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I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC, EURATOM) No 2728/94
of 31 October 1994
establishing a Guarantee Fund for external actions**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 235 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Auditors ⁽³⁾,

Whereas the general budget of the European Communities is exposed to increased financial risk as a result of the guarantees covering loans to third countries;

Whereas the European Council on 11 and 12 December 1992 concluded that considerations of prudent budgetary management and financial discipline called for the establishment of a new financial mechanism, and that accordingly a Guarantee Fund should be set up in order to cover the risks related to loans and guarantees covering loans granted to third countries or for projects executed in third countries; whereas it is possible to meet this need by the establishment of a Guarantee Fund which may be drawn on to pay the Community's creditors direct;

Whereas the institutions have agreed, pursuant to the Interinstitutional Agreement of 29 October 1993, to enter into the budget a reserve relating to lending and guarantee operations for the benefit of and in third countries;

Whereas mechanisms currently exist for honouring guarantees when they are activated, in particular by drawing provisionally on cash resources, as provided for in Article 12 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources ⁽⁴⁾;

Whereas the Guarantee Fund should be constituted by the gradual payment of resources; whereas the Fund will subsequently also receive interest on its invested resources and amounts recovered from defaulting debtors where the Fund has already honoured the guarantee;

Whereas, by reference to the practice of international financial institutions, a ratio of 10 % between the Guarantee Fund's resources and guaranteed liabilities in principal, increased by unpaid interest due, would seem adequate;

Whereas payments to the Guarantee Fund equal to 14 % of the amount of each operation would seem appropriate to attain this target amount; whereas the arrangements for making such payments must be defined;

Whereas, once the target amount is attained, the provisioning rate will be reviewed, whereas if the Guarantee Fund exceeds the target amount the surplus will be paid back to the general budget of the European Communities;

Whereas the financial management of the Guarantee Fund should be entrusted to the European Investment Bank (EIB); whereas the financial management of the Fund should be subject to audit by the Court of Auditors in accordance with procedures to be agreed upon by the

⁽¹⁾ OJ No C 68, 11. 3. 1993, p. 10.

⁽²⁾ OJ No C 315, 22. 11. 1993, p. 235.

⁽³⁾ OJ No C 170, 21. 6. 1993, p. 25.

⁽⁴⁾ OJ No L 155, 7. 6. 1989, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 2729/94 (see page 5 of this Official Journal).

Court of Auditors, the Commission and the European Investment Bank;

Whereas the Treaties do not provide any powers other than those pursuant to Article 235 of the EC Treaty and Article 203 of the EAEC Treaty for the adoption of this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

A Guarantee Fund, hereinafter referred to as 'Fund', shall be established, whose resources shall be used to repay the Community's creditors in the event of default by the beneficiary of a loan granted or guaranteed by the Community.

The lending and guarantee operations referred to in the first paragraph, hereinafter referred to as 'operations', shall be those carried out for the benefit of a third country or for the purpose of financing projects in third countries.

Article 2

The Fund shall be endowed by:

- payments from the general budget of the European Communities pursuant to Article 4,
- interest on Fund resources invested,
- amounts recovered from defaulting debtors where the Fund has already honoured the guarantee.

Article 3

The Fund shall rise to an appropriate level, hereinafter referred to as 'the target amount'.

The target amount shall be 10 % of the Community's total outstanding capital liabilities arising from each operation, increased by unpaid interest due.

If, at the end of a year, the target amount is exceeded, the surplus shall be paid back to a special heading in the statement of revenue in the general budget of the European Communities.

Article 4

1. The payments provided for under the first indent of Article 2 shall be equivalent to 14 % of the capital value of the operations until the Fund reaches the target amount.

The provisioning rate shall be reviewed when the Fund reaches its target amount, and in any case no later than the end of 1999.

2. Payments into the Fund shall be made in accordance with the arrangements indicated in the Annex.

Article 5

If, as a result of the activation of guarantees following default, resources in the Fund stand below 75 % of the target amount, the rate of provisioning on new operations shall be raised to 15 % until the target amount has once more been reached or, if the default occurs before the target amount is reached, until the amount drawn under the activation of the guarantee has been fully restored.

If, as a result of the activation of guarantees on one or more major defaults, resources in the Fund fall below 50 % of the target amount, the Commission shall submit a report on exceptional measures that might be required to replenish the Fund.

Article 6

The Commission shall entrust the financial management of the Fund to the EIB under a brief on the Community's behalf.

Article 7

The Commission shall, by no later than 31 March of the following financial year, send to the European Parliament, the Council and the Court of Auditors an annual report on the situation of the Fund and the management thereof in the previous year.

Article 8

The revenue and expenditure account and the balance sheet relating to the Fund shall be attached to the Communities' revenue and expenditure account and balance sheet.

Article 9

The Commission shall, before 31 December 1998, submit a comprehensive report on the functioning of the Fund.

Article 10

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

Article 4 shall apply to operations decided on and committed as from 1 January 1993.

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

Done at Luxembourg, 31 October 1994.

For the Council

The President

K. KINKEL

ANNEX

Arrangements for the payments stipulated in the first indent of Article 2

1. Payments into the Fund will be made in accordance with the arrangements set out in paragraphs 2 and 3, depending on whether the operations concerned are:
 - (a) Community borrowing/lending operations or guarantees to financial bodies, whether made in one or more than one tranche, except those covered by (b) ⁽¹⁾;
 - (b) Community borrowing/lending operations or guarantees to financial bodies under a framework facility spread over a number of years and with a micro-economic and structural purpose ⁽²⁾.
2. For the operations referred to under point 1 (a) the Commission will start the procedure for making the payments into the Fund as soon as the Council has formally adopted the basic decision. The amount to be paid into the Fund will be calculated on the basis of the total amount for the operation decided on by the Council.
3. For the operations referred to under point 1 (b), payments into the Fund will be made in annual tranches calculated on the basis of the annual amounts indicated in the financial statement attached to the Commission proposal, adapted where appropriate in the light of the Council decision.

