

Opinion of the Economic and Social Committee on the 'Proposal for a Council Regulation (EC, ECSC, Euratom) on the financial regulation applicable to the general budget of the European Communities'

(2001/C 260/08)

On 30 November 2000 the Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an opinion on the above-mentioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 26 June 2001. The rapporteur was Mr Bento Gonçalves.

At its 383rd plenary session (meeting of 11 July 2001), the Economic and Social Committee adopted the following opinion with 108 votes in favour and five abstentions.

1. Introduction

1.1. The Committee's work was based on various documents in addition to the current Financial Regulation⁽¹⁾. The most important of these documents are:

- the fifteen separate amendments made since 1977 to the Financial Regulation applicable to the general budget of the European Communities⁽²⁾;
- the institutional changes made by the Treaties of Maasticht and Amsterdam;
- the opinion of the Court of Auditors of the European Communities (No. 4/97 of 10 July 1997) on the Commission proposal of 26 July 1996;

- the opinion of the Court of Auditors of the European Communities (No. 2/2001 of 8 March 2001) on the Commission proposal⁽³⁾, together with a table comparing the Commission's and the Court's proposals;

- the working document of the Commission on the recasting of the Financial Regulation⁽⁴⁾.

1.2. A number of general comments and concerns are prompted by all the technical and legal documentation:

- the need for greater discipline and exigency in implementing the budget, thereby avoiding or reducing as far as necessary any exceptions from the eight basic principles governing budget law;
- the need for greater clarity and discipline in the annual presentation of accounts, as provided for in Title VI of Part I of the Regulation, thereby ensuring transparency, reliability and comparability between financial years and permitting and facilitating the checks to be made by the competent authorities;
- the creation of instruments for simplifying verification of documents and identification of those responsible for commitments and the fulfilment of all regulatory requirements. This will strengthen and enhance the role of the control authorities, thereby improving transparency considerably.

1.3. On 26 July 2000, the European Commission presented a proposal for recasting the whole of the Financial Regulation, as part of the process of modernising and simplifying the European Union's administration.

⁽¹⁾ OJ L 356, 31.12.1997, p. 1.

⁽²⁾ Council Regulation (ECSC, EEC, Euratom) No. 1252/79 of 25.6.1979 — OJ L 160, 28.6.1979, p. 1; Council Regulation (EEC, Euratom, ECSC) No. 1176/80 of 16.12.1980 — OJ L 345, 20.12.1980, p. 23; Council Regulation (ECSC, EEC, Euratom) No. 1600/88 of 7.6.1988 — OJ L 143, 10.6.1988, p. 1; Council Regulation (ECSC, EEC, Euratom) No. 2049/88 of 24.6.1988 — OJ L 185, 15.7.1988, p. 3; Council Regulation (Euratom, ECSC, EEC) No. 610/90 of 13.3.1990 — OJ L 70, 16.3.1990, p. 1; Council Regulation (ECSC, EC, Euratom) No. 1923/94, 25.7.1994 — OJ L 198, 30.7.1994, p. 4; Council Regulation (ECSC, EC, Euratom) No. 2730/94 of 31.10.1994 — OJ L 293, 12.11.1994, p. 7; Council Regulation (EC, Euratom, ECSC) No. 2333/95 of 18.9.1995 — OJ L 240, 7.10.1995, p. 1; Council Regulation (EC, Euratom, ECSC) No. 2334/95 of 18.9.1995 — OJ L 240, 7.10.1995, p. 9; Council Regulation (EC, Euratom, ECSC) No. 2335/95 of 18.9.1995 — OJ L 240, 7.10.1995, p. 12; Council Regulation (EC) No. 2444/97 of 22.9.1997 — OJ L 340, 11.12.1997, p. 1; Council Regulation (EC, ECSC, Euratom) No. 2548/98 of 23.11.1998 — OJ L 320, 28.11.1998, p. 1; Council Regulation (EC, ECSC, Euratom) No. 2779/98 of 17.12.1998 — OJ L 347, 23.12.1998, p. 3; Council Regulation (EC, ECSC, Euratom) No. 2673/1999 of 13.12.1999 — OJ L 326, 18.12.1999, p. 1; Council Regulation (EC, ECSC, Euratom) No. 762/2001 of 9.4.2001 — OJ L 111, 20.04.2001, p. 1.

