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COUNCIL DECISION

of 27 March 2000

on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'Sisnet'

(2000/265/EC)

(OJ L 85, 6.4.2000, p. 12)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Decision 2000/664/EC of 23 October 2000	L 278	24	31.10.2000
►**M2**	Council Decision 2003/171/EC of 27 February 2003	L 69	25	13.3.2003
►**M3**	Council Decision 2007/155/EC of 5 March 2007	L 68	5	8.3.2007
►**M4**	Council Decision 2008/319/EC of 14 April 2008	L 109	30	19.4.2008

▼B

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on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'Sisnet'

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the first sentence of the second subparagraph of Article 2(1) of the Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community, integrating the Schengen *acquis* into the framework of the European Union (hereinafter 'the Schengen Protocol'),

Whereas:

(1) The Deputy Secretary-General of the Council was authorised by Decision 1999/870/EC [1] to act, in the context of the integration of the Schengen *acquis* within the European Union, as representative of certain Member States for the purposes of concluding contracts relating to the installation and the functioning of the communication infrastructure for the Schengen environment (hereinafter 'Sisnet') and to manage such contracts.

(2) The financial obligations arising under those contracts are not borne by the general budget of the European Union; therefore, the provisions of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities [2] do not apply.

(3) It is therefore necessary to establish specific rules to define the detailed procedures for establishing and implementing the budget required to meet any expenses incurred in the course of concluding the contracts, the obligations arising under those contracts once concluded, for recovering the contributions to be paid by the States concerned and for the presentation and auditing of the accounts.

(4) It is also necessary to set out the rules applicable to the conclusion of these contracts.

(5) This Decision is a development of the Schengen *acquis* within the meaning of the Schengen Protocol,

HAS DECIDED AS FOLLOWS:

CHAPTER I

General principles

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Article 1

1. For the purposes of this Financial Regulation, the budget is the instrument which sets out forecasts of, and authorises in advance, for

[1] OJ L 337, 30.12.1999, p. 41.
[2] OJ L 356, 31.12.1977, p. 1. Regulation as last amended by Regulation (EC) No 2673/1999 (OJ L 326, 18.12.1999, p. 1).

▼M3

each financial year, the revenue and expenditure required to meet the obligations arising under the contracts referred to in Decision 1999/870/EC and Decision 2007/149/EC ([1]).

2. For the purposes of this Financial Regulation, the reference to 'SISNET' comprises the Communication infrastructure for the Schengen environment as referred to in Decision 1999/870/EC and Decision 2007/149/EC.

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Article 2

This Financial Regulation lays down detailed rules for the conclusion of contracts relating to Sisnet and for the establishment and implementation of the budget required in relation to such contracts.

Article 3

1. The budget shall be subdivided into titles covering the budget relating to the preparatory steps leading to the conclusion of the contracts in question, including any costs incurred during the preparation of the call for tenders in respect of Sisnet, the installation budget and the operating budget for the Sisnet. If necessary, each title shall be subdivided into chapters and articles.

2. Appropriations opened under each title may not be assigned to other expenditure titles.

Article 4

The budget appropriations shall be used in accordance with the principles of sound financial management, and in particular those of economy and cost-effectiveness.

Article 5

No revenue shall be collected and no expenditure effected unless credited to, or charged against, an article in the budget.

Without prejudice to Article 17, no expenditure may be committed or authorised in excess of the authorised appropriations.

Article 6

1. Subject to Article 17, all revenue and expenditure shall be entered in full in the budget and in the accounts without any adjustment against each other. Total revenue shall cover total expenditure.

2. The financial year shall run from 1 January to 31 December.

3. Any budget contributions by the States referred to in Article 25 paid before the beginning of the financial year which they concern shall be credited to the budget for that financial year.

4. The expenditure of a financial year shall be entered in the accounts for that year on the basis of expenditure for which the financial controller received authorisation no later than 31 December and for which the corresponding payments were made by the accounting officer before the following 15 January.

