

COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
COUNCIL DECISION
concerning budgetary discipline

Proposal for a
COUNCIL REGULATION (EEC, Euratom)
establishing a Guarantee Fund

Proposal for a
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on the system of the Communities' own resources

(presented by the Commission)

Original pages have been removed and
replaced by texts of the proposals are
published in the Official Journal.

Proposal for a
COUNCIL DECISION
concerning budgetary discipline

EXPLANATORY MEMORANDUM

The purpose of this memorandum is to specify the nature of the adjustments and improvements to be made to the provisions currently in force¹.

The new provisions concerning budgetary discipline, which ought to apply to all expenditure, also have to be expanded to provide a legal base for the entry in the budget of reserves for loan guarantees and for emergency aid.

A. EAGGF GUARANTEE SECTION EXPENDITURE

The guideline has been complied with every year despite the considerable extra costs arising from German unification. The objective of striking a better balance between agricultural expenditure and other categories of expenditure will therefore be met.

This conclusion militates in favour of retaining the existing arrangements, although not all the mechanisms, some of which have displayed shortcomings which have to be remedied. The amendments proposed give substance to the conclusions of the Edinburgh European Council and take account both of the reform of the CAP and of experience gained.

1. Reform of the common agricultural policy

- 1.1 As proposed by the Commission in COM(92) 2001, the guideline is extended to cover all expenditure under the reformed CAP.

The scope of Article 3, which sets out the expenditure subject to the guideline, must therefore be extended to the support measures for CAP reform, including expenditure on similar measures covered hitherto by Objective 5a of the structural Funds, and to all expenditure on set-aside, income aid and the Fisheries Guarantee Fund.

This means that this expenditure must be subject to budgetary discipline in the same way as market policy expenditure. However, in view of their multiannual nature, the support measures should be specially monitored by means of monthly reports on applications made by potential beneficiaries to the Member States and six-monthly reports on individual commitments entered into as a result of these applications.

The fact that these measures are being included without any increase in the guideline and that a ceiling is being maintained on the growth of agricultural expenditure clearly shows that budgetary discipline is being tightened up in the agricultural sector.

¹ Council Decision of 24 June 1988 concerning budgetary discipline (OJ No L 185, 15.7.1988).

- 1.2 As expenditure is less sensitive to fluctuations in the rate of the dollar, the monetary reserve can now be reduced to ECU 500 million in 1995.

Furthermore, the reserve will be drawn on only if the additional costs cannot be covered by the appropriations available in the budget.

Finally, the Edinburgh European Council decided that, if additional costs resulting directly and exclusively from monetary realignments in the EMS were to exceed the ceiling on agricultural expenditure and thus compromise the funding of the reformed common agricultural policy, the Council would take appropriate steps to provide funds for EAGGF Guarantee, with priority being given to the monetary reserve.

The necessary adjustments must therefore be made to the mechanisms governing operation of the monetary reserve.

2. Experience gained

- 2.1 Application of the provisions of Article 6 on the mechanisms of budgetary discipline (early warning system and corrective measures to remedy divergences from the budget profile) has repeatedly led to differences of interpretation with at least one of the two arms of the budgetary authority.

- 2.1.1 While the guideline is respected over the period as a whole, there are sometimes considerable overruns in certain chapters; as a result, the Commission has to propose transfers of appropriations despite any corrective measures which have been adopted.

This practice, although permissible under Article 8 of the Council Decision, has fuelled Parliament's criticisms and cast doubts on the effectiveness of the budgetary discipline mechanisms.

In fact, these difficulties arise not so much from budgetary discipline itself as from the lack of effectiveness of the stabilizers.

The arrangements introduced in 1988 to contain agricultural expenditure were based on two instruments:

- the budgetary discipline arrangements defined in the 1988 decision, which were intended to provide a strictly binding budgetary framework for agricultural spending but which were not in themselves an instrument for curbing expenditure;
- stabilizers, defined elsewhere, which, through automatic penalties, were meant to neutralize the budgetary effects of variations in production and the effectiveness of which considerably influences the effectiveness of budgetary discipline.

The shortcomings of the stabilizing mechanisms thus revealed the limits of the arrangements provided for in Article 6.

Furthermore, the obligation to react as soon as the rate of expenditure exceeds or threatens to exceed the expenditure profiles previously defined for each chapter of the budget has proved excessively rigid and, in the end, has lacked credibility.

This rigidity has proved difficult to reconcile with the extreme volatility of agricultural spending during the period, which was obviously underestimated. On the other hand, the system's capacity to correct sectoral budgetary imbalances in the course of one and the same financial year has been overestimated.

The need for corrective measures can rarely be predicted at the start of a financial year. The time needed to adopt them and for them to produce their effects is often incompatible with the constraints of the procedure and timetable imposed by the Council Decision.

- 2.1.1 In future, containment of agricultural expenditure will depend on three interlinked factors: reform of the CAP, the newly created stabilizers and those which have proved to be effective and have been maintained, and budgetary discipline proper.

The reform, which basically links future support for farmers to production factors (size of farms, number of livestock) instead of the quantity produced, offers better guarantees for stability and for forecasting expenditure, which should then make it easier to respect budgetary discipline.

