

COMMISSION OF THE EUROPEAN COMMUNITIES

Proposal for a Council Regulation (ECSC, EEC, EURATOM)
amending the Financial Regulation of 21 December 1977
applicable to the general budget of the European Communities

(SUBMITTED TO THE COUNCIL BY THE COMMISSION)

COM (80) 760 final

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Document attached:

Formal proposal for the revision of the Financial Regulation

EXPLANATORY MEMORANDUMI. INTRODUCTION

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

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

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

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

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

3. The third proposal for amendment⁴ was submitted on 13 December 1979. The object was to extend the use of the ECU to the general budget of the European Communities in place of the EJA. The Council had still not acted when this proposal was drafted, but it is virtually certain that it is in favour.

¹OJ C 160, 6.7.1978.

²OJ L 160, 28.6.1979.

³OJ C 116, 9.5.1979.

⁴OJ C 55, 5.3.1980.

The Financial Regulation of 21 December 1977 has now been in force for three years. Article 107 of the Regulation states:

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

In presenting the attached draft revision the Commission will have fulfilled its obligations.

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

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

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

A. Symmetry in budgetary powers of the institutions

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

B. Special provisions applicable to external aid

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

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

C. Need for certain technical improvements and more detailed provisions

Experience in recent financial years has shown that on a number of points the provisions of the existing Financial Regulation are not exhaustive, or, at least, leave room for improvement. These points are the presentation of the budget, transfers system, provisional twelfths and carryovers. The Commission has therefore made appropriate proposals.

D. Adjustment of dates and deadlines

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

E. Adjustments in line with Court of Auditors' opinion of
13 June 1978

The Court of Auditors had only just been established when the 1977 Financial Regulation was adopted and so was unable to comment on the

entire Regulation. It was agreed, however, that a final opinion would be delivered at a later date. This was issued on 13 June 1978. The Commission has included in this proposal a number of adjustments which it feels should be made in the light of the Court's final Opinion.

F. Other amendments

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

II. DETAILS OF PROPOSED AMENDMENTS

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

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

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

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

In the Commission's view this inconsistency needs to be corrected. An appropriate amendment is therefore proposed (Article 6(4)) to give Parliament the power to decide on non-automatic carryovers in respect of non-compulsory expenditure. This is in line with the powers which Parliament already enjoys in respect of such expenditure both in establishing and adopting the budget and in deciding on transfers.

B. NEW SPECIAL PROVISIONS APPLICABLE TO EXTERNAL AID

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

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

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

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

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

1. basic principles (Article 102 to 104);
2. definition and responsibilities of the executive organs (chief authorizing officer, national authorizing officer, Commission delegate, paying agent) specifically provided for (Articles 105 to 108);
3. special conditions relating to the award of contracts (Articles 109 to 115);
4. audit arrangements (Article 117).

Article 20, which lays down the basic provisions relating to the accounting officer, has been amended to include reference to a new Article 108, which introduces the definition of the "paying agent" necessary for this particular field.

In its common approach¹ on the draft basic regulations governing the implementation of these Financial Protocols, the Council recognized that the Financial Regulation needed to be amended to include special provisions for this area. The conciliation procedure with Parliament is still in progress on these draft regulations.

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

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

C. NEED FOR CERTAIN TECHNICAL IMPROVEMENTS AND MORE DETAILED PROVISIONS

Experience acquired over the last few years has convinced the Commission that the provisions relating to the aspects set out below need to be adjusted or expanded.

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

1. Improvements in the presentation of the budget

The Commission wishes to propose the following changes :

(a) Entry of appropriations for commitment

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

At present, commitment appropriations appear in the budget only on the right-hand pages under "Remarks": this presentation - as the experience of recent years has shown - is unsatisfactory in several respects, since it does not afford all the budgetary transparency desired.

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

In its recent preliminary draft budgets, the Commission has therefore presented in Volume 7 (General Introduction) the volume of the budget in terms of commitments, both for the various sectors and for the whole.

Commitment appropriations being appropriations in their own right, the Commission accordingly proposes that they appear in future on the left-hand pages of the budget. A new typographical presentation is planned for this (see layout in Annex 1).

This change, which is a definite improvement both for the technical administration of the budget and in the political presentation, affects Article 1(3) and the first indent of Article 16(2)(~~ba~~).

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

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

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

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

The attached revised draft Regulation therefore carries new provisions which clarify and amplify the text of the last indent of Article 16(2)(ba). For non-differentiated appropriations the current practice is confirmed. But for differentiated appropriations, new provisions are proposed in order to make good the existing inadequacies and allow the budget to reflect appropriately implementation during financial year n-2.

2. New provisions concerning transfers

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

- (i) insofar as the expenditure figure is an estimate - which is worked out between at least some eight months and at most nearly twenty months before specific funds are actually spent - the accuracy of the estimate may obviously include a margin of approximation which varies from one sector to another. It is, in principle, quite normal then that adjustments should be made while the budget is being implemented;
- (ii) Over and above this purely technical aspect, the budget is not an entirely static instrument, since it may be necessary, because of political developments during the financial year, to switch between operations in progress.

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

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

- (a) in the first place the current provisions must be expanded to lay down the conditions for possible transfers:
 - (i) of remaining commitment appropriations, since obviously it must be possible to transfer remaining appropriations. Commitment appropriations have a lifetime of two years and there is no reason for not being able to do in the second year what can be done in the first;
 - (ii) payment appropriations carried forward automatically (whether they are non-differentiated or differentiated payment appropriations). Insofar as the aim is to erect a structure which will ensure optimum conditions for rational implementation of the budget, it is essential that in certain cases it be possible to transfer carried-over appropriations to meet specific needs;

- (iii) between appropriations that are non-differentiated and those that are differentiated. Material implementation of the budget may well make such a possibility very advantageous.

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

(b) In the second place, the division of the power of decision between the Commission and the budgetary authority would gain from a new balance, which could be shown to be necessary by purely rational considerations. The Commission should, for instance, be able to take decisions itself concerning all transfers between payment appropriations which are differentiated appropriations; such transfers - where nothing political is at stake, since the real dimension of Community participation is constituted by the commitments - are made simply to adjust the estimate, inevitably very relative, to the flow of cash required to cope with actual payments. In view of the cumbersome and costly procedures involved, it is therefore both unnecessary and inappropriate that such transfers should require the approval of the budgetary authority when the budgetary authority, as it happens, has no real authority to wield on the substance.

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

- (i) the volume of Guarantee Section expenditure is not determined by the appropriations entered in the budget - with all the inevitable inaccuracy in that field - but from the basic regulations covering the various market organizations. While it must be admitted that in purely formal terms the budget authorizes expenditure, in actual fact in this case it simply reflects or rather records the expenditure.

- (ii) to the substantive consideration made above must be added the procedural or administrative consideration that on the basis of the rules in force expenditure is affected first at national level under the global advances and does not affect the Community budget until some time later (on average two or three months). The transfers therefore enable the inevitable inaccuracies of the estimates to be rectified retrospectively in the accounts.

While confirming that it accepts the role devolving upon it from regulations as regards the management of the Guarantee Section and from its responsibility for maintaining vigilance and keeping up a constant supply of information to the budgetary authority on the development of the situation, the Commission would propose that it be granted the power of decision on the transfer in question for the reasons set out above¹.

The proposal therefore contains appropriate amendments to Articles 21, 101 and 116 of the Financial Regulation. Because of the administrative complexity of transfer procedures, it was thought appropriate to include a table comparing the present situation with what is proposed (Annex II).

¹ Some further considerations on this point are stated under D.3(b) below.

3. Additional details concerning implementation of the provisional twelfths arrangements

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

These additional provisions may be summarized as follows:

(a) Treatment of "global commitments" under the EAGGF Guarantee Section as "commitments" provided for in Article 8

It is proposed that a provision be added stating explicitly that the "global commitments" under Article 96 be considered - as has happened in practice during the first half of 1980 - as "commitments" provided for in the new Article 8(2)(a). It is quite right that the Guarantee Section should not be deprived of the benefit of the method applied for commitments in all areas of the budget. The fact that the "global commitments" of the Guarantee Section are in reality advances paid to the Member States should not affect the general principle underlying the Financial Regulation: the commitment enables a start to be made and for that reason a quarter of the appropriations for commitment are available in January. The purpose of the advances from the Guarantee Section is basically the same, since they enable Member States to begin financing operations as and when necessary;

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

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

- the budget for the preceding year
- or the budget (preliminary draft or draft) in preparation.

Two points can be made:

- (i) if the budget is rejected it is not possible to work solely on the basis of the previous year's budget, since the second limit would then not be respected and risks would arise;
- (ii) it should be indicated more clearly than in the present Regulation what document (i.e. stage of the procedure) constitutes the second limit, notably in the event of rejection.

To clarify this the Commission proposes appropriate provisions in the new paragraphs 3 and 4 of Article 8. It should also be pointed out that the twelfths arrangements - for obvious reasons of administrative stability - cannot be uncertain and subject to alteration; i.e. the basic figures must not change as the budget subsequently passes the various stages in the procedure. The figures standing at the end of the financial year are therefore the basis for the application of the twelfths, and no change is possible until the budget is adopted. This is specified in the additional clause entered as Article 8(3).

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

The new, expanded Article 8(5) contains more detailed provisions which practical application of the twelfths arrangements in 1980 has shown to be necessary. It would appear useful to specify that:

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

(d) Possibility of transferring available allocations

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

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

Since the present Regulation neither provides for nor precludes this possibility, a specific provision has been introduced as the new Article 8(7).

4. Carryover of Chapter 100 appropriations

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

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

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

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

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

5. Alignment of the Financial Regulation on the Treaty, with particular reference to the annual report by the Court of Auditors

In the Commission's opinion, the current text of Articles 83 and 84 of the Financial Regulation does not accord with the revised version of the Treaty (see Article 206a(4) of the EEC Treaty) adopted on 22 July 1975.

The proposed revision relates to the following two points:

(a) Relations between the Court of Auditors and the other institutions in the compilation of the annual report

At present, under the terms of Article 83 of the Financial Regulation, the Court of Auditors draws up its annual report in two stages:

- (i) firstly, after receiving the revenue and expenditure account on 1 June, the Court prepares its "comments" and transmits them to the institutions by 15 July. This preliminary report, drafted in only six weeks, is provisional and tentative in nature and is designed to allow the Court to sound out the institutions and obtain their reactions and replies to the comments it intends to make;
- (ii) in the light of the replies supplied by the institutions by 31 October, the Court then compiles its final report, amending its initial comments as and where necessary.

However, the first subparagraph of Article 206a(4) of the EEC Treaty reads as follows:

"The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the institutions of the Community and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Communities."

The "comments" stage, therefore, is not provided for by the Treaty: in practice it constitutes part of the preparations for the compilation of the report, preparations which are a matter for the Court's internal organization, but which should not in the Commission's view be specified in the Financial Regulation.

