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(Acts whose publication is not obligatory)

COUNCIL

FINANCIAL REGULATION

of 29 July 1991

applicable to development finance cooperation under the Fourth ACP-EEC Convention

(91/491/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Fourth ACP-EEC Convention, signed at Lomé on 15 December 1989, hereinafter referred to as 'the Convention',

Having regard to the Internal Agreement on the financing and administration of Community aid, signed in Brussels on 16 July 1990 ⁽¹⁾, hereinafter referred to as 'the Internal Agreement' and in particular Article 32 thereof,

Having regard to Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community ⁽²⁾,

Having regard to the General Regulations and General Conditions for Works, Supplies and Service Contracts financed by the European Development Fund ⁽³⁾ which were approved by the ACP/EEC Council of Ministers on 29 March 1990 (hereinafter referred to as 'the General Regulations and Conditions of Contract'),

Having regard to the draft Financial Regulation submitted by the Commission,

Having regard to the opinion of the European Parliament ⁽⁴⁾,

Having regard to the opinion of the European Investment Bank, hereinafter referred to as 'the Bank'.

Having regard to the opinion of the Court of Auditors ⁽⁵⁾,

Whereas, pursuant to Article 1 (1) of the Internal Agreement, the Member States have set up a Seventh European Development Fund, hereinafter referred to as 'the EDF';

Whereas, under Article 32 of the Internal Agreement, the provisions for implementing the Agreement shall be the subject of a Financial Regulation adopted, upon the entry into force of the Convention, by the Council acting by the qualified majority laid down in Article 21 (4) of the said Agreement;

Whereas the ecu used in application of this Financial Regulation is defined in Council Regulation (EEC) No 1971/89 of 19 June 1989 amending Article 1 of Council Regulation (EEC) No 3180/78 changing the value of the unit of account used by the European Monetary Cooperation Fund ⁽⁶⁾ or in any subsequent Council Regulation defining the composition of the ecu,

⁽¹⁾ OJ No L 229, 17. 8. 1991, p. 228.

⁽²⁾ OJ No L 263, 19. 9. 1991, p. 1.

⁽³⁾ OJ No L 382, 31. 12. 1990, p. 3.

⁽⁴⁾ OJ No C 158, 17. 6. 1991.

⁽⁵⁾ OJ No C 113, 29. 4. 1991, p. 1.

⁽⁶⁾ OJ No L 189, 4. 7. 1989, p. 1.

HAS ADOPTED THIS FINANCIAL REGULATION:

TITLE I

FINANCIAL AGREEMENTS

Article 1

1. The Council shall notify the Commission by 30 November each year of the decision which it adopts pursuant to the first subparagraph of Article 6 (1) of the Internal Agreement and which relates to the schedule of calls for contributions to the EDF.

2. Annual contributions to the EDF shall in principle be called up in four instalments payable on:

- 20 January,
- 1 April,
- 1 July,
- 1 October.

The Commission shall notify the Member States as soon as possible, and in any event at the beginning of each financial year, of the amount of the quarterly instalments of contributions to be paid on each of the due dates.

Supplementary contributions decided on by the Council in accordance with Article 6 (3) of the Internal Agreement shall, unless otherwise decided by the Council, be due and be made within as brief a period as possible which shall be laid down in the decision to call for such contributions and which may not in any case exceed three months.

3. The Commission shall inform the Member States as soon as possible before the date on which each instalment of contributions is due whether it intends to reduce or refrain from calling up the instalment after taking into account the actual cash situation of the EDF treasury and the most up-to-date available expenditure estimates for the remainder of the year.

4. Each Member State shall make the contributions referred to in this Article in proportion to its contributions to the EDF as fixed in Article 1 (2) of the Internal Agreement.

5. Where an instalment of contributions payable under this Article is not paid within 15 days of the due date, the Member State concerned shall be required to pay interest in respect of the amount not paid on the basis of a rate of two percentage points above the interest rate for short-term financing applicable on the date on which the instalment is due on the money market of the Member State for the ecu. This rate shall be increased by 0,25 of a percentage point for each month of delay. The increased rate shall be

applicable to the entire period of delay. Amounts received by the Commission in respect of such late payment interest shall be credited to the account provided for in Article 9 (2) of the Internal Agreement.

Article 2

1. The financial contributions of the Member States shall be expressed in ecus.

2. Each Member State shall pay the amount of its contribution in ecus.

3. Financial contributions shall be credited by each Member State to a special account entitled 'Commission of the European Communities — European Development Fund' opened with the bank of issue of that Member State or the financial institution designated by it. The amount of such contributions shall remain in these special accounts until required to meet payments needs provided for in Article 319 of the Convention.

4. Upon expiry of the Convention, that part of the contributions which the Member States remain obliged to make shall be called up by the Commission, as required on the conditions laid down in this Financial Regulation.

Article 3

1. In order to make payments provided for in Article 319 of the Convention, the Commission shall open accounts with financial institutions in the Member States. Subject to Article 319 (3) of the Convention, deposits in these accounts shall bear interest. Subject to Article 192 of the Convention, such interest shall be credited to the account provided for in Article 9 (2) of the Internal Agreement.

2. Payments from these accounts shall be made in accordance with Article 319 (4) and (5) of the Convention.

Article 4

The signatures of the Commission officials and agents who are empowered to carry out operations on the EDF's accounts shall be lodged with the banks concerned when the accounts are opened or, in the case of officials and agents who are authorized subsequently, when they are designated.

Article 5

1. EDF resources must be used in accordance with the principles of sound financial management, and in particular those of economy and cost effectiveness. Quantified objectives must be identified and the progress of their realization monitored.

2. The Commission shall, as far as possible, make any withdrawals from the special accounts referred to in Article 2 (3) in such a way as to maintain a distribution of its assets in those accounts corresponding to the proportions in which the various Member States contribute to the EDF.