As a result of this new approach, together with the introduction of new stabilizers which make it possible to influence the conditions surrounding the supply of products (set-aside, base area for field crops, reference herds of cattle and quotas for tobacco and sheepmeat), there is no need for a drastic revision of Article 6.

However, some corrective measures are necessary. Budgetary discipline will not be fully effective unless it is based on credible instruments and more transparency.

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To gain credibility, any doubts about the extent of the obligations on the Commission as well as the Council and the Member States must be dispelled.

It is therefore proposed that Article 6 should be adjusted as follows:

- The early warning system would be retained along with the indicative profile for each chapter. If actual expenditure under a given chapter exceeds the profile, the Commission would be obliged to analyse the discrepancy and judge whether there was any risk of the budget appropriation being exceeded at the end of the year.

Only if the matter is dealt with in terms of budget appropriations will it be possible to apply budgetary discipline to each market.

- Any real risk of appropriations being overspent as a result of an internal imbalance in the market in question would oblige the Commission to take action at chapter level and to adopt or propose appropriate corrective measures depending on the nature and foreseeable size of the overrun.

These measures should normally produce a result during the financial year. Nevertheless, if for legal reasons (respect of acquired rights) or political reasons (e.g. the absence of a Council decision or a late decision) these measures did not fully remedy the situation that year, the possibility of transfers as a safeguard measure would have to be accepted. Generally speaking, however, these transfers would not be taken into consideration when determining the budgetary requirements of the market concerned for the following year.

Budgetary transparency vis-à-vis the budgetary authority would also be increased:

- by providing it with earlier and further information on the impact of the corrective measures proposed (causes and foreseeable effects on the budget) as well as on the reasons why the Commission does not expect the budget appropriation to be overspent even when expenditure is running ahead of the profile;
- by forwarding, on receipt - i.e. without waiting for the monthly report - the overall statement of expenditure under each chapter which the Member States are obliged to send to the Commission each month;
- by establishing a monitoring procedure alongside the early warning system so that the Council and Parliament can be informed in the monthly report of how the market situation is developing in the light of the corrective measures adopted and, where applicable, of the need for further action.

Arrangements should also be made for the Council to inform Parliament of any reasons which might prevent it from stating its position on the corrective measures proposed to it within the time limit laid down (two months).

2.2 Two other major adjustments need to be made to enhance the effectiveness of budgetary discipline:

- The guideline should be respected not only by the price proposals, as provided for in Article 5, but also by all proposals for regulations involving expenditure covered by the guideline. Furthermore, any Member State could ask the Commission to evaluate the financial consequences of any amendment which might be made to the Commission's initial proposal during the Council's discussions. The Council would have to postpone its decision until this evaluation had been carried out.

- In the event of unsatisfactory explanations, incorrect or late notification, serious suspicions that the rules are not being complied with and any other situation which was manifestly leading to evident misuse of Community funds, the Commission should be able to reduce or provisionally suspend the monthly advances, without prejudice to the clearance of the accounts.

B. RESERVES FOR EXTERNAL OPERATIONS

1. Reserve to guarantee Community loans and loan guarantees to non-member countries

It is proposed that a reserve for loan guarantees be set up in order to provide resources for the proposed Guarantee Fund to cushion the increased risk borne by the general budget as a result of the guarantees granted to non-member countries.

The conditions for the entry, use and financing of this reserve, which will operate along similar lines to the monetary reserve, should be laid down in this proposal.

The reserve of ECU 300 million a year would be used to provide resources for the Guarantee Fund and to cover any defaults exceeding the sums available in the Fund.

The necessary resources will be called in only if necessary.

If the Fund exceeds its target amount at the end of the year, the surplus is paid back to the statement of revenue in the budget.

2. Reserve for emergency aid

It is proposed that a reserve be set up in the general budget of the European Communities to cover situations requiring rapid mobilization of funds needed for emergency aid to non-member countries, with priority being given to humanitarian operations. This reserve would be allocated ECU 200 million in 1993 and 1994 and ECU 300 million in subsequent years up to 1999.

C. OTHER PROVISIONS

Article 14 of the current Decision states that each year, at the start of the budget procedure, the Council adopts a reference framework, taking account of the financial perspective for compulsory expenditure other than EAGGF Guarantee expenditure.

Article 14 has not been put to any practical use. When drawing up the draft budget, the Council states its position on the amount of appropriations for compulsory expenditure "which it considers necessary with due regard for the Community's legal obligations". It is therefore proposed that this Article be deleted.

The reference made in the current Article 15 to the arrangements contained in the Interinstitutional Agreement for budgetary discipline is retained and extended to all expenditure not covered elsewhere in the Regulation (new Article 18). This is because the Interinstitutional Agreement concerns both compulsory and non-compulsory expenditure.

The content of Article 16 of the current Decision is retained. It explicitly establishes the principle that the financial implementation of any Council decision is conditional on sufficient appropriations being available in the budget and in the financial perspective. If not, appropriate amendments must be made in accordance with the procedures laid down for this purpose.

D. LEGAL INSTRUMENT

It is proposed for reasons of clarity that a completely new decision be adopted and the decision currently in force be repealed.