5. The allotted appropriations may be used solely to cover expenditure properly entered into and paid under the financial year for which

([1]) OJ L 66, 6.3.2007, p. 19;

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they were granted, save as otherwise provided in Article 7, and to cover the debts relating to preceding financial years for which no appropriation was carried forward.

Article 7

1. The following rules shall govern the utilisation of appropriations:

(a) appropriations still uncommitted at the end of the financial year for which they were entered shall, as a rule, lapse;

▼M1

(b) appropriations in respect of payments still outstanding at 31 December by virtue of commitments duly entered into between 1 January and 15 December shall be carried over automatically to the next financial year only.

2. Notwithstanding paragraph 1, the Deputy Secretary-General of the Council may forward to the Schengen Information System Working Group, hereafter referred to as the 'SIS Working Group', before 31 January, duly substantiated requests to carry over to the next financial year appropriatons not committed at 15 December when the appropriations provided for the headings concerned in the budget for the following financial year do not cover requirements.

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The carry-over of such appropriations may be proposed only for exceptional reasons.

In exercising his powers to implement the budget, the Deputy Secretary-General shall, depending on management requirements, endeavour to use first the appropriations authorised for the current financial year and not use the appropriations carried over until the former are exhausted.

The SIS Working Group shall act on such requests for carrying-over by 1 March at the latest.

3. Appropriations carried over from one financial year to the following lapse if still uncommitted at the end of the financial year to which they were carried over.

4. A list of the appropriations to be carried forward automatically pursuant to paragraph 1(b) shall be forwarded to the SIS Working Group for information before 1 March.

5. For the purpose of implementing the budget, the utilisation of appropriations carried forward shall be shown separately, for each budget item, in the accounts for the current financial year.

CHAPTER II

Establishment of the budget

Article 8

1. The budget shall be drawn up in euro.

2. The Deputy Secretary-General shall forward the preliminary draft budget to the SIS Working Group before 30 September and attach an explanatory memorandum.

3. The SIS Working Group shall deliver its opinion on that preliminary draft.

4. The Deputy Secretary-General shall establish the draft budget and forward it by 31 October to the States referred to in Article 25.

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5. The Member States referred to in Article 25, meeting within the Council, shall adopt the budget before the end of the year.

6. The decision to adopt the budget, duly notified by the Deputy Secretary-General to the States referred to in Article 25, shall mark the point at which those States' contributions fall due.

Article 9

1. If the budget has not been finally adopted at the beginning of the financial year:

(a) payments may be made for up to one twelfth, each month, of the total appropriations authorised for each budget title for the preceding financial year; and

(b) the contributions of the States referred to in Article 25 may be called up for up to one twelfth, each month, of the contributions paid under the last duly adopted budget.

2. Each decision to use an expenditure and revenue twelfth, up to a total of three twelfths of the amounts entered in the last duly adopted budget, shall be taken by the Deputy Secretary-General, who shall forward it by letter to the States referred to in Article 25.

3. Above the limit of three twelfths of the amounts entered in the last duly adopted budget, any decision to authorise payments and call up contributions shall be taken by the Member States referred to in Article 25, meeting within the Council.

4. Any measures taken pursuant to paragraphs 1, 2 and 3 shall be terminated immediately on final adoption of the budget.

Article 10

1. Any draft supplementary or amending budgets shall be submitted, examined and adopted in the same form and using the same procedure as the budget whose estimates they are amending.

2. An amending budget shall be submitted on an annual basis, in the month following the closure of the accounts as laid down in Article 46 (1), with the aim of entering the balance of the budget outturn from the previous financial year as revenue in the case of a positive balance or expenditure if the balance is negative.

Article 11

The budget may be released to the public.

CHAPTER III

Implementation of the budget and accountancy

Article 12

The budget shall be implemented in accordance with the principle that the authorising officer and the accounting officer are different individuals. The duties of authorising officer, accounting officer and financial controller shall be mutually incompatible.

