SECTION 2: AUTHORISING OFFICER**

#### *Article 19*

1. In the context of the financial implementation of the operations referred to in Article 9(1), the Commission shall perform the duties of authorising officer.
2. The Commission shall determine the staff of an appropriate level to whom it shall delegate the duties of authorising officer, and shall delimit the powers delegated and the circumstances in which delegates may subdelegate those powers.
3. In accordance with Article 34 of Annex IV to the ACP-EC Agreement, the Commission shall appoint an authorising officer by delegation as Chief Authorising Officer of the EDF. It shall also define his duties in respect of the implementation of the Overseas Association Decision. The Chief Authorising Officer may delegate his powers to authorising officers by subdelegation.
4. The powers of authorising officer shall be delegated or subdelegated only to persons covered by the Staff Regulations of officials and the conditions of employment of other servants of the European Communities (hereinafter "the Staff Regulations").
5. The rules on spheres of competence adopted in this Title shall apply to authorising officers by delegation or subdelegation. Authorising officers by delegation or

subdelegation may act only within the limits set by the instrument of delegation or subdelegation. Each delegation or subdelegation decision shall indicate the limits and, where appropriate, the duration of the delegation. The authorising officer by delegation or subdelegation may be assisted in his task by one or more members of staff entrusted, under the responsibility of the former, with certain operations required for the implementation of the budget and production of the accounts.

6. Decisions taken pursuant to paragraphs 2, 3 and 5 shall be notified to the delegates, the accounting officer, the internal auditor and the Court of Auditors.

#### *Article 20*

The authorising officer entrusted with the management of EDF resources shall be responsible for implementing revenue and expenditure in accordance with the principle of sound financial management and for ensuring that the requirements of legality and regularity are complied with.

#### *Article 21*

1. To implement expenditure, the Chief Authorising Officer and authorising officers by subdelegation shall make commitments, validate expenditure and authorise payments and shall undertake the preliminaries for the implementation of EDF resources.
2. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.

#### *Article 22*

1. Save in cases where management is centralised, operations relating to the implementation of programmes or projects shall be carried out by the national or regional authorising officer, as defined in Article 35 of Annex IV to the ACP-EC Agreement and in the measures implementing the Overseas Association Decision, in close co-operation, in the ACP States, with the head of delegation in accordance with Articles 35 and 36 of Annex IV to the ACP-EC Agreement.
2. The head of delegation shall be an authorising officer by subdelegation and, in exercising the powers delegated to him, he shall be subject to this Regulation. He shall receive the necessary instructions and powers to perform his duties as defined in Article 36 of Annex IV to the ACP-EC Agreement and in the measures implementing the Overseas Association Decision.

#### *Article 23*

- 1 The Chief Authorising Officer shall take all measures necessary for the implementation of Annex IV to the ACP-EC Agreement and Articles 18 and 33 of the Overseas Association Decision and Annexes II A to II D thereto.

2. The Chief Authorising Officer shall take all measures necessary to ensure that national, regional or local authorising officers perform the tasks for which they are responsible by virtue of the ACP-EC Agreement, and in particular Annex IV thereto, and by virtue of the Overseas Association Decision or measures implementing that Decision. In close co-operation with the National Authorising Officer, he shall take such commitment decisions and financial measures as prove necessary, from an economic and technical point of view, to ensure the proper execution of operations.

#### *Article 24*

Where the Chief Authorising Officer becomes aware of problems in carrying out procedures relating to management of EDF resources, he shall, in conjunction with the national or regional authorising officer, make all contacts necessary to remedy the situation and take any steps appropriate. For instance, in cases where the national or regional authorising officer does not or is unable to perform the duties incumbent on him under the ACP-EC Agreement, the Chief Authorising Officer may temporarily take his place, in which case, the Commission may receive, from the resources allocated to the ACP State in question, financial compensation for the extra administrative workload incurred.

Any measure taken by the Chief Authorising Officer pursuant to the first paragraph shall be taken in the name of and on behalf of the national or regional authorising officer concerned.

#### *Article 25*

1. In compliance with the minimum standards adopted by the Commission and having due regard to the risks associated with the management environment and the nature of the operations financed, the Chief Authorising Officer shall put in place the organisational structure and the internal management and control systems and procedures suited to the performance of his duties, including where appropriate *ex post* checks. Before an operation is authorised, the operational and financial aspects shall be verified by staff other than the member of staff who initiated the operation. Initiation of an operation and the *ex ante* and *ex post* verification of that operation shall be separate functions.
2. All staff responsible for controlling the management of financial operations must have the necessary professional skills. They shall respect a specific code of professional standards established by the Commission.
3. Any member of staff involved in the financial management and control of operations who considers that a decision which his superior requires him to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules by which he is bound shall inform the Chief Authorising Officer in writing and, if the latter fails to take action, the panel referred to in Article 36(3). In the event of fraud, corruption or any other illegal activity which may harm the interests of the Community, he shall inform OLAF and the authorities designated by the Staff Regulations.

## *Article 26*

The Chief Authorising Officer shall report to the Commission on the performance of his duties in the form of an annual activity report, which shall include financial and management information. The report shall cover the results of his operations by reference to the objectives set, the risks associated with those operations, the use made of the resources provided and the functioning of the internal control system. The annual activity report and other specified information shall be brought to the attention of the internal auditor of the Commission. By 15 June each year at the latest, the Commission shall send the European Parliament and the Council a summary of the annual activity report for the previous year.

### **SECTION 3: ACCOUNTING OFFICER**

## *Article 27*

1. The accounting officer shall be responsible for:
  - (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
  - (b) preparing and presenting the financial statements and reports on financial implementation in accordance with Articles 100 and 101;
  - (c) keeping the accounts for:
    - (i) the allocations referred to in Article 6, except those for the Investment Facility, and interest rate subsidies;
    - (ii) the commitments referred to in Article 52;
    - (iii) payments, revenue and debts;
  - (d) laying down, in accordance with Title VII, the accounting rules and methods and the chart of accounts;
  - (e) defining and validating the accounting systems and, where appropriate, validating systems defined by the Chief Authorising Officer for the purpose of supplying or explaining accounting information;
  - (f) treasury management.
2. The accounting officer shall obtain from the Chief Authorising Officer and from the EIB, who shall, each for their own part, guarantee its reliability, all the information necessary for the production of accounts giving a true image of the financial implementation of EDF resources.
3. The accounting officer is alone empowered to handle monies and other assets. He shall be responsible for their safekeeping.

## *Article 28*

The accounting officer shall be appointed by the Commission. The accounting officer may, for the performance of his duties, delegate certain tasks to subordinates who are subject to the Staff Regulations. The instrument of delegation shall define the tasks entrusted to the delegates.

Decisions taken pursuant to the first paragraph shall be notified to the delegates, the Chief Authorising Officer, the internal auditor and the Court of Auditors.

## **SECTION 4: PAYING AGENT**

### *Article 29*

In order to make the payments provided for in Article 37(1) and (4) of Annex IV to the ACP-EC Agreement or in the measures implementing the Overseas Association Decision, the accounting officer shall open accounts with financial institutions in the ACP States and the OCTs, for payments in the national currencies of the ACP States or in the local currencies of the OCTs, and with financial institutions in the Member States, for payments in euros and other currencies. Subject to Article 37(2) of Annex IV to the ACP-EC Agreement, deposits in those accounts shall bear interest. Such interest shall be credited to the one of the accounts provided for in Article 1(3) of the Internal Agreement.

### *Article 30*

The relations between the Commission and the paying agents provided for in Article 37 of Annex IV to the ACP-EC Agreement or in the measures implementing the Overseas Association Decision shall be the subject of contracts. Once signed, copies of those contracts shall be sent to the Court of Auditors for information purposes.

### *Article 31*

1. The Commission shall transfer from the special accounts opened pursuant to Article 41(3) the amounts needed to replenish the accounts opened in its name in accordance with Article 29. Such transfers shall be made on the basis of the cash needs of the projects and programmes.
2. The Commission shall endeavour to make any withdrawals from the special accounts referred to in the first subparagraph of Article 41(3) in such a way as to maintain a distribution of its assets in those accounts corresponding to the proportions in which the various Member States contribute to the EDF.

### *Article 32*

The signatures of the Commission officials and staff who are empowered to carry out operations on the EDF's accounts shall be lodged with the banks concerned when the accounts are opened or, in the case of officials and staff who are authorised subsequently, when they are designated. That procedure also applies to the lodging of signatures of national and regional authorising officers and their deputies for operations in paying agent accounts

opened in the ACP States or the OCTs and, where appropriate, in the accounts opened in the Member States.

## **CHAPTER 4 LIABILITY OF THE FINANCIAL ACTORS**

### **SECTION 1: GENERAL RULES**

#### *Article 33*

1. Without prejudice to any disciplinary action, the Chief Authorising Officer and authorising officers by subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.
2. Without prejudice to any disciplinary action, accounting officers may at any time be suspended temporarily or definitively from their duties by the Commission.

#### *Article 34*

1. The provisions of this Chapter are without prejudice to the criminal law liability which the persons referred to in Article 33 may incur under the applicable national law and the legislation in force on the protection of the European Communities' financial interests and on the fight against corruption involving officials of the European Communities or officials of Member States.
2. Each authorising officer or accounting officer shall be liable to disciplinary action and payment of compensation as provided for in the Staff Regulations, without prejudice to Articles 35, 36 or 37 of this Regulation. In the event of fraud, corruption or any other illegal activity which may harm Community interests, OLAF and the authorities designated by the Staff Regulations shall be informed.