It is for the Court of Auditors to determine the procedure whereby, with the assistance of the other institutions, it produces its annual report.

The Commission proposes a new system which would, in its view, be simpler and more consistent: the Commission would forward the revenue and expenditure account by 15 April, the Court of Auditors would have three months to compile its final report - which would thus be available by 15 July - and the institutions would then have until 15 October to draft their replies; this would enable the Court of Auditors, without revising the report, to make the necessary arrangements to forward it, together with the replies, to the authorities responsible for giving discharge and to have it published in the Official Journal.

The proposed new version of Article 83 would thus be fully consistent with Article 206a(4) of the EEC Treaty. There could be no suggestion that the Court of Auditors' own powers were being invaded and each institution's role would be more clearly defined, with due regard to its independence.

(b) Court of Auditors' comments on specific questions

The second subparagraph of Article 206a(4) states:

"The Court of Auditors may also, at any time, submit observations on specific questions and deliver opinions at the request of one of the institutions of the Community."

The existing Financial Regulation merely restates this provision but lays down no implementing rules.

In order to rectify this omission and to make for closer cooperation between the institutions, the Commission has introduced appropriate provisions in the new Article 84 of the attached draft Regulation.

6. Detailed provisions concerning research activities

(a) Indicative ceilings in research programme decisions

Among the proposed amendments to the Financial Regulation which were submitted by the Commission on 12 June 1978¹ was a provision stipulating that the figures given in programme decisions should be merely indicative. Although the Council approved the other proposed amendments relating to research appropriations and included them in its amendment of 25 June 1979², it was unable to agree on this particular aspect.

The Commission shares the view which Parliament has so often stated and feels bound to uphold its original proposal. In its view the figures given in programme decisions can be no more than an estimate and cannot bind the budgetary authority in advance when it comes to draw up the budget for the financial years in question. The Commission therefore feels that an appropriate provision should be added in Article 88(2) of the Financial Regulation in order to eliminate all ambiguity in the future.

(b) Detailed provisions concerning certain specific revenue activities

In the special case of research activities, where certain receipts can accrue from outside bodies and individuals, a number of amendments are required to the Regulation to ensure that the appropriate budgetary procedure is followed.

These amendments, which concern:

- Article 3(2);
- Article 6(5);
- Article 73(1);
- Article 88(4) and (5);
- Article 91(2) and (3),

¹OJ C 160, 6.7.1978.

²Regulation No 1252/79 (OJ L 160, 28.6.1979, p. 1).

are designed to obviate any risk of misinterpretation as to the utilization of revenue from third parties ("revenue earmarked" for particular budget items) particularly revenue in excess of budget estimates, notably as regards the availability of payment appropriations.

Under the 1973 Financial Regulation, the use that could be made of receipts from outside bodies and individuals was specified by an entry in the Council minutes¹.

Since then there has been an increasingly regular flow of such receipts and, pursuant to various Council decisions, they now come from non-Community countries too (COST projects, association agreements in connection with the fusion project, etc.).

Article 3 therefore carries a new provision defining "revenue earmarked for a specific purpose", while Article 6 has been amended to specify the circumstances in which the corresponding payment appropriations may be carried over.

The amendments to Article 73 on the presentation of the revenue and expenditure accounts are designed to distinguish clearly between additional revenue and appropriations carried over corresponding to unused revenue.

In any event, following the partial revision on 25 June 1979 of the Financial Regulation of 21 December 1977, it was incorrect to hold that revenue could make appropriations available in the appropriation accounts, which are the instruments of implementation in the function-orientated budget. On the contrary, it should be stressed that work carried out on behalf of third parties represents programme objectives which are not funded from own resources: for this reason, appropriations made available by this revenue must be allocated to a budget heading.

¹Council minutes No 1258.

This is why new provisions have been added to Article 88 to spell out the special case of appropriations corresponding to additional revenue from third parties, whether appropriations for commitment or for payment, and the special procedure for carrying them over.

The section relating to appropriations made available by additional revenue has accordingly been deleted from Article 91(2), which deals with appropriation accounts.

Finally, Article 91(3) is amended to prevent duplication of commitment or payment procedures: since expenditure charged to the appropriation accounts has already given rise to commitments and payments approved by the financial controller and the accounting officer, the booking of these amounts to research and investment objectives should be regarded as a simple accounting operation.

7. Amendment of provisions relating to the list of posts

Article 16(3) has been amended and expanded for two reasons:

(a) Half-time work

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

The Commission, for instance, has around 120 staff working half-time at the moment: roughly 70% in the C category and 15% in the language service.

Establishment posts are, of course, approved by the budgetary authority in order to meet each institution's requirements - which have been scrutinized and justified in detail - and are thus intended to satisfy their manpower needs - assuming that these posts are occupied full-time. Consequently, if the institutions allow staff to work half-time, under present rules this deprives them of some of the total manpower which the budgetary authority intended them to have: i.e. the effect on the Commission at present is as if its list of posts had been cut by around 60.

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

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

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

(b) Updating of rules on the list of posts for research activities

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

The discrepancy has arisen because Regulation No 2615/76¹ introduced special provisions for research staff, providing in particular for the "establishment staff" category to be abolished together with the distinction between permanent and non-permanent posts.

The Commission is accordingly proposing that the text be adjusted to bring it up to date (see second indent of Article 16(3) of the attached draft Regulation).

¹OJ L 299, 29.10.1976.

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

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

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

This proposal (contained in the new Article 27) offers the following practical advantages:

- (a) Firstly, assuming a positive balance - i.e. a surplus - which is the usual case, it would be easier to provide for a supplementary budget, should the need arise. The retention of a surplus would lessen the impact of a supplementary budget on Community resources by reducing the nominal size of the contribution which Member States would be asked to provide. The existence of this balance would make for greater flexibility, since it would have a definite stabilizing effect on the budgetary procedure as a whole.
- (b) Secondly, on a practical level, the balance is not known until the revenue and expenditure account has been drawn up, i.e. 1 June at present and 15 April in future if the proposed adjustment of dates is accepted.

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

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

¹See COM(76)210 final.

D. ADJUSTMENT OF CERTAIN DATES AND DEADLINES

In the light of past experience and in order to accommodate some of the amendments made in this revision of the Financial Regulation, the Commission sees it necessary to propose the following changes:

1. Bringing forward the dates for presenting the accounts

As things stand at present, the procedure for the presenting and auditing of the accounts for financial year n:

- begins on 1 June of financial year n+1 when the Commission presents the revenue and expenditure account;
- continues on 30 November when the Court of Auditors forwards its annual report, together with the institutions' replies, to the authorities responsible for giving discharge; and
- is completed on 30 April of financial year n+2 when the budgetary authorities give the discharge.

Experience has shown that the timetable is very tight and difficult to comply with in view of the scale and complexity of the work to be done by the various institutions involved.

In order to facilitate implementation of this important procedure the Commission is therefore proposing that certain deadlines be brought forward. It proposes that the revenue and expenditure account be drawn up by 15 April, one and a half months earlier than at present (1 June). This can be achieved as follows:

- (i) by shortening the "additional period" for the EAGGF Guarantee Section as suggested by the Commission (see D.3 below) from the present three months (1 January to 31 March) to two months (1 January to end February);
- (ii) by an extra effort on the part of the relevant Commission departments, which will have one and a half months (1 March to 15 April) from the final closing of the accounts to draw up the revenue and expenditure account instead of two months (1 April to 31 May) under the present arrangements.

By starting the procedure for presenting and auditing the accounts one and a half months earlier, it will be possible to reschedule subsequent deadlines to the advantage of all the institutions involved.

To be more specific:

- (i) firstly, with the revenue and expenditure account available from 15 April the Court of Auditors will be in a position to produce its annual report (see C.5(a) above) by 15 July;
- (ii) secondly, the institutions will be able to draft their replies by 15 October; and
- (iii) lastly, the authorities responsible for giving discharge - Parliament after the Council has been consulted - will be able to work on this from 15 November.

2. Bringing forward the dates for applying for and notifying carryovers

Firstly, it is proposed that the date for applying for non-automatic carryovers (see Article 6(1)(b)) be brought forward to 1 February. This is not only to fit in with the general rescheduling referred to above but also to make it possible, in line with the wishes of the Court of Auditors, to incorporate the decisions taken by the budgetary authority in connection with these carryovers in the revenue and expenditure account; this is not possible with the present deadlines.

Secondly, it is proposed that the deadline for transmitting the list of automatic transfers to the budgetary authority be altered; the existing deadline of 1 April cannot be met for practical reasons as items can be entered in the accounts up to 31 March and it is not possible to draw up a list straightaway. For this reason the Commission suggests that the date in question be made to coincide with the deadline for the revenue and expenditure account.

Annex III sets out all the new dates and deadlines proposed by the Commission. The results of these changes can be summarized as follows:

- (a) Less time is required for closing the accounts; with the EAGGF Guarantee Section's "additional period" curtailed, it will be possible to close the accounts for the financial year earlier and to assess the various implications more speedily.
- (b) The subsequent schedule for presenting and auditing accounts up to and including discharge is not as tight.
- (c) All the institutions involved in preparing and examining the budget proposals for the following financial year will appreciate having the definitive figures of the closed accounts by 15 April instead of 1 June.

* * *

*

The Commission would draw the attention of the Council and Parliament to the fact that the rescheduling of the various dates and deadlines, all closely interlinked, constitutes a single, indivisible operation and the relevant proposals must be assessed accordingly.

3. Shortening the additional period applicable to the EAGGF Guarantee Section and to food aid

As the rules stand at present the additional period is three months (expiring on 31 March); this is one of the reasons why so much time is required for the presentation of the revenue and expenditure account (1 June) and the repercussions on the timing of the subsequent phases of the procedure.

The proposal presented by the Commission in spring 1979¹ was specifically designed to reduce the additional period from three months to one month. This proposal was endorsed by Parliament but not by the Court of Auditors, which was unable to go along with the idea of "commitments based on estimates", on which the new system hinged. The Commission accordingly withdrew its initial proposal, work on the present general revision having already started.

The Commission is still convinced that it would be in the interests of all the institutions involved if this additional period were shortened, obviously on condition that the objectivity of the accounting data is not jeopardized. It has therefore discarded the formula of "commitments based on estimates" and automatic carryovers put forward in 1979 and proposes the following instead:

- (1) the deadline for the closing of the accounts to be brought forward from 31 March to 28 February, thus gaining a valuable month;
- (2) the shortening of the deadline to be achieved as follows:
 - (a) First condition: the few adjustments, mainly involving "category two"² expenditure made after 28 February to be booked to the following financial year.

It should be borne in mind that Commission Regulation (EEC) No 380/78 requires Member States to submit to the Commission:

- by 20 January the up-to-date figures on the year just ended (first subparagraph of Article 6(2)). These are definitive for category one expenditure and provisional for category two expenditure², and are entered in the accounts as soon as they have been received and processed by the Commission;

¹COM(79)202 final, 23 April 1979.

