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REPORT

drawn up on behalf of the Committee on Budgets

on the proposal from the Commission of the European Communities to the Council (Doc. C 2-103/85 - COM(85) 460 final) on the draft financial regulation applicable to the Sixth European Development Fund

Rapporteur: Mr J.C. PASTY

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Or. Fr.

By letter of 18 October 1985 the President of the Council of the European Communities consulted Parliament on the proposal from the Commission of the European Communities to the Council on a draft financial regulation applicable to the Sixth European Development Fund.

On 11 November 1985 the President of the European Parliament referred this proposal to the Committee on Budgets as the committee responsible and to the Committee on Development and Cooperation and the Committee on Budgetary Control for their opinions.

At its meeting of 27 November 1985 the Committee on Budgets appointed Mr J.C. PASTY rapporteur.

The committee considered the Commission proposal and the draft report at its meeting of 22 January 1986.

At that meeting the committee decided by 13 votes to 2 to recommend to Parliament that it approve the Commission proposal, subject to the following amendments.

The committee then adopted the motion for a resolution as a whole by 13 votes to 2.

The following took part in the vote: Mr COT, chairman; Mr PASTY, rapporteur; Mr ABENS, Mr CHAMBEIRON, Mr CHRISTODOULOU, Mr COLOM I NAVAL, Mr ELLES, Mr FICH, Mr HERMAN (deputizing for Mr RYAN), Mrs HOFF, Mr LANGES, Mr LOUWES, Mr LUCAS PIRES, Mr PAPOUTSIS, Mr POETSCHKI (deputizing for Mr SCHÖN), Mr ROSA and Mr VON DER VRING.

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The opinions of the Committee on Development and Cooperation and the Committee on Budgetary Control are attached.

The report was tabled on 28 January 1986.

The deadline for tabling amendments to this report will be indicated in the agenda for the part-session at which it will be debated.

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The Committee on Budgets hereby submits to the European Parliament the following amendments to the Commission's proposal and motion for a resolution, together with explanatory statement:

I. Proposal from the Commission for a financial regulation applicable to the Sixth European Development Fund

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Budgets

Amendment No. 1

Amend the first citation as follows:

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 136, 148 to 155, 199 to 206, 209 and 238 thereof,

Second, third, fourth and fifth citations unchanged

Amendment No. 2

Insert a sixth citation after the fifth citation, as follows:

Having regard to the opinion of Parliament,

Sixth and seventh citations and first recital unchanged

Amendment No. 3

Insert a new recital after the first recital, as follows:

Text proposed by the Commission
of the European Communities

Whereas, under Article 28 of the
Internal Agreement,
.....

Amendments tabled by the Committee
on Budgets

Whereas Article 209 of the EEC
Treaty requires such decisions to be
taken by the Community in the form
of a financial regulation
unanimously adopted by the Council
on a proposal from the Commission
and after consulting Parliament and
the Court of Auditors,

Amendment No. 4

Replace the second recital with the
following:

Whereas the Seventh EDF will be
financed from the Community's own
resources,

Amendment No. 5

Insert two new recitals after the
second recital, as follows:

Whereas the Sixth EDF should be
partially budgetized forthwith,

Whereas the principles of the
general financial regulation are
applicable to the Sixth EDF, but
whereas account should be taken both
of its partial budgetization and of
the special conditions applicable to
its implementation,

Article 1

1. The Council shall notify the Commission
.....
2. Annual contributions to the EDF
.....
3. Supplementary contributions to the EDF
.....
4. Each Member State shall make the payments
.....
5. In the event of any delay in the payment
.....

Amendment No. 6

Add a sixth paragraph, as follows:

6. The estimates of the Member States' annual contributions shall be entered in the revenue section of the preliminary draft budget.

Articles 2, 3, 4, 5 and 6 unchanged

Article 7

Amendment No. 7

Amend paragraph 1 as follows:

Text proposed by the Commission
of the European Communities

1. The Commission shall communicate to the Council each year a statement of contribution payments and a progress report on EDF financial operations.

2. The Commission shall also communicate

.....

Amendments tabled by the Committee
on Budgets

1. The Commission shall communicate to the Council and Parliament each year a statement of contribution payments and a progress report on EDF financial operations.

Amendment No. 8

Insert a third paragraph, as follows:

3. These estimates shall be entered in Chapters 90 and 91 of the preliminary draft budget.

Articles 8 to 72 unchanged

Article 73

Amendment No. 9

Amend this article as follows:

This Financial Regulation shall be applicable for the same period as the Internal Agreement.

This Financial Regulation shall be applicable for the same period as the Convention.