⁽³⁾ COM(2000) 461 final.

⁽⁴⁾ SEC(1998) 1228 final, of 22.7.1998.

1.3.1. This opinion therefore considers the content of the Commission proposal for a Council Regulation which recasts the Financial Regulation applicable to the general budget of the European Communities⁽¹⁾.

2. General considerations

2.1. As already stated above, the current Financial Regulation dates back to 21 December 1977. Since then the text has been amended fifteen times. These amendments have been to points of detail and have sought in essence to provide a response to:

- the need for growing discipline and exigency with regard to Community finances;
- the changes brought about within the Communities by successive enlargements and the new economic and financial framework resulting therefrom;
- institutional changes, especially those introduced by the Treaties of Maastricht and Amsterdam.

2.1.1. As the Court of Auditors of the European Communities points out in its opinion⁽²⁾, the Financial Regulation, which already displayed a number of inconsistencies 'owing to the co-existence of several different sets of rules', has become less and less consistent as a result of these fifteen amendments.

2.2. A proposal for the overall revision of the Regulation — instead of an indeterminate number of new amendments to points of detail — is therefore justified.

2.3. This overall revision will improve this important instrument for the financial management of the Communities in a number of areas where improvements must be made. The following are the main improvements that have to be made, though this list is not exhaustive:

- simplification of the rules applicable to the financial management of the Communities, albeit without neglecting the need for discipline and transparency;
- revision of budgetary nomenclature so as to provide a more precise definition of terms used in the current Financial Regulation which have never been defined;
- elimination of terms and expressions used in the Financial Regulation — not necessarily concerning an exception to a principle — which contribute towards legal imprecision or uncertainty, e.g. 'where appropriate', 'in principle' or 'if need be';

- creation of an overall hierarchy for financial management legislation, with the Financial Regulation laying down the basic rules and principles and subordinate regulations specifying the implementing procedures and more detailed practical rules.

2.4. The Commission's main objectives in recasting the Financial Regulation are:

- simplification (along with consolidation, bearing in mind in this context the fifteen amendments introduced since 1977 and the separate instruments produced in the meantime such as *vade-mecums* and sectoral regulations applicable to the Structural Funds). This need for simplification also reflects a concern about the readability of the document. The new document is thus to be divided into three parts — part one dealing with common provisions, part two with specific provisions setting out the exceptions which apply in highly specific fields, and part three with the transitional and final provisions;
- modernisation of the budget structure, to be brought about by adapting it to activity-based management and allowing the cost of each political objective or each activity to be shown in full (activity-based budgeting);
- financial discipline: this will result, according to the Commission, from the clear presentation of not only the eight budgetary principles but also the limited exceptions permitted in applying these principles.

2.5. The Committee recognises that, generally speaking, the proposal satisfies these major objectives.

2.6. Given the wide scope and highly technical nature of the proposal, this opinion will not consider its content in full. Instead it will look at the articles which have been added to the present Financial Regulation or which contain major changes.

2.7. The recasting of the Financial Regulation is one of the present Commission's most important legal projects, and the Committee trusts that the unanimous vote required in the Council for its approval will not be difficult to obtain.

2.8. As the representative of organised civil society — a term which also includes the social partners and organisations representing various other interests, the Committee attaches great importance to sound and transparent EU financial management which makes optimum use of resources. It should be noted in this context that the Committee is also one of the institutions whose activities are governed by the Financial Regulation.

