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COUNCIL DECISION 2004/197/CFSP

of 23 February 2004

establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications

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COUNCIL DECISION 2004/197/CFSP

of 23 February 2004

establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 13(3) and Article 28(3) thereof,

Whereas:

(1) The European Council, meeting in Helsinki on 10 and 11 December 1999, agreed in particular that, cooperating voluntarily in EU-led operations, Member States must be able by 2003 to deploy within 60 days, and sustain for at least one year, military forces of up to 50 000 to 60 000 persons, capable of the full range of Petersberg tasks.

(2) The European Council, meeting in Thessaloniki on 19 and 20 June 2003, welcomed the conclusions of the Council meeting on 19 May 2003, which in particular confirmed the need for a European Union military rapid-reaction capability.

(3) On 22 September 2003, the Council decided that the European Union should acquire the flexible capacity for managing the financing of common costs of military operations of any scale, complexity or urgency, in particular by setting up, by 1 March 2004, a permanent financing mechanism to assume charge of the financing of common costs of any future Union military operation.

(4) On 17 June 2002, the Council approved Document 10155/02 on the financing of EU-led crisis-management operations having military or defence implications.

(5) The Treaty on European Union provides in its Article 28(3) that Member States whose representatives in the Council have made a formal declaration pursuant to its Article 23(1), second subparagraph, shall not be obliged to contribute to the financing of the operation having military or defence implications concerned.

(6) In conformity with Article 6 of the Protocol on the position of Denmark annexed to the Treaty on European Union and the Treaty establishing the European Community, Denmark does not participate in the elaboration and implementation of decisions and actions of the European Union which have defence implications, and Denmark does not participate in the financing of the mechanism,

HAS DECIDED AS FOLLOWS:

Article 1

Definitions

For the purpose of this Decision:

(a) ‘participating Member States’ shall mean the Member States of the European Union, except Denmark;

(b) ‘contributing States’ shall mean the Member States contributing to the financing of the military operation in question in accordance with Article 28(3) of the Treaty on European Union and the third States contributing to the financing of the common costs of this operation pursuant to agreements between themselves and the European Union.

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CHAPTER 1

MECHANISM

Article 2

Establishment of the mechanism

1. A mechanism to administer the financing of the common costs of European Union operations having military or defence implications is hereby established.

2. The mechanism shall be called ATHENA.

3. ATHENA shall act on behalf of the participating Member States or, regarding the specific operations, the contributing States as defined in Article 1.

Article 3

Legal capacity

With a view to the administrative management of the financing of European Union operations with military or defence implications, ATHENA shall have the necessary legal capacity, in particular, to hold a bank account, acquire, hold or dispose of property, enter into contracts and administrative arrangements and be a party to legal proceedings. ATHENA shall be non-profit-making.

Article 4

Coordination with third parties

To the extent necessary to achieve its tasks, and in conformity with the objectives and policies of the European Union, ATHENA shall coordinate its activities with the Member States, Community institutions and international organisations.

CHAPTER 2

ORGANISATIONAL STRUCTURE

Article 5

Management bodies and staff

1. ATHENA shall be managed, under the authority of the Special Committee, by:

(a) the administrator;

(b) the commander of each operation, in relation to the operation which he/she commands (hereinafter referred to as the ‘operation commander’);

(c) the accounting officer.

2. ATHENA shall use existing administrative structures of the European Union to the greatest possible extent. ATHENA shall resort to staff made available as necessary by the EU institutions or seconded by Member States.

3. The Secretary-General of the Council may provide the administrator or the accounting officer with the staff needed for them to carry out their functions, which may be on the basis of a proposal by a participating Member State.

4. ATHENA's bodies and staff shall be activated on the basis of operational needs.

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Article 6

The Special Committee

1. A Special Committee composed of one representative of each participating Member State is established (Special Committee). The Commission shall attend the meetings of the Special Committee without taking part in its votes.

2. ATHENA shall be managed under the authority of the Special Committee.

3. When the Special Committee is discussing the financing of the common costs of a given operation:

(a) the Special Committee shall be composed of one representative of each contributing Member State;

(b) the representatives of contributing third States shall participate in the proceedings of the Special Committee. They shall neither take part in nor be present at its votes;

(c) the operation commander or his/her representative shall participate in the proceedings of the Special Committee, without taking part in its votes.

4. The Presidency of the Council of the European Union shall convene and chair the meetings of the Special Committee. The administrator shall provide the secretariat for the Special Committee. He/she shall draw up the minutes of the result of the Committee's discussions. He/she shall not take part in its votes.

5. The accounting officer shall participate as necessary in the proceedings of the Special Committee, without taking part in its votes.