²The following distinction is made in EAGGF Guarantee Section expenditure:

- category one expenditure: all expenditure in respect of which an amount is fixed per unit of quantity by the rules for the common organization of the market in question;
- category two expenditure: expenditure arising from buying in, storage and release to the market.

- by 20 February at the latest, adjustments in respect of category two expenditure (second subparagraph of Article 6(2)). This expenditure is so complex that it is often impossible for all the Member States to meet the deadline; it also has to be checked by the Commission at length before being entered in the Community budget. Under the Commission's proposal the differences between the provisional figures due by 20 January and the definitive figures - determined after the adjusted figures transmitted by 20 February have been checked - would be booked to the following financial year.

(b) Second condition: the Commission to be authorized to decide itself - after consulting the Fund Committee as provided in Article 13 of Regulation (EEC) No 729/70 - on all transfers from one chapter to another under Titles 6 and 7 of the budget. The present system, whereby the Council has to approve the transfers, takes at least one month (the time needed for all the administrative work involved - drafting of transfer requests, translation, reproduction, transmission to the Council, transmission to Parliament for information, examination and decision by the Council).

As indicated above (see C.2(b)) in connection with the changes proposed in Article 21, the transfers in question, by virtue of the special nature of the Guarantee Section, are basically "adjusting" transfers rather than "authorizing" transfers.

It should also be pointed out in this connection that the Council was aware of this aspect from the outset; when it adopted the 1973 Financial Regulation, the following statement was recorded in the minutes:

"The Council will decide, in the light of experience, whether it will be necessary to provide for some relaxation of the procedure for appropriation transfers from one chapter to another within the EAGGF Guarantee Section. Should this appear necessary, the Council reserves the right to authorize the Commission to make such transfers within limits and on conditions to be specified in each individual case."¹

Experience acquired since the early days of 1973 demonstrates adequately that the Commission's proposal, which would do a lot to rationalize the procedure, represents the best possible solution to the problem involved and in no way affects the institutions' real responsibilities in respect of the EAGGF Guarantee Section.

¹Document R/2671/1f/72 FIN 716/ATO 174 (Add. 1 rev. 4) Annex jf.

E. OTHER AMENDMENTS

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

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

1. Article 30 (making over of own resources to the Community)

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

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

The rules governing the conversion from ECUs into national currencies and vice versa during these two stages must be made quite clear; the existing Article 30 must therefore be amended and expanded so that no possible doubt may exist.

Article 9(3) of Council Regulation No 2891/77¹ will have to be changed as a result of this amendment. A proposal for the revision of this Regulation is to be made shortly.

2. Updating of certain amounts connected with contracts

Articles 52, 54, 56, 57 and 94 contain a number of specific amounts relating to the award of contracts; they are the thresholds or ceilings which determine the various procedures applied in this field (private treaty, consultation of the Advisory Committee on Procurements and Contracts, security, etc.).

When the existing Financial Regulation was drawn up in 1977 the amounts in the 1973 Regulation were updated and increased by between 50% and 100%.

Hence, in view of the constant rise in the cost of living (the Belgian consumer price index rose by about 40% between 1975-76 - when the amounts in the existing Financial Regulation were calculated - and the end of 1980) and the fact that the new Financial Regulation will not enter into force until about 1981 or 1982, it is proposed that these amounts should be raised by an average of around 50%.

¹OJ L 336, 27.12.1977.

3. Article 58 (Council Directives on public works and supplies)

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

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

New provisions should therefore be added to Article 58:

- (i) drawing attention to the supplies Directive (which is not mentioned at present);
- (ii) stating that more detailed and explicit provisions will be laid down as "implementing measures" to be adopted by Commission Regulation in accordance with Article 121 (present Article 106) of the Financial Regulation.

4. Article 116 (food aid)

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

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

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

This provision can be found in Article 116 of the attached draft (new paragraph 2).

F. AMENDMENTS RESULTING FROM THE COURT OF AUDITORS' OPINION OF
13 JUNE 1978

The Financial Regulation which was adopted on 21 December 1977 provided that the Court of Auditors - which had only recently been set up and had not therefore been able to give an opinion on all the provisions - would deliver a supplementary opinion on the Regulation at a later date¹. The Court of Auditors forwarded its final opinion to the Commission on 13 June 1978.

This opinion (see Annex IV) was studied very closely. The attached proposal takes account of the suggestions made by the Court of Auditors which affect Articles 10², 18, 20, 32, 37, 57³, 58, 68, 78, 79, 80, 85 and 94.

x

x

x

¹See OJ L 356, 31.12.1977, page 1, second recital.

²Based on the Court of Auditors' opinion on the proposal to introduce the ECU.

³Suggestion which has brought about a change in the wording of Article 50.

ANNEXES

- ANNEX I - New layout of the budget for differentiated appropriations

- ANNEX II - Provisions governing transfers - comparison

- ANNEX III - Comparison of dates

- ANNEX IV - Court of Auditors' opinion of 13 June 1978

New layout of the budget for differentiated appropriations

(left-hand page of the budget)

CHAPTER:

Article	Item	Heading	Appropriations for commitment		Appropriations for payment	
			Approps 1981*	Approps 1980*	Approps 1981*	Approps 1980*

* Financial years given as examples.

New layout of the budget for differentiated appropriations

(right-hand page of the budget)

CHAPTER

Implementation 1979*		REMARKS			
Commitments	Payments				
		<u>Item (or article)</u>			
		Indicative schedule			
		Commitments		Payments	
			1980	1981	Subsequent years
		Commitments entered into before 1980 to be covered by new appropriations for payment			
		Remaining from 1979			
		Appropriation for 1980			
		Appropriation for 1981			
		TOTAL			
		<u>Item (or article)</u>			
		Indicative schedule			
		Commitments		Payments	
			1980	1981	Subsequent years
		Commitments entered into before 1980 to be covered by new appropriations for payment			
		Remaining from 1979			
		Appropriation for 1980			
		Appropriation for 1981			
		TOTAL			

* Financial years given as examples.

PROVISIONS GOVERNING TRANSFERS (ARTICLE 21 OF THE FINANCIAL REGULATION)

COMPARISON

I. PRESENT SITUATION

COMMISSION SECTION		COUNCIL AND PARLIAMENT SECTIONS	OTHER SECTIONS (COURT OF JUSTICE AND COURT OF AUDITORS)
Sector	Procedure		
Titles 1 and 2	(a) It takes decisions concerning transfers between items and articles (b) It takes decisions concerning transfers between chapters, within titles, two weeks after informing the budgetary authority	- They take decisions concerning all transfers within their own sections - They inform the Commission of their decisions	- They submit transfers between items and articles to the Commission, which decides - They submit proposals for transfers from one chapter to another to the Commission for transmission to the budgetary authority
Titles 6 and 7	(a) It takes decisions concerning transfers between items and articles up to 31 March (b) It makes proposals to the Council - which decides up to 31 March - concerning transfers from one chapter to another. The Parliament is informed of these transfers		
FOOD AID	It takes decisions concerning transfers from one article to another up to 31 March		
Other titles	(a) It takes decisions concerning transfers between items and articles (b) It makes proposals to the budgetary authority concerning all transfers between chapters		
1. Transfers of appropriations carried over 2. Transfers of appropriations for commitment remaining 3. Distinction in the procedure between transfers of appropriations for commitment and transfers of appropriations for payment (appropriations for the current financial year) 4. Transfers between differentiated approps and non-differentiated approps		non-differentiated appropriations differentiated appropriations (= appropriations for payment)	no specific provisions in the existing Regulation

II. SITUATION RESULTING FROM THE PROPOSAL

COMMISSION SECTION		COUNCIL AND PARLIAMENT SECTIONS	OTHER SECTIONS (COURT OF JUSTICE AND COURT OF AUDITORS)
Sector	Procedure		
Titles 1 and 2	No change*		
Titles 6 and 7	(a) All transfers, including those between chapters, are effected by the Commission, after the Fund Committee has been consulted, up to 28 February (b) The Commission informs the budgetary authority	No change*	No change*
FOOD AID	Transfers between articles are effected up to 28 February		
Other titles	No change*		
*But see points 1 to 4 below			
1. Transfers of appropriations carried over 2. Transfers of appropriations for commitment remaining 3. Distinction in the procedure between (appropriations of the current financial year) 4. Transfers between differentiated appropriations and non-differentiated appropriations		non-differentiated appropriations : all transfers (between items, articles and chapters) to be approved by the budgetary authority differentiated appropriations (= appropriations for payment) : all transfers (between items, articles and chapters) to be decided by the Commission between items and articles : to be decided by the Commission between chapters : to be decided by the budgetary authority transfers of approps for commitment : present provisions do not change transfers of approps for payment : all transfers (between items, articles and chapters) are to be decided by the Commission	all transfers (between items, articles and chapters) to be approved by the budgetary authority all transfers (between items, articles and chapters) to be decided by the Commission to be decided by the Commission to be decided by the budgetary authority present provisions do not change all transfers (between items, articles and chapters) are to be decided by the Commission all transfers (between items, articles and chapters) are to be decided by the budgetary authority

COMPARISON BETWEEN PRESENT DATES AND PROPOSED DATES

	<u>Present situation</u>	<u>Proposal</u>	<u>Change</u>
Deadline for contracting commitments	31 December	31 December	No change
Deadline for payment authorizations to reach financial control	31 December	31 December	No change
Deadline for payment authorizations to reach accounting officer	Not provided for	10 January	New
Deadline for the accounting officer to execute payments	15 January	15 January	No change
Closure of accounts for the EAGGF Guarantee Section	31 March	28 February	One month earlier
Information from other institutions for the revenue and expenditure account	1 April	1 March	One month earlier
Applications for non-automatic carryovers	21 April	1 February ¹	80 days earlier
List of automatic carryovers	1 April ²	15 April	15 days later
Drawing-up of the revenue and expenditure account	1 June	15 April	1½ months earlier
Presentation of the Court of Auditors' "comments"	15 July	15 July ³	4
Presentation of the institutions' replies	31 October	15 October	15 days earlier
Final dispatch of the Court of Auditors' report	30 November	15 November	15 days earlier

¹Until 15 March for the EAGGF Guarantee Section.

²This date is a mistake in the current system. It cannot be complied with.

³Under the new proposal it is the Court of Auditors' report that is presented not just its "comments".

⁴The Court of Auditors has three months - from 15 April to 15 July - to draw up its report (at the moment it has one and a half months - from 1 June to 15 July - to draw up its "comments").

EUROPEAN COMMUNITIES

Court of Auditors

Luxembourg, 13 June 1978

Mr Roy Jenkins,
President of the Commission
of the European Communities,
rue de la Loi, 200,
1049 Brussels

Dear Mr Jenkins,

By letter dated 2 December 1977 I transmitted to the Council the partial opinion of the Court of Auditors on Articles 85 to 91 (auditing of accounts) of the draft Financial Regulation applicable to the general budget of the European Communities, reserving the subsequent opinion of the Court on the whole draft Regulation.