The Commission will start the procedure for making payments into the Fund as soon as the Council has formally adopted the basic decision, or at the beginning of the following financial year if no operation is programmed for the current financial year. For subsequent financial years the Commission will start the payment procedure at the beginning of the financial year.

As from the second year, the amounts to be paid into the Fund will be corrected by the difference recorded on 31 December of the previous year between the estimates that were taken as a basis for the previous payment and the actual figure for the loans signed during that year. Any difference relating to the previous year will give rise to a payment in the following year.

4. When it starts a payment procedure the Commission will check the situation with regard to the performance of the operations which were the subject of previous payments and, where the commitment deadlines originally laid down have not been met, will propose that this be taken into account in calculating the first payment to be made at the start of the following financial year for operations already under way.
5. For operations decided on by the Council as from 1 January 1993 the Commission will start the procedure for making payments into the Fund as soon as possible after the entry into force of the Regulation, in accordance with the arrangements set out in the preceding paragraphs.

⁽¹⁾ Examples of this type of operation: loans for the balance of payments of third countries or the guarantee granted to a consortium of commercial banks to finance the purchase of food products in third countries.

⁽²⁾ Examples of this type of operation: Euratom loans to third countries and the guarantees granted to the EIB for its loans in the developing countries in Latin America and Asia (DCLAA) and the central and eastern European countries (CEEC).

COUNCIL REGULATION (EC, EURATOM) No 2729/94

of 31 October 1994

amending Regulation (EEC, Euratom) No 1552/89 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS REGULATION:

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

Article 1

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

Regulation (EEC, Euratom) No 1552/89 is hereby amended as follows:

Having regard to Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources ⁽¹⁾, and in particular Article 8 (2) thereof,

1. in Article 10 (3), the first subparagraph shall be replaced by the following:

Having regard to the proposal from the Commission ⁽²⁾,

'3. VAT resources, the additional resource — excluding an amount corresponding to the EAGGF (European Agricultural Guidance and Guarantee Fund) monetary reserve, to the reserve relating to loans and loan guarantees and to the reserve for emergency aid — and, where appropriate, GNP financial contributions shall be credited on the first working day of each month, the amounts being one-twelfth of the relevant totals in the budget, converted into national currencies at the rates of exchange of the last day of quotation of the calendar year preceding the budget year, as published in the *Official Journal of the European Communities*.'

Having regard to the opinion of the European Parliament ⁽³⁾,

2. in Article 10 (3), the fifth subparagraph shall be replaced by the following:

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

'The entry in respect of the EAGGF monetary reserve referred to in Article 6 of Decision 88/376/EEC, Euratom, the reserve relating to loans and loan guarantees and the emergency aid reserve created by Council Decision 94/729/EC of 31 October 1994 on budgetary discipline ^(*) shall be made on the first working day of the month following the charging to the budget of the expenditure concerned and shall be limited to the said expenditure if charging is effected before the 16th day of the month. If such is not the case, the entry shall be made on the first working day of the second month after charging.

Whereas additional rules need to be laid down governing the arrangements whereby Member States make available to the Commission the own resources assigned to the Communities;

Whereas Council Decision 94/729/EC of 31 October 1994 concerning budgetary discipline ⁽⁵⁾ provides for the entry in the general budget of the European Communities of a reserve relating to Community loans and loan guarantees to non-member countries and in those countries a reserve for emergency aid;

Whereas amendments need to be made to Council Regulation (EEC, Euratom) No 1552/89 ⁽⁶⁾, to cover the entry of the own resources corresponding to these reserves,

By way of derogation from Article 6 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ^(**), hereinafter referred to as 'the Financial Regulation', these entries shall be taken into account in the financial year to which they relate.

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 24.

⁽²⁾ OJ No C 68, 11. 3. 1993, p. 13.

⁽³⁾ OJ No C 329, 6. 12. 1993, p. 111.

⁽⁴⁾ OJ No C 170, 21. 6. 1993, p. 33.

⁽⁵⁾ See page 14 of this Official Journal.

⁽⁶⁾ OJ No L 155, 7. 6. 1989, p. 1. Regulation as last amended by Regulation (EEC, Euratom) No 3464/93 (OJ No L 317, 18. 12. 1993, p. 1).

However, if the situation as regards the implementation of the budget for the financial year is such that the entries relating to the EAGGF monetary

reserve and the reserve for emergency aid are not necessary to achieve a balance between revenue and expenditure for the year, the Commission shall decide to dispense with these entries or part of these entries.

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

(**) OJ No L 356, 31. 12. 1977. Regulation as last amended by Regulation (ECSC, EC, Euratom) No 1923/94 (OJ No L 198, 30. 7. 1994, p. 4).';

3. Article 10 (7) shall be replaced by the following:

'7. On the basis of figures for aggregate GNP at market prices and its components from the preceding year, supplied by the Member States in accordance with Article 3 (2) of Directive 89/130/EEC, Euratom, each Member State shall be debited with an amount calculated by applying to GNP the uniform rate adopted for the previous financial year, amended, where appropriate, in the light of any use of the EAGGF monetary reserve, of the reserve relating to loans and loan guarantees or of the reserve for emergency aid, and credited with the payments made during that previous financial year. The Commission shall work out the balance and shall inform the

Member States in time for them to enter it in the account referred to in Article 9 (1) of this Regulation on the first working day of December of the same year.';

4. Article 12 (3) shall be replaced by the following:

'3. In the sole case of default under a loan contracted or guaranteed pursuant to Council regulations and decisions, in circumstances in which the Commission cannot activate other measures provided for by the financial arrangements applying to these loans in time to ensure compliance with the Community's legal obligations to the lenders, paragraphs 2 and 4 may provisionally be applied, irrespective of the conditions in paragraph 2, in order to service the Community's debts.'