⁽¹⁾ COM(2000) 461 final of 17.10.2000.

⁽²⁾ Opinion No. 4/97 of 10.7.1997 — OJ C 57, 23.2.1998, p. 1.

2.9. The Committee notes that the procedure suggested by the Court of Auditors but not adopted by the Commission would have had an undeniable advantage over the procedure being used now. The suggested procedure involved the establishment of a top-level working party (including outside experts) to give detailed consideration to the new financial rules of the Communities. It could have helped, *inter alia*, to shorten the time taken to produce the final version of the proposed rules.

2.10. Because of their importance as concepts and in providing a framework setting out a budgetary philosophy, the principles of budget law are considered separately.

3. The principles of budget law

3.1. Article 2 of the proposal specifies eight basic principles of budget law:

- unity of the budget;
- annuality;
- equilibrium between revenue and expenditure;
- unit of account;
- universality of the budget;
- specification;
- sound financial management;
- transparency.

3.2. The first seven of these principles are defined in the Treaty establishing the European Community.

3.2.1. The principle of unity of the budget is set out in Article 268:

‘All items of revenue and expenditure of the Community, including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.’

3.2.1.1. The Committee welcomes two points made in the proposal reaffirming and implementing this principle:

- the elimination of the controversial negative amounts (negative revenue and expenditure);
- the inclusion in the Financial Regulation of the operational expenditure on the common foreign and security policy (CFSP) and cooperation in the field of justice and home affairs (JHA).

3.2.2. The principle of annuality is defined in Article 271:

‘The expenditure shown in the budget shall be authorised for one financial year, unless the regulations made pursuant to Article 279 provide otherwise.’

3.2.2.1. With regard to the application of this principle, the Committee recognises that, as the Commission itself states, natural management requirements do not allow the use of appropriations to be strictly subordinated to an end-of-year deadline⁽¹⁾. Hence the justification for the exceptions to the annuality rule contained in the proposal:

- the ‘additional period’ in the financial year for the charging of EAGGF expenditure (up to 31 January of the following year);
- the carryover arrangements for appropriations (Article 8 of the proposal)⁽²⁾;
- the arrangements for making appropriations available again (applicable only to the Structural Funds)⁽³⁾.

3.2.3. The principle of equilibrium between revenue and expenditure is spelt out in Article 268:

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

3.2.4. The unit of account principle is to be founded in Article 277:

‘The budget shall be drawn up in the unit of account determined in accordance with the provisions of the regulations made pursuant to Article 279.’

3.2.5. The principle of the universality of the budget is defined in Article 268:

‘All items of revenue and expenditure of the Community, including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.’

3.2.5.1. The proposal retains earmarked revenue as an exception to this principle (Article 17). Such revenue will exist on a larger scale in future owing to the elimination of negative expenditure.

⁽¹⁾ Commission working document SEC(1998) 1228 final of 22.7.1998.

⁽²⁾ In its opinion No. 2/2001 the Court of Auditors thinks that these carryover arrangements for appropriations are unnecessary since they not only have a marginal financial impact but also make the accounts management systems additionally complicated.

⁽³⁾ The Court of Auditors also thinks that these arrangements are not justified.

3.2.5.2. In a recent opinion on the financing of the common agricultural policy⁽¹⁾, the Court of Auditors stated that agricultural revenue which hitherto had appeared in the budget as negative expenditure should be treated as general revenue and not as earmarked revenue, as it recognised that 'there may be circumstances in which certain specific receipts, outside the field of EAGGF-Guarantee, could enable institutions to spend corresponding amounts for related purposes without the need for fresh budgetary authorisation'.

3.2.5.3. The Committee would, however, reaffirm what it said in its opinion on the proposal for a Council Regulation amending Regulation (EC) No. 1258/1999 on the financing of the CAP⁽²⁾, namely that in the specific case of the EAGGF Guarantee Fund, earmarked revenue must be available only for applications coming under that Fund. In the same opinion the Committee also welcomed the transformation of negative expenditure into earmarked revenue as a means of putting the budget principle of transparency into effect — a view it would reiterate within the context of the present opinion.

