

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC, Euratom, ECSC) No 2333/95**  
**of 18 September 1995**  
**amending the Financial Regulation of 21 December 1977 applicable to the general budget**  
**of the European Communities**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Court of Auditors <sup>(3)</sup>,

Whereas the principle of subsidiarity is enshrined in the Treaty on European Union and must be incorporated in the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities <sup>(4)</sup> (hereinafter referred to as 'the Financial Regulation');

Whereas that Treaty raises the Court of Auditors to institution status and confers a new task upon it; whereas the provisions of the Financial Regulation relating to that institution should be adapted and supplemented accordingly;

Whereas Article 89 of the financial Regulation must be amended to reflect the stronger powers of control exercised by Parliament and the Council over the execution of the budget on the basis of reports and the

statement of assurance as to the reliability of accounts issued by the Court of Auditors;

Whereas the implementation of the Agreement on the European Economic Area requires that appropriate provisions be inserted in the Financial Regulation to govern, in particular, the budgetary presentation and execution of the additional financial contribution resulting from financial participation by the EFTA countries;

Whereas appropriate provisions must be inserted in the Financial Regulation to govern the financial participation of third parties in Community activities;

Whereas it must be clearly stated that, when awarding contracts, the institutions must comply with the same obligations as are incumbent on bodies in the Member States by virtue of the Council directives coordinating procedures for the award of public works, supply and services contracts with a value equal to or higher than the thresholds established by those directives; whereas the provisions applicable to contracts below those thresholds should at the same time be clarified and adjusted;

Whereas conciliation has taken place as provided for in the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975 <sup>(5)</sup> and in Article 127 of the Financial Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

The Financial Regulation is hereby amended as follows:

1. the following Part I shall be inserted: 'Provisions applicable to the general budget of the European Communities';

<sup>(1)</sup> OJ No C 254, 1. 10. 1992, p. 5, and OJ No C 56, 24. 2. 1994, p. 5.

<sup>(2)</sup> OJ No C 329, 6. 12. 1993, p. 115.

<sup>(3)</sup> OJ No C 342, 23. 12. 1992, p. 1.

<sup>(4)</sup> OJ No L 356, 31. 12. 1977 p. 1. Regulation as last amended by Regulation (ECSC, EC, Euratom) No 2730/94 (OJ No L 293, 12. 11. 1994, p. 7).

<sup>(5)</sup> OJ No C 89, 22. 4. 1975, p. 1.

2. Article 1 shall be amended as follows:
- (a) the following shall be added to the first subparagraph of paragraph 1:
- ‘The budget may also disclose the underwriting of borrowing and lending operations entered into by the Community.’;
- (b) ‘Economic’ shall be deleted from the second indent of the second subparagraph of paragraph 1;
3. the following shall be added to the first paragraph of Article 2:
- ‘To this end the mobilization of Community resources must be preceded by an evaluation to ensure that the resultant benefits are in proportion to the resources applied. All operations must be subject to regular review, in particular within the budgetary procedure, so that their justification may be verified.’;
4. Article 3 shall be amended as follows:
- (a) paragraph 2 shall be replaced by the following:
- ‘2. For activities of an operational nature, the financial statement shall include financial and economic data with a view to the assessment by the legislative authority of the need for Community action in accordance with the relevant provisions of Article 3b of the EC Treaty. The financial statement shall, in particular, incorporate the multiannual impact of the measures proposed. It shall also give details of possible consistency with other financial instruments; it shall be revised if necessary when the preliminary draft budget is drawn up in the light of progress in implementing the programme.’;
- (b) the footnote relating to paragraph 3 shall be replaced by the following:
- ‘<sup>(1)</sup> OJ No C 331, 7.12.1993, p. 1.’;
- (c) paragraph 4 shall be replaced by the following:
- ‘4. In order to prevent risk of fraud or irregularity, the Commission shall record in the financial statement any information regarding existing and planned fraud prevention and protection measures.’;
- (d) paragraph 5 shall be replaced by the following:
- ‘5. At the start of the budget procedure, the Commission shall supply, on the basis of a cost-effectiveness analysis, appropriate information enabling a comparison to be made between the development of appropriation requirements and the original estimates contained in the financial statements.’;
5. the introductory phrase of the second subparagraph of Article 4 (2) shall be replaced by the following:
- ‘Notwithstanding the first subparagraph, and without prejudice to the specific provisions of Title XI, certain revenues, on condition that they are within the limit of the authorized amounts, shall not be used for any other purpose, notably.’;
6. in Article 6, the fourth paragraph shall be amended as follows:
- ‘The allotted appropriations shall be used solely to cover expenditure properly entered into and paid in the financial year for which they were granted, save as otherwise provided in Articles 7 and 103, and to cover the debts regularly contracted relating to preceding financial years for which no appropriation was carried forward.’;
7. in Article 9 (1) and (3) (b), ‘EEC Treaty’ shall be replaced by ‘EC Treaty’;
8. Article 11 shall be amended as follows:
- (a) paragraph 2 shall be replaced by the following:
- ‘2. The ecu shall be defined as the sum of specified amounts of the currencies of the Member States as set out in Council Regulation (EEC) No 3320/94 of 22 December 1994 on the consolidation of the existing Community legislation on the definition of the ecu following the entry into force of the Treaty on European Union (\*).
- Any change in the definition of the ecu decided on by the Council in accordance with the EC Treaty shall automatically apply to the provision.
- (\*) OJ No L 350, 31.12.1994, p. 27.’;
- (b) in paragraph 4, ‘in Article 126’ shall be replaced by ‘in Article 139’;
9. Article 13 (4) (a) shall be replaced by the following:
- ‘(a) in respect of staff of the institutions:
- a statement of the permanent and temporary staff policy measures taken, listing the measures taken to promote mobility and giving figures for the staff redeployed by category;
  - for each category of staff, a detailed list of budgetary posts and numbers of persons in post on the date of the submission of the preliminary draft budget, indicating their