Article 2

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

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

Done at Luxembourg, 31 October 1994.

For the Council

The President

K. KINKEL

COUNCIL REGULATION (ECSC, EC, EURATOM) No 2730/94

of 31 October 1994

amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS REGULATION:

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

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

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

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Auditors ⁽³⁾,

Whereas conciliation has taken place within a conciliation committee, as provided for in the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975 ⁽⁴⁾;

Whereas, in accordance with the conclusions of the European Council in Edinburgh, the institutions agreed that, pursuant to Council Decision 94/729/EC of 31 October 1994 concerning budgetary discipline ⁽⁵⁾ and the Interinstitutional Agreement of 29 October 1993 ⁽⁶⁾, the general budget of the European Communities should include a reserve relating to Community loans and loan guarantees to non-member countries and a reserve for emergency aid;

Whereas, consequently, the necessary amendments need to be made to the Financial Regulation ⁽⁷⁾,

Article 1

The Financial Regulation is hereby amended as follows:

1. the following paragraph shall be added to Article 19:

'7. The subsection concerning "Cooperation with developing countries and other third countries" shall include the following two reserves, the conditions for the entry, utilization and financing of which are laid down in Council Decision 94/729/EC of 31 October 1994 on budgetary discipline ^(*) and in Regulation (EEC, Euratom) No 1552/89:

- (a) a reserve for emergency aid for non-member countries;
- (b) a reserve relating to Community loans and loan guarantees to non-member countries and in those countries;

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

2. the following point shall be added to Article 20:

'6. The budget headings under revenue and expenditure necessary for implementing the reserve relating to Community loans and loan guarantees to non-member countries and in those countries and also for implementing the Guarantee Fund established by Council Regulation (EC, Euratom) No 2728/94.;

3. the following paragraph shall be added to Article 26:

'11. Decisions on transfers to allow the utilization of the reserve relating to Community loans and loan guarantees to non-member countries and in those countries and the reserve for emergency aid shall be taken by the budgetary authority in accordance with paragraph 5 (a) and (b) respectively.'

Article 2

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

⁽¹⁾ OJ No C 68, 11. 3. 1993, p. 12.

⁽²⁾ OJ No C 329, 6. 12. 1993, p. 115.

⁽³⁾ OJ No C 170, 21. 6. 1993, p. 29.

⁽⁴⁾ OJ No C 68, 22. 4. 1975, p. 1.

⁽⁵⁾ See page 14 of this Official Journal.

⁽⁶⁾ OJ No C 331, 7. 12. 1993, p. 1.

⁽⁷⁾ OJ No L 356, 31. 12. 1977, p. 1. Regulation as last amended by Regulation (ECSC, EC, Euratom) No 1923/94 (OJ No L 198, 30. 7. 1994, p. 4).

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

Done at Luxembourg, 31 October 1994.

For the Council

The President

K. KINKEL

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 31 October 1994

on the system of the European Communities' own resources

(94/728/EC, Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 201 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 173 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources ⁽⁴⁾ expanded and amended the composition of own resources by capping the VAT resources base at 55 % of gross national product ('GNP') for the year at market prices, with the maximum call-in rate being maintained at 1,4 %, and by introducing an additional resource based on the total GNP of the Member States;

Whereas the European Council meeting in Edinburgh on 11 and 12 December 1992 reached certain conclusions;

Whereas the Communities must have adequate resources to finance their policies;

Whereas, in accordance with these conclusions, the Communities will, by 1999, be assigned a maximum amount of own resources corresponding to 1,27 % of the total of the Member States' GNPs for the year at market prices;

Whereas observance of this ceiling requires that the total amount of own resources at the Community's disposal for the period 1995 to 1999 does not in any one year exceed a specified percentage of the sum of the Member States' GNPs for the year in question;

Whereas on overall ceiling of 1,335 % of the Member States' GNPs is set for commitment appropriations; whereas an orderly progression of commitment appropriations and payment appropriations should be ensured;

Whereas these ceilings should remain applicable until this Decision is amended;

Whereas, in order to make allowance for each Member State's ability to contribute to the system of own resources and to correct the regressive aspects of the current system for the least prosperous Member States, in accordance with the Protocol on economic and social cohesion annexed to the Treaty on European Union, the

(1) OJ No C 300, 6. 11. 1993, p. 17.

(2) OJ No C 61, 28. 2. 1994, p. 105.

(3) OJ No C 52, 19. 2. 1994, p. 1.

(4) OJ No L 185, 15. 7. 1988, p. 24.

