

## I

*(Information)*

## COURT OF AUDITORS

## OPINION No 2/2001

**on a proposal for a Council Regulation on the Financial Regulation applicable to the general budget of the European Communities***(submitted pursuant to Article 279 EC)**(2001/C 162/01)*

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 248(4) and Article 279 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 45c(4) and Article 78h thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 160c(4), and Article 183 thereof,

Having regard to the proposal for a Council Regulation on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup>,

Having regard to the request for an opinion on this proposal submitted by the Council to the Court of Auditors on 24 November, and received by the Court on 29 November 2000,

HAS ADOPTED THE FOLLOWING OPINION:

1. In 1998, the Commission embarked on the process of recasting the existing financial legislation by presenting a working document on recasting the Financial Regulation <sup>(2)</sup>. This was the Commission's reply to the response given to the 'seventh series' of amendments to the Financial Regulation, including that of Court Opinion No 4/97 <sup>(3)</sup>, which sought a fundamental review of all the financial legislation.

<sup>(1)</sup> Commission document ref. 2000/203 (CNS) — COM(2000) 461 final.

<sup>(2)</sup> Commission working document concerning the recasting of the Financial Regulation(SEC(1998) 1228 final, 22.7.1998).

<sup>(3)</sup> OJ C 57, 23.2.1998, p.1.

2. The Commission did not follow the Court's recommendation to set up a high-level working group including outside experts with a view to thoroughly assessing the situation before making any attempt to draw up a revised draft Financial Regulation <sup>(4)</sup>. In fact, the Commission availed itself of external resources in only two areas: the simplification of the Financial Regulation, and the keeping and the presentation of the accounts. Having examined the study produced by experts consulted in the accounting field, the Court regrets that the timetable drawn up by the Commission has not enabled it to include in the proposal for a Financial Regulation the proposals contained in the study, thereby leaving a significant proportion of the recasting work unfinished (see paragraphs 41 to 43).

3. The Commission proposal provides a basis for recasting the financial regulations, although it does not take into consideration all of the concerns which the Court expressed in Opinion No 4/97 and, generally speaking, is not radical enough. In this opinion, the Court proposes such amendments to the Commission's text as it has deemed necessary, except in areas concerning the basic accounting framework and the objectives of the accounts and of the financial statements, the provisions governing which, in the sections concerned, are inadequate.

4. The general philosophy underlying this Court opinion is the following:

(a) the Community budget system should apply the existing budgetary principles and should tolerate only those exceptions that are indispensable;

(b) the budget system should be as simple as possible;

<sup>(4)</sup> Paragraph 17 of Court Opinion No 4/97.

(c) the budget, in terms of both estimates and implementation, and the financial statements, should reflect the reality of the operations and financial situation of the Communities.

### Budgetary principles (Part One, Title I, Articles 1 to 28)

5. The Court devoted several paragraphs of Opinion No 4/97 <sup>(1)</sup> to the question of general budgetary principles. It recommended that budgetary principles should be applied more strictly and *exceptions confined* to a bare minimum. The Commission's draft recasting groups the principles together under a single title. The Court suggests that certain articles should be amended or added to so as to make the proposed definitions more rigorous and more explicit. It regrets that certain exceptions to the principles are still contained in the draft Financial Regulation.

6. The provision contained in Article 6(2), which allows for *budgetary commitments in annual instalments*, divests the notion of differentiated appropriations of all meaning and should therefore be deleted (see paragraphs 30 and 31).

7. The *carrying-over of appropriations*, which is authorised by Article 8 of the draft, contravenes the very principle of the annuality of the budget. Rules for carrying appropriations over are no longer essential under the system of differentiated appropriations (which the Commission proposes to generalise), in so far as the commitments entered into are, where necessary, covered by payment appropriations which may arise from subsequent financial years. Any shortage of payment appropriations which may arise under certain budget headings could always be offset by the relaxation of the transfer rules proposed by the Commission (see paragraph 10) and, exceptionally, by the possibility of requesting appropriations by means of a supplementary budget. These carry-overs of appropriations are unnecessary and have only a marginal financial impact. On the other hand, they do make management systems (in particular computerised accounting systems) more complex and may even lead to confusion when the financial statements are read. The objectives they are supposed to achieve can be achieved through the normal arrangements for adopting and implementing the budget.

8. The system of *provisional twelfths* described in Article 12 could be placed after Article 33 of the draft, as it essentially concerns the procedure for adopting the budget. The current provisions, which are unnecessarily complicated, could be simplified.

9. Other unnecessary exceptions include the provisions laid down by way of derogation from the principle of the universality of the budget with a view to making the system for *earmarking certain revenue* permanent (Article 17). As the Court points out in Opinion No 1/2001 <sup>(2)</sup>: 'There may be circumstances in which certain specific receipts, outside the field of the EAGGF-Guarantee, could enable institutions to spend corresponding amounts for related purposes without the need for fresh budgetary authorisation'. The Court favours retention of this system but wishes marginal cases to be treated in accordance with the general provisions.

10. The Court considers that the proposed Article 21, which allows the Commission greater room for manoeuvre as regards *transfers of appropriations*, is reasonable, in particular with a view to drawing up the budget on the basis of activities. In order to improve the current situation, consideration also needs to be given to the application of the principle of budgetary specification and to the structure of the budget (see paragraph 16 on the structure of the budget).

11. As regards the *principles of sound financial management*, which are mentioned in Article 25 of the draft, they could usefully be completed by adding a definition of each principle.

12. In addition to the aforementioned exceptions, *special provisions* apply to certain Community activities (e.g. the EAGGF-Guarantee, the Structural Funds, research, external measures, offices and administrative appropriations) in the second part of the draft Financial Regulation (Articles 134 to 168). A stricter application of the principles would render many exemptions superfluous, whereas the more specific provisions, by their very nature, could be transferred to the rules for implementing the Financial Regulation. Any important remaining exemptions could be included in the first part of the Regulation.

13. As a general rule, the Court considers that, for the sake of consistency and legal certainty, any exceptions to the budgetary principles must always be clearly authorised in the Financial Regulation, and not by sectoral regulations adopted on bases other than Article 279 of the Treaty.

<sup>(1)</sup> Paragraph 15 (first to fourth indents) of Court Opinion No 4/97 and paragraphs 1.1 to 1.32 of the Annex.

<sup>(2)</sup> Paragraph 31 of Court Opinion No 1/2001 (OJ C 55, 21.2.2001).

### Drafting and structure of the budget (Part One, Title II, Articles 29 to 44)

14. The Commission has retained in Article 41 of the draft the possibility of including in the budget a *negative reserve* of a maximum of 200 Mio euro. The notion of a negative reserve impedes the clear and accurate presentation of precisely calculated budgetary authorisations and, as such, contravenes the principle of transparency as set out in the Commission's draft.

15. The Court has a number of suggestions for improving or clarifying the texts of Articles 39 and 43 concerning, respectively, the prohibition of negative revenue and expenditure in the budget, and the general presentation of the budget. The Court endorses the proposal in Article 44 to give the institutions a measure of flexibility in the composition and grading of their staff; it is for consideration whether this flexibility should be further extended so as to enable the institutions, within a budgetary allocation for staff costs, to choose the most appropriate mix for them of permanent and temporary staff and staff working under external contracts.

16. In its Opinion No 4/97 <sup>(1)</sup>, the Court referred to the cases of loss of control observed in the application of the principle of budgetary specification, as a result of which some budget headings which had been allocated huge amounts of appropriations existed alongside others which had been allocated a few thousand euro. To begin with, the Financial Regulation should contain a provision limiting these disparities. Consideration then needs to be given to the relevance of subdividing budget headings into titles, chapters, articles and items. The budgetary nomenclature could be reviewed and the maximum number of budgetary subdivisions could be limited to a specific level, for example the chapter, or to an amount established by the budgetary authority, so as to guarantee the institutions greater flexibility as regards management.

### Implementation of the budget (Part One, Title III, Articles 45 to 54)

17. The Commission has sought to clarify the situation by proposing a specific chapter on *methods of implementing the budget* (Articles 50 to 54). This clarification had proved necessary in the light of numerous problems arising from the progressive increase in the Commission's workload, the enlargement of the European Union, the role of the Technical Assistance Offices (TAOs) and the size of the budgets to be managed.

18. Over and above the improvements made by the Commission, the wording of certain articles seems to need some refinement so as to differentiate between the powers of the Commission and those of the other parties involved on the basis of the method of implementation envisaged, whilst stressing that the Commission nevertheless remains responsible in the final analysis for the implementation of the budget, pursuant to Article 274 of the Treaty. Whatever the method of implementation envisaged, the Court welcomes the emphasis placed by the Commission on the checks on measures undertaken and proposes that where the Commission implements the budget on a decentralised basis its

partners' responsibilities should be specified. The Court welcomes the inclusion of provisions which should permit the Commission to work more rationally and effectively with international organisations.

### Financial actors / Liability of financial actors / Internal auditor (Part One, Title III, Articles 55 to 64 and 80 to 82)

19. In Opinion No 4/97, the Court urged the Commission to explore ways of *modernising the role of the financial actors* <sup>(2)</sup>. In particular, it recommended that a new Financial Regulation should contain the following principles and provisions in respect of exercising the internal control function in the institution:

- 'the status and powers of the Financial Controller should be redefined, on the assumption that he would exercise the functions of internal auditor of the institution,
- a clearer indication should be given of the scope of the authorising officers' powers in respect of financial management and financial control. Since the prior approval procedure is likely to be used significantly less or even, in the end, to disappear completely, additional provisions need to be introduced to ensure the legality, regularity and sound financial management of Community measures and to protect the Communities' financial interests, in particular to prevent officials from having to face any situation where a conflict arises between the interests of the service and the interests of third parties,
- on the same assumption, the powers of the accounting officer need to be strengthened'.

In actual fact, the provisions governing the financial actors and, therefore, the structure of the Community internal control system would represent an important step towards meeting the Court's recommendations, in particular with regard to the proposal that an *internal auditor* should now oversee the internal control systems.

20. In its Opinion No 1/2000 <sup>(3)</sup> on the Commission's proposal to separate the internal audit function from the financial control function, the Court stressed the independence of the internal auditor. The importance of this principle would require the Financial Regulation to lay down in unambiguous terms that, 'in carrying out his duties, the internal auditor is responsible only to the institution that designated him and that he reports direct to that institution' <sup>(4)</sup> (this addendum is proposed in these terms in Article 80).

<sup>(2)</sup> Paragraph 16(c) of Court Opinion No 4/97 and paragraphs 5.1 to 5.17 of the Annex.

<sup>(3)</sup> Court Opinion No 1/2000 (OJ C 327, 17.11.2000, p.1).

<sup>(4)</sup> Paragraph 11 of Court Opinion No 1/2000.

<sup>(1)</sup> Paragraphs 1.20 and 1.21 of the Annex to the Court's Opinion.

21. The Commission's proposal concerning the financial actors is based on a significant change in the structure of the Community system of financial control with which the Court generally agrees and which largely follows the recommendations in Court Opinion No 4/97. However, the proposal makes no reference to the Financial Controller, notwithstanding that Article 279c of the Treaty explicitly refers to the Financial Controller as one of the financial actors for whom the rules concerning responsibilities are to be laid down by the Council.

22. Articles 56 and 57 of the Commission's proposal, which concern the *Authorising Officer*, should be amended. It is pointless to propose that the Authorising Officer should submit accounts to his institution when it does not appear clear what accounts are concerned. There should also be a clear definition of what professional responsibility he bears for the legality and regularity of transactions or internal control systems. As the Court has pointed out on several occasions, doing away with centralised prior approval would not be acceptable unless it was replaced by other procedures providing guarantees of at least equivalent value involving actors other than the Financial Controller.

23. The role of the *Accounting Officer* in keeping the accounts and drawing up the financial statements would be strengthened, in particular vis-à-vis the authorising departments. However, Article 58 should also be expanded.

24. The Court draws the Council's attention to the fact that the proposed text (Article 62) on the liability of the Authorising Officer, unlike the provisions concerning the Accounting Officers and Imprest Administrators in Articles 63 and 64, contains no provision as to what could constitute a serious error for which the Authorising Officers could be held legally or financially responsible. The Regulation needs to make clear that authorising officers may be held responsible for losses to the budget or damage to the financial interests of the Community which result from their actions (or failures to act) and which they should have foreseen. The Court further points out again (as it previously indicated in paragraph 5.20 of the Annex to Opinion No 4/97) that it is not sufficient to leave any necessary action to be taken under the relevant provisions of the Staff Regulations; these provisions are not apt for the recovery of money, and have in any case never been applied. The Commission should therefore consider the possibility of creating within the current framework an independent structure for establishing the financial responsibility of its officials and other staff, the legal basis for which would not be the Staff Regulations.

#### **Revenue operations (Part One, Title III, Articles 65 to 69)**

25. The abolition of any form of establishment of a claim in respect of own resources, as envisaged in Article 66(1), is unsatisfactory. Even if an estimate of the claim cannot be made for traditional own resources, because the value of this revenue is known only when it is made available to the Commission by the Member

States, the Authorising Officer should be required at the very least to draw up an estimated timetable for monitoring the recovery of the miscellaneous own resources that are to be paid over periodically by the Member States.

26. As regards agricultural revenue categorised as miscellaneous revenue, the draft does not specify whether it will be subject to the general arrangements or to arrangements akin to those envisaged for own resources. Given that such agricultural revenue does not constitute own resources, it must fall within the ambit of the general arrangements.

#### **Expenditure operations: commitments (Part One, Title III, Articles 70 to 72)**

27. The Court considers that the Commission's proposal concerning the definition of the concept of a commitment does not resolve all the questions raised by a reading of Articles 1(4)(3) and 36(2) of the current Financial Regulation as this area remains a constant source of difficulties for the implementation of the budget and for the accounting system.

28. Accordingly the Court proposes two changes in the arrangements set out in the draft Regulation. First a 'budgetary commitment' should be defined as the subject of a specific documented decision by an institution or its delegate to spend a given sum of money for a defined purpose. In accordance with the Commission's proposals the amounts of money concerned by such decisions would count against the budgetary provision for commitment appropriations. Such decisions would need, as the Commission proposes, to be translated into legal obligations to third parties at the latest by the end of the financial year following that in which the decision was taken. The Court suggests that this latter stage in the process should use the term 'legal obligation', thereby avoiding the use of the word 'commitment' to mean something other than the decision in the budgetary context.

29. Secondly, as stated in paragraph 6, which deals with the budgetary principles, the Court considers that the provision in Article 70(3) whereby commitments may be broken down into instalments (where the basic act so provides) negates the essential purpose of differentiated appropriations and of a commitments budget and should therefore be deleted. The annual commitments budget is intended to authorise and limit the expenditure decisions made by the Communities during the financial year. These expenditure decisions give rise to budgetary commitments which constitute, in turn, the authorisation and limits for recording in the accounts the corresponding legal obligations subsequently entered into with third parties. Another objective is to ensure that the actual extent of the Communities' financial obligations is known. Such a system only makes sense if it is applied in a

consistent manner to all expenditure decisions in all sections of the budget. All specific expenditure decisions taken during a given financial year should be exhaustively recorded in that year. The commitments budget should therefore be sufficient to cover the whole of the expenditure decisions made during a given year, including those concerning programmes, projects, etc., requiring payments which are staggered over several years. If the commitment appropriations provided are not sufficient to cover all of the estimated cost of a programme, then the corresponding decision and legal obligation should not be made and entered into.

30. This means that, in fields involving substantial multiannual programmes for which the expenditure decisions are adopted at the beginning of the programming period, the amounts of commitment appropriations may vary significantly from one year to another. This would simply reflect the underlying reality of the transactions concerned and could not be reconciled with the concept of an annual commitments budget which was directly limited, as has so far been the case, by a linear financial perspective. Currently the financial perspective (not mentioned in the Treaty or the Commission's proposal, but referred to in Article 3 of the existing Financial Regulation) sets an own resources ceiling which in turn is applied to annual budgets for both commitments and payments, although it is only the payments that are directly financed by the revenue raised. In order to ensure that this conflict does not arise in the future, the financial perspective ceilings should be applied to the commitments budgets for the whole of the period of a financial perspective, rather than on an annual basis.

31. The Court wishes to emphasise that the criteria provided for in the Financial Regulation for committing expenditure, and for recording commitments in the accounts, should be applied consistently across the whole budget without derogation for particular expenditure areas. If the Commission's proposal is not amended on the basis set out above, it would be better to opt for a payments budget only, without commitment appropriations. In such a case, the institutions would still need to record and to present to the budgetary authority, in support of their requests for budgetary provision for payments, information on expenditure decisions taken and obligations entered into. No specific limits, however, would be set as part of the annual budgetary process on the level of expenditure decisions. The institutions would still be subject to budgetary discipline in that they would have to manage their affairs in such a way that the need to make payments did not result in them exceeding the appropriations made available by the budgetary authority for the financial year.

#### **Expenditure operations: payments (Part One, Title III, Articles 73 to 77)**

32. Payments (and not 'expenditure', as stated in sections 2 to 5 of Chapter 6) must be carefully monitored at the various stages

in the accounting and management systems in order for the latter to indicate the extent to which budget operations have actually been implemented in respect of final beneficiaries. To this end the Commission proposes the separate disclosure of pre-financing payments and refunds of expenditure charged to the annual budget. However, it is also necessary that the degree to which pre-financing payments charged to previous budgets have not yet been absorbed by the financing of expenditure at final beneficiary level, and the degree to which budgetary payments are not yet 'cleared', should also be accounted for on a continuous basis and disclosed in summary form in the financial statements.

33. Pre-financing payments charged to the budget, most of which are paid to intermediaries and not to final beneficiaries, should be restricted to amounts demonstrably required to meet the Community's share of the necessary pre-financing of programmes, projects, the activities of technical assistance offices, etc. Where further funds are required they should only be paid to reimburse expenditure actually incurred. Where the initial advances are not adequate to meet ongoing pre-financing needs an additional advance would be paid. As operations approach completion, the advances should be absorbed by setting them off against the last payments due for expenditure reimbursements. Systematic perpetual advance payment mechanisms, which increase the risk of loss of control and provide a misleading image of budgetary execution, should be prohibited.

#### **Procurement (Part One, Title IV, Articles 83 to 100)**

34. The Financial Regulation should contain only essential provisions; provisions which, by their very nature, could be susceptible to change should be transferred to the implementing arrangements. This latter category includes specific cases of exclusion and penalties (Articles 88 to 90).

35. The Court considers it important that the rule laid down in Article 84(3) (new Article 96a) of the draft concerning situations of suspected errors, irregularities or fraud, should be strengthened and applied in all cases by the institutions wherever a contractor has committed irregularities or fraud.

36. The Court proposes the inclusion of an additional article (Article 100b, the result of transferring Article 154 of the Commission's proposal) on the designation of persons eligible to participate in tendering procedures in the area of external aid (see paragraph 59).

### Subsidies (Part One, Title V, Articles 101 to 114)

37. The provisions included under this title should be limited to provisions of a general nature, to be implemented in accordance with the recent *vade mecum* on subsidies which, in the Court's view, should enjoy the status of a Commission regulation.

38. Several aspects of the draft Financial Regulation should be amended:

- (a) Article 101 should distinguish more clearly between subsidies and payments made in the context of a public works contract;
- (b) the same article should also better define the scope of the title in question.

39. Given the various fields of activity in which subsidies are disbursed, for example in the field of humanitarian aid, the provisions of the title should allow for a degree of flexibility:

- (a) Article 102 should not insist on either joint financing or the (unverifiable) condition that no profit should be made;
- (b) Article 103 should envisage the possibility of disbursing a subsidy outside the context of a programme;
- (c) Article 106 should be deleted so as not automatically to limit the rate at which administrative expenditure is financed.

40. Certain provisions should also be deleted, as they are self-evident or unnecessary or because they would be impossible to implement: this is the case, in particular, of the provisions envisaged in paragraphs 2 and 3 of Article 112 concerning the refunding of subsidies, as the amendment of the provisions envisaged in Article 112(1) is adequate.

### Keeping and presentation of the accounts (Part One, Title VI, Articles 115 to 122)

41. As paragraph 2 of this opinion states, the provisions submitted take no account of the findings of the study commissioned from a group of experts. This study provides a solid basis for developing the provisions that are missing from the recast proposal (see also paragraph 43 and the introductory comments to Part One, Title VI). The provisions proposed by the Commission should be revised before the Council takes a final decision. The Court would also point out that under the amendment of the Financial Regulation proposed by the 'seventh series' and ratified in 1998 <sup>(1)</sup>, the Commission included in Article 70 of the current

Financial Regulation a provision to distinguish between 'budgetary expenditure and revenue' and 'non-budgetary expenditure and revenue', as a consequence of which a broader accounting result is calculated. This is equivalent to distinguishing between two levels of results, one concerning the implementation of the budget and another which is obtained by adding to the first of those operations which concern the accounts rather than the budget (depreciation, provisions, etc.). Article 70 also provides for the balance sheet to be drawn up on the basis of accruals accounting. Thus, the provisions orienting the Community accounts framework towards an accruals-based accounting system are found in the current Financial Regulation. To be fully applicable, they should have been made explicit and developed in the draft recasting of the Financial Regulation. Once the Commission has completed this task, it must take the measures required to implement these provisions.

42. The Court stresses the importance of choosing a basic accounting framework as a prerequisite for any decision regarding the keeping and presentation of the accounts. To this end, it would be beneficial to consult the work of international bodies with responsibilities in this area, a step which the Court recommended in Opinion No 4/97 <sup>(2)</sup>. In the form in which they are currently presented, the financial statements are of limited value to the user: for example, they do not distinguish between current and capital expenditure, or between intermediate and definitive payments, nor do they account for accrued accounts payable. These deficiencies could be overcome by the adoption of an accruals-based accounting framework, as foreseen by Article 70 of the current Financial Regulation.

43. Implementing an accounting and financial framework which is both consistent and rigorous is, however, a major operation. As well as choosing a basic accounting framework, it is necessary to define the objectives of the accounts and of the financial statements, the principles, rules and accounting methods which determine the rules for keeping the accounts and drawing up the financial statements, and the information contained therein. The timetable for drawing up the financial statements could be brought forward by doing away with additional periods (which are unnecessary once appropriations are no longer carried over and the procedures for transferring payment appropriations are relaxed), and their publication should comply fully with the principle of transparency.

### External audit and discharge (Part One, Title VII, Articles 123 to 133)

44. The provisions included under this title essentially concern the Court's role as external auditor of the Community's finances.

<sup>(1)</sup> Council Regulation (EC, ECSC, Euratom) No 2548/98 (OJ L 320, 28.11.1998, p.1).

<sup>(2)</sup> Paragraph 15 (sixth and eighth indents) and paragraph 16(b) of Court Opinion No 4/97 and paragraphs 1.33 to 1.48 of the Annex.

The Court considers that these provisions are in their rightful place in the Treaty and that they do not need to be repeated and explained in the Financial Regulation. The fact is that the repetition of certain provisions, in particular those dealing with the Court's role and its rights of access to information (in particular Articles 123, 125 (in part), 127 (in part), 129 and 130 (in part)), could be interpreted restrictively by certain bodies which are audited by the Court. The Court should, in all cases, be in a position to carry out its task without hindrance, pursuant to the provisions of the Treaty.

### **Provisions specific to the EAGGF-Guarantee (Part Two, Title I, Articles 134 to 140)**

45. There is no need for a specific section for the EAGGF-Guarantee. Only Article 136(2) needs to be retained and this should be included in Article 70.

46. Most of the exemptions proposed by the Commission are explained by the continuing existence of a system of non-differentiated appropriations and by problems with procedures for charging payments to detailed budget headings. The fact is that EAGGF-Guarantee expenditure takes the form of refunds of expenditure declared by Member States which are initially disbursed outside the budget ('advances' consisting of provisional refunds), followed by budgetary adjustments.

47. These adjustments often require appropriations to be transferred before expenditure can be charged to the appropriate budget items. Furthermore, the level of detail currently utilised when amounts are charged to the budget leads in practice to unacceptable delays in recording the adjustments to budgetary payments.

48. The Commission's amendment to Article 21(1)(c) concerning transfers between chapters of operational expenditure should enable it to make the necessary transfers without having to wait for the budgetary authority's approval of transfer proposals at the end of the year. The requirement to seek approval from the budgetary authority for transfers between budget headings under the EAGGF-Guarantee is meaningless in a context where the expenditure is compulsory and the refunds to the Member States have already been made.

49. As regards the breakdown of declared expenditure, the current system requires the Member States to notify the Commission by the 10th of each month of all expenditure disbursed during the previous month. More detailed information for recording expenditure disbursed during the previous month in the Community budget must be sent to the Commission by the 20th of each month at the latest. For this reason and as the disbursed expenditure is taken into account for the EAGGF budget year, i.e. until

15 October, the Commission is in possession of the data sufficiently early to charge the amounts in question to the budget before the closure of the financial year <sup>(1)</sup>.

50. Furthermore, if the Court's proposal in Article 19 to specify appropriations only by section, subsection, title, chapter and article (and not by item and sub-item) were adopted, the registration of expenditure by Member State, measure and financial year for management purposes would no longer affect the charging to the budget of the monthly advances paid to the Member States.

51. Notifications in respect of certain data may contain inaccuracies. As a result, adjustments may prove necessary, even after the accounts for a financial year have been closed. Nevertheless, such adjustments, provided they do not affect the reliability of the accounts, are recognised by generally accepted accounting principles.

52. As for EAGGF-Guarantee appropriations for rural development and the accompanying measures, these are multiannual measures for which the value of commitments entered into during a financial year is often different from the value of payments made during the same financial year. It is therefore inappropriate to specify in Article 135 that commitment appropriations are equal in value to payment appropriations and Article 170 (appearing in the transitional and final provisions) should be deleted.

### **Provisions specific to the Structural Funds (Part Two, Title II, Articles 141 to 145)**

53. There is no need for a separate Title because the Commission's proposal contains very few derogations from the standard rules.

54. Article 143 concerning the 'reconstitution' of commitment appropriations when commitments made in prior years are decommitted is unnecessary.

55. Article 144, giving the Commission the power to make transfers of appropriations between Structural Funds (where related to the same objectives), and Article 141(3) on the decentralised management of pre-accession structural and agricultural measures should be included in the appropriate place in Part One, Titles I and III.

<sup>(1)</sup> As regards public-storage operations, the deadline for making adjustments is 20 December. As the financial year for this category of expenditure closes on 15 September, this deadline for making final adjustments hardly seems justified.

56. The other articles are unnecessary because they either:
- (a) state the evident fact that certain aspects of the management of the Funds are subject to the provisions of the 'rules' governing the Structural Funds (specifically Regulation (EC) No 1260/1999) when these do not constitute exceptions to general rules (Articles 142(1), first indent, 142(2), 142(4), 145); or
  - (b) restate provisions in Part One (Article 142(1), second indent); or
  - (c) appear to be based on a misunderstanding. Article 142(3) says that 'The treatment by the Member States of repayments of pre-financing payments and the implications for the amounts of contributions from the Funds shall be governed by the rules referred to in Article 141'. The Regulation concerned, Regulation (EC) No 1260/1999, makes no reference to the reconstitution of payment appropriations.

**Provisions specific to research (Part Two, Title III, Articles 146 and 147)**

57. There is no need to create a specific Title for research. Exemptions from the standard provisions should be included in the relevant parts of the Financial Regulation (Article 146(1)(2) and (3) and Article 147(3); the others should be deleted as standard provisions cover the cases concerned (Article 146(2) and Article 147(1) and (2)).

**Provisions specific to external measures (Part Two, Title IV, Articles 148 to 156)**

58. There is no need for a separate Title because the Commission's proposal contains almost no derogations from the standard rules. There are some extensions to these rules in Part One which should be included in the appropriate Titles of that part. Article 153(1), providing that the implementing rules contain special provisions relating to the thresholds and arrangements for awarding external contracts, and Article 154, concerning participation in tendering procedures, should be included in Title IV of Part One (see Articles 100a and 100b). Article 150(2), concerning the assumption of full responsibility by beneficiary countries for Community funds paid to them under the decentralised management arrangements, should be inserted in Article 50 in Title III of Part One.

59. Articles 148 and 149 add little of substance to Article 50 and are therefore unnecessary.

60. Article 150(1) contains unrealistic and over-ambitious criteria which the Commission should evaluate before deciding to entrust management of actions under the rules of decentralised management to non-member country governments. Such criteria are not applied to Member State administrations before they are entrusted with shared management responsibilities. It seems inappropriate to lay down such criteria in the Financial Regulation. The provisions of Article 150(2) are adequate (see paragraph 58).

61. Article 151 is unclear and unnecessary. The fact that the Commission retains the responsibility to carry out checks, even where it has granted responsibilities under decentralised management, is already set out in Article 50(3).

62. Article 152 sets out the contractual instruments to be used for the implementation of external actions. This should be in the implementing rules. The fact that financing agreements with beneficiary non-member countries are to be treated as obligations to third parties should be set out in Article 72.

63. Article 152 provides that the individual contracts and grant agreements which implement financing agreements must be concluded by 31 December of year  $n+3$ <sup>(1)</sup>, where  $n$  is the year of the budget commitment. This is based on the rules applied in the Phare programme, but such provisions are unsuited to current implementation practice in development aid because the maximum implementation period seems too short. This is a management issue already addressed in Article 71(3) by the requirement that each commitment should have a final date for implementation.

64. Article 153(2), providing that the procedures for awarding the contracts should be laid down in the financing agreements, contracts or grant agreements, should be transferred to Title IV of Part I.

65. Article 155, permitting the award of 100 % grants is a derogation from the standard rules on grants in Title V of Part One. The Court proposes that Article 102(1), which requires co-financing in the award of grants, and Article 106(1), which provides that a grant may not finance the entire administrative expenditure of the beneficiary organisation, should be omitted, rendering the derogation at Article 155 unnecessary.

66. Article 156 concerning the auditing of the accounts is not justified. To the extent that explicit provision for this should be in the Financial Regulation, it should be placed in Title VII of Part One, between Articles 126 and 127, or between Articles 127 and 128.

<sup>(1)</sup> Except for contracts for auditing and evaluation, which may be concluded later.



### Provisions specific to the European Offices and to administrative appropriations (Part Two, Title V, Articles 157 to 168)

67. The Court recommends replacing both Titles (the first of which concerns the Office for Official Publications of the European Communities, the other the European Anti-fraud Office) by a single title for 'European Offices'. As these Offices are likely to increase in number <sup>(1)</sup>, taking individual account of them in the Financial Regulation would require the Regulation to be revised each time an Office is created. Furthermore, it would be preferable for the Offices to observe similar rules.

68. As regards administrative appropriations, none of the exceptions envisaged is indispensable if differentiated appropriations are used for this type of expenditure. In the first year in which this new system of appropriations is implemented, provision will clearly have to be made for sufficient commitment appropriations to cover all decisions taken and legal obligations entered into by the institutions.

### Transitional provisions (Part Three, Title I, Articles 169 and 170)

69. These provisions were examined at the same time as the provisions specific to the EAGGF-Guarantee (paragraphs 46 to 53).

### Final provisions (Part Three, Title II, Articles 171 to 176)

70. The overall approach which the Court advocates is that of retaining only the main provisions in the Financial Regulation. Consequently, not only should the Financial Regulation empower the Commission to adopt *implementing arrangements* for all of these provisions but consultation in respect of these arrangements and the adoption thereof should also take place at the same time as the procedure for adopting revisions of the Financial Regulation. This measure would guarantee the chronological consistency of the applicable legislation in this area (which is all the more essential as the Financial Regulation itself would include only the basic provisions) and would provide the Council with a comprehensive overview of the rules which will ultimately apply.

71. If the Parliament and the Council employ the *consultation procedure* when the Financial Regulation is being amended and if, after this procedure, Parliament issues a further opinion, the provision that the Court should be specifically consulted about finan-

cial regulations, if it is to be meaningful, requires the Court to be sent a copy of Parliament's opinion so as to enable it to make such additions to its own opinion as it may deem appropriate.

72. Rather than copy the standard general Financial Regulation, which is not necessarily suited to their needs, the *financial regulations specific* to the various Community bodies should be based on a common framework drawn up by the Commission after it has sought the opinion of Parliament, the Council and the Court.

73. The need for legality, consistency and unity in the applicable financial provisions, together with the need for them to be transparent and legible for users and managers, means that the number of exceptions to the rules specified in the Financial Regulation needs to be strictly limited and the sole exceptions allowed must be specified therein. Consequently, the *exceptions* described in the *sectoral regulations* should be rescinded.

### CONCLUSIONS

74. The general thrust of the Commission's proposals on significant issues (notably methods of implementation, financial actors, internal auditor, procurement and grants) is considered to be satisfactory. However, modifications are required to ensure that the provisions are perfectly clear, precise, rigorous or flexible, as the case may be.

75. There is a need for further simplification by:

- (a) further limiting the exceptions to general principles;
- (b) confining many detailed provisions to the implementing measures;
- (c) eliminating Part Two, which contains separate sections for various areas of expenditure.

76. The Court endorses the measures in the Commission's proposal aimed at rationalising the budget structure (general application of differentiated appropriations; elimination of negative expenditure), reducing certain exceptions to the budgetary principles of annuality and universality (eliminating supplementary periods, except for EAGGF-Guarantee; eliminating the making of appropriations available again, except for Structural Funds; eliminating the re-use of recoveries), and allowing borrowing solely to finance the acquisition of immovable assets. However, in the Court's view the rationalisation should have gone further: in particular the Court considers that the *carrying-over of appropriations*

<sup>(1)</sup> As shown by the creation of the new Office for the Management of External Aid (EuropeAid) at the beginning of 2001.

(paragraph 7), maintaining the *supplementary period for EAGGF-Guarantee* (paragraph 49), and *making appropriations available again for the Structural Funds* (paragraphs 54 and 56(c)) are not necessary.

77. In order to reflect the *reality* of Community transactions and its financial position:

- (a) the basis for budgetary commitments needs to be clearly defined. All legal obligations entered into should be subject to the authorisation of the commitments budget. There should be *no artificial annual tranches for commitments*. It is not logical that the financial perspective should in effect fix a ceiling for annual commitments budgets. If the changes put forward by the Court are not adopted it would be better to opt for a single payments budget without commitment appropriations (paragraphs 6 and 27 to 31);
- (b) '*advances*' paid out of the budget should be *limited* to what is necessary for prefinancing. The real nature of budgetary payments, *and* the degree to which advances have been used for expenditure at the level of final beneficiaries, should be *disclosed* in the annual financial statements (paragraphs 32 and 33);

(c) the Commission's proposal for greater *autonomy to make transfers between appropriations for payment* is reasonable and should be kept. Once legal obligations have been entered into the reality is that the payments budget must be adjusted to meet the legitimate claims of beneficiaries which are often not easily predictable (paragraph 10);

(d) the *negative reserve* should be dropped because it allows the adoption of a budget which exceeds the apparent total amount authorised (paragraph 14).

78. The provisions of the section on the *accounting and the financial statements* are *inadequate*. This is the one main area where the Court does not suggest a text to be inserted in the regulation, in which there are significant omissions. The provisions proposed by the Commission should be revised before the Council takes a final decision (paragraphs 41 to 43).

79. The provisions on the powers and rights of the *external auditor* are *superfluous* as the provisions of the Treaty are adequate in themselves (paragraph 44).

This Opinion was adopted by the European Court of Auditors in Luxembourg at the Court meeting of 8 March 2001.