6. If a participating Member State, the administrator or the operation commander so requests, the Presidency shall convene the Special Committee within at most 15 days.

7. The administrator shall suitably inform the Special Committee of any claim or dispute addressed to ATHENA.

8. The Special Committee shall decide unanimously amongst its members, taking into account its composition as defined in paragraphs 1 and 3. Its decisions shall be binding.

9. The Special Committee approves all budgets, taking into account the relevant reference amounts, and generally exercises the competences foreseen by Articles 18, 19, 20, 21, 22, 24, 25, 27, 29, 31, 32, 36, 37, 38, 39 and 41.

10. The Special Committee shall be informed by the administrator, the operation commander and the accounting officer as provided for in the present Decision.

11. The text of the acts approved by the Special Committee pursuant to Articles 18, 19, 20, 21, 22, 24, 27, 29, 31, 32, 37, 38, 39 and 41 shall be signed by the chairman of the Special Committee at the time of their approval and by the administrator.

Article 7

The administrator

1. The Secretary-General of the Council shall appoint the administrator and at least one deputy administrator for a period of three years.

2. The administrator shall discharge his/her duties on behalf of ATHENA.

3. The administrator:

(a) shall draw up and submit to the Special Committee any draft budget. The expenditure section for an operation in any draft budget shall be drawn up on the basis of a proposal from the operation commander;

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(b) shall adopt the budgets after their approval by the Special Committee;

(c) shall be the authorising officer for the revenue, common costs incurred in preparation for, or further to, operations and operational common costs incurred outside the active phase of the operation;

(d) as regards revenue, shall implement the financial arrangements made with third parties in relation to the financing of the common costs of the Union's military operations.

4. The administrator shall ensure that the rules established by the present Decision are complied with, and that the decisions of the Special Committee are applied.

5. The administrator shall be authorised to adopt any measures which he/she deems necessary to implement the expenditure financed through ATHENA. He/she shall inform the Special Committee thereof.

6. The administrator shall coordinate work on financial questions relating to the Union's military operations. He/she shall be the contact point with national administrations and, as appropriate, international organisations on these matters.

7. The administrator shall be accountable before the Special Committee.

Article 8

The operation commander

1. The operation commander shall discharge his/her duties on behalf of ATHENA in relation to the financing of the common costs of the operation which he/she commands.

2. For the operation which he/she commands, the operation commander shall:

(a) send the administrator his/her proposals for the 'expenditure — operational common costs' section of the draft budgets;

(b) as authorising officer, implement the appropriations relating to the operational common costs; he/she shall exercise his/her authority over any person participating in the implementation of those appropriations, including pre-financing; he/she may award contracts and enter into contracts on behalf of ATHENA; he/she shall open a bank account on behalf of ATHENA for the operation which he/she commands.

3. The operation commander shall be authorised to adopt any measures which he/she deems necessary to implement the expenditure financed through ATHENA, for the operation which he/she commands. He/she shall inform the administrator and the Special Committee thereof.

Article 9

The accounting officer

1. The Secretary-General of the Council shall appoint the accounting officer and at least one deputy accounting officer for a period of two years.

2. The accounting officer shall discharge his/her duties on behalf of ATHENA.

3. The accounting officer shall be responsible for:

(a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;

(b) preparing the accounts for ATHENA each year, and, after completion of each operation, the accounts for that operation;

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(c) supporting the administrator when he/she submits the annual accounts or the accounts for an operation to the Special Committee for approval;

(d) keeping the accounts for ATHENA;

(e) laying down the accounting rules and methods and the chart of accounts;

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

(g) keeping supporting documents;

(h) treasury management, jointly with the administrator.

4. The administrator and the operation commander shall provide the accounting officer with all the information necessary for the production of accounts which accurately represent ATHENA's financial assets and budget implementation administered by ATHENA. They shall guarantee its reliability.

5. The accounting officer shall be accountable before the Special Committee.

Article 10

General provisions applicable to the administrator, the accounting officer and ATHENA's staff

1. The functions of administrator or deputy administrator, on the one hand, and accounting officer or deputy accounting officer, on the other, shall be mutually incompatible.

2. Any deputy administrator shall act under the authority of the administrator. Any deputy accounting officer shall act under the authority of the accounting officer.

3. A deputy administrator shall stand in for the administrator when he/she is absent or prevented from attending. A deputy accounting officer shall stand in for the accounting officer when he/she is absent or prevented from attending.

4. Officials and other servants of the European Communities, when carrying out functions on behalf of ATHENA, shall remain subject to the rules and regulations applicable to them.