When adopting the Financial Regulation on 21 December 1977, the Commission and the Council formally undertook to review the whole of the Regulation, as soon as the supplementary opinion of the Court of Auditors was available.

I am now sending you the final opinion of the Court of Auditors relating to the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities.

In the attached opinion the Court of Auditors has not commented on the deadline laid down in Article 83 of the Regulation for transmittal of the comments which are likely to reappear in its annual report. It has

none the less asked me to convey to you its misgivings as to the brevity of the time available, dating from receipt of the revenue and expenditure account. The Court of Auditors intends to reconsider this point at a later stage, in the light of further experience.

Yours sincerely,

(signed)

Michael N. Murphy
President

**Opinion of the Court of Auditors relating to the Financial Regulation of 21 December 1977
applicable to the general budget of the European Communities**

**THE COURT OF AUDITORS OF THE EUROPEAN
COMMUNITIES,**

Having regard to Article 78 (i) of the Treaty establishing the European Coal and Steel Community, Article 209 of the Treaty establishing the European Economic Community and Article 183 of the Treaty establishing the European Atomic Energy Community,

Having regard to the opinion of the President of the Council of 14 November 1977 on the provisions of the Financial Regulation relating to the Court of Auditors,

Having regard to the partial opinion of the Court of Auditors on Articles 85 to 91 (auditing of accounts) of the draft Financial Regulation forwarded by the President of the Council in a letter of 2 December 1977 reserving expressly the subsequent opinion of the Court of Auditors on the draft Financial Regulation,

Having regard to the Financial Regulation of 21 December 1977 laying down the revision of the whole of the provisions of the said Regulation as soon as the additional opinion of the Court of Auditors is available,

Having regard to Article 108 (2) of the Financial Regulation of 21 December 1977 which stipulates that the provisions of the said Regulation shall be re-examined, in accordance with the procedures laid down to this end by the Treaties, after the Court of Auditors has drawn up an opinion in respect of them,

HAS ADOPTED THE FOLLOWING OPINION:

Firstly the Court considers that the word 'approval' of the Regulation should be completed by the phrase 'considering the opinion of the Court of Auditors' and that consequently there is no reason for keeping

'whereas' referring to the partial opinion already given.

TITLE I

General principles

Article 1

The Court states that Article 1, third subparagraph, does not restrict in any way the institutions' expenditure activities. Consequently, the provision should be completed by the following:

'The abovementioned expenditure may not involve activities other than those arising from the tasks conferred upon the institutions by the Treaties or the acts adopted by virtue of the latter.'

Article 10

The Court considers that in addition to the provisions contained in the Financial Regulation, specific legislation' on the application of the EUA to the measures adopted by the European Communities is in the process of being drawn up. Therefore the fragmentary nature of the normative system of EUA underlines the need for coordination in this subject.

In addition to this general requirement, the Court considers that the idea of 'sum of the amounts' contained in paragraph 1 should be replaced by the more precise 'whole of the amounts', contained in the draft Regulation on EUA.

Moreover the Court considers that the present provision should be completed by the introduction of a periodical adjustment mechanism of the sums referred to in this Article.

With regard to the determination of the value of EUA by the Commission it would seem preferable to delete the note at the foot of the page which merely refers to 'OJ No C 21, 30. 1. 1976' (incomplete reference since the initial communication from the Commission was amended on several occasions) and to point out directly in the text that 'the calculating method should be covered by appropriate provisions taken by the Commission and published in the *Official Journal of the European Communities*'.

TITLE II

Presentation and structure of the budget

Article 15

The Court notes that paragraph 2 lays down the classification of revenue and expenditure under titles, chapters, articles and items and that paragraph 3 stipulates that the budgetary nomenclature shall be decided in respect of the apportionment of the revenue and expenditure under separate titles, chapters and articles, during the budgetary procedure.

In the light of these provisions, it is not obvious if the appointment under items is included in the budgetary nomenclature and if it represents a restriction above all with regard to the transfers under Article 21.

In the Court's opinion the provisions in question require explanation.

TITLE III

Implementation of the budget

Article 18

The Court considers that the rule preventing the delegation of powers with regard to the decision to ignore the authority of the Financial Controller should be completed by a reference to Articles 23 and 24 which also deal with decisions of the same type.

Article 20

Article 20, fourth subparagraph, lays down that the assistant accounting officers shall be appointed 'under the same conditions' as the accounting officer, without the details being given of the procedure to be followed for their nomination (for example, on the basis of a proposal drawn up by the accountant etc.).

The Court stresses the need here for more specific legislation on the subject, all the more since it is a question of officials subject to direct authority and unlike the provisions laid down for the financial controllers there is no mention of the detailed rules for the implementation of the establishment of particular rules on this subject.

Similarly, in order to have adequate information on the measures adopted by the institutions with regard to the accounting officers themselves, the provisions of the

present article should be completed in a similar way to those laid down for the financial controllers (Article 19, fourth subparagraph).

Article 24 (2)

The Court recommends inserting the word 'reasoned' before the words 'proposal for cancellation'.

Article 32 (3)

The Court proposes the omission of the phrase 'in terms of actual needs' which may appear as a condition for the exact accounting of commitments and authorizations.

Article 37 (2), second subparagraph

This subparagraph should read as follows:

'However, the documents relating to transactions not finally closed shall be kept for longer than this period and until the close of the year following that of the closure of the said transactions.'

TITLE IV

Conclusion of contracts, inventories, accountancy

Article 50 (2)

In order to give the invitations to tender the required publicity in the Communities, the Court considers it necessary to publish them in the supplement to the *Official Journal of the European Communities*, as the notice of contracts and the concessions for public works and supplies in accordance with Council Directive 71/305/EEC of 26 July 1971 completed by Council Directive 72/277/EEC of 26 July 1972 and Directive 77/62/EEC of 21 December 1976.

Article 52

Contracts may be made by private treaty under point (c) where the automatic public tendering or discretionary tendering procedures do not give any result or where the prices quoted are not acceptable.

It could be stated that under these circumstances contracts may only be made by private treaty if the initial market conditions have not been fundamentally amended.

Article 57

This Article lays down the possibility of recourse to a simplified procedure (simple invoice or memo) for certain 'contracts for the supply of goods and services'. Whereas, under Article 50 (1), third subparagraph, the simplified procedure is only intended for the 'purchases' and there is thus a discrepancy in the wording of the two Articles.

Article 58

The Court states that the measures with which the institutions must comply should not only be those in respect of public works, as mentioned in the Article, but those in respect of supply contracts (Council Directive 77/62/EEC of 21 December 1976).

Since the said measures differ in several places from those laid down by this section of the Financial Regulation, the Court proposes to amend the initial part of this Article in the following way: 'On the awarding of contracts referred to in this Financial Regulation each institution, without prejudice to the provisions laid down by this Regulation, shall comply etc. ...'.

Article 61, third subparagraph

The making available without charge by the institutions of immovable property or large installations should be provided with adequate restrictions; for example, such availability should be made subject to the utilization of immovable property or large installations, by the beneficiary who shall contribute to the realization of the objectives of the institutions (research, distribution of knowledge etc.). The Court should also be informed of the operations of this kind in order to be able to ensure the observance of the principle of the soundness of the financial management.

TITLE V

**Responsibilities of authorizing officers, financial
controllers, accounting officers and administrators of
advance funds**

Article 68

The Court notes that amongst the cases in which the authorizing officer may be rendered liable to disciplinary action for non-observance of this regulation beside the omission and the delay in the issuing of recovery orders, the omission or the delay in the issuing of payment orders, which both may give rise to cases of civil liability for the institution in respect of third parties.

Article 70 (1), second subparagraph

The accounting officers and assistant accounting officers shall render themselves liable to disciplinary action as regards any loss or deterioration of the monies, assets and documents in their charge where such a loss or deterioration result from intentional or serious negligence on their part.

The liabilities of accounting officers as stockholders is thus limited to the cases of fraud or serious mistake, i.e. practically the same system as that applicable to the whole of the officials on the basis of Article 22 of the Staff Regulations (including the accounting officers in their capacity as paying agents) which lays down the making good of any damage suffered by the Communities as a result of 'serious misconduct'.

It seems on the contrary, considering the special nature of their duty that the accounting officers should have a greater liability also covering the cases of light fault and more than the accountants receiving advantages which are not recognized by other officials, i.e. an insurance against financial risks and a guarantee fund.

Article 70 (2)

The comments drawn up with regard to the accounting officers also apply to the administrators of advances by reason of the nature of the liability which they are required to take.

TITLE VI

Presenting and auditing accounts

Article 78

The second subparagraph of the Article, in laying down that the tasks delegated to officials of the Court must be specified and be limited to the time necessary for this

completion, could impede the auditing activities since it is difficult to predetermine the subject and the length of the audit.

The second subparagraph of Article 78 should be deleted since it conflicts with the exercise of the Court's power to organize its services.

Articles 79 and 80

The reference to Articles 18 and 19 of Regulation (EEC) No 2891/77 is wrong; it should be Articles 17 and 18 of the same Regulation.

TITLE XI

Transitional and final provisions

Article 106

The implementing measures for the Financial Regulation often complete those of the Regulation itself and it is thus important that the Court of Auditors should be able to participate in their formulation, like the Community institutions, who are called upon to give their prior opinion on the said measures.

The Court also considers that these implementing measures should provide for special rules applicable to the Financial Controller in order to ensure the implementation of the responsibility of these officials (Articles 19 and 69 of the Financial Regulation).

Adopted on 8 June 1978.

