

**Proposal for a Council Regulation (EC) amending Regulation (EC) No 1628/96 relating to aid for Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia and the former Yugoslav Republic of Macedonia, in particular through the setting-up of the European Agency for Reconstruction**

(2000/C 21 E/05)

COM(1999) 312 final — 1999/0132(CNS)

*(Submitted by the Commission on 7 July 1999)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) In line with the United Nations Security Council resolution of 10 June 1999, a large-scale programme of reconstruction including measures to help resettle refugees and revitalise Kosovo's economy is urgently needed as soon as security conditions allow.

(2) The European Council held at Cologne on 3 and 4 June 1999 reiterated the European Union's commitment to taking a leading role in the reconstruction efforts in Kosovo.

(3) The European Council has reaffirmed its readiness to draw the countries of that region closer to the prospect of full integration into the structures of the European Union within the framework of the Stability Pact of South-Eastern Europe, which will help to enhance peace, stability and prosperity in, and cooperation between, countries in the region.

(4) The Stability Pact has underlined the European Union's role in bolstering democratic and economic institutions in the region through a number of programmes.

(5) The objectives relating to this region must include reconstruction as a prelude to revitalisation and to economic, social and institutional development.

(6) The European Council has confirmed the European Union's willingness to contribute substantially to the regional reconstruction effort.

(7) Aid programmes of the major scale necessary for the reconstruction of Kosovo cannot be implemented unless the appropriate means and mechanisms are in place.

(8) The European Council has called upon the Commission to develop, as a matter of priority, proposals regarding the organisation of the reconstruction assistance envisaged, in particular on appropriate means and mechanisms for putting such a programme in place.

(9) Council Regulation (EC) No 1628/96 <sup>(1)</sup>, as last amended by Regulation (EC) No 851/98 <sup>(2)</sup>, sets out, *inter alia*, objectives, mechanisms and instruments for the reconstruction of the regions it covers, including Kosovo.

(10) The reconstruction effort in Kosovo, which will be coupled with the humanitarian aid effort, will require the rapid implementation of numerous small-scale projects, measures to support returning refugees and the assistance of large numbers of experts covering a wide range of fields.

(11) The reconstruction programmes should be managed in accordance with appropriate rules and procedures so as to avoid the delays in implementation which occurred during the first phase of the reconstruction programme in Bosnia and Herzegovina, owing largely to unwieldy procedures and a rigid regulatory framework.

(12) A Community agency offers advantages in terms of effectiveness, speed and visibility of the Community's operation in these circumstances.

(13) The European Council has invited the Commission to draw up proposals on setting up an agency to be responsible for the implementation of Community reconstruction programmes.

(14) Regulation (EC) No 1628/96 should be amended to take account of the specific requirements for Kosovo's reconstruction, including provisions on setting up and running an agency to be responsible for implementing the Community's reconstruction programmes.

(15) The above agency should be capable of assuming responsibility for implementing programmes approved by the Commission.

<sup>(1)</sup> OJ L 204, 14.8.1996, p. 1.

<sup>(2)</sup> OJ L 122, 24.4.1998, p. 1.

- (16) The reconstruction programmes should be managed locally. The Agency should therefore be established in Pristina and the way left open for it to have a presence for operational reasons in Skopje and other locations in the region.
- (17) The Agency's mandate should also allow it to manage the programmes of other donors contributing to the reconstruction of the region.
- (18) The Commission should ensure that reconstruction assistance is coordinated with the European Investment Bank, the international financial institutions and the United Nations Office of the High Commissioner for Refugees. In implementing the programme, the Agency must comply with decisions taken in the framework of coordination.
- (19) The Agency's mandate should cover the implementation of programmes for reconstruction and the return of refugees in Kosovo initially, then, once the security situation permits, in other regions of the Federal Republic of Yugoslavia.
- (20) The Agency should be set up for the purposes of reconstruction, and a proposal will be made to wind it up once that objective has been achieved.
- (21) The Agency's structure and status should allow it to respond rapidly and effectively to the requirements of reconstruction.
- (22) The Member States should be involved in the Agency's activities, their role in the governing board should be defined and procedures laid down under which they are to give opinions on project and programme decisions.
- (23) For the sake of effectiveness, the Agency requires a special financial regulation that is flexible and allows a rapid response while at the same time ensuring full managerial accountability and transparency in management.
- (24) In view of the urgency and the nature of the assistance to be given, the Committee established by Regulation (EC) No 1628/96 should act in accordance with the management procedure set out in Article 4 of Council Decision 1999/.../EC laying down the procedures for the exercise of implementing powers conferred on the Commission, rather than using the regulatory procedure originally laid down.
- (25) The authority put in charge of the provisional administration of Kosovo should be consulted on the implementation of the reconstruction programmes.
- (26) Provision should be made for the countries covered by the Phare and Meda programmes to be involved in implementing the programmes provided for in Regulation (EC) No 1628/96.
- (27) The Commission should submit a report by 31 December 2000 on the progress in the implementation of Regulation (EC) No 1628/96 and may if appropriate make

proposals to amend it in the light of political developments in the region;

- (28) Regulation (EC) No 1628/96 should be extended until 31 December 2004,

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1628/96 is hereby amended as follows:

1. In Article 4, the following paragraph 3 is added:

'3. The programmes of reconstruction and assistance to refugees returning to Kosovo shall include:

- (a) measures to help resettle refugees, such as projects to provide psychological support or to aid children and families, special programmes targeting education and the strengthening of community life and cultural life, projects to encourage a return to work, projects designed to ensure the involvement of professionals and refugees in general in reconstruction activities, micro-credit and loan guarantees;

- (b) measures for economic revitalisation at local level;

- (c) projects to set up and help run the administrative and legal framework of the authorities, including local authorities.'

2. In Article 6, the following paragraph 3 is added:

'3. The Commission shall ensure that reconstruction assistance is coordinated with the European Investment Bank, the international financial institutions and the United Nations Office of the High Commissioner for Refugees.'

3. In Article 8, the first subparagraph of paragraph 1 is replaced by the following:

'The operations referred to in this Regulation may cover expenditure relating to the importation of goods and services, the local expenditure necessary to complete the projects and programmes and co-financing (in forms including interest-rate subsidies) of investment projects financed by loans from the European Investment Bank or the international financial institutions, where the latter are involved. Taxes, duties and charges and the acquisition of real estate shall be excluded from Community financing.'

4. Article 9 is amended as follows:

- (a) The first two paragraphs are replaced by the following:

'Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons in the Member States and States which receive benefits, or in countries benefiting under the Phare or Meda programmes.'

(b) The third paragraph is replaced by the following:

'The following shall be considered to be legal persons of a Member State, a recipient State or a State benefiting under the Phare or Meda programmes: legal persons who are established in accordance with the legislation of a Member State, a recipient State or a State benefiting under the Phare or Meda programmes, and who have their central administration or principal establishment in the territories in which the Treaty establishing the European Community applies, in the recipient States or in the States benefiting under the Phare or Meda programmes, or who have their registered office there, where their activity has an actual and continuous link with the economy of the said territories or States.'