5. The staff made available to ATHENA by the Member States shall be subject to the same rules as those set out in the Council decision concerning the rules applicable to national experts on secondment, and to the provisions agreed on by their national administration and the Community institution or ATHENA. However, in any case, the seconding Member State shall assume charge of the experts' entitlements defined by such Council decision concerning the rules applicable to national experts on secondment.

6. Before their appointment, the staff of ATHENA must have received clearance for access to classified information up to at least ‘Secret UE’ level held by the Council, or equivalent clearance by a Member State.

7. The administrator may negotiate and enter into arrangements with the Member States or Community institutions with a view to designating in advance those staff who could, if need be, be made immediately available to ATHENA.

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CHAPTER 3

CONTRIBUTING THIRD STATES

Article 11

Standing and ad hoc administrative arrangements on modalities for the payment of third States' contributions

1. In the framework of the agreements concluded between the EU and third States indicated by the Council as potential contributors to EU operations or as contributors to a specific EU operation, the administrator shall negotiate with these third States standing or ad hoc administrative arrangements, respectively. These arrangements shall take the form of an exchange of Letters between ATHENA and the competent administrative services of the third States concerned establishing the modalities necessary to facilitate swift payment of contributions to any future EU military operation.

2. Pending the conclusion of the agreements referred to in paragraph 1, the administrator may take the necessary measures to facilitate payments by the contributing third States.

3. The administrator shall inform the Special Committee in advance of the envisaged arrangements, before signing them on behalf of ATHENA.

4. When a military operation is launched by the Union, the administrator shall, for the amounts of contributions decided by the Council, implement the arrangements with the third States contributing to that operation.

CHAPTER 4

BANK ACCOUNTS

Article 12

Opening and purpose

1. The administrator shall open one or more bank accounts on behalf of ATHENA.

2. Any bank account shall be opened at a first-rate financial institution with its head office in a Member State.

3. The contributions from contributing States shall be paid into these accounts. They shall be used to pay for the costs administered by ATHENA and to make the necessary advances to the operation commander for the implementation of expenditure relating to the common costs of a military operation. No bank account may be overdrawn.

Article 13

Management of funds

1. Any payment from ATHENA's account shall require the joint signature of the administrator or a deputy administrator on the one hand and the accounting officer or a deputy accounting officer on the other.

2. Funds administered by ATHENA, including those entrusted to an operation commander, may not be deposited other than with a first-rate financial institution in euro in a current or short-term account.

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CHAPTER 5

COMMON COSTS

Article 14

Definition of common costs and periods for eligibility

1. The common costs listed in Annex I shall be at the expense of ATHENA whenever they are incurred. When entered in an article of the budget showing the operation to which they are most related, they shall be regarded as operational costs of this operation. Otherwise, they shall be regarded as common costs incurred in preparation for, or following, operations.

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2. Furthermore, ATHENA shall bear the operational common costs listed in Annex II during the period from the approval of the Crisis Management Concept for the operation until the appointment of the operation commander. In particular circumstances, after the Political and Security Committee has been consulted, the Special Committee may modify the period during which these costs shall be borne by ATHENA.

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3. During the active phase of an operation, which runs from the date on which the operation commander is appointed to the day on which the operation headquarters ceases its activity, ATHENA shall bear as operational common costs:

(a) the common costs listed in Annex III-A;

(b) the common costs listed in Annex III-B, when the Council so decides.

4. The operational common costs of an operation also include the expenditure necessary to wind it up, as listed in Annex IV.

The operation is wound up when the equipment and infrastructure commonly funded for the operation have found their final destination and the accounts for the operation have been drawn up.

5. No expenditure incurred with a view to covering costs which would in any case have been borne by one or more contributing States, a Community institution or an international organisation, independently of the organisation of an operation, may be eligible as a common cost.

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6. The Special Committee may decide on a case-by-case basis that, in view of particular circumstances, certain incremental costs other than those listed in Annex IIIB shall be regarded as common costs for one given operation during its active phase.

7. The Council and the Special Committee shall be informed by the Member States, through the administrator, of cost-sharing arrangements in which they take part in the context of an EU operation.

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Article 15

Exercises

1. The common costs of the European Union's exercises shall be financed through ATHENA following rules and procedures similar to those for operations to which all participating Member States contribute.

2. These exercise common costs shall be composed of, firstly, incremental costs for deployable or fixed headquarters and, secondly, incremental costs incurred by EU recourse to NATO common assets and capabilities when made available for an exercise.

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3. Exercise common costs shall not include costs related to:

(a) capital acquisitions, including those related to buildings, infrastructure and equipment;

(b) the planning and preparatory phase of exercises;

(c) transport, barracks and lodging for forces.

