

II

(Acts whose publication is not obligatory)

COUNCIL

FINANCIAL REGULATION

of 11 November 1986

applicable to the Sixth European Development Fund

(86/548/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Third ACP-EEC Convention, signed at Lomé on 8 December 1984⁽¹⁾, hereinafter referred to as 'the Convention',

Having regard to the Integral Agreement on the financing and administration of Community aid, signed in Brussels on 19 February 1985⁽²⁾, hereinafter referred to as 'the Internal Agreement' and in particular Article 28 thereof,

Having regard to Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community⁽³⁾, hereinafter referred to as 'the Decision',

Having regard to the draft Financial Regulation submitted by the Commission,

Having regard to the consultation of the European Parliament,

Having regard to the opinion of the European Investment Bank, hereinafter referred to as 'the Bank',

Having regard to the opinion of the Court of Auditors⁽⁴⁾,

Whereas, pursuant to Article 1 (1) of the Internal Agreement, the Member States have set up a Sixth European Development Fund, hereinafter referred to as 'the EDF';

Whereas under Article 28 of the Internal Agreement, the provisions for implementing the Agreement shall be the subject of a Financial Regulation adopted, upon the entry into force of the Convention, by the Council acting by the qualified majority laid down in Article 18 (4) of the said Agreement,

HAS ADOPTED THIS FINANCIAL REGULATION:

TITLE I

FINANCIAL ARRANGEMENTS

Article 1

1. The Council shall notify the Commission by 30 November each year of the decision which it adopts pursuant to the first subparagraph of Article 6 (2) of the Internal Agreement and which relates to the schedule of calls for contributions to the EDF.

2. Annual contribution to the EDF shall in principle be called up in four instalments payable on:

- 20 January,
- 1 April,
- 1 July,
- 1 October.

⁽¹⁾ OJ No L 86, 31. 3. 1986, p. 3.

⁽²⁾ OJ No L 86, 31. 3. 1986, p. 210.

⁽³⁾ OJ No L 175, 1. 7. 1986, p. 1.

⁽⁴⁾ OJ No C 361, 31. 12. 1985, p. 1.

The Commission shall notify the Member States as soon as possible, and in any event at the beginning of each financial year, of the amount of the quarterly instalments of contributions to be paid on each of the due dates.

3. The Commission shall inform the Member States as soon as possible before the date on which each instalment of contributions is due of its intentions in respect of limiting its call for contributions as provided for in Article 6 (3) of the Internal Agreement.

4. Supplementary contributions to the EDF decided upon pursuant to the second subparagraph of Article 6 (2) of the Internal Agreement shall, unless otherwise decided by the Council, be due and be made within as brief a period as possible which shall be laid down in the decision to call for such contributions and which may not in any case exceed three months.

5. Each Member State shall make the contributions referred to in paragraphs 2 and 4 in proportion to its contributions to the EDF as fixed in Article 1 (2) of the Internal Agreement.

6. Where an instalment of contributions payable under this Article is not paid within 15 days of the due date, the Member State concerned shall, without further notice, be required to pay interest in respect of the amount not paid. The late payment penalty interest shall be calculated on the basis of a rate of two percentage points above the interest rate for short-term financing applicable on the date on which the instalment is due on the money market of the Member State for the ECU or the national currency, whichever has been chosen for the payment of the instalment in question. This rate shall be increased by 0,25 of a percentage point for each month of delay. The increased rate shall be applicable to the entire period of delay.

Article 2

1. The financial contributions of the Member States shall be expressed in ECU.

2. Each Member State shall pay the amount of its contribution either :

(a) in ECU ; or

(b) in its national currency on the basis of the conversion rate of the ECU in force seven working days preceding the date on which the payment was due.

However, where a Member State adopts the second alternative, it may, in the first instance, base each instalment of its annual contribution on a conversion rate of the ECU in force on a date of its choice during the quarter preceding the date on which the instalment falls due. In that event, the Commission shall transmit to the Member State concerned as soon as possible after the due date a statement of the adjustment to be made to the instalment in question to bring it into line with the requirements of this paragraph. Payment of the amount of the adjustment shall be made by the Commission or the Member State,

as appropriate, not later than the next due date. The provisions of this paragraph shall apply only where instalments are paid on the due date.

3. Financial contributions shall be credited by each Member State to a special account entitled 'Commission of the European Communities — European Development Fund' opened with the bank of issue of that Member State or the financial institution designated by it.

4. Upon expiry of the Convention, that part of the contributions which the Member States remain obliged to make shall be called up by the Commission, as required, on the conditions laid down in the Internal Agreement and this Financial Regulation.

5. The Commission shall credit amounts paid in national currencies to the accounts provided for in paragraph 3 on the basis of the exchange rates for the ECU provided for in paragraph 2 (b).

Article 3

In order to make all necessary payments, the Commission shall open accounts at the bank of issue or other financial institutions in each Member State. Subject to the provisions of Article 229 (3) of the Convention, deposits in these accounts shall bear interest which shall be credited to the resources of the EDF.

Article 4

The signatures of the Commission officials empowered to carry out operations on the EDF's accounts shall be lodged when the accounts are opened or, in the case of officials who are authorized subsequently, when they are designated.