Article 6

Payments from the EDF shall be effected in accordance with Article 319 of the Convention and in conformity with Article 51 of this Financial Regulation.

Article 7

The Commission shall transfer from the special accounts opened pursuant to Article 2 (3) amounts needed to replenish the accounts opened in its name in accordance with Article 3 of this Financial Regulation and with Article 319 of the Convention. Such transfers shall be made on the basis of the cash needs of the projects and programmes.

TITLE II

MANAGEMENT OF THE EDF

SECTION I

GENERAL PROVISIONS

Article 8

1. The EDF shall be administered financially in accordance with the principle that authorizing officers and accounting officers shall be different individuals. Appropriations shall be administered by authorizing officers, who alone shall have the power to enter into commitments regarding expenditure, establish sums due to be collected and issue recovery orders and payment orders.

2. Collection and payment operations shall be carried out by the accounting officer.

3. The duties of authorizing officer, financials controller and accounting officer shall be mutually incompatible.

Article 9

1. Within the limit of the appropriations provided for in Article 1 of the Internal Agreement together with any other revenue accruing to the EDF, the Commission shall, without prejudice to Article 10 (2) of that Agreement, manage the EDF on its own responsibility in accordance with the conditions laid down in the Convention, Decision 91/482/EEC, the Internal Agreement and this Financial Regulation.

2. The Commission may delegate part of the duties of the accounting officer and part of the responsibility for monitoring to authorized agents appointed by it. The rules

governing responsibilities adopted under this Title shall apply to such authorized agents within the limits of the powers delegated to them. Each decision to delegate powers shall state the duration and extend of the mandate.

3. Those to whom powers are delegated may act only within the limits of the powers expressly conferred upon them. Decisions to delegate powers shall be notified to those to whom powers are delegated, to the accounting officer, the financial controller, the authorizing officers and the Court of Auditors.

4. The principles of the provisions of this Financial Regulation relating to the monitoring and payment of expenditure shall be applicable to expenditure effected by delegation. Such expenditure may not be finally entered into the EDF accounts until the Commission has verified that the expenditure has been correctly cleared and that the authorization and payments are in order, in accordance with the requirements of this Financial Regulation.

Article 10

Where revenue and expenditure operations are managed by means of integrated computer systems, the provisions of Sections II and III of this Title shall apply with due allowance for the possibilities and requirements deriving from computerized management.

To this end:

- the supporting documents may remain with the authorizing officer or the accounting officer for the purposes of checking,
- signatures and approvals may be added in appropriate computerized form.

However, the financial controller may request the original supporting documents if he considers it necessary for the purposes of checking.

The financial controller must be consulted on the setting up of the EDF accounting system and shall have access to the data of the system.

Article 11

In accordance with Article 311 (1) of the Convention, the Commission shall appoint the chief authorizing officer of the EDF. He shall be responsible for the preparation of the revenue and expenditure accounts referred to in Article 69 of this Financial Regulation. He may have recourse to deputy authorizing officers, whom he shall appoint, subject to approval by the Commission.

Article 12

1. The Commission shall appoint the financial controller, who shall be responsible for monitoring the commitment and authorization of expenditure and for monitoring revenue. The financial controller may be assisted in his duties by one or more assistant financial controllers.

2. Monitoring shall be carried out by the financial controller by means of inspection of the files relating to expenditure and revenue and, if necessary, on the spot.

3. Special rules applicable to the financial controller shall be formulated in such a way as to ensure his independence in carrying out his duties. Measures taken concerning his appointment and promotion, disciplinary action or transfer, and the various procedures of interruption or termination of his appointment shall be the subject of reasoned decisions which shall be forwarded, for information, to the European Parliament, the Council and the Court of Auditors.

4. The person concerned and the Commission may institute proceedings before the Court of Justice. Where such an action concerns his independence, the financial controller may institute proceedings against his institution.

Article 13

The collection of revenue and the payment of expenditure shall be carried out by an accounting officer appointed by the Commission. Subject to Articles 9 (2) and 34 (3), the accounting officer alone shall be empowered to manage funds and assets. He shall be responsible for their care.

The accounting officer shall be responsible for maintaining the accounts, as provided for in Articles 36 and 37 and for the preparation of the financial statements provided for in Article 69.

He may be assisted in his duties either by one or more assistant accounting officers appointed under the same conditions as the accounting officer or by authorized agents designated by him under the authority of the Commission.

Article 14

The Court of Auditors shall be notified of the appointment of the authorizing officer, the financial controller, the accounting officer and the administrator of advance funds and of the accounting plan referred to in Article 37. The Commission shall forward to the Court any rules of procedure drawn up by it in respect of financial matters.

SECTION II

REVENUE

Article 15

1. All measures which may give rise to or modify a debt due to the EDF must be preceded by a proposal from the competent authorizing officer. Such proposals shall be sent to the financial controller for his approval and to the accounting officer for provisional recording in the accounts. They shall mention, in particular, the type of revenue, the estimated amount thereof and the budget item to which it is to be booked and also the name and description of the debtor. The purpose of the approval of the financial controller shall be to establish that:

- (a) the revenue is booked to the correct item;
- (b) the proposal is in order and conforms to the relevant provisions relating to the management of the EDF and all acts made in implementation thereof and to the principles of sound financial management referred to in Article 5.

The financial controller may withhold his approval if he considers that the conditions laid down in paragraph 1 (a) and (b) above have not been met.

The Commission may, by a decision stating the full reasons therefor, and on its sole responsibility, overrule this refusal. This decision shall be final and binding; it shall be communicated for information to the financial controller. The Commission shall inform the Court of Auditors of all such decisions within one month.

2. Without prejudice to the provisions of Article 10, the competent authorizing officer shall draw up, in respect of every debt established, a recovery order which shall be sent with supporting documents to the financial controller for his prior approval. Such recovery orders shall, after they have received the approval of the financial controller, be recorded in the accounts by the accounting officer.