3.2.6. The specification principle is defined in Article 271:

'Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 279.'

3.2.6.1. The exception to this principle, as the Court of Auditors recognises in its opinion 4/97 is the possibility to transfer appropriations.

3.2.6.2. Transfers of appropriations are also provided for in Article 274 of the Treaty establishing the European Community.

3.2.6.3. The proposal has standardised the procedures applicable to all the Community institutions, making it possible for them to decide about transfers between chapters and articles, but leaving the decision about transfers between titles to the budgetary authority.

3.2.6.4. On the other hand, the Commission has retained its current powers with regard to transfers of appropriations, although for operational expenditure there will be a limit on transfers between chapters within one title. This limit will be set at 10 % of the initial appropriations on the line from which the transfer is made.

3.2.6.5. The Committee is in favour of this mechanism for making budgetary procedures more flexible.

3.2.7. The principle of sound financial management is set out in Article 274:

'The Commission shall implement the budget, in accordance with the provisions of the regulations made pursuant to Article 279, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.'

3.2.7.1. This principle is defined in the proposal by reference to the principles of economy, efficiency and effectiveness, thereby helping to delimit the rule more effectively.

3.2.8. With regard to the principle of transparency and its implementation, the following new points introduced by the proposal are to be welcomed:

- the requirement that the budget be published swiftly — two months after its adoption by the European Parliament;
- the elimination of negative amounts (negative revenue and expenditure);
- the obligation to publish the consolidated revenue and expenditure account and balance sheet in the Official Journal;
- the provision of information (in an annex to the budget) on borrowing and lending operations contracted by the Community.

4. The proposal in detail

4.1. Part I of the proposal — Common Provisions — contains seven titles: Title I (Articles 1-28), 'General provisions'; Title II (Articles 29-44), 'Establishment and structure of the budget'; Title III (Articles 45-82), 'Implementation of the budget'; Title IV (Articles 83-100), 'Procurement'; Title V (Articles 101-114), 'Grants'; Title VI (Articles 115-122), 'Keeping and presentation of the accounts'; and Title VII (Articles 123-133), 'External audit and discharge'.

4.1.1. Article 1 defines the scope of the proposed text, which extends beyond the strict framework for the budget and its implementation to be found in the present Financial Regulation.

4.1.1.1. The proposal now also includes rules relating to:

- the keeping of accounts;

⁽¹⁾ Court of Auditors' opinion No. 1/2001 (OJ C 55, 21.2.2001), point 31.

⁽²⁾ OJ C 123, 25.4.2001.

- procurement;
- the award of grants by the Communities;
- the liability of the authorising officers, accounting officers and internal auditors;
- external control.

4.1.2. Article 2 is new, incorporating in the Financial Regulation the eight basic principles of budget law, already commented on above in point 4.

4.1.3. Article 3(2) includes in Community expenditure and revenue the administrative and operational expenditure for the common foreign and security policy and for cooperation in the field of justice and home affairs — when this is charged to the budget. This will bring the Financial Regulation into line with the Treaty of Amsterdam.

4.1.4. The principle of budgetary equilibrium is defined in Article 13, which also specifies that the Communities may not raise loans to cover a budget deficit.

4.1.4.1. The Communities may raise loans only for the purpose of investments in immovable assets.

4.1.5. Article 21 extends the scope for transferring appropriations, by allowing the Commission to transfer appropriations with regard to expenditure on staff and administration from one title to another without the authorisation of the budgetary authority. The Committee welcomes this.

4.1.5.1. Under the current Financial Regulation, transfers of appropriations are only possible without the authorisation of the budgetary authority if they are between chapters and articles within the same section of the budget.