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposal from the Commission of the European Communities to the Council for a financial regulation applicable to the Sixth European Development Fund

The European Parliament,

- having regard to Article 209 of the EEC Treaty,
 - having regard to the proposal from the Commission to the Council (COM(85) 460 final),
 - having been consulted by the Council (Doc. C 2-103/85),
 - having regard to the opinion of the Court of Auditors,
 - having regard to the report of the Committee on Budgets and the opinions of the Committee on Budgetary Control and the Committee on Development and Cooperation (Doc. A 2-212/85),
 - having regard to the result of the vote on the Commission's proposal,
- A. recalling the repeated demands by the Commission and by Parliament for the budgetization of the EDFs and, lastly, Parliament's resolution of 15 October 1981 contained in the IRMER report,
 - B. recalling that all the other cooperation agreements and their financial protocols are budgetized,
1. Welcomes the fact that for the first time since the 1970 and 1975 Treaties entered into force it has been consulted on a draft financial regulation concerning the European Development Fund;
 2. Considers, however, that the Convention of Lomé, which was drawn up and signed within the framework of the EEC Treaty, is subject to the provisions of that Treaty, especially its budgetary provisions, and in particular to Article 209, which stipulates that consultation of Parliament is mandatory on draft financial regulations;
 3. Draws attention to the shortcomings of the current situation from the point of view of budgetary orthodoxy and management;
 4. Reaffirms its support for the principle of EDF budgetization, primarily with the political objective of strengthening the Community nature of EDF activities;
 5. Proposes that for the duration of the present Convention the system of financing the EDF from contributions be retained - although these should appear in the budget - and that the expenditure estimates be entered in Chapters 90 and 91 of the 'operating expenditure' section;
 6. Considers this proposal to be a first step towards a complete budgetization of the EDF when the present Convention is renewed;

7. Calls on the Council to adopt this proposal and requests it to open the conciliation procedure should it adopt a different position;
8. Approves the changes proposed by the Commission to the Fifth EDF regulation, particularly those concerned with preventing delays in the payment of Member States' financial contributions, use of the ECU and the problem of exchange risks;
9. Points out that the supervisory powers of the Court of Auditors cannot be diminished by the financial regulation under consideration;
10. Takes the view that the financial regulation applicable to the Sixth EDF will have to be adjusted once the changes to the general financial regulation currently before the Council have been adopted;
11. Calls on the Commission to retain Parliament's amendments to its proposal pursuant to the second paragraph of Article 149 of the Treaty establishing the EEC;
12. Instructs its President to forward to the Council and Commission, as Parliament's opinion, the Commission's proposal as voted by Parliament and the corresponding resolution.

EXPLANATORY STATEMENT

1. In spite of the provisions of Article 209 of the EEC Treaty, Parliament has never been consulted on the financial regulations applicable to the EDFs. When the Council adopted the financial regulation for the Fifth EDF after again refusing to consult Parliament, the latter pointed out that this was a breach of a fundamental formal requirement which called into question the validity of the measure in question.

Parliament expressed this view both in an exchange of letters between its President and the President-in-Office of the Council and in its resolution of 15 October 1981, which it adopted on the basis of a report submitted by Mr IRMER on behalf of the Committee on Budgetary Control.

2. The Council's refusal was based on the somewhat paradoxical assertion that expenditure effected by the Community from the EDF was not Community expenditure as such. The Council claimed that a 'mixed' convention is covered by the case-law of the Court of Justice which allows divergent procedures to be followed for international agreements in exceptional circumstances and when such procedures are indispensable.

3. However, while the idea of a 'mixed' convention is just possible to accept, since certain minor sections of the Convention do not fall within the Community's terms of reference, it is quite impossible to deny the Community nature of the activities involved and to claim that the basic Treaty provisions do not apply to them. The Council's position is all the more illogical inasmuch as financial cooperation with countries other than the ACP States is fully budgetized.

4. Even when meeting within the Council, the Member States do not have the authority to modify the institutional balance established by the Treaty or, more importantly, to disregard the fact that consultation of Parliament on financial regulations is mandatory under Article 209 of the Treaty. Article 28 of the Internal Agreement cannot constitute a revision of that Treaty.

The Member States and the Council have also infringed the budgetary principles established by the Treaties and departed from the 1970 decision on financial autonomy by continuing to prevent budgetization of the EDFs.

5. But the nub of the problem is neither of a legal nature nor even of an institutional nature. It is of a political nature. What needs to be established is whether Community cooperation with the ACP States should simply be an extension and an instrument of the national development aid policies, or whether, going beyond the mere task of coordinating these policies, the Community wishes to pursue a development aid policy unfettered by bilateral foreign or commercial policy considerations.