5. Article 10 is amended as follows:

(a) the following subparagraph is added to paragraph 1:

'By way of derogation from the first two subparagraphs, with regard to reconstruction assistance to Kosovo, annual programmes which set out the main objectives and related allocations, guidelines and priorities for Community support for reconstruction and the return of refugees shall be adopted in accordance with the procedure laid down in Article 12(2).'

(b) the following paragraph 4 is added:

'4. Assistance for the reconstruction of Kosovo may be implemented on the basis of financing agreements or contracts concluded with the bodies referred to in Article 3 following consultation with the authority provisionally responsible for administering Kosovo. Assistance may also be provided for that authority.'

6. The following is inserted as the second sentence of the third paragraph of Article 11:

'The Annex shall not apply to contracts awarded by invitation to tender in connection with the operations of the European Agency for Reconstruction referred to in Article 14.'

7. Article 12 is replaced by the following:

'Article 12

1. The Commission shall be assisted by a management committee composed of the representatives of the Member States and chaired by the representative of the Commission, hereinafter referred to as "the Committee".

2. The Committee shall act in accordance with the procedure laid down in Article 4 of Decision 1999/.../EC [Comitology]. The period provided for in paragraph 3 of that Article shall be at most one month.

3. The Committee may examine any other question relating to the implementation of this Regulation which is put to it by its Chairman, including at the request of the representative of a Member State, and in particular any question relating to programming of projects, their general implementation and co-financing.

4. The Committee shall adopt its rules of procedure by a qualified majority.'

8. Article 14 becomes Article 26, and the second paragraph thereof is replaced by the following:

'It shall apply until 31 December 2004.'

9. The following Articles are inserted:

'Article 14

The programmes for reconstruction and assistance to returning refugees will initially target Kosovo and when conditions are right may also target other parts of the Federal Republic of Yugoslavia. The Commission may delegate their implementation to an agency. Such programmes shall be the subject of a Commission decision.

A European Agency for Reconstruction, hereinafter referred to as the "Agency", shall be set up to that end with the aim of implementing the programmes referred to in the first paragraph, namely for reconstruction and assistance to returning refugees.

Article 15

1. To achieve the objective referred to in Article 14, the Agency shall carry out the duties set out in paragraphs 2, 3 and 4, within the bounds of its powers and in accordance with the decisions taken by the Commission:

2. The Agency shall gather, analyse and communicate information to the Commission on:

(a) war damage, the requirements for reconstruction and the return of refugees and related initiatives by the government, local or regional authorities and international community;

(b) the urgent requirements of the communities concerned, taking account of the various population displacements and possibilities for their return;

(c) the priority sectors and geographical areas requiring urgent assistance from the international community.

3. The Agency shall prepare projects and programmes for the reconstruction of Kosovo and the return of its refugees and submit them to the Commission with a view to their adoption in accordance with Article 12(2) of this Regulation.

4. The Agency shall implement the programmes for reconstruction and assistance to returning refugees approved by the Commission. To that end it may be made responsible by the Commission for all operations required to implement the programmes, and in particular for:

- (a) drawing up the terms of reference;
- (b) preparing and evaluating invitations to tender;
- (c) signing contracts;
- (d) concluding financing agreements;
- (e) awarding contracts, in accordance with the provisions of this Regulation;
- (f) evaluating projects;
- (g) monitoring project implementation;
- (h) effecting payments.

5. In addition to the tasks set out in paragraphs 2, 3 and 4, the Agency shall ensure implementation of such programmes of reconstruction and assistance to returning refugees as the Member States and other donors shall entrust to it in the framework of the coordination set up by the Commission with the World Bank, international financial institutions and the European Investment Bank.

#### Article 16

The Agency shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings. The Agency shall be non-profit-making.

The Agency shall establish itself in Pristina, without prejudice to its having a presence in Skopje or in other locations in the region.

#### Article 17

1. The Agency shall have a governing board composed of one representative from each Member State and three representatives of the Commission.

2. The Member States' representatives shall be appointed by the Member States concerned. Member States shall make the appointment with due regard to the experience and qualifications relevant to the Agency's activities.

One of the three Commission representatives shall be a Member of the Commission.

3. The term of office of representatives shall be thirty months.

4. The governing board shall be chaired by the Commission, usually a Member of the Commission. The Chair shall not vote.

5. The governing board shall adopt its rules of procedure.

6. The Commission and Member State representatives on the governing board shall each have one vote.

Governing board decisions shall be adopted by a two-thirds majority of its members.

7. The governing board shall determine the rules as to the languages of the Agency.

8. The governing board shall be convened by its Chair every month. It shall also be convened at the request of the Agency's director or at least by a simple majority of its members.

9. On the basis of a draft submitted by the Agency's director, the governing board, in agreement with the Commission, shall examine by 30 November of each year at the latest the preliminary draft annual work programme for the following year. The work programme shall be adopted at the beginning of each operating year. The programme may be adapted as necessary during the year by the same procedure, to take account *inter alia* of programmes adopted by the Commission.

The projects included in the annual work programme shall be accompanied by an estimate of the necessary expenditure.

10. The governing board shall be closely involved in the implementation of the reconstruction programmes. On a proposal by the director, it shall decide upon the main issues relating to the Agency's activities, and in particular:

- (a) the draft programmes to be submitted to the Commission;
- (b) the conditions for implementing projects;
- (c) methods of evaluating and properly implementing the projects;
- (d) proposals for programmes by other donors for possible implementation by the Agency;
- (e) whether representatives of the countries and organisations delegating implementation of their programmes to the Agency should be present as observers on the latter's governing board.

11. The governing board shall present a draft annual report to the Commission, by 31 March of each year at the latest, on the activities of the Agency for the previous year and on how they were financed.

The Commission shall adopt the annual report and submit it to the European Parliament and the Council.

*Article 18*

1. The director of the Agency shall be appointed by the governing board, on a proposal from the Commission, for a term of office of thirty months. The term of office may be terminated by the same procedure.

The director shall be responsible for:

- (a) the preparation and organisation of the work of the governing board and, in particular, for the preparation of the Agency's draft work programme,
- (b) the day-to-day administration of the Agency,
- (c) the preparation of the statement of revenue and expenditure and execution of the Agency's budget,
- (d) the preparation and publication of reports specified under this Regulation,
- (e) all staff matters,
- (f) implementing the annual work programme referred to in Article 17(9),
- (g) implementing the governing board's decisions and guidelines laid down for the Agency's activities.

2. The director shall be accountable to the governing board for his activities and shall attend its meetings.

3. The director shall be the legal representative of the Agency.

4. The director shall hold the power of Appointing Authority.

5. The director shall present a quarterly activity report to the European Parliament.

*Article 19*

1. All items of revenue and expenditure of the Agency shall be included in the estimates for each financial year, such financial year corresponding to the calendar year, and shall be shown in the budget of the Agency, which shall include an establishment plan.

2. The revenue and expenditure shown in the budget shall be in balance.

3. The revenue of the Agency shall comprise, without prejudice to other types of income, a subsidy from the general budget of the European Communities, payments made as remuneration for services performed, and funding from other sources.

4. The budget shall also include details of any funds made available by the recipient countries themselves for projects benefiting from financial assistance from the Agency.

*Article 20*

1. The director shall draw up each year a draft budget for the Agency covering running costs and the proposed operational programme for the following financial year, and shall submit it to the governing board.

