

Amended proposal for a Council Regulation (EC, ECSC, Euratom) on the Financial Regulation applicable to the general budget of the European Communities

(2002/C 103 E/23)

COM(2001) 691 final/2 — 2000/0203(CNS)

(Submitted by the Commission on 10 January 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 279 thereof,

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 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,

Having regard to the opinion of the Court of Auditors ⁽²⁾,

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

Whereas:

(1) Since times have changed enormously since the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽⁴⁾ was adopted, in particular as a result of a series of enlargements, a financial perspective forming a framework for the development of the budget and changes to the institutional structure, that Financial Regulation has been substantially amended several times. Since further amendments are necessary to take account, in particular, of the requirements of simplification in legislative and administrative matters and the tightening up of management of Community finances, the Financial Regulation of 21 December 1977 should be recast in the interests of clarity.

(2) This Regulation should be confined to stating the broad principles and basic rules governing all budgetary matters referred to in the Treaties and the detailed provisions should be moved to a Regulation laying down rules for

the implementation of this Regulation (hereinafter: 'the implementing rules') in order to produce a better hierarchy of rules and make the Financial Regulation easier to read.

(3) As regards budget principles, the establishment and implementation of the budget should respect the four fundamental principles of budgetary law (unity, universality, specification, annuality), and the principles of equilibrium, unit of account, sound financial management and transparency.

(4) This Regulation should reassert those principles, keep exceptions to an absolute minimum and impose strict conditions on those exceptions.

(5) As regards the principle of unity, this Regulation should state that it also applies to expenditure on the common foreign and security policy and cooperation in the field of justice and home affairs where this is charged to the budget. Decisions on the establishment plans of the Community agencies should be taken by the budgetary authority as part of the budgetary procedure in view of their impact, real or potential, on the number of European civil servants and on the general budget, via subsidies paid or planned by those agencies, or the pensions which will be paid to their staff.

(6) As regards the principle of universality, the practices of repayment of payments on account and re-use should be discontinued; in some cases they should be replaced by assigned revenue. These amendments should not affect the special rules applicable to the Structural Funds.

(7) As regards the principle of specification, the Commission needs to have some degree of management flexibility for transfers of staff and administrative appropriations between titles relating to different policy areas and between chapters for operational expenditure. This Regulation should allow integrated presentation of the allocation of financial and administrative resources by purpose. The procedures for transferring administrative appropriations should be harmonised for all the other institutions so that transfers between titles are a matter for the budgetary authority and those within titles a matter for each institution. The budgetary authority should be allowed to constitute reserves in only two cases: where there is no legal base or where it is not certain that appropriations are adequate or can be used in accordance with the principle of sound financial management.

⁽¹⁾ OJ C 96 E, 27.3.2001, p. 1.

⁽²⁾ OJ C 162, 5.6.2001, p. 1.

⁽³⁾ OJ C 260, 17.9.2001, p. 42.

⁽⁴⁾ OJ L 356, 31.12.1977, p. 1; Regulation as last amended by Regulation (EC, ECSC, Euratom) No 762/2001 (OJ L 111, 20.4.2001, p. 1).

- (8) As regards annuality, differentiated appropriations should be used in all areas, although the technical arrangements applied at present to appropriations of the European Agricultural Guidance and Guarantee Fund (EAGGF) should be retained. Decisions on carryovers of commitment and payment appropriations should be taken by the institution concerned as a result of the simplification brought about by the abandoning of non-differentiated appropriations. The additional periods should be confined exclusively to the cases where they are absolutely necessary, namely EAGGF payments.
- (9) As regards transparency, the aim is to improve information on implementation of the budget and the accounts. A strict deadline should also be set for the publication of the budget and the principle laid down that it should be published provisionally by the Commission between the declaration of adoption by the President of the European Parliament and official publication in the *Official Journal of the European Communities*. In addition, in order to do away with negative amounts, negative expenditure should now be treated as assigned revenue. The possibility of a negative reserve is, however, to be retained.
- (10) Finally, the principle of sound financial management should be defined by reference to the principles of economy, efficiency and effectiveness, and compliance with those principles checked by means of measurable indicators in such a way that results can be assessed. Provision should be made for evaluation throughout the cycle of a programme.
- (11) As regards the establishment and presentation of the budget, budgetary procedures should be harmonised and simplified by elimination of the distinction, which has no practical impact, between supplementary budgets and amending budgets.
- (12) The Commission section of the budget should present appropriations and resources by purpose (activity-based budgeting), with a view to enhancing transparency in the management of the budget with reference to the objectives of sound financial management and in particular efficiency and effectiveness.
- (13) The Commission should enjoy a measure of flexibility in the management of its staff complement in relation to what is authorised in the budget, especially as the emphasis in management is now to be on results and not on means. This freedom will, however, continue to be restricted by the dual limit of budget appropriations and the total number of posts allocated; in addition there will be no latitude as regards grade A1 and A2 posts.
- (14) As regards implementation of the budget, there should be clarification of the various possible methods of implementing the budget, either on a centralised basis by the Commission or on a shared basis with the Member States or on a decentralised basis with third countries receiving external aid or jointly with international public-sector organisations. It should be possible for centralised management either to be performed directly by Commission departments or indirectly by delegation to national or Community public-sector bodies. The implementation methods must guarantee that the procedures for protecting Community funds are complied with, whatever the entity responsible for all or part of this implementation and must confirm that final responsibility for budget implementation lies with the Commission in accordance with Article 274 of the EC Treaty.
- (15) As the Commission is responsible for implementation of the budget, it may not delegate any tasks of public authority involving the use of discretionary powers. This Regulation should restate this principle and specify the scope of the tasks that may be delegated. It should also be stipulated that private-sector bodies, other than those which have a public-service mission guaranteed by the States, should not be able to undertake any budget implementation measure but only provide specialist technical or administrative services or perform preparatory or ancillary tasks.
- (16) For the sake of compliance with the principles of transparency and sound financial management, the public-sector bodies or bodies with a public-service mission guaranteed by the State to which implementing tasks are delegated on behalf of the Commission should have transparent procurement procedures, effective internal controls, a system for presentation of the accounts which is separate from their other activities and an external audit.
- (17) This Regulation meets the requirements of Article 279 of the EC Treaty by defining the powers and responsibilities of authorising officers, the accounting officer and the internal auditor. Authorising officers are made fully responsible for all revenue and expenditure operations executed under their authority and must be held accountable for their actions, including, where necessary, through disciplinary proceedings. This empowerment must therefore be strengthened by the removal of centralised prior controls and in particular the ending of the advance approval of revenue and expenditure operations by the financial controller and of the checking that payment constitutes valid discharge by the accounting officer. The accounting officer continues to be responsible for the proper execution of payments, the collection of revenue and the recovery of receivables. He manages the treasury, keeps the accounts and is responsible for drawing up the financial statements of the institutions. The internal auditor performs his duties in accordance with international audit standards. His role is to provide the institution with reasonable assurances concerning the proper functioning of the management and control systems put in place by the authorising officers. The internal auditor is not an actor involved in the financial operations and does not have the role of exercising control over these operations ahead of the decisions by the authorising officers; the authorising officers should now assume full responsibility for these decisions.

- (18) The liability of authorising officers, accounting officers and imprest administrators is not different from that of other officials and staff and should be subject, under the Staff Regulations of officials of the European Communities, and the Conditions of Employment of other Servants of those Communities, to the application of the existing disciplinary and financial compensation measures. On the other hand, certain specific provisions identifying specific cases of misconduct of accounting officers and imprest administrators, given the nature of their duties, should be retained; they will no longer have any special allowance or insurance. In cases not involving fraud, in order to provide the appointing authority with the necessary expertise, each institution should set up a specialised financial irregularities panel which will determine whether or not an irregularity has occurred which could make the official or other servant liable to disciplinary action or payment of compensation and, if it has detected problems with systems, to report to the authorising officer and the internal auditor. For cases of fraud, however, this Regulation should refer to the provisions in force on the protection of the European Communities' financial interests and on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union.
- (19) The concepts of budget and legal commitment of expenditure and the conditions of application should be defined. In order to limit in time the potential budget impact of Commission decisions and to restrict the volume of dormant commitments, the period during which individual legal commitments may be made on the basis of global budget commitments should be limited.
- (20) This Regulation should define the typology of payments which may be made by authorising officers. Payments must be made principally as a function of the effectiveness of the action and the results which flow from it.
- (21) This Regulation should stipulate that the operations of validation, authorisation and payment must be completed within a time-limit which will be set in the implementing rules and that in the event of failure to respect this time-limit creditors will be entitled to default interest to be charged to the budget.
- (22) As regards procurement, the Directives of the European Parliament and of the Council coordinating the procedures for the award of public supply, service and works contracts should apply to public contracts awarded by the institutions acting on their own account; their principles should also govern the rules applicable to all contracts awarded on behalf of third parties.
- (23) In order to prevent irregularities and to combat fraud and corruption and promote sound and efficient management, candidates or tenderers who are guilty of such acts or have conflicting interests should be excluded from the award of contracts.
- (24) For the sake of transparency, candidates and tenderers should be informed in an appropriate manner about the award of contracts.
- (25) Finally, as part of the process of empowerment of authorising officers, the current Advisory Committee on Procurement and Contracts should be dispensed with.
- (26) As regards grants, a framework for the award and monitoring of Community grants involving specific provisions for implementing the principles of transparency, equal treatment, co-financing, prohibition of retrospective awards, collective assessment and control should be put in place.
- (27) In order to avoid any cumulation, it should not be possible for grants to be awarded to finance twice the same action or routine expenditure for the same year.
- (28) In a similar manner to the rules concerning the award of public contracts, grounds for excluding certain parties from the award of grants should be laid down in order to have appropriate means of combating fraud and corruption.
- (29) So that the rights and obligations of the institution and of the beneficiary are clear, the grant award should be the subject of a written agreement.
- (30) As regards accounting and the presentation of accounts, it should be stipulated that the accounts comprise general accounts and budget accounts and it should be added that the general accounts are based on a system of accrual accounting whereas the budget accounts are intended to draw up the budget outturn account and the reports on implementation of the budget.
- (31) The principles on which the general accounts are based and the financial statements are presented should be defined by reference to internationally accepted accounting principles and the Council Directives on the annual accounts of certain types of companies, where they are relevant in the context of the public service.
- (32) The provisions on the supply of information concerning implementation of the budget should be adapted to extend this information to the use of appropriations carried over, made available again and re-used and to the various Community-law bodies, to improve the arrangements for providing monthly figures and the report on implementation, which will be sent three times a year to the budgetary authority.

- (33) The accounting methods employed by the institutions should be harmonised and, in this field, the Commission's accounting officer should have the right of initiative.
- (34) It should be specified that the use of computerised financial management systems should in no way restrict the Court of Auditors' rights of access to supporting documents.
- (35) The rather vague concepts of advance and payment on account should be removed; payments should be made in the form of pre-financing, interim payments and payments of the final balance, when the entire amount is not paid in one instalment.
- (36) As regards external audit and discharge, although the Commission is fully responsible for implementation of the budget, the importance of management shared with the Member States requires their full cooperation throughout the audit procedure by the Court of Auditors and the discharge by the budgetary authority.
- (37) In order to provide optimum conditions for the presentation of the accounts and the discharge procedure, the timetable leading up to discharge should be amended.
- (38) In order to improve interinstitutional operation, the Commission should present to the European Parliament, at its request, any information relating to the year in question required for the smooth application of the discharge procedure, with due respect for fundamental human rights, the protection of business secrecy, the provisions governing judicial and disciplinary proceedings and the interests of the Union.
- (39) Special provisions should be laid down for certain Community policies; such provisions should be based on the principles of this Regulation.
- (40) As regards the EAGGF, the specific management features, relating in particular to the fact that commitment appropriations and payment appropriations are equal and to the carryover arrangements, should be maintained, although the appropriations for rural development will not be covered with effect from 1 January 2007.
- (41) In order to guarantee the overall amount of appropriations available, revenue from the EAGGF Guarantee Section should be assigned to it as an overall amount.
- (42) Provision should be made for the possibility of advance commitments against EAGGF and administrative appropriations from 15 November preceding the financial year in question.
- (43) As regards the Structural Funds, the provision for repayment of payments on account and making appropriations available again contained in the Commission declaration annexed to Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds should be retained.
- (44) As regards research, the presentation of the budget should be harmonised with the provisions concerning activity-based budgeting, whilst preserving the flexibility of management which the Joint Research Centre currently enjoys.
- (45) As regards external action, decentralisation of management of external aid should be authorised provided that the Commission is given guarantees of sound financial management and the beneficiary State is accountable to the Commission for the funds paid to it.
- (46) Financing agreements or contracts signed with the beneficiary State or a national, Community or international public-sector body or natural or legal persons governed by private law must include the general procurement principles laid down in Title V of Part One and Title IV of Part Two of this Regulation as regards external actions.
- (47) A special title should be included containing the general provisions for the management of European offices. Given the status and special remit of the European Anti-Fraud Office (OLAF), a separate chapter in that title should contain the special rules for its management.
- (48) A separate title should also contain the special rules applicable to administrative appropriations.
- (49) It should be stipulated that the special provisions relating to the appropriations for the EAGGF Guarantee Section will apply to the programmes on rural development and accompanying measures only until the end of the current programming period.
- (50) The change in the timetable for the consolidation of the institutions' accounts should be deferred until 2005 in order to allow time to put in place the essential internal procedures involved.
- (51) Time-limits governing the procedure for adopting the rules for implementing this Regulation should be laid down, in order to ensure that any change made to the Financial Regulation becomes effective within a reasonable time.