### **SECTION 2: RULES APPLICABLE TO AUTHORISING OFFICERS**

#### *Article 35*

Authorising officers shall be liable to pay compensation in accordance with the conditions laid down in the Staff Regulations, under which an official may be required to make good, in whole or in part, any damage suffered by the Communities as a result of serious misconduct on his part in the course of or in connection with the performance of his duties, in particular in the event of failure to comply with the Financial Regulation and the rules for its implementation when establishing entitlements to be recovered or issuing recovery orders, entering into a commitment of expenditure or signing a payment order. The same shall apply if they omit to draw up a document establishing a debt or if they neglect to issue recovery orders or are, without justification, late in issuing them, or if they neglect to issue payment orders or are, without justification, late in issuing them, thereby rendering the institution liable to civil action by third parties.

### *Article 36*

1. Where the Chief Authorising Officer or an authorising officer by subdelegation considers that a decision which it is his responsibility to take is irregular or contrary to the principles of sound financial management, he shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the Chief Authorising Officer or authorising officer by subdelegation to take the decision in question, the latter may not be held liable.
2. In the event of internal subdelegation, the Chief Authorising Officer shall continue to be responsible for the effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation.
3. The specialised panel set up by the Commission in accordance with Regulation (EC, Euratom) No [.../...] (hereinafter “the General Financial Regulation”), shall have competence to determine, in relation to the EDF, whether a financial irregularity has occurred and, if so, the consequences entailed, if any . In respect of the management of EDF resources by the Commission, cases shall be referred to that panel as provided for in the detailed rules for implementing the General Financial Regulation.

On the basis of the panel's opinion, the Commission shall decide whether to initiate proceedings entailing liability to disciplinary action or to payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the Chief Authorising Officer and to the internal auditor.

## **SECTION 3: RULES APPLICABLE TO ACCOUNTING OFFICERS**

### *Article 37*

An accounting officer shall be liable to disciplinary action and payment of compensation, as provided for and in accordance with the procedures laid down in the Staff Regulations, in particular where:

- (a) he loses or damages monies, assets and documents in his keeping;
- (b) he unduly alters bank accounts or postal giro accounts;
- (c) he recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- (d) he fails to collect revenue due.

## CHAPTER 5 – REVENUE OPERATIONS

### SECTION 1: MAKING AVAILABLE OF EDF RESOURCES

#### *Article 38*

EDF revenue consists of payments made by the Member States in accordance with the Internal Agreement and this Regulation, the income generated by deposits in accordance with Article 6(2) of this Regulation and any other sum whose acceptance is established by the Council and which must be earmarked for the same purposes as the resources defined in Articles 6(2) and 7 of this Regulation.

#### *Article 39*

1. The Member States' annual contributions shall be determined by the Council, acting by the qualified majority provided for in Article 21 of the Internal Agreement, on a proposal from the Commission, and shall consist of four instalments payable on:
  - (a) 20 January;
  - (b) 1 April;
  - (c) 1 July;
  - (d) 1 November.

The Commission shall lay the relevant proposals before the Council no later than 15 days before the due dates.

Supplementary contributions for the financial year decided on by the Council in accordance with Article 10(4) of the Internal Agreement shall, unless the Council decides otherwise, be due and be made within as brief a period as possible which shall be laid down in the decision to call for such contributions and which may not exceed three months.

2. Each call for contributions shall specify, in accordance with Article 9:
  - (a) the amount of the contributions required to finance the EDF operations managed by the Commission;
  - (b) the amount of the contributions required to finance the EDF operations managed by the EIB, including interest rates subsidies.
3. The amounts to be paid by each Member State and referred to in paragraph 2 of this Article shall be set in such a way as to be in proportion to that State's contributions to the EDF as fixed in Article 1(2) of the Internal Agreement and indicated in the Annex to this Regulation, for each of the amounts referred to in paragraph 2 of this Article.

#### Article 40

This Part and Part Three shall apply only to revenue collected by the Commission pursuant to Article 41.

#### Article 41

1. The financial contributions of the Member States shall be expressed in euros.
2. Each Member State shall pay the amount of its contribution in euros.
3. In respect of the amount due to the Commission under Article 39(2)(a), financial contributions shall be credited by each Member State to a special account entitled "Commission of the European Communities - European Development Fund" opened with the bank of issue of that Member State or the financial institution designated by it. The amount of such contributions shall remain in those special accounts until the payments provided for in Article 37 of Annex IV to the ACP-EC Agreement or in the measures implementing the Overseas Association Decision need to be made.

In respect of the amount due to the EIB under Article 39(2)(b), financial contributions shall be credited by each Member State, in accordance with the detailed rules laid down in Article 122, to an account opened with the EIB in the name of each Member State.

Where necessary, the Commission shall provide appropriate technical assistance in the implementation of the Council decisions referred to in Article 39.

4. Where an instalment of contributions payable under this Article is not paid on the due date, the Member State concerned shall be required to pay interest in respect of the unpaid amount at a rate of two percentage points above the interest rate applied by the European Central Bank to its main refinancing operations, as published in the C series of the *Official Journal of the European Community*, on the first working day of the month in which the amount falls due. That rate shall be increased by a quarter of a percentage point for each month of delay. The increased rate shall be applicable to the entire period of delay.

In respect of the amount due to the Commission under Article 39(2)(a), such late payment interest shall be credited to one of the accounts provided for in Article 6(2).

In respect of the amount due to the EIB under Article 39(2)(b), such late payment interest shall be credited to the EIB.

5. Upon expiry of the financial protocol set out in Annex I to the ACP-EC Agreement, that part of the contributions which the Member States remain obliged to pay in accordance with Article 39 of this Regulation shall be called up by the Commission, as required, in accordance with the conditions laid down in this Regulation.

## **SECTION 2: ESTIMATES OF AMOUNTS RECEIVABLE**

### *Article 42*

The authorising officer responsible shall first make an estimate of the amount receivable in respect of any measure or situation which may give rise to or modify an amount owing to the EDF and is brought to the Commission's attention by the National Authorising Officer or is noticed by the Commission itself. Such estimates shall be sent to the accounting officer for recording in the accounts. They shall mention the type of revenue and the budget item to which it is to be booked and also, as far as possible, the estimated amount involved and the name and description of the debtor. When drawing up estimates of amounts receivable, the accounting officer responsible shall check that:

- (a) the revenue is booked to the correct item;
- (b) the estimated amount receivable is in order and conforms to the relevant provisions relating to the management of the EDF and all acts adopted pursuant thereto and to the principle of sound financial management referred to in Article 4.

## **SECTION 3: ESTABLISHMENT OF AMOUNTS RECEIVABLE**

### *Article 43*

Establishment of an amount receivable is the act by which the authorising officer responsible:

- (a) verifies that the debt exists;
- (b) determines or verifies the reality and the amount of the debt;
- (c) verifies the conditions in which the debt is due.

## **SECTION 4: PRINCIPLE OF RECOVERY**

### *Article 44*

1. Amounts wrongly paid shall be recovered.
2. The Commission shall lay down the conditions in which interest on late payment is due to the Communities.

## **SECTION 5: AUTHORISATION OF RECOVERY**

### *Article 45*

1. The authorisation of recovery is the act whereby the authorising officer responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he has established.

2. Without prejudice to the responsibilities of the ACP States or the OCTs, the Commission may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable within the meaning of Article 256 of the Treaty.

#### *Article 46*

Every debt that is identified as being certain, of a fixed amount and due in the context of the implementation of EDF resources shall be established by means of a recovery order given to the accounting officer, followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible. The recovery order shall be accompanied by supporting documents certifying the established entitlements. When drawing up the recovery order, the authorising officer responsible shall ensure that:

- (a) the revenue is booked to the correct item;
- (b) the recovery order is in order and conforms to the relevant provisions;
- (c) the supporting documents are in order;
- (d) the particulars of the debtor are correct;
- (e) the due date is indicated;
- (f) the order conforms to the principle of sound financial management referred to in Article 4;
- (g) the amount and currency of the sum to be recovered are correct.

Such recovery orders shall be recorded in the accounts by the accounting officer.

### **SECTION 6: RECOVERY**

#### *Article 47*

1. The accounting officer shall act on recovery orders for amounts receivable that have been duly established by the authorising officer responsible. He shall exercise due diligence to ensure that the EDF receives its revenue by the due dates indicated in the recovery orders and ensure that the relevant rights of the Communities are safeguarded.
2. If recovery has not actually taken place by the due date specified in the recovery order, the accounting officer shall inform the authorising officer responsible and immediately initiate the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting or, if this is not possible, by enforced recovery.
3. The accounting officer shall recover amounts by offsetting them against equivalent claims that the EDF or the Communities has on any debtor who himself has a claim on the EDF or the Communities that is certain, of a fixed amount and due.

4. In connection with the direct labour operations referred to in Title V, where claims that the EDF has on the National Authorising Officer via the public or semi-public bodies or departments of the ACP State or OCT concerned are not recovered within the prescribed time-limits, the authorising officer responsible shall take all the necessary measures to obtain actual repayment of the sums due, including, where appropriate, suspension by the Chief Authorising Officer of the use of that type of arrangement for that State or OCT.

#### *Article 48*

1. Where the authorising officer responsible is planning to waive recovery of an established amount receivable, he shall ensure that the waiver is in order and complies with the principles of sound financial management and proportionality in accordance with procedures and criteria previously laid down by the Commission for that purpose. The waiver decision must be substantiated and taken by the Chief Authorising Officer, who may delegate the decision only as laid down by the Commission.
2. The detailed rules for implementing the General Financial Regulation shall apply *mutatis mutandis* to the implementation of this Article.