▼B

Article 13

1. The task of authorising officer for revenue and expenditure shall be carried out by a Director-General at the General Secretariat of the Council. The authorising officer shall implement the budget on behalf of the Deputy Secretary-General and within the limits of the appropriations allotted he may delegate his powers to a Director.

2. The authorising officer may decide on transfers between articles within each chapter. With the agreement of the SIS Working Group, he may decide on transfers between chapters within the same title. The SIS Working Group shall give its agreement under the same conditions as for adopting its opinion on the budget.

▼M2

Article 14

The task of financial controller shall be carried out by an official or servant of the General Secretariat of the Council appointed to that end by decision of the Deputy Secretary-General, who shall define the terms of this control.

▼B

Article 15

The receipt of revenue and the disbursement of expenditure shall be carried out by an accounting officer from Directorate-General A at the General Secretariat of the Council.

Article 16

1. For the collection of any amount owing pursuant to Article 25, or of any debt due to the States concerned by a third party relating to the conclusion, installation and functioning of Sisnet, the issue of a recovery order by the authorising officer shall be required. Recovery orders shall be forwarded to the accounting officer, who shall submit them to the financial controller for approval.

2. The purpose of this approval shall be to establish that:

(a) the revenue has been booked to the correct budget item;

(b) the recovery order is in order and conforms to the relevant provisions;

(c) the supporting documents are in order;

(d) the debtor, or the competent authority of the debtor State, are correctly described;

(e) the due date is indicated;

(f) the principles of sound financial management referred to in Article 4 have been applied;

(g) the amount and currency of the sum to be recovered are correct.

3. The accounting officer shall assume responsibility for the recovery orders duly drawn up.

Article 17

Notwithstanding Articles 5 and 6:

1. the following deductions may be made from all bills, invoices or statements, which shall then be passed for payment of the net amount:

▼B

(a) fines imposed on a party to a contract on an accepted tender;

(b) adjustment of amounts paid in error, which may be achieved by means of deduction beforehand when another validation of the same type is being effected under the title, chapter, article and financial year in respect of which the excess payment was made.

Discounts, refunds and rebates on invoices and bills shall not be recorded as separate revenue;

2. the following sums may be reused under the heading to which the initial expenditure was charged:

— revenue arising from refund of amounts paid in error against appropriations entered in the budget.

Sums must be reused before the end of the financial year following that in which the revenue was collected.

Article 18

1. Any measure likely to involve expenditure against the budget must first be the subject of a proposal for a commitment of expenditure from the authorising officer to the accounting officer, showing the purpose, the amount involved, the budget item to which the expenditure is to be charged and the creditor. The proposal shall be submitted by the accounting officer to the financial controller for approval.

2. The purpose of this approval shall be to establish that:

(a) the proposal for commitment has been presented in accordance with paragraph 1;

(b) the expenditure has been charged to the correct budget item;

(c) the appropriations are available in the budget;

(d) the principles of sound financial management referred to in Article 4 have been applied;

(e) the expenditure is in order and conforms to the relevant provisions.

Article 19

1. The purpose of validation of expenditure by the authorising officer shall be:

(a) to verify the creditor's claim;

(b) to determine or verify the existence and the amount of the sum due;

(c) to verify the conditions under which the payment falls due;

(d) to verify that purchases or services rendered are as ordered.

2. The authorising officer may have the verifications carried out under his responsibility.

Article 20

1. The authorising officer shall authorise the accounting officer, by the issue of a payment order (‘authorisation’), to pay an item of expenditure which has been validated.

2. The authorisation shall state:

(a) the financial year against which the payment shall be charged;

(b) the budget title, chapter and article;

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(c) the amount to be paid, in figures and in words, and the currency of payment;

(d) the name and address of the creditor;

(e) the purpose of the expenditure;

(f) the method of payment;

(g) the numbers and dates of the relevant approvals of commitment.