4.1.6. Article 27 introduces two innovations:

- the principle of budgetary transparency is laid down [Article 27(1)];
- the consolidated revenue and expenditure account and balance sheet also have to be published in the Official Journal [Article 27(3)].

4.1.7. Article 38(1) specifies that the revenue and expenditure of the Commission and the other institutions is to be classified by the budgetary authority.

4.1.8. Bearing in mind the clarity and transparency objectives, it is useful for Article 38(2) to stipulate that in the classification of revenue and expenditure a 'title' is to correspond to a policy area and a 'chapter' is to correspond as a rule to an activity.

4.1.9. Article 39 includes a major innovation, namely the ban on including negative revenue and expenditure in the budget.

4.1.9.1. The authorisation and existence in the budget of negative amounts was heavily criticised by the Court of Auditors in its opinion⁽¹⁾. The Court considered that such negative amounts not only contribute to a lack of transparency in the budget process but also infringe the principle of universality. Furthermore, they make it more difficult to read and understand the budget.

4.1.10. The sectoral regulations applicable to agriculture, where very high 'negative expenditure' is provided for (i.e. the amounts recovered following fraud or irregularities, the supplementary levy on milk, etc.), stipulate that such expenditure is to be transformed into earmarked revenue. The Financial Regulation (Article 17 of the proposal) provides for two types of earmarked revenue:

- that defined in the Financial Regulation (and already provided for in the current Regulation) and
- that provided for in specific Regulations.

4.1.11. With regard to the negative amounts, provision has only been made for a 'negative reserve' limited to EUR 200 million, to be drawn on before the end of each financial year (Article 41 of the proposal).

4.1.11.1. The Commission deems it necessary to retain this 'negative reserve', which was introduced by the budgetary authority as a negotiating tool to facilitate the conclusion of an agreement between the institutions taking part in the budget procedure. This view is shared by the Committee.

4.1.12. Article 44 of the proposal introduces some flexibility in the management of the Community institutions' establishment plans.

4.1.12.1. Apart from reaffirming the principle (enshrined in the current Financial Regulation) that the establishment plan is to constitute an absolute limit for each institution and that no appointment may be made in excess of the limit set, the Commission now states that 'within the limit of the budget appropriations' each institution may modify its establishment plan by up to 10 %, except in the case of grades A1 and A2.

⁽¹⁾ Opinion No. 4/97 of 10.7.1997 — OJ C 57, 23.2.1998, p. 1.

4.1.13. Articles 50 to 53 introduce the principle of shared management with the Member States, especially with regard to the EAGGF Guarantee Section and the Structural Funds, which after all account for the lion's share of the Communities' operational budget.

4.1.13.1. This shared management obliges the Financial Regulation to define a set of rules applicable to the Member States on the principles and mechanisms of budget management and on their obligations to present accounts with regard to resource management.

4.1.14. As regards the principles of budget management, the proposal explicitly obliges the Member States to observe the principle of sound financial management — Article 45(2) — while recognising the need for cooperation between the Member States and the internal auditor [see Article 81(2)].

4.1.15. In the chapter on financial actors — Articles 55 to 59 — the proposal follows the line taken by the Court of Auditors and drops the current system of centralised *ex ante* controls. More specifically, it

- abolishes the post and duties of the financial controller, who used to play an important role vetting budgetary commitments and payments in advance;
- drops the accounting officer's verification of the validity of discharge acts and procedures and of observance of the Financial Regulation's provisions — a process which used to give him the power to suspend payments.

4.1.16. The abolition of centralised *ex ante* controls will strengthen the duties and responsibilities of the authorising officer.

4.1.17. It is true that under the current Financial Regulation the authorising officer already intervenes not only in the budget implementation procedures but also in the financial management proper of the institutions. However, under the proposal he will no longer share these tasks and responsibilities with the accounting officer.