## **CHAPTER 6 EXPENDITURE OPERATIONS**

### **SECTION 1: GENERAL PROVISIONS**

#### *Article 49*

1. Every item of expenditure shall be committed, validated, authorised and paid.
2. The decisions and procedures for commitment of expenditure by the Commission are defined in this Chapter.

### **SECTION 2: COMMITMENT OF EXPENDITURE: PRINCIPLES AND DEFINITIONS**

#### *Article 50*

The commitment of expenditure shall be preceded by a financing decision adopted by the Commission or by the authorities delegated by the Commission.

#### *Article 51*

1. The financial commitment by the Commission is the operation reserving the appropriation necessary to cover subsequent payments to honour a legal commitment.

The legal commitment by the Commission is the act whereby the authorising officer responsible enters into an obligation with regard to third parties which may result in expenditure being charged to the EDF.

The financial commitment and the legal commitment shall be adopted by the same authorising officer. That rule may be waived:

- (a) in the case of administrative expenditure incurred by the Commission within the meaning of paragraph 4 in respect of which the financial commitments have been divided in accordance with paragraph 3;
- (b) where global commitments relate to financing agreements under Article 52(3).

2. The Commission's financial commitment is individual when the beneficiary and the amount of the expenditure are known.

The Commission's financial commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

3. Financial commitments for Commission administrative expenditure may be divided over several years into annual instalments. The corresponding legal commitments shall stipulate that division.

4. The following shall be regarded as administrative expenditure for the purposes of point (a) of the third subparagraph of paragraph 1:

- (a) expenditure on human resources other than regular staff;
- (b) training expenditure;
- (c) mission expenses;
- (d) representation expenses;
- (e) meeting expenses;
- (f) expenses relating to freelance interpreters and/or translators;
- (g) expenses relating to exchanges of officials;
- (h) cost of recurring rentals of movable and immovable property;
- (i) cost of miscellaneous insurance;
- (j) cost of cleaning and maintenance;
- (k) costs related to the use of telecommunications services;
- (l) cost of water, gas and electricity;
- (m) outlay for periodical publications.

#### *Article 52*

1. The authorising officer responsible must first make a financial commitment before entering into a legal obligation, binding upon the the Commission, with third parties.
2. Financing decisions taken by the Commission, in accordance with the ACP-EC Agreement or the Overseas Association Decision, which authorise it to grant financial aid from the EDF, shall give rise to financial commitments by the Commission.
3. The following shall constitute legal commitments by the Commission:
  - (a) a financing agreement between the Commission, acting for the Community, and the beneficiary ACP State or States or the beneficiary OCTs or the bodies they have designated;
  - (b) a contract or grant agreement between the Commission and national or international public-sector bodies or natural or legal persons responsible for carrying out the operations.
4. Each financing agreement, contract or grant agreement shall provide expressly for the Commission, including OLAF, and the Court of Auditors, to exercise their powers of control, on documents and on the spot, over all contractors and subcontractors who have received financing from EDF resources.

#### *Article 53*

When adopting a financial commitment, the authorising officer responsible shall ensure that:

- (a) the expenditure has been charged to the correct item in the budget;
- (b) the appropriations are available;
- (c) the expenditure conforms to the relevant provisions, in particular of the ACP-EC Agreement, the Overseas Association Decision, the Internal Agreement, this Regulation, and all acts adopted in implementation of those provisions;
- (d) the principle of sound financial management is complied with.

### **SECTION 3: COMMITMENT OF EXPENDITURE UNDER CENTRALISED MANAGEMENT**

#### *Article 54*

1. Where EDF resources are managed by the Commission on a centralised basis or jointly, the commitment of expenditure shall be subject to the provisions of this Section.
2. Individual legal commitments relating to individual financial commitments shall be concluded by the Commission by 31 December of year N at the latest, year N being

the year in which the Commission's individual financial commitment was adopted, subject to Article 51(3).

As a general rule, global financial commitments shall cover the total cost of the corresponding individual legal commitments concluded by the Commission up to 31 December of year N + 1, year N being the year in which the Commission's global financial commitment was adopted, subject to Article 51(3).

However, where the global commitments referred to in Article 52(3) are implemented, the Commission shall conclude the corresponding individual contracts and agreements by no later than three years from the date of the financial commitment. Individual contracts and agreements relating to audit and evaluation may be concluded later.

At the end of the periods referred to in the first and second subparagraphs, the unused balance of those financial commitments shall be decommitted by the authorising officer responsible.

3. The amount of each individual legal commitment adopted by the Commission following a global commitment shall, prior to signature, be registered by the authorising officer responsible in the EDF financial accounts and booked to the global commitment.
4. The legal commitments entered into for operations extending over more than one financial year and the corresponding financial commitments shall have a final date for implementation set in accordance with the requirements of sound financial management, save in the case of the administrative expenditure referred to in Article 51(3).

Any parts of such commitments which have not been implemented six months after that date shall be decommitted and the corresponding appropriations cancelled.

Where a legal commitment has not given rise to any payment during a period of three years, the authorising officer shall proceed to decommit the financial commitment and cancel the appropriations.

5. The termination of a project and the decommitment of the funds committed in accordance with paragraphs 1 to 4 shall be carried out when the legal commitments entered into by the Commission in connection with that project with respect to third parties are concluded and the related payments and collections have been recorded in the accounts.

#### **SECTION 4: COMMITMENT OF EXPENDITURE UNDER DECENTRALISED MANAGEMENT**

##### *Article 55*

1. Where EDF resources are managed on a decentralised basis, the commitment of expenditure by the Commission shall be subject to the provisions of this Section.

2. Financing agreements with the beneficiary ACP States or OCTs shall be concluded by 31 December of year N+1 at the latest, N being the year in which the Commission's financial commitment was adopted.

Where financing agreements are not concluded by the deadline laid down in the first subparagraph, the corresponding appropriations shall be decommitted.

3. The Commission shall be under an obligation to effect payment from EDF resources whenever the head of delegation, acting as authorising officer by subdelegation:
  - (a) endorses contracts and programme estimates, as provided for in Article 80(4) of this Regulation, in accordance with Article 36(2)(i) of Annex IV to the ACP-EC Agreement, or the relevant provisions of the measures implementing the Overseas Association Decision,
  - (b) endorses grant agreements.

In respect of each endorsement the authorising officer responsible shall record in the accounts the value of the contract, programme estimate or grant in question. This recording shall be called “assigned funds”.

The assigned funds recorded shall be set off by the Commission against the global commitments corresponding to the financing decisions concerned.

4. In accordance with the principle of sound financial management referred to in Article 4 and acting within its powers, the Commission shall endeavour to see that:
  - (a) the individual legal commitments implementing the financing agreements referred to in paragraph 2 are concluded no later than three years from the date of the corresponding financial commitment by the Commission;
  - (b) the assigned funds corresponding to individual legal commitments entered into for the implementation of a financing agreement referred to in paragraph 2 which have not given rise to any payment during a period of three years are decommitted.

Individual legal commitments as referred to in the first subparagraph shall be contracts, grant agreements or programme estimates concluded by the ACP State or OCT or its authorities or by the Commission acting in their name and on their behalf.

For the purposes of applying the first and second subparagraphs, the Commission shall, in agreement with the beneficiary ACP States and OCTs, incorporate relevant provisions in the financing agreements referred to in paragraph 2.

5. The termination of a project and the decommitment of the funds committed in accordance with paragraphs 1 to 4 shall be carried out after conclusion of the legal commitments entered into by the ACP State or OCT or its authorities, and/or by the Commission acting in their name and on their behalf in connection with that project with respect to third parties, and after the related payments and collections have been recorded in the accounts.

## **SECTION 5: VALIDATION OF EXPENDITURE**

### *Article 56*

Validation of expenditure is the act whereby the authorising officer responsible:

- (a) verifies the existence of the creditor's entitlement;
- (b) determines or verifies the reality and the amount of the claim;
- (c) verifies the conditions in which payment is due.

### *Article 57*

1. Validation of any expenditure shall be subject to the existence of valid supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out or on the basis of other documents justifying payment. The nature of the supporting documents to be enclosed with the payment orders and the particulars to be included shall be such as to make it possible to carry out the checks provided for in Articles 56, 59 and 61.
2. Before taking the decision validating the expenditure, the authorising officer responsible shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done.
3. The decision validating the expenditure shall be expressed by the signing of a "passed for payment" voucher by the authorising officer responsible.

### *Article 58*

The Chief Authorising Officer shall lay down the criteria for signing the "passed for payment" voucher by analogy with the relevant provisions of the detailed rules for the implementation of the General Financial Regulation.

### *Article 59*

In a non-computerised system, "passed for payment" shall take the form of a stamp incorporating the signature of the authorising officer responsible. In a computerised system, "passed for payment" shall take the form of validation using the personal password of the authorising officer responsible.

## SECTION 6: AUTHORISATION OF EXPENDITURE

### *Article 60*

Authorisation of expenditure is the act whereby the authorising officer responsible, by issuing a payment order, instructs the accounting officer to pay an item of expenditure which he has validated.

### *Article 61*

When drawing up the payment order, the authorising officer responsible shall ensure that:

- (a) the payment order has been properly issued, in that a corresponding validation decision has been taken previously in the form of "passed for payment";
- (b) the payment order corresponds to the financial commitment against which it is booked;
- (c) the expenditure is charged to the correct item in the accounts;
- (d) the appropriations are available;
- (e) the particulars of the payee are correct.