*For the Court of Auditors*

Jan O. KARLSSON

*President*

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## OPINION OF THE COURT

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">PART ONE</p> <p style="text-align: center;"><b>COMMON PROVISIONS</b></p> <p style="text-align: center;">TITLE I</p> <p style="text-align: center;"><b>GENERAL PROVISIONS</b></p> <p style="text-align: center;"><i>Article 1</i></p> <p>This Regulation lays down the rules for the establishment of the general budget of the European Communities, hereinafter referred to as 'the budget' and the implementation of revenue and expenditure. It also contains the rules for the keeping of accounts, procurement and the award of grants by the Communities. It determines the rules and methods for supervising the liability of the authorising officers, accounting officers and internal auditors. It lays down the arrangements for external control and the discharge procedure.</p> <p>For the purposes of this Regulation, the Economic and Social Committee, the Committee of the Regions and the Ombudsman shall be treated as Community institutions.</p> <p style="text-align: center;"><i>Article 2</i></p> <p>The establishment and implementation of the budget shall comply with the principles of unity, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency as set out in this Regulation.</p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b>Principle of unity</b></p> <p style="text-align: center;"><i>Article 3</i></p> <p>1. The budget is the instrument which forecasts and authorises the revenue and expenditure of the Communities each year.</p>	<p style="text-align: center;">PART ONE</p> <p style="text-align: center;"><b>COMMON PROVISIONS</b></p> <p style="text-align: center;">TITLE I</p> <p style="text-align: center;"><b>GENERAL PROVISIONS</b></p> <p style="text-align: center;"><u>Chapter 1</u></p> <p style="text-align: center;"><b><u>Scope</u></b></p> <p style="text-align: center;"><u>Article 1</u></p> <p><u>This Regulation lays down, pursuant to Article 279 of the Treaty, the rules for the establishment of the general budget of the European Communities, hereinafter referred to as 'the budget'.</u></p> <p><u>For the purposes of this Regulation, the Economic and Social Committee, the Committee of the Regions and the Ombudsman shall be treated as Community institutions.</u></p> <p style="text-align: center;"><u>Chapter 2</u></p> <p style="text-align: center;"><b><u>General budget principles</u></b></p> <p style="text-align: center;"><u>Article 1</u></p> <p><u>This Regulation lays down the rules for the establishment of the general budget of the European Communities, hereinafter referred to as 'the budget' and the implementation of revenue and expenditure. It also contains the rules for the keeping of accounts, procurement and the award of grants by the Communities. It determines the rules and methods for supervising the liability of the authorising officers, accounting officers and internal auditors. It lays down the arrangements for external control and the discharge procedure.</u></p> <p><u>For the purposes of this Regulation, the Economic and Social Committee, the Committee of the Regions and the Ombudsman shall be treated as Community institutions.</u></p> <p style="text-align: center;"><i>Article 2</i></p> <p>The establishment and implementation of the budget shall comply with the principles of unity, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency as set out in this Regulation.</p> <p style="text-align: center;"><del>Chapter</del> <u>Section 1</u></p> <p style="text-align: center;"><b><u>Principle of unity</u> <u>Principle of unity</u></b></p> <p style="text-align: center;"><i>Article 3</i></p> <p>1. The budget is the instrument which, <u>in a single document</u>, forecasts and authorises <u>all</u> the revenue and expenditure of the Communities each year.</p>	<p style="text-align: center;">Comments</p> <p style="text-align: right;"><i>Amendment made with a view to providing a complete definition of the principle of unity.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. The revenue and expenditure of the Communities shall comprise:</p> <p>(a) the revenue and expenditure of the European Community, including administrative expenditure for the common foreign and security policy and for cooperation in the field of justice and home affairs and the related operational expenditure where this may be charged to the budget;</p> <p>(b) the administrative expenditure of the European Coal and Steel Community and the related revenue;</p> <p>(c) the expenditure and revenue of the European Atomic Energy Community.</p> <p>3. The budget shall record the guarantee for borrowing and lending operations entered into by the Communities and payments to the Guarantee Fund for external actions, the operations of which are shown in the Commission's revenue and expenditure account and balance sheet.</p> <p style="text-align: center;"><i>Article 4</i></p>	<p>2. The revenue and expenditure of the Communities shall comprise:</p> <p>(a) the revenue and expenditure of the European Community, including administrative expenditure for the common foreign and security policy and for cooperation in the field of justice and home affairs and the related operational expenditure where this may be charged to the budget;</p> <p>(b) the administrative expenditure of the European Coal and Steel Community and the related revenue;</p> <p>(c) the expenditure and revenue of the European Atomic Energy Community.</p> <p>3. The budget shall record the guarantee for borrowing and lending operations entered into by the Communities and payments to the Guarantee Fund for external actions, the operations of which are shown in the Commission's revenue and expenditure account and balance sheet.</p> <p style="text-align: center;"><i>Article 4</i></p>	
<p>1. Subject to Article 69, no revenue shall be collected and no expenditure effected unless booked to an article in the budget.</p> <p>2. No expenditure may be committed or authorised in excess of the authorised appropriations.</p> <p style="text-align: center;">Chapter 2</p> <p style="text-align: center;"><b><i>Principle of annuality</i></b></p> <p style="text-align: center;"><i>Article 5</i></p>	<p>1. <del>Subject to Article 69, n</del>No revenue shall be collected and no expenditure effected unless booked to an article in the budget.</p> <p>2. No expenditure may be committed or authorised in excess of the authorised appropriations.</p> <p style="text-align: center;"><del>Chapter</del> <u>Section 2</u></p> <p style="text-align: center;"><b><i>Principle of annuality</i></b> <u>Principle of annuality</u></p> <p style="text-align: center;"><i>Article 5</i></p>	<p><i>The reference to Article 69 is superfluous, since Article 69 only determines when revenue for operations to which it refers is to be entered in the accounts.</i></p>
<p>The appropriations entered in the budget shall be authorised for one financial year.</p>	<p>The appropriations entered in the budget shall be authorised for one financial year, <u>which shall run from 1 January to 31 December.</u></p>	<p><i>Amendment made in order to provide immediately, from Article 5, a complete definition of the principle of annuality.</i></p> <p><i>Article 7(1) can be deleted as a result.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 6</i></p> <p>1. The budget shall contain differentiated appropriations, which shall consist of commitment appropriations and payment appropriations.</p> <p>Commitment appropriations shall cover the total cost of the legal obligations entered into for the current financial year.</p> <p>Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.</p> <p>2. Paragraph 1 is without prejudice to the special provisions of Titles I and VII of Part Two. It shall not prevent appropriations being committed globally nor budgetary commitments being made in annual instalments.</p> <p>Appropriations shall be shown in the budget as follows:</p> <p>(a) the commitment appropriation authorised for the financial year in question and the payment appropriation for the same financial year shall be entered on the appropriate budget line;</p> <p>(b) the estimated annual payment appropriations required for the subsequent financial years shall be set out against the commitment appropriations in an indicative schedule in the remarks column.</p>	<p style="text-align: center;"><i>Article 6</i></p> <p>1. <del>The budget shall contain appropriations entered in the budget shall be differentiated, which shall consist</del> of commitment appropriations and payment appropriations.</p> <p>2. Commitment appropriations shall cover the total cost of the <u>activities resulting from decisions taken</u> legal obligations entered into for in the current financial year <u>which are liable to give rise to a legal obligation in that year or in subsequent financial years.</u></p> <p>3. Payment appropriations shall cover payments <u>which, during the financial year, are</u> made to honour the legal commitments entered into in the current financial year and/or earlier financial years.</p> <p>2. <del>Paragraph 1 is without prejudice to the special provisions of Titles I and VII of Part Two. It shall not prevent appropriations being committed globally nor budgetary commitments being made in annual instalments.</del></p> <p>3. <del>Appropriations shall be shown in the budget as follows:</del></p> <p>(a) <del>the commitment appropriations authorised for the financial year in question and the payment appropriation for the same financial year shall be entered on the appropriate budget line;</del></p> <p>(b) <del>the estimated annual payment appropriations for the subsequent financial years shall be set out against the commitment appropriations in an indicative schedule in the remarks column.</del></p>	<p><i>Amendment needed in order to clarify the text.</i></p> <p><i>Amendment intended to bring out the two initial stages of an operation:</i></p> <p>— first, the financial decision,</p> <p>— second, the legal obligation vis-à-vis third parties.</p> <p><i>In certain cases, these stages are almost simultaneous.</i></p> <p><i>Amendment needed in order to clarify the text.</i></p> <p><i>The notion of commitment in annual instalments divests of all meaning the differentiation of appropriations, under which commitment appropriations are intended to provide a formal framework for authorisations to carry out multiannual operations (see Article 70(3)).</i></p> <p><i>To be deleted as this clause would fulfil the same function as Article 43(2), were it amended.</i></p>
<p style="text-align: center;"><i>Article 7</i></p> <p>1. The financial year shall run from 1 January to 31 December.</p> <p>2. The revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year. However, the own resources for the month of January of the next financial year may be paid in advance pursuant to the Council Regulation implementing the Decision on the system of the Communities' own resources.</p>	<p style="text-align: center;"><i>Article 7</i></p> <p>1. <del>The financial year shall run from 1 January to 31 December.</del></p> <p>2.1. The revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year. However, the own resources <del>for the month of January of the next financial year may be paid made available to the</del> <u>Communities in advance or in arrears, shall be charged to their year of reference, on the basis of the arrangements established in pursuant to</u> the Council Regulation implementing the Decision on the system of the Communities' own resources.</p>	<p><i>See amendment made to Article 5.</i></p> <p><i>Amendment intended to address the issue of charging to the financial year and to cover the occasional delays liable to arise in the payment of own resources.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>3. The entries in respect of value added tax own resources, the additional GNP-based resource and any financial contributions may be adjusted in accordance with the Regulation referred to in paragraph 2.</p> <p>4. The appropriations authorised for a given year may be used solely to cover expenditure committed and paid in that financial year, save as otherwise provided in Title I of Part Two, and to cover amounts due against commitments from preceding financial years.</p> <p>5. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December.</p> <p>6. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year at the latest.</p> <p>7. By way of derogation from paragraphs 5 and 6, the expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) shall be entered in the accounts for a financial year in accordance with the rules laid down in Title I of Part Two.</p>	<p><del>3.2.</del> The entries in respect of value added tax own resources, the additional GNP-based resource and any financial contributions may be adjusted in accordance with <u>the procedures established in the Regulation referred to in paragraph 2 1.</u></p> <p>4.3. The <u>commitment</u> appropriations authorised for a given year may be used solely to cover expenditure <del>committed and paid on which decisions are taken in that financial year, save as otherwise provided in Title I of Part Two, and to cover amounts due against commitments from preceding financial years and which give rise to a legal obligation in the current financial year or subsequent financial years.</del></p> <p>4. <u>The payment appropriations authorised for a given year may be used solely to cover sums expended in that financial year by reason of amounts due against legal obligations for that financial year or preceding financial years.</u></p> <p>5. <u>Budgetary</u> <del>Commitments</del> shall be entered in the accounts <u>for each financial year</u> on the basis of the <u>legal commitments entered into up to decisions taken between 1 January and 31 December (see Article 70).</u></p> <p>6. <u>Any legal commitments that arise between 1 January and 31 December shall be charged to the corresponding budgetary commitments.</u></p> <p><del>6.7.</del> Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer <u>by between 1 January and 31 December of that year at the latest.</u></p> <p><del>7. By way of derogation from paragraphs 5 and 6, the expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) shall be entered in the accounts for a financial year in accordance with the rules laid down in Title I of Part Two.</del></p>	<p><i>Text split into two paragraphs (commitment/payment).</i></p> <p><i>Text split into two paragraphs (budgetary commitment and registration of legal obligation) to make a clear distinction between the two separate stages constituted by the decision to carry out an operation (budgetary commitment) and the registration of the legal obligation (see Articles 70 and 71).</i></p> <p><i>Reversion to standard rules as regards the Guarantee Section of the EAGGF would render this clause superfluous (see Title I of Part Two).</i></p>
<p>Article 8</p>	<p>Article 8</p>	
<p>1. Commitment appropriations and payment appropriations which have not been used at the end of the financial year for which they were entered shall lapse.</p> <p>However, they may be carried over to the next financial year only, by a decision taken by the institution concerned by 15 February at the latest, in accordance with paragraphs 2 and 3.</p>	<p>1. Commitment appropriations and payment appropriations which have not been used at the end of the financial year for which they were entered shall lapse.</p> <p><del>However, they may be carried over to the next financial year only, by a decision taken by the institution concerned by 15 February at the latest, in accordance with paragraphs 2 and 3.</del></p>	<p><i>The rules relating to carry-overs of appropriations are superfluous in a system of differentiated appropriations, in that the commitments entered into may be covered by payment appropriations for subsequent financial years.</i></p> <p><i>Should there be a shortfall in payment appropriations in subsequent financial years, the flexibility that Article 21(2) would introduce into the rules on transfers should easily enable managers to cope with the obligations entered into. As a last resort, it would still be possible to request the appropriations in question by way of a supplementary budget.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. Commitment appropriations may be carried over in respect of:</p> <p>(a) amounts corresponding to commitments which have been virtually concluded at 31 December; or</p> <p>(b) amounts which are necessary when the legislative authority has adopted a basic instrument in the final quarter of the financial year and the Commission has been unable to commit the appropriations provided for this purpose in the budget by 31 December.</p> <p>The amounts referred to in the first subparagraph must be committed by 31 March of the following year.</p> <p>3. Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements. The institution concerned shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.</p> <p>4. The institution shall inform the European Parliament and the Council ('the budgetary authority') by 15 March at the latest of the carry-over decision taken and shall state, for each budget item, how the criteria in paragraphs 2 and 3 have been applied to each carry-over.</p> <p>5. Appropriations placed in reserve and appropriations for staff expenditure may not be carried over.</p>	<p><del>2. Commitment appropriations may be carried over in respect of:</del></p> <p><del>(a) amounts corresponding to commitments which have been virtually concluded at 31 December; or</del></p> <p><del>(b) amounts which are necessary when the legislative authority has adopted a basic instrument in the final quarter of the financial year and the Commission has been unable to commit the appropriations provided for this purpose in the budget by 31 December.</del></p> <p><del>The amounts referred to in the first subparagraph must be committed by 31 March of the following year.</del></p> <p>2. Commitment appropriations may be carried over in respect of:</p> <p>(a) amounts corresponding to commitments which have been virtually concluded at 31 December; or</p> <p>(b) amounts which are necessary when the legislative authority has adopted a basic instrument in the final quarter of the financial year and the Commission has been unable to commit the appropriations provided for this purpose in the budget by 31 December.</p> <p>The amounts referred to in the first subparagraph must be committed by 31 March of the following year.</p> <p>3. Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements. The institution concerned shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.</p> <p>4. The institution shall inform the European Parliament and the Council ('the budgetary authority') by 15 March at the latest of the carry-over decision taken and shall state, for each budget item, how the criteria in paragraphs 2 and 3 have been applied to each carry-over.</p> <p>5. Appropriations placed in reserve and appropriations for staff expenditure may not be carried over.</p>	
<p style="text-align: center;"><i>Article 9</i></p> <p>Revenue not used and appropriations available at 31 December arising from the earmarked revenue referred to in Article 17 shall be carried over automatically. Earmarked revenue must be used first.</p> <p style="text-align: center;"><i>Article 10</i></p>	<p style="text-align: center;"><i>Article 9</i></p> <p>Revenue not used and appropriations available at 31 December arising from the earmarked revenue referred to in Article 17 shall be carried over automatically. Earmarked revenue must be used first.</p> <p style="text-align: center;"><i>Article 10</i></p>	
<p>When commitments are cancelled, as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were entered in the budget, the appropriations concerned shall lapse.</p> <p>Any amounts which have been wrongly paid shall be recovered, subject to Title II of Part Two.</p>	<p>[When commitments are cancelled, as a result of total or partial non-implementation of the actions for which they the appropriations were <u>earmarked committed</u>, in any financial year after that in which the appropriations were entered in the budget, <u>this cannot result in appropriations being made available again the appropriations concerned shall lapse.</u>]</p> <p>Any amounts which have been wrongly paid shall be recovered, subject to Title II of Part Two.</p>	<p><i>This text is not really necessary, in that the practice it prohibits would not be authorised if the text did not exist. This clause was envisaged solely as a means of countering an irregular practice.</i></p> <p><i>This clause is not only self-evident, but also contains a reservation that is incomprehensible as things stand.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 11</i></p> <p>The appropriations entered in the budget may be committed with effect from 1 January, once the budget has been finally adopted, save as otherwise provided in Title I and Title VII of Part Two.</p>	<p style="text-align: center;"><i>Article 11</i></p> <p>The appropriations entered in the budget may be committed with effect from 1 January, once the budget has been finally adopted, save as otherwise provided in Title I and Title VII of Part Two.</p>	<p><i>The derogation envisaged is unnecessary in a system of differentiated appropriations, provided that a sufficient volume of commitment appropriations is allocated in the first year of application of the new system.</i></p>
<p style="text-align: center;"><i>Article 12</i></p> <p>1. If the budget has not been finally adopted at the beginning of the financial year, Article 273 of the EC Treaty, Article 78b of the ECSC Treaty, and Article 178 of the Euratom Treaty shall apply to commitment and payment of expenditure approved in principle in the last budget duly adopted.</p> <p>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 line for the financial year concerned.</p> <p>2. Commitments may be entered into in respect of any chapter, for up to one quarter of the total appropriations authorised for the relevant chapter in the preceding financial year, account being taken of all transfers, plus one twelfth for each completed month.</p> <p>The commitments may not exceed the appropriations provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.</p> <p>The global provisional commitments of the Guarantee Section of the EAGGF referred to in Title I of Part Two shall be treated as commitments for the purposes of the first subparagraph.</p> <p>3. Payments may be made monthly in respect of any chapter up to one twelfth of the total appropriations authorised for the relevant chapter in the preceding financial year, account being taken of all transfers.</p> <p>The measure provided for in the first subparagraph may not have the effect of placing at the disposal of the Commission, for any month, appropriations in excess of one twelfth of those provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.</p>	<p style="text-align: center;"><i>Article 12</i></p> <p><del>1. If the budget has not been finally adopted at the beginning of the financial year, Article 273 of the EC Treaty, Article 78b of the ECSC Treaty, and Article 178 of the Euratom Treaty shall apply to commitment and payment of expenditure approved in principle in the last budget duly adopted.</del></p> <p><del>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 line for the financial year concerned.</del></p> <p><del>2. Commitments may be entered into in respect of any chapter, for up to one quarter of the total appropriations authorised for the relevant chapter in the preceding financial year, account being taken of all transfers, plus one twelfth for each completed month.</del></p> <p><del>The commitments may not exceed the appropriations provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.</del></p> <p><del>The global provisional commitments of the Guarantee Section of the EAGGF referred to in Title I of Part Two shall be treated as commitments for the purposes of the first subparagraph.</del></p> <p><del>3. Payments may be made monthly in respect of any chapter up to one twelfth of the total appropriations authorised for the relevant chapter in the preceding financial year, account being taken of all transfers.</del></p> <p><del>The measure provided for in the first subparagraph may not have the effect of placing at the disposal of the Commission, for any month, appropriations in excess of one twelfth of those provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.</del></p>	<p><i>Text moved to Article 33a since it essentially concerns the procedure for adopting the budget.</i></p>



Commission's proposal	Court's modified proposal	Comments
<p>4. If the continuity of Community activities and management needs so require:</p> <p>(a) for expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council acting by a qualified majority may, at the request of the Commission and after consulting the European Parliament, authorise simultaneously two or more provisional twelfths for both commitments and payments in addition to those automatically made available under paragraph 2;</p> <p>(b) for expenditure other than that necessarily resulting from the Treaties, or from acts adopted in accordance therewith, the third paragraph of Article 273 of the EC Treaty, the second subparagraph of Article 78b(2) of the ECSC Treaty, and the third paragraph of Article 178 of the Euratom Treaty shall apply.</p> <p>The additional twelfths shall be authorised in whole.</p> <p>The annual total authorised for each chapter by reason of the twelfths may not exceed the total for the corresponding chapter of the preceding year's budget, account being taken of transfers, nor may it exceed the total for the corresponding chapter of the draft budget or, in the absence thereof, the preliminary draft budget.</p> <p>5. If, for a given chapter, the authorisation of two or more provisional twelfths granted in the circumstances provided for in paragraph 4 is not sufficient to cover the expenditure necessary to avoid a break in continuity of the Communities' activity in the area in question, authorisation may exceptionally be given by the procedures provided for in the first subparagraph of paragraph 4 to exceed the total provided for in the third subparagraph of paragraph 4. In this case the overall total of the appropriations available in the budget of the preceding year may not be exceeded.</p>	<p>4. If the continuity of Community activities and management needs so require:</p> <p>(a) for expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council acting by a qualified majority may, at the request of the Commission and after consulting the European Parliament, authorise simultaneously two or more provisional twelfths for both commitments and payments in addition to those automatically made available under paragraph 2;</p> <p>(b) for expenditure other than that necessarily resulting from the Treaties, or from acts adopted in accordance therewith, the third paragraph of Article 273 of the EC Treaty, the second subparagraph of Article 78b(2) of the ECSC Treaty, and the third paragraph of Article 178 of the Euratom Treaty shall apply.</p> <p>The additional twelfths shall be authorised in whole.</p> <p>The annual total authorised for each chapter by reason of the twelfths may not exceed the total for the corresponding chapter of the preceding year's budget, account being taken of transfers, nor may it exceed the total for the corresponding chapter of the draft budget or, in the absence thereof, the preliminary draft budget.</p> <p>5. If, for a given chapter, the authorisation of two or more provisional twelfths granted in the circumstances provided for in paragraph 4 is not sufficient to cover the expenditure necessary to avoid a break in continuity of the Communities' activity in the area in question, authorisation may exceptionally be given by the procedures provided for in the first subparagraph of paragraph 4 to exceed the total provided for in the third subparagraph of paragraph 4. In this case the overall total of the appropriations available in the budget of the preceding year may not be exceeded.</p>	
<p>Chapter 3</p> <p><b>Principle of equilibrium</b></p> <p>Article 13</p> <p>1. Budget revenue and payment appropriations must be in balance.</p> <p>2. The Communities may not raise loans to cover a budget deficit. They are, however, authorised to raise loans for the sole purpose of investments in immovable assets.</p>	<p>Chapter <del>Section</del> 3</p> <p><b>Principle of equilibrium Principle of equilibrium</b></p> <p>Article 13</p> <p>1. Budget revenue and payment appropriations must be in balance.</p> <p>2. The Communities may not raise loans to cover a budget deficit. They are, however, authorised to raise loans for the sole purpose of investments in immovable assets.</p>	

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 14</i></p> <p>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 payment appropriation in the case of a deficit.</p> <p>The estimates of such revenue or payment appropriations shall be entered in the budget during the budget procedure and, where appropriate, in a letter of amendment submitted pursuant to Article 31. They shall be drawn up in accordance with the Council Regulation implementing the Decision on the system of the Communities' own resources.</p> <p>After the presentation of the accounts for each financial year, any discrepancy with the estimates shall be entered in the budget for the following financial year through an amending budget.</p> <p style="text-align: center;">Chapter 4</p> <p style="text-align: center;"><b><i>Principle of unit of account</i></b></p> <p style="text-align: center;"><i>Article 15</i></p> <p>The budget shall be drawn up in euro.</p> <p style="text-align: center;">Chapter 5</p> <p style="text-align: center;"><b><i>Principle of universality</i></b></p> <p style="text-align: center;"><i>Article 16</i></p> <p>1. Total revenue shall cover total payment appropriations, subject to Article 17.</p> <p>2. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to Article 18.</p>	<p style="text-align: center;"><i>Article 14</i></p> <p>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 a <u>commitment and</u> payment appropriation in the case of a deficit.</p> <p>The estimates of such revenue or <del>payment</del> appropriations shall be entered in the budget during the budget procedure and, where appropriate, in a letter of amendment submitted pursuant to Article 31. They shall be drawn up in accordance with the Council Regulation implementing the Decision on the system of the Communities' own resources.</p> <p>After the presentation of the accounts for each financial year, any discrepancy with the estimates shall be entered in the budget for the following financial year through an amending budget.</p> <p style="text-align: center;"><del>Chapter</del> <u>Section 4</u></p> <p style="text-align: center;"><b><i>Principle of unit of account Principle of currency unit</i></b></p> <p style="text-align: center;"><i>Article 15</i></p> <p>The budget shall be drawn up <u>and implemented in euro, and the budgetary accounts presented</u> in euro.</p> <p style="text-align: center;"><del>Chapter</del> <u>Section 5</u></p> <p style="text-align: center;"><b><i>Principle of universality Principle of universality</i></b></p> <p style="text-align: center;"><i>Article 16</i></p> <p>1. Total revenue shall cover total payment appropriations, subject to Article 17.</p> <p>2. All revenue and expenditure shall be entered in full without any adjustment against each other, <del>subject to Article 18.</del></p>	<p>The fact that the principle concerning the currency unit also stipulates that the budget should be implemented in euro is essential to establishing the principle of management being conducted in euro. Commitments, in principle contracts, as well as payments are denominated in euro. This reflects the constant efforts that have been made by all the Community institutions over the past 10 years, which should eventually enable the main burden of exchange risks to be transferred to third parties.</p> <p>The objectives targeted by the derogation in Article 18 are not indispensable and can be achieved by means of the standard mechanisms for the adoption and implementation of the budget (see above).</p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 17</i></p> <p>1. Revenue in the following categories provided for in this Regulation shall not be used for any other purpose:</p> <p>(a) financial contributions from Member States to certain research programmes pursuant to the Council Regulation implementing the Decision on the system of the Communities' own resources;</p> <p>(b) interest on deposits and the fines provided for in the Regulation on speeding up and clarifying the implementation of the excessive deficit procedure;</p> <p>(c) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;</p> <p>(d) contributions to Community activities from third countries or various bodies;</p> <p>(e) revenue from third parties in respect of goods, services or work supplied at their request;</p> <p>(f) revenue arising from the repayment of amounts unduly paid;</p> <p>(g) proceeds from the supply of goods, services and works for other institutions or bodies, including refunds by other institutions or bodies of mission allowances paid on their behalf;</p> <p>(h) insurance payments received;</p> <p>(i) revenue from payments connected with lettings;</p> <p>(j) revenue from the sale of publications and films, including those on an electronic medium.</p> <p>Revenue which is earmarked for a specific purpose in accordance with the applicable legal basis shall also not be used for any other purpose</p> <p>The budget shall carry items to accommodate the categories of revenue referred to in the first and second subparagraphs and, wherever possible, an estimated amount shall be entered.</p>	<p style="text-align: center;"><i>Article 17</i></p> <p>1. Revenue in the following categories provided for in this Regulation shall not be used for <u>any purpose other than the financing of certain specific items of expenditure</u>:</p> <p>(a) financial contributions from Member States to certain research programmes pursuant to the Council Regulation implementing the Decision on the system of the Communities' own resources;</p> <p>(b) interest on deposits and the fines provided for in the Regulation on speeding up and clarifying the implementation of the excessive deficit procedure;</p> <p>(c) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;</p> <p>(d) contributions to Community activities from third countries or various bodies;</p> <p>(e) revenue from third parties in respect of goods, services or work supplied at their request;</p> <p><del>(f) revenue arising from the repayment of amounts unduly paid;</del></p> <p>(g) proceeds from the supply of goods, services and works for other institutions or bodies, including refunds by other institutions or bodies of mission allowances paid on their behalf;</p> <p>(h) insurance payments received;</p> <p><del>(i) revenue from payments connected with lettings;</del></p> <p><del>(j) revenue from the sale of publications and films, including those on an electronic medium.</del></p> <p>Revenue which is earmarked for a specific purpose <del>in accordance with</del> <u>and whose collection is dependent on this earmarking the applicable legal basis shall also not be used for any other purpose, provided that this is stipulated in the applicable legal basis.</u></p> <p>The budget shall <u>also</u> carry items to accommodate the categories of revenue referred to in the first and second subparagraphs and, wherever possible, an estimated amount shall be entered.</p>	<p><i>Some of the objectives targeted by this derogation are not indispensable and can be achieved by means of the standard mechanisms for the adoption and implementation of the budget (entry in the budget of operations in general, transfers on the basis of a more flexible procedure if the Commission's proposals are accepted (see Articles 20 and 21), constitution and utilisation of ad hoc or contingency reserves, and even, as a last resort, supplementary budgets, etc.).</i></p> <p><i>Provision should be made for processing this marginal revenue on the basis of general provisions (see paragraph 1 above).</i></p> <p><i>Provision should be made for processing this marginal revenue on the basis of general provisions (see paragraph 1 above).</i></p> <p><i>Provision should be made for processing this marginal revenue on the basis of general provisions (see paragraph 1 above).</i></p> <p><i>Use of the earmarked revenue mechanism must be strictly limited to those cases where it cannot be avoided.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. The Commission may accept any donation made to the Communities, such as foundations, subsidies, gifts and bequests.</p> <p>The Commission may accept donations which may involve some financial charge only with prior authorisation from the European Parliament and the Council, which shall act on the matter within two months of the date of receipt of the request from the Commission. If no objection has been made within that period, the Commission shall take a final decision in respect of acceptance.</p> <p style="text-align: center;"><i>Article 18</i></p> <p>1. The rules for the implementation of this Regulation (hereinafter: 'the implementing rules') may specify the cases where certain revenue may be deducted from invoices or requests for payment, which shall then be passed for payment of the net amount.</p> <p>2. The cost of products or services provided to the Communities incorporating taxes refunded by the Member States pursuant to the Protocol on the Privileges and Immunities of the European Communities shall be charged net to the budget.</p> <p>3. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the year.</p> <p style="text-align: center;">Chapter 6</p> <p style="text-align: center;"><b><i>Principle of specification</i></b></p> <p style="text-align: center;"><i>Article 19</i></p> <p>Appropriations shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.</p> <p style="text-align: center;"><i>Article 20</i></p> <p>1. Subject to the arrangements set out for the Commission, each institution may, within its own section of the budget, propose to the budgetary authority transfers they have made from one title to another.</p> <p>Proposals made by the other institutions for transfers from one title to another shall be forwarded by the Commission to the budgetary authority for its decision. The Commission may attach its own opinion to such proposals.</p>	<p>2. The Commission may accept any donation made to the Communities, such as foundations, subsidies, gifts and bequests.</p> <p><del>2.3.</del> The Commission may accept donations which may involve some financial charge only with prior authorisation from the European Parliament and the Council, which shall act on the matter within two months of the date of receipt of the request from the Commission. If no objection has been made within that period, the Commission shall take a final decision in respect of acceptance. <u>The Commission shall take account of any charges incurred when preparing the budget for subsequent financial years.</u></p> <p style="text-align: center;"><i>Article 18</i></p> <p>1. The rules for the implementation of this Regulation (hereinafter: 'the implementing rules') may specify the cases where certain revenue may be deducted from invoices or requests for payment, which shall then be passed for payment of the net amount.</p> <p>2. The cost of products or services provided to the Communities incorporating taxes refunded by the Member States pursuant to the Protocol on the Privileges and Immunities of the European Communities shall be charged <del>net</del> to the budget at <u>their ex-tax total. Any taxes that may be incurred at that time shall be entered in a suspense account until they are repaid by the Member States.</u></p> <p>3. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the year.</p> <p style="text-align: center;"><del>Chapter</del> <u>Section 6</u></p> <p style="text-align: center;"><b><u>Principle of specification</u></b> <b><u>Principle of specification</u></b></p> <p style="text-align: center;"><i>Article 19</i></p> <p>Appropriations shall be earmarked for specific purposes by <u>section</u>, and if necessary by <u>sub-section</u>, title, <del>and chapter and article</del>; <u>the articles shall if necessary be further subdivided into items and sub-items. The chapters shall be further subdivided into articles and items.</u></p> <p style="text-align: center;"><i>Article 20</i></p> <p>1. <del>Subject to the arrangements set out for the Commission,</del> <u>Each institution apart from the Commission</u> may, within its own section of the budget, propose transfers from one title to another to the budgetary authority.</p> <p>Proposals made by the other institutions for transfers from one title to another shall be forwarded by the Commission to the budgetary authority for its decision. The Commission may attach its own opinion to such proposals.</p>	<p><i>This does not constitute a derogation (entry in the accounts at net value), but solely charging of the sum that has still to be met from the Community budget (ex-tax total).</i></p> <p><i>Entering the sum in a suspense account will oblige the manager to ensure that the tax cost is recovered.</i></p> <p><i>It is proposed that budgetary specification be restricted to article level.</i></p> <p><i>Amendment suggested to clarify the text.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. Subject to the arrangements set out for the Commission, each institution may, within its own section of the budget, transfer appropriations from one chapter to another and from one article to another. These institutions shall inform the budgetary authority and the Commission of the transfers they have made.</p> <p style="text-align: center;"><i>Article 21</i></p> <p>1. The Commission may, within its own section of the budget:</p> <p>(a) transfer appropriations from one article to another within each chapter;</p> <p>(b) as regards expenditure on staff and administration, transfer appropriations from one title to another provided that the appropriations are entered under the same heading;</p> <p>(c) as regards operational expenditure, transfer appropriations between chapters within the same title, up to a maximum of 10 % of the initial appropriations on the line from which the transfer is made.</p> <p>The Commission shall inform the budgetary authority of the transfers it has made under points (b) and (c) of the first subparagraph.</p> <p>2. The Commission may propose to the budgetary authority, within its own section of the budget, transfers other than those referred to in paragraph 1.</p>	<p><del>2. Subject to the arrangements set out for the Commission, e</del>Each institution <del>apart from the</del> Commission may, within its own section of the budget, transfer appropriations from one chapter to another, <u>within the same title</u>, and from one article to another, <u>within the same chapter</u>. These institutions shall inform the budgetary authority and the Commission of the transfers they have made.</p> <p style="text-align: center;"><i>Article 21</i></p> <p>1. The Commission may, within its own section of the budget:</p> <p>(a) transfer appropriations from one article to another within each chapter;</p> <p>(b) as regards expenditure on staff and administration, transfer appropriations from one title to another provided that <del>the appropriations are entered under the same heading</del> <u>it does not alter the apportionment between staff appropriations and other administrative appropriations</u>;</p> <p>(c) as regards operational expenditure, transfer appropriations between chapters within the same title, up to a maximum of 10 % of the initial appropriations on the line from which the transfer is made.</p> <p>The Commission shall inform the budgetary authority of the transfers it has made under points (b) and (c) of the first subparagraph.</p> <p>2. The Commission may propose to the budgetary authority, within its own section of the budget, transfers other than those referred to in paragraph 1.</p>	<p><i>Amendment suggested to clarify the text.</i></p> <p><i>Amendment suggested to clarify the notion of 'appropriations entered under the same heading'.</i></p>
<p style="text-align: center;"><i>Article 22</i></p> <p>1. The budgetary authority shall decide on transfers of appropriations in accordance with paragraphs 2, 3 and 4 of this Article, subject to the derogations laid down in Title I of Part Two.</p> <p>2. In the case of proposals for transfers of appropriations relating to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council shall, after consulting the European Parliament, act by a qualified majority within six weeks, except in urgent cases. The European Parliament shall deliver its opinion within such time as will permit the Council to take note of it and to act within the stipulated time limit. Where the Council does not act within this time limit, the proposals for transfers shall be deemed to be approved.</p> <p>3. In the case of proposals for transfers relating to expenditure other than that necessarily resulting from the Treaties or from acts adopted in accordance therewith, the European Parliament shall, after consulting the Council, act within six weeks, except in urgent cases. The Council shall deliver its opinion, by a qualified majority, within such time as will permit the European Parliament to take note of it and to act within the stipulated time limit. Where the European Parliament does not act within this time limit, the proposals for transfers shall be deemed to be approved.</p>	<p style="text-align: center;"><i>Article 22</i></p> <p>1. The budgetary authority shall decide on transfers of appropriations in accordance with paragraphs 2, 3 and 4 of this Article, subject to the derogations laid down in Title I of Part Two.</p> <p>2. In the case of proposals for transfers of appropriations relating to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council shall, after consulting the European Parliament, act by a qualified majority within six weeks, except in urgent cases. The European Parliament shall deliver its opinion within such time as will permit the Council to take note of it and to act within the stipulated time limit. Where the Council does not act within this time limit, the proposals for transfers shall be deemed to be approved.</p> <p>3. In the case of proposals for transfers relating to expenditure other than that necessarily resulting from the Treaties or from acts adopted in accordance therewith, the European Parliament shall, after consulting the Council, act within six weeks, except in urgent cases. The Council shall deliver its opinion, by a qualified majority, within such time as will permit the European Parliament to take note of it and to act within the stipulated time limit. Where the European Parliament does not act within this time limit, the proposals for transfers shall be deemed to be approved.</p>	

Commission's proposal	Court's modified proposal	Comments
<p>4. Proposals for transfers relating both to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, and to other expenditure shall be deemed to be approved if neither the European Parliament nor the Council has decided otherwise within six weeks of the date on which the two institutions received the proposals. If, in the case of such proposals for transfers, the European Parliament and the Council reduce the proposed transfer by different amounts, whichever is the smaller of the amounts accepted by one of the two institutions shall be deemed to be approved. Where one of the institutions rejects the principle of the transfer, the transfer shall not be made.</p> <p style="text-align: center;"><i>Article 23</i></p> <p>1. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry (p.m.).</p> <p>2. Revenue earmarked for a specific purpose may be transferred only if it is not used for any other purpose.</p> <p style="text-align: center;"><i>Article 24</i></p> <p>1. Transfers within the titles of the budget devoted to the EAGGF, Guarantee Section, the Structural Funds and research shall be the subject of special provisions under Titles I, II and III of Part Two.</p> <p>2. Decisions on transfers to allow the utilisation of the reserve relating to Community loans and loan guarantees to third countries and the reserve for emergency aid shall be taken by the budgetary authority on a proposal from the Commission.</p> <p>The procedure provided for by Article 22 shall apply. However, if the European Parliament and the Council are unable to agree on an amount different from what the Commission has proposed or if they fail to act, the Commission's proposal for a transfer shall be deemed to be approved.</p>	<p>4. Proposals for transfers relating both to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, and to other expenditure shall be deemed to be approved if neither the European Parliament nor the Council has decided otherwise within six weeks of the date on which the two institutions received the proposals. If, in the case of such proposals for transfers, the European Parliament and the Council reduce the proposed transfer by different amounts, whichever is the smaller of the amounts accepted by one of the two institutions shall be deemed to be approved. Where one of the institutions rejects the principle of the transfer, the transfer shall not be made.</p> <p style="text-align: center;"><i>Article 23</i></p> <p>1. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry (p.m.).</p> <p>2. Revenue earmarked for a specific purposes may be transferred only if it is not used for another purpose.</p> <p style="text-align: center;"><i>Article 24</i></p> <p><del>1. Transfers within the titles of the budget devoted to the EAGGF, Guarantee Section, the Structural Funds and research shall be the subject of special provisions under Titles I, II and III of Part Two.</del></p> <p><del>2. Decisions on transfers to allow the utilisation of the reserve relating to Community loans and loan guarantees to third countries and the reserve for emergency aid shall be taken by the budgetary authority on a proposal from the Commission.</del></p> <p>The procedure provided for by Article 22 shall apply. However, if the European Parliament and the Council are unable to agree on an amount different from <u>what the one indicated in the Commission's proposal has proposed</u> or if they fail to act, the Commission's proposal for a transfer shall be deemed to be approved.</p>	