Communities's financing rules should be further amended:

- by lowering the ceiling for the uniform rate to be applied to the uniform value added tax base of each Member State from 1,4 to 1,0 % in equal steps between 1995 and 1999,
- by limiting at 50 % of GNP from 1995 onwards the value added tax base of the Member States whose per capita GNP in 1991 was less than 90 % of the Community average, i.e. Greece, Spain, Ireland and Portugal, and by reducing the base from 55 to 50 % in equal steps over the period 1995 to 1999 for the other Member States;

Whereas the European Council has examined the correction of budgetary imbalances on numerous occasions, particularly at its meeting on 25 and 26 June 1984;

Whereas the European Council of 11 and 12 December 1992 confirmed the formula for calculating the correction of budgetary imbalances defined in Decision 88/376/EEC, Euratom;

Whereas the budgetary imbalances should be corrected in such a way as not to affect the own resources available for Community policies;

Whereas the monetary reserve, hereinafter referred to as 'the EAGGF monetary reserve', is covered by specific provisions;

Whereas the conclusions of the European Council provided for the creation in the budget of two reserves, one for the financing of the Loan Guarantee Fund, and the other for emergency aid in non-member countries; whereas these reserves should be covered by specific provisions;

Whereas the Commission will by the end of 1999 submit a report on the operation of the system, which will contain a review of the mechanism for correcting budgetary imbalances granted to the United Kingdom; whereas it will also by the end of 1999 present a report containing the results of a study on the feasibility of creating a new own resource, as well as on arrangements for the possible introduction of a fixed uniform rate applicable to the VAT base;

Whereas provisions must be laid down to cover the changeover from the system introduced by Decision 88/376/EEC, Euratom to that arising from this Decision;

Whereas the European Council provided that this Decision should take effect on 1 January 1995,

HAS LAID DOWN THESE PROVISIONS, WHICH IT RECOMMENDS TO THE MEMBER STATES FOR ADOPTION:

Article 1

The Communities shall be allocated resources of their own in accordance with the detailed rules laid down in the following Articles in order to ensure the financing of their budget.

The budget of the Communities shall, without prejudice to other revenue, be financed wholly from the Communities' own resources.

Article 2

1. Revenue from the following shall constitute own resources entered in the budget of the Communities:

- (a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organization of the markets in sugar;
- (b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries and customs duties on products coming under the Treaty establishing the European Coal and Steel Community;
- (c) the application of a uniform rate valid for all Member States to the VAT assessment base which is determined in a uniform manner for Member States according to Community rules. However, the assessment base to be taken into account for the purposes of this Decision shall, from 1995, not exceed 50 % of GNP in the case of Member States whose per capita GNP, in 1991 was less than 90 % of the Community average; for the other Member States the assessment base to be taken into account shall not exceed:
 - 54 % of their GNP in 1995,
 - 53 % of their GNP in 1996,
 - 52 % of their GNP in 1997,
 - 51 % of their GNP in 1998,
 - 50 % of their GNP in 1999;

The cap of 50 % of their GNP to be introduced for all Member States in 1999 shall remain applicable until such time as this Decision is amended;

- (d) the application of a rate — to be determined pursuant to the budgetary procedure in the light of the total of all other revenue — to the sum of all the Member States' GNP established in accordance with the

Community rules laid down in Directive 89/130/EEC, Euratom ⁽¹⁾.

2. Revenue deriving from any new charges introduced within the framework of a common policy, in accordance with the Treaty establishing the European Community or the Treaty establishing the European Atomic Energy Community, provided the procedure laid down in Article 201 of the Treaty establishing the European Community or in Article 173 of the Treaty establishing the European Atomic Energy Community has been followed, shall also constitute own resources entered in the budget of the Communities.

3. Member States shall retain, by way of collection costs, 10 % of the amounts paid under 1 (a) and (b).

4. The uniform rate referred to in paragraph 1 (c) shall correspond to the rate resulting from:

(a) the application to the VAT assessment base for the Member States of:

- 1,32 % in 1995,
- 1,24 % in 1996,
- 1,16 % in 1997,
- 1,08 % in 1998,
- 1,00 % in 1999.

The 1,00 % rate in 1999 shall remain applicable until such time as this Decision is amended;

(b) the deduction of the gross amount of the reference compensation referred to in Article 4 (2). The gross amount shall be the compensation amount adjusted for the fact that the United Kingdom is not participating in the financing of its own compensation and the Federal Republic of Germany's share is reduced by one-third. It shall be calculated as if the reference compensation amount were financed by Member States according to their VAT assessment bases established in accordance with Article 2 (1) (c).

5. The rate fixed under paragraph 1 (d) shall apply to the GNP of each Member State.

6. If, at the beginning of the financial year, the budget has not been adopted, the previous uniform VAT rate and rate applicable to Member States' GNPs, without prejudice to the provisions adopted in accordance with Article 8 (2) as regards the EAGGF monetary reserve, the reserve for financing the Loan Guarantee Fund and the reserve for emergency aid in third countries, shall remain applicable until the entry into force of the new rates.

7. For the purposes of applying this Decision, GNP shall mean gross national product for the year at market prices.

Article 3

1. The total amount of own resources assigned to the Communities may not exceed 1,27 % of the total GNPs of the Member States for payment appropriations.

The total amount of own resources assigned to the Communities may not, for any of the years during the period 1995 to 1999, exceed the following percentages of the total GNPs of the Member States for the year in question:

- 1995 : 1,21,
- 1996 : 1,22,
- 1997 : 1,24,
- 1998 : 1,26,
- 1999 : 1,27.

2. The commitment appropriations entered in the general budget of the Communities over the period 1995 to 1999 must follow an orderly progression resulting in a total amount which does not exceed 1,335 % of the total GNPs of the Member States in 1999. An orderly ratio between commitment appropriations and payment appropriations shall be maintained to guarantee their compatibility and to enable the ceilings mentioned in paragraph 1 to be observed in subsequent years.

3. The overall ceilings referred to in paragraphs 1 and 2 shall remain applicable until such time as this Decision is amended.