Article 16

Reference amount

Any joint action by which the Council decides that the Union will conduct a military operation and any joint action or decision by which the Council decides to extend a Union operation shall contain a reference amount for the common costs of this operation. The administrator shall, with the support in particular of the Union military staff and, if he/she is in post, the operation commander, evaluate the amount judged necessary to cover the common costs of the operation for the planned period. The administrator shall propose this amount through the Presidency to the Council bodies responsible for examining the draft joint action or decision.

CHAPTER 6

BUDGET

Article 17

Budgetary principles

1. The budget, drawn up in euro, is the act which for each financial year lays down and authorises all the revenue and expenditure administered by ATHENA.

2. All expenditure shall be linked to a specific operation, except where appropriate for the costs listed in Annex I.

3. The appropriations entered in the budget are authorised for the duration of a financial year which begins on 1 January and ends on 31 December of the same year.

4. Budget revenue and expenditure must balance.

5. No revenue nor expenditure may be implemented other than by allocation to a heading in the budget and within the limit of the appropriations entered there.

Article 18

Establishment and adoption of the annual budget

1. Each year the administrator shall draw up a draft budget for the following financial year, with the assistance of each operation commander for the ‘operational common costs’ section. The administrator shall propose the draft budget to the Special Committee by 31 October at the latest.

2. The draft shall include:

(a) the appropriations deemed necessary to cover the common costs incurred in preparation for, or further to, operations;

(b) the appropriations deemed necessary to cover the operational common costs for ongoing or planned operations, including, where appropriate, to reimburse common costs which have been prefinanced by a State or third party;

(c) a forecast of the revenue needed to cover expenditure.

3. The appropriations shall be classified in titles and chapters grouping expenditure together by type or purpose, subdivided as necessary into articles. Detailed comments by chapter or article shall

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be included in the draft budget. One specific title shall be dedicated to each operation. One specific title shall be the general part of the budget and shall include the common costs incurred in preparation for, or further to, operations.

4. Each title may include a chapter entitled 'provisional appropriations'. These appropriations shall be entered where there is uncertainty, based on serious grounds, about the amount of appropriations needed or the scope for implementing the appropriations entered.

5. Revenue shall consist of:

(a) contributions payable by the participating and contributing Member States and, where appropriate, by contributing third States;

(b) miscellaneous revenue, subdivided by title, which includes interest received, revenue from sales and the budget outturn from the previous financial year, after it has been determined by the Special Committee.

6. The Special Committee shall approve the draft budget by 31 December. The administrator shall adopt the approved budget and notify the participating and contributing States.

Article 19

Amending budgets

1. In the case of unavoidable, exceptional or unforeseen circumstances, in particular when an operation arises during the course of the financial year, the administrator shall propose a draft amending budget. If the draft amending budget substantially exceeds the reference amount for the operation concerned, the Special Committee may request the Council to approve it.

2. The draft amending budget shall be drawn up, proposed, approved and adopted and notification given in accordance with the same procedure as the annual budget. However, when the amending budget is linked to the launch of a Union military operation, it shall be accompanied by a detailed financial statement on the common costs anticipated for the whole of the operation. The Special Committee shall discuss it taking account of its urgency.

Article 20

Transfers

1. The administrator, where appropriate on the basis of a proposal by the operation commander, may make transfers of appropriations. The administrator shall inform the Special Committee of his/her intention, in so far as the urgency of the situation permits, three weeks in advance.

However, the prior approval of the Special Committee shall be required when:

(a) the planned transfer will amend the total of the appropriations provided for an operation;

or

(b) the planned transfers between chapters during the financial year exceed 10 % of the appropriations entered in the chapter from which the appropriations are being drawn, as appearing in the adopted budget for the financial year on the date when the proposal for the transfer in question is made.

2. When he/she deems this to be necessary for the proper conduct of an operation, in the three months following the date of launching of the operation, the operation commander may make transfers of appropriations allocated for the operation, between articles and between chapters in the 'operational common costs' section of the budget. He/she shall inform the administrator and the Special Committee thereof.

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Article 21

Carryover of appropriations

1. In principle, the appropriations intended to cover the common costs incurred in preparation for, or further to, operations, which have not been committed, are cancelled at the end of the financial year.

2. Appropriations intended to cover the cost of storing material and equipment administered by ATHENA may be carried over once to the following financial year, when a commitment to that effect was made before 31 December of the current financial year. Appropriations intended to cover operational common costs may be carried over if they are necessary for an operation which has not been fully wound up.

3. The administrator shall submit proposals for the carrying over of appropriations from the preceding financial year to the Special Committee by 15 February. ►M1 These proposals shall be deemed approved unless the Special Committee decides otherwise by 15 March. ◄

Article 22

Anticipated implementation

Once the annual budget has been adopted:

(a) appropriations appearing in that budget may be committed with effect from 1 January of the following year;

(b) expenditure which, by virtue of legal or contractual obligations, must be paid in advance, may be paid from the appropriations provided for the following year, following approval by the Special Committee.