6. Having been asked to give an opinion on the draft financial regulation applicable to the Sixth EDF, the Committee on Budgets and Parliament as a whole can refer back to their previous pronouncements and spell out the following principles:

- Cooperation activities involving the ACP States are Community activities and their financing is covered by the budgetary provisions of the Treaty. Non-budgetization of the EDFs is an irregularity and a violation of these provisions which should be rectified as soon as possible;
- Consultation of Parliament on the EDF financial regulations is covered by Article 209 of the Treaty and is therefore compulsory.

The fact that such consultation is compulsory and the existence of the conciliation procedure mean that Parliament can assert its position, if necessary before the Court of Justice.

7. Whereas serious objections to the principle of EDF budgetization have never been advanced, the political, legal and financial arguments justifying such budgetization have often been advanced and never refuted. Hitherto, only incidental considerations have been invoked to justify the omission: budgetization of the EDF would exacerbate the problem of the depletion of own resources, and the uncertainties of the budgetary procedures would threaten the stable legal base needed to ensure that financial obligations resulting from the application of an international convention were met.

These arguments are weakened by one simple fact: all the other Community financial protocols are budgetized - clear evidence of the fact that in principle there can be no objection to EDF budgetization under the same conditions.

8. It is true that the problem of the exhaustion of own resources has not yet been satisfactorily solved and that the scale for the payment of national contributions is decided through negotiation.

9. However, it is possible firmly to establish the principle of EDF budgetization without further complicating these difficult problems. During a transitional period limited to the duration of the present Convention, the Sixth EDF would be financed from national contributions which had already been fixed, but which would appear in the budget as allocated resources. The institutions would undertake to finance the Seventh EDF from own resources. As for the expenditure of the Sixth EDF, this would be normally budgetized under the same conditions that applied to the other financial protocols.

10. On a proposal from the Committee on Budgets, Parliament adopted an opinion on the modification of the current financial regulation applicable to the general budget. This modification has been before the Council for some years. In the interests of consistency, Parliament could conceivably re-table its amendments to the general financial regulation to the financial regulation applicable to the Sixth EDF. However, that would risk creating confusion, since the final version of the general financial regulation is not known. Such a risk could be avoided if the Commission were asked to submit a proposal modifying the Sixth EDF financial regulation as soon as the new general financial regulation is adopted.

11. It is therefore recommended that the Commission's draft be amended with a view to firmly establishing Parliament's positions of principle and, for the rest, that Parliament support the Commission's improvements, especially those concerning delays in the payment of Member States' contributions and the exchange risks that arise when the contributions are paid in national currencies.

OPINION

of the Committee on Development and Cooperation

Letter of 21 November 1985 from Mrs FOCKE, chairman of the Committee on Development and Cooperation, to Mr J.P. COT, chairman of the Committee on Budgets

At its meeting of 19/20/21 November 1985, the Committee on Development and Cooperation considered the draft financial regulation applicable to the Sixth EDF, which had been referred to it for its opinion.

At the close of its discussions, the committee adopted the following opinion.

The Committee on Development and Cooperation reaffirms the need for the EDF to be budgetized with a view to finally placing cooperation and development policy under Community control and for reasons of budgetary orthodoxy.

It was with this in mind that our committee requested Parliament to restate its position in an own-initiative report.

Pending such a report, the committee approves the Commission's proposal inasmuch as it brings the EDF financial regulation more into line with the general regulation applicable to the Community budget.

It would, however, ask the committee responsible to try to ensure that none of the proposed changes to the former regulation complicates the relevant procedures, thus adding to the time taken to process requests for financial assistance.

Yours sincerely,

(sgd) K. FOCKE

Present: Mrs FOCKE, chairman; Mr BAGET-BOZZO, Mrs BARBARELLA (deputizing for Mr Trivelli), Mr CHINAUD, Mrs CINCIARI RODANO, Mrs DE BACKER-VAN OCKEN, Mrs DURY (deputizing for Mr Cohen), Mr FELLERMAIER, Mr C. JACKSON, Mr LANGES (deputizing for Mr Luster), Mr LOO, Mrs PANTAZI, Mrs RABBETHGE, Mrs SCHMIT, Mrs SIMONS, Mr TOMLINSON (deputizing for Mr Balfe) and Mr VERBEEK

OPINION

(Rule 101 of the Rules of Procedure)
of the Committee on Budgetary Control

Draftsman: Mrs Y. FUILLET

At its meeting of 19 November 1985 the Committee on Budgetary Control appointed Mrs Y. FUILLET draftsman for the opinion.

The committee considered the draft opinion at its meeting of 18 December 1985 and unanimously adopted the conclusions on the same day.

The following took part in the vote: Mr AIGNER, chairman; Mrs BOSERUP, vice-chairman; Mrs FUILLET, draftsman; Mr CORNELISSEN, Mr DIMITRIADIS, Mr MARCK, Mr PRICE, Mr RYAN, Mr SCHON and Mr SIMMONDS.