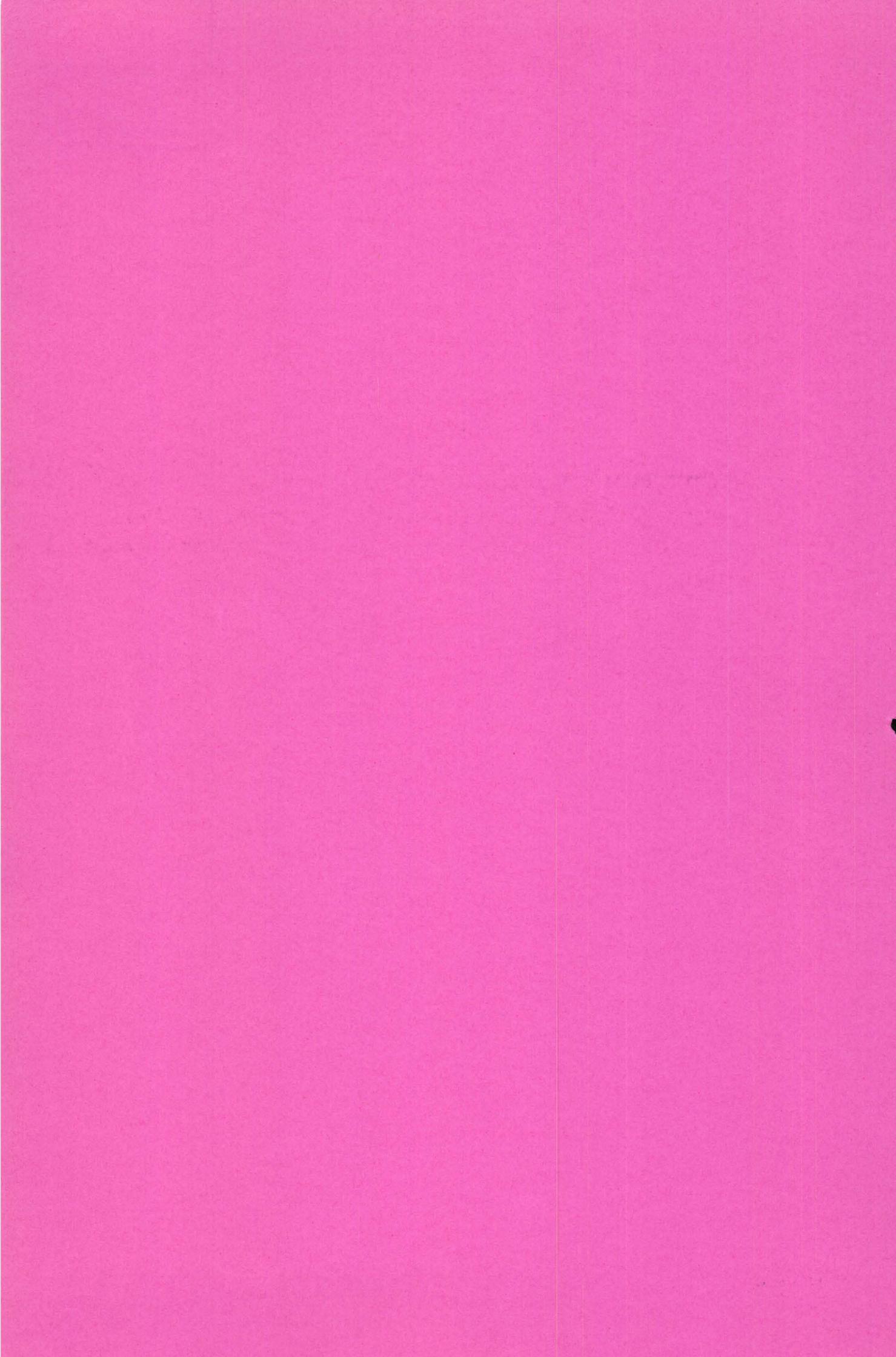
Michael N. MURPHY

President of the Court of Auditors

COMMISSION OF THE EUROPEAN COMMUNITIES

Proposal for a
Council Regulation (ECSC, EEC, EURATOM)
amending the Financial Regulation of 21 December 1977
applicable to the general budget of the European Communities (1)

(1) OJ L 356, 31.12.1977, page 1.



Proposal for a
COUNCIL REGULATION (ECSC, EEC, EURATOM) ...
amending the Financial Regulation of 21 December 1977
applicable to the general budget of
the European Communities¹

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

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

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Court of Auditors³,

Whereas the conciliation provided for in the Joint Declaration of 4 March 1975 of the European Parliament, the Council and the Commission⁴ took place in a Conciliation Committee;

Whereas Article 107 of the Financial Regulation of 21 December 1977¹, as amended by Regulation No 1252/79⁵, provides for the said Financial Regulation to be examined by the European Parliament and the Council in the light of a proposal from the Commission;

¹OJ L 356, 31.12.1977, p. 1.

²OJ C

³OJ C

⁴OJ C 89, 22.4.1975, p. 1.

⁵OJ L 150, 28.6.1979, p. 1.

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

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

Whereas, in the light of the experience acquired since its entry into force, it is necessary to make more detailed or revise certain provisions of the Financial Regulation of 21 December 1977, notably in respect of the presentation of appropriations in the general budget, the arrangements for provisional twelfths, transfers and carryovers, and the scheduling of certain deadlines for entering items in the accounts and for presenting and auditing the accounts;

Whereas it would appear to be in the general interests of the institutions concerned to shorten the additional period for entering in the accounts expenditure under the EAGGF Guarantee Section in order to rationalize the various deadlines governing the procedure for presenting and auditing the accounts;

Whereas it is necessary to amend certain provisions so that it is possible, in connection with the activities of the Joint Research Centre, to utilize revenue from third parties;

Whereas, in view of the rise in the cost of living, it is necessary to update certain amounts relating to the award of contracts referred to in Articles 52, 54, 56, 57 and 94;

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

Whereas the provisions referring to the drawing-up by the Court of Auditors of its annual report must be aligned on the text of the Treaties (Article 78f(4) of the ECSC Treaty, Article 206a(4) of the EEC Treaty and Article 180a(4) of the Euratom Treaty);

Whereas account should be taken of some of the suggestions made by the Court of Auditors in its supplementary opinion on the Financial Regulation of 21 December 1977, adopted at its meeting of 8 June 1978,

HAS ADOPTED THIS FINANCIAL REGULATION:

Article 1

The Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities¹, as amended by Council Regulation No 1252/79 of 25 June 1979², is amended as follows:

1. Article 1(2): The second subparagraph is replaced by the following:

"Without prejudice to paragraph 3 below, expenditure may not be authorized for a period going beyond the financial year.

Operating expenditure arising from contracts which have been concluded in accordance with local usage for periods going beyond the financial year shall not be subject to the provisions of the preceding subparagraph. Such expenditure shall be charged to the budget for the financial year in which it is effected."

2. Article 1(3): The fourth subparagraph is replaced by the following:

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

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

¹OJ No L 356, 31.12.1977.

²OJ No L 160, 28.6.1979.

3. Article 1: Paragraph 4 is deleted.
4. Article 1: Paragraph 5 is deleted.
5. Article 3(2): The first subparagraph is replaced by the following:

"2. Notwithstanding paragraph 1, revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts, bequests, contributions to Community activities from non-member States or various bodies, and revenue from third parties in respect of work carried out at their request shall not be used for any other purpose."

6. Article 4: The following paragraph 2 is added:

"2. No expenditure may be entered into or authorized in excess of the authorized appropriations, without prejudice to Article 22(2)."

7. Article 5: The last three paragraphs are replaced by the following:

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

The allotted appropriations shall be used solely to cover expenditure properly entered into and paid in the financial year for which they were granted, save as otherwise provided in Articles 6, 88 and 90, and to cover the debts relating to preceding financial years for which no appropriation was carried forward.

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

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

8. Article 6: Paragraphs 2 to 8 are replaced by the following:

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

- (a) commitment appropriations not committed at the end of the financial year for which they were entered in the budget shall remain available for the following financial year;
- (b) payment appropriations which have not been used at the end of the financial year for which they were entered shall be carried over automatically to the next financial year only.

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

- (a) appropriations in respect of staff and administrative expenditure (Titles 1 and 2) may not be carried over;
- (b) appropriations in respect of other expenditure may be carried over to the next financial year only.

4. In the case of the appropriations referred to in paragraphs 1(b) and 3(b), the Commission shall submit to the budgetary authority, not later than 1 February, the requests to carry over appropriations, duly substantiated, made by Parliament, the Council, the Court of Justice, the Court of Auditors and the Commission itself. However, requests relating to the carryover of appropriations from the Guarantee Section of the European Agricultural Guidance and Guarantee Fund may be submitted until not later than 15 March.

In the case of requests to carry over appropriations in respect of expenditure necessarily resulting from the Treaties or acts adopted in accordance therewith, the Council shall consult Parliament, which shall deliver its opinion in good time, i.e. normally within four weeks of receiving the request from the Council.

Unless the Council, acting by a qualified majority, decides otherwise within six weeks of receiving the request, the carryover of those appropriations shall be deemed to have been approved.

In the case of requests to carry over appropriations in respect of expenditure other than that necessarily resulting from the Treaties or acts adopted in accordance therewith, Parliament shall act within six weeks of receiving the request, after consulting the Council, which shall deliver its opinion in good time. If no decision is taken within this period, the requests shall be deemed to have been approved.

5. Unused revenue and appropriations available at 31 December arising from the specific revenue referred to in Article 3(2) shall be carried over automatically.
6. The appropriations referred to in paragraph 1(b) which have not been committed by 31 December and in respect of which authorization has been given to carry them over to the next financial year shall lapse if they are not committed and paid by the end of the said financial year.

7. The appropriations for the Guidance Section of the European Agricultural Guidance and Guarantee Fund and for the European Regional Development Fund may be used by way of exception to finance projects for which they were not initially committed,¹ under the conditions laid down in Regulations (EEC) No 3171/75¹ and (EEC) No 214/79² respectively.
8. Parliament and the Council shall be provided, for their information, before 15 April, with a list of the automatic carryovers.
9. For the purpose of implementing the budget, the use of appropriations carried forward shall be shown separately, by article, in the accounts for the current financial year."

9. Article 7: The third paragraph is replaced by the following:

"Expenditure relating to rents or certain associated expenditure which is payable in advance in accordance with local usage may give rise to payments from 20 December onwards to be charged to the appropriations for the next financial year.

The advances intended, within the meaning of Articles 96 and 116, to finance the expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund, and expenditure on food aid, may be paid from 10 December onwards."

10. Article 8: This article is replaced by the following:

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

¹OJ No L 315, 5.12.1975, p.1.
²OJ No L 35, 9.2.1979, p.1.

2a. Commitments may be entered into in respect of any chapter:

- up to one quarter of the total appropriations entered in the relevant chapter for the preceding financial year plus one twelfth for each completed month;
- without exceeding the appropriations provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.

The provisional global commitments referred to in Article 96 of this Regulation shall be treated as commitments for the purposes of these provisions.

2b. Payments may be made monthly in respect of any chapter:

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

3. The "draft budget" referred to in paragraphs 2a and 2b shall be the draft in the form in which it stands at the start of the financial year when the provisional twelfths arrangements began to be applied.
4. Where the absence of a budget is due to the rejection of the draft budget by Parliament as provided for by Article 78(8) of the ECSC Treaty, Article 203(8) of the EEC Treaty and Article 177(8) of the Euratom Treaty, the appropriations referred to in the second indent of paragraph 2a and in the second indent of paragraph 2b shall be those entered in the rejected draft budget or, where appropriate, in the new draft budget drawn up, following the rejection decision, before the start of the financial year.
5. At the request of the Commission, the Council, acting by a qualified majority, may, as dictated by administrative requirements and after consulting Parliament, authorize the simultaneous payment or commitment of two or more provisional twelfths in addition to those automatically made available under paragraphs 2a and 2b. The additional twelfths shall be authorized in whole and may not be split.