The purpose of the approval shall be to establish that:

- (a) the revenue is booked to the correct item;
- (b) the order is in order and conforms to the relevant provisions;
- (c) the supporting documents are in order;
- (d) the debtor is correctly described;
- (e) the due date is indicated;
- (f) the order conforms to the principle of sound financial management referred to in Article 5;
- (g) the amount and currency of the sum to be recovered are correct.

If approval is withheld, the third subparagraph of paragraph 1 shall apply.

3. If the authorizing officer waives the right to recover an established debt, he shall send beforehand a proposal for cancellation to the financial controller for his approval and to the accounting officer for his information. The purpose of approval by the financial controller shall be to establish that the waiver is in order and conforms with the principles of sound financial management. The proposal concerned shall be registered by the accounting officer.

If approval is withheld, the third subparagraph of paragraph 1 shall apply.

4. Where the financial controller finds that a document establishing a debt has not been drawn up or that a sum due has not been recovered, he shall inform the Commission thereof.

Article 16

1. The accounting officer shall assume responsibility for recovery orders that have been duly drawn up.

2. The accounting officer shall do all in his power to ensure that EDF resources are recovered at the due dates indicated in the recovery orders and shall ensure that the rights of the Community are safeguarded.

3. The accounting officer shall inform the authorizing officer and the financial controller of any revenue not recovered within the time limits laid down. If necessary, he shall initiate the recovery procedure.

SECTION III

COMMITMENT, VALIDATION, AUTHORIZATION AND PAYMENT OF EXPENDITURE

1. Commitment of expenditure

Article 17

1. All measures which may give rise to expenditure payable by the EDF must be preceded by a proposal for commitment of expenditure from the authorizing officer. A provisional commitment may be entered into in respect of current expenditure.

2. Without prejudice to Article 34, decisions taken by the Commission in accordance with the provisions authorizing it to grant financial aid from the EDF shall constitute commitments of expenditure.

3. An account shall be kept of commitments and authorizations.

Article 18

Without prejudice to Article 10, proposals for commitments, accompanied by the supporting documents, shall be transmitted to the financial controller. They shall show in particular the purpose of the expenditure, the estimated amount involved, the item to which it is to be charged and the name and description of the creditor. They shall be registered by the authorizing officer after approval by the financial controller.

Article 19

1. The purpose of approval of proposals for commitment by the financial controller shall be to establish that:

- (a) the expenditure has been charged to the correct item;
- (b) appropriations are available;
- (c) the expenditure is correct and in conformity with the provisions applicable to the management of the EDF and with all measures taken in implementation of those provisions, in particular, the general and special conditions of the financing agreement relating to the operation;
- (d) the principles of sound financial management referred to in Article 5 have been applied.

2. Approval may not be conditional.

Article 20

1. The financial controller may withhold his approval if he considers that the conditions laid down in Article 19 are not met. If he withholds his approval, he shall furnish a written statement giving the reasons therefor. The authorizing officer shall be notified accordingly.

Where approval is withheld and the authorizing officer maintains his proposal, the refusal shall be referred for a decision to the Commission.

2. Except where the availability of appropriations is in doubt, the Commission may, by means of a decision stating the full reasons therefor and taken on its sole responsibility, overrule such a refusal. This decision shall be final and binding; it shall be communicated for information to the financial controller. The Commission shall inform the Court of Auditors of all such decisions within one month.

*2. Validation of expenditure**Article 21*

The validation of expenditure shall be the act whereby the authorizing officer:

- (a) verifies the existence of the creditor's claim;
- (b) determines or verifies the existence and the amount of the sum due;
- and
- (c) verifies the conditions under which payment falls due.

Article 22

1. Validation of any expenditure shall be subject to the submission of supporting documents showing the creditor's claim and, where appropriate, the service rendered or the existence of a document justifying payment. The Commission shall lay down the nature and contents of the supporting documents to be enclosed with the payment orders.

2. For certain categories of expenditure, advance may be granted under the conditions laid down by the Commission.

3. Supporting documents relating to the accounts and to the establishment of the revenue and expenditure account and the balance sheet referred to in Title V shall be kept for a period of five years following the date of the decision giving discharge in respect of the implementation of the EDF, referred to in Article 33 (3) of the Internal Agreement. However, documents relating to transactions not finally closed shall be kept beyond this period until the end of the year following the closure of the transactions concerned.

4. The authorizing officer empowered to validate expenditure shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done.

*3. Authorization of expenditure**Article 23*

Authorization is the act whereby the authorizing officer, by the issue of a payment order, authorizes the accounting officer to pay an item of expenditure which he has validated.

Article 24

The payment order shall state:

- (a) the item against which payment shall be charged;
- (b) the amount to be paid, in figures and in words, showing the currency;
- (c) the name and address of the payee;
- (d) the bank account;
- (e) the method of payment;
- (f) the purpose of the expenditure.

The payment order shall be dated and signed by the authorizing officer.

Article 25

1. The payment order shall be accompanied by the original supporting documents, which shall bear or be accompanied by the statement of the authorizing officer confirming that the amounts to be paid are correct and that the supplies have been received or the service performed. The payment order shall show the numbers and dates of the relevant approvals of commitment.

2. Copies of the supporting documents, certified as true copies by the authorizing officer or the Commission delegate, may, in duly warranted cases, be accepted in place of the originals.

Article 26

For payments by instalment, the first payment order shall be accompanied by documents establishing the creditor's claim to payment of the instalment in question. Subsequent payment orders shall refer to the supporting documents already furnished and repeat the reference number of the first payment order.

Article 27

Without prejudice to Article 10, payment orders shall be sent to the financial controller for prior approval. The purpose of this prior approval shall be to establish that:

- (a) the payment order was properly issued;
- (b) the payment order agrees with the commitment of expenditure and that the amount thereof is correct;
- (c) the expenditure is charged to the correct item;
- (d) the appropriations are available;
- (e) the supporting documents are in order;
- (f) the payee is correctly named and described.