1. The opinion of the Committee on Budgetary Control on the draft Financial Regulation applicable to the Sixth European Development Fund must take into account the circumstances in which our committee has dealt with matters concerning the implementation and control of the EDF budget in the past and, in particular, the problems connected with the fact that the EDF is not included in the Community budget.

2. Overseas development activities within the framework of the association with the ACP States and other countries such as the Mediterranean countries are governed by the provisions of the EEC Treaty. Ratification of such activities is based on Article 238, while Article 136 provides the legal basis.

The fact that, from 1972 onwards, the Member States have attempted to take over part of the Community's responsibility does not alter the legal situation in any way, since the procedures employed for this purpose are not such as to modify the Treaty.

In particular, the procedure of 'internal agreements' violates some of the procedural rules which obligatorily govern the adoption of measures of this kind.

3. This desire on the part of the Member States to regain some national control over development cooperation policy is the reason behind the EDF's non-inclusion in the Community budget.

Since 1972 Parliament has refused to accept this fait accompli imposed by the Council and more or less tolerated by the Commission. The reasons for its objections concern budgetary propriety and discipline: it is an incorrect practice in a system of financial autonomy for one part of the Community's revenue and expenditure to be removed from view and for the breakdown of contributions to be different for one part of the Community's activity.

4. But the fundamental reason is, of course, political: Community development cooperation must be freed from the foreign and trade policy considerations associated with national bilateral development aids.

The Committee on Budgetary Control has called for the inclusion of the EDF in the budget, above all in the interests of consistency: Parliament's power to give a discharge on the EDF implies that the EDF constitutes as integral part of the Community's finances.

5. When the second Lomé Convention came into force, Parliament, at the suggestion of the Committee on Budgetary Control, asked to be consulted on the financial regulation on the Convention, pursuant to Article 209 of the Treaty. The Council prevaricated and then declared that Article 209 did not apply in this case and refused to consult Parliament 'optionally', on the grounds that this would delay the implementation of the financial regulation.

Such a situation must not be allowed to recur this time. Under the provisions of Article 209, Parliament must be consulted, whatever the Commission says; the latter's view is indeed surprising, to say the least, and it owes Parliament an explanation.

6. The Committee on Budgetary Control considers it appropriate to use the present request for Parliament's opinion to demand, if necessary within the framework of a conciliation procedure, that legal and budgetary orthodoxy be maintained, that the Sixth EDF be included in the budget and that Parliament be allowed to exercise its powers of financial control in full.

If Parliament's request fails to achieve the desired result, the committee recommends that the Committee on Budgets and Parliament use all the legal means available, including an appeal to the Court of Justice, to defend Parliament's point of view.

7. With regard to the problems encountered in the past and which have been the subject of comments in the decisions on the discharge the present proposal for a financial regulation offers solutions regarding:

- delays in the payments of Member States' financial contributions;
- use of the ECU for financial operations and in the awarding of contracts;
- the monitoring of the EIB's operations;
- the responsibility of the authorizing officer.

8. The question of delays in the payment of the Member States' contributions has led on a number of occasions to specific injunctions being attached to the discharge decision. For example, the SCHON report on the 1981 discharge called on the Commission in paragraph 53 of the resolution¹ 'to ensure with all the resources at its disposal that each Member State pays its financial contribution on time and urges the Commission in future to reclaim from the defaulting Member States losses of interest or funds incurred as the result of delayed payments'.

9. The modification of Article 1(5) proposed by the Commission in its draft regulation fully answers this request and, moreover, has the advantage of bringing the provisions relating to the EDF into line with those applicable to the general budget. This provision is, therefore, of fundamental importance and, from the point of view of budgetary control, absolutely essential.

10. The first Lomé Convention played a pioneering role in the introduction and wider use of the European Unit of Account. Cooperation projects involve transactions in many different currencies with attendant exchange rate problems. The provisions of Articles 6(1) and 47(1) and (2) proposed by the Commission, though not binding, will strengthen the role of the ECU as an international currency.

11. In its opinion of 12 December 1985 the Court of Auditors states categorically that the observations in its special report on the financial control of the operations transacted by the EIB with EDF funds must be reflected in the financial regulation of the Sixth EDF. It therefore proposes amendments:

¹ Doc. 1-275/83/A

- to allow it to monitor such operations (Article 68);
- to ensure that the EIB does not make an exorbitant management charge (Articles 51 and 3).

Parliament has endorsed these requests in its DIMITRIADIS report. Clearly, therefore, it will support these proposals for amendments.

12. The Court of Auditors also proposed improvements to the way in which it carries out its inspections (Article 67) and these are along the lines desired by this committee.