2. On the basis of the draft referred to in paragraph 1, the governing board shall, by 15 February at the latest, adopt a draft budget for the Agency and shall submit it to the Commission.

3. The Commission shall assess the draft budget of the Agency, having regard to the priorities which it has established and to the overall financial guidelines for reconstruction assistance for Kosovo.

It shall establish on this basis, and within the proposed limits of the overall amount to be made available for aid to Kosovo, the annual contribution for the budget of the Agency to be included in the preliminary draft of the general budget of the European Communities.

4. The governing board, after receiving the opinion of the Commission, shall adopt the budget of the Agency together with the work programme at the beginning of each financial year, adjusting it to the various contributions granted to the Agency and to funds from other sources. The budget shall also specify the number, grade and categories of staff employed by the Agency during the financial year in question.

*Article 21*

1. The director shall implement the budget of the Agency.

2. The Commission's Financial Controller shall be responsible for financial checks.

3. By 31 March each year at the latest, the director shall submit to the Commission, the governing board and the Court of Auditors the detailed accounts of all revenue and expenditure from the previous financial year.

The Court of Auditors shall examine these accounts in accordance with Article 248a of the Treaty.

4. The European Parliament shall give a discharge to the director in respect of the implementation of the budget.

*Article 22*

The governing board, having received the agreement of the Commission and the opinion of the Court of Auditors, shall adopt the Agency's Financial Regulation, which shall in particular specify the procedure to be used for drawing up and implementing the Agency's budget, in accordance with Article 142 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities <sup>(1)</sup>.

<sup>(1)</sup> OJ L 356, 31.12.1977, p. 1.

*Article 23*

The Agency's staff shall be subject to the rules and regulations applicable to officials and other servants of the European Communities.

The governing board, in agreement with the Commission, shall adopt the necessary implementing rules.

The Agency's staff shall consist of a strictly limited number of officials assigned or seconded by the Commission or Member States to carry out management duties. The remaining staff shall consist of other employees recruited by the Agency for a period strictly limited to its requirements.

*Article 24*

1. The contractual liability of the Agency shall be governed by the law applicable to the contract in question.

2. In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by the Agency or its servants in the performance of their duties.

The Court of Justice of the European Communities shall have jurisdiction in disputes relating to compensation for any such damage.

3. The personal liability of its servants towards the Agency shall be governed by the relevant provisions applying to the staff of the Agency.

*Article 25*

1. The Commission shall submit to the Council before 31 December 2000 a progress report on the implementation of this Regulation; it may, if appropriate, make proposals, notably with a view to establishing a unified regulatory framework for assistance to Albania, Bosnia-Herzegovina, Croatia, the Federal Republic of Yugoslavia and the Former Yugoslav Republic of Macedonia.

2. Once the Commission considers that the Agency has fulfilled its mandate as described in Article 14, it shall put to the Council a proposal for the winding-up of the Agency.

*Article 2*

This Regulation shall enter into force on the day following that of 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.

## ANNEX

**PRELIMINARY DRAFT****Financial Regulation of the European Agency for Reconstruction**

Text adopted by the governing board at its meeting in (place)

(day) (month) 1999

THE GOVERNING BOARD,

Having regard to Regulation (EC) No .. setting up the European Agency for Reconstruction, and in particular Article ... thereof,

Having regard to the agreement of the Commission,

Having regard to the opinion of the Court of Auditors,

Whereas the above Regulation lays down the basic rules governing the management of the Agency, hereinafter called 'the Agency', the fixing of the annual grant to be charged against the budget of the Communities, the presentation and adoption of the budget and the controls to which the Agency is subject;

Whereas the effectiveness of the programmes implemented by the Agency demands a special Financial Regulation that is

flexible, allows a rapid response and ensures maximum transparency in management;

Whereas the Agency must make payments in respect of numerous small projects in accordance with procedures and therefore needs effective controls on the regularity, legality and sound management of financial transactions and the accuracy of its financial statements;

Whereas the procedures for drawing up and implementing the Agency's budget and presenting and auditing accounts must be laid down; whereas the rules governing authorising officers and accounting officers should also be determined and a system set up for checking the exercise of their responsibilities;

Whereas the Cologne European Council called on the Council, the European Parliament and the Court of Auditors 'to do their utmost to allow the Agency to become operational before the end of the summer',

HAS ADOPTED THIS REGULATION:

TITLE I

**GENERAL PRINCIPLES**

*Article 1*

1. The budget of the Agency (hereinafter called 'the budget') is the instrument which sets out forecasts of, and authorises in advance, the revenue and expenditure of the Agency for each year. Expenditure shall be authorised in separate commitment and payment appropriations in accordance with the principle of differentiated appropriations. It shall contain separate headings under revenue and expenditure for activities financed by third parties.

2. Commitment appropriations may be used to initiate activities during one financial year that will extend beyond the year in question. Payment appropriations may be used to pay for operations initiated earlier that have been authorised and cleared before the end of the financial years.

3. Administrative expenditure arising from:

- contracts, in accordance with local usage, or
- contractual provisions relating, in particular, to the supply of equipment,

for periods extending beyond the financial year shall be charged against the budget for the financial year in which it is effected.

*Article 2*

The budget appropriations must be used in accordance with the principles of sound financial management, and in particular those of economy and cost-effectiveness. Quantified objectives must be identified and progress towards achieving them monitored.

*Article 3*

1. All revenue and expenditure shall be entered in full in the form of commitments and payments in the budget and in the accounts without any adjustment against each other.

2. Total revenue shall cover total payments. However, revenue from the contributions of third parties to activities of the Agency shall not be used for any other purpose. Such contributions must be authorised by the governing board when the budget is established or during the financial year and the Commission notified thereof. An amount representing a share of the management costs proportional to the the ratio of

administrative costs to operational costs at Agency level shall be deducted from these contributions during the implementation of the relevant programmes.

3. The governing board may accept any donation made to the Agency, in particular foundations, grants, gifts and bequests, and shall adhere to the designated use. It shall inform the Commission thereof.

*Article 4*

1. No revenue shall be collected and no commitment or payment effected unless credited to or charged against an article in the budget.

No expenditure may be committed or authorised in excess of the authorised appropriations.

2. Amounts corresponding to revenue from financial contributions by third parties shall be entered in the statement of revenue of the Agency's budget and the same amounts shall be entered in the statement of expenditure.

The implementing rules to be established under Article 74 shall include the detailed provisions necessary for implementation.

*Article 5*

The financial year shall correspond to the calendar year.

The revenue of a financial year shall be entered in the accounts for the financial year in which it is collected.

The commitments of a given financial year shall be entered in the accounts for that year on the basis of expenditure for which the commitment proposal was received by the financial controller no later than 31 December.

The payments of a financial year shall be entered in the accounts for that year on the basis of expenditure the authorisation for which reached the financial controller not later than 31 December.

*Article 6*

The following rules shall govern the use of appropriations:

1. (a) commitment and payment appropriations still uncommitted at the end of the financial year for which they were entered, shall, as a rule, lapse;
- (b) appropriations relating to remuneration and allowances of staff may not be carried over;
- (c) however, the following may be carried over:

Appropriations not committed at 31 December may be carried over to the next financial year only; the director shall submit to the governing board, before 31 January, duly substantiated requests for carry-overs.