4.1.18. The Committee thinks that this extension of the authorising officer's powers and responsibilities would justify the inclusion in the Financial Regulation of rules governing his responsibility for the correctness and legality of the procedures which he uses and for the internal audit systems that are to be implemented.

4.1.19. The Committee has reservations about the abolition of the post of financial controller, as the financial controller is explicitly identified in Article 279 of the Treaty establishing the European Community as one of the players involved in Community financing, unless — as the Commission seems to be considering — the duties of the financial controller are to be assumed by the internal auditor.

4.1.20. The authorising officer is thus to assume full responsibility for the internal controls carried out by his department and for the management, implementation and control methods which he considers appropriate for that department.

4.1.21. Articles 57 and 58 set out the duties of the authorising officer and accounting officer. In particular, the accounting officer (Article 58) is to be responsible for book-keeping and management of the treasury, and his powers are to be extended to include laying down accounting rules and obtaining accounting information.

4.1.22. Overall, the Committee considers that the duties of all the actors involved in budget implementation and control — authorising officer, accounting officer and internal auditor — must be spelt out more explicitly. In the case of the accounting officer, a clear distinction ought to be made between book-keeping and management of the treasury.

4.1.23. Articles 60, 61 and 62(2) and (3) contain new provisions on the liability of the financial actors. These make it possible to suspend and discipline authorising officers, accounting officers and imprest administrators. Principles are also laid down regarding the hierarchical liability of these persons.

4.1.24. The Committee considers that there should be rules for authorising officers which serve the same purpose as those proposed for accounting officers (Article 63) and imprest administrators (Article 64).

4.1.25. The Committee welcomes the new provision in Article 67 regarding the payment of interest to the Community budget on 'every amount receivable that is identified as being certain, of a fixed amount and due'.

4.1.26. As a *quid pro quo*, a new provision in Article 77 stipulates that creditors are to be paid interest from the Community budget.

4.1.27. Article 68(1) of the proposal includes the new provision that amounts due to the Communities may be recovered by being offset.

4.1.28. Article 69 retains the provision that fines and other equivalent penalties are not to be finally recorded as revenue as long as appeals may still be lodged with the Court of Justice.

4.1.28.1. However, the proposal differs from the present Financial Regulation in allowing decisions on clearance of accounts or financial corrections to be excepted from this rule.

4.1.29. Article 70 contains a new 'commitment of expenditure' concept. This is to be welcomed in the context of improving transparency. The commitment of expenditure is to be made up of a budget commitment and a legal commitment, i.e. entering into an obligation with regard to a third party. The Committee suggests that the meaning of a legal commitment be spelt out.

4.1.30. The specification in Article 75(1) of the different operations which a payment may cover is also welcome.

4.1.31. The Committee considers that the new post of internal auditor (Articles 80 to 82) is important. The role of the internal auditor is to guarantee the quality of the internal management and control systems.

4.1.32. The importance of the internal auditor has been heightened by the abolition of the post of financial controller, as mentioned above.

4.1.33. The Committee endorses the opinion of the Court of Auditors that, given the importance of the internal auditor's role, his independence should be clearly and expressly stated in Article 80, using the wording proposed by the Court:

'In carrying out his duties, the internal auditor shall be responsible only to the institution that designated him and shall report direct to the institution.'

4.1.34. It is pointed out that the internal auditor has already been made one of the financial actors by recently published amendments to the present Financial Regulation⁽¹⁾. These amendments, besides creating the post of internal auditor, separate the control and auditing functions which have both been performed by the financial controller in the past.

4.1.35. Many of the procurement provisions (Title IV of Part I of the proposal) are new.

4.1.36. Bearing in mind the financial discipline and transparency objectives, the inclusion in the proposal of 'public contracts' [Article 83(1)] and the principles applicable to such contracts [Article 84(1)] is justified.