distribution by grade and administrative unit or principal operational unit for the establishments of the Joint Research Centre,

- where a change in the number of persons in post is proposed, a statement justifying such changes,
- a list of posts broken down by area of activity;

guarantee given by the Community in respect of these operations;

10. in Article 15 (2), 16 (1), 17 (1) and 18, 'EEC Treaty' shall be replaced by 'EC Treaty';

11. in Article 19 (6), 'Council Decision 88/377/EEC of 24 June 1988' shall be replaced by 'Council Decision 94/729/EC of 31 October 1994 (\*)', and 'Decision 88/376/EEC, Euratom of 24 June 1988' shall be replaced by 'Decision 94/728/EC, Euratom of 31 October 1994 (\*\*)

(\*) OJ No L 293, 12. 11. 1994, p. 14.

(\*\*) OJ No L 293, 12. 11. 1994, p. 9.;

12. Article 20 shall be amended as follows:

(a) in point 2 (bb) the following indent shall be added:

- the amount of any revenue to be re-used. This amount is mentioned for information only;

(b) point 5 (a) and (b) shall be replaced by the following:

'(a) in the general statement of revenue, the budget headings corresponding to the relevant operations and intended to record any reimbursements received from beneficiaries who initially defaulted, leading to activation of the performance guarantee. These headings shall carry a token entry and be accompanied by appropriate remarks;

(b) in the Commission section, Part B:

- the budget headings containing the Community's performance guarantees in respect of the operations in question. These headings shall carry a token entry, so long as no effective charge which has to be covered by specific resources has arisen,

- remarks giving a reference to the legal basis and the volume of the operations envisaged, the duration and the financial

13. Article 27 (5) shall be replaced by the following:

'5. In the cases referred to in paragraphs 1 (c) and 2 (b), (d), (e), (g) and (h), re-use and deduction shall be possible only if provision is made therefor in the remarks column in the budget. Estimates of the amounts earmarked for re-use shall appear in the remarks column for information. The institutions shall justify discrepancies between those estimates and the amounts which actually give rise to re-use.;

14. Article 56 shall be renumbered Article 58 and amended as follows:

(a) in the first subparagraph of paragraph 1, 'either by the automatic public tendering procedure or the discretionary tendering procedure' shall be deleted;

(b) in the second subparagraph of paragraph 1, 'Article 58' shall be replaced by 'Article 59';

(c) in the third subparagraph of paragraph 1, 'Article 63' shall be replaced by 'Article 60';

(d) the following paragraphs 3 and 4 shall be added:

'3. Tendering procedures and selection and award criteria shall be laid down and governed by the detailed implementing rules provided for in Article 139, on the understanding that these criteria shall be laid down by analogy with those provided for in the directives referred to in Article 56.