Article 28

Should approval be withheld, the provisions of Article 20 shall apply.

Article 29

After approval, the original of the payment order, together with all supporting documents, shall be forwarded to the accounting officer.

4. Payment of expenditure*Article 30*

1. Without prejudice to Article 313 and 319 (8) of the Convention concerning respectively the responsibilities of the national authorizing officer and the financial liabilities of the agents responsible for the management and execution of development finance cooperation, payment is the final action whereby the EDF is discharged of its obligations towards its creditors.

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

Article 31

In event of a substantive error or of the validity of the discharge being contested or of failure to observe the formalities prescribed by this Financial Regulation, the accounting officer shall suspend payment.

Article 32

1. If payment is suspended, the accounting officer shall give the reasons for his decision in a written statement which he shall send forthwith to the authorizing officer and, for information, to the financial controller.

2. Except where the validity of the discharge is contested, the authorizing officer may, where payment is suspended, refer the matter to the Commission. The latter may require, in writing and on its own responsibility, that payment be effected.

Article 33

1. Payments shall, as a general rule, be effected through recognized financial institutions. The procedures for opening, administering and using such accounts shall be determined by the Commission.

2. Without prejudice to Article 10, these procedures shall in particular require two signatures on cheques and on transfer orders, one signature necessarily being that of the accounting officer, an assistant accounting officer or a duly authorized administrator of advance funds; the procedure shall, moreover, require the specification of the expenditure in respect of which payment must necessarily be made either by cheque or by transfer.

Article 34

1. For the payment of certain categories of expenditure, advance funds may be set up under the conditions laid down by the Commission.

2. Only the accounting officer may replenish the imprest accounts.

3. The rules governing the management of the advance funds shall cover in particular:

- (a) the appointment of administrators of advance funds;
- (b) the nature and maximum amount of each item of expenditure to be incurred;
- (c) the maximum amounts which may be advanced;
- (d) the procedures for the production of supporting documents and the time within which they must be produced;
- (e) the responsibility of the administrator of advance funds.

4. The authorizing officer and the accounting officer shall take the necessary steps towards clearing, in respect of the exact amounts and within the appropriate period, advances granted under the terms of Article 319 (2) of the Convention.

Article 35

The conversion rates to be used for the definitive accounting in ecus of payments made for the purpose of the projects or programme referred to in Title III of Part Three of the Convention shall be those applicable for the effective date of such payments. This date shall correspond to that on which the Commission accounts referred to in Article 319 of the Convention and in Article 3 of this Financial Regulation were debited.

SECTION IV

ACCOUNTS

Article 36

Accounts shall be kept in ecus by the double entry method and on the basis of the calendar year. They shall show all revenue and expenditure for the year and shall be substantiated by supporting documents. The financial statements provided for in Title V shall be drawn up in ecus. However, when debts or commitments are expressed in national currencies, the accounting system should make it possible, where necessary, for them to be recorded in national currencies as well as in ecus.

Article 37

1. Entries in the accounts shall be made on the basis of an accounting plan comprising a nomenclature of budgetary items which makes a clear distinction between the balance sheet and the revenue and expenditure accounts. These entries shall make it possible to draw up a general monthly balance and a statement of expenditure and revenue.

2. The detailed conditions for drawing up and operating the accounting plan shall be defined by the Commission.

Article 38

The accounts shall be closed at the end of the calendar year to enable the financial statements of the EDF to be drawn up. These shall be submitted to the financial controller.

SECTION V

**RESPONSIBILITIES OF AUTHORIZING OFFICERS,
FINANCIAL CONTROLLERS, ACCOUNTING OFFICERS
AND ADMINISTRATORS OF ADVANCE FUNDS***Article 39*

Without prejudice to Article 313 (1) (f) and 319 (8) of the Convention, authorizing officers who, when establishing

entitlements to be recovered, or issuing recovery orders, entering into commitments of expenditure or signing payment orders, do so without complying with this Financial Regulation, shall render themselves liable to disciplinary action, and where appropriate, to payment of compensation. The same shall apply if they omit to draw up a document establishing a claim or if they neglect to issue recovery orders or are, without justification, late in issuing them. The same shall also apply if they omit to issue payment orders or are, without justification, late in issuing them, thereby rendering the Commission liable to civil action by third parties.

Article 40

Financial controllers shall be liable to disciplinary action and, where appropriate, to payment of compensation for any action taken during their terms of office, in particular where they approve expenditure in excess of appropriations.

Article 41

1. The accounting officer and assistant accounting officers shall be liable to disciplinary action and, where appropriate, to payment of compensation as regards payments they make in disregard of Article 31.

They shall render themselves liable to disciplinary action and to payment of compensation as regards any loss or deterioration of the monies, assets and documents in their charge where such loss or deterioration was caused by intentional mistake or was due to serious negligence on their part.

Under the same conditions, they shall be responsible for the correct execution of orders received by them in respect of the use and administration of accounts held with recognized financial institutions and, in particular:

- (a) where the recoveries or payments made by them do not agree with the amounts on the corresponding recovery or payment orders;
- (b) where they effect payments to a party other than the entitled payee.

2. Administrators of advance funds shall be liable to disciplinary action and, where appropriate, to payment of compensation:

- (a) where they cannot show due warrant with proper documents for payments made by them;
- (b) where they effect payments to a party other than the entitled payee.

They shall be liable to disciplinary action and to payment of compensation in respect of any loss or deterioration of the monies, assets and documents in their charge where such loss or deterioration was caused by intentional mistake or was due to serious negligence on their part.

3. The accounting officer, assistant accounting officers and administrators of advance funds shall insure

themselves against any risk they may incur under this Article, and which cannot be covered by the guarantee fund provided for in paragraph 4.