### *Article 62*

The payment order must state:

- (a) the financial year against which the expenditure is to be booked;
- (b) the instrument and allocation against which it is to be booked in accordance with Article 3;
- (c) the references of the legal commitment giving rise to an entitlement to payment;
- (d) the references of the financial commitment against which it is to be booked;
- (e) the references of any other payment orders booked previously against the same financial commitment;
- (f) the sum to be paid in figures, indicating the currency in which it is to be paid;
- (g) the name and address of the payee;
- (h) the bank account into which the payment is to be made;
- (i) the object of the expenditure;
- (j) the means of payment.

The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

*Article 63*

The supporting documents shall be kept by the authorising officer responsible.

**SECTION 7: PAYMENT OF EXPENDITURE**

*Article 64*

1. Payment shall be made only on production of proof that the relevant action has been carried out in accordance with the provisions of the basic act or the contract and shall cover one or more of the following operations:
  - (a) payment of the entire amount due;
  - (b) payment of the amounts due in any of the following ways:
    - (i) pre-financing, which may be divided into a number of payments,
    - (ii) one or more interim payments,
    - (iii) payment of the balance of the amounts due.
2. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 1 at the time they are made.
3. Pre-financing shall count in full or in part against the interim payments referred to in paragraph 1(b)(ii).
4. The total sum of pre-financing and interim payments shall count against the payment of the balances referred to in paragraph 1(b)(iii).

*Article 65*

Payment of expenditure shall be made by the accounting officer within the limits of the funds available.

*Article 66*

Payments shall be effected through the bank accounts referred to in Article 29. The detailed rules for opening, administering and using such accounts shall be determined by the Commission.

Those rules shall in particular require the joint signatures on transfer orders of two duly authorised officials, one of whom must be the accounting officer. They shall also specify the expenditure in respect of which payment must necessarily be made either by cheque or by transfer.

#### *Article 67*

1. In cases where the head of delegation performs the duties of authorising officer by subdelegation in accordance with Article 22(2), the corresponding payments may be effected by an accounting officer by subdelegation, where appropriate on the spot.

The accounting officer may effect payments in local currency from the paying agent account in the ACP State or OCT and, where appropriate, payments in foreign currency from one or more paying agent accounts in the Community.

2. For payments made by the accounting officer by subdelegation, the authorising officer responsible shall ensure that appropriate checks are carried out either before or after their execution and on their entry in the accounts.

### **SECTION 8: TIME LIMITS FOR EXPENDITURE OPERATIONS**

#### *Article 68*

The validation, authorisation and payment of expenditure must be completed within a period of no more than 90 days from the date on which payment is due. The National Authorising Officer shall authorise the expenditure and notify the head of delegation accordingly no later than 45 days before that time limit expires.

Claims for delayed payments for which the Commission is responsible in accordance with Article 37 of Annex IV to the ACP-EC Agreement shall be borne by the Commission from the account or accounts provided for in Article 6(2) of this Regulation.

## **CHAPTER 7 COMPUTER SYSTEMS**

#### *Article 69*

1. Where revenue and expenditure operations are managed by means of computer systems, documents may be signed by a computerised or electronic procedure.
2. Where computer systems and subsystems are used to process financial implementation operations, a full description of each system or subsystem shall be required.

Each description shall define the content of all data fields and describe how the system treats each individual operation. It shall show in detail how the system guarantees the existence of a complete audit trail for each operation.

3. The data in computer systems and subsystems shall be saved periodically and kept in a safe place.

## **CHAPTER 8**

### **INTERNAL AUDITOR**

#### *Article 70*

The internal auditor of the EDF shall be the internal auditor of the Commission. He shall perform his duties in accordance with the relevant international standards. He shall be accountable to the Commission for verifying the proper operation of systems and procedures for implementing EDF resources managed by the Commission under Article 9. The internal auditor may be neither authorising officer nor accounting officer.

#### *Article 71*

1. The internal auditor shall advise the Commission on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management. He may be called on to advise the authorities of ACP countries or OCTs on the same topics.

He shall be responsible in particular for:

- (a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them;
  - (b) assessing the suitability and quality of the internal control systems applicable to every operation for the implementation of EDF resources.
2. The internal auditor shall enjoy full and unlimited access to all the information he requires to perform his duties, where necessary on the spot, including in the Member States and in third countries.
3. The internal auditor shall report to the Commission on his findings and recommendations. The Commission shall ensure that action is taken on recommendations resulting from audits. The internal auditor shall also submit to the Commission an annual internal audit report indicating the number and type of audits carried out, the recommendations made and the action taken on those recommendations.
4. Each year the Commission shall send the authority responsible for discharge a report summarising the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.

#### *Article 72*

The special rules applicable to the internal auditor shall be those laid down in the detailed rules for implementing the General Financial Regulation, particularly as regards his independence in the performance of his duties and the circumstances under which he may be held liable.

# **TITLE IV PROCUREMENT**

## **CHAPTER 1 SCOPE**

### *Article 73*

1. Public contracts are contracts for pecuniary interest concluded in writing by a contracting authority within the meaning of Article 74 in order to obtain, against payment of a price paid in whole or in part from EDF resources, the supply of movable or immovable assets, the execution of works or the provision of services.

Such contracts comprise:

- (a) supply contracts;
  - (b) works contracts;
  - (c) service contracts.
2. This Title does not relate to grants.

### *Article 74*

1. The following shall be contracting authorities for the purposes of this Title:
  - (a) the beneficiary ACP State or States or bodies duly mandated by them, or their representatives;
  - (b) the Commission, in the case of contracts awarded on its own account;
  - (c) the Commission, on behalf of and for the account of one or more beneficiary ACP States;
  - (d) a national or international public sector body or natural or legal persons who have signed a financing agreement or grant agreement with one or more ACP countries or with the Commission for the implementation of a programme or project.
2. The procurement procedures shall be laid down in the financing agreements referred to in Article 52(3).

## **CHAPTER 2**

### **PROCEDURES AND PRINCIPLES CONCERNING THE AWARD OF CONTRACTS**

#### *Article 75*

1. The procedures for the award of contracts relating to operations financed by the EDF to assist ACP States shall be those defined in Article 28 of Annex IV to the ACP-EC Agreement.

The procedures for the award of contracts relating to operations financed by the EDF to assist OCTs shall be defined in the measures implementing the Overseas Association Decision.

2. Where the Commission acts as contracting authority for the implementation of humanitarian aid or emergency aid within the framework of the ACP-EC Agreement or the Overseas Association Decision, it shall be required to comply with the relevant Community rules on procurement.

## **CHAPTER 3**

### **PARTICIPATION IN CONTRACTS**

#### *Article 76*

1. Participation in tendering procedures in respect of contracts financed by the EDF shall be open on equal terms in accordance with the conditions laid down in Article 20 of Annex IV to the ACP-EC Agreement.
2. Nationals of countries other than ACP States and the Member States, including the OCTs, may be authorised to take part in the tendering procedures in accordance with the conditions laid down in Article 22 of Annex IV to the ACP-EC Agreement.

#### *Article 77*

Within the limits of the powers conferred on it by the ACP-EC Agreement and in accordance with the conditions laid down in Article 21 of Annex IV thereto, the Commission shall ensure the broadest possible participation, on equal terms, in tendering procedures for contracts financed by the EDF and shall ensure compliance with the principles of transparency, proportionality, equal treatment and non-discrimination

## **CHAPTER 4 PUBLICATION**

### *Article 78*

Within the limits of the powers conferred on it by the ACP-EC Agreement and in accordance with the conditions laid down in Articles 21 and 34 of Annex IV thereto, the Commission shall take the necessary steps to have international tendering procedures published in the *Official Journal of the European Communities* and on the Internet.

### *Article 79*

1. Within the limits of the powers conferred on it by the ACP-EC Agreement, the Commission shall take all appropriate measures to ensure the effective dissemination of information for the economic operators concerned, notably through periodic publication of the programmes and projects to be financed from EDF resources.
2. The Commission shall ensure in particular that the following information is published in the most appropriate media, with an indication of the subject matter, content and value of the proposed contracts:
  - (a) fact sheets identifying projects;
  - (b) a summary of financing proposals adopted by the Commission after consulting the EDF Committee.
3. Within the limits of the powers conferred on it by the ACP-EC Agreement, the Commission shall ensure that the results of tendering procedures are published at the earliest opportunity.

## **TITLE V DIRECT LABOUR OPERATIONS**

### *Article 80*

1. This Title shall govern the direct labour operations provided for in Article 24 of Annex IV to the ACP-EC Agreement. It shall apply *mutatis mutandis* to financial co-operation with the OCT.
2. In the case of direct labour operations, projects and programmes shall be implemented directly through public departments of the ACP State or States concerned.

The Community shall contribute to the costs of the department involved by providing the equipment and/or materials that it lacks and/or the resources to acquire any additional staff required, such as experts from within the ACP States concerned or other ACP States. The Community's participation shall cover only costs incurred by supplementary measures and temporary expenditure relating to execution that are strictly confined to the requirements of the project in question.

The financial management of a project implemented by direct labour in accordance with the first and second subparagraphs shall be carried out by imprest accounts administered by an imprest administrator and an accounting officer, appointed by the National Authorising Officer with the prior approval of the head of delegation.