(52) A suitable framework, tailored to the specific management needs, should be provided for the financial rules to apply to bodies set up by the Communities, with their own legal personality, which may receive subsidies from the budget. At the same time, and without in any way impairing the operational autonomy required by these bodies for the performance of their functions, the substance of the rules governing certain matters, and in particular discharge and accounting, needs to be harmonised. The Commission's internal auditor should exercise over these bodies the same powers as over Commission departments. The specific provisions governing these bodies will have to be adapted accordingly to comply with this Regulation,

HAS ADOPTED THIS REGULATION:

PART ONE

COMMON PROVISIONS

TITLE I

SCOPE

Article 1

(Initial proposal: Article 1)

This Regulation lays down the rules for the establishment and implementation of the general budget of the European Communities, hereinafter 'the budget'.

For the purposes of this Regulation, the Economic and Social Committee, the Committee of the Regions and the Ombudsman shall be treated as Community institutions.

Article 2

(New)

All other regulatory instruments concerning the implementation of the revenue and expenditure of the budget shall be based on the principles set out in Title II.

TITLE II

BUDGETARY PRINCIPLES

Article 3

(Initial proposal: Article 2)

The budget shall be established and implemented in compliance with the principles of unity, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency as set out in this Regulation.

CHAPTER 1

PRINCIPLE OF UNITY

Article 4

(Initial proposal: Article 3)

1. The budget is the instrument which, each year, forecasts and authorises the revenue and expenditure considered necessary for the Communities.

2. The revenue and expenditure of the Communities shall comprise:

(a) the revenue and expenditure of the European Community, including administrative expenditure for the common foreign and security policy and for cooperation in the field of justice and home affairs and the related operational expenditure where this is charged to the budget;

(b) the administrative expenditure of the European Coal and Steel Community and the related revenue;

(c) the expenditure and revenue of the European Atomic Energy Community.

3. The budget shall record the guarantee for borrowing and lending operations entered into by the Communities and payments to the Guarantee Fund for external actions.

Article 5

(Initial proposal: Article 4)

1. Subject to Article 74, no revenue shall be collected and no expenditure effected unless booked to a line in the budget.

2. No expenditure may be committed or authorised in excess of the authorised appropriations.

3. An appropriation may not be entered in the budget if it is not for an item of expenditure considered necessary.

4. Subject to Article 74, interest yielded by the funds which remain the property of the European Communities shall be entered in the budget as general revenue.

CHAPTER 2

PRINCIPLE OF ANNUALITY

Article 6

(Initial proposal: Article 5)

The appropriations entered in the budget shall be authorised for one financial year which shall run from 1 January to 31 December.

*Article 7**(Initial proposal: Article 6)*

1. The budget shall contain differentiated appropriations, which shall consist of commitment appropriations and payment appropriations.

2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year, subject to Articles 77(2) and 167(2).

3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.

4. Paragraphs 1 and 2 shall be without prejudice to the special provisions of Titles I, IV and VI of Part Two. They shall not prevent appropriations being committed globally nor budgetary commitments being made in annual instalments.

*Article 8**(Initial proposal: Article 7)*

1. The revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year. However, the own resources for the month of January of the next financial year may be paid in advance pursuant to the Council Regulation implementing the Decision on the system of the Communities' own resources.

2. The entries in respect of value added tax own resources, the additional GNP-based resource and any financial contributions may be adjusted in accordance with the Regulation referred to in paragraph 1.

3. The appropriations authorised for a given year may be used solely to cover expenditure committed and paid in that financial year, save as otherwise provided in Title I of Part Two, and to cover amounts due against commitments from earlier financial years.

4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December, subject to the global commitments referred to in Article 77(2) and the financing agreements referred to in Article 167(2), which shall be entered in the accounts on the basis of the budget commitments up to 31 December.

5. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year at the latest.

6. By way of derogation from paragraphs 4 and 5, the expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) shall be entered in the accounts for a financial year in accordance with the rules laid down in Title I of Part Two.

*Article 9**(Initial proposal: Article 8)*

1. Commitment appropriations and payment appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled.

However, they may be carried over to the following financial year only, by a decision taken by the institution concerned by 15 February at the latest, in accordance with paragraphs 2 and 3.

2. Commitment appropriations may be carried over in respect of:

(a) amounts corresponding to commitment appropriations for which all the preparatory stages of the commitment procedure as specified in Article 60 have been completed by 31 December. These amounts may then be committed up to 31 March of the following year;

(b) amounts which are necessary when the legislative authority has adopted a basic instrument in the final quarter of the financial year and the Commission has been unable to commit the appropriations provided for this purpose by 31 December.

3. Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements. The institution concerned shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.

4. The institution concerned shall inform the European Parliament and the Council (hereinafter 'the budgetary authority') by 15 March at the latest of the carryover decision taken and shall state, for each budget item, how the criteria in paragraphs 2 and 3 have been applied to each carryover.

5. Appropriations placed in reserve and appropriations for staff expenditure may not be carried over.

*Article 10**(Initial proposal: Article 9)*

Revenue not used and appropriations available at 31 December arising from the assigned revenue referred to in Article 18 shall be carried over automatically. The appropriations available corresponding to assigned revenue carried over must be used first.

*Article 11**(Initial proposal: Article 10)*

Where amounts are decommitted as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were entered in the budget, the appropriations concerned shall be cancelled.

*Article 12**(Initial proposal: Article 11)*

The appropriations entered in the budget may be committed with effect from 1 January, once the budget has been finally adopted, save as otherwise provided in Title I and Title VI of Part Two.

*Article 13**(Initial proposal: Article 12)*

1. If the budget has not been finally adopted at the beginning of the financial year, Article 273 of the EC Treaty, Article 78b of the ECSC Treaty, and Article 178 of the Euratom Treaty shall apply to commitment and payment of expenditure approved in principle in the last budget duly adopted.

2. If, for a given chapter, the authorisation of two or more provisional twelfths granted in the circumstances provided for in the Treaties is not sufficient to cover the expenditure necessary to avoid a break in continuity of the Communities' activity in the area in question, authorisation may exceptionally be given under the procedures provided for in the Treaties to exceed that amount. In this case the overall total of the appropriations available in the budget of the preceding year may not be exceeded.

CHAPTER 3**PRINCIPLE OF EQUILIBRIUM***Article 14**(Initial proposal: Article 13)*

1. Budget revenue and payment appropriations must be in balance.

2. The Communities may not raise loans to cover a budget deficit. They are, however, authorised to raise loans for the sole purpose of acquiring land and buildings on the strict condition that such loans offer every guarantee of sound financial management.

*Article 15**(Initial proposal: Article 14)*

1. The balance from each financial year shall be entered in the budget for the following financial year as revenue in the case of a surplus or as a payment appropriation in the case of a deficit.

2. The estimates of such revenue or payment appropriations shall be entered in the budget during the budgetary procedure and, where appropriate, in a letter of amendment presented pursuant to Article 34. They shall be drawn up in accordance with the Council Regulation implementing the Decision on the system of the Communities' own resources.

3. After the presentation of the accounts for each financial year, any discrepancy with the estimates shall be entered in the budget for the following financial year through an amending budget in accordance with Article 37.

CHAPTER 4**PRINCIPLE OF UNIT OF ACCOUNT***Article 16**(Initial proposal: Article 15)*

The budget shall be drawn up and implemented in euro and the accounts shall be presented in euro.

However, for the cash-flow purposes referred to in Article 61, the accounting officer and, in the case of imprest accounts, imprest administrators, shall be authorised to carry out operations in national currencies as laid down in the regulation laying down the rules for implementing this Regulation, hereinafter referred to as 'the implementing rules'.

CHAPTER 5**PRINCIPLE OF UNIVERSALITY***Article 17**(Initial proposal: Article 16)*

Total revenue shall cover total payment appropriations, subject to Article 18. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to Article 20.

*Article 18**(Initial proposal: Article 17(1))*

1. The following items of revenue shall be used to finance specific items of expenditure:

(a) financial contributions from Member States to certain research programmes pursuant to the Council Regulation implementing the Decision on the system of the Communities' own resources;

- (b) interest on deposits and the fines provided for in the Regulation on speeding up and clarifying the implementation of the excessive deficit procedure;
- (c) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;
- (d) contributions to Community activities from third countries or various bodies;
- (e) revenue from third parties in respect of goods, services or work supplied at their request;
- (f) revenue arising from the repayment of amounts wrongly paid;
- (g) proceeds from the supply of goods, services and works for other institutions or bodies, including refunds by other institutions or bodies of mission allowances paid on their behalf;
- (h) insurance payments received;
- (i) revenue from payments connected with lettings;
- (j) revenue from the sale of publications and films, including those on an electronic medium.

2. A legal basis may also assign the revenue for which it provides to specific items of expenditure.

3. The budget shall carry lines to accommodate the categories of assigned revenue referred to in paragraphs 1 and 2 and wherever possible shall indicate the amount.

Article 19

(Initial proposal: Article 17(2))

1. The Commission may accept any donation made to the Communities, such as foundations, subsidies, gifts and bequests.

2. Acceptance of donations which may involve some financial charge shall be subject to the authorisation of the European Parliament and the Council, which shall act on the matter within two months of the date of receipt of the request from the Commission. If no objection has been made within that period, the Commission shall take a final decision in respect of acceptance.

Article 20

(Initial proposal: Article 18)

1. The implementing rules may specify the cases where certain revenue may be deducted from invoices or requests for payment, which shall then be passed for payment of the net amount.

2. The cost of products or services provided to the Communities incorporating taxes refunded by the Member

States pursuant to the Protocol on the Privileges and Immunities of the European Communities or by third countries on the basis of the relevant agreements shall be charged to the budget for the ex-tax amount.

3. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the year.

CHAPTER 6

PRINCIPLE OF SPECIFICATION

Article 21

(Initial proposal: Article 19)

Appropriations shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.

Article 22

(Initial proposal: Article 20)

1. Each institution may, within its own section of the budget, propose to the budgetary authority transfers from one title to another.

Proposals made by the other institutions for transfers from one title to another shall be forwarded by the Commission to the budgetary authority for its decision. The Commission may attach its own opinion to such proposals.

2. Each institution may, within its own section of the budget, transfer appropriations from one chapter to another and from one article to another. These institutions shall inform the budgetary authority and the Commission of the transfers they have made.

3. The provisions of paragraphs 1 and 2 are without prejudice to the specific provisions of Article 23 as regards the Commission.

Article 23

(Initial proposal: Article 21)

1. The Commission may, within its own section of the budget:

- (a) transfer appropriations within articles and, with the exception of expenditure on staff and administration, from one article to another within each chapter;
- (b) as regards expenditure on staff and administration, transfer appropriations from one title to another provided that the appropriations are used for the same purpose;

- (c) as regards operational expenditure, transfer appropriations between chapters within the same title, up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made.

Three weeks before making the transfers referred to at points (b) and (c) of the first subparagraph, the Commission shall inform the budgetary authority of its decision.

2. The Commission may propose to the budgetary authority, within its own section of the budget, transfers other than those referred to in paragraph 1.

Article 24

(Initial proposal: Article 22)

1. The budgetary authority shall take decisions on transfers of appropriations as provided for in paragraphs 2, 3 and 4, save as otherwise provided in Title I of Part Two.

2. In the case of proposals for transfers of appropriations relating to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council shall, after consulting the European Parliament, act by a qualified majority within six weeks, except in urgent cases. The European Parliament shall deliver its opinion within such time as will permit the Council to take note of it and to act within the stipulated time-limit. Where the Council does not act within this time-limit, the proposals for transfers shall be deemed to be approved.

3. In the case of proposals for transfers relating to expenditure other than that necessarily resulting from the Treaties or from acts adopted in accordance therewith, the European Parliament shall, after consulting the Council, act within six weeks, except in urgent cases. The Council shall deliver its opinion, by a qualified majority, within such time as will permit the European Parliament to take note of it and to act within the stipulated time-limit. Where no decision is taken within this time-limit, the proposals for transfers shall be deemed to be approved.