The Commission shall cover the relevant insurance costs. It shall specify the categories of officials qualifying as accounting officers or administrators of advance funds and the terms on which it shall cover the insurance costs borne by these officials in order to protect themselves against the risks involved in their duties.

4. Special allowances shall be granted to accounting officers and administrators of advance funds. The amount of these allowance shall be determined by the Commission departments. The sums corresponding to these allowances shall be credited each month to an account opened by the Commission on behalf of each of these officials in order to establish a guarantee fund to cover any cash or bank shortage for which the person concerned might render himself liable, in so far as such shortage has not been covered by refunds from insurance companies.

The credit balance in these guarantee accounts shall be paid over to the persons concerned after they terminate their appointment as accounting officer or administrator of advance funds.

Article 42

The liability of authorizing officers, financial controllers, accounting officers, assistant accounting officers and administrators of advance funds to payment of compensation and disciplinary action may be determined in accordance with Articles 22 and 86 of the Staff Regulations of Officials of the European Communities.

Article 43

The Commission shall be allowed a period of two years from the date on which the financial statements are submitted to the Council to take a decision on the final discharge to be given to accounting officers for the transactions relating thereto.

TITLE III

IMPLEMENTING MEASURES

Article 44

Commitments of amounts from the EDF shall be decided on in accordance with the terms of the relevant provisions of the Convention following the procedures in Articles 21 to 27 of the Internal Agreement in respect of aid managed by the Commission and in Articles 28 and 29 of that Agreement for aid managed by the Bank.

loan, grace period, and arrangements for the utilization of funds provided by reimbursement of capital and interest. In fixing these terms, due regard will be paid to all relevant provisions of the Convention, and in particular, to Articles 233 (4) (b), 240 (1) (a) and 291.

2. No expenditure in excess of the amount provided for in the financing agreement may be charged to the EDF unless a decision has been taken to commit additional funds thereto under the conditions laid down in Articles 21 to 27 of the Internal Agreement and Article 61 of this Financial Regulation. The request for the commitment of additional funds shall be addressed to the Commission and appraised under the conditions laid down in Article 292 of the Convention.

SECTION I

EDF OPERATIONS ADMINISTERED BY THE COMMISSION

1. General

Article 45

1. Where aid accorded is onlent to the final borrower in accordance with Articles 219 (5), 233 (3) and 266 of the Convention, the financial agreement shall specify the terms of such lending, *inter alia* rates of interest, duration of

Article 46

1. The Commission, whether acting through its departments or its delegate, as appropriate, shall take all measures necessary to comply with Article 314 of the Convention.

2. Claims for delayed payments for which it is responsible by virtue of Article 319 of the Convention shall be borne by the Commission from the account provided for in Article 9 (2) of the Internal Agreement.

2. Tenders and contracts

Article 51

Article 47

1. The Commission shall take all appropriate measures to ensure the effective dissemination of information for the economic operators concerned, notably through periodical publication of forecasts of contracts to be financed from the resources of the EDF.

2. A similar procedure shall be followed in communicating decisions to intervene in respect of carrying out studies and supplying technical assistance.

Article 48

The Commission shall inform the Council each year of any contract concluded during that year. Where appropriate, it shall notify the Council of any measures it has taken or proposes to take to improve the terms of competition for participation in invitations to tender issued by the EDF.

In its report, the Commission shall provide the Council with information enabling it to assess whether the measures taken by the Commission have in fact given all undertakings of the various Member States, of the African, Caribbean and Pacific States (ACP) and of the associated countries and territories equal opportunity of access to works and supply contracts financed by the EDF.

Article 49

Within the framework of Articles 298 to 302 of the Convention and without prejudice to Article 293 of the Convention and Article 24 of the Internal Agreement, a favourable opinion of the EDF Committee shall be required prior to the placing of contracts by direct agreement or after restricted invitations to tender or where recourse is had to direct labour.

However, where they are justified by urgency and by unforeseen circumstances, the above exception to the rules governing competition may be authorized by the Commission without a prior opinion from the EDF Committee. In that event, the Commission shall immediately inform the EDF Committee thereof.

Article 50

The results of invitations to tender referred to in this section shall be published as soon as possible in the *Official Journal of the European Communities*.

1. Without prejudice to Article 20 (1) (c) of the Internal Agreement, the provisions of the General Regulations and Conditions of Contract shall apply to all tenders and contracts financed from the EDF. The payments arrangements and the currency of currencies of payment shall be specified in the wording of the relevant contracts.

2. The price offered in tenders for contracts financed by the EDF shall take into account the applicable tax arrangements provided for in Articles 308, 309 and 310 of the Convention.

3. Where payment is made in the currency of an ACP State, it must be made through a bank established in that State.

Where payment is made in ecus it must be made through the intermediary of an approved bank or agency established in a Member State.

3. Structural adjustment support

Article 52

1. Support for structural adjustment programmes provided under the Convention shall be implemented in accordance with Article 248 of the Convention and the following principles:

- integration of Community support in the framework of the programmes adopted by the ACP States, in particular where those programmes are supported by the main international donors,
- adaptation of Community aid, implemented through import programmes and the targeted and consistent use of counterpart funds, with sound budgetary management, to the specific priority needs to the ACP States as defined in Articles 226 and 244 of the Convention, in keeping with the detailed rules for implementation of those instruments as defined in those Articles,
- definition of operational procedures for the implementation of structural adjustment programmes in the relevant financing proposals and the corresponding financing agreements.

2. Contracts arising in the case of import programmes which take the form of provision of foreign exchange may be expressed in currencies other than those of ACP States or the ecu, such other currencies to include those of countries which are not Contracting Parties to the Convention.

3. On the occasion of each advance of funds provided in structural adjustment programmes, the Commission shall check regularity and conformity with respect to the justification of the use of funds and the rules applicable pursuant to Articles 246, 248 and 294 (1) (b) of the Convention and to Article 20 of the Internal Agreement.