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

4. The accounting officer shall submit the payment order, together with the original supporting documents, to the financial controller for approval.

5. The purpose of this approval shall be to establish that:

(a) the payment order was properly issued;

(b) the payment order agrees with the commitment of expenditure and the amount thereof is correct, taking account of the principles of sound financial management referred to in Article 4;

(c) the expenditure is charged to the correct item in the budget;

(d) the appropriations are available in the budget title or article concerned;

(e) the supporting documents are in order, and

(f) the creditor is correctly named and described.

6. Any expenditure must be covered beforehand by contributions from the States referred to in Article 25 or, failing those, by a bank loan. The costs of a pre-financing loan in the event of non-payment of contributions shall be divided among the States in default, pro rata to their unpaid contributions and taking into account the length of arrears.

Article 21

►M1 Payments shall be effected through a bank account specifically opened for that purpose in the name of the General Secretariat of the Council. ◄ Bank transfer orders executed pursuant to this Financial Regulation shall require the joint signature of two officials nominated by the Deputy Secretary-General, of whom one shall be the accounting officer.

Article 22

Should the financial controller refuse to give the approval laid down in Articles 16, 18 or 20 and the authorising officer maintain his proposal, the matter shall be referred to the Deputy Secretary-General. Except in cases where the availability of appropriations is in doubt, the Deputy Secretary-General may, in a duly reasoned decision, overrule the refusal and confirm the recovery order, expenditure commitment or payment order. The Deputy Secretary-General shall within one month inform the Court of Auditors of any such decision. The decision shall be enforceable as from the date approval was refused.

Article 23

The liability to disciplinary action of the authorising officer, financial controller, and accounting officer in the event of failure to comply with the provisions of this Financial Regulation shall be as laid down in the Staff Regulations of Officials of the European Communities.

▼B

Article 24

The accounts shall be kept by the double-entry method on the basis of the calendar year. They shall show all revenue and expenditure for the financial year.

CHAPTER IV

States' contributions

Article 25

▼M4

1. Budget revenue shall consist of financial contributions from the following Member States: Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, United Kingdom, as well as Iceland, Norway and Switzerland.

▼B

2. These States' financial contributions shall be laid down in the budget and expressed in euro.

▼M4

Article 26

The states referred to in Article 25 shall supply their financial contributions to the Deputy Secretary-General.

The scale of contributions to be paid by the Member States referred to in Article 25, on the one hand, and by Iceland, Norway and Switzerland, on the other hand, shall be calculated annually on the basis of the share of each Member State concerned and of Iceland, Norway and Switzerland, in the total gross domestic product (GDP) for the preceding year of all the States referred to in Article 25. The scale of contributions by the Member States concerned shall be calculated annually, taking into account the contributions of Iceland, Norway and Switzerland, on the basis of the ratio of the VAT resources paid by each of those Member States to the total VAT resources of the European Communities, as established in the last amendment of the budget of the Union during the preceding financial year.

The additional costs resulting from the extension of the communication infrastructure to the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia shall not be borne by Ireland or the United Kingdom.

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Article 27

1. The Deputy Secretary-General shall forward requests for contributions to each State referred to in Article 25 by letter through the national administrations whose details have been notified to him.

2. The letter concerned shall contain the following information:

(a) the decision to adopt the budget or, in the event of Article 9 being invoked, the decision to call up contributions by provisional twelfths;

(b) the amount to be paid by each State, calculated in euro in accordance with the scale referred to in Article 26;

(c) the details necessary for paying the contribution.

▼B

3. Contributions shall be paid into the bank account referred to in Article 21.

4. The contributions shall be payable in euro.

Article 28

1. The States referred to in Article 25 shall be required to pay 25 % of their contribution by 15 February, 1 April, 1 July and 1 October at the latest.