Article 5

1. EDF resources shall be used in accordance with the principles of economy and sound financial management.

2. The Commission shall, as far as possible, make any withdrawals from the special accounts referred to in Article 2 (3) in such a way as to maintain a distribution of its assets in those accounts corresponding to the proportions in which the various Member States contribute to the EDF.

Article 6

The Commission shall transfer from the special accounts opened pursuant to Article 2 (3) of this Financial Regulation amounts needed to replenish the accounts opened in its name in accordance with Article 3 (1) of the Regulation and Article 229 of the Convention. Such transfers shall be made on the basis of the cash requirements for the execution of projects and programmes, including amounts required for payment into the account of the system for stabilization of export earnings from agricultural commodities (hereinafter referred to as the 'Stabex' system) as provided for in Article 153 of the Convention.

Article 7

1. Financial transactions shall be effected either in ECU or in national currencies.

Subject to the exceptions provided for in the second subparagraph of Article 48 (2) and in Article 48 (3) respectively and in Articles 50 (6) and 54 (4), any Fund operations involving conversion between the ECU and national currencies shall be made on the basis of the current market rate applicable on the day on which each such operation is effected.

2. Any exchange differences and costs shall be charged against the EDF.

Article 8

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

2. The Commission shall include with the estimates of contributions which it has to submit to the Council in accordance with Article 6 (2) of the Internal Agreement its forecasts of expenditure (including those relating to earlier Conventions) in respect of each of the four years following that covered by the request for contributions. These forecasts shall be updated annually and communicated to the Council when the annual request for contributions is made.

TITLE II

MANAGEMENT OF THE EDF

SECTION 1

GENERAL PROVISIONS

Article 9

1. The EDF shall be administered financially in accordance with the principle that authorizing officers and accounting officers shall be different individuals. Appropriations shall be administered by authorizing officers, who alone shall have the power to enter into commitments regarding expenditure, establish sums due to be collected and issue recovery orders and payment orders.

2. Collection and payment operations shall be carried out by the accounting officers.

3. The duties of authorizing officer, financial controller and accounting officer shall be mutually incompatible.

Article 10

1. Within the limit of the appropriations provided for in Article 1 of the Internal Agreement, the Commission shall, without prejudice to Article 10 (2) thereof, manage the EDF on its own responsibility in accordance with the conditions laid down in the Convention, the Decision, the Internal Agreement and this Financial Regulation.

2. The Commission may delegate part of the duties of the accounting officer and part of the responsibility for monitoring to authorized agents appointed by it. The rules governing responsibilities adopted under this Title shall apply to such authorized agents within the limits of the powers delegated to them. Each decision to delegate powers shall state the duration and extent of the mandate.

3. Those to whom powers are delegated may act only within the limits of the powers expressly conferred upon them. Decisions to delegate powers shall be notified to those to whom powers are delegated, to the accounting officer, the financial controller, the authorizing officers and the Court of Auditors.

4. The principles of the provisions of this Financial Regulation relating to the monitoring and payment of expenditure shall be applicable to expenditure effected by delegation. Such expenditure may not be finally entered into the EDF accounts until the Commission has verified that the expenditure has been correctly cleared and that the authorization and payment are in order, in accordance with the requirements of this Regulation.

Article 11

In accordance with Article 226 (1) of the Convention, the Commission shall appoint the chief authorizing officer of the EDF. He shall be responsible for the preparation of the management accounts referred to in Article 67. He may have recourse to deputy authorizing officers, whom he shall appoint subject to approval by the Commission.

Article 12

1. The Commission shall appoint the financial controller, who shall be responsible for monitoring the commitment and authorization of expenditure and for monitoring revenue. The financial controller may be assisted in his duties by one or more assistant financial controllers.

2. Monitoring shall be carried out by the financial controller by means of inspection of the files relating to expenditure and revenue and, if necessary, on the spot.

3. The special rules applicable to the financial controller shall be formulated in such a way as to ensure his independence in carrying out his duties. Measures taken in respect of his appointment and promotion, disciplinary action or transfer, and the various procedures of interruption or termination of his appointment shall be the subject of reasoned decisions which shall be forwarded to the Council for its information.

4. The persons concerned or the Commission may institute proceedings before the Court of Justice.

Article 13

The collection of revenue and the payment of expenditure shall be carried out by an accounting officer appointed by the Commission. Subject to Article 34 (2), this accounting officer alone shall be empowered to manage funds and assets. He shall be responsible for their care.

The accounting officer shall be responsible for maintaining the accounts, as provided for in Articles 36 and 37 and for the preparation of the financial statements provided for in Article 66.

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

Article 14

The Court of Auditors shall be notified of the appointment of the authorizing officer, the financial controller, the accounting officer and the administrator of advance funds and of the accounting plan referred to in Article 37. The Commission shall forward to the said Court any rules of procedure drawn up by it in respect of financial matters.