4. Management of the export earnings stabilization system (Stabex)

Article 53

The annual resources available to the Stabex system provided for in Article 191 of the Convention shall be managed by the Commission in accordance with the following procedures:

- (i) half of each annual instalment shall be credit to the system on 1 April and 1 July respectively. However, the first half annual instalment in each year shall be reduced by the amount of any advances granted in the preceding year under Article 194 (1) of the Convention. Any sums due to the Stabex system in the calendar year in which the Convention came into force shall be transferred to the system on the date of entry into force of this Financial Regulation, with effect from the due dates laid down above;
- (ii) interest at the rate obtained on the liquid assets of the EDF shall be provided on the amounts of annual instalments credited to the Stabex system's resources as follows:
 - from 1 April each year on the amount of the first half of each annual instalment less any advance and transfers paid from the Stabex system's resources,
 - in like manner, from 1 July each year in respect of the second half of each annual instalment;
- (iii) any part of annual instalment which has not been advanced or transferred shall continue to bear interest which will be added to the Stabex system's resources until its utilization in the following year;
- (iv) the transfers referred to in Article 211 of the Convention shall be made in ecus into an interest-bearing bank account chosen by mutual agreement between the ACP State and the Commission. All interest accruing shall be credited to that account. All withdrawals from the account shall require two signatures, one being that of a person designated by the ACP State concerned, the other that of the Commission delegate.

The funds in the account, including interest, shall be mobilized in accordance with Article 186 (2) of the

Convention as the operations specified in the agreement on the use of the resources referred to in Article 210 of the Convention are implemented.

Article 54

Where advance use is made of the following year's instalment as provided for in Article 194 of the Convention, the advances referred to in Article 206 of the Convention shall be reduced proportionately.

Article 55

The quarterly report to the Member States on the cash situation of the EDF treasury, provided for in Article 1 (3), shall include information on the financial situation of the Stabex system.

Article 56

Wherever the calculation of the amount of a transfer or advance requires the conversion of statistics expressed in the national currency of the ACP State concerned, or of any other currency, into ecus, the exchange rate applicable shall be the average annual rate in force in the calendar year to which the statistics concerned refer.

SECTION II

AID MANAGED BY THE BANK

Article 57

The Bank shall forward to the Commission at the beginning of each quarter estimates of all amounts expected to be claimed from the EDF in that quarter in respect of risk capital and interest rebates.

1. Risk Capital

Article 58

1. Each decision to grant risk capital shall set a limit to the Community's commitment and financial responsibilities and, in the case of shareholdings, to the extent of the rights in the company to which such operations relate. The decision shall also take into account the provisions in Article 23 (2) of the Convention relating to responsibility for exchange-rate risks.

The instruments giving effect to risk-capital operations shall be concluded by the Bank acting as the Community's authorized agent.

2. The Bank, acting for and on behalf of the Community, shall manage the operations referred to in paragraph 1 which have been the subject of a financing decision by the Board of Directors of the Bank.

3. When each disbursement takes place, the Bank shall request the Commission to pay in ecus the amount of the risk capital disbursed. The Commission shall pay this amount within 21 days of receipt of the request for payment with the same value date as that of the disbursement by the Bank.

4. When the disbursement takes place in currencies other than the ecu, the exchange rates used to determine the amounts to be disbursed shall be those obtained by the Bank from the correspondent responsible for the exchange transaction.

The ecu exchange rates to be used by the borrower to calculate the amounts due in respect of products, income and reimbursements from risk capital operations shall be those in force one month before the date of payment.

5. Amounts due in respect of receipts, income and repayments relating to risk capital operations shall be collected by the Bank on behalf of the Community, in accordance with Article 59 of this Financial Regulation.

Article 59

The sums collected by the Bank in the form of products, revenue or repayments from risk-capital operations shall be credited to a special account opened on behalf of the Community for the Member States in proportion to their contributions to the EDF. The account shall be denominated in ecus and managed by the Bank in accordance with Article 9 (1) of the Internal Agreement. The Bank shall agree with the Member States on the information to be supplied concerning the account.

The technical procedures for the management of the account, including those relating to the fixing of the rates of interest on it, shall be decided upon by the Council and the Bank in agreement with the Commission.

2. Subsidized loans

Article 60

1. The aggregate amount of interest-rate subsidies on each loan from the Bank shall be calculated in ecus in

accordance with Article 235 of the Convention on the basis of the composite interest rate to be fixed in accordance with the procedures set out in paragraph 3 (iii).

2. On the signing of each loan contract, the Bank shall communicate to the Commission the estimated total amount of the interest rate subsidy expressed in ecus.

3. Upon the disbursement of each instalment of the loan, the Bank shall request the Commission to pay the interest subsidy relating to the instalment based on the following calculations:

- (i) the equivalent in ecus of the amounts of currencies in which the loan instalment was disbursed at the conversion rate for those currencies and the ecu as published in the *Official Journal of the European Communities* in operation on the date on which the amount of currencies to be disbursed is determined, which date shall be communicated to the Commission;
- (ii) application of the percentage rate of interest subsidy to the declining annual capital balance due at each repayment date;
- (iii) the present value of the interest subsidies relating to the loan disbursement. Calculation of the present value shall be made by reference to a composite discount rate equal to the annual interest rate(s) which the Bank would in fact receive in the currency or currencies used for the relevant disbursement of the loan if the loan did not benefit from an interest subsidy. The actual calculation of present value shall use this composite discount rate reduced by four-tenths of a percentage point.

4. The Commission shall pay in ecus the amount of subsidy, discounted in accordance with the procedures described in paragraph 3, within 21 days of receipt of the request for payment, the value date being that of the disbursement of the relevant loan instalment.