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">Chapter 7</p> <p style="text-align: center;"><b>Principle of sound financial management</b></p> <p style="text-align: center;">Article 25</p> <p>1. Budget appropriations shall be used in accordance with the principle of sound financial management, that is to say, in accordance with the principles of economy, efficiency and effectiveness.</p> <p>2. Objectives which can be checked by means of measurable indicators shall be set and achievement of these objectives shall be monitored.</p> <p>3. In order to apply the principle of sound financial management, the institutions shall evaluate actions regularly.</p> <p style="text-align: center;">Article 26</p> <p>During the budgetary procedure, the Commission shall provide the necessary information for a comparison between changes in the appropriations required and the initial forecasts made in the financial statements accompanying all proposals sent to the legislative authority which may have a budgetary impact.</p>	<p style="text-align: center;"><del>Chapter</del> <u>Section 7</u></p> <p style="text-align: center;"><del><b>Principle of sound financial management</b></del> <u><b>Principle of sound financial management</b></u></p> <p style="text-align: center;">Article 25</p> <p>1. Budget appropriations shall be used in accordance with the principle of sound financial management, that is to say, in accordance with the principles of economy, efficiency and effectiveness.</p> <p><u>2. In accordance with the principle of economy, the resources used by the organisation to produce goods and/or services must be available in due time, in appropriate quantity and quality, at the best price.</u></p> <p><u>3. In accordance with the principle of efficiency, the goods and services needed to achieve the organisation's objectives must be produced at an optimum input-output ratio.</u></p> <p><u>4. In accordance with the principle of effectiveness, the given objectives must be achieved, thereby maximising the desired effects of the policy being pursued.</u></p> <p>2.5. Objectives which can be checked by means of measurable indicators shall be set and achievement of these objectives shall be monitored.</p> <p><del>3</del>6. In order to apply the principle of sound financial management, the institutions shall evaluate <u>their</u> actions regularly. <u>The results of these evaluations shall be incorporated in the analysis of the financial management mentioned in Article 115(6).</u></p> <p style="text-align: center;">Article 26</p> <p>During the budgetary procedure, the Commission shall provide the necessary information for a comparison between changes in the appropriations required and the initial forecasts made in the financial statements accompanying all proposals sent to the legislative authority which may have a budgetary impact.</p>	
<p style="text-align: center;">Chapter 8</p> <p style="text-align: center;"><b>Principle of transparency</b></p> <p style="text-align: center;">Article 27</p> <p>1. The budget shall be drawn up and implemented and the accounts presented in compliance with the principle of transparency.</p> <p>2. The President of the European Parliament shall have the budget and amending budgets, as finally adopted, published in the <i>Official Journal of the European Communities</i>.</p>	<p style="text-align: center;"><del>Chapter</del> <u>Section 8</u></p> <p style="text-align: center;"><del><b>Principle of transparency</b></del> <u><b>Principle of transparency</b></u></p> <p style="text-align: center;">Article 27</p> <p>1. The budget shall be drawn up and implemented and the accounts presented in compliance with the principle of transparency.</p> <p>2. The President of the European Parliament shall have the budget and amending budgets, as finally adopted, published in the <i>Official Journal of the European Communities</i>.</p>	

Commission's proposal	Court's modified proposal	Comments
<p>The budget shall be published within two months following the date on which the budget is declared finally adopted.</p> <p>3. The consolidated revenue and expenditure account and balance sheet shall be published in the <i>Official Journal of the European Communities</i>.</p> <p style="text-align: center;"><i>Article 28</i></p> <p>1. Information on borrowing and lending operations contracted by the Communities shall appear in an Annex to the budget.</p> <p>2. Information on the operations of the Guarantee Fund for external actions shall appear in the revenue and expenditure account and the balance sheet.</p> <p style="text-align: center;">TITLE II</p> <p style="text-align: center;"><b>ESTABLISHMENT AND STRUCTURE OF THE BUDGET</b></p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b><i>Establishment of the budget</i></b></p> <p style="text-align: center;"><i>Article 29</i></p> <p>The European Parliament, the Council, the Court of Justice of the European Communities, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the Ombudsman shall draw up an estimate of their revenue and expenditure which they shall send to the Commission before 1 July each year.</p> <p>These estimates shall be forwarded for information to the budgetary authority before 1 July each year.</p> <p style="text-align: center;"><i>Article 30</i></p> <p>1. The Commission shall place a preliminary draft budget before the Council by 1 September of each year at the latest. It shall at the same time transmit the preliminary draft budget to the European Parliament.</p> <p>The preliminary draft budget shall contain a general statement of revenue of the Communities and consolidate the estimates referred to in Article 29.</p>	<p>The budget shall be published within two months following the date on which the budget is declared finally adopted.</p> <p>3. The consolidated <u>financial statements revenue and expenditure account and balance sheet</u> shall be published in the <i>Official Journal of the European Communities</i>. <u>The financial management reports and analyses drawn up by each institution shall also be published in the <i>Official Journal of the European Communities</i>.</u></p> <p style="text-align: center;"><i>Article 28</i></p> <p>1. Information on borrowing and lending operations contracted by the Communities shall appear in an Annex to the budget.</p> <p>2. Information on the operations of the Guarantee Fund for external actions shall appear in the <u>financial statements revenue and expenditure account and the balance sheet</u>.</p> <p style="text-align: center;">TITLE II</p> <p style="text-align: center;"><b>ESTABLISHMENT AND STRUCTURE OF THE BUDGET</b></p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b><i>Establishment of the budget</i></b></p> <p style="text-align: center;"><i>Article 29</i></p> <p>The European Parliament, the Council, the Court of Justice of the European Communities, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the Ombudsman shall draw up an estimate of their revenue and expenditure which they shall send to the Commission <u>and, for information, to the budgetary authority</u> before 1 July each year.</p> <p><u>These estimates shall be forwarded for information to the budgetary authority before 1 July each year. The Commission shall draw up its own estimates, which it shall also forward to the budgetary authority before 1 July each year.</u></p> <p style="text-align: center;"><i>Article 30</i></p> <p>1. The Commission shall place a preliminary draft budget before the Council by 1 September of each year at the latest. It shall at the same time transmit the preliminary draft budget to the European Parliament.</p> <p>The preliminary draft budget shall contain a general statement of revenue of the Communities and consolidate the estimates referred to in Article 29.</p>	<p><i>It is essential that the institutions also report on the tangible implementation of their management in terms of what they have actually achieved.</i></p> <p><i>The text is incomplete in that the Commission is not mentioned in connection with the procedure for informing the budgetary authority.</i></p>



Commission's proposal	Court's modified proposal	Comments
<p>2. The Commission shall attach to the preliminary draft budget:</p> <p>(a) the analysis of the financial management for the preceding financial year and the provisional consolidated balance sheet for the same financial year, as provided for in Article 115;</p> <p>(b) an opinion on the estimates of the other institutions. This opinion may contain different estimates, accompanied by the reasons therefore;</p> <p>(c) any working paper it considers useful in connection with the staff of the institutions and the grants they award.</p> <p>3. The Commission shall draw up the general introduction to the preliminary draft budget.</p> <p>4. Each of the sections of the preliminary draft budget shall be preceded by an introduction produced by the institution concerned.</p>	<p>2. The Commission shall attach to the preliminary draft budget:</p> <p>(a) the analysis of the financial management for the preceding financial year and the provisional consolidated balance sheet for the same financial year, as provided for in Article 115;</p> <p>(b) an opinion on the estimates of the other institutions. This opinion may contain different estimates, accompanied by the reasons therefore;</p> <p>(c) any working paper it considers useful in connection with the staff of the institutions and the grants they award.</p> <p>3. The Commission shall draw up the general introduction to the preliminary draft budget.</p> <p>4. Each of the sections of the preliminary draft budget shall be preceded by an introduction produced by the institution concerned.</p>	
<p style="text-align: center;"><i>Article 31</i></p> <p>1. The Commission may, on its own initiative or if requested by the other institutions, each in respect of its own section, present to the Council a letter of amendment to the preliminary draft budget on the basis of new information which was not available at the time the preliminary draft was established.</p> <p>2. However, save as otherwise agreed by the institutions or in exceptional circumstances, the Commission shall put such letter of amendment to the Council at least 30 days before the first reading of the draft budget by the European Parliament. The Council must put the letter of amendment to the European Parliament at least 15 days before the said first reading.</p>	<p style="text-align: center;"><i>Article 31</i></p> <p>1. The Commission may, on its own initiative or if requested by the other institutions, each in respect of its own section, present to the Council a letter of amendment to the preliminary draft budget on the basis of new information which was not available at the time the preliminary draft was established.</p> <p>2. <del>However, save as otherwise agreed by the institutions or in exceptional circumstances,</del>†The Commission shall put such letter of amendment to the Council at least 30 days before the first reading of the draft budget by the European Parliament.†<del>and the</del> Council must put the letter of amendment to the European Parliament at least 15 days before the said first reading.</p>	<p><i>The text proposed for deletion could be viewed as an invitation to negotiations on a procedure. Deleting the text would still allow for the possibility of exceeding the deadline agreed by the institutions concerned.</i></p>
<p style="text-align: center;"><i>Article 32</i></p> <p>1. The Council shall establish the draft budget in accordance with the procedure laid down in Article 272 of the EC Treaty, Article 78 of the ECSC Treaty and Article 177 of the Euratom Treaty.</p> <p>2. The Council shall place the draft budget before the European Parliament by 5 October at the latest. The Council shall attach to that draft budget an explanatory memorandum defining, where appropriate, its reasons for departing from the preliminary draft budget.</p>	<p style="text-align: center;"><i>Article 32</i></p> <p>1. The Council shall establish the draft budget in accordance with the procedure laid down in Article 272 of the EC Treaty, Article 78 of the ECSC Treaty and Article 177 of the Euratom Treaty.</p> <p>2. The Council shall place the draft budget before the European Parliament by 5 October at the latest. The Council shall attach to that draft budget an explanatory memorandum defining, where appropriate, its reasons for departing from the preliminary draft budget.</p>	
<p style="text-align: center;"><i>Article 33</i></p> <p>1. The President of the European Parliament shall declare the budget finally adopted in accordance with the procedure provided for in Article 272 of the EC Treaty, Article 78 of the ECSC Treaty and Article 177 of the Euratom Treaty.</p> <p>2. Once the budget has been declared finally adopted, each Member State shall, from 1 January of the following financial year or from the date of the formal declaration if it is made after 1 January, be bound to make over to the Community the payments due as specified in the Council Regulation implementing the Decision on the system of the Communities' own resources.</p>	<p style="text-align: center;"><i>Article 33</i></p> <p>1. The President of the European Parliament shall declare the budget finally adopted in accordance with the procedure provided for in Article 272 of the EC Treaty, Article 78 of the ECSC Treaty and Article 177 of the Euratom Treaty.</p> <p>2. Once the budget has been declared finally adopted, each Member State shall, from 1 January of the following financial year or from the date of the formal declaration if it is made after 1 January, be bound to make over to the Community the payments due as specified in the Council Regulation implementing the Decision on the system of the Communities' own resources.</p>	

Commission's proposal	Court's modified proposal	Comments
<p>1. If the budget has not been finally adopted at the beginning of the financial year, Article 273 of the EC Treaty, Article 78b of the ECSC Treaty, and Article 178 of the Euratom Treaty shall apply to commitment and payment of expenditure approved in principle in the last budget duly adopted.</p> <p>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 line for the financial year concerned.</p> <p>2. Commitments may be entered into in respect of any chapter, for up to one quarter of the total appropriations authorised for the relevant chapter in the preceding financial year, account being taken of all transfers, plus one twelfth for each completed month.</p> <p>The commitments may not exceed the appropriations provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.</p> <p>The global provisional commitments of the Guarantee Section of the EAGGF referred to in Title I of Part Two shall be treated as commitments for the purposes of the first subparagraph.</p> <p>3. Payments may be made monthly in respect of any chapter up to one twelfth of the total appropriations authorised for the relevant chapter in the preceding financial year, account being taken of all transfers.</p>	<p style="text-align: center;"><u>Article 33a</u></p> <p>1. If the budget has not been finally adopted at the beginning of the financial year, Article 273 of the EC Treaty, Article 78b of the ECSC Treaty, and Article 178 of the Euratom Treaty shall apply to commitment and payment of expenditure approved in principle in the last budget duly adopted.</p> <p>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 line for the financial year concerned.</p> <p>2. Commitments may be entered into in respect of any chapter, for up to one quarter of the total appropriations authorised for the relevant chapter in the preceding financial year, account being taken of all transfers, plus one twelfth for each completed month, <u>provided these remain within the annual limits established in paragraph 5.</u></p> <p><del>The commitments may not exceed the appropriations provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.</del></p> <p><del>The global provisional commitments of the Guarantee Section of the EAGGF referred to in Title I of Part Two shall be treated as commitments for the purposes of the first subparagraph.</del></p> <p>3. Payments may be made monthly in respect of any chapter up to one twelfth of the total appropriations authorised for the relevant chapter in the preceding financial year, account being taken of all transfers, <u>provided these remain within the annual limits established in paragraph 5.</u></p>	<p><i>The Commission is invited to simplify this management procedure on the basis of the provisional twelfths system. The Court presents the following suggestions.</i></p> <p><i>It is suggested that the mechanism for the system of management by twelfths be simplified by only taking into account, in the definition of those twelfths, the appropriations for the preceding financial year. This will provide a straightforward and consistent point of reference, while still maintaining an overall annual limit derived from the smallest of the amounts set by the preceding budget, less any transfers, by the current draft budget or, in its absence, by the preliminary draft budget.</i></p> <p><i>To be deleted, as it is suggested that the mechanism for the system of management by twelfths be simplified by only taking into account, in the definition of those twelfths, the appropriations for the preceding financial year, while still maintaining, an overall annual limit derived from the smallest of the amounts set for the chapter concerned by the preceding budget, less any transfers, by the current draft budget or, in its absence, by the preliminary draft budget.</i></p> <p><i>To be deleted with a view to the application of standard provisions to the Guarantee Section of the EAGGF.</i></p> <p><i>It is suggested that the mechanism for the system of management by twelfths be simplified by only taking into account, in the definition of those twelfths, the appropriations for the preceding financial year. This will provide a straightforward and consistent point of reference, while still maintaining, an overall annual limit derived from the smallest of the amounts set by the preceding budget, less any transfers, by the current draft budget or, in its absence, by the preliminary draft budget.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>The measure provided for in the first subparagraph may not have the effect of placing at the disposal of the Commission, for any month, appropriations in excess of one twelfth of those provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.</p> <p>4. If the continuity of Community activities and management needs so require:</p> <p>(a) for expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council acting by a qualified majority may, at the request of the Commission and after consulting the European Parliament, authorise simultaneously two or more provisional twelfths for both commitments and payments in addition to those automatically made available under paragraph 2;</p> <p>(b) for expenditure other than that necessarily resulting from the Treaties, or from acts adopted in accordance therewith, the third paragraph of Article 273 of the EC Treaty, the second subparagraph of Article 78b(2) of the ECSC Treaty, and the third paragraph of Article 178 of the Euratom Treaty shall apply.</p> <p>The additional twelfths shall be authorised in whole.</p> <p>The annual total authorised for each chapter by reason of the twelfths may not exceed the total for the corresponding chapter of the preceding year's budget, account being taken of transfers, nor may it exceed the total for the corresponding chapter of the draft budget or, in the absence thereof, the preliminary draft budget.</p> <p>5. If, for a given chapter, the authorisation of two or more provisional twelfths granted in the circumstances provided for in paragraph 4 is not sufficient to cover the expenditure necessary to avoid a break in continuity of the Communities' activity in the area in question, authorisation may exceptionally be given by the procedures provided for in the first subparagraph of paragraph 4 to exceed the total provided for in the third subparagraph of paragraph 4. In this case the overall total of the appropriations available in the budget of the preceding year may not be exceeded.</p> <p style="text-align: center;"><i>Article 34</i></p> <p>1. If necessary, the Commission may present preliminary draft amending budgets.</p>	<p><del>The measure provided for in the first subparagraph may not have the effect of placing at the disposal of the Commission, for any month, appropriations in excess of one twelfth of those provided for in the draft budget or, in the absence thereof, in the preliminary draft budget.</del></p> <p>4. If the continuity of Community activities and management needs so require:</p> <p>(a) for expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council acting by a qualified majority may, at the request of the Commission and after consulting the European Parliament, authorise simultaneously two or more provisional twelfths for both commitments and payments in addition to those automatically made available under paragraphs 2 and 3;</p> <p>(b) for expenditure other than that necessarily resulting from the Treaties, or from acts adopted in accordance therewith, the third paragraph of Article 273 of the EC Treaty, the second subparagraph of Article 78b(2) of the ECSC Treaty, and the third paragraph of Article 178 of the Euratom Treaty shall apply.</p> <p>The additional twelfths shall be authorised in whole.</p> <p>5. The annual total authorised for each chapter by reason of <u>all</u> the twelfths may not exceed the total for the corresponding chapter of the preceding year's budget, account being taken of transfers, nor may it exceed the total for the corresponding chapter of the draft budget or, in the absence thereof, the preliminary draft budget.</p> <p>6. If, for a given chapter, <u>and despite</u> the authorisation of two or more provisional twelfths in the circumstances provided for in paragraph 4, <u>it is not possible sufficient</u> to cover the expenditure necessary to avoid a break in continuity of the Communities' activity in the area in question, authorisation may exceptionally be given by the procedures provided for in the first subparagraph of paragraph 4 to exceed the total provided for in the third subparagraph of paragraph 4. In this case the overall total of the appropriations available in the budget of the preceding year may not be exceeded.</p> <p style="text-align: center;"><i>Article 34</i></p> <p>1. If necessary, <u>and in particular with a view to carrying over the balance from the preceding financial year</u>, the Commission <u>may shall</u> present preliminary draft amending budgets.</p>	<p><i>To be deleted, as it is suggested that the mechanism for the system of management by twelfths be simplified by only taking into account, in the definition of those twelfths, the appropriations for the preceding financial year, while still maintaining, an overall annual limit derived from the smallest of the amounts set for the chapter concerned by the preceding budget, less any transfers, by the current draft budget or, in its absence, by the preliminary draft budget.</i></p> <p><i>There is always at least one amending budget to carry over the final balance for the financial year (n - 1).</i></p>



Commission's proposal	Court's modified proposal	Comments
<p>2. The statement of expenditure for the Commission section shall be set out on the basis of a nomenclature adopted by the budgetary authority and classified according to purpose.</p> <p>A title shall correspond to a policy area and a chapter shall, as a rule, correspond to an activity. The administrative appropriations for a title shall be grouped in a single chapter.</p> <p style="text-align: center;"><i>Article 39</i></p> <p>The budget may not contain negative revenue or expenditure. The own resources paid under the Council Decision on the system of the Communities' own resources shall be entered net in the budget statement of revenue.</p> <p style="text-align: center;"><i>Article 40</i></p> <p>1. Each section of the budget may include a 'provisions' title. Appropriations shall be entered in this title in the following two circumstances:</p> <p>(a) where no legal basis exists for the action concerned when the budget is established;</p> <p>(b) where there is uncertainty about the adequacy of or need for the appropriations entered on the operational lines.</p> <p>The appropriations in this title may be used only by means of transfer in accordance with the procedure laid down in Articles 20, 21 and 22.</p> <p>2. In the event of serious implementation difficulties, the Commission may transfer appropriations to the 'provisions' title in the course of a financial year.</p> <p style="text-align: center;"><i>Article 41</i></p> <p>The Commission section may include a 'negative reserve' limited to a maximum amount of EUR 200 million. This reserve, which shall be entered in a separate chapter, may comprise both commitment appropriations and payment appropriations.</p>	<p>2. The statement of expenditure for the Commission section shall be set out on the basis of a nomenclature adopted by the budgetary authority and classified according to purpose.</p> <p>A title (or a subsection) shall correspond to a policy area and a chapter shall, as a rule, correspond to an activity. The administrative appropriations for a title shall be grouped in a single chapter, on the basis of the uniform nomenclature for each article adopted by the budgetary authority by virtue of paragraph 1.</p> <p style="text-align: center;"><i>Article 39</i></p> <p><del>The budget may not contain negative revenue or expenditure. The own resources paid under the Council Decision on the system of the Communities' own resources shall be entered net in the budget statement of revenue. Only that part of the own resources that is actually available for the purposes of financing the budget shall be entered in the budget, in accordance with the Council Decision on the system of the Communities' own resources.</del></p> <p style="text-align: center;"><i>Article 40</i></p> <p>1. Each section of the budget may include a 'provisions' title. Appropriations shall be entered in this title in the following two circumstances:</p> <p>(a) where no legal basis exists for the action concerned when the budget is established;</p> <p>(b) where there is uncertainty about the adequacy of or need for the appropriations entered on the operational budget lines.</p> <p>The appropriations in this title may be used only after by means of a transfer has been effected in accordance with the procedure laid down in Articles 20, 21 and 22.</p> <p><del>2. In the event of serious implementation difficulties, the Commission may transfer appropriations to the 'provisions' title in the course of a financial year.</del></p> <p style="text-align: center;"><i>Article 41</i></p> <p><del>The Commission section may include a 'negative reserve' limited to a maximum amount of EUR 200 million. This reserve, which shall be entered in a separate chapter, may comprise both commitment appropriations and payment appropriations.</del></p>	<p>By proposing to delete the first sentence, the Court obviously intends that the possibility of negative revenue or expenditure should be eliminated. It is evident that the absence of any text would indicate that such operations are irregular.</p> <p>The wording proposed by the Court aims to define available revenue as being the revenue to be entered in the accounts. It is thus not necessary to provide for a derogation to allow for a supposed entry in the accounts of the net balance between own resources and collection costs.</p> <p>It might be appropriate to consider applying this reservation more generally, to all the budget lines.</p> <p>If this passage is to be kept, it would be appropriate to clarify its content, as it is an 'innovation' whose potential value is difficult to ascertain.</p> <p>The very notion of a negative reserve is contrary to clear and transparent presentation of the precise budgetary authorisations established by the budgetary authority. It makes it impossible for those involved in the budgetary procedure to adopt clear and transparent expenditure authorisations.</p>

Commission's proposal	Court's modified proposal	Comments
<p>This reserve must be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 20, 21 and 22.</p> <p style="text-align: center;"><i>Article 42</i></p> <p>1. The Commission section of the budget shall include the following two reserves:</p> <p>(a) a reserve for emergency aid for third countries;</p> <p>(b) a reserve relating to Community loans and loan guarantees to third countries.</p> <p>2. The conditions for the entry, utilisation and financing of the reserves referred to in paragraph 1(a) and (b) are laid down in the Council Decision on budgetary discipline and in the Council Regulation implementing the Decision on the system of the Communities' own resources.</p> <p style="text-align: center;"><i>Article 43</i></p> <p>The budget shall show:</p> <p>1. in the general statement of revenue:</p> <p>(a) the estimated revenue of the Communities for the financial year in question;</p> <p>(b) the revenue for the preceding financial year;</p> <p>(c) appropriate remarks on each subdivision;</p>	<p><del>This reserve must be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 20, 21 and 22.</del></p> <p style="text-align: center;"><i>Article 42</i></p> <p>1. The Commission section of the budget shall include the following two reserves:</p> <p>(a) a reserve for emergency aid for third countries;</p> <p>(b) a reserve relating to Community loans and loan guarantees to third countries.</p> <p>2. The conditions for the entry, utilisation and financing of the reserves referred to in paragraph 1(a) and (b) are laid down in the Council Decision on budgetary discipline and in the Council Regulation implementing the Decision on the system of the Communities' own resources.</p> <p style="text-align: center;"><i>Article 43</i></p> <p>The budget shall show:</p> <p>1. in the general statement of revenue:</p> <p>(a) the estimated revenue of the Communities for the financial year in question;</p> <p>(b) <u>the estimated revenue for the preceding financial year, and revenue for the last financial year for which the accounts have been closed;</u></p> <p>(c) appropriate remarks on each subdivision;</p>	<p><i>More complete presentation of the text.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. in the section for each institution:</p> <p>(a) as regards the statement of revenue:</p> <p>(i) the estimated revenue for each institution for the financial year in question;</p> <p>(ii) the revenue entered in the budget for the preceding financial year and the revenue established for the last financial year for which accounts have been closed;</p> <p>(iii) appropriate remarks on each revenue line;</p> <p>(b) as regards the statement of expenditure:</p> <p>(i) the appropriations made available for the financial year in question and for the preceding financial year and the actual expenditure in the last financial year for which the accounts have been closed, broken down into commitments and payments;</p> <p>(ii) appropriate remarks on each subdivision;</p>	<p><u>2. in the summary statement of expenditure:</u></p> <p>(a) <u>the commitment and payment appropriations for the financial year in question;</u></p> <p>(b) <u>the commitment and payment appropriations for the preceding financial year;</u></p> <p>(c) <u>the expenditure committed and the expenditure paid in the last financial year for which the accounts have been closed;</u></p> <p>(d) <u>a summary statement of the schedule of payments due in subsequent financial years to meet budgetary commitments entered into during the financial year or in preceding financial years;</u></p> <p><u>23. in the section for each institution, the revenue and expenditure shall appear on the basis of the same structure used in paragraphs 1 and 2, with the appropriate remarks on each subdivision, and with schedules of payments due in subsequent financial years to meet budgetary commitments entered into during the financial year or in preceding financial years;</u></p> <p>(a) as regards the statement of revenue:</p> <p>(i) <u>the estimated revenue for each institution for the financial year in question;</u></p> <p>(ii) <u>the revenue entered in the budget for the preceding financial year and the revenue established for the last financial year for which accounts have been closed;</u></p> <p>(iii) <u>appropriate remarks on each revenue line;</u></p> <p>(b) as regards the statement of expenditure:</p> <p>(i) <u>the appropriations made available for the financial year in question and for the preceding financial year and the actual expenditure in the last financial year for which the accounts have been closed, broken down into commitments and payments;</u></p> <p>(ii) <u>appropriate remarks on each subdivision;</u></p>	<p><i>More complete presentation of the text.</i></p> <p><i>Aggregation of the schedules will provide the budgetary authority with an overall view of the total payment appropriations to be entered in the budget in subsequent financial years to meet the Community's cumulative commitments.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>3. as regards staff:</p> <p>(a) for each section of the budget, an establishment plan setting the number of permanent and temporary posts for each grade in each category and in each service authorised within the limits of the budget appropriations;</p> <p>(b) an establishment plan for staff paid from the research and technological development appropriations, classified by category and grade and distinguishing between permanent and non-permanent staff, authorised within the limits of the budget appropriations;</p> <p>(c) as regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget. The establishment plan must specify the number of highly qualified technical or scientific personnel who are accorded special advantages under the specific provisions of the Staff Regulations of officials of the European Communities and Conditions of employment of other servants of the European Communities, hereinafter: 'the Staff Regulations';</p> <p>(d) an establishment plan setting the number of posts for each grade in each category in each agency set up by the Communities.</p> <p>The establishment plans shall show next to the number of posts authorised for the financial year the number authorised for the preceding year;</p>	<p><del>3</del>4. as regards staff:</p> <p>(a) for each section of the budget, an establishment plan setting the number of permanent and temporary posts for each grade in each category and in each service authorised within the limits of the budget appropriations;</p> <p>(b) an establishment plan for staff paid from the research and technological development appropriations, classified by category and grade and distinguishing between permanent and non-permanent staff, authorised within the limits of the budget appropriations;</p> <p>(c) as regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget. The establishment plan must specify the number of highly qualified technical or scientific personnel who are accorded special advantages under the specific provisions of the Staff Regulations of officials of the European Communities and Conditions of employment of other servants of the European Communities, hereinafter: 'the Staff Regulations';</p> <p>(d) an establishment plan setting the number of posts for each grade in each category in each agency set up by the Communities.</p> <p>The establishment plans shall show next to the number of posts authorised for the financial year the number authorised for the preceding year;</p>	
<p>4. as regards borrowing and lending operations:</p> <p>(a) in the general statement of revenue, the budget lines 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 lines shall carry a token entry (p.m.) and be accompanied by appropriate remarks;</p> <p>(b) in the Commission section:</p> <p>(i) the budget lines containing the Communities' performance guarantees in respect of the operations in question. These lines shall carry a token entry (p.m.), so long as no effective charge which has to be covered by specific resources has arisen;</p> <p>(ii) remarks giving a reference to the legal basis and the volume of the operations envisaged, the duration and the financial guarantee given by the Communities in respect of these operations;</p> <p>(c) in a document annexed to the Commission section, as an indication:</p> <p>(i) ongoing capital operations and debt management;</p> <p>(ii) the capital operations and debt management for the financial year in question;</p>	<p><del>4</del>5. as regards borrowing and lending operations:</p> <p>(a) in the general statement of revenue, the budget lines 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 lines shall carry a token entry (p.m.) and be accompanied by appropriate remarks;</p> <p>(b) in the Commission section:</p> <p>(i) the budget lines containing the Communities' performance guarantees in respect of the operations in question. These lines shall carry a token entry (p.m.), so long as no effective charge which has to be covered by specific resources has arisen;</p> <p>(ii) remarks giving a reference to the legal basis and the volume of the operations envisaged, the duration and the financial guarantee given by the Communities in respect of these operations;</p> <p>(c) in a document annexed to the Commission section, as an indication:</p> <p>(i) ongoing capital operations and debt management;</p> <p>(ii) the capital operations and debt management for the financial year in question;</p>	



Commission's proposal	Court's modified proposal	Comments
<p>5. the budget lines under revenue and expenditure necessary for implementing the reserve relating to Community loans and loan guarantees to third countries and also for implementing the Guarantee Fund for external actions.</p> <p style="text-align: center;"><i>Article 44</i></p> <p>1. The establishment plan shall constitute an absolute limit for each institution; no appointment may be made in excess of the limit set.</p> <p>However, each institution may modify each establishment plan by up to 10 % and within the limit of the budget appropriations and the total number of posts allocated, except in the case of grades A 1 and A 2.</p> <p>2. By way of derogation from the first subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments.</p> <p style="text-align: center;">TITLE III</p> <p style="text-align: center;"><b>IMPLEMENTATION OF THE BUDGET</b></p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b><i>General provisions</i></b></p> <p style="text-align: center;"><i>Article 45</i></p> <p>1. The Commission shall implement the budget in revenue and expenditure in accordance with this Regulation, on its own responsibility and within the limits of the appropriations authorised.</p> <p>2. The Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principle of sound financial management.</p>	<p><del>5</del>6. the budget lines under revenue and expenditure necessary for implementing the reserve relating to Community loans and loan guarantees to third countries and also for implementing the Guarantee Fund for external actions.</p> <p style="text-align: center;"><i>Article 44</i></p> <p>1. The establishment plan <u>described in Article 43, paragraph 4</u> shall constitute an absolute limit for each institution; no appointment may be made in excess of the limit set.</p> <p>However each institution may modify each establishment plan by up to 10 % <u>of the posts</u> and within the limit of the budget appropriations and the total number of posts allocated, except in the case of grades A 1 and A 2;</p> <p>2. By way of derogation from the first subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments.</p> <p style="text-align: center;">TITLE III</p> <p style="text-align: center;"><b>IMPLEMENTATION OF THE BUDGET</b></p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b><i>General provisions</i></b></p> <p style="text-align: center;"><i>Article 45</i></p> <p>1. The Commission shall implement the budget in revenue and expenditure in accordance with this Regulation, on its own responsibility and within the limits of the appropriations authorised.</p> <p>2. The Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principle of sound financial management.</p>	