2. Should a State have defaulted on its financial obligations, the existing Community rules on interest chargeable in the event of late payment of contributions to the budget of the Union shall apply by analogy, without prejudice to any costs which must be borne by such State pursuant to the provisions of Article 20(6).

▼M3

3. By way of derogation from paragraph 1, and without prejudice to the provisions of Article 49, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia shall be required to pay their initial contributions in accordance with a schedule to be determined by the Member States referred to in Article 25.

▼M4

4. By way of derogation from paragraph 1, and without prejudice to Article 49, Switzerland shall be required to pay its initial contribution by 1 July 2008.

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CHAPTER V

Conclusion of contracts

Article 29

1. Contracts for the purchase or hiring of goods or for the provision of services shall be in writing.

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2. All such contracts for which the estimated value equals or exceeds the thresholds set out in Directive 2004/2018/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [1] shall be concluded in accordance with the provisions of that Directive (hereinafter the 'Directive on public procurement').

3. Contracts for which the estimated value of the contract in question does not exceed the thresholds set out in the Directive on public procurement may be made by private treaty. In such cases, the Member States referred to in Article 25 shall none the less be bound, as far as possible and by all appropriate means, to enable suppliers who are likely to be able to supply the goods and services in question to compete.

▼B

4. Invitations to tender shall, as a general rule, be published by the General Secretariat of the Council on behalf of the Member States referred to in Article 25 in all the Member States.

▼M3

5. The tendering procedures and selection and award criteria shall be determined and governed by the provisions of the Directive on public

[1] OJ L 134, 30.4.2004, p. 114. Directive as last amended by Council Directive 2006/97/EC (OJ L 363, 20.12.2006, p. 107);

▼M3

procurement, as supplemented by the provisions of this Financial Regulation.

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6. Every invitation to tender shall be prepared by the General Secretariat of the Council on behalf of the Member States referred to in Article 25 and shall, in particular:

(a) specify the procedure for submitting tenders and stipulate how they are to be presented, including, in particular, any requirement as to the use of a standard reply form;

(b) make reference to the general conditions applicable to the contract concerned (supplies or services), where appropriate, and to any document containing conditions specifically applicable to the particular contract concerned;

(c) include a clause stating that the submission of a tender implies acceptance of the relevant conditions;

(d) specify the terms under which an inspection may be made, where appropriate, to be set out in detail in the case of on-the-spot inspections;

(e) specify the period during which a tender will remain valid and may not be varied in any respect;

(f) specify the penalties for failure to comply with the provisions of the contract;

(g) specify the details which must be contained in the invoices (or in the relevant supporting documents);

(h) prohibit any contact between the Deputy Secretary-General and his staff, representatives of the Governments of the Member States referred to in Article 25, representatives of the Governments of Iceland and Norway and tenderers on matters related to that invitation to tender save, by way of special exception, under the following conditions:

before the closing date for the submission of tenders:

(i) at the instance of tenderers:

additional information solely for the purpose of clarifying the nature of the invitation to tender may be communicated to all tenderers;

(ii) at the instance of the Deputy Secretary-General:

if the Member States referred to in Article 25, or Iceland and Norway, or the General Secretariat of the Council notice an error, a lack of precision, an omission or any other type of clerical defect in the text of the invitation to tender, the General Secretariat may, in a manner identical with that applicable in respect of the original invitation to tender, inform the persons concerned accordingly;

(iii) after the tenders have been opened and at the instance of the Member States referred to in Article 25, Iceland or Norway, or the General Secretariat of the Council, if some clarification is required in connection with a tender, or if obvious clerical errors contained in the tender must be corrected, the General Secretariat may contact the tenderer.

Article 30

In every case where contact has been made under the conditions provided for in Article 29(6)(h), a 'Note for the file' shall be drawn up and such contact shall be mentioned in the report to be submitted subsequently to the Advisory Committee referred to in Article 36.