CHAPTER 7

CONTRIBUTIONS AND REIMBURSEMENTS

Article 23

Determination of contributions

1. Appropriations to cover the common costs incurred in preparation for, or further to, operations which are not covered by miscellaneous revenue shall be financed by contributions from the participating Member States.

2. Appropriations to cover the operational common costs of an operation shall be covered by contributions from the Member States and third States contributing to the operation.

3. The contributions payable by the contributing Member States for an operation shall be equal to the amount of the appropriations entered in the budget and intended to cover the operational common costs of that operation, minus the amounts of the contributions payable for the same operation by contributing third States in application of Article 11.

4. The breakdown of contributions between the Member States from whom a contribution is required shall be determined in accordance with the gross national product scale as specified in Article 28(3) of the Treaty on European Union and in accordance with Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources [1], or any other Council decision which may replace it.

5. The data for the calculation of contributions shall be those set out in the 'GNI own resources' column in the 'Summary of financing of the general budget by type of own resource and by Member State' table

[1] OJ L 253, 7.10.2000, p. 42.

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appended to the latest budget adopted by the European Communities. The contribution of each Member State from whom a contribution is due shall be proportional to the share of gross national income (GNI) of that Member State in the total GNI aggregate of the Member States from whom a contribution is due.

Article 24

Schedule for payment of contributions

1. The contributions from participating Member States intended to cover the common costs incurred in preparation for, or further to, operations, shall be payable before 1 March of the financial year concerned.

2. When the Council has adopted a reference amount for a Union military operation, the contributing Member States shall pay their contributions at the level of 30 % of the reference amount, unless the Council decides on a higher percentage.

3. The Special Committee, on the basis of a proposal by the administrator, may decide that additional contributions will be called before the adoption of an amending budget for the operation. The Special Committee may decide to refer the matter to the competent preparatory bodies at the Council.

4. When the appropriations intended to cover the operational common costs of the operation have been entered in the budget, the Member States shall pay the balance of the contributions which they owe for that operation in application of Article 23 after deduction of the contributions already called from them for the same operation in the same financial year. ►M1 However, when the operation is planned to last more than six months, the balance of contributions shall be paid in half-yearly instalments. In such a case, the first instalment shall be paid within two months of the launching of the operation; the second instalment shall be paid by a deadline to be set by the Special Committee acting on a proposal from the administrator, taking into account operational needs. The Special Committee may depart from these provisions. ◄

5. When a reference amount or a budget has been adopted, the administrator shall send the corresponding calls for contributions by letter to the national administrations whose details have been communicated to him/her.

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6. Without prejudice to the other provisions in this Decision, the contributions shall be paid within 30 days following despatch of the relevant call for contributions.

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7. Each contributing State shall pay the bank charges relating to the payment of its own contribution.

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Article 25

Early financing

1. In the case of an EU Military Rapid Response operation, contributions shall be due by contributing Member States at the level of the reference amount. Without prejudice to Article 24(4), payments shall be made as defined below.

2. For the purpose of the early financing of EU Military Rapid Response operations, the participating Member States shall:

(a) either pay contributions to Athena in anticipation;

(b) or, when the Council decides to conduct an EU Military Rapid Response operation to the financing of which they contribute, pay their contributions to the common costs of that operation within five days following despatch of the call at the level of the reference amount, unless the Council decides otherwise.

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3. For the purpose referred to above, the Special Committee, composed of one representative of each of the Member States which have chosen to pay contributions in anticipation (hereafter anticipating Member States), shall establish provisional appropriations in a specific title in the budget. These provisional appropriations shall be covered by contributions payable by the anticipating Member States within 90 days following despatch of the call for these contributions. However, the contributions in anticipation due for the year 2005 shall be paid in two instalments, payable by 30 April and 30 November 2005 respectively.

4. Without prejudice to Article 24(4), the contributions due by an anticipating Member State for an operation, up to the level of the contribution it has paid to the provisional appropriations referred to in paragraph 3 of this Article, shall be payable within 90 days following despatch of the call. A similar amount may be made available to the operation commander from the contributions paid in anticipation.

5. Notwithstanding Article 20, any provisional appropriations referred to under paragraph 3 of this Article which are used for an operation shall be replenished within 90 days following despatch of the call.

6. Without prejudice to paragraph 1, any anticipating Member State may in specific circumstances authorize the administrator to use its contribution paid in anticipation to cover its contribution to an operation in which it participates, other than a Rapid Response operation. The contribution paid in anticipation shall be replenished by the Member State concerned within 90 days following despatch of the call.