4. The price revision procedures following the conclusion of contracts shall be governed by the implementing measures provided for in Article 139.;

15. Article 57 shall be replaced by the following:

'Article 57

Articles 58, 59 and 60 shall apply to contracts other than those referred to in Article 56.;

16. Article 58 shall be renumbered Article 59 and replaced by the following:

'Article 59

Contracts may be made by private treaty:

(a) within the limit laid down in the detailed implementing rules provided for in Article 139 for the purchase or hiring of supplies, furniture and equipment, for the provision of services or for building works;

(b) where the purchase or hiring of goods, the provision of services or the construction works

are so urgently needed that it is not possible to wait for one of the tendering procedures specified in Article 58 to be carried out;

- (c) where the automatic public tendering or discretionary tendering procedures do not give any result or where the prices quoted are not acceptable;
- (d) where for technical, practical or legal reasons the supply of goods or services can only be carried out by a particular contractor or supplier;
- (e) for contracts for the supply of goods and services or for ancillary works which, technically, cannot be separated from the main contract.

The institution concerned is bound, however, as far as possible and by all appropriate means, to enable suppliers or contractors who are likely to be able to supply the goods and services in question to compete, except in the cases referred to in (d) and (e).;

17. Article 59 shall be renumbered Article 62;
18. Article 60 shall be renumbered Article 63 and in the first and third paragraphs 'Article 126' shall be replaced by 'Article 139';
19. Article 61 shall be renumbered Article 64 and amended as follows:
- (a) in the first paragraph, 'Article 60' shall be replaced by 'Article 63';
  - (b) in the second paragraph, 'choice of supplier' shall be replaced by 'selection of tenderer';
20. the following Article shall be inserted:
- 'Article 61*
- Articles 62 to 64a shall apply to the award of contracts for the purchase or hiring of goods, furniture or equipment, for the provision of services or for the performance of works.';
21. Article 62 shall be renumbered Article 64a and amended as follows:
- (a) in the first and third paragraphs, 'Article 126' is replaced by 'Article 139';
  - (b) in the third paragraph, 'for works contracts' shall be inserted after 'obligatory';
22. Article 63 shall be renumbered Article 60 and 'Article 126' is replaced by 'Article 139';
23. Article 64 shall be renumbered Article 56 and replaced by the following:
- 'Article 56*
- When concluding contracts for which the amount involved is equal to or greater than the threshold provided for by the Council directives on the coordination of procedures for the award of public works, supplies and services contracts, each institution shall comply with the same obligations as are imposed upon bodies in the Member States by those directives.
- The implementing measures provided for in Article 139 shall include appropriate provisions to that end.';
24. Article 88 shall be amended as follows: in the introductory sentence, 'in Article 78 of the ECSC Treaty, Article 206a of the EEC Treaty and Article 180a of the Euratom Treaty' shall be replaced by 'in Article 45c of the ECSC Treaty, Article 188c of the EC Treaty and Article 160c of the Euratom Treaty';
25. the following Article shall be added:
- 'Article 88a*
- At the same time as the annual report referred to in Article 88, the Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.';
26. Article 89 shall be replaced by the following:
- 'Article 89*
1. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before 30 April of the following year, give a discharge to the Commission in respect of the implementation of the budget.
  2. To this end the European Parliament shall, after the Council has done so, examine the accounts and financial statements mentioned in Article 78d of the ECSC Treaty, Article 205a of the EC Treaty and Article 179a of the Euratom Treaty, the Annual Report made by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, any relevant special reports by the Court of Auditors and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.
  3. Before giving a discharge to the Commission, the European Parliament may question the Commission on the implementation of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

4. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Commission of the reasons for the postponement.
- If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to facilitate removal of the obstacles to that decision.
5. The discharge decision shall cover the accounts of all the Community's revenue and expenditure, the resulting balance and the assets and liabilities of the Community shown in the financial statement. It shall include an assessment of the responsibility of the Commission's budgetary management over the past financial year.
6. The financial controller shall take account of the comments in the decisions giving discharge taken by the European Parliament; he shall also take account of the comments accompanying the recommendations for discharge adopted by the Council.
7. In accordance with Article 78g of the ECSC Treaty, Article 206 of the EC Treaty and Article 180b of the Euratom Treaty, the Commission and the other institutions shall take all appropriate steps to act on the observations by the European Parliament relating to the implementation of expenditure, and on the comments accompanying the recommendations for discharge adopted by the Council.
8. At the request of the European Parliament or the Council, the institutions shall report on the measures taken in the light of these observations and comments, and, in particular, on the instructions given to those of their departments which are responsible for the implementation of the budget. Such reports shall also be transmitted to the Court of Auditors.
9. The institutions shall also give an account, in an annex to the revenue and expenditure account for the financial year following that of the discharge decision, of the measures taken in the light of the comments appearing in the decisions giving discharge.
10. Supporting documents pertaining to the accounts and the preparation of the revenue and expenditure accounts 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.
- Each institution shall decide which department will keep the supporting documents.;
27. in Article 91, 'and XII' shall be replaced by 'Title XI and Part III';
28. in Article 92 (1) (d), 'Article 130l of the EEC Treaty', 'Article 130m of the EEC Treaty', 'Article 130n of the EEC Treaty', and 'Article 130o of the EEC Treaty' shall be replaced by 'Article 130k of the EC Treaty', 'Article 130l of the EC Treaty', 'Article 130m of the EC Treaty' and 'Article 130n of the EC Treaty' respectively;
29. in the first paragraph of Article 98, 'and XII' shall be replaced by 'and Part III';
30. Article 105 shall be amended as follows:
- (a) in paragraph 1, 'and XII' shall be replaced by 'Title XI and Part III';
- (b) in the second subparagraph of paragraph 3, 'of Article 206a of the EEC Treaty' shall be replaced by 'of Article 188c of the EC Treaty';
31. in Article 118 (1) the following shall be added after the second subparagraph:
- 'The Commission shall publish in the *Official Journal of the European Communities*:
- (a) the content and the value of each contract planned, indicating the purpose:
- forecasts of the services contracts and technical cooperation actions to be awarded after calls for tenders during the 12 months following publication once a year, and
  - the amendments to the forecasts provided for under the first indent once every three months;
- (b) the outcome of the calls for tenders as soon as possible.;
32. in Article 119, 'Articles 56 to 64' shall be replaced by 'Articles 56 to 64a';
33. in Article 121, 'and XII' shall be replaced by 'and Part III';
34. the following Title XI shall be inserted:
- 'TITLE XI**
- SPECIAL PROVISIONS APPLICABLE TO FINANCIAL PARTICIPATION BY THIRD PARTIES AND OUTSIDE BODIES IN COMMUNITY ACTIVITIES**
- SECTION I**
- GENERAL PROVISIONS**
- Article 124*
- Financial participation by a third party or outside body in a Community activity shall require the prior

authorization of the budgetary authority, given according to one of the following procedures:

- (a) in the course of the budgetary procedure if already provided for. In such cases, the Commission shall, in the preliminary draft budget, propose the appropriate budgetary structure and the headings to which the contribution shall be charged in the statement of revenue and under which the corresponding appropriations shall be made available in the statement of expenditure, in accordance with Article 125. The amount of the contribution and the manner of its calculation shall be shown separately, for information;
- (b) where the request for participation is made in the course of a financial year, the Commission may, if it considers it to be in the interest of the Community, and if an appropriate structure to cover it is provided in the budget, propose that it be authorized by the budgetary authority. Such authorization shall be given if the Council, acting by a qualified majority, and the European Parliament agree.

All relevant intervention expenditure shall be covered by the amount of the third party's contribution.

#### *Article 125*

For the purposes of implementing the budget, the contributions referred to in Article 124 shall lead to additional appropriations being made available as follows:

- commitment appropriations equivalent to the entitlement due to the Community,
- payment appropriations equivalent to the amounts received.

#### *Article 126*

The contributions referred to in Article 124 shall constitute earmarked revenue in accordance with the second subparagraph of Article 4 (2).

All necessary accounting measures shall be taken to ensure the separate monitoring of the use both of the revenue from these contributions and of the appropriations made available under Article 125.

## SECTION II

### PROVISIONS APPLICABLE TO PARTICIPATION PROVIDED FOR PURSUANT TO THE AGREEMENT ON THE EUROPEAN ECONOMIC AREA

#### *Article 127*

The budgetary structure to cover participation by the EFTA States shall be as follows:

- (a) in the statement of revenue there shall be a heading to cover the full amount of the contribution of the EFTA States for the relevant financial year. The amount shall be entered separately "for information";
- (b) in the statement of expenditure:
  - the remark relating to each heading covering Community activities involving the participation of the EFTA States shall indicate the amount of their contribution "for information",
  - an annex, constituting an integral part of the budget, shall contain all headings relating to Community activities involving the participation of the EFTA States.

The annex shall serve as and supplement the budgetary structure for making available the appropriations corresponding to such contributions by virtue of Article 128 and for implementing expenditure.