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Article 31

No discrimination shall be practised between nationals of Member States and of Iceland and Norway on grounds of nationality in respect of contracts entered into by the Deputy Secretary-General on behalf of the Member States referred to in Article 25.

Article 32

Where there are general conditions applicable to the proposed contract, they shall be attached to the invitation to tender. Any document containing conditions specifically applicable to the particular contract concerned shall also be attached.

Article 33

Tenderers may submit tenders:

(a) by post:

in which case the invitation to tender must specify that the relevant date shall be that on which the tender is posted, as evidenced by the postmark. Tenders submitted by post must be registered; or

(b) by hand-delivery to the Council General Secretariat direct or by any agent of the tenderer, including private messenger services:

in which case the invitation to tender must state the date by which tenders must be submitted and specify the department within the Council General Secretariat to which they must be delivered against a signed and dated receipt.

The date must be the same in both cases.

In order to maintain secrecy and to avoid any difficulties, the invitation to tender must include a provision as follows:

‘Tenders must be submitted in a sealed envelope itself enclosed within a second sealed envelope. The inner envelope shall bear, in addition to the name of the department to which it is addressed, as indicated in the invitation to tender, the words “Call for tenders — Not to be opened by the Registry”. If self-adhesive envelopes are used they must be sealed with adhesive tape and the sender must sign across this tape.’

Article 34

Every tender must be opened.

The tenders shall be opened together by a committee appointed for this purpose by the Deputy Secretary-General. It shall be composed of three high level officials from different directorates of the Council General Secretariat. The financial controller must be informed of the opening of the tenders. The financial controller or his representative shall be present as an observer.

The committee shall draw up a report of the opening of the tender, to be signed by all its members.

Each page of each tender shall be initialled by at least one member of the committee. The committee shall make a written record of the tenders received, listing, in particular, all the documents which have been received from each tenderer in connection with the tender.

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Article 35

Every tender shall be assessed by the Member States referred to in Article 25, together with Iceland and Norway. A report, approved unanimously by these States, shall be presented by the competent official within the Council General Secretariat designated by the authorising officer or by an alternate, also designated by the authorising officer, to the Advisory Committee referred to in Article 36.

This report shall include in particular:

(a) a statement of the reasons for the elimination of any of the tenders;

(b) a technical and financial assessment of each tender, including a comparative table of unit prices;

(c) the grounds for the choice of tenderer recommended.

Article 36

Contracts to be concluded by the Deputy Secretary-General on behalf of the Member States referred to in Article 25 and by the appropriate representatives of Iceland and Norway after an invitation to tender has been issued shall first be submitted for the opinion of an Advisory Committee on procurements and contracts.

Article 37

The Advisory Committee referred to in Article 36 shall include one representative from each Member State referred to in Article 25, together with one representative from each of Norway and Iceland. The Member States referred to in Article 25, together with Iceland and Norway, shall ensure that the representatives selected have adequate expertise in informatics and/or financial matters and/or legal matters. Representatives must not have participated in the assessment of the files to be submitted to the Advisory Committee. A representative of the financial controller shall be present as observer.

The Advisory Committee shall, by simple majority, elect a Chairman and a deputy Chairman from among its representatives.

The Advisory Committee shall deliver an opinion as to whether the procedure leading to the selection of tenderer is in order and, in general, on the proposed terms of the contract.

Any other problem concerning the matter forming the subject of this chapter may be referred to the said Advisory Committee for an opinion.

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The Advisory Committee shall endeavour to adopt its opinions by consensus. If such consensus is not possible, the Advisory Committee shall adopt its opinions by a simple majority of its representatives. A quorum of 19 shall be required for the proceedings to be valid. In the event of a tied vote, the Chairman shall have the casting vote.

▼B

The General Secretariat of the Council shall provide secretarial assistance to the Advisory Committee as necessary.

Article 38

The Advisory Committee shall draw up its own rules of procedure, by analogy with the rules of procedure of the Advisory Committee on Procurements and Contracts of the Council of the European Union.