The carry-over of such appropriations can be proposed only for exceptional reasons in order to cope with compelling needs which cannot be met by appropriations from the following financial year. In principle, such carry-overs are intended to cover needs which would normally have come under the previous financial year but which, owing to delays for which the authorising officer was not responsible, could not be used in good time.

The governing board shall act on such requests for carry-over by 1 March at the latest.

Payment appropriations that correspond to the payments outstanding on 31 December pursuant to commitments properly entered into between 1 January and 31 December shall not be carried over for longer than the subsequent year.

Appropriations still available on 31 December arising from the donations referred to in Article 3(2) shall be carried forward automatically.

2. The following appropriations shall lapse at the end of the year:
  - (a) appropriations from the previous financial year:
    - appropriations carried over by decision under point 1(c) which have been neither committed nor paid,
    - appropriations carried over automatically under point 1(d) which have not been paid;
  - (b) appropriations of the financial year which have not been carried over.
3. A list of the appropriations to be carried forward automatically shall be sent to the governing board for information purposes before 1 March.
4. For the purpose of implementing the budget, the use of appropriations carried forward shall be shown separately, for each budget item, in the accounts for the current financial year.

#### Article 7

From 15 November of each year, routine administrative expenditure chargeable to the next financial year which, by its nature, arises at the beginning of that financial year may be charged as an advance commitment against the appropriations provided for in respect of the next financial year up to a maximum of one quarter of the total corresponding appropriations for the current year. However, such commitments shall not apply to new expenditure of a kind not yet approved in principle in the budget of the current financial year.

Expenditure relating to rents or certain associated expenditure which is payable in advance in accordance with provisions laid down by law or contracts may give rise to payments from 20 December onwards, to be charged to the appropriations for the next financial year.

#### Article 8

1. If the budget is not finally adopted at the beginning of the financial year, expenditure already approved in principle in the last budget duly adopted may be effected under the conditions laid down in this Article.

An item of expenditure shall be considered as having been approved in principle in the last budget duly adopted if it could have been charged to a specific budget heading under the financial year concerned.

2. Payments may be made monthly in respect of any chapter up to one-twelfth of the total appropriations entered in the chapter in question for the preceding financial year, account being taken of transfers, provided this measure does not have the effect of placing at the disposal of the Agency, for any month, appropriations in excess of one-twelfth of the amount of the grant reserved for the Agency in the draft budget or, in the absence thereof, in the preliminary draft budget of the Communities. Commitments may be entered into in respect of any chapter for up to one-quarter of the total appropriations entered in the relevant chapter for the preceding financial year, account being taken of all transfers, plus one-twelfth for each completed month, provided the amount of the grant reserved for the Agency in the draft budget or, in the absence thereof, in the preliminary draft budget of the European Communities, is not exceeded.

3. At the request of the director, the governing board may, in the light of administrative needs, authorise simultaneously two or more provisional twelfths, provided that the amount authorised for each chapter does not exceed the maximum annual limit provided for in paragraph 2.

4. If, for a given chapter, the expenditure necessary to avoid a break in continuity of the Agency's activity in the area in question cannot be met with the authorisation of two or more provisional twelfths as provided for in paragraph 3, authorisation may, exceptionally, be given under the same procedure to exceed the total provided for in that paragraph, provided that the overall total of the appropriations opened in the budget of the preceding year is not exceeded.

#### Article 8a

In no circumstances may the Agency make commitments for activities of a duration beyond the date referred to in Article 27 of Regulation No . . . setting up the Agency.



*Article 9*

The budget shall be drawn up in euros. The value of the euro and the arrangements for its conversion into national currencies shall be that laid down in the Financial Regulation applicable to the general budget of the European Communities.

## TITLE II

**PRESENTATION AND STRUCTURE OF THE BUDGET***Article 10*

1. The director shall send the governing board an estimate of the Agency's revenue and expenditure for the following year. This estimate shall include a list of posts.

The governing board shall draw up the estimate along with the list of posts and shall forward it to the Commission by 31 March at the latest.

2. In the event of unavoidable, exceptional or unforeseen circumstances, the director may submit draft supplementary and/or amending budgets to the governing board. Such estimates shall be submitted in the same form and according to the same procedure as the statement whose estimates they are amending. They must be substantiated by reference to the latter and, as a general rule, are to be submitted to the Commission no later than the date laid down for submitting the estimate for the following financial year.

*Article 11*

1. In support of the estimate there shall be submitted:

- a list of posts including, for each category of staff, a detailed list of authorised posts and actual numbers of persons holding posts on the date of submission of the estimate of revenue and expenditure;
- where a change in the numbers of persons holding posts is proposed, a statement giving the reason for requesting new posts;
- a quarterly estimate of cash payments and receipts.

2. As a preface to the estimate, the director shall submit a general introductory note containing in particular:

- an outline of the policy justifying the requests for appropriations, particularly in terms of corresponding to the programme of work adopted by the governing board;
- an explanation of the changes in appropriations from one financial year to the next.

*Article 12*

The governing board shall adopt the budget, together with the establishment plan, before the beginning of the financial year, ensuring that the statement of revenue and the statement of payments are in balance, having regard in particular to any grant from the budgetary authority.

The budget thus adopted shall be forwarded to the Commission forthwith.

*Article 12a*

In unforeseen circumstances the Agency may at any time adopt a supplementary or amending budget in accordance with the procedures set out in Articles 10 to 12.

*Article 13*

The budget and the list of posts shall be published in the *Official Journal of the European Communities*.

*Article 14*

The budget shall be subdivided into titles, chapters, articles and items according to the nature of the revenue or expenditure or the intended purpose thereof, following a decimal classification system.

It shall show:

1. as regards the statement of revenue:
  - (a) the revenue for the financial year in question;
  - (b) the revenue entered for the preceding financial year and the revenue established for the last financial year for which accounts have been closed;
  - (c) appropriate remarks on each revenue heading;
2. as regards the statement of expenditure:
  - (a) the commitment and payment appropriations made available for the financial year in question, divided into titles, chapters, articles and items;
  - (b) the appropriations made available for the preceding financial year and the actual expenditure in the last financial year for which the accounts have been closed, using the same classification;
  - (c) appropriate remarks on each subdivision.

Such remarks may include financial information relating to:

- the Agency's draft work programme;
- services provided for third parties;
- the participation of third parties in the Agency's activities.

- (d) in an annex, a list of posts setting the number of permanent and temporary posts for each grade in each category and indicating the number of posts authorised for the preceding year.

#### Article 15

The list of posts drawn up by the governing board shall constitute an absolute limit for the Agency; no appointment may be made in excess of the limit set.

Instances of half-time work authorised by the director in accordance with Article 51 of the Staff Regulation of officials of the European Communities may be compensated for by the recruitment of other staff within the limits laid down by the governing board.

### TITLE III

#### IMPLEMENTATION OF THE BUDGET

##### SECTION I

#### *General provisions*

#### Article 16

The budget shall be implemented in accordance with the principle that the authorising officers, accounting officers and financial controllers are different individuals.

The appropriations shall be administered by the authorising officer who alone is empowered to enter into commitments regarding expenditure, establish entitlements to be collected and issue recovery orders and payment orders. The operations of collection or payment shall be carried out by the accounting officer. The duties of authorising officer, financial controller and accounting officer shall be mutually incompatible.