Article 4

The United Kingdom shall be granted a correction in respect of budgetary imbalances. This correction shall consist of a basic amount and an adjustment. The adjustment shall correct the basic amount to a reference compensation amount.

1. The basic amount shall be established by:

(a) calculating the difference in the financial year, between:

- the percentage share of the United Kingdom in the sum total of the payments referred to in Article 2 (1) (c) and (d) made during the financial year, including adjustments at the uniform rate in respect of earlier financial years, and
- the percentage share of the United Kingdom in total allocated expenditure;

⁽¹⁾ OJ No L 49, 21. 2. 1989, p. 26.

- (b) applying the difference thus obtained to total allocated expenditure;
- (c) multiplying the result by 0,66;

2. The reference compensation shall be the correction resulting from application of (a), (b) and (c) of this paragraph, corrected by the effects arising for the United Kingdom from the changeover to capped VAT and the payments referred to in Article 2 (1) (d).

It shall be established by:

- (a) calculating the difference, in the preceding financial year, between:
 - the percentage share of the United Kingdom in the sum total of VAT payments which would have been made during that financial year, including adjustments in respect of earlier financial years, for the amounts financed by the resources referred to in Article 2 (1) (c) and (d) if the uniform VAT rate had been applied to non-capped bases, and
 - the percentage share of the United Kingdom in total allocated expenditure;
- (b) applying the difference thus obtained to total allocated expenditure;
- (c) multiplying the result by 0,66;
- (d) subtracting the payments by the United Kingdom taken into account in the first indent of point 1 (a) from those taken into account in point (a), first indent of this subparagraph;
- (e) subtracting the amount calculated at (d) from the amount calculated at (c).

3. The basic amount shall be adjusted in such a way as to correspond to the reference compensation amount.

Article 5

1. The cost of the correction shall be borne by the other Member States in accordance with the following arrangements.

The distribution of the cost shall first be calculated by reference to each Member State's share of the payments referred to in Article 2 (1) (d), the United Kingdom being excluded; it shall then be adjusted in such a way as to restrict the share of the Federal Republic of Germany to two-thirds of the share resulting from this calculation.

2. The correction shall be granted to the United Kingdom by a reduction in its payments resulting from the application of Article 2 (1) (c) and (d). The costs borne by the other Member States shall be added to their

payments resulting from the application for each Member State of Article 2 (1) (c) and (d).

3. The Commission shall perform the calculations required for the application of Article 4 and this Article.

4. If, at the beginning of the financial year, the budget has not been adopted, the correction granted to the United Kingdom and the costs borne by the other Member States as entered in the last budget finally adopted shall remain applicable.

Article 6

The revenue referred to in Article 2 shall be used without distinction to finance all expenditure entered in the budget. However, the revenue needed to cover in full or in part the EAGGF monetary reserve the reserve for the financing of the Loan Guarantee Fund and the reserve for emergency aid in third countries, entered in the budget shall not be called up from the Member States until the reserves are implemented. Provisions for the operation of those reserves shall be adopted as necessary in accordance with Article 8 (2).

The first paragraph shall be without prejudice to the treatment of contributions by certain Member States to supplementary programmes provided for in Article 130l of the Treaty establishing the European Community.

Article 7

Any surplus of the Communities' revenue over total actual expenditure during a financial year shall be carried over to the following financial year.

Any surpluses generated by a transfer from EAGGF Guarantee Section chapters, or surplus from the Guarantee Fund arising from external measures, transferred to the revenue account in the budget, shall be regarded as constituting own resources.

Article 8

1. The Community own resources referred to in Article 2 (1) (a) and (b) shall be collected by the Member States in accordance with the national provisions imposed by law, regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Community rules. The Commission shall examine at regular intervals the national provisions communicated to it by the Member States, transmit to the Member States the adjustments it deems necessary in order to ensure that they comply with Community rules and report to the budget authority. Member States shall make the resources

provided for in Article 2 (1) (a) to (d) available to the Commission.

2. Without prejudice to the auditing of the accounts and to checks that they are lawful and regular as laid down in Article 188c of the Treaty establishing the European Community, such auditing and checks being mainly concerned with the reliability and effectiveness of national systems and procedures for determining the base for own resources accruing from VAT and GNP and without prejudice to the inspection arrangements made pursuant to Article 209 (c) of that Treaty, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, adopt the provisions necessary to apply this Decision and to make possible the inspection of the collection, the making available to the Commission and payment of the revenue referred to in Articles 2 and 5.

Article 9

The mechanism for the graduated refund of own resources accruing from VAT or GNP-based financial contributions introduced for Greece up to 1985 by Article 127 of the 1979 Act of Accession and for Spain and Portugal up to 1991 by Articles 187 and 374 of the 1985 Act of Accession shall apply to the own resources accruing from VAT and the GNP-based resources referred to in Article 2 (1) (c) and (d) of this Decision. It shall also apply to payments by the two last-named Member States in accordance with Article 5 (2) of this Decision. In the latter case the rate of refund shall be that applicable for the year in respect of which the correction is granted.

Article 10

The Commission shall submit, by the end of 1999, a report on the operation of system, including a re-examination of the correction of budgetary imbalances granted to the United Kingdom, established by this Decision. It shall also by the end of 1999 submit a report on the findings of a study on the feasibility of creating a new own resource, as well as on arrangements for the possible introduction of a fixed uniform rate applicable to the VAT base.

Article 11

1. Member States shall be notified of this Decision by the Secretary-General of the Council and the Decision shall be published in the *Official Journal of the European Communities*.

Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the adoption of this Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on the first day on the month following receipt of the last of the notifications referred to in the second subparagraph. It shall take effect on 1 January 1995.