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 46</i></p> <p>1. A basic act must first be adopted before the appropriations entered in the budget for any Community action may be used.</p> <p>2. The following appropriations may be used without a basic act provided that the actions they are intended to finance fall within the competence of the Community:</p> <p>(a) appropriations for pilot schemes of an experimental nature designed to test the feasibility of an action and its usefulness;</p> <p>(b) appropriations for preparatory actions, designed to prepare proposals for the adoption of future Community actions;</p> <p>(c) appropriations for one-off actions, or even actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level other than its right of legislative initiative and under specific powers directly conferred on it by the Treaties;</p> <p>(d) appropriations for the operation of each institution under its administrative autonomy.</p>	<p style="text-align: center;"><i>Article 46</i></p> <p>1. A basic act must first be adopted before the appropriations entered in the budget for any Community action may be used.</p> <p>2. The following appropriations may be used without a basic act provided that the actions they are intended to finance fall within the competence of the Community:</p> <p>(a) appropriations for pilot schemes of an experimental nature designed to test the feasibility of an action and its usefulness;</p> <p>(b) appropriations for preparatory actions, designed to prepare proposals for the adoption of future Community actions;</p> <p>(c) appropriations for one-off actions, or even actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level other than its right of legislative initiative and under specific powers directly conferred on it by the Treaties;</p> <p>(d) appropriations for the operation of each institution under its administrative autonomy.</p>	<p><i>The exceptions laid down arise from the fact that the Treaty itself introduces an exception to the need for a basic act by providing for a specific action to be conducted directly by the Commission. Due to the limited and determinate number of such cases, it is proposed that the list of cases given in Annex V to the Interinstitutional Agreement of 6 May 1999 on budgetary discipline should be reproduced in full in the implementing rules.</i></p> <p><i>The text should be refined so that it does not make any exception for staff expenditure which is founded in a basic act (the Staff Regulations).</i></p>
<p style="text-align: center;"><i>Article 47</i></p> <p>The Commission shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them.</p>	<p style="text-align: center;"><i>Article 47</i></p> <p>The Commission shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them.</p>	
<p style="text-align: center;"><i>Article 48</i></p> <p>The Commission and each of the other institutions may, within their departments, delegate their powers of budget implementation in accordance with the conditions laid down by their Rules of Procedure and within the limits which they lay down in the instrument of delegation. Those so empowered may act only within the limits of the powers expressly conferred upon them.</p>	<p style="text-align: center;"><i>Article 48</i></p> <p>The Commission and each of the other institutions may, within their departments, delegate their powers of budget implementation in accordance with the conditions laid down by their Rules of Procedure and within the limits which they lay down in the instrument of delegation. Those so empowered may act only within the limits of the powers expressly conferred upon them.</p>	
<p style="text-align: center;"><i>Article 49</i></p> <p>Any measures of budget implementation which may give rise to a conflict of interests between the delegator, the delegatee and the third party supplying the revenue or the third party receiving the expenditure shall be prohibited.</p>	<p style="text-align: center;"><i>Article 49</i></p> <p><u>It shall be prohibited for any actor involved in the implementation of the budget to take any measures of budget implementation which may bring his own interests into conflict with those of the Community.</u> <del>Any measures of budget implementation which may bring his own interests into conflict with those of the Community, give rise to a conflict of interests between the delegator, the delegatee and the third party supplying the revenue or the third party receiving the expenditure shall be prohibited. Should such a case arise, the actor in question must refer it to the competent authority.</del></p>	<p><i>There is a risk of a conflict of interests not between persons, but between a person and the Community.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">Chapter 2</p> <p style="text-align: center;"><b>Methods of implementation</b></p> <p style="text-align: center;">Article 50</p> <p>1. The Commission shall implement the budget on a centralised basis or by shared or decentralised management.</p> <p>2. Where the Commission implements the budget on a centralised basis, implementation operations shall be performed directly by Commission departments or by executive agencies or by national, Community or international public-law bodies.</p> <p>3. Where the Commission implements the budget by shared or decentralised management, implementation operations shall be entrusted to Member States in accordance with the provisions of Titles I and II of Part Two, or to third countries in accordance with Title IV of Part Two. In this case, in order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply, in accordance with specific provisions, clearance-of-accounts procedures and appropriate financial correction mechanisms.</p>	<p style="text-align: center;">Chapter 2</p> <p style="text-align: center;"><b>Methods of implementation</b></p> <p style="text-align: center;">Article 50</p> <p>1. The Commission shall implement the budget on a centralised basis or by shared or decentralised management.</p> <p>2. Where the Commission implements the budget on a centralised basis, implementation operations shall be performed directly by Commission departments or indirectly, in accordance with Articles 51 to 54 by executive agencies or by national, Community or international public-law bodies.</p> <p>3. Where the Commission implements the budget by shared or decentralised management, implementation operations shall be entrusted in part to Member States in accordance with the provisions of Titles I and II of Part Two, or</p> <p>4. When the Commission implements the budget on a decentralised basis, implementation operations shall be delegated in part to third countries in accordance with Title IV of Part Two. In this both these cases, in order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply, in accordance with specific provisions, clearance of accounts procedures and appropriate financial correction mechanisms which enable it to assume its final responsibility for the implementation of the budget.</p> <p>5. The country concerned in paragraph 4 must agree to assume full responsibility for the Community funds paid to it; it shall also undertake to conduct regular checks to ensure that the actions financed from the Community budget have been implemented correctly, to prevent and prosecute irregularities and fraud and to recover funds lost, wrongly paid or incorrectly used.</p>	<p>Shows that Articles 51 to 54 are not concerned with the shared or decentralised management referred to in Article 50(3), but with the indirect management methods referred to in Article 50(2).</p> <p>Distinguishing between the two methods of management enables each to be defined more succinctly. To be deleted if, as the Court proposes, it is decided to delete the Titles in question.</p> <p>A reminder that ultimate responsibility for the implementation of the budget lies with the Commission.</p> <p>The provisions of Article 150(2) applying to third countries should be extended to Member States included here.</p>
<p style="text-align: center;">Article 51</p> <p>1. The Commission may not delegate the executive powers it enjoys under the Treaties where they involve a large measure of discretion implying political choices.</p> <p>2. Within the limits laid down in paragraph 1, the Commission may delegate tasks of public authority and in particular measures of budget implementation to executive agencies governed by Community or international law, hereinafter 'executive agencies' or to other external national, public-law bodies or bodies with a public-service mission guaranteed by the State.</p>	<p style="text-align: center;">Article 51</p> <p>1. The Commission may not delegate to third parties the executive powers it enjoys under the Treaties where they involve a large measure of discretion implying political choices. <u>The delegation of powers can only involve clearly defined executive powers, which must be entirely subject to supervision.</u></p> <p>2. Within the limits laid down in paragraph 1, the Commission may delegate tasks of public authority and in particular measures of budget implementation, <u>namely commitment, validation, authorisation and recovery,</u> to executive agencies governed by Community or international law, hereinafter called 'executive agencies', or to other external national, Community or international public-law bodies or bodies with a public-service mission guaranteed by the State.</p>	<p>Additional text on the basis of Judgment of 13 June 1958, Case C- 9/56 Meroni v High Authority [1958] ECR 1.</p> <p>Full definition currently given in Article 54.</p> <p>Precision: the phrase 'guaranteed by the State' would exclude a number of NGOs and should thus be deleted.</p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 52</i></p> <p>The executive agencies are bodies which can be empowered to implement all or part of a Community programme or project on behalf of the Commission and under its responsibility.</p> <p>The conditions and arrangements for the creation and operation of these agencies shall be defined in such a way that the Commission retains control of implementation and can monitor their operation.</p>	<p style="text-align: center;"><i>Article 52</i></p> <p>The executive agencies are bodies which can be empowered to implement all or part of a Community programme or project on behalf of the Commission and under its responsibility.</p> <p>The conditions and arrangements for the creation and operation of these agencies shall be defined in such a way that the Commission retains control of implementation and can monitor their operation.</p>	
<p style="text-align: center;"><i>Article 53</i></p> <p>1. Decisions delegating tasks to implementing bodies or agencies governed by Community or international law or to external national public-law bodies or bodies with a public-service mission guaranteed by the State must include all appropriate arrangements for ensuring the transparency of operations carried out and include at least the following:</p> <p>(a) transparent, non-discriminatory procurement procedures which prevent any conflicts of interest;</p> <p>(b) an effective system of internal control of management operations;</p> <p>(c) separate accounts for these operations and procedures for separate presentation of the accounts which will show the use made of Community funds;</p> <p>(d) an independent external audit.</p> <p>The Commission may accept that the audit, accounting and procurement systems of the delegates are equivalent to its own, with due account for internationally accepted standards.</p> <p>The Commission must also ensure periodic supervision, evaluation and control of the implementation of the delegated tasks. It shall take account of the equivalence of control systems when undertaking its controls.</p> <p>2. Where the Commission has made payments to public-law bodies which yield interest, recovery orders shall be issued periodically, at intervals of no more than six months, for such interest to be booked to the statement of revenue.</p>	<p style="text-align: center;"><i>Article 53</i></p> <p>1. Decisions delegating tasks to implementing <del>bodies or</del> agencies <del>governed by Community or international law</del> or to other <u>national, Community or international</u> <del>external national public law</del> bodies or bodies with a public-service mission <del>guaranteed by the State</del> must include all appropriate arrangements for ensuring the transparency of operations carried out and include at least the following:</p> <p>(a) transparent, non-discriminatory procurement procedures which prevent any conflicts of interest;</p> <p>(b) an effective system of internal control of management operations;</p> <p>(c) <del>Separate</del> accounting for these operations and procedures for <del>separate the</del> presentation of the accounts which will <del>show</del> <u>enable the correct use made of Community funds to be ascertained and the true extent of this use to be reflected in the Community accounts;</u></p> <p>(d) an independent external audit.</p> <p>The Commission may accept that the audit, accounting and procurement systems of the delegates are equivalent to its own, with due account for internationally accepted standards.</p> <p>The Commission must also ensure periodic supervision, evaluation and control of the implementation of the delegated tasks. It shall take account of the equivalence of <u>the control systems vis-à-vis its own control systems</u> when undertaking its controls.</p> <p>2. Where the Commission has made payments to <del>public-law bodies, or to bodies with a public-service mission,</del> which yield interest, recovery orders shall be issued periodically, at intervals of no more than six months, for such interest to be booked to the statement of revenue.</p>	<p>See Article 51(2).</p> <p><i>The accounts should not necessarily be 'separated' in order to achieve the desired objectives, which should be better defined.</i></p> <p><i>It is assumed that this provision will not apply to the interest paid to implementing agencies, which would be entered under the budget for the agency itself.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 54</i></p> <p>The Commission may not entrust measures of budget implementation, namely commitment, validation, authorisation or recovery to external private-law bodies or organisations, other than those which have a public-service mission guaranteed by the State.</p> <p>The tasks which may be entrusted by contract to external private-law bodies or organisations other than those which have a public-service mission guaranteed by the State are technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgement.</p> <p style="text-align: center;">Chapter 3</p> <p style="text-align: center;"><b>Financial actors</b></p> <p style="text-align: center;"><i>Section 1</i></p> <p style="text-align: center;"><b>Principle of separation of duties</b></p> <p style="text-align: center;"><i>Article 55</i></p> <p>The duties of authorising officer and accounting officer shall be separated.</p> <p style="text-align: center;"><i>Section 2</i></p> <p style="text-align: center;"><b>Authorising officer</b></p> <p style="text-align: center;"><i>Article 56</i></p> <p>1. Each institution shall lay down in its Rules of Procedure the staff of an appropriate level to whom it delegates the duties of authorising officer, the scope of the powers delegated and the possibility for the persons to whom these powers are delegated to subdelegate them.</p> <p>2. The powers of authorising officer shall be delegated or subdelegated only to persons covered by the Staff Regulations.</p> <p>3. Authorising officers by delegation or subdelegation may act only within the limits set by the instrument of delegation.</p> <p style="text-align: center;"><i>Article 57</i></p> <p>1. The authorising officer by delegation and subdelegation shall be responsible in each institution for implementing revenue and appropriations in accordance with the principles of sound financial management.</p>	<p style="text-align: center;"><i>Article 54</i></p> <p>The Commission may not entrust measures of budget implementation, <del>namely commitment, validation, authorisation or recovery</del> to external private-law bodies or organisations, other than those which have a public-service mission <del>guaranteed by the State</del>.</p> <p>The tasks which may be entrusted by contract to external private-law bodies or organisations other than those which have a public-service mission <del>guaranteed by the State</del> are technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgement.</p> <p style="text-align: center;">Chapter 3</p> <p style="text-align: center;"><b>Financial actors</b></p> <p style="text-align: center;"><i>Section 1</i></p> <p style="text-align: center;"><b>Principle of separation of duties</b></p> <p style="text-align: center;"><i>Article 55</i></p> <p>The duties of authorising officer and accounting officer shall be separated.</p> <p style="text-align: center;"><i>Section 2</i></p> <p style="text-align: center;"><b>Authorising officer</b></p> <p style="text-align: center;"><i>Article 56</i></p> <p>1. Each institution shall lay down in its Rules of Procedure the staff of an appropriate level to whom it delegates the duties of authorising officer, the scope of the powers delegated and the possibility for the persons to whom these powers are delegated to subdelegate them.</p> <p>2. <u>Authorising officer powers</u> shall be delegated or subdelegated only to persons covered by the Staff Regulations and the <u>Conditions of employment of other servants of the European Communities</u>.</p> <p>3. Authorising officers by delegation or subdelegation may act only within the limits set by the instrument of delegation.</p> <p style="text-align: center;"><i>Article 57</i></p> <p>1. The authorising officer by delegation and <u>the authorising officer</u> by subdelegation shall be responsible in each institution for implementing revenue and appropriations in accordance with the principles of <u>legality, regularity and</u> sound financial management.</p>	<p><i>This full definition need only be given once, the first time the measures of budget implementation are mentioned (see Article 51(2)).</i></p> <p><i>See Article 51(2).</i></p> <p><i>Without this amendment, some high-level temporary members of staff would no longer have authorising officer powers.</i></p> <p><i>Amendment intended to clarify the text and render it more complete, by including in it the principles of legality and regularity.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. To implement appropriations, the authorising officer by delegation and by subdelegation shall make commitments and shall validate expenditure and authorise payments. Implementation of appropriations shall also include programming this implementation and implementing the measures required to make appropriations available to the third parties for whom the expenditure is intended.</p> <p>3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements in appropriate cases.</p> <p>4. The authorising officer by delegation shall set up, in accordance with the minimum standards set by each institution and taking into account the risks associated with the management environment and the nature of the actions financed, the organisational structure and the monitoring and internal control systems and procedures required for the performance of his tasks.</p> <p>5. The authorising officer by delegation shall report to his institution on the performance of his duties, including on the results of the operations by reference to the objectives set, on the risks associated with these operations and on the use made of the resources provided. The authorising officer by delegation shall submit to the institution, to the internal auditor and to the accounting officer an annual activity report together with accounts.</p>	<p>2. To implement appropriations, the authorising officer by delegation and by subdelegation shall make commitments and shall validate expenditure and authorise payments. Implementation of appropriations shall also include programming this implementation and implementing the measures required to make appropriations available to the third parties for whom the expenditure is intended.</p> <p>3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements in appropriate cases.</p> <p>4. The authorising officer by delegation shall set up, in accordance with the minimum standards set by each institution and taking into account the risks associated with the management environment and the nature of the actions financed, the organisational structure and the monitoring and internal control systems and procedures required for the performance of his tasks.</p> <p>5. The authorising officer by delegation shall report to his institution on the performance of his duties, <u>in the form of an annual activity report including on</u> <del>including on</del> <u>comprising</u> the results of the operations by reference to the objectives set, <del>on</del> the risks associated with these operations <del>and on</del> the use made of the resources provided and the operation of internal control systems. The authorising officer by delegation shall, <u>at the same time, forward this report</u> <del>submit to the institution,</del> to the internal auditor <del>and to the accounting officer an annual activity report together with accounts.</del></p>	<p><i>The proposal does not specify which accounts are being referred to, or when the report should be submitted.</i></p> <p><i>The annual activity report drawn up by the authorising officer by delegation should include an assessment of the internal control systems for which he is responsible.</i></p> <p><i>It is difficult to see the point of sending the annual activity report to the accounting officer, and to see which accounts are meant to accompany the report. The proposal already requires that the authorising officer supply the accounting officer with all the necessary information (see Article 58(2)).</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Section 3</i></p> <p style="text-align: center;"><b>Accounting officer</b></p> <p style="text-align: center;"><i>Article 58</i></p> <p>1. Each institution shall appoint an accounting officer who shall be responsible in each institution:</p> <p>(a) for preparing and presenting the financial statements provided for in Title V;</p> <p>(b) for laying down the minimum accounting rules and the accounting systems used by authorising officers and for validating these systems;</p> <p>(c) for proper implementation of payments, management of the treasury, collection of revenue and recovery of established entitlements.</p> <p>The accounting officer shall obtain all the information necessary for the purposes of the first subparagraph from the authorising officers.</p> <p>2. Save as otherwise provided in this Financial Regulation or in any sectoral regulation, the accounting officer is alone empowered to manage monies and other assets. He shall be responsible for their safekeeping.</p>	<p style="text-align: center;"><i>Section 3</i></p> <p style="text-align: center;"><b>Accounting officer</b></p> <p style="text-align: center;"><i>Article 58</i></p> <p>1. Each institution shall appoint an accounting officer who shall be responsible in each institution:</p> <p>(a) <u>or preparing and presenting the financial statements provided for in Title V; for laying down the minimum accounting rules and the accounting systems used, and for validating these systems. The Commission's accounting officer shall be responsible for laying down the accounting standards, principles and methods applicable to the drawing-up of the Community's consolidated financial statements;</u></p> <p>(b) <u>for laying down the minimum accounting rules and the accounting systems used by authorising officers and for validating these systems; for the management of cash resources;</u></p> <p>(c) for proper implementation of payments, <del>management of the treasury,</del> collection of revenue and recovery of established entitlements <u>in conformity with the information supplied by the authorising officer and the accounting rules laid down in this Regulation;</u></p> <p>(d) <u>for keeping the accounts and for drawing up and presenting the financial statements stipulated in Title VI.</u></p> <p><u>2.</u> The accounting officer shall obtain all the information <del>necessary for the purposes of the first subparagraph</del> <u>needed to fulfil his duties</u> from the authorising officers.</p> <p><del>2.3.</del> Save as otherwise provided in this Financial Regulation <del>or in any sectoral regulation,</del> the accounting officer alone is empowered to manage monies and other assets. He shall be responsible for their safekeeping.</p>	<p><i>A more logical order and a more complete text is proposed.</i></p> <p><i>It is difficult to see why a specific reference has to be made to sectoral regulations. Any derogations concerning this area should be specified in the Financial Regulation itself.</i></p>
<p style="text-align: center;"><i>Section 4</i></p> <p style="text-align: center;"><b>Imprest administrator</b></p> <p style="text-align: center;"><i>Article 59</i></p> <p>For the payment of small sums, imprest accounts may be set up which shall be endowed by the institution's accounting officer and shall be placed under the responsibility of imprest administrators designated by the institution's accounting officer.</p>	<p style="text-align: center;"><i>Section 4</i></p> <p style="text-align: center;"><b>Imprest administrator</b></p> <p style="text-align: center;"><i>Article 59</i></p> <p><u>For the payment of small sums, imprest accounts may be set up which shall be endowed by the institution's accounting officer and shall be placed under the responsibility of imprest administrators designated by the institution's accounting officer. Each institution's accounting officer may designate one or more imprest account administrators, who shall be responsible for effecting the payment of small sums and/or the collection of revenue. The accounting officer shall to this end set up and endow imprest accounts.</u></p>	<p><i>Modification designed to clarify the text and render it more complete, notably by proposing that the imprest administrators would also have responsibility for the collection of revenue.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">Chapter 4</p> <p style="text-align: center;"><b>Liability of the financial actors</b></p> <p style="text-align: center;">Section 1</p> <p style="text-align: center;"><b>General rules</b></p> <p style="text-align: center;">Article 60</p> <p>Without prejudice to any disciplinary action, authorising officers by delegation and subdelegation, accounting officers and imprest administrators may be suspended from their duties by the authority which appointed them.</p> <p style="text-align: center;">Article 61</p> <p>The provisions of this chapter are without prejudice to the criminal law liability which the persons referred to in Article 60 may incur as provided in the applicable national law and in the provisions in force on the protection of the European Communities' financial interests and on the fight against corruption involving officials of the European Communities or officials of Member States.</p> <p style="text-align: center;">Article 62</p> <p>1. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, without prejudice to Articles 63 and 64.</p>	<p style="text-align: center;">Chapter 4</p> <p style="text-align: center;"><b>Liability of the financial actors</b></p> <p style="text-align: center;">Section 1</p> <p style="text-align: center;"><b>General rules</b></p> <p style="text-align: center;">Article 60</p> <p>Without prejudice to any disciplinary action, authorising officers by delegation and subdelegation, accounting officers and imprest administrators may be suspended from their duties by the authority which appointed them.</p> <p style="text-align: center;">Article 61</p> <p>The provisions of this chapter are without prejudice to the criminal law liability which the persons referred to in Article 60 may incur as provided in the applicable national law and in the provisions in force on the protection of the European Communities' financial interests and on the fight against corruption involving officials of the European Communities or officials of Member States.</p> <p style="text-align: center;">Article 62</p> <p>1. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation, <del>as laid down in the Staff Regulations</del> without prejudice to Articles <u>62a</u>, 63 and 64.</p>	<p>No reference is made to the Financial Controller, notwithstanding that Article 297c of the Treaty explicitly refers to the Financial Controller as one of the financial actors for whom the rules concerning responsibilities are to be laid down by the Council.</p> <p>See text below.</p>



Commission's proposal	Court's modified proposal	Comments
<p>2. An authorising officer by delegation or subdelegation who considers that a decision he is required to take is irregular or contrary to the principles of sound financial management shall inform his higher authority in writing. If the instruction is then confirmed in writing, the authorising officer by delegation or subdelegation may not be held liable.</p> <p>3. In the event of subdelegation, the authorising officer by delegation continues to be responsible for the effectiveness of the control systems put in place and for the choice of the authorising officer by subdelegation.</p>	<p style="text-align: center;"><u>Section 2</u></p> <p style="text-align: center;"><b><u>Rules applicable to authorising officers</u></b></p> <p style="text-align: center;"><u>Article 62a</u></p> <p><u>2.1.</u> An authorising officer by delegation or subdelegation who considers that a decision <u>which</u> he is <u>his</u> responsibility required to take is irregular or contrary to the principles of sound financial management shall inform <u>his higher authority</u> the delegating authority of this in writing. If the <u>delegating authority then gives a reasoned instruction is then confirmed in writing</u> to the authorising officer by delegation or subdelegation to take the aforesaid decision, the officer may not be held liable.</p> <p><u>Any decision taken after an authorising officer by delegation or subdelegation has written to his delegating authority must be logged in the accounting system.</u></p> <p><u>3.2.</u> In the event of subdelegation, the authorising officer by delegation continues to be responsible for the effectiveness of the control systems put in place and for the choice of the authorising officer by subdelegation.</p>	<p>Taking as a model the section applicable to accounting officers and imprest administrators, this section should be supplemented with provisions concerning the situations in which authorising officers are liable to disciplinary action and payment of compensation, particularly in view of the responsibilities defined in Article 57. It is for the Commission to lay down these provisions. The Regulation needs to make clear that authorising officers may be held responsible for losses to the budget or damage to the financial interests of the Community which result from their actions (or their failure to act) and which they should have foreseen. The Court further points out again (as it previously indicated in paragraph 5.20 of the Annex to its Opinion No 4/97) that it is not sufficient to leave any necessary action to be taken under the relevant provisions of the Staff Regulations; these provisions are not apt for the recovery of money, and have in any case never been applied. The Commission should therefore consider the possibility of creating, within the current framework, an independent body which would be responsible for ruling on the liability of these officials and other servants in respect of the payment of compensation, and which would not have the Staff Regulations as its legal basis.</p> <p>Amendment intended to clarify the notion of liability.</p> <p>Amendment intended to ensure transparency. Without this, there would be no evidence of any such conflicts of opinion between the delegating authority and the authorising officer by delegation or subdelegation.</p>

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<p style="text-align: center;"><i>Section 2</i></p> <p style="text-align: center;"><b>Rules applicable to accounting officers and imprest administrators</b></p> <p style="text-align: center;"><i>Article 63</i></p> <p>An accounting officer shall be liable to disciplinary action and payment of compensation in particular where:</p> <p>(a) he loses or damages monies, assets and documents in his keeping;</p> <p>(b) he alters bank accounts or postal giro accounts;</p> <p>(c) he recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders.</p> <p style="text-align: center;"><i>Article 64</i></p> <p>An imprest administrator shall be liable to disciplinary action and payment of compensation in particular where:</p> <p>(a) he loses or damages monies, assets and documents in his keeping;</p> <p>(b) he cannot provide proper supporting documents for the payments he has made;</p> <p>(c) he makes payments to persons other than those entitled.</p>	<p style="text-align: center;"><i>Section 2 3</i></p> <p style="text-align: center;"><b>Rules applicable to accounting officers and imprest administrators</b></p> <p style="text-align: center;"><i>Article 63</i></p> <p>An accounting officer shall be liable to disciplinary action and payment of compensation in particular where:</p> <p>(a) he loses or damages monies, assets and documents in his keeping</p> <p>(b) he alters bank accounts or postal giro accounts;</p> <p>(c) he recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;</p> <p>(d) <u>he omits, within reasonable time limits, to recover amounts or to request from the authorising officer a waiver of recovery of amounts receivable.</u></p> <p style="text-align: center;"><i>Article 64</i></p> <p>An imprest administrator shall be liable to disciplinary action and payment of compensation in particular where:</p> <p>(a) he loses or damages monies, assets and documents in his keeping;</p> <p>(b) he cannot provide proper supporting documents for the payments he has made;</p> <p>(c) he makes payments to persons other than those entitled;</p> <p>(d) <u>he omits to collect revenue due.</u></p>	<p><i>A more complete description of the accounting officer's responsibilities is necessary.</i></p> <p><i>A more complete description of the imprest administrator's responsibilities was necessary.</i></p>
<p style="text-align: center;">Chapter 5</p> <p style="text-align: center;"><b>Revenue operations</b></p> <p style="text-align: center;"><i>Section 1</i></p> <p style="text-align: center;"><b>Making available of own resources</b></p> <p style="text-align: center;"><i>Article 65</i></p> <p>An estimate of revenue constituted by own resources, as referred to in the Council Decision on the system of the European Communities' own resources, shall be entered in the budget in euro. It shall be made available in accordance with the Council Regulation implementing that Decision.</p>	<p style="text-align: center;">Chapter 5</p> <p style="text-align: center;"><b>Revenue operations</b></p> <p style="text-align: center;"><del><i>Section 1</i></del></p> <p style="text-align: center;"><del><b>Making available of own resources</b></del></p> <p style="text-align: center;"><i>Article 65</i></p> <p><del>An estimate of revenue constituted by own resources, as referred to in the Council Decision on the system of the European Communities' own resources, shall be entered in the budget in euro. It shall be made available in accordance with the Council Regulation implementing that Decision.</del></p>	<p><i>Any revenue, whatever its nature, must form the subject of a budget estimate. It is superfluous to specify that it should be made available in accordance with the Regulation implementing the Council Decision concerning own resources.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Section 2</i></p> <p style="text-align: center;"><b>Estimate of amounts receivable</b></p> <p style="text-align: center;"><i>Article 66</i></p> <p>1. An estimate of the amount receivable shall first be made by the authorising officer in respect of any measure or situation which may give rise to or modify an amount owing to the Communities.</p> <p>2. By way of derogation from paragraph 1, no estimate of the amount receivable shall be made before Member States make directly available to the Commission the amounts of own resources defined in the Council Decision on the system of the Communities' own resources which are paid at fixed intervals by the Member States. The authorising officer shall issue a recovery order in respect of these amounts.</p>	<p style="text-align: center;"><i>Section 2 1</i></p> <p style="text-align: center;"><b><u>Forward schedule and estimate of amounts receivable</u></b></p> <p style="text-align: center;"><i>Article 66</i></p> <p><del>1. An estimate of the amount receivable shall first be made by the authorising officer in respect of any measure or situation which may give rise to or modify an amount owing to the Communities.</del></p> <p>1. <u>By way of derogation from paragraph 1, The authorising officer shall draw up a forward schedule for making directly available to the Commission no estimate of the amount receivable shall be made before Member States make directly available to the Commission the amounts of own resources defined in the Council Decision on the system of the Communities' own resources which are paid at fixed intervals by the Member States. The authorising officer shall issue a recovery order in respect of these amounts.</u></p> <p>2. <u>Any measure or situation, other than those defined in paragraph 1, which is liable to generate or alter an amount receivable by the Communities shall give rise to an estimate of the amount receivable drawn up by the authorising officer.</u></p> <p>3. <u>The forward schedule and the estimate of the amount receivable shall precede any recovery order.</u></p>	<p><i>Even if an estimate of amounts receivable cannot be made for traditional own resources, because the sum total of such revenue is only known at the time this is made available to the Commission by the Member States, it should be the authorising officer's duty to draw up, as a minimum, a forward schedule which allows recovery of the various amounts of own resources paid at fixed intervals by the Member States to be monitored.</i></p> <p><i>The general system must be applied to any revenue from agricultural sources, classified as miscellaneous revenue.</i></p>
<p style="text-align: center;"><i>Section 3</i></p> <p style="text-align: center;"><b>Recovery order</b></p> <p style="text-align: center;"><i>Article 67</i></p> <p>A recovery order shall be drawn up by the authorising officer to establish every amount receivable that is identified as being certain, of a fixed amount and due. The conditions in which interest on late payment is due to the budget shall be laid down in the implementing rules.</p>	<p style="text-align: center;"><i>Section 3 2</i></p> <p style="text-align: center;"><b>Recovery order</b></p> <p style="text-align: center;"><i>Article 67</i></p> <p>A recovery order shall be drawn up by the authorising officer to establish <u>any own resources placed directly at the disposal of the Commission and</u> every amount receivable that is identified as being certain, of a fixed amount and due. The conditions in which interest on late payment is due to the budget shall be laid down in the implementing rules.</p>	<p><i>The implementing rules should specify that the recovery order must indicate the nature of the revenue, the budget line concerned, the total amount and the debtor.</i></p>
<p style="text-align: center;"><i>Section 4</i></p> <p style="text-align: center;"><b>Recovery</b></p> <p style="text-align: center;"><i>Article 68</i></p> <p>1. The accounting officer shall act on recovery orders duly established by the authorising officer. He shall exercise due diligence to ensure that the Communities receive their revenue and shall see that their rights are safeguarded.</p> <p>The accounting officer shall inform the authorising officer when revenue is not received by the due date. He shall, where appropriate, initiate the enforced recovery procedure.</p>	<p style="text-align: center;"><i>Section 4 3</i></p> <p style="text-align: center;"><b>Recovery</b></p> <p style="text-align: center;"><i>Article 68</i></p> <p>1. The accounting officer shall act on recovery orders duly established by the authorising officer. He shall exercise due diligence to ensure that the Communities receive their revenue and shall see that their rights are safeguarded.</p> <p>The accounting officer shall inform the authorising officer when revenue is not received by the due date. He shall, where appropriate, initiate the enforced recovery procedure.</p>	

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<p>The accounting officer may recover amounts by offsetting them against equivalent claims that the Communities have on a debtor who himself has a claim on the Communities that is certain, of a fixed amount and due.</p> <p>2. Where the authorising officer waives recovery of an established entitlement, he shall ensure that the waiver is in order and complies with the principle of sound financial management. He shall inform the accounting officer of the waiver so that it can be registered. The waiver decision must be substantiated and adopted by the authorising officer by delegation. The authorising officer by delegation shall refer any cases about which he has doubts to the higher authority for a decision.</p> <p style="text-align: center;"><i>Article 69</i></p> <p>Revenue received by way of fines, periodic penalty payments and other penalties and any accrued interest shall not be finally recorded as budget revenue as long as the decisions imposing them may be annulled by the Court of Justice.</p> <p>The provision of the first subparagraph shall not apply to decisions on clearance of accounts or financial corrections.</p> <p style="text-align: center;">Chapter 6</p> <p style="text-align: center;"><b>Expenditure operations</b></p>	<p>The accounting officer may recover amounts by offsetting them against equivalent claims that the Communities have on a debtor who himself has a claim on the Communities that is certain, of a fixed amount and due.</p> <p>2. Where the authorising officer waives recovery of an established entitlement, he shall ensure that the waiver is in order and complies with the principle of sound financial management. He shall inform the accounting officer of the waiver so that it can be registered. The waiver decision must be substantiated and adopted by the authorising officer by delegation. The authorising officer by delegation shall refer any cases about which he has doubts to the higher authority for a decision.</p> <p style="text-align: center;"><i>Article 69</i></p> <p>Revenue received by way of fines, periodic penalty payments and other penalties and any accrued interest shall not be finally recorded as budget revenue as long as the decisions imposing them may be annulled by the Court of Justice.</p> <p>The provision of the first subparagraph shall not apply to decisions on clearance of accounts or financial corrections.</p> <p style="text-align: center;">Chapter 6</p> <p style="text-align: center;"><b>Expenditure operations</b></p>	<p><i>It is suggested that a recital be included to the effect that: 'The implementation by the Commission of any policy, activity, etc. requires on the one hand administrative implementation resulting in a legal commitment pursuant to Articles 202 and 211 of the Treaty, and on the other hand budgetary implementation under Article 274 of the Treaty (see Judgment of the Court of Justice of 24 October 1989, Case 16/88 Commission v Council, [1989] ECR, 3457). The Financial Regulation is concerned solely with budgetary implementation.'</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Section 1</i></p> <p style="text-align: center;"><b>Commitment of expenditure</b></p> <p style="text-align: center;"><i>Article 70</i></p> <p>1. A commitment shall be made up of a budget commitment and a legal commitment.</p> <p>The budget commitment is the operation whereby the appropriations necessary for performance of the obligation imposing a charge on the budget are reserved.</p> <p>The legal commitment is the act whereby the authorising officer enters into an obligation with regard to third parties which results in expenditure being charged to the budget.</p> <p>The legal commitment and the budget commitment shall, as a rule, be adopted by the same person.</p>	<p style="text-align: center;"><i>Section 1</i></p> <p style="text-align: center;"><b>Commitments of expenditure</b></p> <p style="text-align: center;"><i>Article 70</i></p> <p><del>1. A commitment shall be made up of a budget commitment and a legal commitment.</del></p> <p><u>1. The budget commitment is based on a documented decision by an institution or those delegated to decide on its behalf and consists of the prior allocation of is the operation whereby the appropriations necessary to cover a for performance of the legal obligation imposing a charge on the budget, are reserved.</u></p> <p><del>The legal commitment is the act whereby the authorising officer enters into an obligation with regard to third parties which results in expenditure being charged to the budget.</del></p> <p><del>The legal commitment and the budget commitment shall, as a rule, be adopted by the same person.</del></p>	<p><i>In order to avoid any confusion between the administrative implementation and budgetary implementation facets of a policy, which are clearly distinct (see remark at beginning of chapter), it would be better to avoid the use of the term 'legal commitment' and to refer, when necessary in this chapter, to a 'legal obligation in respect of third parties'. If conclusion of the legal obligation, which is the final stage of the administrative implementation, requires a prior budgetary implementation (see Article 71(1), as amended), it does not constitute a budget implementation measure and should therefore not be defined in the Financial Regulation.</i></p> <p><i>It is necessary to be precise about the point at which the budgetary commitment is established, and on which basis.</i></p> <p><i>See the comment under Article 70(1), first subparagraph.</i></p> <p><i>While it is understandable that in administrative practice, budgetary commitments are made by the person who also has responsibility for entering into legal commitments on behalf of the Communities, the Financial Regulation cannot require this as an absolute rule, since powers of delegation in the field of the administrative implementation of a policy (Article 211 of the Treaty) and in that of budgetary implementation (Article 274 of the Treaty) are not the same. See in this respect Judgment of the Court of Justice, Case 16/88 Commission v Council, [1989], ECR 3457, paragraph 17: '... the power to adopt the administrative decision and the power to commit the expenditure may be entrusted, within the internal organisation of each institution, to different officials.'</i></p>

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<p>2. The budget commitment is global either when the final beneficiary is not individually identified or when the commitment covers a number of individual commitments. The commitment is provisional when it is intended to cover routine administrative expenditure and the amount is not definitively determined. The budget commitment is individual when the final beneficiary is individually determined.</p> <p>3. Budget commitments for actions extending over more than one financial year may be broken down into instalments where the basic act so provides. Where the budget commitment is divided into instalments extending over several years, the legal commitment shall mention this.</p> <p style="text-align: center;"><i>Article 71</i></p>	<p>2. The budget commitment is global either when <u>all the elements (the final beneficiary, allocation of amounts, etc.) necessary to identify individual commitments are not known</u>, is not individually identified or when the commitment covers a number of individual commitments. The budget commitment is provisional when it is intended to cover routine administrative expenditure and the amount is not definitively determined. The budget commitment is individual when the final beneficiary is individually determined.</p> <p>3. <del>Budget commitments for actions extending over more than one financial year may be broken down into instalments where the basic act so provides. Where the budget commitment is divided into instalments extending over several years, the legal commitment shall mention this.</del></p> <p style="text-align: center;"><i>Article 71</i></p>	<p><i>It should be made clear that a budget commitment is either global, provisional, or individual. If the beneficiary and the amount concerned are known, then the budget commitment is always individual, and there is no need for a global commitment covering individual commitments.</i></p> <p><i>This provision negates the concept of differentiated appropriations and should be dropped. The main reason why this is introduced is to cope with the situation of the Structural Funds where it is not possible under current arrangements to commit fully in the first year of the multiannual programme the total amount of the programme without exceeding in that year the ceiling of the financial perspective. Similar considerations have affected International Fisheries Agreements, and external aid (MEDA, 1996) in the past. However, such a massive derogation from a key concept of the Community budget — the Structural Funds account for one third of the total budget — negates that concept to an unacceptable degree.</i></p> <p><i>The implication of the above is that changes are needed in the mechanism of the financial perspectives to enable the concept of differentiated appropriations to be respected.</i></p>
<p>1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer must first make a budget commitment before entering into an individual legal commitment with third parties.</p> <p>2. Subject to the special provisions of Title IV of Part Two, global budget commitments shall cover the total cost of the corresponding individual legal commitments up to 31 December of year n + 1.</p>	<p>1. In respect of any measure which may give rise to <u>expenditure payments</u> chargeable to the budget, the authorising officer must first make a budget commitment before <u>entering into</u> an individual legal <u>commitment obligation is entered into</u> with third parties.</p> <p>2. <del>Subject to the special provisions of Title IV of Part Two, global budget commitments shall cover the total cost of the corresponding individual legal commitments up to 31 December of year n + 1.</del></p>	<p><i>For consistency with Article 70.</i></p> <p><i>Presumably the same rules apply to legal obligations corresponding to global or individual budget commitments. The word 'global' should therefore not apply. Otherwise different rules need to be formulated. It is presumably also intended that the same rule should apply to provisional primary commitments, where the current position is that unless legal obligations are entered into before 31 December of year n, the amounts concerned must be decommitted.</i></p> <p><i>This text can be removed because the ideas contained therein are included in the second subparagraph, as redrafted.</i></p>