SECTION II

REVENUE

Article 15

1. The recovery of any sum due to the EDF shall give rise to the issue by the authorizing officer of a recovery order.

2. Recovery orders shall be transmitted by the authorizing officer, to the financial controller and shall be subject to the latter's approval. On approval by the financial controller, the recovery orders shall be registered by the accounting officer. The purpose of approval by the financial controller shall be to establish that:

- (a) the revenue is correctly credited;
- (b) the recovery order is correct and in conformity with the provisions applicable to the management of the EDF and with all measures taken in implementation of those provisions;
- (c) the principles of sound financial management have been applied;
- (d) the supporting documents are in order;
- (e) the debtor is correctly described;
- (f) the due date is indicated;
- (g) the amount and currency of the sum to be recovered are correct.

3. The financial controller may withhold his approval if he considers that the conditions laid down in paragraph 2 (a) to (g) are not met.

The Commission may, by a decision stating the full reasons therefor and on its sole responsibility, overrule this refusal. This decision shall be final and binding; it shall be communicated for information to the financial controller. The Commission shall inform the Court of Auditors of all such decisions every three months.

4. If the authorizing officer waives the right to recover an established debt, he shall send beforehand a proposal for cancellation to the financial controller for his approval and to the accounting officer for his information. The purpose of approval by the financial controller shall be to establish that the waiver is in order and conforms with the principles of sound financial management. The proposal concerned shall be registered by the accounting officer.

If approval is withheld, the Commission may, by a decision stating the full reasons therefor and on its sole responsibility, overrule this refusal. This decision shall be final and binding. It shall be communicated for information to the financial controller. The Commission shall inform the Court of Auditors of all such decisions every three months.

5. Where the financial controller 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 Commission thereof.

Article 16

1. The accounting officer shall assume responsibility for recovery orders forwarded to him by the authorizing officer.

2. The accounting officer shall do all in his power to ensure that EDF resources are recovered at the due dates and that the Community's rights are safeguarded.

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

SECTION III

COMMITMENT, CLEARANCE, AUTHORIZATION AND PAYMENT OF EXPENDITURE

1. Commitment of expenditure

Article 17

1. All measures which may give rise to expenditure payable by the EDF must be preceded by a proposal for commitment of expenditure from the authorizing officer. A provisional commitment may be entered into in respect of current expenditure.

2. Without prejudice to Article 34, decisions taken by the Commission in accordance with the provisions authorizing it to grant financial aid from the EDF shall constitute commitments of expenditure.

3. An account shall be kept of commitments and authorizations.

Article 18

Proposals for commitments accompanied by the supporting documents, shall be transmitted to the financial controller. They shall show in particular the purpose of the expenditure, the estimated amount involved, the item to which it is to be charged and the name and description of the creditor. They shall be registered by the authorizing officer after approval by the financial controller.

Article 19

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

- (a) the expenditure has been charged to the correct item ;
- (b) appropriations are available ;
- (c) the expenditure is correct and in conformity with the provisions applicable to the management of the EDF and with all measures taken in implementation of those provisions, in particular, the general and special conditions of the financing or loan agreement relating to the operation ;
- (d) the principles of sound financial management have been applied.

2. Approval may not be conditional.

Article 20

1. The financial controller may withhold his approval if he considers that the conditions laid down in Article 19 are not met. If he withholds his approval, he shall furnish a written statement giving the reasons therefor. The authorizing officer shall be notified accordingly.

Where approval is withheld and the authorizing officer maintains his proposal, the refusal shall be referred for a decision to the Commission.

2. Except where the availability of appropriations is in doubt, the Commission may, by means of a decision stating the full reasons therefor and taken on its sole responsibility, overrule such a refusal. This decision shall be final and binding ; it shall be communicated for information to the financial controller. The Commission shall inform the Court of Auditors of all such decisions every three months.

2. Clearance of expenditure*Article 21*

The clearance of expenditure shall be the act whereby the authorizing officer :

- (a) verifies the existence of the creditor's claim ;
- (b) determines or verifies the existence and the amount of the sum due ; and
- (c) verifies the conditions under which payment falls due.

Article 22

1. Clearance of any expenditure shall be subject to the submission of supporting documents showing the creditor's claim and, where appropriate, the service rendered or the existence of a document justifying payment. The Commission shall lay down the nature and contents of the supporting documents to be enclosed with the payment orders.

2. For certain categories of expenditure, advances may be granted under the conditions laid down by the Commission.

3. The supporting documents relating to the accounts and to the establishment of the revenue and expenditure account and the balance sheet referred to in Title IV shall be kept for a period of five years following the date of the decision giving discharge in respect of the the implementation of the EDF, referred to in Article 29 (3) of the Internal Agreement. However, the documents relating to transactions not finally closed shall be kept beyond this period.

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

3. Authorization of expenditure*Article 23*

Authorization is the act whereby the authorizing officer, by the issue of a payment order, authorizes the accounting officer to pay an item of expenditure which he has cleared.

Article 24

The payment order shall state :

- (a) the item against which payment shall be charged ;
- (b) the amount to be paid, in words and figures, showing the currency ;
- (c) the name and address of the payee ;
- (d) the method of payment ;
- (e) the purpose of the expenditure.

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

Article 25

1. The payment order shall be accompanied by the original supporting documents, which shall bear or be accompanied by the statement of the authorizing officer confirming that the amounts to be paid are correct and that the supplies have been received or the service performed. The payment order shall show the numbers and dates of the relevant approvals of commitment.