II

(Preparatory Acts)

COMMISSION

Proposal for a Council Decision concerning budgetary discipline

(93/C 68/07)

COM(93) 20 final

(Submitted by the Commission on 17 February 1993)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 43, 209 and 235 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Court of Auditors,

Whereas, at its meeting in Edinburgh on 11 and 12 December 1992, the European Council decided to retain and strengthen the budgetary discipline introduced by Council Decision 88/377/EEC⁽¹⁾;

Whereas a new Interinstitutional Agreement containing the financial perspective for 1993 to 1999 (hereinafter referred to as the 'Interinstitutional Agreement') was concluded on . . . between the European Parliament, the Council and the Commission for the purposes of implementing budgetary discipline and of improving the annual budgetary procedure;

Whereas the European Council also agreed to maintain the base and the rate of increase of the agricultural guideline and to extend it to all expenditure under the reformed common agricultural policy and to some other expenditure;

Whereas there have been differing interpretations of the mechanisms set up by Article 6 of Decision 88/377/EEC to ensure compliance with the agricultural guideline; whereas their scope must therefore be clarified;

Whereas the mechanisms for the depreciation of stocks formed during the budget year should be retained;

Whereas the annual agricultural price proposals and any proposals for regulations involving expenditure under the EAGGF Guarantee Section must comply with the limit laid down by the agricultural guideline;

Whereas expenditure arising from application of environmental measures in the agricultural sector, the

Community aid scheme for forestry measures and the aid scheme for early retirement from farming is multiannual in nature; whereas special monitoring and control procedures should be introduced adapted to the nature of this expenditure;

Whereas, if there is a risk of the appropriations in a given chapter being overspent as a result of an unforeseen change in internal supply or demand, corrective measures should be taken to remedy the situation;

Whereas the corrective measures do not necessarily have an effect on the budget during the budget year concerned and whereas it may be necessary in such circumstances to take the safeguard measure of increasing the corresponding appropriations by means of transfers;

Whereas evaluation of the impact of the corrective measures on the development of the market situation will help to ensure continuity in the control of agricultural expenditure from one year to the next;

Whereas, the level of EAGGF Guarantee Section expenditure may be influenced by movements in the dollar/ecu market rate and by currency realignments between the Member States; whereas a monetary reserve should therefore be entered in the form of provisional appropriations to be drawn on should the need arise;

Whereas with the gradual implementation of the reform of the common agricultural policy, expenditure is likely to be less sensitive to changes in the dollar/ecu rate; whereas the monetary reserve can therefore be reduced from ECU 1 billion to ECU 500 million from 1995;

Whereas the quality and reliability of the particulars communicated by the Member States in connection with agricultural expenditure are essential for the proper operation of the early warning system and the effectiveness of budgetary discipline; whereas provision should therefore be made, when these requirements are not satisfied, for the possibility of reducing or provisionally suspending the monthly advances, without prejudice to the possibility of reducing or suspending these advances where Member States fail to comply with the rules;

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 29.

Whereas, to provide appropriations for the Guarantee Fund established by Regulation (EEC, Euratom) No .../93 a reserve for guarantees on loans to non-member countries and on loans in those countries must be entered in the budget in the form of provisional appropriations;

Whereas this reserve is also used to cover activated guarantees, up to the limit of its appropriations, when the Guarantee Fund does not have sufficient resources;

Whereas a financial margin must be left to permit a rapid response to specific emergency aid requirements in non-member countries resulting from unforeseeable events, with priority being given to humanitarian operations; whereas a reserve should be entered in the budget for this purpose in the form of provisional appropriations;

Whereas the conditions for calling in and mobilizing funds should be the same for the monetary reserve, the reserve for loan guarantees and the reserve for emergency aid;

Whereas, for reasons of clarity, the relevant provisions should be consolidated in one instrument and Decision 88/377/EEC should accordingly be repealed;

Whereas it is necessary that expenditure other than EAGGF Guarantee expenditure be subject to budgetary rigour and planning,

HAS ADOPTED THIS DECISION:

I. EAGGF GUARANTEE EXPENDITURE

Article 1

The agricultural guideline, which represents a ceiling on agricultural expenditure as defined in Article 3 for each budget year, must be respected each year. For each budget year, the Commission shall make an initial estimate of the agricultural guideline when fixing the agricultural prices and shall determine its final level when establishing the preliminary draft budget.

Article 2

1. The reference base from which the agricultural guideline is to be calculated shall be equal to ECU 27 500 million entered for 1988 in Titles 1 and 2 of Part B of Section III of the budget less the amounts for that year relating to the disposal of ACP sugar, food aid refunds and payments by producers in respect of the levies provided for by the common organization of the sugar market.

2. The agricultural guideline for a given year shall be equal to the reference base laid down in paragraph 1 plus amounts corresponding to:

- the base multiplied by 74 % of the rate of increase in GNP between 1988 (base year) and the year in question,
- the base multiplied by the GNP deflator estimated by the Commission for the same period,

- forecasts of expenditure in the year in question on disposal of ACP sugar, food aid refunds, payments by producers in respect of levies provided for by the common organization of the sugar market and any other revenue raised from the agricultural sector in the future.