6. Decisions concerning several provisional twelfths and relating to expenditure other than that necessarily resulting from the Treaties or from acts adopted in accordance therewith shall be taken in accordance with the procedure laid down in Article 78b(2) of the ECSC Treaty, Article 204 of the EEC Treaty and the third paragraph of Article 178 of the Euratom Treaty.

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

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

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

8. Article 92 shall apply in respect of research and investment appropriations.

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

11. Article 10: This article is replaced by the following:

1. The budget shall be drawn up in ECUs.
The ECU is the sum of specified amounts of the currencies of the Member States as set out in Council Regulation (EEC) No 3180/78 of 18 December 1978 changing the value of the unit of account used by the European Monetary Cooperation Fund^{1,2}.

Any change in the composition of the ECU decided on by the Council in the context of the European Monetary System, as provided for by Article 2 of Regulation (EEC) No 3180/78, shall automatically apply to this provision.

2. The value of the ECU in a given currency shall be equal to the sum of the equivalents in that currency of the amounts of the currencies which make up the ECU. It shall be determined by the Commission on the basis of the exchange rates recorded each day on the exchange markets.

The daily rates for conversion into the various national currencies shall be available each day: they shall be published in the Official Journal of the European Communities.

3. Any conversion between the ECU and a national currency shall be effected at the rate obtaining on the day, without prejudice to the special provisions referred to in Article 123(2)."

¹OJ L 379, 30.12.1978, p. 1.

²The following amounts applied when this Regulation entered into force:

German mark	0.828
Pound sterling	0.0885
French franc	1.15
Italian lira	109
Dutch guilder	0.286
Belgian franc	3.66
Luxembourg franc	0.14
Danish krone	0.217
Irish pound	0.00759.

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

"TITLE II

ESTABLISHMENT AND STRUCTURE OF THE BUDGET"

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

"SECTION 1

ESTABLISHMENT OF THE BUDGET"

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

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

15. Article 12(5): A third indent is added as follows:

"- the plans referred to in Article 90."

16. Article 12(6): This paragraph is replaced by the following:

"6. The Commission may, on its own initiative or if requested by Parliament, the Council, the Court of Justice or the Court of Auditors, present to the Council a letter of amendment to the preliminary draft budget necessitated by the receipt of new information which was not available at the time the preliminary draft was established.

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

7. If circumstances arise which it could not have taken into account when establishing the draft budget, the Council may, if necessary, send to Parliament a letter of amendment to the said draft; the time limit set in the second subparagraph of paragraph 6 shall apply.

8. In the event of unavoidable, exceptional or unforeseen circumstances, the Commission may submit preliminary draft supplementary and/or amending budgets.

Also, particularly to enable policies to be adapted, the Commission may submit preliminary draft amending budgets which do not alter the total amount of the annual budget and to which the corresponding necessary draft Regulations would be attached.

Requests for supplementary or amending budgets from Parliament, the Council, the Court of Justice or the Court of Auditors shall be forwarded by the Commission to the budgetary authority. The Commission may attach a dissenting opinion. These budgets shall be submitted, examined, prepared and finally adopted in the same form and according to the same procedure as the budget whose estimates they are amending. They must be substantiated by reference to the latter. The competent authorities shall discuss them in the light of their urgency. All preliminary draft supplementary budgets must, as a general rule, be forwarded to the Council by the date laid down for the submission of the preliminary draft budget for the following financial year."

17. Section II: The heading is replaced by the following:

"SECTION II

STRUCTURE AND PRESENTATION OF THE BUDGET"

18. Article 15(5): The first subparagraph is replaced by the following:

"5. The statement of revenue and expenditure in respect of the Office for Official Publications of the European Communities, drawn up in accordance with Article 118 (2), shall be attached to the Commission section. "

19. Article 16: Paragraph 2 is replaced by the following:

"2. in the section for each Institution:

(a) as regards the statement of revenue:

- the estimated revenue for each Institution for the financial year in question, divided into titles, chapters, articles and items, following a decimal classification system,
- the revenue entered in the budget for the preceding financial year and the revenue established for the last financial year for which accounts have been closed, using the same decimal classification,
- appropriate remarks on each revenue heading;

(b) as regards the statement of expenditure:

(ba) in the case of the various items, articles, chapters and titles:

- the appropriations made available for the financial year in question, these appropriations being the commitment appropriations and the payment appropriations for the budget headings for which this distinction has been agreed,
- the appropriations made available for the preceding financial year,
- the actual expenditure in the last financial year for which the accounts have been closed;

This expenditure shall be determined as follows:

- for the budget headings where the distinction between commitment appropriations and payment appropriations has not been made:
 - actual payments in the last financial year for which the accounts have been closed plus the carryovers to the next financial year;
- for the headings where the distinction between commitment appropriations and payment appropriations has been made:
 - in commitments: commitments entered into during the financial year against appropriations for that financial year and against appropriations remaining from the preceding financial year;
 - in payments: payments effected during the financial year against appropriations for that financial year and against appropriations carried over from the preceding financial year;

(bb) in the case of the appropriations intended for the implementation of multiannual activities and consisting of commitment appropriations and payment appropriations:

in the remarks column, an indicative schedule of the payments relating to the financial year concerned and subsequent financial years;

(bc) appropriate remarks on each subdivision;

3. as regards total staff:

- for each section of the budget, a list of posts fixing the number of posts for each grade in each category and in each service,
- a list of posts paid from research and investment appropriations, classified by category and grade, distinguishing between permanent and non-permanent staff whose employment is authorized within the limits of the budget appropriations. As regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget. The list of posts must specify the number of highly qualified technical or scientific personnel who are accorded special advantages under the Staff Regulations applicable to these officials,
- a list of posts of the Official Publications Office fixing the number of posts for each grade in each category.

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

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

Paragraph 3 becomes paragraph 4.

20. Article 18: Paragraph 1 is replaced by the following:

"1. The Commission shall, without prejudice to Article 102(2), implement the budget on its own responsibility in accordance with this Financial Regulation and within the limits of the appropriations allotted."

21. Article 18(3): The first subparagraph is replaced by the following:

"3. With the exception of decisions overruling the Financial Controller provided for in Articles 23, 24, 35, 44 and 47, the Commission and each of the other institutions may delegate their powers in accordance with the conditions laid down by their internal rules of procedure and within the limits which they themselves lay down in the act of delegation."

22. Article 20: This article is replaced by the following:

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

This accounting officer shall be appointed by the Institution.

Without prejudice to the system provided for in Articles 4 and 5 of Regulation (EEC) No 729/70 and subject to the second paragraph of Article 48, to Article 49 and to Article 108 of this Financial Regulation, the accounting officer alone is empowered to manage funds and assets. He shall be responsible for their care.

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

The special rules applicable to the accounting officer and to assistant accounting officers shall be laid down in implementing measures provided for in Article 121."

23. Article 21: This article is replaced by the following:

1. Appropriations shall be classified by chapter and by article.
2. The Commission may make proposals to the budgetary authority, as provided in paragraphs 3 and 4, for transfers within each budget section. Proposals made by the other institutions for transfers from one chapter to another shall be automatically forwarded to the authority; the Commission may attach its own opinion to such proposals.

3. The appropriations which may be transferred, as provided in paragraph 5, shall be as follows:

(a) within the category of appropriations where no distinction is made between commitment appropriations and payment appropriations:

(aa) appropriations for the current financial year;

(ab) appropriations carried over by virtue of Article 6(1)(c);

(b) within the category of appropriations where a distinction is made between commitment appropriations and payment appropriations:

(ba) commitment appropriations for the current financial year;

(bb) commitment appropriations remaining available by virtue of Article 6(2)(a) and Article 88(3);

(bc) payment appropriations carried over by virtue of Article 6(2)(b).

4. Appropriations may also be transferred, by decision of the budgetary authority as provided in paragraph 6, between headings where a distinction is made between commitment appropriations and payment appropriations and headings where no such distinction is made.

5. Transfer decisions shall be taken as follows:

(a) the budgetary authority shall take decisions, in accordance with the procedure laid down in paragraph 6, on:

- all transfers from one chapter to another provided for in paragraph 3(aa), (ba) and (bb), subject to paragraph 5(bb) and (c) below;
- all transfers from one article to another and from one chapter to another provided for in paragraphs 3(ab) and 4.

(b) the Commission shall take decisions, in accordance with its internal procedure, on:

(ba) all transfers of payment appropriations provided for in paragraph 3(bc) and (bd) from one article to another and from one chapter to another in its own section;

(bb) transfers of appropriations from one chapter to another within the titles relating to staff expenditure and administrative expenditure in its own section. It shall inform the budgetary authority two weeks before making such transfers;

(bc) in each section, transfers from one article to another within each chapter shall be made by the Commission, deciding according to the urgency of the matter. As regards sections which do not relate to the Commission, such transfers shall be deemed effective if, except in urgent cases, the Commission does not take a decision within six weeks from the date when the proposal was lodged.

(c) Parliament and the Council may transfer appropriations from one chapter to another and from one article to another within their own sections of the budget. The Commission shall be informed of such transfers.

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

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

Proposals for transfers relating both to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, and to other expenditure shall be deemed to be approved if neither the Council nor Parliament has decided otherwise <-----> within six weeks of the date on which the two Institutions received the proposals.

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

7. Every proposal for a transfer within a chapter or from one chapter to another shall be subject to the approval of the financial controller, who shall attest that the appropriations are available.
8. Appropriations may be transferred only to budget headings for which the budget has authorized appropriations or carried a token entry.
9. This Article shall apply to the appropriations corresponding to revenue earmarked for a specific purpose under Article 3(2) only as long as the revenue is not used for any other purpose.
10. No transfer shall be made between Parts I and II of the budget."

24. Article 22(2): The first line is replaced by the following:

"2. By way of derogation from Articles 3 and 4, the following sums may be re-used:"

25. Article 24(1): The third subparagraph is replaced by the following:

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

26. Article 26: This article is replaced by the following:

"Estimates of the own resources and, if appropriate of the contributions referred to in Article 4(2), (3) and (6) of the Decision of 21 April 1970 to be paid by the Member States shall be entered in the budget, expressed in ECU. They shall be made available in accordance with Council Regulation (EEC, Euratom, ECSC) No 2891/77, and with Article 28 of this Financial Regulation."

27. Article 27: This article is replaced by the following:

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

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

28. Article 28: The following paragraph 2 is inserted:

"2. If the budget is not finally adopted before the start of the financial year, the contributions provided for in paragraph 1 shall be based on the amount shown in the draft budget, as referred to in Article 8(3) and (4) of this Regulation or, if this does not exist, in the preliminary draft budget."

Paragraph 2 becomes paragraph 3.

Paragraph 3 becomes paragraph 4.