5. Where the whole of an interest subsidized loan is repaid in advance, the Bank shall pay to the Commission the total balance of the discounted subsidy, adjusted for the period between receipt and payment by the Bank, on the first contractual repayment date subsequent to the advance payment. Where only part of such a loan is repaid, the payment by the Bank to the Commission shall relate to that part of the loan which has been repaid.

6. The sums reimbursed to the Commission shall be added to the appropriations available for the financing of interest rate subsidies provided for in Article 4 of the Internal Agreement.

7. All payments provided for in this Article shall be made in ecus.

TITLE IV

EXECUTIVE AGENTS

1. The Chief Authorizing Officer

Article 61

1. The Chief Authorizing Officer of the EDF, referred to in Article 311 of the Convention, shall take all measures necessary for the implementation of Articles 294 to 307 of the Convention.

Where he deems it appropriate, the Chief Authorizing Officer shall consult experts chosen for their technical competence and their independence vis-à-vis the firms concerned with the award of contractors.

2. The Chief Authorizing Officer shall ensure, before the publication of an invitation to tender, that the documents relating to tenders do not contain any directly or indirectly discriminatory provisions. He shall ensure that tenders are compared under equal conditions and, in particular, that the import duties or taxes of the recipient State, country or territory do not constitute an obstacle to participation in invitations to tender.

3. The Chief Authorizing Officer may suspend the publication of a notice of invitation to tender where it is found that corrections must be made to the specifications or other documents on replacement thereof. To this end, he shall inform the relevant authorities of the recipient State, country or territory of his observations.

Article 62

In accordance with Article 292 of the Convention, decisions to commit additional funds required to cover may excess expenditure incurred on a project or programme shall be taken by the Chief Authorizing Officer where the excess expenditure is equal to, or lower than, a ceiling of 20 % of the original commitment set out in the financing decision. Where the excess is greater than the 20 % ceiling, the procedures of Articles 21 to 24 of the Internal Agreement shall apply to the relevant financing decision.

Article 63

1. The Chief Authorizing Officer shall take all measures to ensure that National Authorizing Officers perform the tasks for which they are responsible by virtue of Articles 312 to 315 of the Convention and in particular that they comply with the provisions of this Financial Regulation regarding commitment, clearance and authorization of expenditure.

2. Where the Chief Authorizing Officer of the EDF becomes aware of delays in the carrying out of procedures relating to projects financed by the EDF he shall, in conjunction with the National Authorizing Officer, make all contacts necessary to remedy the situation.

3. If, for any reason whatsoever, services have been rendered but further delay in clearance, authorization or payment gives rise to difficulties likely to call into question the full performance of the contract, the Chief Authorizing Officer may take all appropriate measures to resolve these difficulties, to remedy, where necessary, the financial consequences of the resultant situation and, more generally, to enable the project, projects or programmes to be completed under the best economic conditions. He shall inform the National Authorizing Officer of such measures as soon as possible. If payments are thus made directly by the Commission to the beneficiary of the contract, the Community shall automatically acquire that beneficiary's right as creditor vis-à-vis the national authorities.

4. This Article shall apply, *mutatis mutandis*, to measures to ensure that Regional Authorizing Officers referred to in Article 164 (1) (f) (ii) of the Convention perform tasks assigned to them in the Convention.

2. The Commission delegate

Article 64

The Commission delegate shall comply with this Financial Regulation in the performance of his duties, as provided for in Articles 316, 317 and 318 of the Convention.

Article 65

During the performance of operations financed by the EDF the delegate shall verify on the spot and on the basis of records that work carried out of services rendered correspond with their descriptions as given in the financing agreements, or other contracts or estimates.

Article 66

In the event of failure to comply with this Financial Regulation, of misconduct or gross negligence in the

performance of his duties, the delegate shall render himself liable to disciplinary action, and where necessary, to payment of compensation.

3. The paying agent

Article 67

The relations between the Commission and the paying agents provided for in Article 319 of the Convention shall be the subject of contracts which shall require the prior approval of the financial controller. In these contracts, the

Commission shall include provisions stipulation that, in the discharge of their duties, the paying agents are required to comply with this Financial Regulation. These contracts shall be sent to the Court of Auditors.

Article 68

The contract signed by the Commission and the paying agent transfers to the latter the entire financial responsibility of the EDF accounting officer in the event of failure to observe the provisions in force or of negligence entailing financial loss for the Community.

TITLE V

PRESENTING AND AUDITING ACCOUNTS

Article 69

1. The Commission shall draw up, not later than 1 May each year, a balance sheet of assets and liabilities of the EDF as at 31 December of the preceding year and a statement of sources and uses of funds since the date of the previous balance sheet.

2. The financial statements referred to in paragraph 1 shall be accompanied by a table of revenue showing:

- estimated revenue for the calendar year,
- amendments to the revenue estimates,
- entitlements established in the course of the calendar year,
- amounts still to be collected at the end of the calendar year,
- additional revenue.

Article 70

1. The Commission shall, in respect of each financial year, draw up not later than 1 May of the following year revenue and expenditure accounts for the EDF.

2. The revenue and expenditure accounts shall include:

- (a) a table of revenue containing the items specified in Article 69 (2);
- (b) expenditure tables which shall comprise:
 - a table showing the decisions taken by the Commission or the Council during the financial year, together with a table showing the overall situation regarding sums committed,

- a table showing the situation regarding delegated appropriations and expenditure authorizations effected during the financial year, together with a table showing the overall situation regarding delegated appropriations and expenditure authorizations effected.

3. The tables referred to in paragraph 2 shall be accompanied by a cumulative statement showing for each recipient country or territory the aggregate figure for the commitment decisions taken, for delegated appropriations granted and for expenditure authorizations effected.

Article 71

Without prejudice to Article 33 (5) of the Internal Agreement, the Commission shall forward the balance sheet, statement of sources and uses of funds and the revenue and expenditure accounts to the European Parliament, the Council and the Court of Auditors not later than 1 May of the following financial year.