2. Copies of the supporting documents, certified as true copies by the authorizing officer or the Commission delegate, may, in duly warranted cases, be accepted in place of the originals.

Article 26

For payments by instalment, the first payment order shall be accompanied by documents establishing the creditor's claim 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.

Article 27

Payment orders shall be sent to the financial controller for prior approval. The purpose of this prior approval shall be to establish 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;
- (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 28

Should approval be withheld, the provisions of Article 20 shall apply.

Article 29

After approval, the original of the payment order, together with all supporting documents, shall be forwarded to the accounting officer.

4. Payment of expenditure*Article 30*

1. Without prejudice to the provisions of Article 227 (4) of the Convention concerning the responsibilities of the national authorizing officer, payment is the final act whereby the EDF is discharged of its obligations resulting from carrying out the operations financed.

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

Article 31

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 Financial Regulation, the accounting officer shall suspend payment.

Article 32

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

2. Except where the validity of the discharge is contested, the authorizing officer may, where payment is suspended, refer the matter to the Commission. The latter may require, in writing and on its own responsibility, that payment be effected.

Article 33

1. Payments shall, as a general rule, be effected through a bank account or post office giro account. The proce-

dures for opening, administering and using such accounts shall be determined by the Commission.

2. These procedures shall in particular require two signatures on cheques and on transfer orders, one signature necessarily being that of the accounting officer, an assistant accounting officer or a duly authorized administrator of advance funds; the procedures shall, moreover, require the specification of the expenditure in respect of which payment must necessarily be made either by cheque or by transfer.

Article 34

1. For the payment of certain categories of expenditure, advance funds may be set up under the conditions laid down by the Commission.

2. The rules governing the management of the advance funds shall cover in particular:

- (a) the appointment of administrators of advance funds;
- (b) the nature and maximum amount of each item of expenditure to be incurred;
- (c) the maximum amounts which may be advanced;
- (d) the procedures for the production of supporting documents and the time within which they must be produced;
- (e) the responsibility of the administrator of advance funds.

3. The authorizing officer and the accounting officer shall take the necessary steps towards clearing, in respect of the exact amounts and within the appropriate period, advances granted under the terms of Article 230 of the Convention.

Article 35

The conversion rates to be used for the calculation in ECU of payments to be made for the purpose of the projects or programme referred to in Title III of Part Three of the Convention shall be those in force on the effective date of such payments. This date shall correspond to that on which the Commission accounts referred to in Article 229 of the Convention and in Article 3 of this Financial Regulation were debited.

SECTION IV

ACCOUNTS

Article 36

The EDF accounts shall be kept in ECU by the double entry method and on the basis of the calendar year. They shall show all revenue and expenditure for the year and shall be substantiated by supporting documents. The financial statements provided for in Title IV shall be drawn up in ECU. However, when debts or commitments are expressed in national currencies, the accounting system should make it possible, where necessary, for them to be recorded in national currencies as well as in ECU.

Article 37

1. Entries in the accounts shall be made on the basis of an accounting plan comprising a nomenclature of budgetary items which makes a clear distinction between the balance sheet and the revenue and expenditure accounts. These entries shall make it possible to draw up a general monthly balance and a statement of expenditure and revenue.

2. The detailed conditions for drawing up and operating the accounting plan shall be defined by the Commission.

Article 38

The accounts shall be closed at the end of the calendar year to enable the financial statements of the EDF to be drawn up. These shall be submitted to the financial controller.

SECTION V

RESPONSIBILITIES OF AUTHORIZING OFFICERS, FINANCIAL CONTROLLERS, ACCOUNTING OFFICERS AND ADMINISTRATORS OF ADVANCE FUNDS*Article 39*

Without prejudice to Article 227 (4) of the Convention, authorizing officers who, when establishing entitlements to be recovered, or issuing recovery orders, entering into commitments of expenditure or signing payment orders, do so without complying with this Financial Regulation, shall render themselves liable to disciplinary action, and, where appropriate, to payment of compensation. The same shall apply if they omit to draw up a document establishing a claim or if they neglect to issue recovery orders or are, without justification, late in issuing them.

Article 40

Financial controllers shall be liable to disciplinary action and, where appropriate, to payment of compensation for any action taken during their term of office, in particular where they approve expenditure in excess of appropriations.

Article 41

1. The accounting officer and assistant accounting officers shall be liable to disciplinary action and, where appropriate, to payment of compensation as regards payments they make in disregard of Article 31.

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 was caused intentionally or was due to 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 administration of bank accounts and post office accounts and in particular:

- (a) where the recoveries or payments made by them do not agree with the amounts on the corresponding recovery or payment orders;
 - (b) where they effect payments to a party other than the entitled payee.
2. Administrators of advance funds shall be liable to disciplinary action and, where appropriate, to payment of compensation:
- (a) where they cannot show due warrant with proper documents for payments made by them;
 - (b) where they effect payments to a party other than the entitled payee.

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 was caused intentionally or was due to serious negligence on their part.

3. The accounting officer, assistant accounting officers and administrators of advance funds shall insure themselves against any risk they may incur under this Article, and which cannot be covered by the guarantee fund provided for in paragraph 4 of this Article.