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<p>During the period referred to in subparagraph 1, the conclusion of each individual legal commitment shall be registered by the authorising officer in the budget accounts and booked to the global commitment.</p> <p>At the end of this period, the unused balance of this global budget commitment shall be decommitted by the authorising officer.</p> <p>3. The legal commitments entered into for actions extending over more than one financial year and the corresponding budget commitments shall have a final date for implementation.</p>	<p><del>During the period referred to in subparagraph 1, the conclusion of</del> Each individual legal obligation must be entered into by 31 December of the year following that in which the primary commitment was raised, and <del>commitment shall be</del> registered by the authorising officer in the budget accounts <del>against and booked to</del> the global related budget commitment.</p> <p><del>At the end of this period</del> As soon as the legal obligation(s) have been entered into, but not later than the date mentioned in the date mentioned in the previous subparagraph, the any unused balance of the <del>this global</del> budget commitment shall be decommitted by the authorising officer.</p> <p><del>3.2.</del> The legal obligations entered into registered for actions extending over more than one financial year and the corresponding budget commitments shall have a final date for implementation.</p> <p><u>3. Financial agreements with beneficiary third countries shall be treated as individual legal obligations.</u></p> <p><u>4. The Commission decisions fixing the overall amounts to be refunded on an estimated basis to the Member States shall constitute both budget commitments and legal obligations within the framework of the EAGGF-Guarantee Section. The procedures for entering adjustments, as commitments and payments, in the relevant chapters and articles of the budget, shall be defined in the implementing rules.</u></p>	<p><i>Because the corresponding secondary commitment may be less than the individual budget commitment, the provisions of this subparagraph should be generalised. Also, decommitment of unused balances on budget commitments must be done as soon as it is clear that they are not required.</i></p> <p><i>The text relating to final implementation dates has been significantly reduced with respect to the current Financial Regulation. It is therefore necessary to ensure that it covers all possible cases. In fact, there should be two final implementation dates for each action: one implementation date for the action itself, in the context of the legal obligation, and one subsequent implementation date up until which the financial operations connected with the measure (payments etc.) can be effected. The final implementation dates should be set at the level of both budget commitments and of legal obligations.</i></p> <p><i>Transferred from Article 152(2).</i></p> <p><i>Transferred from Article 136(2) (see comments at Article 136(2)).</i></p>
<p style="text-align: center;"><i>Article 72</i></p> <p>When drawing up acts of budget commitment, the authorising officer shall ensure that:</p> <p>(a) the expenditure has been charged to the correct item in the budget;</p> <p>(b) the appropriations are available;</p> <p>(c) he expenditure is in order and conforms to the relevant provisions, in particular of the budget and Regulations, and of all acts adopted in accordance with the Treaties and of the Regulations;</p> <p>(d) the principle of sound financial management is complied with.</p>	<p style="text-align: center;"><i>Article 72</i></p> <p>When drawing up a <del>a</del> acts of budget commitment, the authorising officer shall ensure that:</p> <p>(a) the expenditure <del>has been</del> <u>is to be</u> charged to the correct item in the budget;</p> <p>(b) the appropriations are available;</p> <p>(c) the expenditure <del>is in order and</del> conforms to the relevant provisions, in particular of the budget and Regulations, and of all acts adopted in accordance with the Treaties and of the Regulations;</p> <p>(d) the principle of sound financial management is complied with.</p>	

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<p style="text-align: center;"><i>Section 2</i></p> <p style="text-align: center;"><b>Validation of expenditure</b></p> <p style="text-align: center;"><i>Article 73</i></p> <p>Validation of expenditure is the act whereby the authorising officer:</p> <p>(a) verifies the existence of the creditor's claim;</p> <p>(b) determines or verifies the existence and the amount of the sum due;</p> <p>(c) verifies the conditions under which payment falls due.</p> <p style="text-align: center;"><i>Section 3</i></p> <p style="text-align: center;"><b>Authorisation of expenditure</b></p> <p style="text-align: center;"><i>Article 74</i></p> <p>Authorisation is the act whereby the authorising officer, by issuing a payment order, instructs the accounting officer to pay an item of expenditure which he has validated.</p>	<p style="text-align: center;"><i>Article 72a</i></p> <p><u>When registering a legal obligation, the authorising officer shall ensure that:</u></p> <p>(a) <u>it is covered by the related budget commitment;</u></p> <p>(b) <u>the expenditure conforms to the relevant provisions, in particular of the budget and Regulations, and of all acts adopted in accordance with the Treaties and of the Regulations;</u></p> <p>(c) <u>the principle of sound financial management is complied with.</u></p> <p style="text-align: center;"><i>Section 2</i></p> <p style="text-align: center;"><b>Validation of <u>expenditure payments</u></b></p> <p style="text-align: center;"><i>Article 73</i></p> <p>Validation of <u>expenditure payments</u> is the act whereby the authorising officer:</p> <p>(a) verifies the existence of the creditor's claim;</p> <p>(b) determines or verifies the existence and the amount of the sum due;</p> <p>(c) verifies the conditions under which payment falls due.</p> <p style="text-align: center;"><i>Section 3</i></p> <p style="text-align: center;"><b>Authorisation of <u>expenditure payments</u></b></p> <p style="text-align: center;"><i>Article 74</i></p> <p>Authorisation is the act whereby the authorising officer, <u>after having checked that the appropriations are available</u>, by issuing a payment order, instructs the accounting officer to pay an <u>item of expenditure amount due</u> which he has validated.</p>	<p><i>There is a need to state the preconditions applying to the registering of legal obligations.</i></p> <p><i>The correct terminology is payments. Expenditure is too general, as it can include commitments.</i></p> <p><i>The task of checking the availability of appropriations used to be the responsibility of the Financial Controller (Article 47 in the old Financial Regulation). It should be made clear that under the new rules this task falls to the authorising officer.</i></p>



Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 75</i></p> <p>1. A payment order may, in accordance with the provisions of the basic act or the contract, cover one of the following operations:</p> <p>(a) payment of the entire amount due thus clearing the budget commitment;</p> <p>(b) prefinancing;</p> <p>(c) an interim payment, to reimburse eligible expenditure;</p> <p>(d) payment of a balance, based on supporting documents, which is designed to clear the budget commitment and which is made before the final date stipulated in Article 71(3).</p> <p>A distinction shall be made in the accounts between these different types of payment.</p> <p>2. Only amounts paid by way of prefinancing shall yield interest until such time as they are definitively transferred to the final beneficiaries, save where they are made available to the Member States' authorities.</p>	<p style="text-align: center;"><u>Section 4</u></p> <p style="text-align: center;"><b>Payments</b></p> <p style="text-align: center;"><i>Article 75</i></p> <p>1. A payment order may, in accordance with the provisions of the basic act or the contract, cover one of the following operations:</p> <p>(a) payment of the entire amount <del>due thus clearing the budget commitment;</del></p> <p>(b) refinancing;</p> <p>(c) an interim payment, to reimburse eligible expenditure;</p> <p>(d) payment of a balance, <u>intended to clear a legal obligation based on supporting documents, which is designed to clear the budget commitment, and which is made before the final date stipulated in Article 71(3).</u></p> <p>A distinction shall be made in the accounts between these different types of payment <u>at the time they are made. The subsequent conversion of prefinancing payments to reimbursements, and the clearance of both of these by balancing payments, should also be recorded in the accounts.</u></p> <p>2. <del>Only</del> [Amounts paid by way of prefinancing shall yield interest until such time as they are definitively transferred to the final beneficiaries, save where they are made available to the Member States' authorities.]</p>	<p><i>A payment does not clear a budget commitment.</i></p> <p><i>Care is needed over the definition of supporting documents. Currently payments of types (a), (c) and (d) are often made on the basis of statements of expenditure, <u>without</u> the supporting documents. Appropriate references to supporting documentation should be in the implementing measures.</i></p> <p><i>The reference to the final date is not appropriate, as it would mean that any payment made after that date, even though due to the beneficiary, would be irregular.</i></p> <p><i>It is absolutely essential that these conversions are shown in the accounts in order that they reflect the true situation regarding financial implementation of the operation. It also is a key reflection of the principle of transparency, and information on the implementation of the budget.</i></p> <p><i>The location of this text should be examined, it may be more appropriate to place it in Part One Title VI.</i></p> <p><i>This is nothing to do with authorisation of payments, and so should be placed elsewhere. How interest should be recorded needs to be made explicit.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">Section 4</p> <p style="text-align: center;"><b>Payment of expenditure</b></p> <p style="text-align: center;">Article 76</p> <p>Payment of expenditure is the final act whereby the institution is discharged of its obligations towards its creditors.</p> <p>Payment of expenditure shall be made by the accounting officer within the limits of the funds available.</p>	<p style="text-align: center;">Section 4</p> <p style="text-align: center;"><b>Payment of expenditure</b></p> <p style="text-align: center;">Article 76</p> <p><del>Payment of expenditure is the final act whereby the institution is discharged of its obligations towards its creditors.</del></p> <p><del>Payment of expenditure shall be made by the accounting officer within the limits of the funds available.</del></p>	<p>The provision is required because the currently widely used systematic mechanisms of perpetual advance payments, mainly the intermediaries and not to final beneficiaries, which increase the risk of loss of control and provide a misleading image of budgetary execution, should be prohibited. Where further funds in addition to initial advances are required they should be paid only to reimburse expenditure actually incurred. Where the initial advances are not adequate to meet ongoing prefinancing needs an incremental advance should be paid. As operations approach completion, the prefinancing (advance) payments should be absorbed by setting them off against the last payments due to reimburse expenditure.</p> <p>Unnecessary, and arguable in light of Article 75(1).</p> <p>Unnecessary, as totally obvious.</p> <p>(Article 76 is all that remains of Articles 51 to – 53 of the old Regulation, the rest being transferred to the implementing rules. The two remaining paragraphs are not necessary, which means that there is no need for Section 4).</p>
<p style="text-align: center;">Section 5</p> <p style="text-align: center;"><b>Time limits for expenditure operations</b></p> <p style="text-align: center;">Article 77</p> <p>The validation, authorisation and payment of expenditure must be completed within the time limits laid down in the implementing rules, which shall also specify the circumstances in which creditors paid late are entitled to receive default interest charged to the line from which the principal was paid.</p>	<p style="text-align: center;">Section 5</p> <p style="text-align: center;"><b>Time limits for <u>expenditure payment</u> operations</b></p> <p style="text-align: center;">Article 77</p> <p><del>If the validation, authorisation and payment of expenditure must be completed within the time limits laid down in the implementing rules, which shall also specify the circumstances in which creditors paid late are entitled to receive default interest charged to the budget line from which the principal was paid, in accordance with the provisions laid down in the implementing rules.</del></p>	<p>There is no point in setting up a rule which renders late payments irregular. The consequences of late payment, however, should be made clear.</p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">Chapter 7</p> <p style="text-align: center;"><b>Information on the implementation of the budget</b></p> <p style="text-align: center;">Article 78</p> <p>1. Once a month, the Commission shall send to the European Parliament and the Council aggregate figures, by chapter, on the implementation of the budget, both for revenue and for expenditure against all appropriations. These figures shall also show details of the utilisation of appropriations carried over.</p> <p>The figures shall be sent within 10 working days following the end of each month.</p> <p>2. Three times a year, within the 30 working days following 31 May, 31 August and 31 December, the Commission shall send the European Parliament and the Council a report on implementation of the budget, covering both revenue and expenditure broken down by chapter, article and item. This report shall also give details of the utilisation of appropriations carried over from previous financial years.</p> <p>3. The figures and the report shall at the same time be sent to the Court of Auditors.</p>	<p style="text-align: center;"><del>Chapter 7</del></p> <p style="text-align: center;"><del><b>Information on the implementation of the budget</b></del></p> <p style="text-align: center;"><del>Article 78</del></p> <p><del>1. Once a month, the Commission shall send to the European Parliament and the Council aggregate figures, by chapter, on the implementation of the budget, both for revenue and for expenditure against all appropriations. These figures shall also show details of the utilisation of appropriations carried over.</del></p> <p>The figures shall be sent within 10 working days following the end of each month.</p> <p><del>2. Three times a year, within the 30 working days following 31 May, 31 August and 31 December, the Commission shall send the European Parliament and the Council a report on implementation of the budget, covering both revenue and expenditure broken down by chapter, article and item. This report shall also give details of the utilisation of appropriations carried over from previous financial years.</del></p> <p>3. The figures and the report shall at the same time be sent to the Court of Auditors.</p>	<p><i>This chapter has been moved to Article 119a.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">Chapter 8</p> <p style="text-align: center;"><b>It systems</b></p> <p style="text-align: center;"><i>Article 79</i></p> <p>Where revenue and expenditure operations are managed by means of computer systems, the provisions of this Title and of Chapters 2 and 3 of Title VI of Part One shall apply with due allowance for the possibilities and requirements deriving from computerised management. To this end, in particular:</p> <p>(a) the computer systems shall refer to the supporting documents corresponding to the data recorded;</p> <p>(b) signatures may be added by a computerised or electronic procedure.</p>	<p style="text-align: center;"><del>Chapter 8</del></p> <p style="text-align: center;"><b><i>It systems</i></b></p> <p style="text-align: center;"><i>Article 79</i></p> <p><del>Where revenue and expenditure operations are managed by means of computer systems, the provisions of this Title and of Chapters 2 and 3 of Title VI of Part One shall apply with due allowance for the possibilities and requirements deriving from computerised management. To this end, in particular:</del></p> <p><del>(a) the computer systems shall refer to the supporting documents corresponding to the data recorded;</del></p> <p><del>(b) signatures may be added by a computerised or electronic procedure.</del></p>	<p><i>Chapter 8 is not needed as a separate chapter dealing with IT systems. Some of the items in the Commission's draft can be moved to the implementing measures, as indicated below. There are other points concerning computer systems which should be included after Article 121 in the section dealing with the accounts.</i></p> <p><i>It is vital that there is full transparency in the computerised systems used for accounting purposes. It is essential that full records are kept and properly maintained of, for example, users, authorisations, electronic signatures. Otherwise, such things as electronic signatures are not acceptable. Weaknesses in this area identified by the Court in relation to Sincom 2 undermine confidence in the accuracy and correctness of the accounts. This should, however, be dealt with after Article 121 (see Article 121a).</i></p> <p><i>Already dealt with in Article 120(5). There is no need to have a special reference to computer systems.</i></p> <p><i>This provision should be in the implementing measures.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">Chapter 9</p> <p style="text-align: center;"><b>Internal auditor</b></p> <p style="text-align: center;"><i>Article 80</i></p> <p>Each institution shall appoint an internal auditor responsible for providing the institution with guarantees, in accordance with the relevant international standards, concerning the proper operation of budget implementation systems and procedures. The internal auditor may be neither authorising officer nor accounting officer.</p> <p style="text-align: center;"><i>Article 81</i></p> <p>1. The internal auditor shall assist his institution in dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting the economically sound use of the institution's resources.</p> <p>He shall be responsible:</p> <p>(a) for assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them; and</p> <p>(b) for assessing the suitability and quality of the internal control systems applicable to every budget implementation operation.</p> <p>2. The internal auditor shall perform his tasks on all the institution's activities and departments. He shall enjoy full and unlimited access to files relating to revenue and expenditure, where necessary on the spot, including in the Member States and in third countries.</p>	<p style="text-align: center;"><del>Chapter 9</del> <u>TITLE IV</u></p> <p style="text-align: center;"><b>INTERNAL AUDITOR</b></p> <p style="text-align: center;"><i>Article 80</i></p> <p><del>Each institution shall appoint an internal auditor responsible for providing the institution with guarantees, in accordance with the relevant international standards, concerning the proper operation of budget implementation systems and procedures.</del> <u>Each institution shall establish an internal audit function within the institution. Internal auditing is an assurance and consulting activity designed to add value and improve the institution's operations, as well as helping it to accomplish its objectives by bringing a systematic, disciplined approach to evaluating and improving the management and control processes. The duties of internal auditor shall be separate from any financial functions.</u></p> <p><u>The internal auditor shall only be responsible, in the performance of his duties, to the institution which has appointed him, and shall report directly to that institution.</u></p> <p style="text-align: center;"><i>Article 81</i></p> <p>1. <u>Each institution shall designate the internal auditor according to the method appropriate to its specific characteristics and requirements. Each institution shall, according to its specific characteristics and requirements, decide the scope of the internal auditor's work and adopt detailed objectives and procedures for the internal audit function, having due regard to international internal auditing standards.</u></p> <p><del>2.</del> <u>The internal auditor shall assist his institution in dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting the economically sound use of the institution's resources.</u></p> <p><u>The internal auditor shall be responsible, in particular:</u></p> <p>(a) for assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them; and</p> <p>(b) for assessing the suitability and quality of the internal control systems applicable to every budget implementation operation.</p> <p><del>2.</del> <u>3.</u> The internal auditor shall perform his tasks on all the institution's activities and departments. He shall enjoy full and unlimited access to files relating to revenue and expenditure, where necessary on the spot, including in the Member States and in third countries.</p>	<p><i>To emphasise the independence of the internal auditor in respect of the financial actors.</i></p> <p><i>As is stressed in the Court's Opinion No 1/2000.</i></p> <p><i>It should be considered whether such a detailed description of specific duties should be included in the implementing measures rather than the Financial Regulation itself.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>3. The internal auditor shall report to the institution on his findings and recommendations. The institution shall ensure that action is taken on recommendations resulting from audits.</p> <p style="text-align: center;"><i>Article 82</i></p> <p>Special rules applicable to the internal auditor shall be laid down by the institution and shall be such as to guarantee that he is independent in the performance of his duties. The internal auditor shall, in the performance of his duties, be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations.</p> <p style="text-align: center;">TITLE IV</p> <p style="text-align: center;"><b>PROCUREMENT</b></p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b>General provisions</b></p> <p style="text-align: center;"><i>Section 1</i></p> <p style="text-align: center;"><b>Scope</b></p> <p style="text-align: center;"><i>Article 83</i></p> <p>1. Public contracts are contracts for pecuniary interest concluded in writing by a contracting authority within the meaning of Articles 97 and 153, in order to obtain, against payment of a price paid wholly or partly from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.</p> <p>These contracts comprise:</p> <p>(a) building contracts;</p> <p>(b) supply contracts;</p> <p>(c) works contracts;</p> <p>(d) service contracts.</p> <p>2. This Title does not relate to grants.</p> <p style="text-align: center;"><i>Article 84</i></p> <p>1. All public contracts financed in whole or in part by the budget shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination.</p>	<p>3.4. The internal auditor shall report to the institution on his findings and recommendations. The institution shall ensure that action is taken on recommendations resulting from audits.</p> <p style="text-align: center;"><i>Article 82</i></p> <p>Special rules applicable to the internal auditor shall be laid down by the institution and shall be such as to guarantee that he is independent in the performance of his duties. <del>The internal auditor shall, in the performance of his duties, be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations.</del></p> <p style="text-align: center;">TITLE IV</p> <p style="text-align: center;"><b>PROCUREMENT</b></p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b>General provisions</b></p> <p style="text-align: center;"><i>Section 1</i></p> <p style="text-align: center;"><b>Scope</b></p> <p style="text-align: center;"><i>Article 83</i></p> <p>1. Public contracts are contracts for pecuniary interest concluded <del>in writing</del> by a contracting authority <del>within the meaning of Articles 97 and 153</del> in order to obtain, against payment of a price paid wholly or partly from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.</p> <p>These contracts comprise:</p> <p>(a) building contracts;</p> <p>(b) supply contracts;</p> <p>(c) works contracts;</p> <p>(d) service contracts.</p> <p><del>2. This Title does not relate to grants.</del></p> <p style="text-align: center;"><i>Article 84</i></p> <p>1. All public contracts financed in whole or in part by the budget shall comply with the principles of transparency, proportionality <u>and</u> equal treatment <del>and non-discrimination</del>.</p>	<p><i>Although their role and responsibilities are significant, internal auditors are not directly involved in the implementation of the budget, and there is therefore no reason to lay down their liability to payment of compensation.</i></p> <p><i>Note that certain contracts may be concluded orally on conditions to be specified elsewhere (see proposal for new Article 86(2)).</i></p> <p><i>The contracting authority no longer needs to be defined by reference to the Articles in question as this Title covers all contracts.</i></p> <p><i>To be defined in the implementing rules.</i></p> <p><i>To be defined in the implementing rules.</i></p> <p><i>To be defined in the implementing rules.</i></p> <p><i>To be defined in the implementing rules.</i></p> <p><i>To be deleted as it states the obvious.</i></p> <p><i>'Equal treatment' and 'non-discrimination' seem to be two expressions of a single principle.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. All contracts shall be put out to tender on the broadest possible base except in the cases of which an exhaustive list is given in the detailed implementing rules.</p> <p>3. The institutions shall reserve the right to suspend, refuse or recover at any time amounts paid for contracts in respect of which they feel that the award procedure was vitiated by error, irregularities or fraud.</p> <p style="text-align: center;">Section 2</p> <p style="text-align: center;"><b>Publication</b></p> <p style="text-align: center;">Article 85</p>	<p><del>2. All contracts shall be put out to tender on the broadest possible base except in the cases of which an exhaustive list is given in the detailed implementing rules.</del></p> <p><del>3. The institutions shall reserve the right to suspend, refuse or recover at any time amounts paid for contracts in respect of which they feel that the award procedure was vitiated by error, irregularities or fraud.</del></p> <p style="text-align: center;"><u>Article 84a</u></p> <p><u>The provisions of this title shall not apply to activities of the JCR performed on behalf of third parties.</u></p> <p style="text-align: center;">Section 2</p> <p style="text-align: center;"><b>Publication</b></p> <p style="text-align: center;">Article 85</p>	<p><i>This provision does not concern the scope of the Article and duplicates Article 86. Furthermore, the need for the widest possible call for tenders does not apply to all contracts.</i></p> <p><i>Amended and transferred to Article 96a as it does not concern the scope of the Article.</i></p> <p><i>Article 147(3) transferred to this Title because a separate section on research is unnecessary.</i></p>
<p>1. All contracts with a value exceeding the thresholds provided for in Article 98 or Article 153 shall be published in the <i>Official Journal of the European Communities</i>.</p> <p>2. Publication shall consist of a pre-information notice, a contract notice and an award notice.</p> <p>The contract notice shall be published, except in the cases referred to in Article 87.</p> <p>The award notice need not be published where publication would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between the suppliers.</p> <p>3. Contracts with a value not exceeding the thresholds provided for in Article 98 or Article 153 shall be advertised as appropriate.</p> <p>4. The subject of the contract must be clearly defined in the documents relating to competitive tendering, including the specifications.</p>	<p>1. All contracts with a value exceeding the thresholds provided for in Article 98 <del>or Article 153</del> shall be published in the <i>Official Journal of the European Communities</i>.</p> <p>2. Publication shall consist of a pre-information notice, a contract notice and an award notice.</p> <p>The contract notice shall be published, except in the cases referred to in Article 87.</p> <p>The award notice need not be published where publication would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between the suppliers.</p> <p>3. Contracts with a value not exceeding the thresholds provided for in Article 98 <del>or Article 153</del> shall be advertised as appropriate.</p> <p>4. The subject of the contract must be clearly defined in the documents relating to competitive tendering, <del>including the specifications.</del></p>	<p><i>Amendment required if the relevant common arrangements are applied to external aid.</i></p> <p><i>Appropriate advertising to be defined in the implementing rules</i></p> <p><i>Amendment intended to make it clear that the principle of transparency concerns all stages of the procedure.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Section 3</i></p> <p style="text-align: center;"><b>Procurement procedures</b></p> <p style="text-align: center;"><i>Article 86</i></p> <p>1. Procurement procedures involving competitive tendering shall take one of the following forms:</p> <p>(a) the open procedure;</p> <p>(b) the restricted procedure;</p> <p>(c) contests;</p> <p>(d) the negotiated procedure.</p> <p>2. For contracts where the value exceeds the thresholds provided for in Article 98 or Article 153, one of the procedures referred to in points (a), (b) and (c) of paragraph 1 shall apply, subject to Article 87.</p> <p>3. For contracts where the value does not exceed the thresholds provided for in Article 98 or Article 153, the contracting authority may, in addition to the procedures mentioned in paragraph 1, apply simplified tendering procedures under which the candidates invited to tender are selected on the basis of objective criteria allowing genuine competition.</p> <p style="text-align: center;"><i>Article 87</i></p> <p>1. Contracts may be awarded by negotiated procedure without prior publication of a contract notice only in the cases set out in the implementing rules.</p> <p>2. After a contract notice is published and candidates have been selected on the basis of the criteria set out, the negotiated procedure may be used only in the cases set out in the implementing rules.</p>	<p style="text-align: center;"><i>Section 3</i></p> <p style="text-align: center;"><b>Procurement procedures</b></p> <p style="text-align: center;"><i>Article 86</i></p> <p>1. Procurement procedures involving competitive tendering shall take one of the following forms:</p> <p>(a) the open procedure;</p> <p>(b) the restricted procedure;</p> <p>(c) contests;</p> <p>(d) the negotiated procedure.</p> <p><del>2. For contracts where the value exceeds the thresholds provided for in Article 98 or Article 153, one of the procedures referred to in points (a), (b) and (c) of paragraph 1 shall apply, subject to Article 87.</del></p> <p><del>3. For contracts where the value does not exceed the thresholds provided for in Article 98 or Article 153, the contracting authority may, in addition to the procedures mentioned in paragraph 1, apply simplified tendering procedures under which the candidates invited to tender are selected on the basis of objective criteria allowing genuine competition.</del></p> <p><u>2. Public works contracts shall be concluded in writing, except where contracts may be made against an invoice or a bill of costs, if the presumed value of the supplies, services or work does not exceed the limits set in the implementing rules.</u></p> <p style="text-align: center;"><i>Article 87</i></p> <p>1. Contracts may be awarded by negotiated procedure without prior publication of a contract notice only in the cases set out in the implementing rules.</p> <p>2. After a contract notice is published and candidates have been selected on the basis of the criteria set out, the negotiated procedure may be used only in the cases set out in the implementing rules.</p>	<p><i>To be defined in the implementing rules.</i></p> <p><i>To be defined in the implementing rules.</i></p> <p><i>To be defined in the implementing rules.</i></p> <p><i>To be defined in the implementing rules.</i></p> <p><i>To be deleted, as this provision aims only to make it possible to implement the negotiated procedure laid down in Article 87 without restricting its scope by specifying amounts.</i></p> <p><i>To be deleted, as it concerns either a (simplified) fifth procedure which should be stipulated in paragraph 1(e) or the implementation of a procedure envisaged in paragraph 1, in which case, the text is unclear and should, in any case, be dealt with in the implementing rules.</i></p> <p><i>This amendment is linked to the deletion of the words 'in writing' in Article 83 and to the fact that provision must be made for the adoption of oral contracts in strictly limited cases.</i></p>



Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Section 4</i></p> <p style="text-align: center;"><b>Exclusion from procurement procedures</b></p> <p style="text-align: center;"><i>Article 88</i></p> <p>1. Candidate or tenderer shall be excluded from award of a contract if:</p> <p>(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;</p> <p>(b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of <i>res judicata</i>;</p> <p>(c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;</p> <p>(d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be carried out.</p> <p>2. Candidates or tenderers must certify that they are not in one of the situations listed in paragraph 1.</p>	<p style="text-align: center;"><i>Section 4</i></p> <p style="text-align: center;"><b>Exclusion from procurement procedures</b></p> <p style="text-align: center;"><i>Article 88</i></p> <p>1. Candidate or tenderer shall be excluded from award of a contract if:</p> <p>(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;</p> <p>(b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of <i>res judicata</i>;</p> <p>(c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;</p> <p>(d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be carried out.</p> <p>2. Candidates or tenderers must certify that they are not in one of the situations listed in paragraph 1.</p>	<p><i>To be deleted and dealt with in the implementing rules, the more adaptable nature of which would make it possible to extend exclusions to situations not envisaged in this text.</i></p> <p><i>Note that Article 88(1)(b) and (c) and Article 89(2) provide for permanent forms of exclusion, whereas Article 90 provides for exclusion of no more than five years.</i></p> <p><i>Note that Article 88(1)(b) and (c) and Article 89(2) provide for permanent forms of exclusion, whereas Article 90 provides for exclusion of no more than five years.</i></p>
<p style="text-align: center;"><i>Article 89</i></p> <p>1. Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:</p> <p>(a) are subject to a conflict of interests;</p> <p>(b) are guilty of misrepresentation in supplying the information required by the contracting authorities as a condition of participation in a contract procedure;</p> <p>(c) have attempted to obtain confidential information, reach unlawful agreements with their competitors, influence or corrupt the contracting authority in any way.</p>	<p style="text-align: center;"><i>Article 89</i></p> <p>1. Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:</p> <p>(a) are subject to a conflict of interests;</p> <p>(b) are guilty of misrepresentation in supplying the information required by the contracting authorities as a condition of participation in a contract procedure;</p> <p>(c) have attempted to obtain confidential information, reach unlawful agreements with their competitors, influence or corrupt the contracting authority in any way.</p>	<p><i>To be deleted and dealt with in the implementing rules, the more flexible nature of which would make it possible to extend exclusions to situations not envisaged in this text.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. In addition to the cases provided for in paragraph 1, contracts may not be awarded to candidates or tenderers who, in another procurement or grant procedure financed by the Community budget, have been declared to be in serious breach of contract for failure to comply with their contractual obligations.</p> <p style="text-align: center;"><i>Article 90</i></p> <p>Administrative or financial penalties may be imposed on candidates or tenderers who are excluded by virtue of Articles 88 and 89, after they have been given the opportunity to present their observations. These penalties may consist of the suspension or cancellation of funding for ongoing contracts or the exclusion of the candidate or tenderer concerned from contracts financed by the Community budget for a period of up to five years.</p> <p style="text-align: center;"><i>Section 5</i></p> <p style="text-align: center;"><b>Award of contracts</b></p> <p style="text-align: center;"><i>Article 91</i></p> <p>1. The selection criteria for evaluating the capability of candidates or tenderers and the award criteria for evaluating the content of the tenders shall be defined in advance and set out in the call for tender.</p> <p>2. Contracts shall be awarded in one of the following two ways:</p> <p>(a) under the automatic award procedure, the contract is awarded to the lowest bid submitted that is in order and satisfies the conditions laid down;</p> <p>(b) under the value-for-money procedure, the contract is awarded to the bid offering the best quality-price combination.</p>	<p><del>2. In addition to the cases provided for in paragraph 1, contracts may not be awarded to candidates or tenderers who, in another procurement or grant procedure financed by the Community budget, have been declared to be in serious breach of contract for failure to comply with their contractual obligations.</del></p> <p style="text-align: center;"><i>Article 90</i></p> <p>Candidates or tenderers <del>who</del> shall not be considered for <u>the awarding of a contract where they fall within one of the situations justifying exclusion envisaged in the implementing rules. They shall be informed thereof without delay, by virtue of Articles 88 and 89.</u> Administrative or financial penalties may be imposed on <u>them</u>, after they have been given the opportunity to present their observations, in accordance with the <u>implementing rules</u>. <del>These penalties may consist of the suspension or cancellation of funding for ongoing contracts or the exclusion of the candidate or tenderer concerned from contracts financed by the Community budget for a period of up to five years.</del></p> <p style="text-align: center;"><i>Section 5 6</i></p> <p style="text-align: center;"><b>Award of contracts</b></p> <p style="text-align: center;"><i>Article 91 95</i></p> <p>1. The selection criteria for evaluating the capability of candidates or tenderers and the award criteria for evaluating the content of the tenders shall be defined in advance and set out in the call for tender.</p> <p>2. Contracts shall be awarded in one of the following two ways:</p> <p>(a) under the automatic award procedure, the contract is awarded to the lowest bid submitted that is in order and satisfies the conditions laid down;</p> <p>(b) under the value-for-money procedure, the contract is awarded to the bid offering the best quality-price combination. <u>In this case, if the authorising officer decides to set aside the opinion of the committee referred to in Article 92(3) (91(3)), he shall justify his decision accordingly.</u></p>	<p><i>Note that Article 88(1)(b) and (c) and Article 89(2) provide for permanent forms of exclusion, whereas Article 90 provides for exclusion of no more than five years.</i></p> <p><i>This amendment stems from the transfer to the implementing rules of specific cases of exclusion and from the need to establish the basic rules governing the principle of administrative and financial penalties in the Financial Regulation itself.</i></p> <p><i>Invert the order of Sections 5 and 6, as the contract is awarded once bids have been submitted and opened.</i></p> <p><i>Over and above the requirement to justify any administrative decision, steps must be taken to ensure that account has actually been taken of the ad hoc committee's opinion and that the decision has been fully justified.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Section 6</i></p> <p style="text-align: center;"><b>Submission, opening and evaluation of tenders</b></p> <p style="text-align: center;"><i>Article 92</i></p> <p>1. The procedure for submitting tenders shall ensure that they remain confidential until they are all opened simultaneously.</p> <p>2. Whatever procedure is applied for awarding the contract, the applications and tenders shall be opened by a tender board appointed for this purpose. Any tender or proposal declared by the board not to satisfy the conditions laid down shall be rejected.</p> <p>3. All applications or tenders declared by the tender board to satisfy the conditions laid down shall be evaluated on the basis of the selection and award criteria by a committee appointed for this purpose.</p> <p style="text-align: center;"><i>Article 93</i></p> <p>While the procedure for awarding a contract is under way, all contacts between the contracting authority and candidates or tenderers must satisfy conditions ensuring transparency and equal treatment. They may not lead to amendment of the conditions of the contract or the terms of the original tender.</p> <p style="text-align: center;"><i>Article 94</i></p> <p>The contracting authority shall notify all candidates or tenderers whose applications or tenders are rejected of the grounds on which the decision was taken, and all tenderers whose tenders are admissible of the characteristics and relative advantages of the successful tender as well as the name of the tenderer to whom the contract is awarded.</p> <p style="text-align: center;"><i>Article 95</i></p> <p>The contracting authority may, before signature of the contract, cancel the award procedure or abandon the procurement without the candidates or tenderers being able to claim any compensation.</p> <p>The decision must be reasoned and be brought to the attention of the candidates or tenderers.</p>	<p style="text-align: center;"><i>Section 6 <u>5</u></i></p> <p style="text-align: center;"><b>Submission, opening and evaluation of tenders</b></p> <p style="text-align: center;"><i>Article 92 (91)</i></p> <p>1. The procedure for submitting tenders <u>must</u> ensure that they remain confidential until they are all opened simultaneously.</p> <p>2. Whatever procedure is applied for awarding the contract, the applications and tenders shall be opened by a tender board appointed for this purpose. Any tender or proposal declared by the board not to satisfy the conditions laid down shall be rejected.</p> <p>3. All applications or tenders declared by the tender board to satisfy the conditions laid down shall be evaluated on the basis of the selection and award criteria by a committee appointed for this purpose.</p> <p style="text-align: center;"><i>Article 93 (92)</i></p> <p>While the procedure for awarding a contract is under way, all contacts between the contracting authority and candidates or tenderers must satisfy conditions ensuring transparency and equal treatment. They may not lead to amendment of the conditions of the contract or the terms of the <del>original</del> tender.</p> <p style="text-align: center;"><i>Article 94 (93)</i></p> <p>The contracting authority shall notify all candidates or tenderers whose applications or tenders are rejected or <u>not selected</u> of the grounds on which the decision was taken, <del>and all tenderers whose tenders are admissible of the characteristics and relative advantages of the successful tender</del> as well as the name of the tenderer to whom the contract is awarded.</p> <p style="text-align: center;"><i>Article 95 (94)</i></p> <p>The contracting authority may, before <u>the signing</u> of the contract, <del>either abandon the contract or, in the event of an irregularity, cancel the award procedure or abandon the procurement</del> without the candidates or tenderers being able to claim any compensation.</p> <p>The decision must be reasoned and be brought to the attention of the candidates or tenderers.</p>	<p><i>Invert the order of Sections 5 and 6, as the contract is awarded once bids have been submitted and opened.</i></p> <p><i>This is a formality which should be reinforced.</i></p> <p><i>The rules for appointing and running the committee are to be specified in the implementing rules.</i></p> <p><i>Delete the word 'original', as it is ambiguous, the implication being that there may be tenders other than the original tender.</i></p> <p><i>A description of the nature and advantages of the successful tender may lead to problems as regards the disclosure of information and confidentiality.</i></p> <p><i>Authorisation to cancel the procedure must not be granted too readily, owing to the attendant risk of manipulation. On the other hand, the possibility of abandoning a contract definitively must exist (e.g. where the project is no longer relevant). The inversion of the order of the two possibilities is purely stylistic.</i></p>