4.1.37. In the light of the experience gathered by the Community and the need for more to be done to fight fraud and corruption, the Committee welcomes the provision in Article 84(3) allowing the Community institutions to suspend, refuse or recover amounts paid for contracts in respect of which they feel that the award procedure was vitiated by error, irregularities or fraud.

4.1.38. By the same token it welcomes the inclusion in Section 4 of Chapter 1 (Article 88-90) of provisions regulating exclusion from procurement procedures.

4.1.39. The proposal chooses to incorporate in this instrument governing the financial management of the Communities some of the rules already to be found in Community Directives on public procurement, thereby obliging the Communities to observe rules and procedures already incumbent on the Member States (via Directives).

4.1.40. It is with this objective in mind that there are new basic provisions in Section 6 of Chapter 1 (Articles 92-95) for the submission, opening and evaluation of tenders and new provisions in Chapter 2 (Articles 97-100) for contracts awarded by the Community institutions on their own account.

4.1.41. The proposal lays down provisions for grants for the first time (Title V of Part 1, Articles 101-114) as a result of their growing importance as a Community aid instrument.

4.1.42. In this entirely new field the Committee would highlight the following positive aspects:

- the requirement that grants must be covered by a written agreement — Article 101(1);
- the fact that grants must not produce a profit for the beneficiary and must be subject to the principles of transparency and equal treatment, may not be cumulative or awarded retrospectively and must involve co-financing — Article 102;
- the possibility of granting exceptions to the co-financing principle, by allowing an action to be financed in full by the budget 'if this is essential for it to be carried out' — Article 155;

⁽¹⁾ Council Regulation (EC, ECSC, Euratom) No. 762/2001 of 9.4.2001, OJ L 111, 20.4.2001.

- the rule that a grant presupposes a publication of calls for proposals — Article 103(1);
- the annual publication of the programme of grants and of the grants actually awarded — Article 103(1) and (2);
- the general principle that grants may only be awarded for actions that have not yet begun — Article 105;
- the fact that non-profit-making legal persons are to be the preferred recipients of grants — Article 108(1).

4.1.43. Despite its generally favourable assessment of the proposed financial rules for grants, the Committee recommends that in the near future (bearing in mind the planned reappraisal of the Financial Regulation every three years) an assessment be made of how the current rules have been applied in practice.

4.1.44. Also new is the list in Article 115 of what the financial statements are to contain. Implementation of the principles of transparency and sound financial management is bound to benefit from:

- the annex, which is to supplement the information provided in the balance sheet and revenue and expenditure account;
- the presentation, in consolidated form, of all the financial statements;
- the listing of the accounting principles which are to govern the drawing-up of the financial statements — Article 116(1) and (2);
- the possibility of the Community institutions being able to correct their financial statements after they have been initially presented to the Court of Auditors as 'provisional' statements — Article 118(1).

4.1.45. The principle of shared management with the Member States, which has already been referred to above in 5.1.13, is to involve Member States in:

- the preparation of the Court of Auditors' annual report — Article 128(3) and (4);
- the special reports produced by the Court of Auditors — Article 130(2);
- the action taken on any comments made by the European Parliament in the course of the discharge proceedings — Article 133(2).

4.2. Part II of the proposal — Special Provisions — contains seven titles: Title I (Articles 134-140), 'European Agricultural Guidance and Guarantee Fund, Guarantee Section'; Title II (Articles 141-145), 'Structural Funds'; Title III (Articles 146-147), 'Research'; Title IV (Articles 148-156), 'External Actions';

Title V (Articles 157-161), 'Office for Official Publications of the European Communities'; Title VI (Articles 162-165), 'European Anti-Fraud Office'; and Title VII (Articles 166-168), 'Administrative Appropriations'.

4.2.1. Two new provisions are to be introduced for the EAGGF Guarantee Section — Articles 135 and 140.

4.2.2. Article 135 lays down a number of specific provisions with regard to this fund's financial management, i.e.

- the principle of equality between commitment appropriations and payment appropriations;
- the possibility to carry over payment appropriations from one financial year to the next (exception to the principle of annuality).