4. Proposals for transfers relating both to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, and to other expenditure shall be deemed to be approved if neither the European Parliament nor the Council has decided otherwise within six weeks of the date on which the two institutions received the proposals. If, in the case of such proposals for transfers, the European Parliament and the Council reduce the proposed transfer by different amounts, whichever is the smaller of the amounts accepted by one of the two institutions shall be deemed to be approved. Where one of the institutions rejects the principle of the transfer, the transfer shall not be made.

Article 25

(Initial proposal: Article 23)

1. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry (p.m.).
2. Assigned revenue may be transferred only if it is used for the purpose to which it is assigned.

Article 26

(Initial proposal: Article 24)

1. Transfers within the titles of the budget devoted to the EAGGF, Guarantee Section, the Structural Funds and research shall be the subject of special provisions under Titles I, II and III of Part Two.
2. Decisions on transfers to allow the utilisation of the reserve relating to Community loans and loan guarantees to third countries and the reserve for emergency aid shall be taken by the budgetary authority on a proposal from the Commission.

The procedure provided for in Article 24 shall apply. However, if the European Parliament and the Council are unable to agree on an amount different from the one indicated in the Commission's proposal or if they fail to act, the Commission's proposal for a transfer shall be deemed to be approved.

CHAPTER 7

PRINCIPLE OF SOUND FINANCIAL MANAGEMENT

Article 27

(Initial proposal: Article 25)

1. Budget appropriations shall be used in accordance with the principle of sound financial management, that is to say, in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency is concerned with the best relationship between resources employed and results achieved.

The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

3. Objectives which can be checked by means of measurable indicators shall be set and achievement of these objectives shall be monitored.

4. In order to apply the principle of sound financial management, the institutions shall evaluate programmes or actions regularly.

Article 28

(Initial proposal: Article 26)

1. Any proposal submitted to the legislative authority which may have an impact on the budget, including changes in the number of posts, must be accompanied by a financial statement.

2. During the budgetary procedure, the Commission shall provide the necessary information for a comparison between changes in the appropriations required and the initial forecasts made in the financial statements. This information shall include progress made and the stage reached by the legislative authority in its consideration of proposals presented. The appropriations required shall, where appropriate, be revised in the light of the deliberations on the legal basis.

CHAPTER 8

PRINCIPLE OF TRANSPARENCY

Article 29

(Initial proposal: Article 27)

1. The budget shall be established and implemented and the accounts presented in compliance with the principle of transparency.

2. The President of the European Parliament shall have the budget and amending budgets, as finally adopted, published in the *Official Journal of the European Communities*.

The budget shall be published within two months following the date on which the budget is declared finally adopted.

The consolidated financial statements shall be published in the *Official Journal of the European Communities*. The financial management reports and analyses drawn up by each institution shall also be published in the *Official Journal of the European Communities*.

Article 30

(Initial proposal: Article 28)

1. Information on borrowing and lending operations contracted by the Communities for third parties shall appear in an annex to the budget.

2. Information on the operations of the Guarantee Fund for external actions shall appear in the financial statements.

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

ESTABLISHMENT OF THE BUDGET

Article 31

(Initial proposal: Article 29)

The European Parliament, the Council, the Court of Justice of the European Communities, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the Ombudsman shall draw up an estimate of their revenue and expenditure, which they shall send to the Commission before 1 July each year.

These estimates shall also be sent by these institutions to the budgetary authority for information by no later than 1 July each year. The Commission shall draw up its own estimates, which it shall also send to the budgetary authority by the same date.

In preparing its own estimates the Commission shall use the information referred to in Article 32.

Article 32

(New)

Each body referred to in Article 190 shall, in accordance with the instrument establishing it, send to the Commission by 1 April each year an estimate of its revenue and expenditure, including the establishment plan, and its work programme.

The Commission shall forward these documents to the budgetary authority for information, except in the case provided for in point (3)(d) of Article 46(1).

Article 33

(Initial proposal: Article 30)

1. The Commission shall place a preliminary draft budget before the Council by 1 September each year at the latest. It shall at the same time transmit the preliminary draft budget to the European Parliament.

The preliminary draft budget shall contain a summary general statement of the expenditure and revenue of the Communities and consolidate the estimates referred to in Article 31.

2. The Commission shall attach to the preliminary draft budget:

(a) an analysis of financial management in the previous year;

- (b) an opinion on the estimates of the other institutions; this opinion may contain different estimates, accompanied by the reasons therefor;
- (c) any working paper it considers useful in connection with the establishment plans of the institutions and the grants which the Commission awards to the bodies referred to in Article 190 and to the European Schools;
- (d) information on objectives for the activities and on any evaluation available.

Article 34

(Initial proposal: Article 31)

1. The Commission may, on its own initiative or if requested by the other institutions, each in respect of its own section, present to the Council a letter of amendment to the preliminary draft budget on the basis of new information which was not available at the time the preliminary draft was established.
2. However, save as otherwise agreed by the institutions or in exceptional circumstances, the Commission shall put such letter of amendment to the Council at least thirty days before the first reading of the draft budget by the European Parliament. The Council must put the letter of amendment to the European Parliament at least fifteen days before the said first reading.

Article 35

(Initial proposal: Article 32)

1. The Council shall establish the draft budget in accordance with the procedure laid down in Article 272 of the EC Treaty, Article 78 of the ECSC Treaty and Article 177 of the Euratom Treaty.
2. The Council shall place the draft budget before the European Parliament by 5 October at the latest. The Council shall attach to that draft budget an explanatory memorandum defining, where appropriate, its reasons for departing from the preliminary draft budget.

Article 36

(Initial proposal: Article 33)

1. The President of the European Parliament shall declare the budget finally adopted in accordance with the procedure provided for in Article 272 of the EC Treaty, Article 78 of the ECSC Treaty and Article 177 of the Euratom Treaty.
2. Once the budget has been declared finally adopted, each Member State shall, from 1 January of the following financial year or from the date of the formal declaration if it is made after 1 January, be bound to make over to the Community the payments due as specified in the Council Regulation

implementing the Decision on the system of the Communities' own resources.

Article 37

(Initial proposal: Article 34)

1. If necessary, or in the case provided for in Article 15(3), the Commission may present preliminary draft amending budgets.

Preliminary draft amending budgets from institutions other than the Commission shall be sent to the Commission.

2. The Commission shall, save in exceptional circumstances, submit any preliminary draft amending budget to the Council by 1 September each year at the latest. It may attach a dissenting opinion to the requests for amending budgets from the other institutions.

3. The budgetary authority shall discuss them with due account for their urgency.

Article 38

(Initial proposal: Article 35)

1. Where the Council has received a preliminary draft amending budget, it shall draw up a draft amending budget in accordance with Article 35.
2. Except for the timetable, Articles 35 and 36 shall apply to amending budgets. They must be substantiated by reference to the budget whose estimates they are amending.

Article 39

(Initial proposal: Article 36)

The Commission and the budgetary authority may agree to bring forward certain dates for the transmission of the estimates, and for the adoption and transmission of the preliminary draft and draft budgets. This agreement may not, however, have the effect of shortening or delaying the periods allowed for consideration of these texts under Article 272 of the EC Treaty, Article 78 of the ECSC Treaty and Article 177 of the Euratom Treaty.

CHAPTER 2

STRUCTURE AND PRESENTATION OF THE BUDGET

Article 40

(Initial proposal: Article 37)

The budget shall consist of:

- (a) a summary statement of revenue and expenditure;
- (b) separate sections subdivided into statements of revenue and expenditure for each institution.

*Article 41**(Initial proposal: Article 38)*

1. Commission revenue and the revenue and expenditure of the other institutions shall be classified by the budgetary authority according to their type or the use to which they are assigned under titles, chapters, articles and items.

2. The statement of expenditure for the Commission section shall be set out on the basis of a nomenclature adopted by the budgetary authority and classified according to purpose.

A title shall correspond to a policy area and a chapter shall, as a rule, correspond to an activity.

Each title may include operational appropriations and administrative appropriations.

The administrative appropriations for a title shall be grouped in a single chapter.

*Article 42**(Initial proposal: Article 39)*

The budget may not contain negative revenue or expenditure.

The own resources paid under the Council Decision on the system of the Communities' own resources shall be net amounts and shall be shown as such in the summary statement of revenue in the budget.

*Article 43**(Initial proposal: Article 40)*

1. Each section of the budget may include a 'provisions' title. Appropriations shall be entered in this title in the following two circumstances:

- (a) where no legal basis exists for the action concerned when the budget is established;
- (b) where there is uncertainty, on serious grounds, about the adequacy of the appropriations entered on the budget lines or about the possibility of using them in a manner consistent with sound financial management.

The appropriations in this title may be used only after transfer in accordance with the procedure laid down in Articles 22, 23 and 24.

2. In the event of serious implementation difficulties, the Commission may propose, in the course of a financial year, that appropriations be transferred to the 'provisions' title. The

budgetary authority shall take a decision on these transfers as provided in Article 26.

*Article 44**(Initial proposal: Article 41)*

The Commission section may include a 'negative reserve' limited to a maximum amount of EUR 200 million. This reserve, which shall be entered in a separate chapter, may comprise both commitment appropriations and payment appropriations.

This reserve must be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 22, 23 and 25.

*Article 45**(Initial proposal: Article 42)*

1. The Commission section of the budget shall include the following two reserves:

- (a) a reserve for emergency aid for third countries;
- (b) a reserve relating to Community loans and loan guarantees to third countries.

2. The conditions for the entry, utilisation and financing of the reserves referred to in paragraph 1(a) and (b) are laid down in the Council Regulation on budgetary discipline and in the Council Regulation implementing the Decision on the system of the Communities' own resources respectively.

*Article 46**(Initial proposal: Article 43)*

1. The budget shall show:

1. in the summary statement of revenue and expenditure:

- (a) the estimated revenue of the Communities for the financial year in question;
- (b) the estimated revenue for the preceding financial year and the revenue for year N-2;
- (c) the commitment and payment appropriations for the financial year in question;
- (d) the commitment and payment appropriations for the preceding financial year;
- (e) the expenditure committed and the expenditure paid in year N-2;

(f) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;

(g) appropriate remarks on each subdivision;

2. in the section for each institution, the revenue and expenditure shall be shown in the same structure as in point 1, with appropriate remarks on each subdivision, and with schedules of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years.

The estimated annual amounts of payment appropriations required for subsequent financial years in relation to the commitment appropriations for the current year shall be shown, as an indication, in a schedule entered in the remarks column of the budget.

3. as regards staff:

(a) for each section of the budget, an establishment plan setting the number of posts for each grade in each category and in each service and the number of permanent and temporary posts authorised within the limits of the budget appropriations;

(b) an establishment plan for staff paid from the research and technological development appropriations for direct action and an establishment plan for staff paid from the same appropriations for indirect action; the establishment plans shall be classified by category and grade and shall distinguish between permanent and temporary posts, authorised within the limits of the budget appropriations;

(c) as regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget. The establishment plan must specify the number of highly qualified technical or scientific personnel who are accorded special advantages under the specific provisions of the Staff Regulations of Officials of the European Communities and Conditions of Employment of Other Servants of the European Communities hereinafter referred to as 'the Staff Regulations';

(d) an establishment plan setting the number of permanent and temporary posts, authorised within the limits of the budget appropriations, by grade and by category in each body mentioned in Article 190.

The establishment plans shall show next to the number of posts authorised for the financial year the number authorised for the preceding year;

4. as regards borrowing and lending operations:

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

(b) in the Commission section:

(i) the budget lines containing the Communities' performance guarantees in respect of the operations in question. These lines shall carry a token entry (p.m.), so long as no effective charge which has to be covered by definitive resources has arisen;

(ii) remarks giving the reference to the legal basis and the volume of the operations envisaged, the duration and the financial guarantee given by the Communities in respect of these operations;

(c) in a document annexed to the Commission section, as an indication:

(i) ongoing capital operations and debt management,

(ii) the capital operations and debt management for the financial year in question;

5. the budget lines under revenue and expenditure necessary for implementing the reserve relating to Community loans and loan guarantees to third countries and also for implementing the Guarantee Fund for external actions.

2. In addition to the documents referred to in paragraph 1 the budgetary authority may attach other documents to the budget.

Article 47

(Initial proposal: Article 44)

1. The establishment plan described in point (3) of Article 46(1) shall constitute an absolute limit for each institution or body; no appointment may be made in excess of the limit set.

However, save in the case of grades A1 and A2, each institution or body may modify each establishment plan by up to 10 % of posts and within the limit of the budget appropriations and the total number of posts allocated.

2. By way of derogation from the first subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments.

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1

GENERAL PROVISIONS

Article 48

(Initial proposal: Article 45)

1. The Commission shall implement the budget in revenue and expenditure in accordance with this Regulation, on its own responsibility and within the limits of the appropriations authorised.