The Commission shall cover the relevant insurance costs. It shall specify the categories of officials qualifying as accounting officers or administrators of advance funds and the terms on which it shall cover the insurance costs borne by these officials in order to protect themselves against the risks involved in their duties.

4. Special allowances shall be granted to accounting officers and administrators of advance funds. The amount of these allowances shall be determined by the Commission departments. The sums corresponding to these allowances shall be credited each month to an account opened by the Commission on behalf of each of these officials in order to establish a guarantee fund to cover any cash or bank shortage for which the person concerned might render himself liable, in so far as such shortage has not been covered by refunds from insurance companies.

The credit balance in these guarantee accounts shall be paid over to the persons concerned after they terminate their appointment as accounting officer or administrator of advance funds and after they have been given final discharge for their management.

Article 42

The liability of authorizing officers, financial controllers, accounting officers, assistant accounting officers and administrators of advance funds to payment of compensation and disciplinary action may be determined in accordance with Articles 22 and 86 to 89 of the Staff Regulations of Officials of the European Communities.

Article 43

The Commission shall be allowed a period of two years from the date on which the financial statements are submitted to the Council to take a decision on the final discharge to be given to accounting officers for the transactions relating thereto.

TITLE III

IMPLEMENTING MEASURES

SECTION I

EXECUTION OF EDF OPERATIONS ADMINISTERED
BY THE COMMISSION*Article 44*

The Commission shall take all appropriate measures to ensure the effective dissemination of information for the economic operators concerned, notably through periodical publication of forecasts of contracts to be financed from the resources of the EDF.

Article 45

The Commission shall inform the Council each year of any contract concluded during that year. Where appropriate, it shall notify the Council of any measures it has taken or proposes to take to improve the terms of competition for participation in invitations to tender issued by the EDF.

In its report, the Commission shall provide the Council with information enabling it to assess whether the measures taken by the Commission have in fact given all undertakings of the various Member States, of the ACP States and of the associated countries and territories equal opportunity of access to works and supply contracts financed by the EDF.

Article 46

Within the framework of Article 234 (3) of the Convention a favourable opinion of the EDF Committee shall be required prior to the placing of contracts by direct agreement or after restricted invitations to tender or where recourse is had to direct labour.

However, where they are justified by urgency and by unforeseen circumstances, the above exceptions to the rules governing competition may be authorized by the Commission without a prior opinion from the EDF Committee. In that event, the Commission shall immediately inform the EDF Committee thereof.

Article 47

The results of international invitations to tender referred to in this Section shall be published as soon as possible in the *Official Journal of the European Communities*.

Article 48

1. Tenders for supply contracts financed by the EDF shall be drawn up and payments made, at the option of the tenderer, in ECU, in the currency of the recipient State, country or territory, in the currency of the country of his registered place of business or in that of the country producing the supplies.

2. Tenders for works contracts and for technical assistance service contracts financed by the EDF shall be drawn up and payments made in the currency of the recipient State, country or territory.

However, the tenderer may request in his tender that a justified part of the nominal amount of his tender be paid in the currency of the country of his registered place of business or in the currency of one of the Member States on the basis of the conversion rate in force on the first day of the month preceding the month in which the date set for the opening of tenders falls. He may also express this part in ECU on the basis of the conversion rate referred to above.

The justification required under this paragraph shall be assessed in the light of the verifiable facts as regards the real origin of the services to be provided and of the expenditure to which they give rise.

3. Tenders for service contracts financed by the EDF shall be drawn up and payments made, at the option of the contractor, either in ECU or in the currency of the country in which the contractor has his registered place of business.

However, that part of the services provided which corresponds to expenditure in the currency of the recipient State, country or territory shall be paid in that currency. Where the sums to be paid in the various currencies are defined by reference to another currency, the conversion shall be effected on the basis of the rate specified in the contract.

4. Where payment is made in the currency of the recipient State, country or territory it must be made through a bank established in the recipient country.

Where payment is made in another currency it must be made through the intermediary of an approved bank or agency established in the country where the contractor has his registered place of business.

Where, however, the registered place of business is in an ACP State or in an associated country or territory, payment may be made in the currency of a Member State where the contractor so wishes provided that he maintains, with the prior approval of the national authorities in the State where his business is registered, a bank account in the Member State in whose currency payments are to be made.

SECTION II

FINANCIAL COMMITMENTS

Article 49

1. Commitments of amounts from the EDF shall be decided on in accordance with the terms of the relevant provisions of the Convention following the procedures in

Articles 18 to 21 of the Internal Agreement in respect of aid managed by the Commission and in Articles 22 and 23 of the Agreement for aid managed by the Bank.

2. The financing agreement and the loan contract referred to in Article 222 of the Convention shall specify the amount of the EDF's financial commitment in respect of each operation in question.

3. No expenditure in excess of this amount may be charged to the EDF unless a decision has been taken to commit additional funds thereto under the conditions laid down in Articles 21 to 24 of the Internal Agreement and Article 59 of this Financial Regulation. The request for the commitment of additional funds shall be addressed to the Commission and appraised under the conditions laid down in Article 223 of the Convention.

SECTION III

SPECIAL LOANS

Article 50

1. Each decision to grant a special loan shall set the limit to the Community's commitment. Contracts relating to such loans, drawn up in conjunction with the Bank for the parts concerning it, shall be concluded by the Commission on behalf of the Community.