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<p data-bbox="336 277 416 302"><i>Section 7</i></p> <p data-bbox="330 338 424 367"><b>Security</b></p> <p data-bbox="330 421 427 448"><i>Article 96</i></p> <p data-bbox="129 483 624 562">To guarantee implementation of contracts, the contracting authority may require contractors to lodge a security in advance.</p> <p data-bbox="330 763 427 790"><i>Article 84</i></p> <p data-bbox="129 826 624 927">The institutions shall reserve the right to suspend, refuse or recover at any time amounts paid for contracts in respect of which they feel that the award procedure was vitiated by error, irregularities or fraud.</p> <p data-bbox="316 1189 442 1218">Chapter 2</p> <p data-bbox="129 1252 632 1330"><b>Specific provisions applicable to contracts awarded by the community institutions on their own account</b></p> <p data-bbox="330 1384 427 1411"><i>Article 97</i></p> <p data-bbox="129 1447 592 1525">The Community institutions shall be deemed to be contracting authorities in the case of contracts awarded on their own account.</p> <p data-bbox="330 1579 427 1606"><i>Article 98</i></p> <p data-bbox="129 1641 616 1767">The thresholds and time limits applicable shall be those laid down in the Directives of the European Parliament and of the Council on the coordination of procedures for the award of public services, supply and works contracts, subject to Title III of Part Two.</p> <p data-bbox="330 1821 427 1848"><i>Article 99</i></p> <p data-bbox="129 1883 624 2085">Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has ratified a special agreement, under the conditions laid down in that agreement, between that country and the European Communities in the field of public procurement.</p>	<p data-bbox="863 277 943 302"><i>Section 7</i></p> <p data-bbox="857 338 951 367"><b>Security</b></p> <p data-bbox="857 421 954 448"><i>Article 96</i></p> <p data-bbox="647 483 1110 584">To guarantee implementation of contracts, the contracting authority may, <u>and, in certain cases envisaged by the implementing rules, must,</u> require contractors to lodge a security in advance.</p> <p data-bbox="863 620 943 647"><i>Section 8</i></p> <p data-bbox="775 683 1029 712"><b><u>Irregularities and fraud</u></b></p> <p data-bbox="847 763 959 790"><i>Article 96a</i></p> <p data-bbox="647 826 1150 976">The institutions <del>shall reserve the right to</del> shall suspend <del>implementation, refuse to make payment,</del> or recover at <del>any time amounts already paid for</del> contracts in respect of which <del>they feel that</del> the award procedure <del>or implementation is</del> vitiated by <del>error,</del> by irregularities or fraud <u>attributable to the contracting party.</u></p> <p data-bbox="839 1189 965 1218">Chapter 2</p> <p data-bbox="652 1252 1155 1330"><b>Specific provisions applicable to contracts awarded by the community institutions on their own account</b></p> <p data-bbox="857 1384 954 1411"><i>Article 97</i></p> <p data-bbox="647 1447 1150 1525">The Community institutions shall be deemed to be contracting authorities in the case of contracts awarded on their own account.</p> <p data-bbox="857 1579 954 1606"><i>Article 98</i></p> <p data-bbox="647 1641 1150 1767">The thresholds and time limits applicable shall be those laid down in the Directives of the European Parliament and of the Council on the coordination of procedures for the award of public services, supply and works contracts, <del>subject to Title III of Part Two.</del></p> <p data-bbox="857 1821 954 1848"><i>Article 99</i></p> <p data-bbox="647 1883 1142 2085">Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has ratified a special agreement, under the conditions laid down in that agreement, between that country and the European Communities in the field of public procurement.</p>	<p data-bbox="1174 826 1485 976"><i>It seems preferable to create a special section at the end of the chapter for this type of situation (from Article 84(3), which essentially concerns circumstances identified after a contract has been awarded).</i></p> <p data-bbox="1174 1005 1477 1131"><i>The implementation of these rules must not depend on the good will of the institutions, but must be compulsory in the event of fraud or irregularities.</i></p> <p data-bbox="1174 1641 1422 1668"><i>See Articles 100a and 100b.</i></p>

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<p style="text-align: center;"><i>Article 100</i></p> <p>Where the Plurilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the contracts shall also be open to nationals of the States which have ratified this agreement, under the conditions laid down in that agreement.</p>	<p style="text-align: center;"><i>Article 100</i></p> <p>Where the Plurilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the contracts shall also be open to nationals of the States which have ratified this agreement, under the conditions laid down in that agreement.</p> <p style="text-align: center;"><u>Chapter 3</u></p> <p style="text-align: center;"><b><u>Provisions applicable to external measures</u></b></p> <p style="text-align: center;"><i>Article 100a</i></p> <p><u>The provisions of Chapter 1 of this Title shall be applicable to all contracts financed in whole or in part by the budget in third countries, subject to the special provisions relating to thresholds and the arrangements for awarding external contracts laid down in the implementing rules.</u></p> <p style="text-align: center;"><i>Article 100b</i></p> <p><u>1. Participation in tendering procedures shall be open on equal terms to all persons coming within the scope of the Treaties and, in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned, to all natural persons and legal entities who are nationals of the beneficiary third countries or of any other third country expressly mentioned in those instruments.</u></p> <p><u>2. In exceptional cases and with due justification, it may be decided, on the basis of the specific conditions laid down in the basic instruments governing cooperation, to allow nationals of third countries other than those referred to in paragraph 1 to tender for contracts.</u></p>	<p><i>The proposed text is a modified version of the part of Article 153 which refers to special provisions for external actions in the implementing measures. It is incorporated here because Title III of Part Two is unnecessary as a separate section.</i></p> <p><i>It was necessary to move the current Article 154 because of the proposal to delete the title listing exceptions in respect of external aid, and of the need to maintain access, in the area of external aid, to public works contracts for companies from countries with which the Community has a special relationship.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>TITLE V</p> <p><b>GRANTS</b></p> <p>Chapter 1</p> <p><b>General provisions</b></p> <p>Article 101</p> <p>1. Grants are direct financial contributions, by way of donation, from the budget in order to finance:</p> <p>(a) either the functioning of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy;</p> <p>(b) or action intended to help achieve an objective forming part of a European Union policy.</p> <p>They shall be covered by a written agreement</p> <p>2. Expenditure on the institutions' staff, loans and shareholdings, payment of damages, and procurement contracts shall not constitute grants.</p>	<p>TITLE V</p> <p><b>GRANTS</b></p> <p>Chapter 1</p> <p><b>General provisions</b></p> <p>Article 101</p> <p>1. <u>A subsidy is a direct financial contribution granted by a Community institution so as to promote the implementation of a European Union policy objective, or to pursue an aim of general European interest. Grants are direct financial contributions, by way of donation, from the budget in order to finance:</u></p> <p>(a) <del>either the functioning of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy;</del></p> <p>(b) <del>or action intended to help achieve an objective forming part of a European Union policy.</del></p> <p><u>It</u> They shall be covered by a written agreement. <u>A budget must be attached to the agreement granting the subsidy.</u></p> <p>2. <u>Financial assistance provided through the intervention of the Member States or of bodies designated by them ("transfers"), for example under the common agricultural policy or the Structural Funds, shall not constitute a subsidy as defined in Article 101(1).</u> (Expenditure on the Community institutions' staff, loans and shareholdings, payment of damages, and procurement contracts shall not constitute grants.)</p>	<p>Definition inspired by the Vade-mecum on grants of July 1998. This definition covers both grants for the functioning of a body as in subparagraph (a) and those to support actions as in subparagraph (b) of the proposal).</p> <p>Point 5(1)(6) of the Vade-mecum on Grants (shorter version for the general public; point 6(1)(6) of the complete version of July 1998).</p> <p>The text of point 1(2) of the short form Vade-mecum is incorporated to clarify that this Title does not cover Community support granted in areas where there is shared management in the sense of Article 50. It may be questioned whether the reference to the Community institutions' staff, loans and shareholdings, payment of damages should be included as they are manifestly not grants. While it may be desirable, in the light of problems that have arisen in the past with inappropriate use of subsidies for procurement of services and equipment, to make absolutely clear the distinction between procurement contracts and grant agreements, this is specified in the Vade-mecum.</p>

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<p style="text-align: center;">Chapter 2</p> <p style="text-align: center;"><b>Award principles</b></p> <p style="text-align: center;"><i>Article 102</i></p> <p>1. The award of grants is subject to the principles of transparency and equal treatment. They may not be cumulative or awarded retrospectively.</p> <p>2. The grant may not have the purpose or effect of producing a profit for the beneficiary.</p> <p style="text-align: center;"><i>Article 103</i></p> <p>1. Grants shall be subject to an annual programme indicating this legal base, the objectives and the results expected.</p> <p>These programmes shall be published every year and implemented through the publication of calls for proposals except where the urgency, the nature of the action or the status of the beneficiary makes this inappropriate.</p> <p>2. All grants awarded in the course of a financial year shall be published annually.</p>	<p style="text-align: center;">Chapter 2</p> <p style="text-align: center;"><b>Award principles</b></p> <p style="text-align: center;"><i>Article 102</i></p> <p>1. The award of grants is subject to the principles of transparency and equal treatment. They may not be cumulative or awarded retrospectively.</p> <p>2. <u>Under the conditions attached to the grant, the beneficiary may be required to lodge a security in advance as a guarantee that he will discharge his obligations.</u></p> <p><del>2. The grant may not have the purpose or effect of producing a profit for the beneficiary.</del></p> <p style="text-align: center;"><i>Article 103</i></p> <p>1. Grants shall be subject to an annual programme indicating <del>this</del> <u>their</u> legal base, the objectives and the results expected.</p> <p>These programmes shall be published every year and implemented through the publication of calls for proposals except where the urgency, the nature of the action or the status of the beneficiary makes this inappropriate.</p> <p><u>In duly justified and exceptional circumstances, in the interest of pursuing a Community objective or an aim of general European interest, an individual grant may be made without a programme existing.</u></p> <p>2. All grants awarded in the course of a financial year shall be published <del>annually</del> <u>within six months of the end of that year.</u></p>	<p><i>The concept of retroactivity is qualified, given the provisions of Article 105(1) and (3) which allow retrospective funding in a limited, defined and vital context. Point 4(1)(7) of the summary Vade-mecum is more explicit when it states that the retroactive subsidising of completed measures is not allowed. The requirement for co-financing is unnecessary, especially as it is relaxed in the external action area. It may be desirable, and should be part of the Commission's policy for the individual programmes, but should not be a restrictive criterion in the Financial Regulation. Omission here would mean that the derogation in the external aid area (Article 155) is unnecessary.</i></p> <p><i>Paragraph 2 has been moved from Article 111. It may need to be presented as Article 103.</i></p> <p><i>This is unverifiable, because of the fungible nature of support from different origins received by organisations.</i></p> <p><i>This is not a principle, but means of implementation. It should be in Chapter 3.</i></p> <p><i>First, while it is certainly desirable that grants should normally only be made within the context of a programme, there will almost certainly be occasions when a grant should be made on an ad hoc basis. The regulation should not prevent this.</i></p>

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<p style="text-align: center;"><i>Article 104</i></p> <p>1. One action may give rise to the award of only one grant to any one beneficiary.</p> <p>2. A beneficiary may be awarded only one operating grant per financial year.</p>	<p style="text-align: center;"><i>Article 104</i></p> <p><del>1. One action may give rise to the award of only one grant to any one beneficiary.</del></p> <p><del>2. A beneficiary may be awarded only one operating grant per financial year.</del></p>	<p><i>The principle that grants may not be multiplied, as stipulated in Article 102(1), is sufficient. Further details on the implementation of this principle are in the Vade-mecum.</i></p> <p><i>See above</i></p>
<p style="text-align: center;"><i>Article 105</i></p> <p>1. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the award decision.</p> <p>In such cases, expenditure eligible for financing may not have been incurred prior to the date of submission of the grant application.</p> <p>2. No grant may be awarded retrospectively for actions already completed.</p>	<p style="text-align: center;"><i>Article 105</i></p> <p><del>1. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the award decision.</del></p> <p><del>In such cases, expenditure eligible for financing may not have been incurred prior to the date of submission of the grant application.</del></p> <p><del>2. No grant may be awarded retrospectively for actions already completed.</del></p>	<p><i>This Article gives an explanation of how to understand the principle of retroactivity, especially in an area such as humanitarian aid where urgency prevails. It should be dealt with in the implementing measures (or the Vade-mecum). Article 102 should contain a reference to such implementing measures.</i></p>
<p style="text-align: center;"><i>Article 106</i></p> <p>1. The grant may not finance the entire administrative expenditure of the beneficiary organisation or of the action, subject to Title IV of Part Two.</p> <p>Where operating grants are renewed, they shall be gradually decreased.</p> <p>2. Derogations from paragraph 1 may be laid down either in the legal basis or in the budget remarks for organisations pursuing an objective of general European interest. Derogations from the second subparagraph of paragraph 1 may be laid down in the same way for international organisations.</p>	<p style="text-align: center;"><i>Article 106</i></p> <p><del>1. The grant may not finance the entire administrative expenditure of the beneficiary organisation or of the action, subject to Title IV of Part Two.</del></p> <p><del>Where operating grants are renewed, they shall be gradually decreased.</del></p> <p><del>2. Derogations from paragraph 1 may be laid down either in the legal basis or in the budget remarks for organisations pursuing an objective of general European interest. Derogations from the second subparagraph of paragraph 1 may be laid down in the same way for international organisations.</del></p>	<p><i>This is unnecessarily restrictive. It is also unsatisfactorily drafted as it permits 99 % financing of administrative expenditure. Such provisions are best dealt with in the implementing measures (or the Vade-mecum).</i></p>
<p style="text-align: center;">Chapter 3</p> <p style="text-align: center;"><b><i>Award procedure</i></b></p> <p style="text-align: center;"><i>Article 107</i></p> <p>The call for proposals shall set out selection criteria which make it possible to assess the applicant's financial and operational capacity to complete the proposed action and the award criteria for selecting the beneficiaries of the grants.</p>	<p style="text-align: center;">Chapter 3</p> <p style="text-align: center;"><b><i>Award procedure</i></b></p> <p style="text-align: center;"><i>Article 107</i></p> <p>The call for proposals shall set out selection criteria which make it possible to assess the applicant's financial and operational capacity to complete the proposed action and the award criteria for selecting <del>the beneficiaries of the grants.</del></p>	<p><i>Improvement of text. It is necessary to avoid confusion between actions and beneficiaries.</i></p>



Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 108</i></p> <p>1. Grant applications submitted in writing by non-profit-making legal persons shall be eligible. By way of exception, depending on the nature of the action or the objective pursued by the applicant, natural persons or commercial enterprises may receive grants.</p> <p>2. Grants may not be awarded to applicants who are or at the time of a grant award procedure or procurement procedure financed from the budget have been in one of the situations referred to in Articles 88 and 89.</p> <p>Applicants must certify that they are not in one of the situations listed in Article 88.</p> <p>Administrative and financial penalties may be imposed on applicants who are excluded pursuant to Articles 88 and 89.</p>	<p style="text-align: center;"><i>Article 108</i></p> <p><u>Eligibility criteria, and the rules concerning exclusion of applicants, are set out in the implementing measures.</u> <del>1. Grant applications submitted in writing by non-profit-making legal persons shall be eligible. By way of exception, depending on the nature of the action or the objective pursued by the applicant, natural persons or commercial enterprises may receive grants.</del></p> <p>2. Grants may not be awarded to applicants who are or at the time of a grant award procedure or procurement procedure financed from the budget have been in one of the situations referred to in Articles 88 and 89.</p> <p>Applicants must certify that they are not in one of the situations listed in Article 88.</p> <p>Administrative and financial penalties may be imposed on applicants who are excluded pursuant to Articles 88 and 89.</p>	<p><i>Eligibility criteria, exclusions, etc. should be in the implementing measures (the Vade-mecum).</i></p>
<p style="text-align: center;"><i>Article 109</i></p> <p>1. Applications shall be evaluated, on the basis of pre-announced selection and award criteria, by a committee set up for that purpose.</p> <p>2. The institution shall inform applicants in writing of the decision on their application. If it decides not to award all or part of the requested grant, the institution shall give the reasons for its decision.</p>	<p style="text-align: center;"><i>Article 109</i></p> <p><del>1. Applications shall be evaluated, on the basis of pre-announced selection and award criteria, by a committee set up for that purpose.</del></p> <p>2. The institution shall inform applicants in writing of the decision on their application. If it decides not to award all or part of the requested grant, the institution shall give the reasons for its decision.</p>	<p><i>These are implementation provisions which should be in the implementing rules. The principle of transparency is set out in Article 101, and the requirement to set out award criteria is in Article 107.</i></p> <p><i>This follows from the general obligation of public services, and is not necessary.</i></p>
<p style="text-align: center;">Chapter 4</p> <p style="text-align: center;"><b>Payment</b></p> <p style="text-align: center;"><i>Article 110</i></p> <p>1. Grants shall be paid in euro.</p> <p>2. The rate of payment shall be determined by the financial risks involved, the duration and progress of the action or the real costs incurred by the beneficiary.</p>	<p style="text-align: center;">Chapter 4</p> <p style="text-align: center;"><b>Payment</b></p> <p style="text-align: center;"><i>Article 110</i></p> <p><del>1. Grants shall be paid in euro.</del></p> <p>2. The rate of payment shall be determined by the financial risks involved, the duration and progress of the action or the real costs incurred by the beneficiary.</p>	<p><i>Unnecessary. The currency unit is the euro. In almost all cases payment in euro is automatic. There may be exceptional cases, e.g. in the case of humanitarian aid actions, where it is necessary to use another currency.</i></p> <p><i>Self-evident, unnecessary.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 111</i></p> <p>Under the conditions attached to the grant, the beneficiary may be required to lodge a security in advance as a guarantee that he will discharge his obligations.</p> <p style="text-align: center;"><i>Article 112</i></p> <p>1. The amount of the grant shall not become final until after the action has been completed or the operating costs have been presented and the institution has accepted the final accounts, without prejudice to subsequent checks by the institutions.</p> <p>2. The grant must be repaid pro rata by the beneficiary if the action is not carried out or only partly carried out or is not completed on schedule, where sums above the maximum amounts provided for in the agreement have been paid or where the action has been carried out at a lower cost.</p> <p>3. Should the beneficiary infringe the rules and principles laid down in this Title, the grant paid shall be recovered.</p>	<p style="text-align: center;"><i>Article 111</i></p> <p><del>Under the conditions attached to the grant, the beneficiary may be required to lodge a security in advance as a guarantee that he will discharge his obligations.</del></p> <p style="text-align: center;"><i>Article 112</i></p> <p><del>The amount of the grant shall not become final until the institution has accepted that the general and specific terms of the grant, laid down in the implementing rules and the written grant agreement, have been fulfilled. 1. The amount of the grant shall not become final until after the action has been completed or the operating costs have been presented and the institution has accepted the final accounts, without prejudice to subsequent checks by the institutions. If these are not fulfilled, then full or partial reimbursement may result.</del></p> <p><del>2. The grant must be repaid pro rata by the beneficiary if the action is not carried out or only partly carried out or is not completed on schedule, where sums above the maximum amounts provided for in the agreement have been paid or where the action has been carried out at a lower cost.</del></p> <p><del>3. Should the beneficiary infringe the rules and principles laid down in this Title, the grant paid shall be recovered.</del></p>	<p><i>Not a payment problem, should go under award principles. See Article 102.</i></p> <p><i>This proposal as drafted is unworkable. Article 112(1) is sufficient.</i></p> <p><i>The revised first paragraph of this Article is sufficient. The individual grant programmes may contain in their conditions provisions identifying the circumstances in which the Commission may seek repayment of the grant by a beneficiary in breach.</i></p>
<p style="text-align: center;">Chapter 5</p> <p style="text-align: center;"><b>Implementation</b></p> <p style="text-align: center;"><i>Article 113</i></p> <p>Where implementation of the action requires the award of contracts, they shall be subject to Title IV of this Part or Chapter 3 of Title IV of Part Two.</p> <p style="text-align: center;"><i>Article 114</i></p> <p>Each grant programme shall be evaluated to ensure that the results are consistent with the objectives set.</p>	<p style="text-align: center;">Chapter 5</p> <p style="text-align: center;"><b>Implementation</b></p> <p style="text-align: center;"><i>Article 113</i></p> <p>Where implementation of the action requires <del>the award of contracts</del> <u>procurement</u>, they it shall be subject to Title IV of this Part <del>or Chapter 3 of Title IV of Part Two.</del></p> <p style="text-align: center;"><i>Article 114</i></p> <p><del>Each grant programme shall be evaluated to ensure that the results are consistent with the objectives set.</del></p>	<p><i>Improved formulation. This part of the Regulation has been removed in the Court's proposal.</i></p> <p><i>This Article is not necessary if there are general provisions in the Financial Regulation concerning the evaluation of all Commission expenditure programmes (see Article 25).</i></p>

Commission's proposal	Court's modified proposal	Comments
TITLE VI	TITLE VI	<p><i>This Title does not indicate the basic accounting framework chosen by the Commission to record and present financial information. It does not incorporate the provisions of Article 70 of the Regulation under revision, distinguishing between 'budgetary revenue and expenditure' and 'non-budgetary revenue and expenditure', and aiming at the calculation of a broad accounting result. Similarly, it takes no account of the recommendations made by a group of experts in the context of a study.</i></p> <p><i>The following aspects should be dealt with in the Financial Regulation itself, on the basis of the developments currently proposed by the international bodies and of the recommendations contained in the study:</i></p> <ul style="list-style-type: none"> <li><i>(a) the basic accounting framework which, in order to reflect international trends in public sector accounting, requires the implementation of an accruals-based accounting system;</i></li> <li><i>(b) the rules and methods for calculating the result of the implementation of the budget;</i></li> <li><i>(c) the objectives and characteristics of the accounts and of the financial statements;</i></li> <li><i>(d) the accounting principles which determine the standards and rules for keeping the accounts and drafting the financial statements, with reference to generally accepted accounting principles;</i></li> </ul>

Commission's proposal	Court's modified proposal	Comments
		<p>(e) <i>the accounting rules applicable to the drafting of the financial statements, with reference to the work of the aforementioned international bodies: the IPSAS (International Public Sector Accounting Standards) accounting standards of the International Federation of Accountants (IFAC) and, in the absence thereof, the IAS (International Accounting Standards) standards of the International Accounting Standards Committee (IASC) or the proposals of the International Organisation of Supreme Audit Institutions (Intosai);</i></p> <p>(f) <i>the various components of the financial statements, with reference to generally accepted standards (i.e. the balance sheet, an outturn account, the cash-flow statement, the statement of variations in own capital and the Annex containing explanatory notes on the financial statements), together with one or more statements on the implementation of the budget;</i></p> <p>(g) <i>the scope of consolidation and the consolidation method, as well as the implementation of homogeneous accounting methods for all Community bodies which may or may not be included in the consolidation;</i></p> <p>(h) <i>the implementation of accounting procedures, rules and methods so as to take accounting data to be included in the financial statements directly from the central accounting system without recourse to data outside the accounts;</i></p> <p>(i) <i>the rate at which intermediary financial statements are presented.</i></p> <p><i>Only points (d) and (f) above are covered in Chapter 1 of this Title. The drafting of the Articles concerned should be improved.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><b>KEEPING AND PRESENTATION OF THE ACCOUNTS</b></p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b>Presentation of the accounts</b></p> <p style="text-align: center;">Article 115</p> <p>1. The financial statements shall consist of the balance sheet, the revenue and expenditure account and an Annex and shall form an indissoluble whole. They shall be presented in euro.</p> <p>2. The balance sheet shall set out the financial situation at 31 December of the preceding financial year.</p> <p>The balance sheet shall be presented in the form laid down in the Council Directive on the annual accounts of certain types of companies, with account being taken of the specific features of the Communities.</p> <p>3. The revenue and expenditure account shall set out all budget operations for the year in terms of revenue and expenditure.</p> <p>4. The Annex shall supplement and comment on the information provided in the balance sheet and the revenue and expenditure account, in particular explaining the methods used to draw them up and commenting on the figures they contain.</p>	<p style="text-align: center;"><b>KEEPING AND PRESENTATION OF THE FINANCIAL STATEMENTS ACCOUNTS</b></p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b>Presentation of the financial statements accounts</b></p> <p style="text-align: center;">Article 115</p> <p>1. The financial statements shall consist of the <del>balance sheet</del> <u>budget outturn account, the economic out-turn account</u>, the revenue and expenditure account and an Annex and shall form an indissoluble whole. They shall be presented in <u>million</u> euro.</p> <p><u>The financial statements shall be presented in accordance with the structure laid down by the Council Directive on the annual accounts of certain kinds of company, but shall nevertheless take account of the particular nature of the Communities.</u></p> <p>2. The balance sheet shall set out the financial situation at 31 December of the preceding financial year.</p> <p><del>The balance sheet shall be presented in the form laid down in the Council Directive on the annual accounts of certain types of companies, with account being taken of the specific features of the Communities.</del></p> <p>3. The <del>revenue and expenditure</del> <u>budget outturn</u> account shall set out all budget operations for the year in terms of revenue and expenditure.</p> <p><u>The economic outturn account is produced by adding the non-budgetary revenue and expenditure accounts to the aforementioned budget outturn account.</u></p> <p>4. The Annex shall supplement and comment on the information provided in the balance sheet <del>and by</del> <u>and the revenue and expenditure budget outturn account and the economic out-turn account</u>, in particular by explaining the methods used to draw them up and commenting on the figures they contain.</p>	<p><i>In order to observe the chronological order of the transactions, the chapters should be inverted by presenting the chapter on the accounts before those covering the presentation of the accounts and the implementation of the budget. The fact is that the accounts are kept before the financial statements are drafted and presented to their recipients.</i></p> <p><i>See point (f) of the introduction.</i></p> <p><i>This proposed amendment would make it easier to read the financial statements and would bring Community and international practices into line.</i></p> <p><i>See point (e) of the introduction.</i></p> <p><i>See point (b) of the introduction.</i></p> <p><i>See point (f) of the introduction.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>5. The consolidated financial statements of the Communities shall present in aggregated form the financial information contained in the financial statements of each institution.</p> <p>6. In addition to the financial statements, each institution shall draw up a report on budget implementation and an analysis of financial management.</p> <p style="text-align: center;"><i>Article 116</i></p> <p>1. The financial statements must comply with the rules and be accurate and comprehensive and present a true and fair view of assets, the financial situation and the outturn of the financial year.</p> <p>2. The financial statements shall be drawn up in accordance with the following generally accepted accounting principles:</p> <p>(a) going concern basis;</p> <p>(b) prudence;</p> <p>(c) consistent accounting methods;</p> <p>(d) materiality;</p> <p>(e) no netting;</p> <p>(f) substance over form;</p> <p>(g) independence of financial years.</p>	<p>5. The consolidated financial statements of the Communities shall present in aggregated form the financial information contained in the financial statements of each institution <u>and body over which one or more Community institutions have a decisive influence.</u></p> <p>6. In addition to the financial statements, each institution and body to which Article 115(5) refers, shall draw up a report on budget implementation and an analysis of financial management.</p> <p style="text-align: center;"><i>Article 116</i></p> <p>1. The financial statements must comply with the rules and be accurate and comprehensive and present a true and fair view of assets, the financial situation and the outturn of the financial year.</p> <p>2. The financial statements shall be drawn up in accordance with the following generally accepted accounting principles:</p> <p>(a) going concern basis;</p> <p>(b) prudence;</p> <p>(c) consistent accounting methods;</p> <p>(d) materiality;</p> <p>(e) no netting;</p> <p>(f) substance over form;</p> <p>(g) independence of financial years.</p>	<p><i>The addition of this provision would make it possible to consolidate all bodies connected to the institutions, thereby accurately reflecting the scope of the consolidation.</i></p> <p><i>All provisions regarding information on the implementation of the budget could be brought together in a chapter following the chapter on the presentation of the financial statements (see Chapter 3).</i></p> <p><i>The list below should be completed on the basis proposed in point (d) of the introduction by stating the assumptions underlying the keeping of the accounts and the drafting of the financial statements (going concern principle, prudence, accruals-based accounting), the basic accounting principles (permanence of methods etc.) and the characteristics of the financial statements (exhaustiveness etc.).</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 117</i></p> <p>1. The accounting officers of the other institutions shall send their provisional financial statements to the Commission's accounting officer by 1 March of the following year at the latest.</p> <p>They shall also send him a report on budget implementation and an analysis of financial management.</p> <p>2. The Commission accounting officer shall consolidate the provisional financial statements and shall send to the Court of Auditors, by 1 May of the following year at the latest, each institution's provisional financial statements together with the provisional consolidated financial statements of the Communities. He shall also send each institution's analysis of financial management to Parliament, the Council and the Court of Auditors by the same date.</p>	<p style="text-align: center;"><i>Article 117</i></p> <p>1. The accounting officers of the <del>other institutions</del> <u>and of the bodies to which Article 115(5) refers</u>, shall send their provisional financial statements to the <u>Court of Auditors</u> and to the Commission's accounting officer by 1 March of the following year at the latest.</p> <p>By the same date, <del>They shall also send him them</del> a report on budget implementation and an analysis of financial management.</p> <p>2. The Commission accounting officer shall consolidate the provisional financial statements and shall send to the Court of Auditors, by 1 <u>April</u> <del>May</del> of the following year at the latest, <del>each institution's provisional financial statements together with the</del> provisional consolidated financial statements of the Communities. He shall also send <del>each institution's the</del> <u>budget implementation report and the analysis of financial management</u> to Parliament, the Council and the Court of Auditors by the same date.</p>	<p><i>The Commission ought to be able to bring forward the date on which its own provisional financial statements are drafted into line with the 1 March deadline stipulated for the other institutions and bodies. In the explanatory memorandum, the Commission itself justifies dropping the additional periods (except as regards the EAGGF, a matter which the Court comments upon in this opinion) so as to speed up the presentation of the financial statements. If the Commission's provisional financial statements were drafted two months earlier, the deadline for drafting the provisional consolidated financial statements could be brought forward by one month compared with the current proposal (they would be drafted by 1 April rather than 1 May). The date on which the provisional financial statements of the Commission and of the other institutions and bodies are sent to the Court of Auditors should therefore also be brought forward to 1 March.</i></p> <p><i>Same comment as for Article 117(1) and for Article 115(6).</i></p> <p><i>Same comment as for Article 117(1) and for Article 115(6).</i></p>
<p style="text-align: center;"><i>Article 118</i></p> <p>1. The Court of Auditors shall draw up observations on the provisional financial statements of each institution by 15 July at the latest to allow them to make the corrections which they deem necessary for their final financial statements.</p>	<p style="text-align: center;"><i>Article 118</i></p> <p>1. The Court of Auditors shall draw up observations on the provisional financial statements of each institution <u>and body to which Article 115(5) refers</u> by 15 July at the latest to allow them to make the corrections which they deem necessary for their final financial statements.</p>	<p><i>The provisional financial statements are exhaustive and consistent documents, and are duly drafted by the stipulated deadlines. They are provisional only in that the Commission has not yet formally adopted them and that they may, where appropriate, be subject to corrections proposed by the Court. However, the Court's task cannot under any circumstances involve helping the Commission to draft the final consolidated financial statements. This responsibility, of an administrative and accounting nature, lies solely with the Commission and is incompatible with the Court's external control responsibility.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. Each institution shall draw up its final financial statements and send them to the Commission's accounting officer by 5 September of the following year at the latest with a view to drawing up the final consolidated financial statements.</p> <p>3. After approving the final consolidated financial statements, the Commission shall send them to the European Parliament, the Council and the Court of Auditors by 30 September of the following year at the latest.</p> <p>4. The final consolidated financial statements shall be published in the <i>Official Journal of the European Communities</i> together with the statement of assurance given by the Court of Auditors in accordance with Article 248 of the EC Treaty, Article 45c of the ECSC Treaty and Article 160c of the Euratom Treaty by 30 November the following year.</p>	<p>2. Each institution <u>and body to which Article 115(5) refers shall be responsible for drawing up its own</u> final financial statements and send them to the Commission's accounting officer <u>and to the Court of Auditors</u> by 5 September of the following year at the latest with a view to drawing up the final consolidated financial statements.</p> <p>3. After <u>all its Members have approved</u> the final consolidated financial statements, the Commission shall send them to the European Parliament, the Council and the Court of Auditors by 30 September of the following year at the latest.</p> <p>4. The final consolidated financial statements shall be published in the <i>Official Journal of the European Communities</i> together with the statement of assurance given by the Court of Auditors in accordance with Article 248 of the EC Treaty, Article 45c of the ECSC Treaty and Article 160c of the Euratom Treaty by 30 November the following year.</p>	<p><i>See above.</i></p> <p><i>The formal adoption of the final consolidated financial statements should be the collective responsibility of the Commissioners.</i></p> <p><i>The application of the principle of transparency means that the final consolidated financial statements should not only be published at the same time as the Statement of Assurance, but that they should be published as a single document, as recommended by Article 48 of the fourth European Accounting Directive.</i></p>
<u>Chapter 2</u>	<u>Chapter 2</u>	
<b><u>Information on the implementation of the budget</u></b>	<b><u>Information on the implementation of the budget</u></b>	<p><i>The provisions regarding information on the implementation of the budget which are contained in Article 115(6), the second indent of Article 117(1) and in part of Article 117(2) could be transferred to this Chapter.</i></p>
<i>Article 119</i>	<i>Article 119</i>	
<p>The Commission shall report to the European Parliament and the Council twice a year on budget guarantees and the corresponding risks.</p>	<p>The Commission shall report to the European Parliament and the Council twice a year on budget guarantees and the corresponding risks.</p>	
<p>This information shall be sent to the Court of Auditors at the same time.</p>	<p>This information shall be sent to the Court of Auditors at the same time.</p>	
<i>Article 119a (formerly Article 78)</i>	<i>Article 119a (formerly Article 78)</i>	
<p>1. Once a month, the Commission shall send to the European Parliament and the Council aggregate figures, by chapter, on the implementation of the budget, both for revenue and for expenditure against all appropriations. These figures shall also show details of the utilisation of appropriations carried over.</p>	<p>1. Once a month, the Commission shall send to the European Parliament and the Council aggregate figures, by chapter, on the implementation of the budget, both for revenue and for expenditure against all appropriations. These figures shall also show details of the utilisation of appropriations carried over.</p>	
<p>The figures shall be sent within 10 working days following the end of each month.</p>	<p>The figures shall be sent within 10 working days following the end of each month.</p>	
<p>2. Three times a year, within the 30 working days following 31 May, 31 August and 31 December, the Commission shall send the European Parliament and the Council a report on implementation of the budget, covering both revenue and expenditure broken down by chapter, article and item. This report shall also give details of the utilisation of appropriations carried over from previous financial years.</p>	<p>2. Three times a year, within the 30 working days following 31 May, 31 August and 31 December, the Commission shall send the European Parliament and the Council a report on implementation of the budget, covering both revenue and expenditure broken down by chapter, article and item. This report shall also give details of the utilisation of appropriations carried over from previous financial years.</p>	
<p>3. The figures and the report shall at the same time be sent to the Court of Auditors.</p>	<p>3. The figures and the report shall at the same time be sent to the Court of Auditors.</p>	



Commission's proposal	Court's modified proposal	Comments
<p>Chapter 2</p> <p><b>Accounts</b></p> <p>Article 120</p> <p>1. The accounts shall consist of general accounts and budget accounts. These accounts shall be kept in euro on the basis of the calendar year.</p> <p>2. The accounting methods and the accounting plan employed by the institutions shall be harmonised and adopted by the Commission's accounting officer.</p> <p>3. The general accounts shall show, by the double entry method, all revenue and expenditure for the financial year and is intended to establish the institution's assets.</p> <p>4. The budget accounts shall allow detailed monitoring of budget implementation.</p> <p>5. All accounting records shall be based on supporting documents to which they shall refer.</p>	<p>Chapter <u>3</u></p> <p><b>Accounts</b></p> <p>Article 120</p> <p>1. The accounts shall consist of general accounts and budget accounts. These accounts shall be kept in euro on the basis of the calendar year.</p> <p>2. The accounting <u>rules and methods resulting from the application of the principles set out in Article 116(2), the rules governing the drafting of the financial statements and the accounting plan employed by the institutions and the bodies to which Article 115(5) refers</u> shall be harmonised and adopted by the Commission's accounting officer.</p> <p>3. The general accounts shall show, by the double entry method, all <u>budgetary and non-budgetary</u> revenue and expenditure for the financial year and are intended to establish the institution's assets.</p> <p>4. The budget accounts shall allow detailed monitoring of budget implementation.</p> <p>5. All accounting records, <u>including accounting adjustments</u>, shall be based on supporting documents to which they shall refer.</p> <p><u>6. All transactions shall be recorded in the accounts in such a way that there is a full chronological record and a clear audit trail.</u></p>	<p>Same comment as for Chapter 1.</p> <p><i>This proposed amendment establishes a link between the accounting principles set out in Article 116 and the accounting rules and methods defined in this Article.</i></p> <p><i>See also points (d), (e), (f) and (h) of the introduction.</i></p> <p><i>This addition is intended to guarantee the exhaustiveness of the supporting documents.</i></p> <p><i>Such a provision is needed to obviate the situation in 2000 whereby this is not the case for commitments.</i></p>
<p>Article 121</p> <p>1. The figures from the general and budget accounts shall be adopted at the close of the budget year with a view to drawing up the financial statements of the Communities referred to in Chapter 1.</p> <p>2. The accounting officer may, after the close of the budget year and up to the date of closure of the accounts, make any corrections which, without involving disbursement in respect of that year, are necessary for a full, true and fair presentation of the financial statements.</p>	<p>Article 121</p> <p>1. The figures from the general and budget accounts shall be adopted at the close of the budget year with a view to drawing up the financial statements of the Communities referred to in Chapter 1.</p> <p>2. The accounting officer <u>must</u> <del>may</del>, after the close of the budget year and up to the date of closure of the accounts, make any corrections which, without involving disbursement in respect of that year, are necessary for a <u>full</u>, true and fair presentation of the financial statements <u>which complies with the rules.</u></p>	<p><i>This amendment is proposed so as to reproduce the wording of Article 116(1).</i></p>