3. In the case of externalised direct labour operations, the contracting authorities within the meaning of Article 74(1)(a) shall entrust tasks relating to the implementation of projects or programmes to public, semi-public or private bodies that are legally distinct from the ACP State or States concerned. In such cases, the body concerned shall assume responsibility for the management and implementation of the programme or project in place of the National Authorising Officer. Tasks so delegated may include the power to conclude contracts and manage contracts and the supervision of works on behalf of or for the account of the ACP State or States concerned.
4. Direct labour operations shall be implemented on the basis of a programme of measures to be carried out and an estimate of their cost, hereinafter referred to as the "programme estimate". The programme estimate is a document laying down the human and material resources required, the budget and the detailed technical and administrative implementing arrangements for execution of a project over a specified period by direct labour and, possibly, by means of public procurement and the award of specific grants. Each programme estimate shall be prepared by the imprest administrator and the accounting officer referred to in paragraph 2, in the case of direct labour operations, or by the third party organisation referred to in paragraph 3, in the case of externalised direct labour operations, and shall then be approved by the National Authorising Officer and the head of delegation before the activities it provides for commence.
5. In the context of the implementation of the programme estimates referred to in paragraph 4, the procurement and grant award procedures shall comply with those laid down in Titles IV and VI respectively. In particular, proposals for the award of contracts must be approved by the head of delegation in accordance with Article 36 of Annex IV to the ACP-EC Agreement. The same shall apply to proposals to award grants.
6. The financing agreements referred to in Article 52(3) must make provision for the implementation of projects or programmes by direct-labour operations.

#### *Article 81*

In the case of externalised direct labour operations, the contracting authority referred to in Article 74(1)(a) shall conclude a service contract with a third party organisation. The Commission shall ensure that the contract sets out:

- (a) adequate provisions for scrutiny of the use of EDF resources by the Chief Authorising Officer, the head of delegation, OLAF, the National Authorising Officer, the Court of Auditors and the national audit bodies of the ACP State or States concerned;
- (b) a clear definition and precise delimitation of the powers delegated to the organisation concerned and the powers retained by the National Authorising Officer;

- (c) the procedures to be followed in exercising the powers so delegated, such as the selection of operations to be financed, the award of contracts or the supervision of works;
- (d) the possibility of *ex post* review and financial penalties where the granting of funds or award of contracts by the third party organisation does not correspond to the procedures laid down at point (c);
- (e) effective segregation of the duties of authorising officer and accounting officer;
- (f) the existence of an effective system for the internal control of management operations;
- (g) the existence of an accounting system for management operations and separate procedures for the presentation of accounts enabling the correct use of EDF resources to be ascertained.

## **TITLE VI GRANTS**

### **CHAPTER 1 GENERAL PROVISIONS**

#### *Article 82*

1. In the context of centralised management, grants are direct financial contributions, awarded by the Commission by way of donation from EDF resources in order to finance:
  - (a) either an action designed to help achieve an objective of the ACP-EC Agreement or the Overseas Association Decision, or of a programme or project adopted in accordance with that Agreement or Decision;
  - (b) or the functioning of a body which pursues such an objective.

They shall be covered by a written agreement.
2. The following shall not constitute grants for the purposes of this Title:
  - (a) financing agreements as referred to in Article 52(3)(a);
  - (b) public contracts as referred to in Title IV or direct labour operations as referred to in Title V;
  - (c) loans, guarantees, contributions, contracts, interest rate subsidies or any other financial operation managed by the EIB;
  - (d) direct or indirect budgetary assistance, or aid to help relieve debt or support export earnings in the event of short-term fluctuations;

- (e) payments made to bodies to whom powers are delegated by the Commission as provided for in Articles 15 and 16 or within the framework of joint management referred to in Article 17.

## **CHAPTER 2 AWARD PRINCIPLES**

### *Article 83*

1. The award of grants shall be subject to the principles of transparency and equal treatment. Grants may not be cumulative; they may not be awarded retrospectively; and they must involve co-financing.
2. The grant may not have the purpose or effect of producing a profit for the beneficiary.

### *Article 84*

1. Where, in the context of centralised management, an action provides for financing in the form of grants, the operational plan for that action shall contain a programme, except in the case of crisis management aid or humanitarian aid operations.

That programme shall be implemented through the publication of calls for proposals save in duly substantiated cases of urgency or where the nature of the beneficiary leaves no other choice for a given action.

2. The grants awarded shall be published annually with due observance of the requirements of confidentiality and security.

### *Article 85*

1. One action may give rise to the award of only one grant from EDF resources to any one beneficiary.
2. A beneficiary may be awarded only one operating grant from EDF resources per budget year of the beneficiary.

### *Article 86*

1. A grant may be awarded for an action which has already begun only if the applicant is able to demonstrate that it was necessary to start the action before the agreement was signed.

In such cases, expenditure eligible for financing may not have been incurred prior to the date of submission of the grant application, save in duly substantiated exceptional cases or in the case of expenditure necessary for the proper implementation of crisis management aid or humanitarian aid operations, as provided for in the ACP-EC Agreement or the Overseas Association Decision.

No grant may be awarded retrospectively for actions already completed.

2. The agreement on an operating grant may not be signed more than four months after the start of the beneficiary's budget year. Expenditure eligible for financing may not have been incurred before the date when the grant application was submitted or the start of the beneficiary's budget year.

*Article 87*

An action may be financed entirely from EDF resources only if this proves essential for its completion.

### **CHAPTER 3 AWARD PROCEDURE**

*Article 88*

1. Grant applications shall be eligible where they fall under the ACP-EC Agreement or the Overseas Association Decision or a programme or project adopted in accordance with that Agreement or Decision and are submitted in writing by legal persons. By way of exception, depending on the nature of the action or the objective pursued by the applicant, natural persons may receive grants in accordance with the conditions laid down in the Agreement or Decision.
2. Grants may not be awarded to applicants whose situation, at the time of a grant award procedure, is such that they fall to be classed as ineligible under the Community rules applicable to public procurement.

Applicants must certify that they are not in one of the situations referred to in the first subparagraph.

3. Effective, proportionate and dissuasive administrative and financial penalties may be imposed by the Chief Authorising Officer on applicants who are excluded under paragraph 2.

*Article 89*

1. The selection criteria shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.
2. The award criteria shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

*Article 90*

1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, by an evaluation committee set up for that purpose, with a view to determining which proposals may be financed.

2. On the basis of the evaluation provided for in paragraph 1, the authorising officer responsible shall draw up the list of beneficiaries and the amounts approved.
3. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, he shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria previously announced.

## **CHAPTER 4 PAYMENT**

### *Article 91*

The pace of payments shall be determined by the financial risks involved, the duration and progress of the action, or the costs incurred by the beneficiary.

### *Article 92*

The authorising officer responsible may require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

### *Article 93*

1. The amount of the grant shall not become final until after the Commission has accepted the final reports and accounts, without prejudice to subsequent checks by the Commission.
2. Should the beneficiary fail to comply with his legal or contractual obligations, the grant shall be suspended and reduced or terminated after the beneficiary has been given the opportunity to make his observations.

## **CHAPTER 5 IMPLEMENTATION**

### *Article 94*

1. Where implementation of the action requires the award of procurement contracts by the beneficiary, the grant agreements referred to in Article 82(1) shall make provision for procedures that comply with the Community rules on procurement applicable to co-operation with non-member countries.
2. Each grant agreement shall provide expressly for the Commission, including OLAF, and the Court of Auditors to exercise their powers of control, on documents and on the spot, over all contractors and subcontractors who have received financial assistance from EDF resources.

*Article 95*

In the context of decentralised management, referred to in Article 14, the Commission shall strive to encourage management by the beneficiary ACP States and OCTs that is aimed at applying provisions equivalent to those laid down in this Title.

**TITLE VII  
ACCOUNTS**

**CHAPTER 1  
PRESENTATION OF THE ACCOUNTS**

*Article 96*

1. The Commission shall draw up, by 31 July each year at the latest, the accounts of the EDF describing the financial situation of the Fund as at 31 December of the preceding year. The EDF Accounts shall comprise:
  - (a) the financial statements referred to in Article 100;
  - (b) the reports on financial implementation referred to in Article 101;
  - (c) the financial statements and the information supplied by the EIB in accordance with Article 125(2).
2. The EDF accounts shall be accompanied by a report on financial management during the preceding year containing an accurate account of:
  - (a) the achievement of the objectives for the financial year, in accordance with the principle of sound financial management;
  - (b) the financial situation and the events that had a significant influence on the activities carried out during the financial year.

*Article 97*

The accounts must comply with the rules and be accurate and comprehensive and present a true and fair view:

- (a) as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities, and cash flow;
- (b) as regards the reports on financial implementation, of the revenue and expenditure operations from EDF resources.

#### *Article 98*

The financial statements referred to in Article 100 shall be drawn up in accordance with generally accepted accounting principles, namely:

- (a) going concern basis;
- (b) prudence;
- (c) consistent accounting methods;
- (d) comparability of information;
- (e) materiality;
- (f) no netting;
- (g) reality over appearance;
- (h) accrual-based accounting.

#### *Article 99*

1. In accordance with the principle of accrual-based accounting, the financial statements referred to in Article 100 shall show the charges and income for the financial year, regardless of the date of payment or collection.
2. The value of assets and liabilities shall be determined in accordance with the valuation rules provided for in Article 111.