Article 72

The Court of Auditors and its Members may seek the assistance of the Court's staff in the discharge of their duties.

The Court itself, or one of its Members, shall notify the authorities with which members of the Court's staff to whom such responsibilities have been delegated are to work on the tasks delegated to them.

Article 73

1. Without prejudice to Article 33 (5) of the Internal Agreement, the audit carried out by the Court of Auditors shall be based on records and, if necessary, be performed on the spot. Its purpose shall be to establish that all revenue has been received and all expenditure incurred in a lawful and regular manner with regard to the provisions applicable and that the financial management has been sound.

2. In the performance of its tasks, the Court of Auditors may, under the conditions laid down in paragraph 6, consult all documents and information relating to the financial management of the departments subject to its inspection; it has the power to hear any official responsible for revenue and expenditure operations and to use any of the auditing procedures appropriate to those departments.

3. The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositaries or against official memoranda of cash and securities held. The Court may itself carry out such checks.

4. At the request of the Court of Auditors, the Commission shall authorize financial institutions holding EDF deposits to enable the Court to ensure that the external data tally with the accounts.

5. The Commission shall afford the Court of Auditors all the facilities and give it all the information which the Court may consider necessary for the performance of its tasks, and shall in particular provide all the information available to the Commission as a result of the checks which it has carried out, pursuant to the regulations in force, within the departments responsible for the management of EDF finances and for effecting expenditure on behalf of the Community. In particular, it shall place at the disposal of the Court all documents concerning the conclusion and implementation of contracts and all accounts of cash or materials, all accounting records or supporting documents and also the administrative documents pertaining thereto, all documents relating to revenue and expenditure, all inventories, and all lists of posts in the departments which the Court of Auditors may consider necessary and all documents and data created or stored on a data-carrier.

To this end, officials subject to audit by the Court of Auditors shall in particular:

- (a) disclose their records of cash in hand, any other cash, securities and materials of any kind and the supporting documents in respect of their management of which they are the depositaries and any books, registers and other documents relating thereto;
- (b) present the correspondence or any other document required for the full implementation of the audit referred to in paragraph 1.

The information referred to under (b) may be requested only by the Court of Auditors.

The Court of Auditors shall be empowered to audit the documents in respect of EDF revenue and expenditure which are held by the Commission's departments and, in particular, by the departments responsible for decisions on such revenue and expenditure.

6. The task of establishing that revenue has been received and expenditure incurred in a lawful and proper manner and that the financial management has been sound shall also encompass the utilization by bodies outside the Commission of Community funds they have received. Any grant of EDF funds to beneficiaries outside the Commission shall be subject to the agreement in writing by the recipients to an audit being carried out by the Court of Auditors on the utilization of the amounts paid out.

Article 74

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

2. The special reports shall be transmitted to the institution or body concerned.

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.

Should the Court of Auditors decide to have such observations published in the *Official Journal of the European Communities*, it shall include after them any comments submitted by the institution or institutions concerned.

The special reports shall be transmitted to the European Parliament and the Council, each of which shall decide, in conjunction with the Commission if appropriate, what action is to be taken in response.

Article 75

1. The annual report of the Court of Auditors provided for in Article 78 of the ESCS Treaty and in Article 206a of the EEC Treaty shall be governed by the following provisions:

- (a) the Court of Auditors shall communicate to the Commission, not later than 15 July, any observations which it considers should appear in the annual report. These observations must remain confidential. The Commission shall forward its replies to the Court of Auditors not later than 31 October of the relevant year;
- (b) the annual report shall contain an assessment of the soundness of the financial management.

2. The Court of Auditors may submit observations at any time on particular matters and may give its opinion in response to a request by one of the Community institutions.

Article 76

The Court of Auditors shall send its annual report, together with the Commission's replies, not later than 30 November, to the Commission and to the authorities responsible for giving discharge pursuant to Article 33 (3) of the Internal Agreement, and shall ensure its publication in the *Official Journal of the European Communities*.

Article 77

1. Before 30 April of the following year, the European Parliament, upon a recommendation from the Council, which shall act by a qualified majority, shall give the Commission discharge in respect of the execution of the financial management of the EDF for the preceding financial year, in accordance with Article 33 (3) of the Internal Agreement. If this date cannot be complied with, the European Parliament or the Council shall inform the Commission of the reasons for which this decision has had to be deferred. Should the European Parliament postpone the decision giving discharge, the Commission shall make every effort to take measures, as soon as possible, to facilitate removal of the obstacles to this decision.

2. The discharge decision concerns the accounts of all the revenue and expenditure of the EDF during the year in question and also the assets and liabilities of the EDF shown in its balance sheet. It shall include an assessment of the responsibility of the Commission in the execution of the financial management during the preceding period.

3. The Financial Controller shall take account of the observations appearing in the decision giving discharge.

4. The Commission shall take all appropriate steps to act on the comments appearing in the decision giving discharge.

5. At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these comments, and, in particular, on the instructions given to those of its departments which are responsible for the management of the EDF. This report shall also be sent to the Court of Auditors.

In an Annex to the revenue and expenditure account for the year following that of the discharge decision, the Commission must also give an account of the measures taken in the light of the observations appearing in the decision giving discharge.

6. The balance sheet, statement of sources and uses of funds and the revenue and expenditure accounts for each financial year and the decision giving the discharge shall be published in the *Official Journal of the European Communities*.

TITLE VI

GENERAL AND FINAL PROVISIONS

Article 78

Unless otherwise specified, references in this Financial Regulation to the provisions of the Convention shall be deemed to refer to the corresponding provisions of Decision 91/482/EEC.

Article 79

This Financial Regulation shall be applicable to the aid specified in the Financial Protocol to the Convention. This Financial Regulation shall be applicable for the same period as the Internal Agreement.

Done at Brussels, 29 July 1991.

For the Council

The President

H. VAN DEN BROEK