4.2.3. In recognition, too, of this fund's distinctive role, importance and impact within Community policy-making, the advance commitments for routine management expenditure under the EAGGF Guarantee Section [provided for in Article 136(3)] may be for more than the amount normally specified for advance commitments for routine management expenditure (see Article 167(1) of the proposal).

4.2.4. Article 140 provides for a system of earmarked revenue for the EAGGF Guarantee Section, thereby introducing an exception to the principle of universality.

4.2.5. A new title — 'Structural Funds' — has been added to Part II. This includes the Cohesion Fund and the pre-accession structural and agricultural measures (Articles 141-145).

4.2.6. Although the sectoral regulations for these funds and agricultural measures will probably continue to contain their own financial provisions, the fact that the Financial Regulation is to set out the relevant basic principles of financial management is to be welcomed.

4.2.6.1. The Committee thinks that the sectoral regulations for funds and agricultural measures will have to continue to include specific provisions, but that it is important to ensure that these specific provisions are not in fact derogations from the principles.

4.2.7. The decentralised management of certain external actions is to be allowed in beneficiary third countries subject to scrutiny by the Commission — Articles 150-151 (new).

4.2.8. A new title (Article 162-165) has been introduced. This lays down basic rules for managing the budget of the European Anti-Fraud Office (OLAF), created by the Commission's decision of 28 August 1999.

4.2.9. With regard to administrative appropriations, the proposal specifies that commitment and payment appropriations are to be equal — Article 168(1) — though routine management expenditure may be committed in advance from 15 November of each year (this possibility already exists in the present Financial Regulation).

4.3. Part III of the proposal — Transitional and Final Provisions — contains two titles: Title I (Articles 169 and 170), 'Transitional Provisions'; and Title II (Articles 171-176), 'Final Provisions'.

4.3.1. Appropriations for rural development and accompanying measures are to be subject to the EAGGF Guarantee Section rules until 31 December 2006 (Article 170).

4.3.2. Finally, Article 173 stipulates that the Council-European Parliament conciliation procedure is to be used for the Community's financial rules. This procedure is laid down in Article 140 of the present Financial Regulation. In view of the importance of this matter for the functioning of the Communities, the need for the European Parliament and Council to agree in principle is welcomed.

5. Conclusions

5.1. The Committee broadly welcomes the content of the proposal.

5.2. The proposal includes provisions which will allow the eight basic principles of budget law to be implemented more effectively.

5.2.1. To this end, the Commission has proposed that major steps be taken with regard to transparency, and that the legal, financial and accounting definitions be improved significantly. This should also improve legal certainty.

5.3. The proposal reflects some of the new realities of Community life, as it is bound to do (grants, Structural Funds, Anti-Fraud Office).

5.4. In such an extremely technical and practically important field as the Community's financial rules, efficiency and flexibility should be aspired to without sacrificing the equally important objective of discipline. It is against the background of trying to strike a balance between these objectives that a number of concerns voiced by the Court of Auditors in its assessment of the proposal — and duly considered by the Committee — should be set.

5.5. The Committee agrees with the Commission proposal to grant all institutions the power to make transfers between chapters in their own budgets without the prior authorisation of the budget authority.

5.6. It should be borne in mind that any assessment of the Communities' financial rules cannot focus exclusively on the Financial Regulation. There are also one or more further sets of (secondary) implementing rules, which must form a harmonised and mutually compatible whole. Therefore, the proposal for a Financial Regulation should have been accompanied by a draft set or sets of procedural rules for implementing the basic Regulation.

5.7. Finally, the Committee trusts that the new Financial Regulation will provide an active and efficient instrument for sharing the financial management of the Communities more closely with the Member States. This is the ideal future scenario.

Brussels, 11 July 2001.

The President
of the Economic and Social Committee
Göke FRERICHS