#### *Article 100*

1. The financial statements shall be drawn up by the accounting officer and presented in millions of euros. They shall comprise:
  - (a) the balance sheet, which represents the assets and liabilities and financial situation and the economic outturn of the EDF at 31 December of the previous year; it shall be presented in accordance with the structure laid down by the Council Directive on the annual accounts of certain types of companies, but with account being taken of the specific nature of the EDF's activities;
  - (b) the cash-flow table showing amounts collected and disbursed during the year, the final treasury position and a statement of sources and uses of funds covering the preceding financial year;
  - (c) a table of items payable to the EDF showing:
    - (i) amounts still to be recovered at the beginning of the financial year;
    - (ii) entitlements established in the course of the financial year;
    - (iii) amounts recovered in the course of the financial year;

- (iv) cancellation of established entitlements;
  - (v) amounts still to be recovered at the end of the financial year.
2. The annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall contain notes indicating which accounting principles were applied in the preparation and presentation of the accounts.

#### *Article 101*

1. The reports on financial implementation shall be drawn up by the accounting officer and presented in millions of euro. They shall comprise the financial outturn account, which sets out all financial operations for the year in terms of revenue and expenditure. The annex to the financial outturn account shall supplement and comment on the information presented in it.
2. The reports on financial implementation shall comprise the following tables, presented in millions of euros and drawn up by the Chief Authorising Officer in conjunction with the accounting officer:
- (a) a table describing changes over the preceding financial year in the appropriations indicated in the Annex;
  - (b) a table showing the total by allocation of commitments, assigned funds and payments effected during the financial year and aggregate totals since the opening of the EDF;
  - (c) tables showing by appropriation, country, territory, region or sub-region, the total commitments, assigned funds and payments effected during the financial year and aggregate totals since the opening of the EDF.

#### *Article 102*

The Commission shall send the provisional accounts to the Court of Auditors by 31 March of the following financial year at the latest. By 30 April it shall send the European Parliament, the Council and the Court of Auditors the report, referred to in Article 96, concerning financial management during the year.

#### *Article 103*

1. The Court of Auditors shall, by 15 June at the latest, make its observations on the provisional accounts as regards the part of the EDF resources for which the Commission is responsible for financial management under Article 9(1), so that the Commission can make the corrections deemed necessary for drawing up the final accounts.
2. The Commission shall approve the final accounts and send them to the European Parliament, the Council and the Court of Auditors by 31 July of the following year at the latest.

3. The final accounts shall be published by 31 October of the following year in the *Official Journal of the European Communities* together with the statement of assurance given by the Court of Auditors in respect of the part of the EDF resources for which the Commission is responsible for financial management under Article 9(1).

## **CHAPTER 2**

### **INFORMATION ON IMPLEMENTATION OF EDF RESOURCES**

#### *Article 104*

1. The Commission and the EIB shall monitor, each to the extent to which it is concerned, the use of EDF assistance by the ACP States, the OCTs or any other beneficiary, and the implementation of projects financed by the EDF, having particular regard to the objectives referred to in Articles 55 and 56 of the ACP-EC Agreement and in the corresponding provisions of the Overseas Association Decision.
2. The EIB shall periodically inform the Commission regarding the implementation of projects financed from the EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility.
3. The Commission and the EIB shall provide the EDF Committee with information on the operational implementation of EDF resources through the national and regional allocations set out in the Annex. Such information shall also cover projects and programmes financed from the Investment Facility. The Commission shall send that information to the Court of Auditors in accordance with Article 32(4) of the Internal Agreement.

## **CHAPTER 3**

### **ACCOUNTING**

#### *Article 105*

1. The accounting system is the system serving to organise the financial information in such a way that figures can be input, filed and registered.
2. The accounts shall consist of general accounts and financial accounts. Those accounts shall be kept in euros on the basis of the financial year.
3. The figures in the general accounts and the financial accounts shall be adopted at the close of the financial year so that the accounts referred to in Chapter 1 can be drawn up.
4. Notwithstanding paragraphs 2 and 3, the Chief Authorising Officer may keep analytical accounts.

#### *Article 106*

The accounting officer shall be responsible for the monitoring and entry in the accounts of payments by the Member States and other revenue.

#### *Article 107*

The general accounts shall record, in chronological order using the double entry method, all events and operations affecting the economic and financial situation and the assets and liabilities of the EDF, and which make up the EDF balance sheet.

#### *Article 108*

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.
2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.
3. The accounting system shall be such as to leave a trail for all accounting entries.

#### *Article 109*

The accounting officer shall, after the close of the financial year and up to the date of presentation of the accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts which complies with the rules.

#### *Article 110*

1. The financial accounts shall allow detailed monitoring of the financial implementation of EDF resources.  
They shall show all:
  - (a) allocations;
  - (b) commitments;
  - (c) assigned funds;
  - (d) payments, and established debts and collection operations for the financial year, in full and without any adjustment against each other.
2. When commitments, payments and debts are expressed in national currencies, the accounting system shall make it possible, where necessary, for them to be recorded in national currencies as well as in euros.
3. The commitments defined in Article 52 shall be recorded in euros for the value of the financing decisions taken by the Commission.

The assigned funds defined in Article 55(3) shall be recorded in euros at the equivalent of the value of the contracts, grants and programme estimates concluded by the beneficiary ACP State or OCT or by the Commission in the performance of the project. That value shall include where appropriate:

- (a) provision for the payment of reimbursable expenses on presentation of supporting documents;
  - (b) provision for the revision of prices and contingencies as defined in EDF-funded contracts;
  - (c) financial provision for exchange rate fluctuations.
4. The conversion rates to be used for final accounting of payments made under the projects or programmes referred to in Part 4 of the ACP-EC Agreement and Annex IV thereto or in the Overseas Association Decision shall be the rates applicable on the date on which the Commission accounts referred to in Article 29 of this Regulation were debited.
5. All accounting records referring to the fulfilment of a commitment shall be kept for a period of five years from the date of the decision giving discharge in respect of the financial implementation of EDF resources, referred to in Article 119, concerning the financial year during which the commitment was closed for accounting purposes. However, records relating to operations that have not been definitively closed shall be kept beyond that period up to the end of the year following the year in which those operations are closed.

#### *Article 111*

1. The accounting officer shall adopt the applicable accounting rules and methods. He shall prepare and, after consulting the Chief Authorising Officer, adopt the chart of accounts to be applied to the EDF's operations. In so doing he shall be guided by the internationally accepted accounting standards for the public sector but may depart from them where justified by the specific nature of the EDF's activities.
2. Entries in the accounts shall be made on the basis of the chart of accounts using a nomenclature which makes a clear distinction between the general accounts and the financial accounts. The chart of accounts shall be sent to the Court of Auditors.

# **TITLE VIII**

## **EXTERNAL AUDIT AND DISCHARGE**

### **CHAPTER 1**

#### **GENERAL PROVISIONS**

##### *Article 112*

The operations financed from EDF resources managed by the EIB in accordance with Article 9(2) shall be subject to the audit and discharge procedures laid down in the Statutes of the EIB for all of its operations. Existing specific provisions concluded by common agreement between the Court of Auditors, the EIB and the Commission shall continue to apply and, where necessary, shall be updated to take account of the specific characteristics of the Investment Facility, including interest rate subsidies.

As regards the operations financed from EDF resources managed by the Commission in accordance with Article 9(1), the Court of Auditors shall exercise its powers in accordance with this Title.

### **CHAPTER 2**

#### **EXTERNAL AUDIT**

##### *Article 113*

The Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to this Regulation.

##### *Article 114*

In the performance of its task, the Court of Auditors shall notify the Commission and the authorities to which this Regulation applies of the names of the members of its staff who are empowered to audit them and the tasks entrusted to those persons.

##### *Article 115*

1. The Court of Auditors, when examining whether all revenue has been received and all expenditure incurred in a lawful and proper manner, shall have regard to the provisions of the ACP-EC Agreement, the Overseas Association Decision, this Regulation and all other acts adopted pursuant to those instruments.
2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in paragraph 6, all documents and information relating to the financial management of departments or bodies with regard to operations financed or co-financed from EDF resources. It shall have the power to make enquiries of any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to those departments or bodies.

In order to obtain all the necessary information for the performance of its task, the Court of Auditors may be present, at its request, during the audit operations carried out within the framework of financial implementation by, or on behalf of, the Commission.

3. The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositories or against official memoranda of cash and securities held. The Court may carry out such checks itself.
4. At the request of the Court of Auditors, the Commission shall authorise financial institutions holding EDF deposits to enable the Court of Auditors to ensure that the external data tally with the accounts.
5. The Commission shall afford the Court of Auditors all the facilities and give it all the information which the latter deems necessary for the performance of its task. It shall place at the disposal of the Court of Auditors all documents concerning the award and performance of contracts and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts which the Court of Auditors considers necessary for auditing the financial outturn report on the basis of documents or on the spot and, for the same purposes, all documents and data created or stored on a magnetic medium.

The officials whose operations are checked by the Court of Auditors shall:

- (a) disclose their records of cash in hand, any other cash, securities and materials of any kind and the supporting documents in respect of their stewardship of the funds with which they are entrusted and any books, registers and other documents relating thereto;
- (b) present the correspondence or any other document required for the full implementation of the audit referred to in paragraph 1.

The information referred to under (b) of the second subparagraph may be requested only by the Court of Auditors.

The Court of Auditors shall be empowered to audit the documents relating to EDF revenue and expenditure which are held by the Commission departments responsible.

6. The task of establishing that the revenue has been received and the expenditure incurred in a lawful and proper manner and that the financial management has been sound shall extend to the utilisation by bodies outside the Commission of EDF resources received in the form of grants in accordance with Title VI. All financing from EDF resources granted to beneficiaries outside the Commission shall be subject to the agreement in writing by the beneficiaries or, failing agreement on their part, by the contractors or subcontractors, to an audit by the Court of Auditors of the use made of the financing granted.
7. Use of integrated computer systems may not have the effect of impairing access by the Court of Auditors to supporting documents.