2. The amounts of the appropriations corresponding to each loan granted shall be expressed in ECU. If an appropriation is subsequently revoked before all or part of the payments related thereto are made, any unpaid amounts from the loan shall be regarded as not having been granted.

3. Loans shall be paid in ECU or in the currency or currencies of the Member States as fixed by the Commission after consultation with the borrower.

4. Amounts due to the Community in respect of special loans shall be collected by the Bank on behalf of the Community on the basis of a mandate notified by the Commission to the Bank, in accordance with the procedures laid down in Article 53.

5. Amounts to be reimbursed and interest payments due in respect of special loans shall be expressed in ECU. Reimbursements and interest payments shall be made either in ECU or in one or more of the currencies of the Member States chosen by the borrower.

6. The exchange rates with the ECU for calculating sums due in respect of debt service charges and any commission due shall be those in force on the 10th day preceding payment.

Article 51

In accordance with Article 184 of the Convention, the implementing measures concerning special loans shall also apply in respect of the aid granted from the special financing facility for the mining sector.

SECTION IV

RISK CAPITAL

Article 52

1. Each decision to grant risk capital shall set a limit to the Community's commitment and financial responsibilities and to the extent of the rights in the company to which such operations relate.

The instruments giving effect to risk capital operations shall be concluded by the Bank acting as the Community's authorized agent.

2. The Bank, acting for and on behalf of the Community, shall manage the operations referred to in paragraph 1 which have been the subject of a financing decision by the Board of Directors of the Bank.

3. When each disbursement takes place, the Bank shall request the Commission to pay the equivalent in ECU of the amounts of national currencies in which the risk capital will be disbursed. The Commission shall pay the amount in ECU within 21 days of receipt of the request for payment.

The conversion rates to be used for the determination of the amounts to be disbursed in national currencies shall be those obtained by the Bank from the correspondants carrying out the transaction. These exchange rates shall be communicated to the Commission.

4. Amounts due in respect of receipts, income and repayments relating to risk capital operations shall be collected by the Bank on behalf of the Community, in accordance with the provisions of Article 53 of this Financial Regulation.

Article 53

The sums collected by the Bank either in the form of repayments of principal, interest or charges in respect of special loans or the aid granted from the special financing facility or in the form of products, revenue or repayments from risk capital operations shall be credited to a special account opened on behalf of the Community for the Member States in proportion to their contributions to the EDF. The account shall be denominated in ECU and managed by the Bank in accordance with the provisions of Article 9 of the Internal Agreement. The Bank shall agree with the Member States on the information to be supplied concerning the account.

The technical procedures for the management of the account, including those relating to the fixing of the rates of interest on it, shall be decided upon by the Council and the Bank in agreement with the Commission.

SECTION V

SUBSIDIZED LOANS FROM THE BANK

Article 54

1. The aggregate amount of interest rate subsidies on each loan from the Bank shall be calculated in ECU in accordance with Article 196 of the Convention on the basis of the composite interest rate to be fixed in accordance with the procedures set out in paragraph 3 (iii) below.

2. On the signing of each loan contract, the Bank shall communicate to the Commission the estimated total amount of the interest rate subsidy expressed in ECU.

3. On disbursement of each instalment of the loan, the Bank shall request the Commission to pay the interest subsidy relating to the instalment based on the following calculations :

- (i) the equivalent in ECU of the amounts of currencies in which the loan instalment was disbursed at the conversion rates for those currencies and the ECU as published in the *Official Journal of the European Communities* in operation on the date on which the amount of currencies to be disbursed is determined, which date shall be communicated to the Commission ;
- (ii) application of the percentage rate of interest subsidy to the declining annual capital balance due at each repayment date ;
- (iii) the present value of the interest subsidies relating to the loan disbursement. Calculation of the present value shall be made by reference to a composite discount rate equal to the annual interest rate which the Bank would in fact receive in the currency or currencies used for the relevant disbursement of the loan if the loan did not benefit from an interest subsidy. The actual calculation of present value shall use this composite discount rate reduced by four-tenths of a percentage point.

4. The Commission shall pay in ECU the amount of subsidy, discounted in accordance with the procedures described in paragraph 3, within 21 days of receipt of the request for payment, the value date being that of the disbursement of the relevant loan instalment.

5. Where the whole of an interest subsidized loan is repaid in advance, the Bank shall pay to the Commission on each contractual repayment date subsequent to the advance repayment, in each of the currencies concerned, a part of the undiscounted subsidy calculated in accordance with the terms of point (ii) of paragraph 3. Where only part of such a loan is repaid, the Bank shall pay to the Commission on each contractual repayment date subsequent to the advance repayment, in each of the currencies

concerned, a part of the undiscounted subsidy calculated in the proportion which the amount of the advance repayment bears to the balance outstanding prior to the advance repayment.

6. The sums reimbursed to the Commission shall be credited to the amount of 210 million ECU provided for in Article 4 of the Internal Agreement to finance interest rate subsidies.