7. Notwithstanding Article 31(3), the operation commander may commit and pay the amounts made available to him.

8. Any Member State may reverse its option by notifying the administrator at least three months in advance.

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Article 26

Reimbursement of prefinancing

1. A Member State, a third State or, as appropriate, an international organisation which has been authorised by the Council to prefinance a part of the common costs of an operation may obtain reimbursement from ATHENA by making a request accompanied by the necessary supporting documents and addressed to the administrator at the latest two months after the date of completion of the operation concerned.

2. No request for reimbursement may be honoured if it has not been approved by the operation commander and by the administrator.

3. If a request for reimbursement presented by a contributing State is approved, it may be deducted from the next call for contributions addressed to that State by the administrator.

4. If no call for contributions is anticipated when the request is approved, or if the approved request for reimbursement would exceed the anticipated contribution, the administrator shall make payment of the amount to be reimbursed within 30 days, taking account of ATHENA's cash flow and of what is needed to finance the common costs of the operation concerned.

5. Reimbursement shall be due in accordance with this Decision even if the operation is cancelled.

Article 27

Management by ATHENA of expenditure not included in common costs

1. The Special Committee, on the basis of a proposal by the administrator or a Member State, may decide that the administrative management of certain expenditure in relation to an operation, particu-

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larly in the area of manpower support/messing and laundry, while remaining the responsibility of the Member State which it concerns, should be entrusted to ATHENA.

2. The Special Committee, in its decision, may authorise the operation commander to enter into contracts on behalf of the Member States participating in an operation, for the acquisition of the supplies described. It may authorise ATHENA's budget to prefinance expenditure by the Member States or decide that ATHENA will collect the necessary funds from the Member States in advance to honour the contracts entered into.

3. ATHENA shall keep accounts of the expenditure borne by each Member State the management of which has been entrusted to it. Each month it shall send each Member State a statement of the expenditure borne by it and incurred by it or by its staff during the preceding month, and shall call for the necessary funds to pay for this expenditure. The Member States shall pay ATHENA the funds required within 30 days following despatch of the call for funds.

Article 28

Interest on late payment

►M1 1. ◄ If a State does not fulfil its financial obligations, the Community rules on interest on late payment determined by Article 71 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1] in relation to the payment of contributions to the Community budget shall be applicable by analogy.

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2. When payment is late by no more than ten days, no interest shall be charged. When payment is late by more than ten days, interests shall be charged for the entire delay.

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CHAPTER 8

IMPLEMENTATION OF EXPENDITURE

Article 29

Principles

1. ATHENA's appropriations shall be used in accordance with the principles of sound financial management, that is in accordance with the principles of economy, effectiveness and efficiency.

2. Authorising officers shall be responsible for implementing ATHENA's revenue or expenditure in accordance with the principles of sound financial management to ensure that the requirements of legality and regularity are complied with. The authorising officers shall make budgetary and legal commitments, clear and authorise expenditure and carry out actions prior to this implementation of appropriations. An authorising officer may delegate his/her duties by a decision determining:

(a) staff at an appropriate level for such delegation;

(b) the extent of the conferred powers; and

(c) the scope for beneficiaries to subdelegate their powers.

[1] OJ L 248, 16.9.2002, p. 1.

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3. The implementation of appropriations according to the principle of the segregation of the authorising officer and the accounting officer shall be ensured. The duties of authorising officer and accounting officer shall be mutually incompatible. Any payment made on funds administered by ATHENA shall require the joint signature of an authorising officer and an accounting officer.

4. Without prejudice to this Decision, when the implementation of common expenditure is entrusted to a Member State, a Community institution or, as appropriate, an international organisation, that State, institution or organisation shall apply the rules applicable to the implementation of its own expenditure. When the administrator implements expenditure directly, it shall comply with the rules applicable to the implementation of the 'Council' section of the general budget of the European Communities.

5. However, the administrator may provide the Presidency with elements for proposal to the Council or the Special Committee on rules for the implementation of common expenditure.

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6. The Special Committee may approve rules for the implementation of common expenditure which depart from paragraph 4.

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Article 30

Common costs incurred in preparation for, or further to, operations

The administrator shall perform the duties of authorising officer for expenditure covering the common costs incurred in preparation for, or further to, operations.

Article 31

Operational common costs

1. The operation commander shall carry out the duties of authorising officer for expenditure covering the operational common costs of the operation he/she commands. However, the administrator shall carry out the duties of authorising officer for expenditure covering the operational common costs incurred during the preparatory phase of a specific operation, which are implemented directly by ATHENA, or related to the operation after the end of its active phase.