2. The Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principle of sound financial management.

Article 49

(Initial proposal: Article 46)

1. A basic act must first be adopted before the appropriations entered in the budget for any Community action or any other Union action may be used.

2. The following appropriations may be used without a basic act provided that the actions they are intended to finance fall within the competence of the Community:

- (a) appropriations for pilot projects of an experimental nature designed to test the feasibility of an action and its usefulness;
- (b) appropriations for preparatory actions, designed to prepare proposals for the adoption of future Community actions;
- (c) appropriations for one-off actions, or even actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level other than its right of legislative initiative and under specific powers directly conferred on it by the Treaties;
- (d) appropriations for the operation of each institution under its administrative autonomy.

Article 50

(Initial proposal: Article 47)

The Commission shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them.

Article 51

(Initial proposal: Article 48)

The Commission and each of the other institutions may, within their departments, delegate their powers of budget implementation in accordance with the conditions laid down by this Regulation and by their internal rules and within the limits which they lay down in the instrument of delegation. Those

so empowered may act only within the limits of the powers expressly conferred upon them.

Article 52

(Initial proposal: Article 49)

All financial actors shall be prohibited from taking any measures of budget implementation which may bring their own interests into conflict with those of the Communities. Should such a case arise, the actor in question must refrain from such measures and refer the matter to the competent authority.

CHAPTER 2

METHODS OF IMPLEMENTATION

Article 53

(Initial proposal: Article 50)

1. The Commission shall implement the budget:

- (a) on a centralised basis;
- (b) by shared or decentralised management; or
- (c) by joint management with international organisations.

2. Where the Commission implements the budget on a centralised basis, implementation tasks shall be performed either directly by its departments or indirectly, in accordance with the provisions of Articles 54 to 57.

3. Where the Commission implements the budget by shared management, implementation tasks shall be entrusted to Member States in accordance with the provisions of Titles I and II of Part Two.

4. Where the Commission implements the budget by decentralised management, implementation tasks shall be entrusted to third countries in accordance with the provisions of Title IV of Part Two.

5. In cases of shared or decentralised management, in order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance of accounts procedures or financial correction mechanisms which enable it to assume its responsibility for the implementation of the budget in accordance with Article 274 of the EC Treaty.

6. In the methods of budget implementation referred to in paragraphs 3 and 4, the Member States and third countries shall conduct regular checks to ensure that the actions to be financed from the Community budget have been implemented correctly.

They shall take appropriate measures to prevent irregularities and fraud and if necessary shall bring prosecutions to recover funds wrongly paid.

7. Where the Commission implements the budget by joint management, certain implementation tasks shall be entrusted to international public-sector organisations as specified in the implementing rules.

These organisations shall, in their accounting, audit, control and procurement procedures, apply standards which offer guarantees equivalent to internationally accepted standards.

Article 54

(Initial proposal: Article 51)

1. The Commission may not entrust to third parties the executive powers it enjoys under the Treaties where they involve a large measure of discretion implying political choices. The implementing tasks entrusted must be clearly defined and supervised.

2. Within the limits laid down in paragraph 1, the Commission may, when implementing the budget on a centralised basis and indirectly under Article 53(2), entrust tasks of public authority and in particular budget implementation tasks to:

- (a) agencies governed by Community law, referred to in Article 55, hereinafter: 'executive agencies';
- (b) bodies set up by the Communities as referred to in Article 190;
- (c) national public-sector bodies or bodies with a public-service mission guaranteed by the State.

3. Where the bodies referred to in paragraph 2 perform implementation tasks, they shall conduct regular checks to ensure that the actions to be financed from the budget have been implemented correctly.

Such bodies shall take appropriate measures to prevent irregularities and fraud and if necessary bring prosecutions to recover funds lost, wrongly paid or incorrectly used.

Article 55

(Initial proposal: Article 52)

1. The executive agencies shall be set up by Commission decision. They shall be legal persons under Community law to which powers can be delegated to implement all or part of a Community programme or project on behalf of the Commission and under its responsibility.

2. The conditions and arrangements for the creation and operation of these executive agencies shall be defined in such

a way that the Commission retains control of implementation and can monitor their operation.

Article 56

(Initial proposal: Article 53)

1. Decisions entrusting executive tasks to the bodies referred to in Article 54(2) shall include all appropriate arrangements for ensuring the transparency of operations carried out and must comprise:

- (a) transparent, non-discriminatory procurement and grant award procedures which prevent any conflicts of interest;
- (b) an effective internal control system for management operations;
- (c) accounting arrangements for these operations and procedures for the presentation of the accounts which will enable the correct use of Community funds to be ascertained and the true extent of this use to be reflected in the Community accounts;
- (d) an independent external audit.

2. The Commission may accept that the audit, accounting and procurement systems of the national bodies referred to in Article 54(2)(c) are equivalent to its own, with due account for internationally accepted standards.

3. The Commission shall ensure periodic supervision, evaluation and control of the implementation of the tasks entrusted.

Article 57

(Initial proposal: Article 54)

1. The Commission may not entrust measures of implementation of funds deriving from the budget, in particular payment and recovery, to external private-sector entities or bodies, other than those which have a public-service mission guaranteed by the State under Article 54(2)(c).

2. The tasks which may be entrusted by contract to external private-sector entities or bodies other than those which have a public-service mission guaranteed by the State are technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgment.

CHAPTER 3

FINANCIAL ACTORS

Section 1

Principle of separation of duties

Article 58

(Initial proposal: Article 55)

The duties of authorising officer and accounting officer shall be separated.

Section 2

Authorising officer

Article 59

(Initial proposal: Article 56)

1. The institution shall perform the duties of authorising officer.
2. Each institution shall lay down in its internal rules the staff of an appropriate level to whom it delegates the duties of authorising officer, the scope of the powers delegated and the possibility for the persons to whom these powers are delegated to subdelegate them.
3. The powers of authorising officer shall be delegated or subdelegated only to persons covered by the Staff Regulations.
4. Authorising officers by delegation or subdelegation may act only within the limits set by the instrument of delegation or subdelegation.

Article 60

(Initial proposal: Article 57)

1. The authorising officer shall be responsible in each institution for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with.
2. To implement expenditure, the authorising officer by delegation and by subdelegation shall make budget commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminaries for the implementation of appropriations.
3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.

4. The authorising officer by delegation shall put in place, in compliance with the minimum standards adopted by each institution and having due regard to the risks associated with the management environment and the nature of the actions financed, the organisational structure and the internal management and control procedures suited to the performance of his duties. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. Initiation and verification of an operation shall be separate functions.

5. All staff responsible for controlling the management of financial operations must have the necessary professional skills. They shall respect a specific code of professional standards established by each institution.

6. Any member of staff involved in the financial management and control of transactions who considers that a decision he is required by his superior to apply or to agree to is irregular or contrary to the principles of sound financial management shall inform the authorising officer by delegation in writing and, if the latter fails to take action, the panel referred to in Article 66(3). In the event of any illegal activity, fraud or corruption which may harm the interests of the Community, he shall inform the authorities and bodies designated by the applicable legislation.

7. The authorising officer by delegation shall report to his institution on the performance of his duties in the form of an annual activity report covering the results of the operations by reference to the objectives set, the risks associated with these operations and the use made of the resources provided. The authorising officer by delegation shall submit to his institution the annual activity report, together with financial and management information.

Section 3

Accounting officer

Article 61

(Initial proposal: Article 58)

1. Each institution shall appoint an accounting officer who shall be responsible in each institution for:
 - (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
 - (b) preparing and presenting the accounts in accordance with Title VII;
 - (c) keeping the accounts in accordance with Title VII;
 - (d) laying down, in accordance with Title VII, the accounting rules and methods and the chart of accounts;

(e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information;

(f) treasury management.

2. The accounting officer shall obtain from authorising officers, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the Communities' assets and of budget implementation.

3. Save as otherwise provided in this Regulation, the accounting officer is alone empowered to manage monies and other assets. He shall be responsible for their safekeeping.

Article 62

(New)

The accounting officer may, in the performance of his duties, delegate certain tasks to subordinates subject to the Staff Regulations.

The instrument of delegation shall lay down the tasks entrusted to the delegates.

Section 4

Imprest administrator

Article 63

(Initial proposal: Article 59)

For the payment of small sums and for the collection of revenue other than own resources, imprest accounts may be set up which shall be endowed by the institution's accounting officer and shall be placed under the responsibility of imprest administrators designated by the institution's accounting officer.

CHAPTER 4

LIABILITY OF THE FINANCIAL ACTORS

Section 1

General rules

Article 64

(Initial proposal: Article 60)

1. Without prejudice to any disciplinary action, authorising officers by delegation and subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.

2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily

or definitively from his duties by the authority which appointed him.

3. Without prejudice to any disciplinary action, imprest administrators may at any time be suspended temporarily or definitively from their duties by the authority which appointed them.

Article 65

(Initial proposal: Articles 61 and 62(1))

1. The provisions of this chapter are without prejudice to the criminal-law liability which the persons referred to in Article 64 may incur as provided in the applicable national law and in the provisions in force on the protection of the European Communities' financial interests and on the fight against corruption involving officials of the European Communities or officials of Member States.

2. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, without prejudice to Articles 67 and 68.

Section 2

Rules applicable to authorising officers by delegation and subdelegation

Article 66

(Initial proposal: Article 62(2) and (3))

1. An authorising officer by delegation or subdelegation who considers that a decision which it is his responsibility to take is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to take the decision in question, the authorising officer may not be held liable.

2. In the event of subdelegation, the authorising officer by delegation continues to be responsible for the effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation.

3. Each institution shall set up a specialised financial irregularities panel which shall determine whether a financial irregularity has occurred and what the consequences, if any, should be.

On the basis of the opinion of this panel, the institution shall decide whether to initiate proceedings entailing liability to disciplinary action or to payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer by delegation and to the internal auditor.

Section 3

Rules applicable to accounting officers and imprest administrators

Article 67

(Initial proposal: Article 63)

An accounting officer may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- (a) he loses or damages monies, assets and documents in his keeping;
- (b) he alters bank accounts or postal giro accounts;
- (c) he recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- (d) he fails to collect revenue due.

Article 68

(Initial proposal: Article 64)

An imprest administrator may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- (a) he loses or damages monies, assets and documents in his keeping;
- (b) he cannot provide proper supporting documents for the payments he has made;
- (c) he makes payments to persons other than those entitled;
- (d) he fails to collect revenue due.

CHAPTER 5

REVENUE OPERATIONS

Section 1

Making available of own resources

Article 69

(Initial proposal: Article 65)

An estimate of revenue constituted by own resources, as referred to in the Council Decision on the system of the Communities' own resources, shall be entered in the budget

in euros. It shall be made available in accordance with the Council Regulation implementing that Decision.

Section 2

Estimate of amounts receivable

Article 70

(Initial proposal: Article 66)

1. An estimate of the amount receivable shall first be made by the authorising officer responsible in respect of any measure or situation which may give rise to or modify an amount owing to the Communities.

2. By way of derogation from paragraph 1, no estimate of the amount receivable shall be made before Member States make available to the Commission the amounts of own resources defined in the Council Decision on the system of the Communities' own resources which are paid at fixed intervals by the Member States. The authorising officer responsible shall issue a recovery order in respect of these amounts.

Section 3

Establishment of amounts receivable

Article 71

(Initial proposal: Article 67)

1. Establishment of an amount receivable is the act by which the authorising officer by delegation or subdelegation:

- (a) verifies that the debt exists;
- (b) determines or verifies the reality and the amount of the debt;
- (c) verifies the conditions in which the debt is due.

2. The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due must be established by a debit note sent to the debtor followed by a recovery order to the accounting officer, both drawn up by the authorising officer responsible.

3. Amounts wrongly paid shall be recovered.

4. The conditions in which interest on late payment is due to the Communities shall be laid down in the implementing rules.

Section 4

Authorisation of recovery

Article 72

(New)

1. The authorisation of recovery is the act whereby the authorising officer by delegation or subdelegation responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he has established.

2. The institution may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable within the meaning of Article 256 of the EC Treaty and Article 92 of the ECSC Treaty.

Section 5

Recovery

Article 73

(Initial proposal: Article 68)

1. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. He shall exercise due diligence to ensure that the Communities receive their revenue and shall see that their rights are safeguarded.

The accounting officer shall recover amounts by offsetting them against equivalent claims that the Communities have on any debtor who himself has a claim on the Communities that is certain, of a fixed amount and due.

2. Where the responsible authorising officer by delegation is planning to waive recovery of an established amount receivable, he shall ensure that the waiver is in order and complies with the principle of sound financial management and the criteria laid down in the implementing rules. The waiver decision must be substantiated. The authorising officer may delegate the decision only as laid down in the implementing rules.