29. Article 29: This article is replaced by the following:

"The Commission shall, four times a year, present to Parliament and the Council a report on the Communities' financial situation, covering both revenue and expenditure. This report shall also give details of appropriations carried forward from previous financial years, as well as of any changes brought about by the adoption of supplementary or amending budgets."

30. Article 30: This article is replaced by the following:

- " 1. The Member States shall credit the amounts due to the account referred to in Article 9(1) of Council Regulation (EEC, Euratom, ECSC) No 2891/77 in their national currency in accordance with the following provisions:
- (a) the own resources referred to in Article 2(a) and (b) of the Decision of 21 April 1970 and the balance of VAT resources referred to in Article 10(4) of Council Regulation (EEC, Euratom, ECSC) No 2891/77, both amounts expressed in national currency, shall be credited to the abovementioned account as they stand;

- (b) the own resources accruing from VAT referred to in Article 4(1) of the Council Decision of 21 April 1970, the amounts of which are expressed in ECU in the general budget of the European Communities, and, where appropriate, the financial contributions based on GNP and the adjustments to such contributions provided for in Article 10(5) of Council Regulation (EEC, Euratom, ECSC) No 2691/77 shall be converted at the rate for the ECU applying on the first working day following the fifteenth of the month preceding that in which they are credited to the account;
 - (c) the financial contributions referred to in Article 4(6) of the Decision of 21 April 1970 shall be converted at the rate for the ECU applying on the last but one working day of the month preceding that in which they are credited to the account;
 - (d) all other contributions or additional payments referred to in Article 28(3) of this Financial Regulation shall be converted in accordance with whichever of the methods laid down at (a) to (c) above applies to the case to which, depending on their nature, such contributions or additional payments correspond.
2. The Commission shall enter the amounts credited to the account referred to in paragraph 1 in its accounts kept in implementation of the statement of revenue for the general budget of the European Communities on the basis of the rate for the ECU applying for the month in which they are credited. "

31. Article 32(3): This paragraph is replaced by the following:

" 3. The procedure for implementing paragraphs 1 and 2 above shall be determined by the implementing measures provided for in Article 121. This procedure shall ensure that an exact account is kept of commitments and authorizations. "

32. Article 37(2): This paragraph is deleted. Paragraph 3 becomes paragraph 2.

33. Article 40: The third indent is replaced by the following:

" — the amount to be paid (in figures and words),
expressed in national currency or ECU, "

34. Article 42: The second paragraph is replaced by the following:

" The authorizing officer may grant
advances if a provision laid down
by regulation specifically provides
therefor. "

35. Article 50: Paragraph 1 is replaced by the following:

" 1. Contracts for the purchase or hiring
of buildings or goods, for the provision
of services or for the performance of
construction work shall be in writing.
Apart from contracts relating to buildings,
all such contracts shall be concluded
following an automatic public tendering or
discretionary tendering procedure.

However, contracts may be made by private
treaty in the circumstances referred to in
Article 52.

Contracts may be made against invoice or
bill of costs in the cases provided for in
Article 57. "

36. Article 52(a): "6 500 EUA" is replaced by "10 000 ECU".
37. Article 54: "18 000 EUA" is replaced by "30 000 ECU".
38. Article 56, third paragraph: "200 000 EUA" is replaced by "300 000 ECU".
39. Article 57: This article is replaced by the following:

"Contracts may be made against invoice or bill of costs only where the expected value of the goods and services supplied does not exceed 500 ECU. This limit shall be increased to 1 200 ECU for expenditure to be entered into outside the provisional places of work of the institution. "

40. Article 58: This article is replaced by the following:

" Without prejudice to the provisions laid down in this Financial Regulation, when concluding contracts referred to in this Regulation, each institution shall comply with the Directives¹ adopted by the Council, pursuant to the Treaty establishing the European Economic Community, in respect of public works and supplies, whenever the amounts involved are equal to or greater than the amounts provided for in those Directives.

The implementing measures provided for in Article 121 shall include the supplementary provisions which may be required in order to implement this Article. "

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

- (a) Public works: Directive 71/305/EEC,
as amended by Directive 78/669/EEC;
- (b) Supplies: Directive 77/62/EEC.

41. Article 59, first paragraph: This paragraph is replaced by the following:

"Permanent inventories showing the quantity and value of all movable and immovable property belonging to the Communities shall be kept in accordance with a model drawn up by the Commission. Only movable property exceeding a specific value laid down in the implementing measures provided for in Article 121 shall be entered in those inventories. "

42. Article 61, first paragraph: This paragraph is replaced by the following:

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

43. Article 64, second paragraph: This paragraph is replaced by the following:

"These entries shall make it possible to draw up a general monthly balance, and a statement by chapter and article, of budgetary revenue and expenditure, which shall be forwarded to the financial controller and the authorizing officer. "

44. Article 68: This article is replaced by the following:

" Authorizing officers who, when establishing entitlements to be recovered or issuing recovery orders, entering into a commitment of expenditure or signing a payment order do so without complying with this Financial Regulation and the rules for its implementation, shall render themselves liable to disciplinary action and, where appropriate, to payment of compensation. The same shall apply if they omit to draw up a document establishing a debt or if they neglect to issue recovery or payment orders or are, without justification, late in issuing them, thereby rendering the institution liable to civil action by third parties. "

45. Article 73(1), (2), (3) and (4): These paragraphs are replaced by the following:

" The Commission shall draw up, not later than 15 April of the following year, a revenue and expenditure account for the Communities, which shall include the following documents classified in accordance with the budget nomenclature:

(1) a table of revenue including:

- estimated revenue for the financial year,
- amendments to the revenue estimates as a result of supplementary or amending budgets and additional revenue as specified in the first subparagraph of Article 3(2),
- entitlements established in the course of the financial year,
- entitlements still to be collected from the preceding financial year,
- revenue collected during the financial year and revenue carried over pursuant to Article 6(5),
- amounts still to be collected at the end of the financial year.

Statements shall be attached to this table showing revenue carried over pursuant to Article 6(5) and, where appropriate, the balances and the gross payments arising from the transactions referred to in Article 22(2);

(2) tables showing the movement in appropriations for the financial year and, with a distinction being made between commitment appropriations, payment appropriations and non-differentiated appropriations, indicating:

- the initial appropriations,
- any amendments introduced by means of supplementary or amending budgets,
- any amendments to appropriations introduced by means of transfer,
- the final appropriations for the financial year,
- the appropriations remaining or carried over under Article 6;

(3) tables showing the use of the appropriations allocated for the financial year and, with a distinction being made between commitment appropriations, payment appropriations and non-differentiated appropriations, indicating:

- the commitments entered into and chargeable to the financial year,
- the payments made and chargeable to the financial year,

- the settlement of the commitments of the financial year and the calculation of the sums still to be paid at the close of that financial year,
- the commitment appropriations remaining by virtue of Articles 6 and 88,
- the payment appropriations carried over in accordance with Articles 6 and 88,
- the non-differentiated appropriations carried over in accordance with Article 6.
- cancelled appropriations.

Where appropriate, a statement shall be attached to this table showing the balances and gross payments arising from the transactions referred to in Article 22 (2);

- (4) tables showing the use of the appropriations available from previous financial years and indicating:
- the amount of appropriations remaining or carried over, a distinction being made between commitment appropriations, payment appropriations and non-differentiated appropriations,
 - the commitments entered into and chargeable to available commitment appropriations,
 - the payments made from payment appropriations and non-differentiated appropriations which have been carried over,
 - the settlement of sums still to be paid at the close of the previous financial year and the calculation of the sums still to be paid at the end of the current financial year,
 - the amount unused and maintained for the following financial year,
 - the amount cancelled, a distinction being made between commitment appropriations, payment appropriations and non-differentiated appropriations."

46. Article 74: This article is replaced by the following:

" Each institution shall, not later than 1 March, forward to the Commission the information required for drawing up the revenue and expenditure account and the balance sheet, together with a contribution to the analysis of the financial management referred to in Article 75, after submitting them to its financial controller."

47. Article 76: This article is replaced by the following:

- " 1. The Commission shall draw up, within the time limit provided for in Article 73, a balance sheet of assets and liabilities of the Communities as at 31 December of the preceding financial year. A statement, showing the movements and balances of the accounts, drawn up on the same date, shall be attached thereto.
2. These documents shall be submitted to the financial controller. "

48. Article 77: This article is replaced by the following:

"The Commission shall forward the revenue and expenditure account, the financial analysis and the balance sheet to Parliament, the Council and the Court of Auditors by 15 April at the latest."

49. Article 78: This article is replaced by the following:

- " The Court of Auditors and its members may, in carrying out the task of the Court, be assisted by officers of the Court.
- The Court itself or one of its members shall notify the authorities with which the delegated officer is to work of the tasks delegated to him. "

50. Article 79: The reference to "Article 19" of Regulation No 2891/77 is corrected to "Article 18".

51. Article 80: The reference in the third paragraph to "Articles 18 and 19" of Regulation No 2891/77 is corrected to "Articles 17 and 18".

52. Article 83: This article is replaced by the following:

"1. The Court of Auditors shall, by 15 July at the latest, adopt the report provided for in Article 78f(4) of the ECSC Treaty, Article 206a(4) of the EEC Treaty and Article 180a(4) of the Euratom Treaty. It shall transmit the report without delay to the institutions of the Communities. They shall address their replies to the Court of Auditors and shall forward them to the Commission by 15 October at the latest.

The Court of Auditors shall transmit its report together with the replies of the institutions to the authorities responsible for giving discharge and to the other institutions by 15 November at the latest and it shall ensure publication thereof in the Official Journal of the European Communities.

2. The Court of Auditors shall attach to the annual report an assessment of the soundness of the financial management. "

53. Article 84: This article is replaced by the following:

"The Court of Auditors may, at any time, submit observations on specific questions and deliver opinions at the request of one of the institutions of the Communities.

It shall transmit any observations made or opinions given pursuant to the preceding paragraph to Parliament, the Council, the Commission and, where appropriate, to the institution or body concerned.

The Commission and, where appropriate, the institution concerned shall have six weeks in which to forward to the Court of Auditors, and to Parliament and the Council, any comments they wish to make on the observations or opinions in question.

Should the Court of Auditors decide to have such observations or opinions published in the Official Journal of the European Communities, it shall include after them any comments submitted pursuant to the previous paragraph."

54. Article 85: This article is replaced by the following:

- " 1. Parliament, upon a recommendation from the Council, which shall act by a qualified majority, shall, before 30 April of the next year, give a discharge to the Commission in respect of the implementation of the budget. If that date cannot be met, \longleftrightarrow Parliament or the Council shall inform the Commission of the reasons for the postponement.
2. The financial controller shall take account of the comments made in the decisions giving discharge.
3. The institutions shall take all appropriate steps to take action on the comments appearing in the decisions giving discharge. At the request of \longleftarrow Parliament or the Council, the institutions shall report on the measures taken in the light of these comments and, in particular, on the instructions given to those of their departments which are responsible for the implementation of the budget. Such reports shall also be forwarded to the Court of Auditors.
4. Without prejudice to the reports provided for in the third paragraph, the institutions must give an account, in an annex to the revenue and expenditure account for the financial year following the discharge, of the measures taken in the light of the comments appearing in the decisions giving discharge.
5. Supporting documents pertaining to the accounts and the drawing up of the revenue and expenditure account and the balance sheet shall be kept for a period of five years following the date of the decision giving discharge in respect of the implementation of the budget, referred to in Article 85.