2. The sums required for the implementation of expenditure on an operation shall be transferred by the administrator from ATHENA's bank account to the operation commander, upon his/her request, into the bank account opened on behalf of ATHENA, of which the operation commander has provided the details.

3. By way of derogation from Article 17(5), the adoption of a reference amount shall activate the right of the administrator and the operation commander, each in his/her area of competence, to commit and pay expenses for the operation concerned up to 30 % of the reference amount, unless the Council should set a higher percentage. The Special Committee, on the basis of a proposal from the administrator, may decide that additional expenditure may be committed and paid. The Special Committee may decide to refer the question to the competent preparatory bodies at the Council through the Presidency. This derogation shall no longer apply from the date of adoption of a budget for the operation concerned.

4. During the period prior to the adoption of the budget for an operation, the administrator and the operation commander or his/her representative shall report to the Special Committee every two weeks, each reporting on the matters concerning him/her, as regards the expenses which are eligible as common costs for that operation. The Special Committee, on the basis of a proposal by the administrator, the operation commander or a Member State, may issue directives on the implementation of expenditure during this period.

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5. By way of derogation from Article 17(5), in the case of imminent danger to the lives of personnel involved in a Union military operation, the operation commander for that operation may implement the necessary expenditure to save the lives of those personnel, in excess of the appropriations entered in the budget. He/she shall inform the administrator and the Special Committee as soon as possible. In such a case, the administrator shall, liaising with the operation commander, propose the transfers needed to finance this unexpected expenditure. If it is not possible to ensure sufficient funding for such expenditure by means of a transfer, the administrator shall propose an amending budget.

CHAPTER 9

FINAL DESTINATION OF EQUIPMENT AND INFRASTRUCTURE FINANCED IN COMMON

Article 32

1. With a view to winding up the operation which he/she has commanded, the operation commander shall act as necessary to find a final destination for the equipment and infrastructure acquired in common for that operation. He/she shall propose to the Special Committee the relevant rate of depreciation as necessary.

2. The administrator shall manage the equipment and infrastructure remaining after the end of the active phase of the operation, with a view if necessary to finding its final destination. He/she shall propose to the Special Committee the relevant rate of depreciation as necessary.

3. The depreciation rate for equipment, infrastructure and other assets shall be approved by the Special Committee at the earliest time possible.

4. The final destination of equipment and infrastructure financed in common shall be approved by the Special Committee, taking into account operational needs and financial criteria. The final destination may be as follows:

(a) in the case of infrastructure, to be sold or transferred through ATHENA to the host country, a Member State or a third party;

(b) in the case of equipment, to be sold through ATHENA to a Member State, the host country or a third party, or be stored and maintained by ATHENA, a Member State or a third party.

5. Equipment and infrastructure shall be sold to a contributing State, the host country or a third party for their market value, or, where no market value can be determined, taking account of the relevant rate of depreciation.

6. Sale or transfer to the host country or a third party shall be in accordance with the security rules in force, particularly within the Council, the contributing States or NATO, as appropriate.

7. When it is decided that ATHENA shall retain equipment acquired for an operation, the contributing Member States may ask for financial compensation from the other participating Member States. The Special Committee, composed of the representatives of all the participating Member States, shall take the appropriate decisions on the basis of a proposal from the administrator.

CHAPTER 10

ACCOUNTING AND INVENTORY

Article 33

Principles

When the implementation of common expenditure has been entrusted to a Member State, a Community institution or, as appropriate, an interna-

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tional organisation, that State, institution or organisation shall apply the rules which are applicable to accounting for its own expenditure and its own inventory.

Article 34

Accounting for operational common costs

The operation commander shall keep accounts of transfers received from ATHENA, of expenditure he/she has committed and of payments made, as well as an inventory of the movable property financed by the ATHENA budget and used for the operation which he/she commands.

Article 35

Consolidated accounts

1. The accounting officer shall keep the accounts of contributions called for and transfers made. He/she shall also draw up the accounts for the common costs incurred in preparation for, or further to, operations, and for operational expenditure implemented under the direct responsibility of the administrator.

2. The accounting officer shall draw up the consolidated accounts for ATHENA's revenue and expenditure. Each operation commander shall send him/her the accounts for the expenditure he/she has committed and the payments he/she has made, as well as for the prefinancing he/she has approved to cover the operational common costs of the operation which he/she commands.

CHAPTER 11

AUDIT AND PRESENTATION OF ACCOUNTS

Article 36

Regular reports to the Special Committee

Every three months, the administrator shall present to the Special Committee a report on the implementation of revenue and expenditure during the preceding three months and since the beginning of the financial year. To this end, every operation commander shall provide the administrator in good time with a report on expenditure relating to the operational common costs of the operation which he/she commands.