#### Article 17

The director of the Agency shall implement the budget on his own responsibility in accordance with this Regulation, within the limits of the appropriations allotted and in accordance with Article 2.

The director shall delegate his powers under conditions to be laid down by him and within the limits set by the act of delegation, which shall be communicated to the empowered person, the accounting officer, the financial controller, the governing board and the Court of Auditors.

Those so empowered may act only within the limits of the powers expressly conferred upon them.

#### Article 18

Where revenue and expenditure operations are managed by means of integrated computer systems, the provisions of Sections II and III of this Title and of Title VI shall apply with due allowance for the possibilities and requirements deriving from computerised management. To this end:

- the supporting documents may remain with the authorising officer or the accounting officer for purposes of checking,
- signatures and approvals may be added in appropriate computerised form.

The conditions for implementing this Article shall be determined by the implementing rules provided for in Article 74.

#### Article 19

The financial controller shall be responsible for checking the commitment and payment of all expenditure and the establishment and recovery of the Agency's revenue, in accordance with the principles laid down in Article 2.

Controls shall be carried out by that official by means of inspection of the files relating to expenditure and revenue and, if necessary, on the spot.

The financial controller may be assisted in his duties by one or more assistant controllers.

The financial controller must be consulted on the setting up of the accounting systems of the Agency. He shall have access to the data of such systems.

The financial controller shall carry out internal audits in accordance with the rules for implementation provided for in Article 74. Audits shall include an evaluation of the efficiency of management and control systems and verification of the proper performance of operations.

#### Article 20

The collection of revenue and the payment of expenditure shall be carried out by an accounting officer appointed by the governing board.

Subject to the second paragraph of Article 42, and to Article 43, the accounting officer alone is empowered to manage funds and assets. He shall be responsible for their safekeeping.

He shall be responsible for preparing the financial statements provided for in Article 65 and 66.

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 the implementing rules provided for in Article 74.

#### Article 21

1. The appropriations shall be classified by chapter and article.

2. The appropriations entered under a chapter or article of expenditure may not be used for other expenditure.

3. However, the director may propose to the governing board that appropriations be transferred from one chapter to another. The governing board shall act within one month. If it has not so acted, the transfers shall be deemed to be approved.

The governing board may, at the time of adoption of the budget, authorise the director to transfer appropriations from one chapter to another. Such authorisation must specify the chapters concerned and any limits and conditions on the transfer.

The director may authorise transfers between articles on behalf of the Agency.

The governing board shall be informed of such transfers.

4. Every proposal for a transfer within a chapter or between chapters shall be subject to the approval of the financial controller who shall attest that the appropriations are available.

5. Appropriations may be transferred only to budget headings for which the statement of expenditure has authorised appropriations or carried a token entry.

6. This Article shall apply to the appropriations for revenue allocated for a specific purpose within the meaning of Article 3(2) only as long as that revenue is not used for any other purpose.

#### Article 22

Notwithstanding Article 4(1):

(a) the following deductions may be made from all bills, invoices or statements, which shall then be passed for payment of the net amount:

- fines imposed on a party to a contract or an accepted tender;

- adjustments of amounts paid in error, which may be achieved by means of deduction beforehand when another validation of the same type is being effected under the chapter, article and financial year in respect of which the excess payment was made;

- the value of vehicles, apparatus, equipment and installations taken in part exchange in accordance with commercial usage upon purchase of new apparatus, vehicles, equipment and installations of the same kind.

Discounts, refunds and rebates on invoices and bills shall not be recorded as separate revenue;

(b) the following sums may be reused under the heading to which the initial expenditure was charged:

- revenue arising from the refund of amounts paid in error against appropriations entered in the budget;

- proceeds from the supply of goods and services to other institutions or bodies, including refunds by such institutions or bodies of mission allowances paid on their behalf;

- insurance payments received;

- revenue from payments connected with lettings;

- the revenue from the sale of publications and films;

- refunds of taxes — incorporated in the price of the products or services provided to the Agency — effected by Member States pursuant to the provisions of the Protocol on the Privileges and Immunities of the European Communities;

- the revenue from the supply of goods and services and from building works against payment;

- proceeds from the sale of vehicles, equipment and installations and scientific and technical apparatus, equipment and materials which are being replaced or scrapped.

Sums must be re-used before the end of the financial year following that in which the revenue was collected.

The chart of accounts shall include suspense accounts to record reuse operations in both revenue and expenditure;

(c) adjustments may be made in respect of exchange differences occurring in budget operations, and in respect of debtor and creditor interest rates relating to cash operations. Only the final gain or loss shall be included in the balance for the year.

## SECTION II

**Revenue and management of available funds***Article 23*

1. Any measure or situation which may give rise to or modify a debt due to the Agency must be preceded by a debt forecast from the authorising officer. Such forecasts shall be sent to the financial controller for approval and to the accounting officer for provisional registration. They shall mention, in particular, the type of revenue and the budget item to which it is to be booked and also, as far as possible, the estimated amount and the name and description of the debtor.

The financial controller's approval shall certify that:

- (a) the revenue is booked to the correct item;
- (b) the forecast is in order and conforms to the relevant provisions, in particular of the budget and of the regulations applying to the Agency and also of all acts adopted in implementation of these regulations, and to the principles of sound financial management referred to in Article 2.

2. The financial controller may withhold his approval. The director may, by a duly substantiated decision, and on his sole responsibility, overrule this refusal. This decision shall be final and binding, and may not be delegated; it shall be communicated for information to the Director, the governing board, the financial controller and, within one month, the Court of Auditors.

3. The authorising officer shall draw up, in respect of every debt established, a recovery order which shall be sent to the financial controller for prior approval with the supporting documents. The recovery orders shall then be registered by the accounting officer after approval of the financial controller.

The accounting officer's approval shall be to establish that:

- (a) the revenue is booked to the correct item;
- (b) the recovery order is in order and conforms to the relevant provisions;
- (c) the supporting documents are in order;
- (d) the debtor is correctly described;
- (e) the due date is indicated;
- (f) the principles of sound financial management referred to in Article 2 have been applied;
- (g) the amount and currency of the sum to be recovered are correct.

If the accounting officer's approval is withheld, paragraph 2 shall apply.

*Article 24*

1. The accounting officer shall assume responsibility for the recovery orders duly drawn up.

He shall exercise all due diligence to ensure that the resources due to the Agency are recovered at the due dates indicated in the recovery orders, and shall ensure that the rights of the Agency are safeguarded.

The accounting officer shall inform the authorising officer and the financial controller of any revenue not recovered within the time limits laid down.

2. If the authorising officer waives the right to recover an established debt, he/she shall first forward a proposal for cancellation to the accounting officer for registration and to the financial controller for information.

The director shall inform the governing board and the Court of Auditors of all such decisions within one month.

When the accounting officer finds that a document establishing a debt has not been drawn up, or that a sum due has not been recovered, he shall inform the director thereof.

*Article 25*

A receipt shall be issued in respect of all cash payments made to the accounting officer.

*Article 26*

The balance from each financial year shall be entered in the budget for the following financial year as revenue in the case of a surplus or as expenditure in the case of a deficit.