7. All payments provided for in this Article shall be made in ECU.

SECTION VI

MANAGEMENT OF THE EXPORT EARNINGS STABILIZATION SYSTEM

Article 55

1. The annual resources available to the Stabex system provided for in Article 153 of the Convention shall be managed by the Commission in accordance with the following procedures :

- (i) half of each annual instalment shall be transferred on 1 April and 1 July respectively from the accounts provided for in Article 3 of this Financial Regulation and credited to a special interest-bearing account. However the first transfer in each year shall be reduced by the amount of any advances granted in the preceding year under Article 155 (1) of the Convention. Any sums due to the Stabex account in the calendar year in which the Convention came into force shall be transferred to the Stabex account on the date of entry into force of this Financial Regulation, with effect from the due dates laid down above ;
- (ii) amounts in the Stabex account, including interest, shall be used to finance transfers provided for in Part Three, Title II Chapter 1 of the Convention ;
- (iii) any amounts remaining in the Stabex account at the end of each calendar year shall be carried forward automatically to the next year.

2. The transfer agreement referred to in Article 170 of the Convention shall state the currencies in which the transfer of this amount is to be made, the reference date to be used to fix the conversion rate of ECU into the currencies concerned and, where appropriate, the conditions of the replenishment of resources made available to the stabilization system referred to in Part Three, Title II, of the Convention.

Article 56

Where advance use is made of the following year's instalment as provided for in Article 155 of the Convention, the advances referred to in Article 170 (1) of the Convention shall be reduced proportionately.

Article 57

1. The Commission shall inform the Council every three months of the financial situation of the system.
2. The information referred to in paragraph 1 shall be supplemented or updated whenever proposals for transfers are laid before the Member States.

SECTION VII

EXECUTIVE AGENTS

Chapter 1

The Chief Authorizing Officer

Article 58

1. The Chief Authorizing Officer of the EDF, referred to in Article 226 of the Convention, shall take all measures necessary for the implementation of the provisions of Articles 232 to 238 of the Convention.

Where he deems it appropriate, the Chief Authorizing Officer shall consult experts chosen for their technical competence and their independence *vis-à-vis* the firms concerned with the award of contracts.

2. The Chief Authorizing Officer shall ensure, before the publication of an invitation to tender, that the documents relating to tenders do not contain any direct or indirect discriminatory provisions. He shall ensure that tenders are compared under equal conditions and, in particular, that the import duties or taxes of the recipient State, country or territory do not constitute an obstacle to participation in invitations to tender.
3. The Chief Authorizing Officer may suspend the publication of a notice of invitation to tender where it is found that corrections must be made to the specifications or other documents in replacement thereof. To this end, he shall inform the relevant authorities of the recipient State, country or territory of his observations.

Article 59

In accordance with Article 223 of the Convention, decisions to commit additional funds required to cover any excess expenditure incurred on a project or programme shall be taken by the Chief Authorizing Officer where the excess expenditure is equal to, or lower than, a ceiling of 15 % of the original commitment set out in the financing decision. Where the excess is greater than the 15 % ceiling, the procedures of Articles 18 to 21 of the Internal Agreement shall apply to the relevant financing decision.

Article 60

1. The Chief Authorizing Officer shall take all measures to ensure that National Authorizing Officers perform the tasks for which they are responsible by virtue of Articles 216 (4) and 227 of the Convention and in particular that they comply with the provisions of this Financial Regulation regarding commitment, clearance and authorization of expenditure.

2. Where the Chief Authorizing Officer becomes aware of delays in the carrying out of procedures relating to projects financed by the EDF he shall, in conjunction with the National Authorizing Officer, make all contacts necessary to remedy the situation.

3. If, for any reason whatsoever, services have been rendered but further delay in clearance, authorization or payment gives rise to difficulties likely to call into question the full performance of the contract, the Chief Authorizing Officer may take all appropriate measures to resolve these difficulties, to remedy, where necessary, the financial consequences of the resultant situation and, more generally, to enable the project, projects or programmes to be completed under the best economic conditions. He shall inform the National Authorizing Officer of such measures as soon as possible. If payments are thus made directly by the Commission to the beneficiary of the contract, the Community shall automatically acquire that beneficiary's right as creditor *vis-à-vis* the national authorities.

Chapter II

The Commission delegate

Article 61

The Commission delegate shall comply with this Financial Regulation in the performance of his duties, as provided for in Article 228 of the Convention.

Article 62

During the performance of operations financed by the EDF, the delegate shall verify on the spot and on the basis of records that work carried out or services rendered correspond with their descriptions as given in the financing agreements, loan or other contracts or estimates.

Article 63

In the event of failure to comply with this Financial Regulation, of misconduct or gross negligence in the performance of his duties, the delegate shall be answerable to the Commission.

Chapter III

Article 65

The Paying Agent

Article 64

In the performance of its tasks, as laid down in Article 229 of the Convention, the paying agent shall comply with this Financial Regulation.

In the event of failure to observe the provisions in force, of misconduct or of gross negligence which entail financial loss for the Community, the paying agent shall be held financially responsible under the conditions and in accordance with the terms laid down in the contract binding it to the Commission.

TITLE IV

PRESENTING AND AUDITING ACCOUNTS

Article 66

1. The Commission shall draw up, not later than 15 April each year, a balance sheet of assets and liabilities of the EDF as at 31 December of the preceding year and a statement of sources and uses of funds since the date of the previous balance sheet.