Article 74

(Initial proposal: Article 69)

Revenue received by way of fines, periodic penalty payments and other penalties and any accrued interest shall not be finally recorded as budget revenue as long as the decisions imposing them may be annulled by the Court of Justice.

The first paragraph shall not apply to decisions on clearance of accounts or financial corrections.

CHAPTER 6

EXPENDITURE OPERATIONS

Article 75

(New)

1. Every item of expenditure shall be committed, validated, authorised and paid.

2. The commitment of the expenditure shall be preceded by a financing decision adopted by the institution or the authorities to which powers have been delegated by the institution.

Section 1

Commitment of expenditure

Article 76

(Initial proposal: Article 70)

1. The budget commitment is the operation reserving the appropriation necessary to cover subsequent payments to honour a legal commitment.

The legal commitment is the act whereby the authorising officer responsible enters into an obligation with regard to third parties which may result in expenditure being charged to the budget.

The budget commitment and the legal commitment shall be adopted by the same authorising officer, save in duly substantiated cases as provided for in the implementing rules.

2. The budget commitment is individual when the beneficiary and the amount of the expenditure are known.

The budget commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

The budget commitment is provisional when it is intended to cover the expenditure referred to in Article 151 or routine administrative expenditure and either the amount or the final beneficiaries are not definitively known.

3. Budget commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the basic act so provides and for administrative expenditure. Where the budget commitment is thus divided into annual instalments, the legal commitment shall stipulate this, except in the case of expenditure on staff.

*Article 77**(Initial proposal: Article 71)*

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budget commitment before entering into a legal obligation with third parties.

2. Subject to the special provisions of Title IV of Part Two, global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year N+1.

Subject to Article 76(3) and Article 183(2), individual legal commitments relating to individual or provisional budget commitments shall be concluded by 31 December of year N.

At the end of the periods referred to in the first and second subparagraphs, the unused balance of these budget commitments shall be decommitted by the authorising officer responsible.

The amount of each individual legal commitment adopted following a global commitment shall, prior to signature, be registered by the authorising officer responsible in the budget accounts and booked to the global commitment.

3. The legal commitments entered into for actions extending over more than one financial year and the corresponding budget commitments shall, save in the case of staff expenditure, have a final date for implementation set in compliance with the principle of sound financial management.

Any parts of such commitments which have not been executed six months after that date shall be decommitted in accordance with Article 11.

*Article 78**(Initial proposal: Article 72)*

When adopting a budget commitment, the authorising officer responsible shall ensure that:

- (a) the expenditure has been charged to the correct item in the budget;
- (b) the appropriations are available;
- (c) the expenditure conforms to the relevant provisions, in particular of the budget and regulations, and of all acts adopted in accordance with the Treaties and regulations;
- (d) the principle of sound financial management is complied with.

*Section 2***Validation of expenditure***Article 79**(Initial proposal: Article 73)*

Validation of expenditure is the act whereby the authorising officer responsible:

- (a) verifies the existence of the creditor's entitlement;
- (b) determines or verifies the reality and the amount of the claim;
- (c) verifies the conditions in which payment is due.

*Section 3***Authorisation of expenditure***Article 80**(Initial proposal: Article 74)*

Authorisation of expenditure is the act whereby the authorising officer responsible, by issuing a payment order, instructs the accounting officer to pay an item of expenditure which he has validated.

*Section 4***Payment of expenditure***Article 81**(Initial proposal: Article 75)*

1. Payment shall be made on production of proof that the relevant action has been carried out in accordance with the provisions of the basic act or the contract and shall cover one of the following operations:

- (a) payment of the entire amount due;
- (b) payment of the amount due in any of the following ways:
 - (i) pre-financing, which may be divided into a number of payments;
 - (ii) one or more interim payments;
 - (iii) payment of the balance of the amounts due.

2. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 1 at the time they are made.

*Article 82**(Initial proposal: Article 76)*

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

Section 5**Time-limits for expenditure operations***Article 83**(Initial proposal: Article 77)*

The validation, authorisation and payment of expenditure must be completed within the time-limits laid down in the implementing rules, which shall also specify the circumstances in which creditors paid late are entitled to receive default interest charged to the line from which the principal was paid.

CHAPTER 7**IT SYSTEMS***Article 84**(Initial proposal: Article 79)*

Where revenue and expenditure operations are managed by means of computer systems, documents may be signed by a computerised or electronic procedure.

CHAPTER 8**INTERNAL AUDITOR***Article 85**(Initial proposal: Article 80)*

Each institution shall appoint an internal auditor responsible for providing the institution with guarantees, in accordance with the relevant international standards, concerning the proper operation of budget implementation systems and procedures. The internal auditor may be neither authorising officer nor accounting officer.

*Article 86**(Initial proposal: Article 81)*

1. The internal auditor shall advise his institution on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

He shall be responsible:

(a) for assessing the suitability and effectiveness of internal management systems and the performance of departments

in implementing policies, programmes and actions by reference to the risks associated with them;

(b) for assessing the suitability and quality of the internal control systems applicable to every budget implementation operation.

2. The internal auditor shall perform his duties on all the institution's activities and departments. He shall enjoy full and unlimited access to all information required to perform his duties.

3. The internal auditor shall report to the institution on his findings and recommendations. The institution shall ensure that action is taken on recommendations resulting from audits.

*Article 87**(Initial proposal: Article 82)*

Special rules applicable to the internal auditor shall be laid down by the institution and shall be such as to guarantee that he is independent in the performance of his duties.

The internal auditor shall assume responsibility for action taken in the performance of his duties as laid down in the Staff Regulations and spelt out in the implementing rules.

TITLE V**PROCUREMENT****CHAPTER 1****GENERAL PROVISIONS****Section 1****Scope and award principles***Article 88**(Initial proposal: Article 83)*

1. Public contracts are contracts for pecuniary interest concluded in writing by a contracting authority within the meaning of Articles 103 and 168, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.

These contracts comprise:

(a) building contracts;

(b) supply contracts;

(c) works contracts;

(d) service contracts.

2. This Title does not relate to grants.

Article 89

(Initial proposal: Article 84)

1. All public contracts financed in whole or in part by the budget shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination.

2. All procurement contracts shall be put out to tender on the broadest possible base, except when use is made of the negotiated procedure referred to in Article 91(1)(d).

Section 2

Publication

Article 90

(Initial proposal: Article 85)

1. All contracts exceeding the thresholds provided for in Article 104 or Article 168 shall be published in the *Official Journal of the European Communities*.

Contract notices shall be published in advance except in the cases referred to in Article 91(2) and for the service contracts referred to in the implementing rules.

Publication of certain information after the contract has been awarded may be dropped where it would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between them.

2. Contracts with a value below the thresholds provided for in Article 104 or Article 168 shall be advertised as appropriate.

Section 3

Procurement procedures

Article 91

(Initial proposal: Articles 86 and 87)

1. Procurement procedures shall take one of the following forms:

- (a) the open procedure;
- (b) the restricted procedure;
- (c) contests;
- (d) the negotiated procedure.

2. For contracts where the value exceeds the thresholds provided for in Article 104 or Article 168, use of the negotiated procedure shall be authorised only in the cases provided for in the implementing rules.

The first subparagraph shall not apply to the service contracts referred to in the implementing rules.

3. The thresholds below which the contracting authority may either use a negotiated procedure or, by way of derogation from the first subparagraph of Article 88(1), simply pay costs against invoices shall be determined in the implementing rules.

Article 92

(Initial proposal: Article 87(4))

A full, clear and precise description of the subject of the contract must be given in the documents relating to the call for tenders

Article 93

(Initial proposal: Article 88)

1. Candidates or tenderers shall be excluded from participation in a procurement procedure if:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

2. Candidates or tenderers must certify that they are not in one of the situations listed in paragraph 1.

Article 94

(Initial proposal: Article 89)

Contracts may not be awarded to candidates or tenderers who, during the procurement procedure:

- (a) are subject to a conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the contract procedure or fail to supply this information.

Article 95

(Initial proposal: Article 90)

Administrative or financial penalties may be imposed by the contracting authority on candidates or tenderers who are in one of the cases of exclusion provided for in Articles 93 and 94, after they have been given the opportunity to present their observations.

These penalties may consist:

- (a) in the exclusion of the candidate or tenderer concerned from contracts and grants financed by the budget, for a maximum period of five years;
- (b) in the payment of financial penalties by the contractor in the case referred to in Article 93(1)(f) and by the candidate or tenderer in the cases referred to in Article 94 where they are really serious and without exceeding the value of the contract in question.

The penalties imposed shall be in proportion to the seriousness of the misconduct.

Article 96

(Initial proposal: Article 91)

1. The selection criteria for evaluating the capability of candidates or tenderers and the award criteria for evaluating the content of the tenders shall be defined in advance and set out in the call for tender.

2. Contracts may be awarded by the automatic award procedure or by the best-value-for-money procedure.

Article 97

(Initial proposal: Article 92)

1. The arrangements for submitting tenders shall ensure that there is genuine competition and that the contents of tenders remain confidential until they are all opened simultaneously.

2. The contracting authority may require tenderers, as provided in the implementing rules, to lodge a security in

advance as a guarantee that the bids made will not be withdrawn.

3. With the exception of the contracts involving small amounts referred to in Article 91(3), applications and tenders shall be opened by an opening board appointed for this purpose. Any tender or application declared by the board not to satisfy the conditions laid down shall be rejected.

4. All applications or tenders declared by the opening board to satisfy the conditions laid down shall be evaluated, on the basis of the selection and award criteria laid down in the documents relating to the call for tenders, by a committee appointed for this purpose with a view to proposing to whom the contract should be awarded.

Article 98

(Initial proposal: Article 93)

While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers must satisfy conditions ensuring transparency and equal treatment. They may not lead to amendment of the conditions of the contract or the terms of the original tender.

Article 99

(Initial proposal: Article 94)

1. The authorising officer shall decide to whom the contract is to be awarded, in compliance with the selection and award criteria laid down in advance in the documents relating to the call for tenders and the procurement rules.

2. The contracting authority shall notify all candidates or tenderers whose applications or tenders are rejected of the grounds on which the decision was taken, and all tenderers whose tenders are admissible and who make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

Article 100

(Initial proposal: Article 95)

The contracting authority may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

The decision must be substantiated and be brought to the attention of the candidates or tenderers.

Section 4

Guarantees and control

Article 101

(Initial proposal: Article 96)

The contracting authority may, as provided in the implementing rules, require contractors to lodge a guarantee in advance in order to:

- (a) ensure full performance of the contract,
- (b) limit the financial risks connected with payment of pre-financing.

Article 102

(New, Article 84(3) of the initial proposal)

Where the award procedure or performance of the contract is vitiated by substantial errors or irregularities or by fraud, the institutions shall suspend performance of the contract.

Where such errors, irregularities or fraud are attributable to the contractor, the institutions may in addition refuse to make payments or may recover amounts already paid, in proportion to the seriousness of the errors, irregularities or fraud.

CHAPTER 2

PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY THE COMMUNITY INSTITUTIONS ON THEIR OWN ACCOUNT

Article 103

(Initial proposal: Article 97)

The Community institutions shall be deemed to be contracting authorities in the case of contracts awarded on their own account.

Article 104

(Initial proposal: Article 98)

Subject to Title IV of Part Two of this Regulation, the Directives of the European Parliament and of the Council on the coordination of procedures for the award of public service, supply and works contracts shall lay down the thresholds which determine:

- (a) the publication arrangements referred to in Article 90;
- (b) the choice of procedures referred to in Article 91;

- (c) the corresponding time-limits.

Article 105

(Initial proposal: Article 99)

Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has ratified a special agreement with the European Communities in the field of public procurement under the conditions laid down in that agreement.

Article 106

(Initial proposal: Article 100)

Where the Plurilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the contracts shall also be open to nationals of the States which have ratified this agreement, under the conditions laid down in that agreement.

TITLE VI

GRANTS

CHAPTER 1

SCOPE

Article 107

(Initial proposal: Article 101)

1. Grants are direct financial contributions, by way of donation, from the budget in order to finance:

- (a) either an action intended to help achieve an objective forming part of a European Union policy;
- (b) or the functioning of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy.

They shall be covered by a written agreement.

2. The following shall not constitute grants within the meaning of this Title:

- (a) expenditure on the institutions' staff, loans and share-holdings, and procurement contracts;
- (b) EAGGF Guarantee and Structural Funds expenditure referred to in Articles 149(1) and 156(1) and aid paid as macrofinancial assistance.

CHAPTER 2

AWARD PRINCIPLES*Article 108**(Initial proposal: Article 102)*

1. The award of grants is subject to the principles of transparency and equal treatment. They may not be cumulative or awarded retrospectively and they must involve co-financing.
2. The grant may not have the purpose or effect of producing a profit for the beneficiary.