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

55. Article 88: This article is replaced by the following:

"1. An overall allocation covering several years (hereinafter called 'tranche') shall be made for each type of action project referred to in Article 87 corresponding to a research and investment objective defined by the Council in the programme decisions or corresponding decisions.

In budgetary terms, the tranche shall be the total allocation provided in the budget for each research and investment objective, taking into account any financial reserves, except where the objective as defined by the Council in the programme decisions or corresponding decisions comprises several specific stages, each forming a self-contained whole.

2. The figures given in programme decisions or corresponding decisions shall be merely indicative.

3. Amounts authorized annually in the budget to cover research and investment expenditure shall comprise commitment appropriations and payment appropriations.

4. The commitment appropriations within each tranche are intended to enable the Commission to meet all the legal obligations which it may contract.

They constitute the upper limit of expenditure to which the Commission may commit itself during the financial year in question for the implementation of the operations to which the expenditure relates.

However, with regard to additional revenue as specified in the first subparagraph of Article 3(2), additional appropriations may be made available corresponding to the amounts provided for in agreements and contracts with third parties. These appropriations shall be made available under the relevant budget heading.

Notwithstanding Article 6 (2) (a), the commitment appropriations shall remain valid until cancelled under the budgetary procedure.

5. The payment appropriations represent the upper limit of expenditure which may be paid or authorized for payment during each financial year to cover commitments entered into during the current year or earlier financial years.

However, with regard to additional revenue as specified in the first subparagraph of Article 3(2), additional appropriations may be made available corresponding to the the additional amounts actually received under agreements or contracts with third parties. These appropriations shall be made available under the relevant budget heading.

Payment appropriations not used by the end of the financial year for which they were entered shall be carried over automatically in accordance with Article 6(2)(b), without prejudice to Article 6(5)."

56. Article 90(2): A fourth indent is added at (b) as follows:

"- the major installations;"

57. Article 91(2): The second subparagraph is replaced by the following:

"The charges to the appropriation accounts shall not exceed the amount of the appropriations entered in the articles and items in Part I of the financial plans referred to in Article 90 (2) (a)."

58. Article 91(3): The fourth subparagraph is replaced by the following:

"The charges booked to research and investment objectives and other activities in Part I of the financial plan shall be allocated monthly in the budget to the articles and items in the special chapter provided for in Article 87."

59. Article 92: A paragraph 3 is added as follows:

"3. The general provisions relating to provisional twelfths set out in Article 8(3), (4), (5), (6), (7) and (9) shall apply to research appropriations."

60. Article 94: This article is replaced by the following:

"1. For the purposes of applying Article 21, the items of the chapter provided for in Article 87 shall be treated as chapters.

2. Notwithstanding Article 21 (2), the Commission may, within the limits and subject to the conditions fixed at the final adoption of the budget, transfer appropriations from one ~~article~~ to another and from one item to another within the special chapter referred to in Article 87, the said Articles and items being specified, provided that such transfers relate to direct action projects and do not include action projects financed according to a special budgetary scale.

3. Notwithstanding Article 52(a), a contract for scientific and technical supplies and for works may be made by private treaty where the amount does not exceed 45 000 ECU without prejudice to those cases where private treaties are allowed under Article 52(b), (c) and (d) and subject to the general obligation to invite competitive tenders, as far as possible and by all suitable means, from those capable of supplying the goods and services required by the contract.

4. Notwithstanding Article 54, the following shall be submitted, before the decision of the authorizing officer, for the opinion of an Advisory Committee on procurements and contracts, whose composition and functioning shall be determined by the implementing measures provided for in Article 121:

- (a) contracts of a scientific or technical nature, for sums exceeding 200 000 ECU, and the acquisition of immovable property;
- (b) contracts for supplies and equipment of a nature other than scientific or technical, for sums exceeding 45 000 ECU;
- (c) contracts for supplies and equipment of a nature other than scientific or technical for sums exceeding 15 000 ECU, to which points (c), (d) and (e) of Article 52 apply.

5. Notwithstanding the provisions of the first paragraph of Article 60, scientific and technical equipment may be sold, without first being advertised, following a decision taken by the authorizing officer after he has consulted the Advisory Committee on procurements and contracts."

61. Articles 98, 99, 100 and 101: These articles are replaced by the following:

Article 98

"1. Expenditure shall be taken into account for a financial year on the basis of payments made up to 31 December by the authorities and bodies referred to in Article 4 of Regulation (EEC) No 729/70, provided that their commitment and authorization have reached the accounting officer not later than 28 February of the following year.

2. Any adjustments to the expenditure declared which may be authorized separately from the clearance of the accounts, under the implementing provisions adopted pursuant to Article 5(3) of Regulation (EEC) No 729/70, may be charged to the accounts of the following financial year."

Article 99

"1. Any difference which may exist between the total expenditure charged to the accounts for a financial year pursuant to Articles 97 and 98 and the total expenditure established by the Commission when clearing the accounts as provided for in Article 5(2)(b) of Regulation (EEC) No 729/70 shall be charged, under a single article, as over- or under-expenditure to the financial year in which the accounts are cleared.

2. For the purposes of paragraph 1, the adjustments referred to in Article 98(2) shall be deemed to have been charged to the accounts of the original financial year."

Article 100

"1. Provisional global commitments which have been made for a financial year in accordance with Article 96 and which have not been specifically committed under the budget nomenclature in accordance with Article 97 by 1 March of the following financial year, shall be released under the original financial year.

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

Article 101

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

2. Transfers from one chapter to another and transfers within a chapter shall be made by decision of the Commission in accordance with the procedure provided for in Article 13 of Regulation (EEC) No 729/70, which must be completed not later than 28 February.

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

4. The Commission shall inform the budgetary authority of such transfers immediately."

62. TITLE IX: This title is replaced by the following:

"SPECIAL PROVISIONS APPLICABLE TO EXTERNAL AID

SECTION I

GENERAL PROVISIONS"

Article 102

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

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

3. The appropriations paid out by the Commission shall be used in accordance with the following provisions."

Article 103

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

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

SECTION II

EXECUTIVE AGENTS

Article 104

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

Article 105

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

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

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

Article 106

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

2. The national authorizing officer shall submit invitations to tender to the Commission for agreement before issuing them. On the basis of the decisions thus endorsed and in close cooperation with the chief authorizing officer and with the delegate referred to in Article 105 where such a delegate has been appointed, the national authorizing officer shall issue invitations to tender, receive tenders, preside over the examination of tenders and establish the results of the tendering procedure.

3. He shall transmit to the Commission for agreement the results of the examination of the tendering procedure and a proposal for the award of the contract. He shall sign contracts and riders thereto and estimates and notify the Commission thereof.

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

Article 107

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

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

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

4. The delegate shall make sure, on behalf of the Commission, that the projects financed by the Community are executed properly from the financial and technical angles. To this end he shall approve all payment authorizations issued by the national authorizing officer. This approval shall not constitute the Commission's clearance of the operation concerned and shall not discharge the national authorizing officer from his liability under Article 106(4)."

Article 108

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

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

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

4. The paying agent shall not be remunerated for his services; nor shall interest be paid on the funds deposited.

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

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

SECTION III
AWARD OF CONTRACTS

Article 109

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

Article 110

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

Article 111

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

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

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

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

Article 112

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

2. To this end, without prejudice to Article 113, care shall be taken in particular to:

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

Article 113

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

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

Article 114

"The Commission and the relevant authorities of the recipient State shall ensure that Articles 112 and 113 are observed for each operation and that the tender selected is economically the most advantageous, with due regard notably to the qualifications of and the guarantees offered by the tenderers, the nature and conditions of execution of the works or supplies, and the price, utilization costs and technical value of those works or supplies.

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

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

Article 115

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

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

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

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

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

However, they may be prepared, negotiated and concluded by the Commission where they relate to urgent, short-term expert services in connection with the preparation, appraisal, execution or utilization of projects, or where special provisions in the financing agreements referred to in Article 103(1) so stipulate."

SECTION IV

FOOD AID

Article 116

- "1. Every food-aid programme shall as soon as possible be made the subject of a proposal for commitment in accordance with the procedure laid down in Articles 32 to 35.

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

Articles 97, 98 and 99 shall apply as regards entry as payment of expenditure effected by the Member States using the funds advanced by the Commission, and as regards the clearance of accounts.

2. Articles 32 to 48 shall apply as regards the commitment and payment of expenditure effected by the Commission direct, particularly in respect of purchases on the world market, the occasional transport or storage of goods, or quality controls on products supplied.
3. The Commission may decide, up to 28 February of the following financial year, on transfers from one article to another within the chapter relating to food aid.
4. The provisions of Article 101(3) shall apply to transfers made necessary by changes, in relation to the appropriations authorized, in the parts of the expenditure chargeable to the EAGGF Guarantee chapters and the food aid chapter."

SECTION V

AUDITING OF ACCOUNTS

Article 117

- " 1. The Community's Court of Auditors may, on the basis of records and, if necessary, on the spot, conduct a full audit of the accounts, records of accounting operations and any other documents relating to projects which are kept by recipients of Community aid.

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

- 63. Article 103 becomes Article 118.
- Article 104 becomes Article 119.
- Article 105 becomes Article 120.
- Article 106 becomes Article 121.
- Article 107 becomes Article 122.

64. Article 108 becomes Article 123 and is amended as follows:

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

- (a) where they relate to payments remaining due under commitments, they shall be carried over automatically for a period of five years reckoned from 31 December of the financial year during which they were committed;
- (b) upon expiry of that period, the Commission may submit to the Council and forward to Parliament, by 1 February, the lists of appropriations remaining committed, for which a duly substantiated request for carryover is being made. The decision shall be taken in accordance with the second subparagraph of Article 6(3).

2. The conditions under which the ECU is to be applied to revenue and expenditure shall be determined by the implementing measures provided for in Article 121."

65. Article 109 becomes Article 124.

66. Article 110 becomes Article 125.

Article 2

- "1. In Articles 18, 19, 23, 24, 32, 33, 34, 37, 41, 42, 48, 49, 51, 54, 56, 59, 60, 66, 70, 94 and 108 the references to Article 106 concerning implementing measures shall be understood as being to Article 101.
2. The name "the European Parliament" in the present text of the Financial Regulation is replaced by "Parliament".

Article 3

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

Article 4

"This Regulation shall enter into force on ...

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

Done at Brussels, ...