Article 3

1. The agricultural guideline shall cover expenditure chargeable to Titles 1 to 5 of subsection B1 of Section III of the budget in the nomenclature adopted for the 1993 budget.

2. Each year the budget shall contain the appropriations necessary for financing all costs relating to the depreciation of stocks formed during the budget year.

Article 4

1. The Commission's agricultural price proposals and any other proposals for regulations involving expenditure referred to in Article 3 shall be consistent with the limit laid down by the agricultural guideline.

2. Any Member State may ask the Commission to evaluate the financial consequences of any amendment which may be made to a proposal referred to in paragraph 1 during the Council's discussions. The Council shall then be obliged to postpone its decision until it is informed of the impact.

3. If the Commission considers that the outcome of the Council's discussions on these proposals may be such that the costs specified in its initial proposals will be significantly exceeded, the final decision shall be taken at a special Council meeting.

Article 5

1. To ensure that the agricultural guideline is respected, the Commission shall establish a monthly early warning and monitoring system for each chapter involving expenditure of the type referred to in Article 3.

2. Before the beginning of each budget year, the Commission shall define indicative profiles of monthly expenditure for each budget chapter based, where possible, on the average monthly expenditure of the three preceding years.

3. In view of its multiannual nature, implementation of expenditure arising from application of environmental measures in the agricultural sector, the Community aid scheme for forestry measures and the Community aid scheme for early retirement from farming shall be subject to special monitoring based on:

- applications made by potential beneficiaries to Member States, which shall send this information to the Commission each month,

— individual commitments entered into in response to the applications referred to in the first indent, which the Member States shall send to the Commission every six months.

4. The statements of expenditure presented by the Member States in accordance with Article 3 (3) of Commission Regulation No 2776/88⁽¹⁾ shall be sent to the European Parliament and to the Council for information.

The Commission shall submit monthly reports thereafter to the European Parliament and the Council on the development of actual expenditure in relation to the indicative profiles.

5. When expenditure under a given chapter significantly exceeds the profile laid down, the Commission shall analyse the discrepancy.

If the overrun on the profile is not likely to lead to an overrun on the appropriations for the chapter, no corrective measures need be taken. The Commission shall explain to the budgetary authority its reasons for not expecting an overrun on the appropriations.

If it concludes that there is a risk of the appropriations for the chapter being exceeded at the end of the year, the Commission shall determine the causes and evaluate the foreseeable effect on the budget.

6. Where the appropriations entered in the budget are in danger of being exceeded as a result of unforeseen changes in internal supply or demand, the Commission shall take action on the chapter concerned, using the management powers at its disposal, including those it has under the stabilizing measures, to remedy the situation. If these measures are insufficient, the Commission shall present proposals to the Council for appropriate action to control expenditure, which may include proposals for strengthening the stabilizers in the relevant sector. The Council shall act within two months of receiving the Commission's proposal in order to remedy the situation. Should it fail to take a decision within this time limit, the Council shall inform the European Parliament of the reasons.

7. The Commission shall evaluate the impact of the proposed measures with respect to both the savings which they are likely to produce and the time required for them to have their first economic and budgetary effects. The budgetary authority shall be informed of this evaluation.

8. If it proves impossible to remedy the situation before the end of the budget year, the budgetary authority, acting on a proposal from the Commission, shall make a transfer as a safeguard measure. The Commission shall inform the budgetary authority of

developments in the market situation in the light of the corrective measures adopted, the foreseeable financial consequences of which shall be taken into account in the budget for the following year. If these measures prove insufficient for restoring the balance of the market or markets concerned, the Commission shall present proposals to the Council designed to strengthen their action.

9. In circumstances other than those referred to in paragraph 6, and without prejudice to the special measures which may be taken for the operations referred to in paragraph 3, the Commission shall propose measures to increase the appropriation of a chapter whenever it is insufficient.

Article 6

The dollar/ecu rate used to draw up the annual budget estimates of the expenditure referred to in Article 3 for any given year shall be the average market rate over the first three months of the preceding year.

Article 7

ECU 1 000 million shall be entered in a reserve in the general budget of the European Communities, as a provision to cover:

- developments caused by movements in the dollar/ecu market rate in relation to the rate used in the budget,
- and, where applicable, the costs arising from monetary realignments between Member States.

From 1995, the reserve shall be reduced to ECU 500 million. These appropriations shall not be included in the agricultural guideline.

Article 8

By no later than the end of October each year, the Commission shall report to the budgetary authority on the impact on expenditure referred to in Article 3 of movements in the average dollar/ecu market rate for the period from 1 August of the preceding year to 31 July of the current year in relation to the rate used in the budget, as defined in Article 6.

Article 9

1. Savings or additional costs resulting from movements in the rate shall be treated in symmetrical fashion. Where the dollar strengthens against the ecu compared to the rate used in the budget, savings in the Guarantee Section of up to ECU 1 000 million (ECU 500 million from 1995) shall be transferred to the monetary reserve. Where additional budgetary costs are engendered by a fall in the dollar against the ecu compared with the budget rate, the monetary reserve shall be drawn on and transfers shall be made from the monetary reserve to the EAGGF Guarantee Section

⁽¹⁾ OJ No L 249, 8. 9. 1988, p. 9.

headings affected by the fall in the dollar. Where necessary, these transfers shall be proposed at the same time as the report referred to in Article 8.