*Article 109**(Initial proposal: Article 103)*

1. Grants shall be subject to an annual programme, to be published at the start of the year, with the exception of crisis management aid and humanitarian aid operations.

This work programme shall be implemented through the publication of calls for proposals except in cases of urgency or where the characteristics of the beneficiary leave no other choice for a given action.

2. All grants awarded in the course of a financial year shall be published annually with due observance of the requirements of confidentiality and security.

*Article 110**(Initial proposal: Article 104)*

1. One action may give rise to the award of only one grant from the budget to any one beneficiary.
2. A beneficiary may be awarded only one operating grant from the budget per financial year.

*Article 111**(Initial proposal: Article 105)*

1. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the agreement is signed.

In such cases, expenditure eligible for financing may not have been incurred prior to the date of submission of the grant application, save in duly substantiated exceptional cases as provided for in the legal basis or for the expenditure necessary for the proper implementation of crisis management

aid or humanitarian aid operations as laid down in the implementing rules.

No grant may be awarded retrospectively for actions already completed.

2. The agreement on an operating grant may not be signed more than four months after the start of the beneficiary's budget year. Expenditure eligible for financing may not have been incurred before the grant application was lodged or before the start of the beneficiary's budget year.

*Article 112**(Initial proposal: Article 106)*

1. The grant may not finance the entire costs of the action, subject to Title IV of Part Two.

The grant may not finance the entire operating expenditure of the beneficiary body.

2. When operating grants are renewed, they shall be gradually decreased.

The legal basis may, however, allow exceptions to the first subparagraph for bodies pursuing an objective of general European interest.

CHAPTER 3

AWARD PROCEDURE*Article 113**(Initial proposal: Article 108)*

1. Grant applications submitted in writing by legal persons shall be eligible.

By way of exception, depending on the nature of the action or the objective pursued by the applicant, the legal basis may provide that natural persons may receive grants.

2. Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 93 and 94.

Applicants must certify that they are not in one of the situations listed in Article 93.

3. Administrative and financial penalties may be imposed by the authorising officer, as provided in Article 95, on applicants who are excluded under paragraph 2.

*Article 114**(Initial proposal: Article 107)*

1. The selection criteria shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.

2. The award criteria shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

*Article 115**(Initial proposal: Article 109)*

1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, by an evaluation committee set up for that purpose, with a view to determining which proposals may be financed.

2. The authorising officer responsible shall then draw up the list of beneficiaries and the amounts approved.

3. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the institution shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria already announced.

CHAPTER 4

PAYMENT AND CONTROL*Article 116**(Initial proposal: Article 110)*

The pace of payments shall be determined by the financial risks involved, the duration and progress of the action or the costs incurred by the beneficiary.

*Article 117**(Initial proposal: Article 111)*

The authorising officer responsible may require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

*Article 118**(Initial proposal: Article 112)*

1. The amount of the grant shall not become final until after the institution has accepted the final reports and accounts, without prejudice to subsequent checks by the institution.

2. Should the beneficiary fail to comply with his legal or contractual obligations, the grant shall be suspended and may

then be reduced or terminated after the beneficiary has been given the opportunity to make his observations.

CHAPTER 5

IMPLEMENTATION*Article 119**(Initial proposal: Article 113)*

1. Where implementation of the action requires the award of procurement contracts by the beneficiary, the award shall be subject to the principles set out in Title V of this Part.

2. In cases of joint management the Commission shall ensure that the principles of transparency and non-discrimination are complied with in the procurement procedures applied by the international organisations.

3. Each grant agreement shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all contractors and subcontractors who have received Community funds.

TITLE VII

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

PRESENTATION OF THE ACCOUNTS*Article 120**(Initial proposal: Article 115)*

The Community accounts shall comprise:

- (a) the financial statements of the institutions as set out in Article 125 and those of the bodies referred to in Article 190;
- (b) the consolidated financial statements which present in aggregated form the financial information contained in the financial statements of the institutions and bodies referred to in point (a);
- (c) the reports on implementation of the budget of the institutions and the budgets of the bodies referred to in Article 190;
- (d) the consolidated reports on implementation of the budget which present in aggregated form the information contained in the reports referred to in point (c).

*Article 121**(New)*

The accounts of the institutions and bodies referred to in Article 190 shall be accompanied by a report on budgetary and financial management during the year.

*Article 122**(New, taken in part from Article 116(1) of the initial proposal)*

The accounts must comply with the rules and be accurate and comprehensive and present a true and fair view:

- (a) as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities and cash flow;
- (b) as regards reports on budget implementation, of revenue and expenditure operations.

*Article 123**(New, taken from Article 116(2) of the initial proposal)*

The financial statements shall be drawn up in accordance with the generally accepted accounting principles, namely:

- (a) going concern basis;
- (b) prudence;
- (c) consistent accounting methods;
- (d) comparability of information;
- (e) materiality;
- (f) no netting;
- (g) substance over form;
- (h) accrual-based accounting.

*Article 124**(New)*

1. In accordance with the principle of accrual-based accounting, the financial statements shall show the charges and income for the financial year, regardless of the date of payment or collection.
2. The value of assets and liabilities shall be determined in accordance with the valuation rules provided for in Article 132.
3. The annex to the financial statements shall present the entitlements and commitments which do not appear in the

balance sheet and which may have a material influence on the net assets, the financial situation or the outturn of the institutions concerned or of any of the bodies referred to in Article 190.

*Article 125**(Initial proposal: Article 115)*

1. The financial statements shall be presented in millions of euro and shall comprise:

- (a) the balance sheet and the economic outturn account, which represent the assets and liabilities and financial situation and the economic outturn at 31 December of the previous year; they shall be presented in accordance with the structure laid down by the Council Directive on the annual accounts of certain types of companies, but with account being taken of the specific nature of the Communities' activities;
- (b) the cash-flow table showing amounts collected and disbursed during the year and the final treasury position;
- (c) the statement of changes in capital presenting in detail the increases and decreases during the year in each item of the capital accounts.

2. The annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1.

*Article 126**(Initial proposal: Article 115(3))*

The budget implementation reports shall be presented in millions of euro. They shall comprise:

- (a) the budget outturn account, which sets out all budget operations for the year in terms of revenue and expenditure; the structure in which it is presented shall be the same as that of the budget itself;
- (b) the annex to the budget outturn account, which shall supplement and comment on the information given in that account.

*Article 127**(Initial proposal: Article 117)*

1. The accounting officers of the other institutions and bodies referred to in Article 190 shall send to the Commission's accounting officer by 1 March of the following year at the latest their provisional accounts together with the report on budgetary and financial management during the year.

2. The Commission's accounting officer shall consolidate the provisional accounts and shall send to the Court of Auditors, by 31 March of the following year at the latest, the provisional accounts of each institution and body referred to in Article 190 together with the provisional consolidated accounts.

He shall also send the report on budgetary and financial management of each institution and body referred to in Article 190 to the European Parliament, the Council and the Court of Auditors by the same date.

Article 128

(Initial proposal: Article 118)

1. The Court of Auditors shall, by 15 June at the latest, make its observations on the provisional accounts of each institution and body referred to in Article 190 so that they can make the corrections considered necessary for drawing up the final accounts.

2. Each institution and body referred to in Article 190 shall draw up its final accounts and send them to the Commission's accounting officer by 31 July of the following year at the latest with a view to drawing up the final consolidated accounts.

3. After approving the final consolidated accounts, the Commission shall send them to the European Parliament, the Council and the Court of Auditors by 15 September of the following year at the latest.

4. The final consolidated accounts shall be published in the *Official Journal of the European Communities* together with the statement of assurance given by the Court of Auditors in accordance with Article 248 of the EC Treaty, Article 45c of the ECSC Treaty and Article 160c of the Euratom Treaty by 31 October of the following year.

CHAPTER 2

INFORMATION ON THE IMPLEMENTATION OF THE BUDGET

Article 129

(Initial proposal: Article 119)

In addition to the statements provided for in Articles 125 and 126, the Commission shall report to the European Parliament and the Council twice a year on budget guarantees and the corresponding risks.

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

Article 130

(New — formerly Article 78)

1. In addition to the statements provided for in Articles 125 and 126, the Commission shall send once a month to the European Parliament and the Council figures, aggregated at chapter level at least, on the implementation of the budget, both for revenue and for expenditure against all appropriations.

These figures shall also provide details of the utilisation of appropriations carried over.

The figures shall be sent within ten working days following the end of each month;

2. Three times a year, within the thirty working days following 31 May, 31 August and 31 December, to the European Parliament and the Council a report on implementation of the budget, covering both revenue and expenditure broken down by chapter, article and item.

This report shall also provide details of the utilisation of appropriations carried over from previous financial years.

CHAPTER 3

ACCOUNTING

Section 1

Common provisions

Article 131

(Initial proposal: Article 120)

1. The institution's accounting system is the system serving to organise the budgetary and financial information in such a way that figures can be input, filed and registered.

2. The accounts shall consist of general accounts and budget accounts. These accounts shall be kept in euro on the basis of the calendar year.

3. The figures in the general accounts and the budget accounts shall be adopted at the close of the budget year so that the accounts referred to in Chapter 1 can be drawn up.

4. Notwithstanding paragraphs 2 and 3, the authorising officer by delegation may keep analytical accounts.

5. For management purposes the Commission may set up allocation accounts.

Article 132

(New, taken from Article 120(2) of the initial proposal)

1. The Commission's accounting officer shall, after consulting the accounting officers of the other institutions and bodies referred to in Article 190, adopt the accounting rules and methods and the harmonised chart of accounts to be applied by all the institutions and all the bodies referred to in Article 190.

2. When adopting the rules and methods referred to in paragraph 1, the Commission's accounting officer shall be guided by the generally accepted accounting standards for the public sector but may depart from them where justified by the specific nature of the Communities' activities.

Section 2

General accounts

Article 133

(Initial proposal: Article 120(3))

The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the institutions and bodies referred to in Article 190.

Article 134

(New, taken from Article 120(5) of the initial proposal)

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.

2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.

3. The accounting system must be such as to leave a trail for all accounting entries.

Article 135

(New, taken from Article 121(2) of the initial proposal)

The accounting officer shall, after the close of the budget year and up to the date of presentation of the accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts which complies with the rules.

Section 3

Budget accounts

Article 136

(New, taken from Article 120(4) of the initial proposal)

1. The budget accounts provide a detailed record of budget implementation.

2. For the purposes of paragraph 1 the budget accounts shall record all budget revenue and expenditure operations provided for in Title IV of Part One.

CHAPTER 4

PROPERTY INVENTORIES

Article 137

(Initial proposal: Article 122)

1. Each institution and body referred to in Article 190 shall keep inventories showing the quantity and value of all the Communities' tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

Each institution and body referred to in Article 190 shall check that entries in the inventory correspond to the actual situation.

2. The sale of movable property shall be suitably advertised.

TITLE VIII

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

EXTERNAL AUDIT

Article 138

(Initial proposal: Article 123)

The Court of Auditors shall conduct the audit of accounts provided for by Article 248 of the EC Treaty, Article 45 of the ECSC Treaty and Article 180 of the Euratom Treaty.

Article 139

(Initial proposal: Article 124)

1. The European Parliament, the Council and the Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to Articles 9, 13, 18, 22, 23, 26 and 36.

2. The institutions shall send to the Court of Auditors any internal rules they adopt in respect of financial matters.

3. The Court of Auditors shall be informed of the appointment of authorising officers, internal auditors, accounting officers and imprest administrators and of delegation decisions under Articles 51, 61, 62, 63 and 85.

Article 140

(Initial proposal: Article 125)

1. The audit carried out by the Court of Auditors shall be based on records and, if necessary, performed on the spot. Its purpose shall be to establish that all revenue has been received and all expenditure incurred in a lawful and proper manner having regard to the provisions of the Treaties, the budget, this Regulation and all other acts adopted pursuant to the Treaties. It shall also establish that the financial management has been sound. The audit in the Member States shall be carried out in conjunction with the national audit institutions or, where they do not have the necessary powers, with the national departments responsible.

2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 142, all documents and information relating to the financial management of the departments or bodies subject to its audit. It has the power to make enquiries of any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to those departments or bodies.

In order to obtain all the necessary information for the performance of the task entrusted to it by the Treaties or the acts adopted pursuant to them, the Court of Auditors may be present, at its request, during the audit operations carried out within the framework of the implementation of the budget by, or on behalf of, any Community institution.

At the request of the Court of Auditors, each institution shall authorise financial institutions holding Community deposits to enable the Court of Auditors to ensure that external data tally with the accounts.

3. In order to perform its task, the Court of Auditors shall notify the institutions and authorities to which this Regulation applies of the names of the members of its staff who are empowered to audit them.

Article 141

(Initial proposal: Article 126)

The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by

the depositories or against official memoranda of cash and securities held. It may carry out such checks itself.