2. The financial statements referred to in paragraph 1 shall be accompanied by a table of revenue showing:

- estimated revenue for the financial year;
- amendments to the revenue estimates;
- entitlements established in the course of the financial year;
- amounts still to be collected at the end of the financial year;
- additional revenue.

Article 67

1. The Commission shall in respect of each calendar year, draw up not later than 15 April of the following year, management accounts for the EDF.

2. The management accounts shall include:

(a) a table of revenue containing the items specified in Article 66 (2);

(b) expenditure tables which shall comprise:

- a table showing the decisions taken by the Commission or the Council during the calendar year, together with a table showing the overall situation regarding sums committed;
- a table showing the situation regarding delegated appropriations and expenditure authorizations effected during the calendar year, together with a table showing the overall situation regarding delegated appropriations and expenditure authorizations effected.

3. The tables referred to in paragraph 2 shall be accompanied by a cumulative statement showing for each recipient country or territory the aggregate figure for the commitment decisions taken, for delegated appropriations granted and for expenditure authorizations effected.

Article 68

Without prejudice to Article 29 (4) of the Internal Agreement, the Commission shall forward the balance sheet, statement of sources and uses of funds and the management accounts to the European Parliament, the Council and the Court of Auditors not later than 15 April of the following financial year.

Article 69

The Court of Auditors and its members may, in carrying out the task of the Court, seek assistance from officers of the Court.

In such cases, the Court itself, or one of its members, shall notify to the authorities with whom such officers shall work, the tasks delegated to these officers.

Article 70

1. The audit carried out by the Court of Auditors shall be based on records and, if necessary, be performed on the spot. It shall be concerned with operations and projects financed from EDF resources managed by the Commission and its purpose shall be to establish that all revenue has been received and all expenditure incurred in a lawful and regular manner with regard to the provisions applicable, and that the financial management has been sound.

2. In the performance of its tasks, the Court of Auditors may, under the conditions laid down in paragraph 4, consult all documents and information relating to the financial management of the departments subject to its inspection; it has the power to hear any official responsible for revenue and expenditure operations and to use any of the auditing procedures appropriate to those departments.

3. The Court of Auditors shall ensure that all securities and cash on deposit are checked against vouchers signed by the depositaries. The Court may itself carry out such checks.

4. The Commission shall provide the Court of Auditors with all the facilities and give it all the information which the Court may consider necessary for the performance of its tasks. In particular, it shall place at the disposal of the Court of Auditors all documents concerning the conclusion and implementation of contracts and

all accounts of cash or materials, all accounting records or supporting documents and also the administrative documents pertaining thereto, all documents relating to revenue and expenditure, all inventories, and all lists of posts in the departments which the Court of Auditors may consider necessary.

To this end, officials subject to audit by the Court of Auditors shall in particular :

- (a) submit the supporting documents in respect of their management of which they are the depositaries and any books, registers and other documents relating thereto ;
- (b) present the correspondence or any other document required for the full implementation of the audits.

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

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

Article 71

1. The Court of Auditors shall communicate to the Commission, not later than 15 July in any year, any observations which it considers should appear in the annual report provided for in Article 206a of the Treaty. These observations shall remain confidential.

The Commission shall forward its replies to the Court of Auditors not later than 31 October of the relevant year.

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

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

Article 72

The Court of Auditors shall send its annual report, together with the Commission's replies, not later than 30 November in any year, to the European Parliament, to the Council and to the Commission and shall ensure its publication in the *Official Journal of the European Communities*.

Article 73

1. Before 30 April of the following year, the European Parliament, upon a recommendation from the Council acting by a qualified majority, shall give the Commission a discharge in respect of the financial management of the EDF for the preceding year, in accordance with Article 29 (3) of the Internal Agreement.

2. The financial controller shall take account of the observations appearing in the decision giving discharge.

3. The Commission shall take all appropriate steps to act on the observations appearing in the decision giving discharge. At the request of the European Parliament or the Council it shall report on the measures taken in the light of these observations and in particular on the instructions given to those of its departments which are responsible for the management of the EDF. Such reports shall also be forwarded to the Court of Auditors.

4. Subject to the second sentence of paragraph 3, the Commission must, in an Annex to the revenue and expenditure account for the next financial year, give an account of the measures taken in the light of the observations appearing in the decision giving discharge.

5. The balance sheet, statement of sources and uses of funds and the management accounts for each financial year and the decision giving the discharge shall be published in the *Official Journal of the European Communities*.

TITLE V

GENERAL AND FINAL PROVISIONS

Article 74

Unless otherwise specified, references in this Financial Regulation to the provisions of the Convention shall be deemed to refer to the corresponding provisions of the Decision as shown in the Annex.

Article 75

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

Done at Brussels, 11 November 1986.

For the Council

The President

C. PATTEN

*ANNEX***Cross references between provisions in the Convention referred to in the Financial Regulation
and corresponding provisions in the Decision**

Article in Convention	Article in Decision
153	89
155	91
170 (1)	105 (1)
196	129
222	152
223	153
226 (1)	156 (1)
227 (4)	157 (4)
228	158
229	159
230	160
232	162
to	to
238	168
234 (3)	164 (3)