2. There shall be a franchise of ECU 400 million. Savings or additional costs below this amount arising from the movements referred to in paragraph 1 will not necessitate transfers to or from the monetary reserve. Savings or additional costs above this amount shall be paid into, or met from, the monetary reserve. The amount shall be reduced to ECU 200 million from 1995.

Article 10

1. If it should become apparent when the budget is being implemented that the agricultural guideline cannot cover the budget cost arising directly from monetary realignments within the European Monetary System, the monetary reserve shall be used and appropriate transfers shall be proposed without, however, compromising full application of Article 9 (1).

2. If, in the circumstances referred to in paragraph 1, the appropriations available in the monetary reserve prove inadequate, the Council shall take the necessary measures.

Article 11

1. Funds shall be taken from the reserve only if the additional costs cannot be met from the budget appropriations to cover the expenditure referred to in Article 3 (1) for the year in question.

2. The necessary own resources shall be called up, in accordance with Council Decision 88/376/EEC, Euratom (*) and the provisions adopted pursuant thereto, to finance the corresponding expenditure.

3. Any savings made in the EAGGF Guarantee Section which have been transferred to the monetary reserve in accordance with Article 9 (1) and which remain in the monetary reserve at the end of the financial year shall be cancelled and thus contribute to a budgetary surplus which shall be counted as a revenue item in the budget for the coming year by means of a letter of amendment to that budget.

Article 12

1. Payment of the monthly EAGGF Guarantee advances by the Commission shall be effected on the basis of the information supplied by the Member States in regard to expenditure in each chapter.

2. In the event of unsatisfactory explanations, incorrect or late notification, serious suspicions that the rules are not being complied with and any other situation

indicating evident misuse of Community funds, the Commission may reduce or provisionally suspend the monthly advances after notifying the Member State in question at least five days before the decision and after consulting the EAGGF Committee. This reduction or suspension shall be without prejudice to the decisions which will be taken as part of the clearance of accounts.

3. If the profile defined in Article 2 (5) is significantly exceeded, the Member States shall, at the Commission's request, provide any information which may explain the abnormal rate of expenditure, including particulars about the quantities subsidized.

II. RESERVES FOR EXTERNAL OPERATIONS

1. Reserve to guarantee Community loans and loan guarantees to non-member countries and in those countries

Article 13

Each year the current-price equivalent of ECU 300 million at 1992 prices shall be entered as a provision in a reserve in the general budget of the European Communities.

This amount shall be adjusted to the corresponding allocation in the financial perspective contained in the Interinstitutional Agreement if the financial perspective is revised.

This reserve is intended to cover:

- (a) the requirements of the Guarantee Fund set up by Regulation (EEC, Euratom) No .../93; and
- (b) where necessary, activated guarantees exceeding the amount available in the Fund so that these amounts may be charged to the budget.

Article 14

If, at the end of the financial year, the Fund exceeds the target amount provided for in Article 3 of Regulation (EEC, Euratom) No .../93, the surplus shall be repaid to a specific heading in the statement of revenue of the budget and shall contribute to a budgetary surplus.

2. Reserve for emergency aid

Article 15

A reserve for emergency aid to non-member countries shall be entered each year in the general budget of the European Communities as a provision. The purpose of this reserve shall be to permit a rapid response to specific emergency aid requirements in non-member countries resulting from unforeseeable events, with priority being given to humanitarian operations.

(*) OJ No L 185, 15. 7. 1988, p. 24.

The amounts of this reserve shall be the equivalent, in current prices for each financial year, of the following amounts expressed in 1992 prices: ECU 200 million in 1993 and 1994 and ECU 300 million for each of the financial years between 1995 and 1999.

These amounts shall be adjusted to the corresponding allocations in the financial perspective contained in the Interinstitutional Agreement if the financial perspective is revised.

3. Common provisions

Article 16

The reserves shall be used by means of transfers to the budget headings concerned in accordance with the provisions of the Financial Regulation.

Article 17

The own resources necessary for financing the reserves shall not be called in from the Member States until the reserves are used in accordance with Article 16.

The own resources necessary shall be made available as provided in Council Regulation (EEC, Euratom) No 1552/89 ⁽¹⁾.

III. OTHER PROVISIONS

Article 18

Budgetary discipline in respect of all other expenditure shall be applied on the basis of the arrangements contained in the Interinstitutional Agreement.

Article 19

The financial implementation of any Council Decision or any decision by the European Parliament and the Council exceeding the budget appropriations available in the general budget or the appropriations provided for in the financial perspective contained in the Interinstitutional Agreement may not take place until the budget has been amended and, where necessary, the financial perspective revised according to the procedure laid down for each of these cases.

IV. FINAL PROVISION

Article 20

Decision 88/377/EEC is hereby repealed.

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 1.

Proposal for a
COUNCIL REGULATION (EEC, Euratom)
establishing a Guarantee Fund

EXPLANATORY MEMORANDUM

The Edinburgh European Council on 11 and 12 December 1992 decided to set up a Fund to cover expenditure incurred when the guarantees in the general budget for loans to non-member countries are activated in order to prevent any disruption of budget implementation in the event of default.