#### Article 116

1. After the closure of each financial year, the Court of Auditors shall draw up an annual report in accordance with paragraphs 2 to 6.
2. The Court of Auditors shall transmit to the Commission, by 15 June at the latest, any observations which, in its opinion, are such that they should appear in the annual report. Those observations must remain confidential. The Commission shall address its replies to the Court of Auditors by 30 September at the latest.
3. The annual report shall contain an assessment of the soundness of financial management.
4. The Court of Auditors may add any summary report or any general observations which it sees fit to make.
5. The Court of Auditors shall take all necessary steps to ensure that the Commission's replies to its observations are published immediately after the observations to which they relate.
6. The Court of Auditors shall send its annual report, together with the Commission's replies, to the authorities responsible for giving discharge and to the Commission, by 31 October at the latest, and shall ensure the publication thereof in the *Official Journal of the European Communities*.

#### Article 117

1. The Court of Auditors shall notify the Commission of any observations which, in its opinion, are such that they should appear in a special report. Those observations must remain confidential.

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

The Court of Auditors shall adopt the definitive version of the special report in question the following month.

2. The special reports referred to in paragraph 1, together with the Commission's replies, shall be transmitted without delay to the European Parliament and the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.

Should the Court of Auditors decide to have any such special reports published in the *Official Journal of the European Communities*, they shall be accompanied by the Commission's replies.

3. The Court of Auditors may, at the request of one of the other institutions, issue opinions on matters relating to the EDF.

#### *Article 118*

At the same time as the annual report referred to in Article 116, the Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

### **CHAPTER 3 DISCHARGE**

#### *Article 119*

1. Before 30 April of year N + 2, the European Parliament, upon a recommendation from the Council acting by a qualified majority, shall give a discharge to the Commission in respect of the financial implementation for year N of the EDF resources, which it manages in accordance with Article 9(1). If that date cannot be met, the European Parliament or the Council shall inform the Commission of the reasons for the postponement. Should the European Parliament postpone the decision giving discharge, the Commission shall make every effort to take measures, as soon as possible, to facilitate removal of the obstacles to that decision.
2. The discharge decision shall cover the accounts referred to in Article 96, except the part thereof provided by the EIB in accordance with Article 125(2). The discharge decision shall include an assessment of the responsibility of the Commission in the execution of the financial management during the preceding period.
3. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the EDF accounts referred to in Article 96. It shall also examine the annual report made by the Court of Auditors together with the Commission's replies, any special reports by the Court of Auditors relevant to the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.
4. The Commission shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and the comments accompanying the discharge recommendation adopted by the Council.
5. At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of those observations and comments, and, in particular, on the instructions given to those of its departments which are responsible for the financial implementation of EDF resources. That report shall also be sent to the Court of Auditors.
6. The decision giving the discharge shall be published in the *Official Journal of the European Communities*.

#### *Article 120*

The Commission shall submit to the European Parliament, at the latter's request, any information required for the control of implementation of the EDF resources managed by the

Commission in accordance with Article 9(1) for the year in question. Access to confidential information and the arrangements for handling it shall comply with fundamental human rights, the protection of business secrecy, the provisions governing judicial and disciplinary proceedings and the interests of the Community.

## **PART TWO**

### **SPECIFIC PROVISIONS CONCERNING EDF RESOURCES MANAGED BY THE EIB**

#### *Article 121*

Each year, before 1 September, the EIB shall send the Commission its estimates of commitments and payments, which are necessary for drawing up the communication referred to in Article 8(1), in respect of the operations of the Investment Facility, including interest rate subsidies, in accordance with the Internal Agreement.

The EIB shall update its estimates every three months. At the beginning of each quarter and no later than 35 working days before the due dates for contributions by the Member States indicated in Article 39, it shall send the Commission its estimates of all amounts to be called on from the EDF that are necessary to finance the operations under its responsibility.

#### *Article 122*

1. The contributions referred to in Article 39 and adopted by the Council shall be paid by the Member States to the EIB via a special account opened in the name of each Member State.
2. Save where the Council decides otherwise regarding the remuneration of the EIB in accordance with Article 8 of the Internal Agreement, proceeds received by the Bank via the credit balance of the special accounts referred to in paragraph 1 of this Article shall be recorded in an account in the Commission's name, and used for the purposes set out in Article 9 of the Agreement.
3. Any rights resulting from operations carried out by the EIB using EDF resources, and particularly rights as creditor or owner, shall be vested in the Member States.
4. The EIB shall undertake the treasury management of the amounts referred to in paragraph 1 in accordance with the detailed rules laid down in the management agreement provided for in Article 128.
5. The Investment Facility shall be managed in accordance with the conditions laid down in the ACP-EC Agreement, the Overseas Association Decision and the Internal Agreement.

#### *Article 123*

The EIB shall be remunerated on a full indemnity basis for the management of the Investment Facility operations. The Council shall decide on the resources and mechanisms for remuneration of the Bank in accordance with Article 8(2) of the Internal Agreement. The

measures implementing that decision shall be incorporated in the management agreement provided for in Article 128.

#### *Article 124*

The EIB shall regularly inform the Commission of the operations carried out under the Investment Facility, including interest rate subsidies, of the use made of each call for contributions paid to the EIB and, in particular, of the total quarterly amounts of commitments, contracts and payments, in accordance with the detailed rules laid down in the management agreement provided for in Article 128.

#### *Article 125*

1. The EIB shall keep the accounts of the Investment Facility, including interest rate subsidies, financed by the EDF. The EIB and the Commission shall draw up the relevant accounting rules and methods by common agreement and inform the Member States accordingly.
2. Each year the EIB shall send the Council and the Commission a report on the implementation of operations financed from EDF resources under its management, including the financial statements drawn up in accordance with the rules and methods referred to in paragraph 1 and the information referred to in Article 101(2).

Those documents shall be submitted in draft form no later than 28 February and in their final version no later than 30 June of the following financial year, so that they can be used by the Commission in preparing the accounts referred to in Article 96 of this Regulation in accordance with Article 32(1) of the Internal Agreement. The report on the financial management of the resources managed by the EIB shall be submitted by the latter to the Commission no later than 31 March of the following financial year.

#### *Article 126*

The EIB's own rules shall apply to contracts financed by the EDF resources which it manages.

#### *Article 127*

Where programmes or projects are co-financed by the Member States or their implementing bodies and correspond to the priorities laid down in the Country Co-operation Strategies provided for in Chapter III of the Internal Agreement and in Article 20 of the Overseas Association Decision, the EIB may entrust responsibility for managing Community aid to Member States or their implementing bodies.

#### *Article 128*

The detailed rules for implementing this Part shall be the subject of a management agreement between the Commission, acting on behalf of the Community, and the EIB.

## **PART 3**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **TITLE I TRANSITIONAL PROVISIONS**

##### **CHAPTER 1 TRANSFER OF BALANCES REMAINING FROM PREVIOUS EDFs**

###### *Article 129*

1. The provisions of this Title shall govern the transfer to the 9th EDF of the balances remaining from resources constituted under the Internal Agreements relating to the 6th,<sup>9</sup> 7th,<sup>10</sup> and 8th<sup>11</sup> EDFs (hereinafter “previous EDFs”).
2. The balances remaining from previous EDFs shall be used to finance projects, programmes and other forms of action that contribute to attaining the objectives of the ACP-EC Agreement and the Overseas Association Decision, in accordance with the provisions of that Agreement or that Decision, and with the conditions laid down in this Title.

To that end, any balances remaining from previous EDFs on the date of the entry into force of the Financial Protocol set out in Annex I to the ACP-EC Agreement, in the case of the ACP States, or on the date of the entry into force of the Internal Agreement, in the case of the OCTs, together with any amounts to be decommitted at a later date from ongoing projects under those EDFs, shall be transferred to the 9<sup>th</sup> EDF.

###### *Article 130*

1. Any resources transferred to the 9th EDF that were previously allocated to the indicative programme of an ACP State or an ACP region before the entry into force of the Financial Protocol set out in Annex I to the ACP-EC Agreement shall remain allocated to that State or region.
2. Resources that were allocated to OCTs before the entry into force of the Overseas Association Decision shall remain allocated to them. Any resources thus transferred to the 9th EDF after having been allocated previously to the indicative programme of an OCT or a region shall remain allocated to that OCT or to regional co-operation in the context of the implementation of the Overseas Association Decision.

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<sup>9</sup> OJ L 86, 31.3.1986, p. 221.

<sup>10</sup> OJ L 229, 17.8.1991, p. 288.

<sup>11</sup> OJ L 156, 29.5.1998, p. 108.

3. The balance of revenue accruing from interest on the resources of previous EDFs shall be transferred to the 9th EDF and allocated for the same purposes as the revenue provided for in Article 1(3) of the Internal Agreement. The same shall apply to miscellaneous revenue of previous EDFs comprising, for example, default interest received in the event of late payment of contributions to those EDFs by Member States and the interest generated by the EDF resources managed by the EIB, that is payable to the Community.

#### *Article 131*

1. In respect of the ACP States, any balance that is not allocated to a country or region, taking into account the transitional measures applicable up to the entry into force of the ACP-EC Agreement, shall be assigned to the unallocated amount of the 9th EDF, in accordance with the decision referred to in Article 132 of this Regulation.

The first subparagraph shall apply in particular to:

- (a) any balance remaining from the resources of previous EDFs that were not previously allocated to a specific ACP State or region, including any balances of resources available for emergency aid, aid for refugees or structural adjustment;
  - (b) any balance remaining from resources under the Stabex and Sysmin instruments.
2. In respect of the OCTs, any balance that is not allocated to an indicative programme on the date when the Internal Agreement enters into force shall be assigned to the non-allocated amount of the EDF.