2. (a) Subject to (b), Decision 88/376/EEC, Euratom shall be repealed as of 1 January 1995. Any references to the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities own resources⁽¹⁾, to Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources⁽²⁾, or to Decision 88/376/EEC, Euratom shall be construed as references to this Decision.

(b) Article 3 of Decision 85/257/EEC, Euratom shall continue to apply to the calculation and adjustment of revenue from the application of rates to the uncapped uniform VAT base for 1987 and earlier years.

Articles 2, 4 and 5 of Decision 88/376/EEC, Euratom shall continue to apply to the calculation and adjustment of revenue accruing from the application of a uniform rate valid for all Member States to the VAT base determined in a uniform manner and limited to 55 % of the GNP of each Member State and to the calculation of the correction of budgetary imbalances granted to the United Kingdom for the years 1988 to 1994. When Article 2 (7) of that Decision has to be applied, the value added tax payments shall be replaced by financial contributions in the calculations referred to in this paragraph for any Member State concerned; this system shall also apply to the payment of adjustments of corrections for earlier years.

Done at Luxembourg, 31 October 1994.

For the Council

The President

K. KINKEL

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 19.

⁽²⁾ OJ No L 128, 14. 5. 1985, p. 15. Decision repealed by Decision 88/376/EEC, Euratom.

COUNCIL DECISION

of 31 October 1994

on budgetary discipline

(94/729/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 43, 209 and 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Auditors ⁽³⁾,

Whereas, at its meeting in Edinburgh on 11 and 12 December 1992, the European Council decided to retain and strengthen the budgetary discipline introduced by Decision 88/377/EEC ⁽⁴⁾ and confirmed that all Community expenditure should be subject to the principles of sound public finance and budgetary discipline;

Whereas budget discipline is important in all policies to ensure a sustainable relationship between commitments, payments and available own resources;

Whereas a new Interinstitutional Agreement including the financial perspective for 1993 to 1999 was concluded on 29 October 1993 between the European Parliament, the Council and the Commission for the purposes of implementing budgetary discipline and improving the annual budgetary procedure;

Whereas, on the basis of the European Council's conclusions, the institutions also agreed to maintain unchanged the reference base and the rate of increase of the agricultural guideline and to extend the guideline to all expenditure under the reformed common agricultural policy and to expenditure under the fisheries guarantee fund and income subsidies;

Whereas the mechanisms for the depreciation of stocks formed during the budget year should be retained;

Whereas the annual agricultural price proposals and any other proposals for measures involving expenditure under the EAGGF Guarantee Section must comply with the limit laid down by the agricultural guideline;

Whereas expenditure arising from application of environmental measures in the agricultural sector, the Community aid scheme for forestry measures and the aid scheme for early retirement from farming is multiannual in nature and accordingly is subject to special monitoring;

Whereas, if there is a risk of the appropriations in a given chapter being exceeded, corrective measures should be taken to remedy the situation whenever such action might be effective; whereas those measures do not necessarily have an effect on the budget during the budget year concerned and it may be necessary in such circumstances to take measures to increase appropriations;

Whereas a monetary reserve should be entered in the budget in the form of provisional appropriations in order to deal not only with the financial consequences of movements in the dollar/ecu market rate but also with those of monetary realignments within the European Monetary System;

Whereas, with the gradual implementation of the reform of the common agricultural policy, expenditure is likely to be less sensitive to changes in the dollar/ecu rate; whereas the monetary reserve can therefore be reduced from ECU 1 000 million to ECU 500 million from 1995;

Whereas provision should be made for the possibility of reducing or temporarily suspending the monthly advances when the information communicated by the Member States does not enable the Commission to confirm that the Community rules applicable have been observed or indicates a clear misuse of Community funds;

Whereas the institutions have agreed that a reserve relating to Community loans and loan guarantees to non-member countries and in those countries must be entered in the budget in the form of provisional appropriations so that the Guarantee Fund set up by Council Regulation (EC, Euratom) No 2728/94 of

⁽¹⁾ OJ No C 68, 11. 3. 1993, p. 8.

⁽²⁾ OJ No C 329, 6. 12. 1993, p. 100.

⁽³⁾ OJ No C 170, 21. 6. 1993, p. 20.

⁽⁴⁾ OJ No L 185, 15. 7. 1988, p. 29.

31 October 1994 establishing a guarantee fund for external actions ⁽¹⁾ may be funded and any calls on guarantees exceeding the amount available under the Fund may be met;

Whereas the institutions have agreed that a reserve should be entered in the budget in the form of provisional appropriations to permit a rapid response to specific emergency aid requirements in non-member countries resulting from unforeseeable events, with priority being given to humanitarian operations;

Whereas the institutions have agreed that the conditions for calling in and mobilizing funds should be the same for the monetary reserve, the reserve relating to loan guarantees and the reserve for emergency aid; whereas the detailed rules for using the reserve for emergency aid are those defined in the Interinstitutional Agreement;

Whereas, for reasons of clarity, Decision 88/377/EEC should be repealed and replaced by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

Budgetary discipline shall apply to all expenditure. Such discipline shall be applied, as appropriate, by the Financial Regulation, this Decision and the Interinstitutional Agreement of 29 October 1993.

I. EAGGF GUARANTEE SECTION EXPENDITURE

Article 2

The agricultural guideline, which constitutes for each budget year the ceiling on agricultural expenditure as defined in Article 4, must be respected each year. For each budget year, the Commission shall make an initial estimate of the agricultural guideline when submitting its annual price-fixing proposals and shall determine its final level when submitting the preliminary draft budget.