The Fund will be gradually constituted by the payment of a percentage of each new operation. Subsequently, the interest on Fund resources invested and any late repayments made by defaulting debtors after the Fund has paid the creditors will also be paid to the Fund.

When a guarantee provided by the Community budget is activated, the creditor will be paid direct from the Fund.

By reference to the ratios applied by international financial institutions such as the EIB and EBRD, the Fund should aim for a target amount of 10% of the total outstanding liabilities for all guaranteed operations. If the Fund exceeds this target amount, the surplus will be paid to a special heading in the statement of revenue in the budget.

So that this target amount will be rapidly attained, initial payments will be 14% of the amount of each operation.

In the interests of efficiency and rapid implementation, it is proposed that the Guarantee Fund be managed by the Commission.

Since the proposed Regulation contains some important changes in financing mechanisms, the Commission suggests that the Council seek the opinion of the Court of Auditors.

The amounts of this reserve shall be the equivalent in ... The own resources necessary shall be made available as

Proposal for a Council Regulation (EEC, Euratom) establishing a Guarantee Fund

(93/C 68/08)

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(Submitted by the Commission on 17 February 1993)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission,
Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Court of Auditors,
Whereas the European Council, meeting in Edinburgh on 11 and 12 December, agreed that a Guarantee Fund should be established to cover loan guarantees to non-member countries;

Whereas the general budget is exposed to increased financial risk as a result of the guarantees covering loans to non-member countries;

Whereas mechanisms currently exist for honouring guarantees when they are activated, in particular by drawing provisionally on cash resources, as provided for in Article 12 of Council Regulation No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Community's own resources⁽¹⁾, as last amended by Regulation (EEC, Euratom) No ...;

Whereas it is necessary for these mechanisms to be reinforced by making provisions for the risk of default;

Whereas it is possible to meet this need by the establishment of a Guarantee Fund which may be drawn on to pay the Community's creditors direct;

Whereas the Guarantee Fund should be constituted by the gradual payment of resources; whereas the Fund will

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 1.

subsequently also receive interest on its invested resources and late repayments by defaulting debtors after the Fund has paid creditors;

Whereas, by reference to the practice of international financial institutions, a ratio of 10 % between the Guarantee Fund's resources and guaranteed liabilities in principal would seem adequate;

Whereas initial payments to the Guarantee Fund equal to 14 % of the amount of each operation would seem appropriate to attain this target amount;

Whereas, once this amount is attained, payments to the Guarantee Fund could then be limited to 10 % of the amount of new operations; whereas if the Guarantee Fund exceeds this amount the surplus will be paid back to the budget;

Whereas management of the Guarantee Fund by the Commission will ensure effective and rapid implementation;

Whereas the Treaties do not provide any powers other than those under Article 235 and Article 203, respectively, for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

A Guarantee Fund, hereinafter referred to as 'the Fund', shall be established, the purpose of which shall be to repay the Community's creditors direct in the event of default by the beneficiary of a lending operation guaranteed by the general budget.

The operations referred to in the first subparagraph shall be covered by the Fund only if the beneficiaries are non-member countries or a person not resident in the Community.

Article 2

The Fund shall be endowed by:

- payments from the general budget corresponding to a set percentage of each operation for a non-member country, decided on and committed by the Community and guaranteed by the budget,
- interest on Fund resources invested,
- amounts recovered from defaulting debtors where the Fund has already honoured the guarantee.

Article 3

The Fund shall rise to an appropriate level, known as 'the target amount', determined by reference to guaranteed liabilities.

The target amount shall be 10 % of the Community's outstanding liabilities in principal arising from loans and loan guarantees granted by the Community.

If, at the end of a year, the Fund exceeds this amount, the surplus shall be paid back to a special heading in the statement of revenue in the budget.

Article 4

The payments provided for under the first indent of Article 2:

- shall be equivalent to 14 % of the value of the operation until the Fund reaches its target amount,
- shall be reduced to 10 % when the target amount is reached.

Article 5

If, as a result of the activation of guarantees, resources in the Fund fall below 75 % of the target amount, the rate of provisioning on new operations shall be raised to 15 % until the target amount has been reached.

If a guarantee is activated before the Fund reaches its target amount and the resources in the Fund fall below 75 % of the target amount as a result, the rate of provisioning shall be raised to 15 % until the amount drawn has been fully restored.

If, as a result of the activation of guarantees, the resources in the Fund fall below 50 % of the target amount, the budgetary authority, acting on a proposal from the Commission, shall decide on measures to replenish the Fund.

Article 6

The Fund shall be managed by the Commission, which shall adopt rules satisfying the principles of prudence and sound financial management.

Article 7

The Commission shall, by no later than the following 31 March, send to the European Parliament, the Council and the Court of Auditors an annual report on the situation of the Guarantee Fund and the management thereof in the previous year.

Article 8

The revenue and expenditure account and the balance sheet relating to the Fund shall be attached to the Communities' revenue and expenditure account and balance sheet.