Commission's proposal	Court's modified proposal	Comments
<p data-bbox="316 790 440 822">Chapter 3</p> <p data-bbox="272 920 485 952"><b>Property inventories</b></p> <p data-bbox="323 1014 434 1046">Article 122</p> <p data-bbox="129 1093 596 1216">Each institution shall keep inventories showing the quantity and value of all the Communities' tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.</p> <p data-bbox="129 1267 604 1344">Each institution shall carry out its own inspection to ascertain that entries in the inventory correspond to the actual situation.</p> <p data-bbox="129 1395 549 1447">The sale of movable property shall be suitably advertised.</p> <p data-bbox="129 1498 619 1624">A statement or record shall be drawn up by the authorising officer 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.</p>	<p data-bbox="842 315 965 347"><u>Article 121a</u></p> <p data-bbox="647 394 1155 723"><u>Where computerised systems and subsystems are used to process transactions underlying the accounts, full descriptions of each system shall exist. Each description will define the contents of all data fields and shall include details of how the system treats individual transactions. It will describe how the system ensures that a full audit trail of every operation is kept. Such descriptions of systems shall be regarded as part of the accounts. These descriptions of accounting systems and subsystems will mention, where appropriate, the links between these systems and subsystems and the central accounting system (especially as regards the transfer of data and the reconciliation of balances).</u></p> <p data-bbox="842 790 965 822"><del>Chapter 3</del></p> <p data-bbox="799 920 1011 952"><b>Property inventories</b></p> <p data-bbox="850 1014 960 1046"><del>Article 122</del></p> <p data-bbox="647 1093 1118 1216"><del>Each institution shall keep inventories showing the quantity and value of all the Communities' tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.</del></p> <p data-bbox="647 1267 1126 1344"><del>Each institution shall carry out its own inspection to ascertain that entries in the inventory correspond to the actual situation.</del></p> <p data-bbox="647 1395 1070 1447"><del>The sale of movable property shall be suitably advertised.</del></p> <p data-bbox="647 1498 1155 1624"><del>A statement or record shall be drawn up by the authorising officer 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.</del></p>	<p data-bbox="1177 394 1497 595"><i>It is vital that there is full transparency in the computerised systems used for accounting purposes. It is essential that full records are kept on, for example, users, authorisations, electronic signatures. Otherwise, such procedures as electronic signatures are not acceptable.</i></p> <p data-bbox="1177 790 1477 866"><i>Most of the contents of this Chapter could usefully be transferred to the implementing rules.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">TITLE VII</p> <p style="text-align: center;"><b>EXTERNAL AUDIT AND DISCHARGE</b></p> <p style="text-align: center;">CHAPTER 1</p> <p style="text-align: center;"><b>External audit</b></p> <p style="text-align: center;"><i>Article 123</i></p> <p>The Court of Auditors shall conduct the audit of accounts provided for by Article 248 of the EC Treaty, Article 45 of the ECSC Treaty and Article 180 of the Euratom Treaty.</p> <p style="text-align: center;"><i>Article 124</i></p> <p>1. The European Parliament, the Council and the Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to Articles 8, 12, 17(2), 20, 21, 24 and 33.</p> <p>2. The institutions shall send to the Court of Auditors any rules of procedure they adopt in respect of financial matters.</p> <p>3. The Court of Auditors shall be informed of the appointment of authorising officers, internal auditors, accounting officers and imprest administrators and of financial delegation decisions under Articles 48, 56, 58, 59 and 80.</p> <p style="text-align: center;"><i>Article 125</i></p> <p>1. The audit carried out by the Court of Auditors shall be based on records and, if necessary, performed on the spot. Its purpose shall be to establish that all revenue has been received and all expenditure incurred in a lawful and proper manner having regard to the provisions of the Treaties, the budget, this Regulation and all other acts adopted pursuant to the Treaties. It shall also establish that the financial management has been sound.</p>	<p style="text-align: center;">TITLE VII</p> <p style="text-align: center;"><b>EXTERNAL AUDIT AND DISCHARGE</b></p> <p style="text-align: center;">CHAPTER 1</p> <p style="text-align: center;"><b>External audit</b></p> <p style="text-align: center;"><i>Article 123</i></p> <p><del>The Court of Auditors shall conduct the audit of accounts provided for by Article 248 of the EC Treaty, Article 45 of the ECSC Treaty and Article 180 of the Euratom Treaty.</del></p> <p style="text-align: center;"><i>Article 124</i></p> <p>1. The European Parliament, the Council and the Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to Articles 8, 12, 17(2), 20, 21, 24 and 33.</p> <p>2. The institutions shall send to the Court of Auditors any rules of procedure they adopt in respect of financial matters.</p> <p>3. The Court of Auditors shall be informed of the appointment of authorising officers, internal auditors, accounting officers and imprest administrators and of financial delegation decisions under Articles 48, 56, 58, 59 and 80.</p> <p style="text-align: center;"><i>Article 125</i></p> <p><del>1. The audit carried out by the Court of Auditors shall be based on records and, if necessary, performed on the spot. Its purpose shall be to establish that all revenue has been received and all expenditure incurred in a lawful and proper manner having regard to the provisions of the Treaties, the budget, this Regulation and all other acts adopted pursuant to the Treaties. It shall also establish that the financial management has been sound.</del></p>	<p><i>The provisions set out under this Title mostly concern the Court's role as external auditor of the Community's finances. The Court considers that provisions on this subject are best enshrined in the Treaty and that they need not be repeated or further explained in the Financial Regulation. The fact is that certain provisions, in particular those concerning the Court's right of access to information, could be interpreted restrictively by certain bodies which are audited by the Court. The Court should, in all circumstances, be in a position to carry out its duties without hindrance, pursuant to the Treaty.</i></p> <p><i>These references are to be adapted in the light of the amendments ultimately made to the text.</i></p> <p><i>These references are to be adapted in the light of the amendments ultimately made to the text.</i></p> <p><i>The word 'financial' could introduce an undesirable restriction in the point in question.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. For the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 127, all documents and information relating to the financial management of the departments or bodies subject to its inspection. It has the power to make enquiries of any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to those departments or bodies.</p> <p>In order to obtain all the necessary information for the performance of the task entrusted to it by the Treaties or the acts taken to implement them, the Court of Auditors may be present, at its request, during the operations carried out by the Commission under the rules applicable to EAGGF Guarantee and own resources. This provision shall also apply to the inspection of any fund set up by the Communities.</p> <p>At the request of the Court of Auditors, each institution shall authorise financial organisations holding Community deposits to enable the Court of Auditors to ensure that external data tally with the accounts.</p> <p>3. In carrying out its task, the Court of Auditors and its members may be assisted by officers of the Court of Auditors. The Court of Auditors itself or one of its members shall notify the authorities with which the delegated officer is to work of the tasks delegated to him.</p> <p style="text-align: center;"><i>Article 126</i></p> <p>The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositories or against official memoranda of cash and securities held. The Court of Auditors may carry out such checks itself.</p>	<p><del>2. For the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 127, all documents and information relating to the financial management of the departments or bodies subject to its inspection. It has the power to make enquiries of any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to those departments or bodies.</del></p> <p>In order to obtain all the necessary information for the performance of the task entrusted to it by the Treaties or the acts taken to implement them, the Court of Auditors may be present, at its request, during the <u>audit operations carried out within the framework of the implementation of the budget by, or on behalf of any Community institution</u> the Commission under the rules applicable to EAGGF Guarantee and own resources. This provision shall also apply to the inspection of any fund set up by the Communities.</p> <p>At the request of the Court of Auditors, each institution shall authorise financial organisations holding Community deposits to enable the Court of Auditors to ensure that external data tally with the accounts.</p> <p>3. <del>In carrying out its task, the Court of Auditors and its members may be assisted by officers of the Court of Auditors. The Court of Auditors itself or one of its members shall notify the authorities with which the delegated officer is to work of the tasks delegated to him.</del> In order to carry out its tasks, the Court of Auditors shall <u>notify the institutions and authorities to which this Financial Regulation applies of the names of the members of its staff who are empowered to audit them.</u></p> <p style="text-align: center;"><i>Article 126</i></p> <p><del>The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositories or against official memoranda of cash and securities held. The Court of Auditors may carry out such checks itself.</del></p>	<p><i>This participation in Community audit operations should be applicable in all areas.</i></p> <p><i>This new wording observes the spirit and letter of the Treaty and the practice followed since the Court was set up.</i></p> <p><i>Provisions too detailed and out of date.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 127</i></p> <p>1. The Commission, the other institutions, the bodies administering revenue or expenditure on the Communities' behalf and the national audit institutions or, where they do not dispose of the necessary powers, the national departments responsible and the final beneficiaries of payments from the budget shall afford the Court of Auditors all the facilities and give it all the information which the Court of Auditors may consider necessary for the performance of its task. They shall place at the disposal of the Court of Auditors all documents concerning the conclusion and implementation of contracts financed by the Community budget 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 organisation charts of 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, for the same purposes, all documents and data created or stored on a magnetic medium.</p> <p>2. The officials whose operations are checked by the Court of Auditors shall:</p> <p>(a) show their records of cash in hand, any other cash, securities and materials of all kinds, and also the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto;</p> <p>(b) present the correspondence and any other document required for the full implementation of the audit referred to in Article 125(1).</p> <p>The information supplied under point (b) of the first subparagraph may be requested only by the Court of Auditors.</p> <p>3. The Court of Auditors shall be empowered to audit the documents in respect of the revenue and expenditure of the Communities which are held by the departments of the institutions and, in particular, by the departments responsible for decisions in respect of such revenue and expenditure, the bodies administering revenue or expenditure on the Communities' behalf and the natural or legal persons receiving payments from the budget.</p> <p>The national audit institutions or, where they do not dispose of the necessary powers, the national departments responsible shall provide the Court of Auditors with all the information they possess on operations financed or cofinanced by the Communities and on the management and control of these operations.</p>	<p style="text-align: center;"><i>Article 127</i></p> <p><del>1. The Commission, the other institutions, the bodies administering revenue or expenditure on the Communities' behalf and the national audit institutions or, where they do not dispose of the necessary powers, the national departments responsible and the final beneficiaries of payments from the budget shall afford the Court of Auditors all the facilities and give it all the information which the Court of Auditors may consider necessary for the performance of its task. They shall place at the disposal of the Court of Auditors all documents concerning the conclusion and implementation of contracts financed by the Community budget 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 organisation charts of 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, for the same purposes, all documents and data created or stored on a magnetic medium. The first subparagraph shall also apply to natural or legal persons receiving payments from the Community budget.</del></p> <p>1. The Commission, the other institutions, the bodies administering revenue or expenditure on the Communities' behalf and the national audit institutions or, where they do not dispose of the necessary powers, the national departments responsible and the final beneficiaries of payments from the budget shall afford the Court of Auditors all the facilities and give it all the information which the Court of Auditors may consider necessary for the performance of its task. They shall place at the disposal of the Court of Auditors all documents concerning the conclusion and implementation of contracts financed by the Community budget 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 organisation charts of 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, for the same purposes, all documents and data created or stored on a magnetic medium. The first subparagraph shall also apply to natural or legal persons receiving payments from the Community budget.</p> <p>2. The officials whose operations are checked by the Court of Auditors shall:</p> <p>(a) show their records of cash in hand, any other cash, securities and materials of all kinds, and also the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto;</p> <p>(b) present the correspondence and any other document required for the full implementation of the audit referred to in Article 125(1).</p> <p>The information supplied under point (b) of the first subparagraph may be requested only by the Court of Auditors.</p> <p>3. The Court of Auditors shall be empowered to audit the documents in respect of the revenue and expenditure of the Communities which are held by the departments of the institutions and, in particular, by the departments responsible for decisions in respect of such revenue and expenditure, the bodies administering revenue or expenditure on the Communities' behalf and the natural or legal persons receiving payments from the budget.</p> <p>The national audit institutions or, where they do not dispose of the necessary powers, the national departments responsible shall provide the Court of Auditors with all the information they possess on operations financed or cofinanced by the Communities and on the management and control of these operations.</p>	

Commission's proposal	Court's modified proposal	Comments
<p>4. 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 institutions, of Community funds received by way of grants.</p> <p>5. The award of Community grants to beneficiaries outside the institutions shall be subject to the agreement in writing by the beneficiaries to an audit being carried out by the Court of Auditors on the use made of the amounts granted.</p> <p>6. The Commission shall provide the Court of Auditors, at its request, with any information on borrowing and lending operations.</p> <p>7. Use of integrated computer systems shall not have the effect of reducing the access of the Court of Auditors to the supporting documents.</p>	<p>4. <u>1.</u> 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 institutions, of Community funds received by way of grants.</p> <p><del>5.2. The award of Community financing paid grants to beneficiaries outside the institutions shall be subject to the agreement in writing by the beneficiaries to an audit being carried out by the Court of Auditors on the use made of the amounts granted up to and including the final beneficiary of the measure.</del></p> <p><del>6. The Commission shall provide the Court of Auditors, at its request, with any information on borrowing and lending operations.</del></p> <p><del>7. 3.</del> Use of integrated computer systems shall not have the effect of reducing the access of the Court of Auditors to the supporting documents.</p>	<p><i>Modified to include provisions of Article 156.</i></p>
<p>Article 128</p>	<p>Article 128</p>	
<p>1. The annual report of the Court of Auditors provided for in Article 248(4) of the EC Treaty, Article 45c(4) of the ECSC Treaty and Article 160c(4) of the Euratom Treaty shall be governed by the provisions of paragraphs 2 to 7 of this Article.</p> <p>2. The Court of Auditors shall transmit to the Commission and the institutions concerned, by 15 July at the latest, any observations which are, in its opinion, such that they should appear in the annual report. These observations must remain confidential. Each institution shall address its reply to the Court of Auditors by 31 October at the latest. The replies of institutions other than the Commission shall be sent to the Commission at the same time.</p> <p>3. The Commission shall inform Member States of the Court of Auditors' observations on the management of Community funds for which they are responsible under the rules applicable, whenever the Member States referred to are identified in those observations.</p> <p>4. The Member States shall reply to the Commission by 30 September at the latest. The Commission shall transmit the reply, accompanied by its comments to the Court of Auditors, by 31 October.</p> <p>5. The annual report shall contain an assessment of the soundness of financial management.</p> <p>6. The annual report shall include a section for each institution. The Court of Auditors may add any summary report or general observations which it sees fit to make.</p>	<p>1. The annual report of the Court of Auditors provided for in Article 248(4) of the EC Treaty, Article 45c(4) of the ECSC Treaty and Article 160c(4) of the Euratom Treaty shall be governed by the provisions of paragraphs 2 to 7 of this Article.</p> <p>2. The Court of Auditors shall transmit to the Commission and the institutions concerned, by 15 July at the latest, any observations which are, in its opinion, such that they should appear in the annual report. These observations must remain confidential. Each institution shall address its reply to the Court of Auditors by [31 October] at the latest. The replies of institutions other than the Commission shall be sent to the Commission at the same time.</p> <p>3. The Commission shall inform Member States of the Court of Auditors' observations on the management of Community funds for which they are responsible under the rules applicable, whenever the Member States referred to are identified in those observations.</p> <p>4. The Member States shall reply to the Commission by [30 September] at the latest. The Commission shall transmit the reply, accompanied by its comments to the Court of Auditors, by 31 October.</p> <p>5. The annual report shall contain an assessment of the soundness of financial management.</p> <p>6. The annual report shall include a section for each institution. The Court of Auditors may add any summary report or general observations which it sees fit to make.</p>	<p><i>The Court has managed for some years now, by cooperating with the Commission, to adopt its Report at the end of October and to present it to the Parliament in mid-November. Providing the Member States with the opportunity to reply via Commission to the Court's observations until 30 September, while allowing scope for the institutions to submit their own replies until 31 October, makes it very difficult to preserve this timetable.</i></p> <p><i>See above.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>The Court of Auditors shall take all necessary steps to ensure that the replies of each institution to its observations are published immediately after the observations to which they relate.</p> <p>7. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other institutions, by 30 November at the latest, its annual report accompanied by the replies and shall ensure publication thereof in the <i>Official Journal of the European Communities</i>.</p> <p style="text-align: center;"><i>Article 129</i></p> <p>At the same time as the annual report referred to in Article 128, 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.</p> <p style="text-align: center;"><i>Article 130</i></p> <p>1. In addition to the annual report, the Court of Auditors may also, at any time, submit observations, in the form of special reports, on specific questions and deliver opinions at the request of one of the institutions of the Communities.</p> <p>2. The special reports shall be transmitted to the institution or body concerned.</p> <p>The institution concerned shall have two and a half months within which to inform the Court of Auditors of any comments it wishes to make on the special reports in question.</p> <p>Should the Court of Auditors decide to have any such reports published in the <i>Official Journal of the European Communities</i>, they shall be accompanied by the replies of the institutions concerned. Where the special report concerns the management of Community funds for which the Member States are responsible under the relevant rules, the Commission shall send the special report to the Member States identified in the Court of Auditors' observations.</p> <p>The Member States shall send their replies to the Commission within one and a half months of the adoption of the special report. The Commission shall transmit these replies to the Court of Auditors together with its remarks.</p>	<p>The Court of Auditors shall take all necessary steps to ensure that the replies of each institution to its observations are published immediately after the observations to which they relate.</p> <p>7. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other institutions, by 30 November at the latest, its annual report accompanied by the replies and shall ensure publication thereof in the <i>Official Journal of the European Communities</i>.</p> <p style="text-align: center;"><i>Article 129</i></p> <p><del>At the same time as the annual report referred to in Article 128, 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.</del></p> <p style="text-align: center;"><i>Article 130</i></p> <p><del>1. In addition to the annual report, the Court of Auditors may also, at any time, submit observations, in the form of special reports, on specific questions and deliver opinions at the request of one of the institutions of the Communities.</del></p> <p><u>1.2. The Court shall notify the institution concerned of all observations which are, in its opinion, such that they could appear in a The special report shall be transmitted to the institution or body concerned. These observations must remain confidential.</u></p> <p>The institution concerned shall have two and a half months within which to inform the Court of Auditors of any comments it wishes to make on the observations <del>special reports</del> in question. <u>The Court shall adopt the definitive version of the special report in question the following month.</u></p> <p>Should the Court of Auditors decide to have any <u>special reports published in the Official Journal of the European Communities</u>, they shall be accompanied by the replies of the institutions concerned. Where the <u>observations referred to in the first paragraph special report</u> concerns the management of Community funds for which the Member States are responsible under the relevant rules, the Commission shall send the <u>observations concerned special report</u> to the Member States identified <del>in the Court of Auditors' observations</del>.</p> <p>The Member States shall send their replies to the Commission within one and a half months of the adoption of the <u>observations in question special report</u>. The Commission shall transmit these replies to the Court of Auditors together with its remarks.</p>	<p><i>See above.</i></p> <p><i>Specification required given the context.</i></p> <p><i>Proposal to apply, by analogy, the timetable for the annual report to special reports.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>The special reports shall be transmitted to the European Parliament and the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.</p> <p>3. If the opinions referred to in paragraph 1 do not relate to proposals for legislation or draft legislation on which it has been consulted, they may be published by the Court of Auditors in the <i>Official Journal of the European Communities</i>. The Court of Auditors shall take its decision on publication after consulting the institution which requested the opinion or the institution concerned by the Court of Auditors' analysis. Opinions published shall be accompanied by the replies of the institutions concerned.</p> <p style="text-align: center;"><b>Chapter 2</b></p> <p style="text-align: center;"><b>Discharge</b></p> <p style="text-align: center;"><i>Article 131</i></p> <p>1. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before 30 April of the year n + 2 give a discharge to the Commission in respect of the implementation of the budget for year n.</p> <p>2. 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.</p> <p>3. If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.</p> <p style="text-align: center;"><i>Article 132</i></p> <p>1. The discharge decision shall cover the accounts of all the Communities' revenue and expenditure, the resulting balance and the assets and liabilities of the Communities shown in the financial statement. It shall include an assessment of the responsibility of the Commission's budgetary management over the financial year in question.</p> <p>2. To grant the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements mentioned in Article 275 of the EC Treaty, Article 78d of the ECSC Treaty, and Article 179a of the Euratom Treaty. It shall also examine the annual report made by the Court of Auditors together with the replies of the institutions under audit, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.</p>	<p>The special reports, accompanied by the replies of the <u>institution in question</u>, shall be transmitted to the European Parliament and the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.</p> <p><del>2.3.</del> If the opinions referred to in paragraph 1 do not relate to proposals for legislation or draft legislation on which it has been consulted, they may be published by the Court of Auditors <del>in the Official Journal of the European Communities</del>. The Court of Auditors shall take its decision on publication after consulting the institution which requested the opinion or the institution concerned by the Court of Auditors' analysis. Opinions published shall be accompanied by <u>any comments by the replies of the institutions concerned</u>.</p> <p style="text-align: center;"><b>Chapter 2</b></p> <p style="text-align: center;"><b>Discharge</b></p> <p style="text-align: center;"><i>Article 131</i></p> <p>1. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before 30 April of the year n + 2 give a discharge to the Commission in respect of the implementation of the budget for year n.</p> <p>2. 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.</p> <p>3. If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.</p> <p style="text-align: center;"><i>Article 132</i></p> <p>1. The discharge decision shall cover the accounts of all the Communities' revenue and expenditure, the resulting balance and the assets and liabilities of the Communities shown in the financial statement. It shall include an assessment of the responsibility of the Commission's budgetary management over the financial year in question.</p> <p>2. To grant the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements mentioned in Article 275 of the EC Treaty, Article 78d of the ECSC Treaty, and Article 179a of the Euratom Treaty. It shall also examine the annual report made by the Court of Auditors together with the replies of the institutions under audit, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.</p>	



Commission's proposal	Court's modified proposal	Comments
<p>3. The Commission shall submit to the European Parliament, at the latter's request, any information required for the control of the implementation of the budget of the year in question. Access to confidential information and the arrangements for handling it shall comply with fundamental human rights, the protection of business secrecy, the provisions governing judicial and disciplinary proceedings and the interests of the Union.</p> <p style="text-align: center;"><i>Article 133</i></p> <p>1. In accordance with Article 276 of the EC Treaty, Article 78g of the ECSC Treaty and Article 180b of the Euratom Treaty, the Commission and the other institutions shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.</p> <p>2. 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. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on these observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions shall also be transmitted to the Court of Auditors.</p> <p style="text-align: center;">PART TWO</p> <p style="text-align: center;"><b>SPECIAL PROVISIONS</b></p> <p style="text-align: center;">TITLE I</p> <p style="text-align: center;"><b>EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND, GUARANTEE SECTION</b></p> <p style="text-align: center;"><i>Article 134</i></p> <p>1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules relating to the EAGGF Guarantee Section and to revenue, save as otherwise provided in this Title.</p> <p>2. Operations managed directly by the Commission shall be implemented in accordance with the rules laid down in Parts One and Three.</p>	<p>3. The Commission shall submit to the European Parliament, at the latter's request, any information required for the control of the implementation of the budget of the year in question. Access to confidential information and the arrangements for handling it shall comply with fundamental human rights, the protection of business secrecy, the provisions governing judicial and disciplinary proceedings and the interests of the Union.</p> <p style="text-align: center;"><i>Article 133</i></p> <p>1. In accordance with Article 276 of the EC Treaty, Article 78g of the ECSC Treaty and Article 180b of the Euratom Treaty, the Commission and the other institutions shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.</p> <p>2. 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. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on these observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions shall also be transmitted to the Court of Auditors.</p> <p style="text-align: center;">PART TWO</p> <p style="text-align: center;"><b>SPECIAL PROVISIONS</b></p> <p style="text-align: center;">TITLE I</p> <p style="text-align: center;"><del>EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND, GUARANTEE SECTION</del></p> <p style="text-align: center;"><del><i>Article 134</i></del></p> <p><del>1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules relating to the EAGGF Guarantee Section and to revenue, save as otherwise provided in this Title.</del></p> <p><del>2. Operations managed directly by the Commission shall be implemented in accordance with the rules laid down in Parts One and Three.</del></p>	<p><i>There is no need for a specific section for the EAGGF Guarantee Section. Only Article 136(2) needs to be retained and this should be included in Article 70.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 135</i></p> <p>1. For each financial year, the budget of the EAGGF Guarantee Section shall include equal amounts of commitment appropriations and payment appropriations.</p> <p>2. Payment appropriations not used at the end of the financial year shall be carried over automatically to the following year only to cover earlier commitments.</p> <p>3. Payment appropriations which have been carried over but which have not been used by the end of the financial year shall lapse.</p>	<p style="text-align: center;"><del>Article 135</del></p> <p><del>1. For each financial year, the budget of the EAGGF Guarantee Section shall include equal amounts of commitment appropriations and payment appropriations.</del></p> <p><del>2. Payment appropriations not used at the end of the financial year shall be carried over automatically to the following year only to cover earlier commitments.</del></p> <p><del>3. Payment appropriations which have been carried over but which have not been used by the end of the financial year shall lapse.</del></p>	<p><i>The preservation of the arrangements which currently apply to EAGGF appropriations, i.e. the budgetary practice based on accounting for non-differentiated appropriations, cannot be justified. The EAGGF can be managed on the basis of differentiated appropriations. As regards rural development and accompanying measures which are financed by the EAGGF Guarantee Section, it is necessary, in view of the multiannual nature of the measures, to envisage situations where the amount of commitment appropriations are not equal in value to the amount of payment appropriations (see Article 170, transitional provisions).</i></p>
<p style="text-align: center;"><i>Article 136</i></p> <p>1. The Commission shall reimburse the expenditure incurred by the Member States.</p> <p>2. The Commission decisions fixing the amounts of these payments shall constitute global provisional commitments, which may not exceed total appropriations entered in the EAGGF Guarantee Section, less any earmarked revenue.</p> <p>3. As from 15 November, routine management expenditure for the EAGGF Guarantee Section may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one half of the total corresponding appropriations for the current financial year. They may apply only to expenditure for which the principle is laid down in an existing legal base.</p>	<p style="text-align: center;"><del>Article 136</del></p> <p><del>1. The Commission shall reimburse the expenditure incurred by the Member States.</del></p> <p><del>2. <u>The Commission decisions fixing the overall amounts to be reimbursed on a provisional basis to the Member States shall constitute simultaneously budgetary and legal obligations within the framework of the EAGGF Guarantee Section. The procedures for recording adjustments in the budget, as commitments and payments, in the chapters and articles concerned, shall be defined in the implementing rules. The Commission decisions fixing the amounts of these payments shall constitute global provisional commitments, which may not exceed total appropriations entered in the EAGGF Guarantee Section, less any earmarked revenue.</u></del></p> <p><del>3. As from 15 November, routine management expenditure for the EAGGF Guarantee Section may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one half of the total corresponding appropriations for the current financial year. They may apply only to expenditure for which the principle is laid down in an existing legal base.</del></p>	<p><i>Unnecessary.</i></p> <p><i>This Article should be incorporated into Article 71. The commitments are not provisional because the amounts are known. All commitments can only be entered into within the limits of the available appropriations.</i></p> <p><i>Agricultural revenue should be entered in the general statement of revenue (see Article 140).</i></p> <p><i>Not necessary as payments are outside the budget. In any event the provisional reimbursements to Member States in respect of a particular financial year only start in January of that year.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 137</i></p> <p>1. Expenditure effected by the authorities and bodies referred to in the rules relating to the EAGGF Guarantee Section shall, within two months following receipt of the statements sent in by Member States, be the subject of a commitment by chapter, article and item. Save where payment has not yet been made by the Member States or eligibility is in doubt, the amounts shall be charged as payments within the same time-limit.</p> <p>This budget commitment shall be deducted from the global provisional commitment referred to in Article 136.</p> <p>2. Global provisional commitments which have been made for a financial year and which have not been committed by specific lines in the budget nomenclature by 1 February of the following financial year shall be cancelled in respect of the original financial year.</p> <p>3. Paragraphs 1 and 2 shall apply subject to the clearance of accounts.</p>	<p style="text-align: center;"><del>Article 137</del></p> <p><del>1. Expenditure effected by the authorities and bodies referred to in the rules relating to the EAGGF Guarantee Section shall, within two months following receipt of the statements sent in by Member States, be the subject of a commitment by chapter, article and item. Save where payment has not yet been made by the Member States or eligibility is in doubt, the amounts shall be charged as payments within the same time-limit.</del></p> <p><del>This budget commitment shall be deducted from the global provisional commitment referred to in Article 136.</del></p> <p><del>2. Global provisional commitments which have been made for a financial year and which have not been committed by specific lines in the budget nomenclature by 1 February of the following financial year shall be cancelled in respect of the original financial year.</del></p> <p><del>3. Paragraphs 1 and 2 shall apply subject to the clearance of accounts.</del></p>	<p><i>Provisions of this kind concerning the recording of the budgetary adjustments for reimbursements in the budget should be transferred to the implementing procedures (see proposal for Article 136(2)).</i></p> <p><i>Unnecessary because evident.</i></p>
<p style="text-align: center;"><i>Article 138</i></p> <p>Expenditure shall be booked to the accounts for a financial year on the basis of the repayments made by the Commission to the Member States by 31 December of the year concerned at the latest, provided that the payment order has reached the accounting officer by 31 January of the following financial year at the latest.</p>	<p style="text-align: center;"><del>Article 138</del></p> <p><del>Expenditure shall be booked to the accounts for a financial year on the basis of the repayments made by the Commission to the Member States by 31 December of the year concerned at the latest, provided that the payment order has reached the accounting officer by 31 January of the following financial year at the latest.</del></p>	<p><i>The adoption of appropriate procedures should enable the budgetary adjustments for provisional reimbursements to be recorded in the budget before the closure of the financial year on 31 December, since the Member States' declarations cover the period ending on 15 October of the financial year.</i></p>
<p style="text-align: center;"><i>Article 139</i></p> <p>1. Where the Commission may transfer appropriations pursuant to Article 21, it shall take its decision by 31 January of the following financial year at the latest and shall inform the budgetary authority thereof.</p> <p>2. In cases other than those referred to in paragraph 1, the Commission shall submit transfer proposals to the budgetary authority by 10 January of the following financial year at the latest.</p> <p>The budgetary authority shall take decisions on such transfers in accordance with the procedure provided for in Article 22, but within a time limit of three weeks.</p>	<p style="text-align: center;"><del>Article 139</del></p> <p><del>1. Where the Commission may transfer appropriations pursuant to Article 21, it shall take its decision by 31 January of the following financial year at the latest and shall inform the budgetary authority thereof.</del></p> <p><del>2. In cases other than those referred to in paragraph 1, the Commission shall submit transfer proposals to the budgetary authority by 10 January of the following financial year at the latest.</del></p> <p><del>The budgetary authority shall take decisions on such transfers in accordance with the procedure provided for in Article 22, but within a time limit of three weeks.</del></p>	<p><i>The need to transfer appropriations during the period until 31 January of the financial year n+1 is no longer justified owing to the Commission's increased autonomy as regards decision-making which is proposed for the Commission in Articles 20 and 21.</i></p>
<p style="text-align: center;"><i>Article 140</i></p> <p>Earmarked revenue under this Title shall be earmarked in its entirety either to appropriations for the EAGGF Guarantee Section for financing expenditure on the common agricultural policy or to appropriations for the EAGGF Guarantee Section for rural development and accompanying measures.</p>	<p style="text-align: center;"><del>Article 140</del></p> <p><del>Earmarked revenue under this Title shall be earmarked in its entirety either to appropriations for the EAGGF Guarantee Section for financing expenditure on the common agricultural policy or to appropriations for the EAGGF Guarantee Section for rural development and accompanying measures.</del></p>	<p><i>Agricultural revenue should be entered in the statement of revenue.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">TITLE II</p> <p style="text-align: center;"><b>STRUCTURAL FUNDS</b></p> <p style="text-align: center;"><i>Article 141</i></p> <p>1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules governing the Structural Funds, the Cohesion Fund and the pre-accession structural and agricultural measures and to revenue, save as otherwise provided in this Title.</p> <p>2. Operations managed directly by the Commission shall also be implemented in accordance with the rules laid down in Parts One and Three of this Regulation.</p> <p>3. The pre-accession structural and agricultural measures may be managed on a decentralised basis as provided in Article 150.</p> <p style="text-align: center;"><i>Article 142</i></p> <p>1. Payment by the Commission of contributions from the Funds shall be made in accordance with the rules referred to in Article 141.</p> <p>It may take the form of prefinancing, an interim payment or payment of the balance.</p> <p>2. The time limit for interim payments by the Commission shall be laid down in accordance with the rules referred to in Article 141.</p>	<p style="text-align: center;">TITLE II</p> <p style="text-align: center;"><b>STRUCTURAL FUNDS</b></p> <p style="text-align: center;"><i>Article 141</i></p> <p><del>1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules governing the Structural Funds, the Cohesion Fund and the pre-accession structural and agricultural measures and to revenue, save as otherwise provided in this Title.</del></p> <p><del>2. Operations managed directly by the Commission shall also be implemented in accordance with the rules laid down in Parts One and Three of this Regulation.</del></p> <p><del>3. The pre-accession structural and agricultural measures may be managed on a decentralised basis as provided in Article 150.</del></p> <p style="text-align: center;"><i>Article 142</i></p> <p><del>1. Payment by the Commission of contributions from the Funds shall be made in accordance with the rules referred to in Article 141.</del></p> <p><del>It may take the form of prefinancing, an interim payment or payment of the balance.</del></p> <p><del>2. The time limit for interim payments by the Commission shall be laid down in accordance with the rules referred to in Article 141.</del></p>	<p><i>No need for a specific section for the Structural Funds. Only one provision (Article 144) can be considered an exception to the general rules — it should be incorporated in Article 21.</i></p> <p><i>Unnecessary because evident.</i></p> <p><i>To be treated in the context of 'methods of implementation' (Articles 50 to 54).</i></p> <p><i>There is no need to state what is evident. All payments are due when conditions in specific regulations are met.</i></p> <p><i>Already said in Article 75. No need to repeat.</i></p> <p><i>No need to state this. See Article 142(1). The general rule at Article 71(3) provides for the fixing of a date for all commitments by which the final payment should be made.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>3. The treatment of repayments by the Member States of prefinancing payments and the implications for the amount of contributions from the Funds shall be governed by the rules referred to in Article 141.</p> <p>4. Payments shall be made subject to any financial corrections deemed necessary by the Commission or the Member States in order to comply with the rules referred to in Article 141.</p> <p style="text-align: center;"><i>Article 143</i></p> <p>The Commission shall automatically decommit appropriations that have been committed as provided for in the rules referred to in Article 141.</p>	<p><del>3. The treatment of repayments by the Member States of prefinancing payments and the implications for the amount of contributions from the Funds shall be governed by the rules referred to in Article 141.</del></p> <p><del>4. Payments shall be made subject to any financial corrections deemed necessary by the Commission or the Member States in order to comply with the rules referred to in Article 141.</del></p> <p style="text-align: center;"><i>Article 143</i></p> <p><del>The Commission shall automatically decommit appropriations that have been committed as provided for in the rules referred to in Article 141.</del></p>	<p><i>There should not be a reference to other rules without saying what the essential provisions are. The specific regulation does not mention any reconstitution of payment appropriations as a result of reimbursements as supported in the explanatory memorandum (Article 3(A)(2)(b)). Regulation (EC) No 1260/1999 (Article 32(2) (3)) does however refer to the fact that payments on account should be reimbursed when an action has not commenced within 18 months of the initial prefinancing payment having been made. A procedure could be envisaged whereby repayments of initial prefinancing payments not used within the prescribed time limit are held in suspense accounts until it is clear that there is no further claim. The reimbursement should be recorded as revenue when this becomes clear, at the latest when an automatic decommitment is made which the Structural Fund Regulation requires to be done no later than a further 18 months after such repayments take place. If in the meantime the action concerned has commenced, the reimbursement can be used to restore prefinancing. Such a provision should be included in a more general section about reimbursements (which currently does not exist).</i></p> <p><i>Evident for all areas of expenditure. No need to say this here.</i></p> <p><i>Unnecessary because evident.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>The decommitted appropriations may be made available again in the event of a manifest error attributable solely to the Commission or in the event of a major natural disaster which has serious repercussions for the implementation of operations supported by the Structural Funds.</p> <p>To this end, the Commission shall examine decommitments made during the previous financial year and decide, by 15 February of the current year, on the basis of requirements, whether it is necessary to make the corresponding appropriations available again.</p> <p style="text-align: center;"><i>Article 144</i></p> <p>With regard to operational expenditure referred to in this Title, the Commission may make transfers from one title to another, provided that the appropriations in question are for the same objective, within the meaning of the rules referred to in Article 141.</p> <p style="text-align: center;"><i>Article 145</i></p> <p>Aspects concerning the management and selection of projects and audit shall be governed by the rules referred to in Article 141.</p>	<p><del>The decommitted appropriations may be made available again in the event of a manifest error attributable solely to the Commission or in the event of a major natural disaster which has serious repercussions for the implementation of operations supported by the Structural Funds.</del></p> <p><del>To this end, the Commission shall examine decommitments made during the previous financial year and decide, by 15 February of the current year, on the basis of requirements, whether it is necessary to make the corresponding appropriations available again.</del></p> <p style="text-align: center;"><del><i>Article 144</i></del></p> <p><del>With regard to operational expenditure referred to in this Title, the Commission may make transfers from one title <u>Structural Fund</u> to another, provided that the appropriations in question are for the same objective, within the meaning of the <u>specific</u> rules referred to in Article 141 <u>applicable</u>.</del></p> <p style="text-align: center;"><del><i>Article 145</i></del></p> <p><del>Aspects concerning the management and selection of projects and audit shall be governed by the rules referred to in Article 141.</del></p>	<p><i>This constitutes an exception to the general rule (stated in Article 10) that decommitment of commitments made in a prior year should not result in 'reconstituting' the commitment appropriations used in that prior year. The reason for proposing the exception is the declaration of the Commission attached to Regulation (EC) No 1260/1999 concerning those automatic decommitments which could be made in error, or could be made because an action cannot be completed within the specified time limits (due to natural catastrophe etc.) As far as a natural catastrophe is concerned, restarting or replacing the initial programme after several years should be done using new commitment appropriations, but there should be no problem making such appropriations available, if necessary by supplementary budget, and even by amending the financial perspective in the unlikely event that that would be necessary. The same reasoning would apply in the rare event that it would be necessary to recommit significant amounts decommitted in error by the Commission in a prior year.</i></p> <p><i>Therefore the exception proposed to rules applying to the annual budget is not necessary to ensure that Member States receive the amounts allocated to them at the beginning of a programming period.</i></p> <p><i>It is proposed to add this text to Article 21(1)(d). This derogation will only be necessary when the budget structure is changed to show objectives within Funds. Currently the situation is the opposite.</i></p> <p><i>Unnecessary because evident.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>TITLE III</p> <p><b>RESEARCH</b></p> <p><i>Article 146</i></p> <p>1. Parts One and Three shall apply to the research and technological development appropriations, save as otherwise provided in this Title.</p> <p>These appropriations shall be entered either in a budget title relating to research policy or in a chapter relating to research activities in another title. They shall be used by implementation of the actions set out in detail in the implementing rules.</p> <p>2. Within the budget title relating to the research policy area, the Commission may, by way of derogation from Article 21, make transfers between chapters of up to 15 % of the appropriations on the line from which the transfer is made.</p> <p>3. Experts paid from the research and technological development appropriations shall be recruited in accordance with the procedures laid down by the Council when it adopts each research framework programme.</p> <p><i>Article 147</i></p>	<p>TITLE III</p> <p><b>RESEARCH</b></p> <p><i>Article 146</i></p> <p><del>1. Parts One and Three shall apply to the research and technological development appropriations, save as otherwise provided in this Title.</del></p> <p>[These appropriations shall be entered either in a budget title relating to research policy or in a chapter relating to research activities in another title. <del>They shall be used by implementation of the actions set out in detail in the implementing rules.</del>]</p> <p><del>2. Within the budget title relating to the research policy area, the Commission may, by way of derogation from Article 21, make transfers between chapters of up to 15 % of the appropriations on the line from which the transfer is made.</del></p> <p>[3. Experts paid from the research and technological development appropriations shall be recruited in accordance with the procedures laid down by the Council when it adopts each research framework programme.]</p> <p><i>Article 147</i></p>	<p><i>A specific section for research is not necessary. The provisions contained in the articles below should be either deleted or transferred to other parts of the Financial Regulation.</i></p> <p><i>This provision should be transferred to Title II of Part One relating to the structure of the budget. Furthermore, the second sentence of the sub-paragraph is unclear.</i></p> <p><i>This exemption has only a marginal effect and is all the more unnecessary as the Commission proposes in Article 21 a general limit of 10 %.</i></p> <p><i>If considered useful, this provision could be incorporated into the provision envisaged by Article 43(4)(b) and (c) (as amended by the Court) on the establishment plan for staff paid from research appropriations.</i></p>
<p>1. The Joint Research Centre (JRC) may receive funding charged to appropriations entered outside the title and the chapters referred to in Article 146(1) in respect of its participation on a competitive or negotiated basis in Community activities financed in whole or in part from the general budget.</p> <p>2. The appropriations relating to the activities in which the JRC participates on a competitive basis shall be treated as earmarked revenue within the meaning of Article 17. The commitment appropriations generated by this revenue shall be made available as soon as the amount receivable has been estimated.</p> <p>The utilisation of these appropriations shall be shown in a set of analytical accounts in the revenue and expenditure account for each category of action to which it relates; it shall be separate from revenue originating from financing by third parties (public or private) and from revenue from other services carried out by the Commission for third parties.</p>	<p><del>1. The Joint Research Centre (JRC) may receive funding charged to appropriations entered outside the title and the chapters referred to in Article 146(1) in respect of its participation on a competitive or negotiated basis in Community activities financed in whole or in part from the general budget.</del></p> <p><del>2. The appropriations relating to the activities in which the JRC participates on a competitive basis shall be treated as earmarked revenue within the meaning of Article 17. The commitment appropriations generated by this revenue shall be made available as soon as the amount receivable has been estimated.</del></p> <p><del>The utilisation of these appropriations shall be shown in a set of analytical accounts in the revenue and expenditure account for each category of action to which it relates; it shall be separate from revenue originating from financing by third parties (public or private) and from revenue from other services carried out by the Commission for third parties.</del></p>	<p><i>The provisions on the transfer of appropriations envisaged in Article 21 of this proposed Financial Regulation should enable the Commission to finance this type of work, thereby making this Article unnecessary.</i></p> <p><i>There is no need to include an article of this kind in this Title: the provisions it contains should be covered by Article 17(1)(e).</i></p> <p><i>The drafting of this sub-paragraph is unclear. If it concerns measures financed from the general budget, it should be deleted (see comment in Article 147(1)); if it concerns measures financed by third parties, there is no need to include this kind of article in this Title: the provisions it contains should be covered by Article 17(1)(e).</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>3. The rules on procurement in Title IV of Part One shall not apply to the activities of the JRC on behalf of third parties.</p> <p style="text-align: center;">TITLE IV</p> <p style="text-align: center;"><b>EXTERNAL ACTIONS</b></p> <p style="text-align: center;">Chapter 1</p> <p style="text-align: center;"><b>General provisions</b></p> <p style="text-align: center;">Article 148</p> <p>1. Parts One and Three shall apply to external actions financed from the budget, save as otherwise provided in this Title.</p> <p>2. The appropriations for the actions referred to in paragraph 1 shall be used by the Commission:</p> <p>(a) either by autonomous decision;</p> <p>(b) or under agreements concluded with one or more beneficiary third countries;</p> <p>(c) or under agreements with international organisations.</p> <p style="text-align: center;">Chapter 2</p> <p style="text-align: center;"><b>Implementation of actions</b></p> <p style="text-align: center;">Article 149</p> <p>The actions referred to in this Title may be implemented either on a centralised basis by the Commission or on a partly or wholly decentralised basis by the beneficiary third country or countries, or jointly with international organisations.</p>	<p><del>3. The rules on procurement in Title IV of Part One shall not apply to the activities of the JRC on behalf of third parties.</del></p> <p style="text-align: center;"><del>TITLE IV</del></p> <p style="text-align: center;"><del>EXTERNAL ACTIONS</del></p> <p style="text-align: center;"><del>Chapter 1</del></p> <p style="text-align: center;"><del>General provisions</del></p> <p style="text-align: center;"><del>Article 148</del></p> <p><del>1. Parts One and Three shall apply to external actions financed from the budget, save as otherwise provided in this Title.</del></p> <p><del>2. The appropriations for the actions referred to in paragraph 1 shall be used by the Commission:</del></p> <p><del>(a) either by autonomous decision;</del></p> <p><del>(b) or under agreements concluded with one or more beneficiary third countries;</del></p> <p><del>(c) or under agreements with international organisations.</del></p> <p style="text-align: center;"><del>Chapter 2</del></p> <p style="text-align: center;"><del>Implementation of actions</del></p> <p style="text-align: center;"><del>Article 149</del></p> <p><del>The actions referred to in this Title may be implemented either on a centralised basis by the Commission or on a partly or wholly decentralised basis by the beneficiary third country or countries, or jointly with international organisations.</del></p>	<p><i>This provision has been transferred to the new Article 84a under the Title concerning procurement.</i></p> <p><i>Paragraph 1 indicates that the purpose of this Title is to set out derogations from Parts One and Three. The Title contains almost no derogations, however. Instead it sets out a number of implementation details which should be in the implementing measures. The few derogations and some extensions to general rules should be placed in the appropriate parts of Part One.</i></p> <p><i>All this could be in the implementing measures.</i></p> <p><i>This is not a derogation, but means of implementation. It is covered by Articles 50 to 53 on methods of implementation, to which nothing of substance is added.</i></p>



Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 150</i></p> <p>1. The Commission may decide to entrust management of certain actions to the authorities of beneficiary third countries, after having established that the beneficiary third country or countries are in a position to apply the following minimum criteria for the management of Community funds:</p> <p>(a) effective separation of the duties of authorising officer and accounting officer;</p> <p>(b) existence of an effective system for the internal control of management operations;</p> <p>(c) procedures for the separate presentation of accounts showing the use made of Community funds;</p> <p>(d) existence of an independent external audit system;</p> <p>(e) transparent, non-discriminatory procurement procedures ruling out all conflicts of interest.</p> <p>2. The beneficiary country must agree to assume full responsibility for the Community funds paid to it; it shall also undertake to conduct regular checks to ensure that the actions financed from the Community budget have been implemented correctly, to prevent and prosecute irregularities and fraud and to recover funds lost, wrongly paid or incorrectly used.</p>	<p style="text-align: center;"><i>Article 150</i></p> <p><del>1. The Commission may decide to entrust management of certain actions to the authorities of beneficiary third countries, after having established that the beneficiary third country or countries are in a position to apply the following minimum criteria for the management of Community funds:</del></p> <p><del>(a) effective separation of the duties of authorising officer and accounting officer;</del></p> <p><del>(b) existence of an effective system for the internal control of management operations;</del></p> <p><del>(c) procedures for the separate presentation of accounts showing the use made of Community funds;</del></p> <p><del>(d) existence of an independent external audit system;</del></p> <p><del>(e) transparent, non-discriminatory procurement procedures ruling out all conflicts of interest.</del></p> <p>2. The beneficiary country must agree to assume full responsibility for the Community funds paid to it; it shall also undertake to conduct regular checks to ensure that the actions financed from the Community budget have been implemented correctly, to prevent and prosecute irregularities and fraud and to recover funds lost, wrongly paid or incorrectly used.</p>	<p><i>Article 150 is unrealistic. The Commission does not have the means to verify this, the countries themselves will not all be able to satisfy such demanding criteria presented so starkly, indeed the Member States would have difficulty satisfying all of them. The provisions of Article 50(2) are adequate.</i></p> <p><i>Such criteria should be prepared as part of the implementing rules for the programmes concerned, where they can be expressed in a more appropriate manner.</i></p> <p><i>It is not accounting separately for Community funds that is important, but adequate public accounting procedures generally.</i></p> <p><i>This provision should be put in Article 50.</i></p>
<p style="text-align: center;"><i>Article 151</i></p> <p>The implementation of actions by beneficiary third countries or international organisations is subject to scrutiny by the Commission. Such scrutiny shall be exercised either by prior approval, by <i>ex post</i> checks or by a combined procedure.</p>	<p style="text-align: center;"><i>Article 151</i></p> <p><del>The implementation of actions by beneficiary third countries or international organisations is subject to scrutiny by the Commission. Such scrutiny shall be exercised either by prior approval, by <i>ex post</i> checks or by a combined procedure.</del></p>	<p><i>This provision applies in principle to all fields of expenditure not only external actions. It is already covered by Articles 50(3) and 53(1), third indent.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 152</i></p> <p>1. Actions carried out autonomously or under agreements with beneficiary third countries or international organisations shall give rise to:</p> <p>(a) a financing agreement drawn up between the Commission, acting for the Communities, and the beneficiary third country or countries or the bodies they have designated, hereinafter referred to as 'the beneficiaries';</p> <p>(b) or a contract or grant agreement with a body established under national or international public law or natural or legal persons responsible for carrying out the actions.</p> <p>These contracts and agreements shall lay down the terms on which the external aid shall be managed by the contractor.</p> <p>2. Financing agreements with beneficiary third countries shall be treated as individual legal commitments concluded within the time limits laid down in Article 71(2). The individual contracts and agreements which implement such financing agreements must be concluded by 31 December of year <math>n + 3</math> at the latest, year <math>n</math> being the one in which the budget commitment was made. Individual contracts and agreements relating to audit and evaluation may be concluded later.</p>	<p style="text-align: center;"><del><i>Article 152</i></del></p> <p><del>1. Actions carried out autonomously or under agreements with beneficiary third countries or international organisations shall give rise to:</del></p> <p><del>(a) a financing agreement drawn up between the Commission, acting for the Communities, and the beneficiary third country or countries or the bodies they have designated, hereinafter referred to as 'the beneficiaries';</del></p> <p><del>(b) or a contract or grant agreement with a body established under national or international public law or natural or legal persons responsible for carrying out the actions.</del></p> <p><del>These contracts and agreements shall lay down the terms on which the external aid shall be managed by the contractor.</del></p> <p><del>2. Financing agreements with beneficiary third countries shall be treated as individual legal commitments concluded within the time limits laid down in Article 71(2). The individual contracts and agreements which implement such financing agreements must be concluded by 31 December of year <math>n + 3</math> at the latest, year <math>n</math> being the one in which the budget commitment was made. Individual contracts and agreements relating to audit and evaluation may be concluded later.</del></p>	<p><i>All of Article 152 should be in the implementing measures</i></p> <p><i>This introduces, possibly, an element of confusion in relation to Article 50 in so far as it seems to provide that subsidies (grants) can be provided to international public law bodies (i.e. UN organisations). Article 50(2), however, provides that the budget may be implemented on an indirect centralised basis by such organisations.</i></p> <p><i>The first sentence should be transferred to Article 70(2). The details concerning the time available for concluding individual contracts within a financing agreement have no place here. Having said that, it is necessary to comment on the proposal that such contracts must be concluded by 31 December of year <math>n + 3</math> at the latest. This comes from the rules that have been adopted within Phare. To apply them to development cooperation is unrealistic, because too short a period is defined. This is a management issue already addressed by the provision in Article 71(3) requiring each legal obligation to have a final date for implementation.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">Chapter 3</p> <p style="text-align: center;"><b>Award of contracts</b></p> <p style="text-align: center;">Article 153</p> <p>1. The provisions of Article 53 and of Chapter 1 of Title IV of Part One relating to the general provisions on procurement shall be applicable to contracts covered by this Title subject to the special provisions relating to thresholds and the arrangements for awarding external contracts laid down in the implementing rules. Such contracts shall be awarded:</p> <p>(a) by the Commission on behalf of and for the account of one or more beneficiaries;</p> <p>(b) by the beneficiary or beneficiaries;</p> <p>(c) or by a body established under national or international law or natural or legal persons who have signed a contract or a financing or grant agreement with the Commission for the implementation of an external action.</p> <p>2. The procedures for awarding the contracts must be laid down in the financing agreements or contracts or grant agreements referred to in Article 152.</p>	<p style="text-align: center;"><del>Chapter 3</del></p> <p style="text-align: center;"><del><b>Award of contracts</b></del></p> <p style="text-align: center;"><del>Article 153</del></p> <p><del>1. The provisions of Article 53 and of Chapter 1 of Title IV of Part One relating to the general provisions on procurement shall be applicable to contracts covered by this Title subject to the special provisions relating to thresholds and the arrangements for awarding external contracts laid down in the implementing rules. Such contracts shall be awarded:</del></p> <p><del>(a) by the Commission on behalf of and for the account of one or more beneficiaries;</del></p> <p><del>(b) by the beneficiary or beneficiaries;</del></p> <p><del>(c) or by a body established under national or international law or natural or legal persons who have signed a contract or a financing or grant agreement with the Commission for the implementation of an external action.</del></p> <p>2. The procedures for awarding the contracts must be laid down in the financing agreements or contracts or grant agreements referred to in Article 152.</p>	<p><i>Except for the necessity to state explicitly that the provisions of Chapter 1 of Title IV of Part One apply to external actions, but are subject to special provisions in the implementing measures, these provisions do not contain any derogations vis-à-vis Part One Title IV. They should, therefore, appear in the implementing measures. This statement should, however, be specified in Title IV of Part One (see Article 100a).</i></p>
<p style="text-align: center;">Article 154</p> <p>1. Participation in tendering procedures shall be open on equal terms to all persons coming within the scope of the Treaties and, in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned, to all natural and legal persons who are nationals of the beneficiary third countries or of any other third country expressly mentioned in those instruments.</p> <p>2. In exceptional cases and with proper justification, it may be decided, on the basis of the specific conditions laid down in the basic instruments governing cooperation, to allow nationals of third countries other than those referred to in paragraph 1 to tender for contracts.</p>	<p style="text-align: center;"><del>Article 154</del></p> <p><del>1. Participation in tendering procedures shall be open on equal terms to all persons coming within the scope of the Treaties and, in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned, to all natural and legal persons who are nationals of the beneficiary third countries or of any other third country expressly mentioned in those instruments.</del></p> <p><del>2. In exceptional cases and with proper justification, it may be decided, on the basis of the specific conditions laid down in the basic instruments governing cooperation, to allow nationals of third countries other than those referred to in paragraph 1 to tender for contracts.</del></p>	<p><i>This should be included in Title VI of Part I. It is an extension of the provisions of Article 99 applying to contracts awarded by the Community institutions on their own account.</i></p> <p>As above.</p>
<p style="text-align: center;">Chapter 4</p> <p style="text-align: center;"><b>Award of grants</b></p> <p style="text-align: center;">Article 155</p> <p>An action may be financed in full by the budget if this is essential for it to be carried out.</p>	<p style="text-align: center;"><del>Chapter 4</del></p> <p style="text-align: center;"><del><b>Award of grants</b></del></p> <p style="text-align: center;"><del>Article 155</del></p> <p><del>An action may be financed in full by the budget if this is essential for it to be carried out.</del></p>	<p><i>This is a derogation from Article 106(1)(Grants), which the Court proposes to delete. Therefore there is no need for Article 155.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">Chapter 5</p> <p style="text-align: center;"><b><i>Auditing of accounts</i></b></p> <p style="text-align: center;"><i>Article 156</i></p> <p>Each financing agreement or contract or grant agreement shall expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, up to and including the final beneficiary of the operation, subject the derogations provided for in Article 53.</p> <p style="text-align: center;">TITLE V</p> <p style="text-align: center;"><b>OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES</b></p> <p style="text-align: center;"><i>Article 157</i></p> <p>Parts One and Three shall apply to the operation of the Office for Official Publications of the European Communities, hereinafter referred to as 'the Office', save as otherwise provided in this Title.</p> <p style="text-align: center;"><i>Article 158</i></p> <p>1. The appropriations for the Office, the total amount of which shall be entered under a special budget line within the section of the budget relating to the Commission, shall be set out in detail in an Annex to that section.</p> <p>The Annex shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.</p> <p>The appropriations entered in that Annex shall cover all the financial requirements of the Office in the performance of its duties in the service of the Community institutions.</p>	<p style="text-align: center;"><del>Chapter 5</del></p> <p style="text-align: center;"><b><i>Auditing of accounts</i></b></p> <p style="text-align: center;"><del>Article 156</del></p> <p><del>Each financing agreement or contract or grant agreement shall expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, up to and including the final beneficiary of the operation, subject the derogations provided for in Article 53.</del></p> <p style="text-align: center;"><del>TITLE V-I</del></p> <p style="text-align: center;"><b><u>EUROPEAN OFFICES DES PUBLICATIONS OFFICIELLES DES COMMUNAUTES EUROPEENNES</u></b></p> <p style="text-align: center;"><i>Article 157</i></p> <p>Parts One and Three shall apply to the operation of the <u>European Offices set up by the Community institutions for Official Publications of the European Communities</u>, hereinafter referred to as 'the Offices', save as otherwise provided in this Title.</p> <p style="text-align: center;"><i>Article 158</i></p> <p>1. The appropriations for <u>an</u> the Office, the total amount of which shall be entered under a special budget line within the section of the budget relating to <u>the institution which set up the Office in question</u> the Commission, shall be set out in detail in an Annex to that section.</p> <p>The Annex shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.</p> <p>The appropriations entered in that Annex shall cover all the financial requirements of the Office in the performance of its duties in the service of the Community institutions.</p>	<p><i>This is not a derogation as such. It applies to all areas of the budget and should be covered by the general provisions, in Article 50 for the Commission and in Article 127 for the Court of Auditors.</i></p> <p><i>The Financial Regulation should preferably contain only the basic mechanisms for the administrative and accounting operations of the Offices set up by the Community institutions (European Offices).</i></p> <p><i>As these Offices are likely to increase in number, individual coverage in the financial legislation would require the Financial Regulation to be revised each time a new Office is set up.</i></p> <p><i>In addition, the Offices should preferably follow similar rules, mostly adopted in the form of implementing rules for this Financial Regulation.</i></p> <p><i>As above.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p>2. The Management Committee of the Office shall take decisions on transfers within the Annex provided for in paragraph 1. The Commission shall inform the budgetary authority of such transfers.</p> <p style="text-align: center;"><i>Article 159</i></p>	<p>2. The <del>Director Management Committee</del> of the Office shall take decisions on transfers within the Annex provided for in paragraph 1. <del>He shall inform the aforementioned institution and The Commission shall inform</del> the budgetary authority of such transfers.</p> <p style="text-align: center;"><i>Article 159</i></p>	As above.
<p>The Commission shall, in respect of the appropriations entered in the Annex for the Office, delegate the powers of authorising officer to the Director of the Office and shall set the limits and conditions for this delegation of powers.</p> <p style="text-align: center;"><i>Article 160</i></p>	<p><del>The Commission shall, in respect of the appropriations entered in the Annex for the Office, delegate the</del> <u>The authorising officer powers in respect of the appropriations in the Annex shall be exercised by</u> to the Director of the Office. <del>and shall set the limits and conditions for this delegation of powers.</del></p> <p style="text-align: center;"><i>Article 160</i></p>	As above.
<p>1. The Office shall draw up analytical accounts of its expenditure, enabling the proportion of its services supplied to each of the institutions to be determined. The Management Committee shall lay down the criteria on which the accounting system shall be based.</p>	<p><del>1. The Office shall draw up analytical accounts of its expenditure, enabling the proportion of its services supplied to each of the institutions to be determined. The Management Committee shall lay down the criteria on which the accounting system shall be based.</del></p>	As above.
<p>2. The remarks concerning the specific budget line under which is entered the total appropriation for the Office shall show an estimate of the cost of services supplied by the Office to each of the institutions. This shall be based on the forecasts of the analytical accounts provided for in paragraph 1.</p>	<p><del>2. The remarks concerning the specific budget line under which is entered the total appropriation for the Office shall show an estimate of the cost of services supplied by the Office to each of the institutions. This shall be based on the forecasts of the analytical accounts provided for in paragraph 1.</del></p>	As above.
<p>3. The Office shall notify the institutions concerned of the results of the analytical accounts.</p>	<p><del>3. The Office shall notify the institutions concerned of the results of the analytical accounts.</del></p>	As above.
<p>4. The revenue and expenditure account and the balance sheet of the Office shall form an integral part of the revenue and expenditure account and of the balance sheet of the Communities referred to in Article 115.</p> <p style="text-align: center;"><i>Article 161</i></p>	<p>4. The revenue and expenditure account and the balance sheet of the Office shall form an integral part of the revenue and expenditure account and of the balance sheet of the Communities referred to in Article 115.</p> <p style="text-align: center;"><i>Article 161</i></p>	As above.
<p>The Management Committee of the Office shall determine the detailed rules for the implementation of this Title, and also specific rules governing the terms of sale of publications and the corresponding accounting system.</p>	<p><del>The institution which sets up the Office</del> <u>The Management Committee of the Office shall determine the detailed rules for the implementation of this Title. The Director of the Office shall determine, and also</u> specific rules governing the <u>administrative and accounting operations of the Office, the terms of sale of publications and the corresponding accounting system</u></p>	As above.
<p>Each institution shall retain the powers of authorisation for expenditure charged to the appropriations for the publication of all work entrusted to outside bodies by the Office. The net proceeds from the sale of the publications shall be used as earmarked revenue by the institution which drew up these publications, in accordance with Article 17.</p>	<p><del>Each institution shall retain the powers of authorisation for expenditure charged to the appropriations for the publication of all work entrusted to outside bodies by the Office. The net proceeds from the sale of the publications shall be used as earmarked revenue by the institution which drew up these publications, in accordance with Article 17.</del></p>	As above.

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">TITLE VI</p> <p style="text-align: center;"><b>EUROPEAN ANTI-FRAUD OFFICE</b></p> <p style="text-align: center;"><i>Article 162</i></p> <p>Parts One and Three shall apply to the operation of the European Anti-fraud Office (OLAF), save as otherwise provided in this Title.</p> <p style="text-align: center;"><i>Article 163</i></p> <p>1. Appropriations to cover all the financial requirements for the operation of OLAF in the exercise of its tasks and remits shall be entered under a special budget line within the section of the budget relating to the Commission. These appropriations shall be set out in detail in an Annex which shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.</p> <p>2. The Commission shall, at the request of the Director of OLAF, make transfers within the Annex referred to in paragraph 1. The Commission shall inform the budgetary authority of such transfers.</p> <p style="text-align: center;"><i>Article 164</i></p> <p>The Commission shall delegate the powers of authorising officer in respect of the appropriations entered in the Annex to the Commission Section relating to OLAF to the Director of OLAF and shall set the limits and conditions for this delegation of powers. The Director of OLAF shall be authorised to subdelegate his powers to staff covered by the Staff Regulations.</p> <p style="text-align: center;"><i>Article 165</i></p> <p>The revenue and expenditure account and the balance sheet of OLAF shall form an integral part of the revenue and expenditure account and of the balance sheet of the Communities referred to in Article 115.</p>	<p style="text-align: center;">TITLE VI</p> <p style="text-align: center;"><b>EUROPEAN ANTI-FRAUD OFFICE</b></p> <p style="text-align: center;"><i>Article 162</i></p> <p><del>Parts One and Three shall apply to the operation of the European Anti-fraud Office (OLAF), save as otherwise provided in this Title.</del></p> <p style="text-align: center;"><i>Article 163</i></p> <p><del>1. Appropriations to cover all the financial requirements for the operation of OLAF in the exercise of its tasks and remits shall be entered under a special budget line within the section of the budget relating to the Commission. These appropriations shall be set out in detail in an Annex which shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.</del></p> <p><del>2. The Commission shall, at the request of the Director of OLAF, make transfers within the Annex referred to in paragraph 1. The Commission shall inform the budgetary authority of such transfers.</del></p> <p style="text-align: center;"><i>Article 164</i></p> <p><del>The Commission shall delegate the powers of authorising officer in respect of the appropriations entered in the Annex to the Commission Section relating to OLAF to the Director of OLAF and shall set the limits and conditions for this delegation of powers. The Director of OLAF shall be authorised to subdelegate his powers to staff covered by the Staff Regulations.</del></p> <p style="text-align: center;"><i>Article 165</i></p> <p><del>The revenue and expenditure account and the balance sheet of OLAF shall form an integral part of the revenue and expenditure account and of the balance sheet of the Communities referred to in Article 115.</del></p>	<p><i>The Financial Regulation should preferably contain only the basic mechanisms for the administrative and accounting operations of the Offices set up by the Community Institutions (European Offices).</i></p> <p><i>As these Offices are likely to increase in number, individual coverage in the financial legislation would require the Financial Regulation to be revised each time a new Office is set up.</i></p> <p><i>In addition, the Offices should preferably follow similar rules, mostly adopted in the form of implementing rules for this Financial Regulation.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;">TITLE VII</p> <p style="text-align: center;"><b>ADMINISTRATIVE APPROPRIATIONS</b></p> <p style="text-align: center;"><i>Article 166</i></p> <p>Parts One and Three shall apply to administrative appropriations, save as otherwise provided in this Title.</p> <p style="text-align: center;"><i>Article 167</i></p> <p>1. As from 15 November of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the total corresponding appropriations for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.</p> <p>2. Expenditure which must be paid in advance, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year.</p> <p style="text-align: center;"><i>Article 168</i></p> <p>1. For each financial year the amount of the commitment appropriations contained in the budget shall be equal to that of the payment appropriations</p> <p>2. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.</p> <p style="text-align: center;">PART THREE</p> <p style="text-align: center;"><b>TRANSITIONAL AND FINAL PROVISIONS</b></p> <p style="text-align: center;">TITLE I</p> <p style="text-align: center;"><b>TRANSITIONAL PROVISIONS</b></p> <p style="text-align: center;"><i>Article 169</i></p> <p>The section of the budget relating to the Commission shall, as a transitional measure, contain within the appropriations for the EAGGF Guarantee Section a monetary reserve, for which the entry, utilisation and financing conditions are determined by the Council Decision on budgetary discipline and the Council Decision on the system of the Communities' own resources and by the provisions adopted for implementing the latter.</p>	<p style="text-align: center;">TITLE VII</p> <p style="text-align: center;"><b>ADMINISTRATIVE APPROPRIATIONS</b></p> <p style="text-align: center;"><i>Article 166</i></p> <p><del>Parts One and Three shall apply to administrative appropriations, save as otherwise provided in this Title.</del></p> <p style="text-align: center;"><i>Article 167</i></p> <p><del>1. As from 15 November of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the total corresponding appropriations for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.</del></p> <p><del>2. Expenditure which must be paid in advance, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year.</del></p> <p style="text-align: center;"><i>Article 168</i></p> <p><del>1. For each financial year the amount of the commitment appropriations contained in the budget shall be equal to that of the payment appropriations</del></p> <p><del>2. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.</del></p> <p style="text-align: center;">PART THREE</p> <p style="text-align: center;"><b>TRANSITIONAL AND FINAL PROVISIONS</b></p> <p style="text-align: center;">TITLE I</p> <p style="text-align: center;"><b>TRANSITIONAL PROVISIONS</b></p> <p style="text-align: center;"><i>Article 169</i></p> <p>The section of the budget relating to the Commission shall, as a transitional measure, contain within the appropriations for the EAGGF Guarantee Section a monetary reserve, for which the entry, utilisation and financing conditions are determined by the Council Decision on budgetary discipline and the Council Decision on the system of the Communities' own resources and by the provisions adopted for implementing the latter.</p>	<p><i>None of the exceptions envisaged in this Title is essential to the management of administrative appropriations, if this type of appropriation is subject to the logic of differentiated appropriations. It is clear that when this kind of appropriation is implemented for the first time, there will need to be an adequate volume of commitment appropriations to cover all decisions taken and legal obligations entered into by the various Community institutions.</i></p> <p><i>As above.</i></p> <p><i>As above.</i></p> <p><i>As above.</i></p>

Commission's proposal	Court's modified proposal	Comments
<p style="text-align: center;"><i>Article 170</i></p> <p>The EAGGF Guarantee appropriations for rural development and accompanying measures shall remain subject to Article 135 until the end of the period covered by the financial perspective, that is until 31 December 2006. Appropriate provisions shall be adopted after that date.</p> <p style="text-align: center;">TITLE II</p> <p style="text-align: center;"><b>FINAL PROVISIONS</b></p> <p style="text-align: center;"><i>Article 171</i></p> <p>The European Parliament and the Council shall be empowered to demand any information or explanations regarding budgetary matters within their competence.</p> <p style="text-align: center;"><i>Article 172</i></p> <p>In consultation with the European Parliament and the Council and after the other institutions have delivered their opinions, the Commission shall adopt rules for implementing this Financial Regulation.</p> <p style="text-align: center;"><i>Article 173</i></p> <p>Every three years, the European Parliament and the Council shall examine this Financial Regulation in the light of a proposal from the Commission.</p> <p>Any financial regulations amending this Financial Regulation shall be adopted by the Council after recourse to the conciliation procedure, if the European Parliament so requests.</p> <p>The conciliation shall take place in a 'conciliation committee' consisting of the Council and representatives of the European Parliament. The Commission shall participate in the work of the conciliation committee.</p> <p>The aim of the conciliation procedure shall be to seek agreement between the European Parliament and the Council. The procedure should normally take place over a period not exceeding three months, unless the instrument in question must be adopted by a specific date or if the matter is urgent, in which case the Council may set an appropriate time limit.</p>	<p style="text-align: center;"><del><i>Article 170</i></del></p> <p><del>The EAGGF Guarantee appropriations for rural development and accompanying measures shall remain subject to Article 135 until the end of the period covered by the financial perspective, that is until 31 December 2006. Appropriate provisions shall be adopted after that date.</del></p> <p style="text-align: center;">TITLE II</p> <p style="text-align: center;"><b>FINAL PROVISIONS</b></p> <p style="text-align: center;"><i>Article 171</i></p> <p>The European Parliament and the Council shall be empowered to demand any information or explanations regarding budgetary matters within their competence.</p> <p style="text-align: center;"><i>Article 172</i></p> <p>In consultation with the European Parliament and the Council and after the other institutions have delivered their opinions, the Commission shall adopt <u>the rules needed to implement all of the provisions for implementing</u> of this Financial Regulation.</p> <p><u>The Commission shall commence the aforementioned consultations at the same time as it presents to the Council its proposals to amend the Financial Regulation.</u></p> <p style="text-align: center;"><i>Article 173</i></p> <p><del>Every three years, the European Parliament and the Council shall examine this Financial Regulation in the light of a proposal from the Commission.</del></p> <p>Any financial regulations amending this Financial Regulation shall be adopted by the Council after recourse to the conciliation procedure, if the European Parliament so requests.</p> <p>The conciliation shall take place in a 'conciliation committee' consisting of the Council and representatives of the European Parliament. The Commission shall participate in the work of the conciliation committee.</p> <p>The aim of the conciliation procedure shall be to seek agreement between the European Parliament and the Council. The procedure should normally take place over a period not exceeding three months, unless the instrument in question must be adopted by a specific date or if the matter is urgent, in which case the Council may set an appropriate time limit.</p>	<p><i>See proposed amendment to Article 135.</i></p> <p><i>It is important that the Commission should be empowered to adopt implementing rules for all provisions, not just those which explicitly refer to this possibility, which was the practice followed with the current text.</i></p> <p><i>It is important that all of the applicable financial rules should be consistent with each other at all times. Simultaneous drafting also enables those drawing up the legislation to have an overview of the rules which will ultimately be applied.</i></p> <p><i>This provision does not enhance the power of initiative of the Commission, which must be able at all times to propose any necessary amendments.</i></p>



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<p>When the positions of the two institutions are sufficiently close, the European Parliament may give a new opinion, after which the Council shall take definitive action.</p> <p style="text-align: center;"><i>Article 174</i></p> <p>The financial rules of Community bodies having legal personality and receiving grants from the general budget must be modelled on this Financial Regulation. They may depart from them when the specific requirements of their individual operation so dictate.</p> <p style="text-align: center;"><i>Article 175</i></p> <p>The Financial Regulation of 21 December 1977 is repealed.</p> <p>References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.</p> <p style="text-align: center;"><i>Article 176</i></p> <p>This Regulation shall enter into force on the 20th day following that of its publication in the <i>Official Journal of the European Communities</i>,</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p> <p>Done at Brussels, ...</p> <p><i>For the Council</i></p> <p><i>The President</i></p>	<p>When the positions of the two institutions are sufficiently close, the European Parliament may give a new opinion. <u>This new opinion shall also be sent to the Court of Auditors so as to enable it to add to its own opinion where it deems that necessary. Thereafter, after</u> <del>which</del> the Council shall take definitive action.</p> <p style="text-align: center;"><i>Article 174</i></p> <p>The financial rules of Community bodies having legal personality and receiving grants from the general budget must be modelled on a <u>framework legislation drawn up by the Commission in consultation with the Parliament and the Council and after the Court of Auditors has given its opinion this Financial Regulation</u>. They may depart from them <u>only if when</u> the specific requirements of their individual operation so dictate.</p> <p style="text-align: center;"><i>Article 175</i></p> <p>The Financial Regulation of 21 December 1977 <u>and any legislative provision which is contrary to this Financial Regulation</u> <del>are</del> is repealed.</p> <p>References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.</p> <p style="text-align: center;"><i>Article 176</i></p> <p>This Regulation shall enter into force on the 20th day following that of its publication in the <i>Official Journal of the European Communities</i>.</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p> <p>Done at Brussels, ...</p> <p><i>For the Council</i></p> <p><i>The President</i></p>	<p><i>It is important to preserve the consultative role of the Court of Auditors, by ensuring that its opinion relates to the provisions in the form they are to be amended.</i></p> <p><i>The current provision which results in the financial regulations of the Community bodies with a legal personality being based on the general Financial Regulation leads these bodies to adopt regulations which are partly unsuited to their management requirements. These bodies should be able to operate in a relatively flexible framework.</i></p> <p><i>If the amendment suggested by the Court is not approved, the Court believes that the Commission should also propose to the Council that, as well as repealing the Financial Regulation of 21 December 1977, it should repeal all of the special regulatory provisions which depart, in particular in the sectoral regulations, from the rules of the new Financial Regulation.</i></p>