Article 3

1. The reference base from which the agricultural guideline is to be calculated shall be equal to ECU 27 500 million entered for 1988 in Titles 1 and 2 of Part B of Section III of the budget less the amounts for that year relating to the disposal of ACP sugar, food aid refunds and payments by producers in respect of the levies provided for by the common organization of the sugar market.

2. The agricultural guideline for a given year shall be equal to the reference base laid down in paragraph 1 plus amounts corresponding to:

- the base multiplied by 74 % of the rate of increase in GNP between 1988 (base year) and the year in question,
- the base multiplied by the GNP deflator estimated by the Commission for the same period,
- forecasts of expenditure in the year in question on disposal of ACP sugar, food aid refunds, payments by producers in respect of levies provided for by the common organization of the sugar market and any other revenue raised from the agricultural sector in the future.

3. The statistical base for GNP shall be as defined in Council Directive 89/130/EEC, Euratom, of 13 February 1989 on the harmonization of the compilation of gross national product at market prices ⁽²⁾.

Article 4

1. The agricultural guideline shall cover expenditure chargeable to Titles 1 to 5 of Subsection B1 of Section III of the budget in the nomenclature adopted for the 1993 budget.

2. Each year the budget shall contain the appropriations necessary for financing all costs relating to the depreciation of stocks formed during the budget year.

Article 5

1. The Commission's agricultural price proposals and any other proposals for measures involving expenditure referred to in Article 4 shall be consistent with the limit laid down by the guideline.

2. Any Council member may ask the Commission to evaluate the financial consequences of any amendment which may be made to a proposal referred to in paragraph 1 during the Council's discussions. The Commission shall provide those evaluations as quickly as possible, and in any case within two weeks. The Council shall then be obliged to postpone its decision until it is informed of the impact. The European Parliament shall be informed of evaluations made by the Commission.

3. If the Commission considers that the outcome of the Council's discussions on these proposals is likely to exceed the costs put forward in its original proposals, the final decision shall be referred to a special meeting of the Council.

⁽¹⁾ See page 1 of this Official Journal.

⁽²⁾ OJ No L 49, 21. 2. 1989, p. 26.

Article 6

1. To ensure that the agricultural guideline is respected, the Commission shall establish a monthly early-warning and monitoring system for each chapter involving expenditure of the type referred to in Article 4.

2. Before the beginning of each budget year, the Commission shall define profiles of monthly expenditure for each budget chapter based, where appropriate, on the average monthly expenditure of the three preceding years.

3. In view of its multiannual nature, implementation of expenditure arising from application of environmental measures in the agricultural sector, the Community aid scheme for forestry measures and the Community aid scheme for early retirement from farming shall be subject to special monitoring.

4. The statements of expenditure presented by the Member States monthly in accordance with Article 3, third paragraph of Commission Regulation EEC No 2776/88 ⁽¹⁾ shall be sent to the European Parliament and to the Council for information.

The Commission shall submit monthly reports thereafter to the European Parliament and the Council on the development of actual expenditure in relation to the profiles.

5. When trends in actual expenditure under a given chapter are likely to exceed or do exceed the profile laid down, the Commission shall analyse the discrepancy in order to determine the cause and evaluate the foreseeable budgetary implications.

6. Where the overrun on the profile is not likely to lead to an overrun on the appropriations for the chapter, no corrective measures need be taken. The Commission shall explain to the budgetary authority its reasons for not expecting an overrun on the appropriations.

7. If it concludes from the examination that there is a risk of the appropriations for the chapter being exceeded at the end of the year, the Commission shall take action on the chapter concerned, using the management powers at its disposal, including those it has under the stabilizing measures, to remedy the situation, whenever such action might be effective. If these measures prove to be insufficient, the Commission shall submit proposals to the Council for appropriate action to control expenditure, which may include proposals for strengthening the stabilizing measures in the relevant sector. The European Parliament shall deliver its opinion

within six weeks and the Council shall act within two months of receiving the Commission's proposal in order to bring expenditure back into line with the provision for the budget chapter concerned, if possible by the end of the year in question.

8. The Commission shall evaluate the impact of the proposed measures with respect to both the savings which they are likely to produce and the time required for them to have their first economic and budgetary effects. The budgetary authority shall be informed of this evaluation.

9. If it proves impossible to remedy the situation before the end of the budget year, the Commission shall propose a transfer to the budgetary authority. The Commission shall inform the budgetary authority of developments in the market situation and of the situation regarding the appropriations under the chapter concerned, in the light, in particular, of the corrective measures adopted, the foreseeable financial consequences of which shall be taken into account in the budget for the following year. If these measures prove insufficient, the Commission shall present proposals to the Council designed to strengthen their action.

Article 7

The dollar/ecu rate used to draw up the annual budget estimates of the expenditure referred to in Article 4 for any given year shall be the average market rate over the first three months of the preceding year.

Article 8

ECU 1 000 million shall be entered in a reserve in the general budget of the European Communities, as a provision to cover:

- the developments caused by movements in the dollar/ecu market rate in relation to the rate used in the budget referred to in Article 10, and
- where applicable, the costs arising from monetary realignments within the European Monetary System referred to in Article 11.

From 1995, the reserve shall be reduced to ECU 500 million. These appropriations shall not be included in the agricultural guideline.

Article 9

By no later than the end of October each year, the Commission shall report to the budgetary authority on the impact on expenditure referred to in Article 4 of:

- movements in the average dollar/ecu market rate for the period 1 August of the preceding year to 31 July

(1) OJ No L 249, 8. 9. 1988, p. 9. Regulation as last amended by Regulation (EC) No 775/90 (OJ No L 83, 30. 3. 1990, p. 85).

of the current year in relation to the rate used in the budget, as defined in Article 7,

- the monetary realignments within the European Monetary System referred to in Article 11.