Article 9

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

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

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

EXPLANATORY MEMORANDUM

Introduction

On 2 September 1992 the Commission presented a proposal¹ for revision of the Financial Regulation of 21 December 1977, principally to incorporate the changes entailed by the amendments to the Treaties that emerged from Maastricht. The present proposal complements that earlier proposal, its aim being to reflect the implications of the Delors II package in line with the conclusions of the Edinburgh European Council of 11-12 December 1992.

*

* * *

The creation of a reserve to guarantee Community loans and loan guarantees to non-member countries and a reserve for emergency aid under the proposal for a new Decision on budgetary discipline, and the proposed constitution of a Guarantee Fund affect the Financial Regulation in two respects:

1. Recognition of the new reserves and procedures for their mobilization

Article 19 of the current Financial Regulation already makes provision for the existing reserves, i.e. "provisional appropriations" and the "contingency reserve" (paragraph 4), the "negative reserve" (paragraph 5) and the "monetary reserve" (paragraph 6).

It therefore needs to be amended to cover the two new reserves as well.

Article 26, which concerns transfers, also needs to be amended to include the procedural requirements for mobilizing the new reserves. It should be noted that under the Commission's proposal, transfers from the reserves to the appropriate operational headings will be decided by the budgetary authority alone, acting in accordance with Article 26(5).

2. Relationship between the general budget and the Guarantee Fund

The Guarantee Fund is intended to serve a dual purpose:

- to allow the necessary financial resources to be constituted outside the budget so as to enable the Community to deal more effectively with the eventuality of default by beneficiaries of a lending operation guaranteed by the general budget;

¹ COM(92) 358 final.

- to make repayments direct to lenders, while ensuring that these operations are recorded in the general budget, which, from the legal point of view, guarantees performance.

Two sets of provisions must therefore be included in the Financial Regulation:

(a) Amending the presentation of the budget (the nomenclature)

Article 20 of the Financial Regulation deals with presentation, in particular the presentation of the statements of revenue and expenditure.

It is therefore proposed that a new paragraph 6 be added to the present Article to make provision for the following:

- in the statement of revenue: the appropriate headings to finance the reserve as and when it is mobilized and to record in the budget any repayments made direct by the Guarantee Fund, as well as to cover payment back into the budget of any late payments made by loan recipients and any Guarantee Fund surplus;
- in the statement of expenditure: the heading to endow the Guarantee Fund in accordance with the provisions of the new Decision on budgetary discipline.

(b) Recording in the budget of repayments made direct by the Guarantee Fund

The Guarantee Fund stands separately alongside the budget, its primary aim being to ensure that funds are readily available for rapid intervention in the event that a debtor should default. Obviously any such intervention has to be recorded in the general budget (which is the sole effective guarantee of performance via the appropriate budget headings) in line with the provisions of the Financial Regulation on implementation of the budget.

The Commission therefore proposes to add a new Title Xa containing "special provisions" to that effect. A new Article 123a spells out the procedure to ensure that operations carried out in accordance with the relevant provisions of the Financial Regulation on implementation of the budget are recorded in the statements of revenue and expenditure.

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

(93/C 68/09)

COM(93) 20 final

(Submitted by the Commission on 17 February 1993)

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 Parliament,

Having regard to the opinion of the Court of Auditors,

Whereas conciliation has taken place in a conciliation committee, as provided for in the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975 ⁽¹⁾;

Whereas under Council Decision ... of ... on budgetary discipline the general budget is to include a reserve for emergency aid and a reserve to guarantee Community loans and loan guarantees to non-member countries; whereas those reserves should be given recognition in the relevant provisions of the Financial Regulation; whereas provision needs to be made for the necessary budget structure in the presentation of the budget nomenclature;

Whereas the creation of the Guarantee Fund under Council Regulation (EEC, Euratom) No ... requires provisions to be included so that repayments made direct by the Guarantee Fund to lenders are recorded in the budget,

HAS ADOPTED THIS REGULATION:

Article 1

The Financial Regulation is amended as follows:

1. The following paragraph 7 ⁽²⁾ is added to Article 19:

⁽¹⁾ OJ No C 89, 22. 4. 1975, p. 1.

⁽²⁾ The current paragraph 7 is deleted by the proposal in COM(92) 358 of 2 September 1992.

'7. The subsection concerning "Cooperation with developing countries and other third countries" shall include the following two reserves, the conditions for the entry, utilization and financing of which are laid down in Council Decision ... of ... [on budgetary discipline] ^(*) and in Regulation (EEC, Euratom) No 1552/89:

- (a) a reserve for emergency aid for non-member countries;
- (b) a reserve to guarantee Community loans and loan guarantees to non-member countries and in those countries.

^(*) OJ No L ...'

2. The following point 6 is added to Article 20:

'6. As regards the budgetary impact of the reserve to guarantee Community loans and loan guarantees to non-member countries and in those countries and of implementing the Guarantee Fund set up by Council Regulation (EEC, Euratom) No ... ^(**).