▼B

Article 39

The Advisory Committee shall be required to give its opinion, in a purely advisory capacity, on:

▼M3

(a) all proposed contracts for supplies or services, including studies, for which the estimated value equals or exceeds the thresholds in the Directive on public procurement;

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(b) any proposed agreement supplementary to any contract as referred to in point (a) whenever there are significant changes, particularly when the effect of such supplementary agreement would be to alter the amount involved in the original contract;

(c) any proposed supplementary agreement the effect of which would be to raise the total amount involved in a contract already concluded above the thresholds referred to in point (a);

(d) questions arising at the time of conclusion or in the course of performance of contracts (e.g. cancellation of orders, requests for remission of penalties for delay, departures from the specifications and general conditions of contract), should the matter be sufficiently serious to justify a request for an opinion;

(e) at the request of one of the Member States referred to in Article 25 or of Iceland or Norway, or of a member of the Advisory Committee, or of the Deputy Secretary-General, proposed contracts involving an amount below the thresholds referred to in point (a), where they consider that such contracts involve questions of principle or are of a special nature.

Article 40

The files submitted to the Advisory Committee for an opinion pursuant to Article 39(b) to (e), shall also be accompanied by a report approved unanimously by the Member States referred to in Article 25, as well as Iceland and Norway.

Article 41

The opinions of the Advisory Committee shall be signed by its chairman. In order to avoid delays in the process as a result of the intervention of the Advisory Committee, the Member States referred to in Article 25, as well as Iceland and Norway, may, if they deem it necessary, impose a reasonable deadline by which an opinion must be furnished. Opinions shall be communicated to the Deputy Secretary-General and to the Member States referred to in Article 25, as well as to Iceland and Norway. Following due consideration of that opinion, the Member States referred to in Article 25, as well as Iceland and Norway, shall take a final decision on the case by unanimity. Once that decision has been taken, the contract or contracts which form the subject of each case shall be concluded by the Deputy Secretary-General on behalf of the Member States referred to in Article 25 and by the appropriate representatives of Iceland and Norway.

Article 42

All the tenderers shall be informed by the General Secretariat of the Council of the decision taken with regard to their tenders.

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Article 43

1. Contracts may be made against an invoice or bill of costs where the expected value of the goods or services does not exceed EUR 2 000.

2. By way of guarantee of the performance of contracts, suppliers, contractors or providers of services may be required by a warranty clause to make a preliminary deposit. Such deposit must cover not only the entire period of the guarantee but also a period long enough to allow the guarantee to be invoked. The deposit must, in principle, consist of a payment in euro made to a bank account specifically opened for that purpose in the name of the General Secretariat of the Council. Such deposit may only be lodged with a first-class credit institution in a sight- or short-term deposit account denominated in euro.

3. The amount of the deposit shall be fixed according to the usual trade terms and conditions.

▼M3

4. The provision of such security shall be obligatory where the value of the contract concerned equals or exceeds the thresholds set out in the Directive on public procurement.

▼B

5. This security may be replaced by a joint and several personal guarantee given by a third party approved by the accounting officer. The guarantee shall, in principle, be denominated in euro and must comply with the same rules as the guarantee referred to in paragraph 2.

6. Where a contract has not been performed or completion has been late, the Deputy Secretary-General shall ensure that the Member States referred to in Article 25, as well as Iceland and Norway, are adequately compensated in respect of all damages, interests and costs by the deduction of the amount from the deposit, whether this has been lodged directly by the supplier or contractor or by a third party.

Article 44

The usual supporting documents accompanying the first order to pay drawn up pursuant to a contract requiring the provision of a deposit shall be supplemented by a copy, certified true by the accounting officer, of the receipt issued when the deposit was paid, or by a copy, certified true by the accounting officer, of a declaration from the establishment or third party providing the guarantee.