The first subparagraph shall apply in particular to any balance remaining from the overall amounts referred to in Articles 118 and 142 of Council Decision 91/482/EC<sup>12</sup>, which concern, respectively, the Stabex and Sysmin instruments. However, financing decisions concerning balances under Sysmin may be adopted up to the entry into force of the Internal Agreement if a request for financing was introduced before Decision 91/482/EC expired.

#### *Article 132*

The Commission shall adopt the detailed arrangements for implementing this Title with regard to the definitive treatment under the 9th EDF of the remaining balances and amounts to be decommitted and transferred to the 9th EDF.

Those detailed arrangements shall be adopted after consultation of the EIB in respect of the resources managed by it and in accordance with the rules laid down in the ACP-EC Agreement, the Overseas Association Decision, the Internal Agreement and this Regulation.

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<sup>12</sup> OJ L 263, 19.9.1991, p. 1.

## **CHAPTER 2**

### **RULES APPLICABLE FOR THE IMPLEMENTATION OF PREVIOUS EDFs AND BALANCES TRANSFERRED**

#### *Article 133*

1. Balances remaining from previous EDFs that are transferred to the 9th EDF shall be administered in accordance with the conditions laid down in this Title and in the relevant provisions of the ACP-EC Agreement, the Overseas Association Decision or the Internal Agreement.
2. As regards the ACP States, commitments relating to previous EDFs entered into before the entry into force of the ACP-EC Agreement shall continue to be implemented in accordance with the rules applicable to those EDFs, save as regards the duties of the Financial Controller and the presentation of accounts, for which the provisions of this Regulation shall apply. With effect from the date on which the ACP-EC Agreement enters into force, the balances transferred to the 9th EDF shall be used in accordance with the conditions laid down in the ACP-EC Agreement, the Internal Agreement and this Regulation.

However, where transfers are made from previous EDFs for the benefit of national or regional indicative programmes, as provided for in Article 130:

- (a) if the amount exceeds EUR 10 million per country or region, those resources shall be administered in accordance with the rules of the EDF of origin as regards eligibility for participation in tenders and the award of contracts;
  - (b) if the resources transferred are equal to or less than EUR 10 million, the eligibility rules applicable to tenders under the 9th EDF shall apply.
3. As regards the OCTs, commitments relating to the previous EDFs entered into before the entry into force of the Internal Agreement and this Regulation shall continue to be implemented in accordance with the rules applicable to those EDFs, save as regards the duties of the Financial Controller and the presentation of accounts, for which the provisions of this Regulation shall apply. Resources from previous EDFs shall continue to be employed in accordance with the relevant provisions of Decision 91/482/EC, which shall remain applicable for that purpose until the entry into force of the Internal Agreement.
4. Decisions relating to previous EDFs for which the EIB undertakes the financial implementation shall continue to be implemented in accordance with the rules applicable to those EDFs.

#### *Article 134*

To ensure that commitments entered into under previous EDFs are completed in accordance with the principle of sound financial management, the Commission shall implement procedures which provide, in particular, that, after this Regulation enters into force, a financing agreement may be renewed only once and may not in any event be renewed for a

period of more than three years from the deadline laid down at the time of that entry into force for the completion of the programme or project financed by the agreement in question.

### **CHAPTER 3 TRANSITIONAL PERIOD**

#### *Article 135*

1. The deadlines referred to in Articles 102, 103, 116 and 125 shall apply for the first time in respect of financial year 2005.

For earlier years those deadlines shall be:

- (a) 30 April and 31 May for Article 102;
  - (b) 15 July for Article 103(1);
  - (c) 15 October for Article 103(2);
  - (d) 30 November for Article 103(3);
  - (e) 15 July and 31 October for Article 116(2);
  - (f) 30 November for Article 116(6);
  - (g) 31 March, 15 September and 30 April for the second subparagraph of Article 125(2).
2. The provisions of Title VII of Part One shall apply gradually depending on technical possibilities in order to be fully effective for the financial year 2005.

### **TITLE II FINAL PROVISIONS**

#### *Article 136*

1. In accordance with Articles 2 and 34 of the Internal Agreement, the Member States shall assess the degree to which commitments and disbursements have been carried out before the expiry of the EDF. On that occasion they shall also assess the Commission's needs in respect of the resources reserved for costs linked to implementation under Articles 4 and 9 of the Internal Agreement. The need for new resources to support financial co-operation and costs linked to implementation under Article 9 of the Internal Agreement shall be established in the light of that assessment. Due account shall be taken of the uncommitted and non-disbursed resources under the EDF.

The Commission shall take full account of that performance assessment when updating the allocation of resources under Article 16 of the Internal Agreement and

shall decide on any reallocation of resources that is necessary in order to guarantee optimum use of the available resources.

2. Before the expiry of the EDF, the Member States shall set a date beyond which the resources of the EDF may no longer be committed.

*Article 137*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

It shall be applicable for the same period as the Internal Agreement.

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

Done at Brussels,

*For the Council*  
*The President*

## ANNEX

### FINANCIAL INFORMATION ON THE EDF

1. In accordance with Article 1 of the Internal Agreement, the EDF shall consist of an amount of up to EUR 13 800 million contributed by the Member States as follows:

Member State	Contribution in EUR million
Belgium	540.96
Denmark	295.32
Germany	3 223.68
Greece	172.50
Spain	805.92
France	3 353.40
Ireland	85.56
Italy	1 730.52
Luxembourg	40.02
Netherlands	720.36
Austria	365.70
Portugal	133.86
Finland	204.24
Sweden	376.74
United Kingdom	1 751.22
	13 800.00

Within that total amount:

- (i) EUR 13 500 million shall be allocated to the ACP States;
- (ii) EUR 175 million shall be allocated to the OCTs;
- (iii) EUR 125 million shall be allocated to the Commission for costs linked to implementation of the EDF.

- 2.1 Out of the total amount stated in Article 1(2)(a) of the Internal Agreement, an amount of up to EUR 13 500 million shall be reserved for the ACP States and allocated as follows:
- (a) up to EUR 10 000 million in the form of non-repayable aid comprising up to:
    - (i) EUR 9 836 million reserved for support for long-term development to be programmed in accordance with Articles 1 to 5 of Annex IV to the ACP-EC Agreement. Those resources may be used to finance humanitarian aid and short-term emergency aid in accordance with Article 72(3) of the ACP-EC Agreement. Out of that total allocation, EUR 195 million shall be earmarked to finance the interest rate subsidies provided for in Article 3(c) of Annex I to the ACP-EC Agreement and Articles 2 and 4 of Annex II thereto;
    - (ii) EUR 90 million reserved for the financing of the budget of the Centre for Development of Enterprise (CDE) in accordance with the provisions of Annex III to the ACP-EC Agreement;
    - (iii) EUR 70 million reserved for the financing of the budget of the Technical Centre for Agriculture and Rural Co-operation (CTA) in accordance with the provisions of Annex III to the ACP-EC Agreement; and
    - (iv) EUR 4 million for the expenditure relating to the ACP-EC Joint Assembly, constituted by Article 17 of the ACP-EC Agreement;
  - (b) up to EUR 1 300 million reserved for the financing of support for regional co-operation and integration of the ACP States in accordance with Articles 6 to 14 of Annex IV to the ACP-EC Agreement;
  - (c) up to EUR 2 200 million shall be allocated to finance the Investment Facility in accordance with the terms and conditions set out in Annex II ("Terms and conditions of financing") to the ACP-EC Agreement, without prejudice to the financing of the interest rate subsidies provided for in Articles 2 and 4 of Annex II to the Agreement funded from the resources mentioned in point (a)(i) of this Section.
- 2.2 Out of the EUR 13 500 million referred to in Section 2.1, an amount of EUR 1 000 million may be released only following a performance review undertaken by the Council in 2004, on the basis of a proposal from the Commission. Those resources shall, if released, be distributed as appropriate between the envelopes referred to in points (a), (b) and (c) of Section 2.1.
3. The overall amount of financial assistance to the OCTs allocated by the Community out of the overall amount stated in Article 1(2)(a) of the Internal Agreement shall be EUR 175 million, of which EUR 155 million in the form of non-repayable aid, including EUR 1 million set aside to finance the interest rate subsidies provided for in Article 3(3)(d) of Annex IIA to the Overseas Association Decision, and EUR 20 million under the Investment Facility. The rules governing the implementation of that assistance shall be laid down in the Council Decision on the association of the OCTs with the Community, adopted pursuant to Article 187 of the Treaty.

4. An amount of EUR 125 million shall be reserved for the financing of costs linked to implementation incurred by the Commission in the framework of the ACP-EC Agreement. It shall be utilised in accordance with the principles set out in Article 9 of the Internal Agreement together with the resources referred to in Article 1(3) of that Agreement.
- 5.1. To the amount laid down in the second paragraph of Section 1 shall be added up to EUR 1 720 million in the form of loans granted by the EIB from its own resources. Those resources shall be granted for the purposes set out in Annex II to the ACP-EC Agreement and in the Overseas Association Decision, in accordance with the conditions provided for by its statutes and the relevant provisions of the terms and conditions for investment financing as laid down in that Annex and Decision.
- 5.2. Those loans shall be allocated as follows:
  - (a) up to EUR 1 700 million for financing operations to be carried out in the ACP States;
  - (b) up to EUR 20 million for financing operations to be carried out in the OCTs.