The relevant estimates of revenue or expenditure are entered in the budget during the budget procedure.

After the close of accounts for each financial year, any discrepancy with the estimates is entered in the budget for the following financial year in accordance with Article 10(2).

*Article 27*

Where the Agency's budget includes provision for a grant paid from the general budget of the European Communities, the governing board shall ask the Commission for payment of the grant on the basis of the estimate referred to in the third indent of Article 11(1), solely in accordance with actual requirements.

## SECTION III

**Commitment, validation, authorisation and payment of expenditure**

## 1. Commitment of expenditure

*Article 28*

1. For any measure which may give rise to administrative expenditure chargeable to the budget, the authorising officer must first draw up a proposal for commitment and may not enter into legal commitments vis-à-vis third parties until the financial controller has given his approval after effecting controls commensurate with the risks involved. A provisional commitment may be entered into for current expenditure.

2. The implementing conditions in respect of paragraph 1 shall be determined by the implementing rules provided for in Article 74. These conditions shall ensure that an exact account is kept of commitments and authorisations in terms of actual needs.

*Article 29*

Without prejudice to Article 18, proposals for commitments and supporting documents shall show the purpose of the expenditure, the estimated amount involved, if possible the currency of payment, the budget item to which it is to be booked and the identity of the creditor; they shall be approved by the financial controller and registered in accordance with the implementing rules provided for in Article 74.

*Article 30*

1. The purpose of the approval of proposals for commitments of expenditure given by the financial controller shall be to establish that:

- (a) the proposal for commitment has been presented in accordance with Article 28(1);
- (b) the expenditure has been correctly charged,
- (c) the appropriations are available.
- (d) the expenditure is in order and conforms to the relevant provisions, in particular of the budget and the rules applying to the Agency, and of all acts made in implementation of these rules;
- (e) the principles of sound financial management referred to in Article 2 have been applied.

2. Approval may not be conditional.

*Article 31*

Where the financial controller withholds his approval he shall furnish a written statement of his reasons therefor. The authorising officer shall be notified accordingly.

Except where the availability of the appropriations is in doubt, the governing board may, by means of a decision stating the full reasons therefor, and on its sole responsibility, overrule a refusal of approval by financial controller. This decision shall be final and binding, and may not be delegated; it shall be communicated for information to the financial controller and, within a month, the Court of Auditors.

## 2. Validation of expenditure

*Article 32*

The purpose of validation of expenditure by the authorising officer shall be:

- to verify the creditor's claim;
- to determine or verify the existence and the amount of the sum due,
- to verify the conditions under which payment falls due.

*Article 33*

Validation of any expenditure shall be subject to the submission of supporting documents attesting the creditor's claim and the service rendered or the existence of a document justifying payment.

The authorising officer empowered to validate expenditure shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done.

## 3. Authorisation of expenditure

*Article 34*

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

*Article 35*

The payment order shall state:

- the financial year against which the payment shall be charged,
- the budget article and any other subdivision that may apply,
- the amount to be paid (in figures and words), expressed in euros or in national currency,
- the name and address of the payee,
- the purpose of the expenditure,
- the method of payment, wherever possible.

The payment order shall be dated and signed by the authorising officer.

*Article 36*

The payment order shall be accompanied by all the original supporting documents, which shall bear or be accompanied by a statement certifying the correctness of the amounts to be paid, the receipt of the supplies and the performance of the service and, if appropriate, the entry of the goods in the inventory referred to in Article 51.

It shall show the numbers and dates of the relevant approvals of commitment. Copies of supporting documents, certified as true copies by the authorising officer, may, in some cases, be accepted in place of the originals.

*Article 37*

1. For payments by instalment, the first payment order shall be accompanied by documents establishing the creditor's right to payment of the instalment in question. Subsequent payment orders shall refer to the supporting documents already furnished, and repeat the reference number of the first payment order.

2. The authorising officer may grant advances to personnel if a provision laid down by regulation specifically provides therefor.

The authorising officer may grant advances to cover disbursements to be effected by a member of staff on behalf of the Agency.

Apart from the imprests referred to in Article 42, no advance for administrative expenditure may be granted unless it has been approved beforehand by the financial controller.

*Article 38*

The financial controller shall approve payment orders after effecting controls commensurate with the risks involved in order to verify that:

- (a) the payment order was properly issued,
- (b) the payment order agrees with the commitment of expenditure and that the amount thereof is correct, taking account of the principles and requirements of sound financial management referred to in Article 2,
- (c) the expenditure is charged to the correct item;
- (d) the appropriations are available;
- (e) the supporting documents are in order;
- (f) the payee is correctly named and described.

*Article 39*

Should approval be withheld, Article 31 shall apply.

## 4. Payment of expenditure

*Article 40*

Payment is the final action whereby the Agency is discharged of its obligations towards its creditors.

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

In the event of a substantive error or of the validity of the discharge being contested or of failure to observe the formalities prescribed by this Regulation, the accounting officer shall suspend payment.

*Article 41*

If payment is suspended, the accounting officer shall give the reasons therefor in a written statement which he shall send forthwith to the authorising officer and, for information, to the financial controller.

Except where the validity of the discharge is contested, the authorising officer may place the matter before the governing board in the manner laid down in the rules of procedure of the Agency. The governing board may require in writing, and on its own responsibility, that payment be effected.

*Article 42*

Payments shall be effected as a general rule through a bank account or post office giro account.

The procedure for opening, administering and using such accounts shall be determined by the implementing rules provided for in Article 74. These rules shall, in particular, indicate expenditure the payment of which must necessarily be effected either by cheque or by post office or bank transfer order, and shall require the joint signature on cheques and on post office or bank transfer orders of two duly authorised officials, one signature necessarily being that of the accounting officer, an assistant accounting officer or an administrator of an imprest account.

## 5. Imprest accounts

*Article 43*

For the payment of certain categories of expenditure, imprest accounts may be set up in accordance with the implementing rules provided for in Article 74.

Only the accounting officer may replenish the imprest accounts, save in exceptional cases defined in the implementing rules of this Regulation.

These rules shall contain specific provisions concerning in particular:

- the appointment of administrators of imprest accounts,
- the nature and maximum amount of each item of expenditure to be paid;
- the maximum amount of the imprest which may be advanced;
- the time within which supporting documents must be produced;
- the responsibility of the administrators of imprest accounts.

#### SECTION IV

### **Management of posts**

#### Article 44

1. The following shall be established:
  - (a) a file identifying the posts and containing a job description for each category A post;
  - (b) an organisation chart showing the organisation of the departments, detailing the tasks of each administrative unit.
2. If the note 'to be abolished' is placed against a post in the statement of revenue and expenditure, it may no longer be filled when the next vacancy arises in the same career.

#### TITLE IV

### **CONCLUSION OF CONTRACTS, INVENTORY, ACCOUNTS**

#### SECTION I

### **Contracts for the supply of goods and services, contracts for lease and hire**

#### Article 45

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 the purchase of a building already constructed or to the leasing of a building, all such contracts shall be concluded

- (a) by invitation to tender;
  - (b) by way of a bill of costs or invoice in the cases provided for in Article 50;
  - (c) by direct agreement in the cases referred to in Article 46 and within the limits laid down in this article.
2. Invitations to tender are published on the Internet, the S series of the Official Journal and in all other appropriate media. However, their publication may be limited where the scale or

nature of the goods or services or the operational requirements are such that they are not appropriate for a general invitation to competitive tender.