Article 142

(Initial proposal: Article 127)

1. The Commission, the other institutions, the bodies administering revenue or expenditure on the Communities' behalf and the national audit institutions or, where they do not have the necessary powers, the national departments responsible and the final beneficiaries of payments from the budget shall afford the Court of Auditors all the facilities and give it all the information which the Court of Auditors considers necessary for the performance of its task. They shall place at the disposal of the Court of Auditors all documents concerning the award and performance of contracts financed by the Community budget and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts of departments, which the Court of Auditors considers necessary for auditing the budgetary and financial outturn report on the basis of records or on the spot and, for the same purposes, all documents and data created or stored on a magnetic medium.

The first subparagraph shall also apply to natural or legal persons receiving payments from the Community budget.

2. The officials whose operations are checked by the Court of Auditors shall:

(a) show their records of cash in hand, any other cash, securities and materials of all kinds, and also the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto;

(b) present the correspondence and any other document required for the full implementation of the audit referred to in Article 140(1).

The information supplied under point (b) of the first subparagraph may be requested only by the Court of Auditors.

3. The Court of Auditors shall be empowered to audit the documents in respect of the revenue and expenditure of the Communities which are held by the departments of the institutions and, in particular, by the departments responsible for decisions in respect of such revenue and expenditure, the bodies administering revenue or expenditure on the Communities' behalf and the natural or legal persons receiving payments from the budget.

The national audit institutions or, where they do not have the necessary powers, the national departments responsible shall provide the Court of Auditors, at its request, with all the information they possess on operations financed or co-financed by the Communities and on the management and control of these operations.

4. The task of establishing that the revenue has been received and the expenditure incurred in a lawful and proper manner and that the financial management has been sound shall extend to the utilisation, by bodies outside the institutions, of Community funds received by way of grants.

5. Community financing paid to beneficiaries outside the institutions shall be subject to the agreement in writing by the beneficiaries or, failing agreement on their part, by the contractors or subcontractors, to an audit by the Court of Auditors into the use made of the financing granted.

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

7. Use of integrated computer systems may not have the effect of reducing the access of the Court of Auditors to the supporting documents.

Article 143

(Initial proposal: Article 128)

1. The annual report of the Court of Auditors provided for in Article 248(4) of the EC Treaty, Article 45c(4) of the ECSC Treaty and Article 160c(4) of the Euratom Treaty shall be governed by the provisions of paragraphs 2 to 7 of this Article.

2. The Court of Auditors shall transmit to the Commission and the institutions concerned, by 15 June at the latest, any observations which are, in its opinion, such that they should appear in the annual report. These observations must remain confidential. Each institution shall address its reply to the Court of Auditors by 30 September at the latest. The replies of institutions other than the Commission shall be sent to the Commission at the same time.

3. The Commission shall inform Member States without delay of the Court of Auditors' observations on the management of Community funds for which they are responsible under the rules applicable whenever the Member States referred to are identified in those observations.

4. The Member States shall reply to the Commission by 31 August at the latest. The Commission shall transmit the reply, accompanied by its comments to the Court of Auditors, by 30 September.

5. The annual report shall contain an assessment of the soundness of financial management.

6. The annual report shall contain a section for each institution. The Court of Auditors may add any summary report or general observations which it sees fit to make.

The Court of Auditors shall take all necessary steps to ensure that the replies of each institution to its observations are published immediately after the observations to which they relate.

7. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other institutions, by 31 October at the latest, its annual report accompanied by the replies and shall ensure publication thereof in the *Official Journal of the European Communities*.

Article 144

(Initial proposal: Article 129)

At the same time as the annual report referred to in Article 143, the Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

Article 145

(Initial proposal: Article 130)

1. In addition to the annual report, the Court of Auditors may also, at any time, submit observations, in the form of special reports, on specific questions. It may also deliver opinions at the request of any of the institutions.

2. The Court of Auditors shall notify the institution concerned of all observations which are, in its opinion, such that they should appear in a special report. These observations must remain confidential.

The institution concerned shall have two and a half months within which to inform the Court of Auditors of any comments it wishes to make on the observations in question.

The Court of Auditors shall adopt the definitive version of the special report in question the following month.

Where the observations referred to in the first subparagraph concern the management of Community funds for which the Member States are responsible under the relevant rules, the Commission shall send the special report to the Member States identified.

The Member States shall send their replies to the Commission within one and a half months of the presentation of the observations in question. The Commission shall, without delay, transmit these replies to the Court of Auditors together with its remarks.

The Court of Auditors shall adopt the definitive version of the special report in question the following month.

The special reports, together with the replies of the institutions concerned or the Member States in question, shall be transmitted without delay to the European Parliament and the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.

Should the Court of Auditors decide to have any such special reports published in the *Official Journal of the European Communities*, they shall be accompanied by the replies of the institutions concerned or of the Member States in question.

3. The opinions referred to in paragraph 1 which do not relate to proposals or drafts covered by the legislative consultation procedure may be published by the Court of Auditors in the *Official Journal of the European Communities*. The Court of Auditors shall take its decision on publication after consulting the institution which requested the opinion or which is concerned by it. Opinions published shall be accompanied by any remarks by the institutions concerned.

CHAPTER 2

DISCHARGE

Article 146

(Initial proposal: Article 131)

1. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2 give a discharge to the Commission in respect of the implementation of the budget for year N.

2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Commission of the reasons for the postponement.

3. If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

Article 147

(Initial proposal: Article 132)

1. The discharge decision shall cover the accounts of all the Communities' revenue and expenditure, the resulting balance and the assets and liabilities of the Communities shown in the balance sheet. It shall include an assessment of the responsibility of the Commission in budgetary management over the financial year in question.

2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements referred to in Article 275 of the EC Treaty, Article 78d of the ECSC Treaty, and Article 179a of the Euratom Treaty. It shall also examine the annual report made by the Court of Auditors together with the replies of the institutions under audit, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

3. The Commission shall submit to the European Parliament, at the latter's request, any information required for the control of the implementation of the budget of the year in question. Access to confidential information and the arrangements for handling it shall comply with fundamental

human rights, the protection of business secrecy, the provisions governing judicial and disciplinary proceedings and the interests of the Union.

Article 148

(Initial proposal: Article 133)

1. In accordance with Article 276 of the EC Treaty, Article 78g of the ECSC Treaty and Article 180b of the Euratom Treaty, the Commission and the other institutions shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.

2. At the request of the European Parliament or the Council, the institutions shall report on the measures taken in the light of these observations and comments, and, in particular, on the instructions they have given to those of their departments which are responsible for the implementation of the budget. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on these observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions shall also be transmitted to the Court of Auditors.

PART TWO

SPECIAL PROVISIONS

TITLE I

EUROPEAN AGRICULTURAL GUIDANCE AND GUARANTEE FUND, GUARANTEE SECTION

Article 149

(Initial proposal: Article 134)

1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules relating to the EAGGF Guarantee Section and to revenue, save as otherwise provided in this Title.

2. Operations managed directly by the Commission shall be implemented in accordance with the rules laid down in Parts One and Three.

Article 150

(Initial proposal: Article 135)

1. For each financial year, the budget of the EAGGF Guarantee Section shall include equal amounts of commitment appropriations and payment appropriations.

2. Payment appropriations not used at the end of the financial year shall be carried over automatically to the following year only to cover earlier commitments.

3. Payment appropriations which have been carried over but which have not been used by the end of the financial year shall be cancelled.

Article 151

(Initial proposal: Article 136)

1. The Commission shall reimburse the expenditure incurred by the Member States.

2. The Commission decisions fixing the amounts of these payments shall constitute global provisional commitments, which may not exceed total appropriations entered in the EAGGF Guarantee Section, less any assigned revenue.

3. As from 15 November, routine management expenditure for the EAGGF Guarantee Section may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one half of the total corresponding appropriations for the current financial year. They may apply only to expenditure for which the principle is laid down in an existing legal base.

Article 152

(Initial proposal: Article 137)

1. Expenditure effected by the authorities and bodies referred to in the rules relating to the EAGGF Guarantee Section shall, within two months following receipt of the statements sent in by Member States, be the subject of a commitment by chapter, article and item. Save where payment has not yet been made by the Member States or where eligibility is in doubt, the amounts shall be charged as payments within the same time-limit.

This budget commitment shall be deducted from the global provisional commitment referred to in Article 151.

2. Global provisional commitments which have been made for a financial year and which have not given rise to commitment on specific lines in the budget nomenclature by 1 February of the following financial year shall be cancelled in respect of the original financial year.

3. Paragraphs 1 and 2 shall apply subject to the clearance of accounts.

Article 153

(Initial proposal: Article 138)

Expenditure shall be booked to the accounts for a financial year on the basis of the repayments made by the Commission to the Member States by 31 December of the year concerned at the latest, provided that the payment order has reached the accounting officer by 31 January of the following financial year at the latest.

Article 154

(Initial proposal: Article 139)

1. Where the Commission may transfer appropriations pursuant to Article 23, it shall take its decision by 31 January of the following financial year at the latest and shall inform the budgetary authority thereof.

2. In cases other than those referred to in paragraph 1, the Commission shall submit transfer proposals to the budgetary authority by 10 January of the following financial year at the latest.

The budgetary authority shall take decisions on such transfers in accordance with the procedure provided for in Article 24, but within a time-limit of three weeks.

Article 155

(Initial proposal: Article 140)

Assigned revenue under this Title shall be assigned as an overall amount either to appropriations for the EAGGF Guarantee Section for financing expenditure on the common agricultural policy or to appropriations for the EAGGF Guarantee Section for financing rural development and accompanying measures.

TITLE II

STRUCTURAL FUNDS

Article 156

(Initial proposal: Article 141)

1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the regulations governing the Structural Funds, the Cohesion Fund and the pre-accession structural and agricultural measures and to their revenue, save as otherwise provided in this Title.

2. Operations managed directly by the Commission shall also be implemented in accordance with the rules laid down in Parts One and Three of this Regulation.

3. The pre-accession structural and agricultural measures may be managed on a decentralised basis as provided in Article 165.

Article 157

(Initial proposal: Article 142)

1. Payment by the Commission of financial contributions from the Funds shall be made in accordance with the regulations referred to in Article 156.

2. The time-limit for interim payments by the Commission shall be laid down in accordance with the regulations referred to in Article 156.

3. The treatment of repayments by the Member States of prefinancing payments and the implications for the amount of contributions from the Funds shall be governed by the regulations referred to in Article 156.

Article 158

(Initial proposal: Article 143)

The Commission shall automatically decommit appropriations that have been committed as provided for in the regulations referred to in Article 156.

The decommitted appropriations may be made available again in the event of a manifest error attributable solely to the Commission or in the case of *force majeure* which has serious repercussions for the implementation of operations supported by the Structural Funds.

To this end, the Commission shall examine decommitments made during the previous financial year and decide, by 15 February of the current year, on the basis of requirements, whether it is necessary to make the corresponding appropriations available again.

Article 159

(Initial proposal: Article 144)

With regard to the operational expenditure referred to in this Title, the Commission may make transfers from one title to another, provided that the appropriations in question are for the same objective, within the meaning of the regulations referred to in Article 156.

Article 160

(Initial proposal: Article 145)

Aspects concerning the management and selection of projects and audit shall be governed by the regulations referred to in Article 156.

TITLE III

RESEARCH

Article 161

(Initial proposal: Article 146)

1. Parts One and Three shall apply to the research and technological development appropriations, save as otherwise provided in this Title.

These appropriations shall be entered either in one of the budget titles relating to the policy area research by direct or indirect action or in a chapter relating to research activities in another title.

They shall be used by implementation of the actions listed in the implementing rules.

2. With regard to the operational expenditure referred to in this Title, the Commission may make transfers from one title to another, provided that the appropriations are used for the same purpose.

3. Experts paid from the research and technological development appropriations shall be recruited in accordance with the procedures laid down by the Council when it adopts each research framework programme.

Article 162

(Initial proposal: Article 147)

1. The Joint Research Centre (JRC) may receive funding charged to appropriations entered outside the titles and the chapters referred to in Article 161(1) in respect of its participation on a competitive or negotiated basis in Community activities financed in whole or in part from the general budget.

2. The appropriations relating to the activities in which the JRC participates on a competitive basis shall be treated as assigned revenue within the meaning of Article 18. The commitment appropriations generated by this revenue shall be made available as soon as the amount receivable has been estimated.

The utilisation of these appropriations shall be shown in a set of analytical accounts in the budget outturn account for each category of action to which it relates; it shall be separate from revenue originating from financing by third parties (public or private) and from revenue from other services carried out by the Commission for third parties.

3. The rules on procurement in Title V of Part One shall not apply to the activities of the JRC on behalf of third parties.