Article 45

Deposits shall be repaid, or the guarantees referred to in Article 43 given in place thereof released, by the Deputy Secretary-General in accordance with the provisions of the applicable contract or guarantee, except in cases of non-performance or late performance as referred to in Article 43(6).

CHAPTER VI

Presenting and auditing the accounts

Article 46

1. The Deputy Secretary-General shall, within two months from the end of the budget implementation period, draw up a revenue and expenditure account and a balance sheet and transmit them to the SIS Working Group.

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2. The revenue and expenditure account shall cover all revenue and expenditure transactions relating to the preceding financial year. It shall be submitted in the same form and following the same subdivisions as the budget.

3. The following shall be attached to the account:

(a) a statement showing the situation of each of the States referred to in Article 25 as regards payment of its financial contribution, and

(b) an appropriation transfer statement.

4. The balance sheet shall show the budget assets and liabilities as at 31 December of the preceding financial year.

Article 47

1. The Court of Auditors shall be asked to audit the accounts.

2. The Deputy Secretary-General shall forward the revenue and expenditure account and the balance sheet to the Court of Auditors within 15 days following the period laid down in Article 46(1).

3. The purpose of the audit by the Court of Auditors shall be to establish that all revenue has been received and all expenditure incurred in a lawful and regular manner in accordance with the contracts to be managed, the budget and this Financial Regulation.

4. The Deputy Secretary-General shall provide the Court of Auditors with every facility it may consider necessary in order to carry out its task.

Article 48

The revenue and expenditure account, balance sheet and report by the Court of Auditors, accompanied where appropriate by the Deputy Secretary-General's comments, shall be submitted by 1 July to the States referred to in Article 25. The Member States referred to in Article 25, meeting within the Council, shall give a discharge to the Deputy Secretary-General in respect of the budget's implementation.

CHAPTER VII

Final provisions

Article 49

The introduction of the provisions of the Schengen *acquis* concerning the Schengen information system for a State other than those referred to in Article 25 (hereinafter referred to as 'other State') shall entail:

(a) readjustment of the share of contributions of the States referred to in Article 25 as laid down in Article 26;

(b) adjustment of the contributions of the States referred to in Article 25 in order to establish the contribution payable by the other State to the operation of Sisnet for the whole of the current financial year;

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(c) adjustment of the contributions of the States referred to in Article 25 in order to establish the proportion of earlier SISNET installation costs to be borne by the other State. This percentage shall be calculated on the basis of the ratio of the VAT resources paid by the other State to the total VAT resources of the European Communities for the earlier financial years in which the necessary SISNET installation costs have been incurred. If no data on VAT resources is available, the adjustment of contributions shall be calculated on the

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basis of the share of each Member State concerned in the total GDP of all the Member States referred to in Article 25. The percentage contribution shall be the subject of a 'credit note' to the States referred to in Article 25 for an amount pro rata to their share as calculated in accordance with Article 26. The other States may choose to allocate the amount concerned towards their share of the budget or request reimbursement.

▼B

Article 50

1. This Financial Regulation shall apply to the adoption of the budget with respect to the revenue and expenditure required to meet the obligations arising out of any action taken pursuant to Article 1 of Decision 1999/870/EC, for the financial year in which this Regulation enters into force.

2. By derogation from Article 8, for the purposes of the budget referred to in paragraph 1, the Deputy Secretary-General of the Council shall forward the preliminary draft budget to the SIS Working Group as soon as possible after the adoption of this Financial Regulation. Following the delivery of the opinion of the SIS Working Group and the establishment of the draft budget, the Member States referred to in Article 25, meeting within the Council, shall adopt the budget without delay.

3. By derogation from Article 28, for the purposes of the budget referred to in paragraph 1, the States referred to in Article 25 shall be required to pay their contribution in accordance with a schedule to be determined by the Member States referred to in Article 25 at the time of adoption of this budget.

Article 51

1. This Decision shall take effect from the date of its adoption.

2. It shall be published in the *Official Journal of the European Communities*.