3. The tendering procedures, award criteria and price adjustment procedures adopted after the conclusion of contracts shall be established and governed by the implementing rules provided for in Article 74, on the understanding that award criteria shall be established by analogy with the criteria laid down in the Financial Regulation applicable to the general budget of the European Communities.

#### Article 46

Contracts may be made by direct agreement:

- (a) where the purchase or hiring of supplies, furniture and equipment, or the provision of services or building works are so urgently needed that it is not possible to wait for one of the tendering procedures specified in Article 45 to be carried out,
- (b) where the tendering or award procedures do not give any result or where the prices quoted are not acceptable;
- (c) where for technical, practical or legal reasons the supply of goods or services can be carried out only by a particular contractor or supplier;
- (d) for contracts for the supply of additional supplies or services or for ancillary building works which, technically, cannot be separated from the main contract.

It shall be understood that the Agency is bound, as far as possible and by all appropriate means, to enable suppliers who are likely to be able to supply the goods and services in question to compete, excluding the cases referred to in (c) and (d).

#### Article 47

Participation in invitations to tender and contracts awarded by the Agency shall be open on equal terms to all natural and legal persons from the Member States, the recipient states of this Regulation and the states covered by the Phare and Meda programmes.

The following shall be considered to be legal persons of a Member State, the recipient states or states covered by the Phare and Meda programmes: legal persons who are established in accordance with the legislation of a Member State, a recipient state or a state covered by the Phare or Meda programmes and who have their central administration or principal establishment in the territories in which the Treaty establishing the European Community applies, in the recipient states or in the states covered by the Phare or Meda programmes, or who have their registered office there, where their activity has an actual and continuous link with the economy of the said territories or countries.

Participation in contracts awarded by the Agency that are covered by contributions from third parties shall be governed by the financing agreement concluded between the Agency and the donor concerned.

#### Article 48

(Deleted)

#### Article 49

By way of guarantee of the performance of contracts, suppliers or contractors may be required by a warranty clause to make a preliminary deposit.

The amount of the deposit shall be fixed:

- according to the usual trade terms of supply contracts,
- according to the special conditions governing building contracts.

For works of a value exceeding the ceiling laid down in the implementing rules provided for in Article 74, a preliminary deposit must be lodged. A sum may be retained as security until final acceptance of delivery.

The Agency shall publish on the internet each quarter a list of persons to whom contracts have been awarded.

Where a contract has not been performed or completion has been late, the Agency shall ensure that it is adequately compensated in respect of all damages, interests and costs by the deduction of the amount from the deposit, whether this has been lodged directly by the supplier or contractor, or by a third party.

#### Article 50

Contracts may be made against invoice or bill of costs where the expected value of the goods, services or works does not exceed the amounts laid down by the implementing rules of the Financial Regulation applicable to the general budget of the European Communities.

### SECTION II

#### **Inventory of movable and immovable property**

#### Article 51

A permanent inventory showing the quantity and value of all movable and immovable property belonging to the Agency 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 rules provided for in Article 74 shall be entered in those inventories.

The Agency shall carry out its own inspection once a year to ascertain that entries in the inventory correspond to the facts.

#### Article 52

The sale of movable property shall be suitably advertised under the conditions laid down by the implementing rules provided for in Article 74.

Apart from sales by public auction, staff of the Agency may not acquire any movable property resold by the Agency.

#### Article 53

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

The statement or record shall refer in particular to any obligation that may devolve on a member of the staff of the Agency or any other person to replace the item in question.

If immovable property or large installations are made available free of charge, they must be covered by contracts approved by the financial controller and such cases shall be mentioned in an annual communication addressed to the Commission when the estimate of revenue and expenditure is presented.

#### Article 54

All acquisitions of movable or immovable property as defined in Article 51 shall, before payment, be entered in the permanent inventory.

The entry shall be recorded in the corresponding invoice or attached document drawn up with a view to payment of the expenditure.

### SECTION III

#### **Accounts**

#### Article 55

The accounts shall be kept in euros by the double entry method on the basis of the calendar year. They shall show all revenue and expenditure for the financial year; they shall be authenticated by supporting documents.

The revenue and expenditure account and the balance sheet shall be drawn up in euros.



*Article 56*

The chart of accounts shall make a clear distinction between budgetary accounts and cash accounts.

It shall comprise two parts:

- (a) accounts of budgetary expenditure and revenue which show the detailed implementation of the budget;
- (b) cash accounts which disclose the assets of the Agency.

These accounts shall show the expected effect of the Agency's legal obligations.

The accounts shall make it possible to draw up an annual balance of assets and a monthly statement of revenue and expenditure by chapter and article.

The statements shall be forwarded to the financial controller, the authorising officer and the Court of Auditors.

*Article 57*

Any advance, other than regular advances which are periodically re-examined, shall be entered in a suspense account and settled at the latest during the financial year which follows the payment of this advance.

However, the advances referred to in the second subparagraph of Article 37(2) shall be settled as a general rule within six weeks following completion of the project for which they were granted.

*Article 58*

The detailed conditions for the establishment and operation of the chart of accounts for transactions relating both to assets and to the implementation of the budget shall be determined by the implementing rules provided for in Article 74.

*Article 59*

The accounts shall be closed at the end of the financial year to enable the balance sheet and the revenue and expenditure account referred to in Title VI to be drawn up. The revenue and expenditure account shall be submitted to the financial controller.

## TITLE V

**RESPONSIBILITIES OF AUTHORISING OFFICERS, THE ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS***Article 60*

Authorising officers who, when establishing entitlements to be recovered, issuing recovery orders, entering into commitments

of expenditure or signing payment orders, do so without complying with this Regulation and its implementing rules shall be rendered 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 orders or are, without justification, late in issuing them.

The same shall apply if they neglect to issue payment orders or are, without justification, late in issuing them, thereby rendering the Agency liable to civil action by third parties.

*Article 61*

1. Accounting officers and assistant accounting officers shall render themselves liable to disciplinary action and, where appropriate, to payment of compensation in respect of payments made by them in disregard of the third paragraph of Article 40.

They shall render themselves liable to disciplinary action and to payment of compensation as regards any loss or deterioration of the monies, assets and documents in their charge where such loss or deterioration result from an intentional mistake or serious negligence on their part.

Under the same conditions, they shall be responsible for the correct execution of orders received by them in respect of the use and the administration of bank and post office giro accounts, and in particular:

- (a) where the recoveries or payments made by them do not agree with the amounts on the corresponding recovery of payment orders,
- (b) where they effect payment to a party other than the payee entitled or without the supporting documents required under the Regulations, agreements, contracts and financing agreements applicable to the payments in question.

2. Administrators of advance funds shall render themselves liable to disciplinary action and, where appropriate, to payment of compensation in the following cases:

- (a) where they cannot show due warrant with proper documents for payments made by them;
- (b) where they effect payments to parties other than entitled payees.

They shall be liable to disciplinary action and to payment of compensation in respect of any loss or deterioration of the monies, assets and documents in their charge where such loss or deterioration results from an intentional mistake or serious negligence on their part.