#### *Article 128*

By virtue of Article 82 of the Agreement on the European Economic Area, amounts relating to the annual participation of EFTA States — as confirmed to the Commission by the Joint Committee in conformity with Article 1 (5) of Protocol 32 — shall, at the beginning of the financial year, give rise to the full entry of the corresponding appropriations for commitment and appropriations for payment.

#### *Article 129*

1. If in the course of a financial year the appropriations for budget headings involving the participation of the EFTA States are increased by amending or supplementary budgets or by transfers, without it being possible for the EFTA States, in the course of that financial year, to adjust their contribution accordingly in line with the proportionality factor provided for in Article 82 of the Agreement on the European Economic Area, the Commission shall be authorized to provide

provisional, exceptional advance financing from its cash resources for the share of the EFTA States in order to permit balanced implementation of expenditure relating to the relevant activity. Following any such increase the Commission shall as soon as possible call for corresponding contributions from the EFTA States save in cases of overriding necessity.

Each year the Commission shall inform the budgetary authority of the measures it has had to take in accordance with the foregoing provisions.

2. The advance financing shall be regularized as soon as possible in the budget for the following financial year.

#### Article 130

By way of derogation from Article 58 (2), as regards the rules governing tendering procedures, invitations to tender shall be published throughout all the Member States and all the EFTA States whenever the contract entails expenditure from a budget heading involving participation of the EFTA States.

#### Article 131

1. The financial contributions of EFTA States shall constitute earmarked revenue within the meaning of the third indent of the second subparagraph of Article 4 (2). All appropriate accounting measures shall accordingly be taken to ensure the separate monitoring both of revenue flowing from such contributions and of the corresponding appropriations.

2. Point 4 of Article 7 and Article 26 (9) shall apply to the contributions referred to in paragraph 1.

3. In the quarterly reports provided for in Article 34 the Commission shall give clear details of the state of execution of both the revenue and the expenditure corresponding to participation by the EFTA States.

#### Article 132

The revenue and expenditure corresponding to participation by the EFTA States shall be verified in compliance with the provisions of the EC Treaty, of this Regulation and of regulations applicable to matters covered by Article 78 of the Agreement on the European Economic Area and Protocol 31 thereto.;

35. Title XI shall be renumbered Title XII;

36. Article 124 shall be renumbered Article 133;

37. the following shall be inserted as Part II:

#### 'Part II

#### Provisions applicable to borrowing and lending operations by the European Communities

##### Article 134

The Commission shall report to the Council and the European parliament twice a year on the position regarding budget guarantees and risks relating thereto.

This information shall be sent at the same time to the Court of Auditors.

##### Article 135

The financial balance sheet provided for in Article 81 shall give details of capital operations and debt management indicating:

- the amount of loans granted,
- the amount of the repayments made on borrowings contracted and of the charges on such borrowings,
- the amount of borrowings contracted,
- the amount of repayments of capital and payments of interest made on loans granted.

##### Article 136

Within the powers conferred on the Commission in relation to each instrument, the financial controller of the Commission shall check the regularity of the execution of borrowing and lending operations.

To this end, he shall check:

- that operations are in conformity with the basic rules,
- the assessment of risks,
- where appropriate, the calculation of interest rate subsidies where they are covered by the budget,
- compliance with the principle of sound financial management.

To enable him to exercise these functions to the full, the financial controller of the Commission:

- shall have access either manually or by computer to all data, documents, ledgers, registers,

correspondence, statements of account or computer files relating to borrowing and lending operations,

- shall be authorized to conduct or take part in on-the-spot checks.

*Article 137*

The Commission shall provide the Court of Auditors, at its request, with any information on borrowing and lending operations.;

38. the former Title XII shall be renumbered Part III and entitled 'Transitional and final provisions';
39. Article 125 shall be renumbered Article 138;

40. Article 126 shall be renumbered Article 139. References to that Article in Articles 22, 23, 24, 25, 28, 29, 36, 37, 38, 41, 45, 46, 49, 53, 54, 65, 66, 70, 75, 94, 97 and 123 shall be adapted accordingly;

41. Article 127 shall be renumbered Article 140;

42. Article 128 shall be deleted;

43. Articles 129, 130 and 131 shall be renumbered Articles 141, 142 and 143 respectively.

*Article 2*

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

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

Done at Brussels, 18 September 1995.

*For the Council*

*The President*

P. SOLBES MIRA