4. By way of derogation from Article 23, the Commission may, within the budget title relating to the policy area direct action research, make transfers between chapters of up to 15 % of the appropriation on the line from which the transfer is made.

TITLE IV

EXTERNAL ACTIONS

CHAPTER 1

GENERAL PROVISIONS

Article 163

(Initial proposal: Article 148)

1. Parts One and Three shall apply to external actions financed from the budget, save as otherwise provided in this Title.

2. The appropriations for the actions referred to in paragraph 1 shall be used by the Commission:

- (a) either by autonomous decision;
- (b) or under agreements concluded with one or more beneficiary third countries;
- (c) or under agreements with the international organisations referred to in Article 53.

CHAPTER 2

IMPLEMENTATION OF ACTIONS

Article 164

(Initial proposal: Article 149)

The actions referred to in this Title may be implemented either on a centralised basis by the Commission or on a decentralised basis by the beneficiary third country or countries, or jointly with international organisations.

Article 165

(Initial proposal: Article 150)

1. Under the decentralised management arrangements, the Commission may decide to entrust management of certain actions to the authorities of beneficiary third countries, after having established that the beneficiary third country or countries are in a position, in the management of Community funds, to apply at least the following criteria to be specified according to the degree of decentralisation agreed:

- (a) effective separation of the duties of authorising officer and accounting officer;
- (b) existence of an effective system for the internal control of management operations;
- (c) separate procedures for the presentation of accounts showing the use made of Community funds;
- (d) existence of an independent external audit system;
- (e) transparent, non-discriminatory procurement procedures ruling out all conflicts of interest.

2. The beneficiary country must undertake to comply with Article 53(6).

Article 166

(Initial proposal: Article 151)

The implementation of actions by beneficiary third countries or international organisations is subject to scrutiny by the

Commission. Such scrutiny shall be exercised either by prior approval, by *ex post* checks or by a combined procedure.

Article 167

(Initial proposal: Article 152)

1. Actions carried out shall give rise to:

- (a) a financing agreement drawn up between the Commission, acting for the Communities, and the beneficiary third country or countries or the bodies they have designated, hereinafter: 'the beneficiaries'; or
- (b) a contract or grant agreement with a national or international public-sector bodies or natural or legal persons responsible for carrying out the actions.

The contracts and agreements provided for in the first subparagraph shall lay down the terms on which the external aid shall be managed by the contractor.

2. Financing agreements with beneficiary third countries shall be concluded by 31 December of year N+1 at the latest, year N being the one in which the budget commitment was made. The individual contracts and agreements which implement such financing agreements shall be concluded by 31 December of year N+3 at the latest, year N being the one in which the budget commitment was made. Individual contracts and agreements relating to audit and evaluation may be concluded later.

CHAPTER 3

PROCUREMENT

Article 168

(Initial proposal: Article 153)

1. The provisions of Article 56 and of Chapter 1 of Title V of Part One relating to the general provisions on procurement shall be applicable to contracts covered by this Title subject to the special provisions relating to thresholds and the arrangements for awarding external contracts laid down in the implementing rules. The contracting authorities for the purposes of this Chapter shall be:

- (a) the Commission on behalf of and for the account of one or more beneficiaries;
- (b) the beneficiary or beneficiaries;
- (c) a national or international public-sector body or natural or legal persons who have signed a financing agreement or grant agreement with the Commission for the implementation of an external action.

2. The procurement procedures must be laid down in the financing agreements or grant agreements referred to in Article 167.

Article 169

(Initial proposal: Article 154)

1. Participation in tendering procedures shall be open on equal terms to all persons coming within the scope of the Treaties and, in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned, to all natural and legal persons who are nationals of the beneficiary third countries or of any other third country expressly mentioned in those instruments.

2. In duly substantiated exceptional cases, it may be decided, on the basis of the specific conditions laid down in the basic instruments governing cooperation, to allow nationals of third countries other than those referred to in paragraph 1 to tender for contracts.

CHAPTER 4

AWARD OF GRANTS

Article 170

(Initial proposal: Article 155)

An action may be financed in full by the budget if this is essential for it to be carried out.

CHAPTER 5

AUDITING OF ACCOUNTS

Article 171

(Initial proposal: Article 156)

Each financing agreement or grant agreement must expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Community funds, subject to Article 56(2).

TITLE V

EUROPEAN OFFICES

CHAPTER 1

GENERAL PROVISIONS

Article 172

(Initial proposal: Article 157)

1. 'European offices' for the purposes of this Title are the bodies set up to perform specific cross-cutting tasks on behalf of one or more institutions.

2. This Title shall also apply to the European Anti-Fraud Office.

3. Parts One and Three shall apply to the operation of the European offices, save as otherwise provided in this Title.

Article 173

(Initial proposal: Article 158)

1. The appropriations for each European office, the total amount of which shall be entered in a special budget line within the section of the budget relating to the Commission, shall be set out in detail in an annex to that section.

The annex shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.

The appropriations entered in that annex shall cover all the financial requirements of each European office in the performance of its duties on behalf of the institutions.

2. Each European office's establishment plan shall be annexed to that of the Commission.

3. The Director of each European office shall take decisions on transfers within the annex provided for in paragraph 1. The Commission shall inform the budgetary authority of such transfers.

4. Each European office's accounts shall form an integral part of the Communities' accounts referred to in Article 120.

Article 174

(Initial proposal: Article 159)

The Commission shall, in respect of the appropriations entered in the annex for each European office, delegate the powers of authorising officer to the Director of the European office in question and shall set the limits and conditions for this delegation of powers.

Article 175

(Initial proposal: Article 160)

1. Each interinstitutional European office shall draw up analytical accounts of its expenditure, enabling the proportion of its services supplied to each of the institutions to be determined. Its Management Committee shall lay down the criteria on which the accounting system shall be based.

2. The remarks concerning the specific budget line on which is entered the total appropriation for each interinstitutional European office shall show an estimate of the cost of services supplied by the office to each of the institutions. This shall be based on the analytical accounts provided for in paragraph 1.

3. Each interinstitutional European office shall notify the institutions concerned of the results of the analytical accounts.

Article 176

(Initial proposal: Article 161)

1. The Management Committee of each European office shall lay down the detailed rules for the implementation of this Title.

2. Should the remit of a European office involve supplies to third parties for pecuniary interest, the Management Committee shall lay down the specific provisions governing how these supplies are to be made and the keeping of the corresponding accounts.

CHAPTER 2

EUROPEAN ANTI-FRAUD OFFICE

Article 177

(Initial proposal: Article 162)

Chapter 1 shall apply to the operation of the European Anti-Fraud Office (OLAF), save as otherwise provided in this Chapter.

Article 178

(Initial proposal: Article 163)

The Commission shall, at the request of the Director of OLAF, make transfers within the annex provided for in Article 173(1). The Commission shall inform the budgetary authority of such transfers.

Article 179

(Initial proposal: Article 164)

1. The Commission shall delegate to the Director of OLAF the powers of authorising officer in respect of the appropriations entered in the annex to the Commission Section relating to OLAF and shall set the limits and conditions for this delegation of powers.

2. The Director of OLAF shall be authorised to subdelegate his powers to staff covered by the Staff Regulations.

Article 180

(Initial proposal: Article 165)

The provisions of Article 175(1), (2) and (3) and those of Article 176(2) shall not apply to the European Anti-Fraud Office (OLAF).

TITLE VI

ADMINISTRATIVE APPROPRIATIONS

Article 181

(Initial proposal: Article 166)

Parts One and Three shall apply to administrative appropriations, save as otherwise provided in this Title.

Article 182

(Initial proposal: Article 167)

1. As from 15 November of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the appropriations on the corresponding budget line for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.

2. Expenditure which must be paid in advance, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year.

Article 183

(Initial proposal: Article 168)

1. For each financial year the amount of the commitment appropriations contained in the budget shall be equal to that of the payment appropriations.

2. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.

PART THREE

TRANSITIONAL AND FINAL PROVISIONS

TITLE I

TRANSITIONAL PROVISIONS

Article 184

(Initial proposal: Article 169)

The section of the budget relating to the Commission shall, as a transitional measure, contain within the appropriations for the EAGGF Guarantee Section a monetary reserve, for which the entry, utilisation and financing conditions are determined by the Council Regulation on budgetary discipline and the Council Decision on the system of the Communities' own resources and by the provisions adopted for implementing the latter.

Article 185

(Initial proposal: Article 170)

The EAGGF Guarantee appropriations for rural development and accompanying measures shall remain subject to Article 150 until the end of the period covered by the financial perspective, that is until 31 December 2006.

Until that date, appropriations not committed and the corresponding payment appropriations may be carried over, to the following financial year only, up to a maximum of 3 % of the appropriations for the title concerned. Such carryover shall be possible only if the commitment appropriations earmarked on the relevant lines in the budget for the following year will not make it possible to make good the shortfall in implementation of the rural development programmes in relation to the level decided the previous year. The carryover decision shall be taken, at the latest on 15 February of the year to which the carryover is being made, by the Commission, which shall inform the budgetary authority.

Article 186

(New)

1. The classification of Commission expenditure according to purpose as provided for in Article 41(2) shall apply for the first time in respect of budget year 2004.

For budget year 2003 the Commission section shall comprise:

- (a) a part A devoted to expenditure on the institution's staff and administrative operation;
- (b) a part B devoted to operational expenditure made up of several sub-sections depending on requirements.

2. The time-limits referred to in Articles 127(2), 128(4) and 143(2), (4) and (7) shall apply for the first time in respect of budget year 2005.

For earlier years these time-limits shall be:

- (a) 1 May for Article 127(2),
- (b) 15 July for Article 128(1),
- (c) 15 September for Article 128(2),
- (d) 15 October for Article 128(3),
- (e) 30 November for Article 128(4),
- (f) 15 July and 31 October for Article 143(2),
- (g) 30 September and 31 October for Article 143(4),
- (h) 30 November for Article 143(7).

The provisions of Title VII of Part One shall apply gradually depending on technical possibilities in order to be fully effective for the budget year 2005.

TITLE II

FINAL PROVISIONS

Article 187

(Initial proposal: Article 171)

The European Parliament and the Council shall be empowered to demand any information or explanations regarding budgetary matters within their competence.

Article 188

(Initial proposal: Article 172)

In consultation with the European Parliament and the Council and after the other institutions have delivered their opinions, the Commission shall adopt rules for implementing this Regulation.

All the institutions shall deliver their opinions within three months after the Commission has sent its draft regulation laying down the rules for implementing the Financial Regulation. If no reply is received within this time, the opinion shall be deemed to be favourable.

The Commission shall definitively adopt the regulation laying down the rules for implementing the Financial Regulation within three months after receiving the last opinion or, if no opinion is received, within three months of expiry of the time-limit set in the second paragraph.

Article 189

(Initial proposal: Article 173)

Every three years, or whenever it is necessary to do so, the European Parliament and the Council shall examine this Regulation in the light of a proposal from the Commission.

Any regulations amending this Regulation shall be adopted by the Council after recourse to the conciliation procedure, if the European Parliament or the Council so requests. The procedure shall be initiated if the Council intends to depart from the opinion adopted by the European Parliament.

The conciliation shall take place in a 'conciliation committee' consisting of the Council and representatives of the European Parliament. The Commission shall participate in the work of the conciliation committee.

The aim of the conciliation procedure shall be to seek agreement between the European Parliament and the Council. The procedure should normally take place over a period not exceeding three months, unless the instrument in question must be adopted by a specific date or if the matter is urgent, in which case the Council may set an appropriate time-limit.

When the positions of the two institutions are sufficiently close, the European Parliament may give a new opinion, after which the Council shall take definitive action.

Article 190

(Initial proposal: Article 174)

1. The Commission shall draw up, on the basis of this Regulation, a framework financial regulation for the bodies set up by the Communities and having legal personality which may receive grants from the budget.

The financial rules of these bodies may not depart from the framework regulation except where their specific operating needs so require and with the Commission's prior consent.

The framework regulation shall be adopted after the European Parliament, the Council and the Court of Auditors have been consulted. These institutions shall give their opinions on the draft regulation within three months after the Commission has transmitted the draft regulation. If no reply is received within this time, the opinion shall be deemed to be favourable.

2. Discharge for the implementation of the budgets of the bodies referred to in the first subparagraph of paragraph 1 shall be given by the European Parliament.

3. The Commission's internal auditor shall exercise the same powers over the bodies referred to in the first subparagraph of paragraph 1 as he does in respect of Commission departments.

4. The bodies referred to in the first subparagraph of paragraph 1 shall apply the accounting rules set out in Article 132 so that their accounts can be consolidated with the Commission's accounts.

Article 191

(Initial proposal: Article 175)

The Financial Regulation of 21 December 1977 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the annex.

Article 192

(Initial proposal: Article 176)

This Regulation shall enter into force on the twentieth day following that of 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.