3. The accounting officers, assistant accounting officers and imprest-holders shall insure themselves against the risks arising under this Article.

The Agency shall cover the related insurance costs.

*Article 62*

The liability to payment of compensation and to disciplinary action of authorising officers, accounting officers, assistant accounting officers and administrators of imprest accounts may be determined in accordance with the provisions of Articles 22 and 86 to 89 of the Staff Regulations applicable to officials of the European Communities.

*Article 63*

The Agency shall be allowed a period of two years from the date when the revenue and expenditure account is submitted to take a decision on the final discharge to be given to accounting officers for the transactions relating thereto.

## TITLE VI

## PRESENTING AND AUDITING THE ACCOUNTS

## SECTION I

***Presenting the accounts****Article 64*

The director shall draw up each year a revenue and expenditure account for the Agency.

The revenue and expenditure account shall cover all revenue and expenditure transactions relating to the preceding financial year. It shall be submitted in the same form and following the same subdivisions as the budget.

It shall be preceded by an analysis of the financial management in respect of the year in question. In drawing up this analysis the Agency shall supply details on the implementation of the principles and objectives referred to in Article 2.

*Article 65*

The revenue and expenditure account shall include the following tables subdivided in accordance with the nomenclature of the Agency's budget:

1. a table of revenue comprising:
  - the revenue estimate for the year in question setting out separately revenue and the grant from the budget of the European Communities and revenue from other sources,
  - amendments to the revenue estimates as a result of supplementary or amending estimates,
  - 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(3),

- amounts still to be collected at the end of the financial year,
- the cancellation of established entitlements.

Where appropriate, a statement shall be attached to this table, showing the balances and gross payments arising from the transactions referred to in Article 23,

2. a table showing the movement in appropriations for the financial year, indicating:
  - the initial appropriations,
  - any amendments to appropriations introduced by means of transfers;
  - any amendments made by means of supplementary or amending estimates,
  - the final appropriations for the financial year,
  - appropriations carried over under Article 6;
3. a table showing the use of the appropriations allocated for the financial year, indicating:
  - the commitments entered into and chargeable to the financial year,
  - the payments made and chargeable to the financial year,
  - the sums still to be paid at the close of the financial year,
  - the appropriations carried over pursuant to 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,

4. a table showing the use of appropriations carried over from the preceding financial year, indicating:
  - the amount of appropriations carried over,
  - the payments made from appropriations which have been carried over,
  - the unused appropriations to be cancelled.

*Article 66*

1. The director shall also draw up a balance sheet of assets and liabilities of the Agency as at 31 December of the financial year just ending.

A statement showing the movements and balances of the accounts at the same date shall be attached thereto.

The balance sheet shall include, on the assets side, the amount of revenue to be collected and, on the liabilities side, the amount of expenditure chargeable to the financial year, which have not yet been entered in the accounts.

2. These documents shall be submitted to the financial controller.

#### *Article 67*

The director shall, by 31 March at the latest, send the revenue and expenditure account, the financial analysis and the balance sheet of the Agency for the preceding financial year to the governing board and the Court of Auditors and, for information, to the European Parliament, the Council and the Commission.

### *SECTION II*

#### ***Auditing the accounts***

#### *Article 68*

Without prejudice to the controls carried out by the financial controller, the Court of Auditors shall exercise its powers in respect of the Agency in accordance with the Financial Regulation applicable to the general budget of the European Communities.

#### *Article 69*

The Agency shall forward to the Court of Auditors, on a quarterly basis and at the latest within the month which follows the end of the quarter, the documents supporting the accounts, in particular the documents and certificates in respect of the correct application of the provisions which govern the implementation of the budget and relating to the commitment and payment of expenditure and the establishment and collection of revenue.

The Court of Auditors may question the Agency on the subject of the said supporting documents.

#### *Article 70*

The Agency shall afford the Court of Auditors all the facilities and give it all the information which the Court may consider necessary for the performance of its task.

In particular, the Agency shall place at the disposal of the Court of Auditors all documents concerning the conclusion of contracts and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents pertaining thereto, all documents relating to revenue and expenditure, all inventories, all lists of posts in the departments, which the Court of Auditors may consider necessary for auditing the revenue and expenditure account on

the basis of records or on the spot, and all documents and data created or stored on a magnetic medium.

To this end, the officials whose operations are checked by the Court of Auditors and the financial controller shall in particular:

(a) show their records of cash in hand, any other cash, securities and materials of all kinds, and the supporting documents in respect of their stewardship with which they are entrusted, and also any books, registers and other documents relating thereto;

(b) present the correspondence and any other document required for the full implementation of the audit.

The Court of Auditors shall be empowered to audit the documents in respect of revenue and expenditure which are held by the departments of the Agency and, in particular, by the department responsible for decisions in respect of such revenue and expenditure.

The task of establishing that the revenue has been received and the expenditure incurred in a lawful and proper manner, and that the financial management has been sound, shall extend to the utilisation, by bodies outside the Agency, of Community funds received by way of aid.

The grant of aid to beneficiaries outside the Agency shall be subject to the agreement in writing by the recipients of an audit being carried out by the Court of Auditors on the utilisation of the amounts granted.

#### *Article 71*

The report of the Court of Auditors shall be drawn up in accordance with Article 248 of the EC Treaty and Article 88 of the Financial Regulation applicable to the general budget of the European Communities.

#### *Article 72*

1. Parliament shall, before 30 April of the following year, give a discharge to the director in respect of the implementation of the budget. If that date cannot be met, the Parliament shall inform the director of the reasons for the postponement.

If Parliament postpones the decision giving discharge, the director shall make every effort to take measures, as soon as possible, to facilitate removal of the obstacles to that decision.

Parliament shall inform the Council, the Commission and the Court of Auditors of the decisions which it adopts pursuant to this paragraph.

2. The discharge decision shall cover the accounts of all revenue and expenditure of the Agency, the resulting balance and the assets and liabilities of the Agency shown in the balance sheet. It shall include an assessment of the responsibility of the director's budgetary management over the past financial year.

3. The director shall take all appropriate steps to act on the comments appearing in the decisions giving discharge.

4. By 15 December of the year in which the decision giving discharge is taken, the director shall report on the measures taken in the light of these comments and, in particular, on the instructions given to those departments which are responsible for the implementation of the budget. Such reports shall be transmitted to Parliament and the Court of Auditors and, for information, to the Council and the Commission.

The director must also give an account, in an annex to the revenue and expenditure account for the next financial year, 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 preparation 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.

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.

## TITLE VII

### FINAL PROVISIONS

#### *Article 73*

The governing board shall inform the Court of Auditors, as soon as possible, of all decisions and measures taken in implementation of Articles 3, 6, 8, 12 and 21.

The Court of Auditors and the financial controller of the Commission shall be informed of the appointment of authorising officers, the accounting officer, assistant accounting officers and imprest administrators, and of the acts of delegation or appointment pursuant to Articles 17, 20 and 41.

The governing board shall transmit to the Court of Auditors and the Commission any rules of procedure they adopt in respect of financial matters.

#### *Article 74*

On a proposal by the director, and with the assent of the financial controller of the Commission, the governing board shall establish the rules required for implementing this Regulation.

#### *Article 75*

This Regulation shall enter into force on . . .

---