(a) in the general statement of revenue:

- a heading to cover the financing of the reserve to guarantee Community loans and loan guarantees to non-member countries and in those countries as and when it is mobilized in accordance with Article 13 of Decision ... [concerning budgetary discipline],
- a heading to record in the budget payments made by the Guarantee Fund,
- a heading to allow late repayments by defaulting recipients to be booked to the budget if they are not made direct to the Guarantee Fund in accordance with the third indent of Article 2 of Regulation (EEC, Euratom) No ... [establishing the Fund],

— a heading to accommodate the repayment to the budget of any Guarantee Fund surplus in accordance with Article 14 of Decision ... [concerning budgetary discipline];

(b) in the Commission section of the statement of expenditure:

— the heading intended for the endowment of the Guarantee Fund in accordance with the provisions contained in Articles 2 and 4 of Regulation (EEC, Euratom) No ... [establishing the Guarantee Fund].

(**) OJ No L ...?

3. The following paragraph 11 is added to Article 26:

'11. Decisions on transfers to allow the utilization of the reserve to guarantee Community loans and loan guarantees to non-member countries and in those countries and the reserve for emergency aid shall be taken by the budgetary authority in accordance with paragraph 5.'

4. The following Title Xa is inserted:

'TITLE Xa

Special provisions applicable to the recording in the general budget of repayments made direct by the Guarantee Fund

Article 123a

In accordance with Article 1 of Regulation (EEC, Euratom) N° ... [setting up the Guarantee Fund], the

Guarantee Fund shall make payments direct to lenders in the event that loan recipients default.

In order to record these operations in the general budget, which provides the guarantee of their performance, the following procedure shall apply:

— the amount paid by the Guarantee Fund shall be recorded by the issue of a recovery order within seven working days for the heading specifically entered for this purpose in the statement of revenue in accordance with Article 20 (6);

— at the same time as this entry in the statement of revenue, an appropriation of the same amount shall be entered under the corresponding heading in the statement of expenditure — carrying a token entry in accordance with Article 20 (5) (b) — to record the expenditure effected, in accordance with the relevant provisions in Part I of Section III of Title III.'

Article 2

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

It shall apply from ...

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

Proposal for a
COUNCIL REGULATION (EEC, Euratom)
amending Regulation (EEC, Euratom) No 1552/89
implementing Decision 88/376/EEC, Euratom
on the system of the Communities' own resources

EXPLANATORY MEMORANDUM

Council Decision of concerning budgetary discipline establishes a reserve to guarantee Community loans and loan guarantees to non-member countries and a reserve for emergency aid to be entered in the general budget of the European Communities.

The own resources required to finance these reserves are entered in the general budget of the European Communities but they are not called in from the Member States until the reserves are drawn on as stipulated in the Regulation. Provisions should accordingly be added to Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources to lay down the rules for making these resources available to the Commission.

The proposed amendments are to Article 10 of Regulation (EEC, Euratom) No 1552/89; they concern the time limits for making the resources available, entry in respect of the year concerned and the possibility for the Commission to waive calling in resources to cover the use made of the emergency aid reserve if the budget implementation situation so permits.

These amendments are in addition to those proposed by the Commission on ...

Proposal for a Council Regulation (EEC, Euratom) amending Regulation (EEC, Euratom) No 1552/89 implementing Decision 88/376/EC, Euratom on the system of the Communities' own resources

(93/C 68/10)

COM(93) 20 final

(Submitted by the Commission on 17 February 1993)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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 Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the

Communities' own resources ⁽¹⁾, and in particular Article 8 (2) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Court of Auditors,

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 24.

Whereas additional rules need to be laid down governing the arrangements whereby Member States make available to the Commission the own resources assigned to the Communities;

Whereas Council Decision ... of ... concerning budgetary discipline provides for the entry in the general budget of the European Communities of a reserve to guarantee Community loans and loan guarantees to non-member countries and in those countries and a reserve for emergency aid;

Whereas rules need to be added to Council Regulation (EEC, Euratom) No 1552/89⁽¹⁾, as last amended by Regulation (EEC, Euratom) No ... of ..., to cover the operation of these reserves,

HAS ADOPTED THIS REGULATION:

Article 1

The second subparagraph of Article 10 (3) of Regulation (EEC, Euratom) No 1552/89 is hereby replaced by the following:

'The entry in respect of the EAGGF monetary reserve referred to in Article 6 of Decision 88/376/EEC, Euratom shall be made on the first working day of the month following the charging to the budget of the expenditure concerned and shall be limited to the said expenditure if charging is effected before the 16th day of the month. If such is not the

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 1.

case, the entry shall be made on the first working day of the second month after charging.

The entry in respect of the reserve to guarantee Community loans and loan guarantees to non-member countries and in those countries and the reserve for emergency aid established by Council Decision ... [concerning budgetary discipline] (*) shall be made on the first working day of the second month following the charging to the budget of the expenditure concerned and shall be limited to the said expenditure.

By way of derogation from Article 5 of the Financial Regulation, these entries shall be taken into account in the financial year to which they relate.

However, if the situation as regards the implementation of the budget for the year is such that the entries relating to the EAGGF monetary reserve and the reserve for emergency aid are not necessary to achieve a balance between revenue and expenditure for the year, the Commission may decide to dispense with these entries or part of these entries.

(*) OJ No L ... ?

Article 2

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

It shall apply from ... 1993.

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

COM(93) 20 final

DOCUMENTS

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