Article 10

1. Savings or additional costs resulting from movements in the dollar/ecu rate shall be treated in symmetrical fashion. Where the dollar strengthens against the ecu compared to the rate used in the budget, savings in the Guarantee Section of up to ECU 1 000 million (ECU 500 million from 1995) shall be transferred to the monetary reserve. Where additional budgetary costs are engendered by a fall in the dollar against the ecu compared with the budget rate, the monetary reserve shall be drawn on and transfers shall be made from the monetary reserve to the EAGGF Guarantee Section headings affected by the fall in the dollar. Where necessary, these transfers shall be proposed at the same time as the report referred to in Article 9.

2. There shall be a neutral margin of ECU 400 million. Savings or additional costs below this amount arising from the movements referred to in paragraph 1 will not necessitate transfers to or from the monetary reserve. Savings or additional costs above this amount shall be paid into, or met from, the monetary reserve. The amount shall be reduced to ECU 200 million from 1995.

Article 11

1. If it should become apparent when the budget is being implemented that the agricultural guideline cannot cover the budget cost arising directly from monetary realignments within the European Monetary System which have taken place since 1 September 1992, the monetary reserve shall be used to the extent necessary and appropriate transfers shall be proposed without, however, compromising full application of Article 10 (1).

2. If, in the circumstances referred to in paragraph 1, the appropriations available in the monetary reserve prove inadequate, thus compromising the financing of the common agricultural policy, the Council, using a suitable legal basis, shall take appropriate steps to fund the EAGGF Guarantee Section. Any decision which results in an actual increase in EAGGF Guarantee Section financing in any one year by exceeding or raising the agricultural guideline shall be taken unanimously.

3. This Article shall apply until the end of the financial year 1997.

Article 12

1. Funds shall be taken from the reserve only if the additional costs cannot be met from the budget appropriations intended to cover the expenditure referred to in Article 4 (1), for the year in question.

2. The necessary own resources shall be called up, in accordance with Decision 88/376/EEC, Euratom⁽¹⁾ and the provisions adopted pursuant thereto, to finance the corresponding expenditure.

3. Any savings made in the EAGGF Guarantee Section which have been transferred to the monetary reserve in accordance with Article 10 (1) and which remain in the monetary reserve at the end of the financial year shall be cancelled and entered as a revenue item in the budget for the coming year by means of a letter of amendment to the preliminary draft budget for the following year.

Article 13

1. Payment of the monthly EAGGF Guarantee Section advances by the Commission shall be effected on the basis of the information supplied by the Member States in regard to expenditure in each chapter.

2. If the declarations of expenditure or the information submitted by a Member State do not enable the Commission to establish whether the commitment of funds is in conformity with the relevant Community rules, the Commission shall request the Member State to supply further information within a period which it shall determine according to the seriousness of the problem.

In the event of a reply which is deemed unsatisfactory or which indicates manifest non-compliance with the rules and a clear misuse of Community funds, the Commission may reduce or provisionally suspend the monthly advances to Member States.

Such reductions and suspensions shall be without prejudice to the decisions which will be taken in connection with the clearance of accounts.

3. The Commission shall inform the Member State concerned before taking its decision.

The Member State shall make its position known within 10 days.

The Commission's decision, stating the reasons on which it is based, shall be taken after the EAGGF Committee has been consulted and must be in keeping with the principle of proportionality.

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 24.

II. RESERVES FOR EXTERNAL OPERATIONS

Article 17

1. Reserve relating to loans and loan guarantees

Article 14

Each year a reserve intended to cover:

- (a) the requirements of the Guarantee Fund set up by Regulation (EC, Euratom) No 2728/94; and
- (b) where necessary, activated guarantees exceeding the amount available in the Fund so that these amounts may be charged to the budget;

shall be entered in the general budget of the European Communities as a provision.

The amount of that reserve shall be the same as that in the financial perspective that forms part of the Interinstitutional Agreement.

2. Reserve for emergency aid

Article 15

A reserve for emergency aid to non-member countries shall be entered each year in the general budget of the European Communities as a provision. The purpose of this reserve shall be to permit a rapid response to specific emergency aid requirements in non-member countries resulting from unforeseeable events, with priority being given to humanitarian operations.

The amount of that reserve shall be the same as that adopted in the financial perspective contained in the Interinstitutional Agreement.

The detailed rules for the use of the reserve shall be as laid down in the Interinstitutional Agreement.

3. Common provisions

Article 16

The reserves shall be used by means of transfers to the budget headings concerned in accordance with the provisions of the Financial Regulation.

The own resources necessary for financing the reserves shall not be called in from the Member States until the reserves are used in accordance with Article 16.

The own resources necessary shall be made available as provided in Regulation (EEC, Euratom) No 1552/89 ⁽¹⁾.

III. OTHER PROVISIONS

Article 18

The financial implementation of any Council decision or of any decision of the European Parliament and of the Council exceeding the appropriations available in the budget or the amounts specified in the financial perspective may not take place until the budget and, where appropriate, the financial perspective have been suitably amended according to the procedure laid down for each of these cases.

IV. FINAL PROVISIONS

Article 19

Decision 88/377/EEC is hereby repealed.

Article 20

This Decision is addressed to the Member States.

Done at Luxembourg, 31 October 1994.

For the Council

The President

K. KINKEL

⁽¹⁾ OJ No L 155, 7. 6. 1989, p. 1. Regulation as amended by Regulation (EC, Euratom) No 2729/94 (see page 5 of this Official Journal).