Article 37

Auditing the accounts

1. When the implementation of ATHENA's expenditure has been entrusted to a Member State, a Community institution or an international organisation, that State, institution or organisation shall apply the rules which apply to the auditing of its own expenditure.

2. However, the administrator or persons appointed by him/her may at any time carry out an audit of the common costs of ATHENA incurred in preparation for, or further to, operations, or the operational common costs of an operation. Furthermore, the Special Committee, on the basis of a proposal by the administrator or a Member State, may at any time appoint external auditors, whose tasks and conditions of employment it shall determine.

3. An audit of the expenditure relating to common costs incurred in preparation for, or further to, operations, and operational costs which have not yet been audited by external auditors acting on behalf of ATHENA shall be carried out in the two months following the end of each financial year.

4. With a view to external audits, a six-member college of auditors shall be established. Each year the Special Committee shall appoint two members for a non-renewable three-year period, from candidates proposed by the Member States. The candidates must be members of a

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national audit body in a Member State and offer adequate guarantees of security and independence. They must be available to carry out tasks on behalf of ATHENA as needed. In carrying out these tasks:

(a) the members of the college shall continue to be paid by their audit body of origin and shall only receive from ATHENA reimbursement of their mission expenses in accordance with the rules applicable to officials of the European Communities of an equivalent grade;

(b) they shall neither request nor receive instructions other than from the Special Committee; within its audit mandate the College of Auditors and its members shall be completely independent and solely responsible for the conduct of the external audit;

(c) they shall only report on their task to the Special Committee;

(d) they shall check that expenditure financed by ATHENA has been implemented in conformity with the applicable legislation and the principles of sound financial management, that is in accordance with the principles of economy, effectiveness and efficiency.

Each year the College of Auditors shall elect its chairman for the forthcoming financial year. It shall adopt the rules applicable to audits carried out by its members in accordance with the highest international standards. The College of Auditors shall approve the audit reports drawn up by its members before their transmission to the administrator and to the Special Committee.

5. The Special Committee may decide on a case-by-case basis and upon specific motivations to use other external bodies.

6. The persons responsible for auditing ATHENA's expenditure must, before carrying out their task, have received clearance for access to classified information up to at least ‘Secret UE’ level held by the Council, or equivalent clearance from a Member State or NATO, as appropriate. Those persons shall ensure that they respect the confidentiality of the information and protect the data of which they acquire knowledge during their audit task, in accordance with the rules applicable to that information and data.

7. The administrator and the persons responsible for auditing ATHENA's expenditure shall have access without delay and without giving prior notice to the documents and to the contents of all data supports relating to that expenditure, and to the premises where those documents and supports are kept. They may make copies. The persons involved in implementing ATHENA's expenditure shall give the administrator and the persons responsible for the audit of that expenditure the necessary assistance in performing their task.

8. The cost of the audits carried out by auditors acting on behalf of ATHENA shall be considered as a common cost to be borne by ATHENA.

Article 38

Annual presentation of accounts

1. The administrator, with the assistance of the accounting officer and each operation commander, shall draw up and submit to the Special Committee, by April following the end of the financial year, the annual management accounts, the annual balance sheet for ATHENA, and an activity report. The annual management accounts shall distinguish between the common costs of ATHENA incurred in preparation for, or further to, operations, and the operational common costs of each operation conducted during the financial year in question, as well as miscellaneous revenue and revenue from Member States and third States. The balance sheet shall show as assets all the assets belonging to ATHENA, taking account of their depreciation and any losses or decommissioning, and shall show its reserves as liabilities. The administrator shall submit the management accounts to the College of Auditors for examination and opinion by February following the end of the financial year.

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2. The Special Committee shall approve the annual management accounts and the balance sheets. It shall grant a discharge to the administrator, the accounting officer and each operation commander for the financial year in question.

3. All accounts and inventories shall be retained, each at his/her level, by the accounting officer and each operation commander for a period of five years from the date on which the corresponding discharge was granted.

4. The Special Committee shall decide to enter the balance of the budget outturn for a financial year for which the accounts have been approved in the budget for the following financial year, as revenue or expenditure depending on the circumstances, by means of an amending budget.

5. That part of the balance of the budget outturn for a financial year which comes from the implementation of appropriations intended to cover common costs incurred in preparation for, or further to, operations, shall be entered against the next contributions from participating Member States.

6. That part of the balance of the budget outturn which comes from the implementation of appropriations intended to cover the operational common costs of a given operation shall be entered against the next contributions from the Member States which have contributed to that operation.

7. If reimbursement cannot be done by deduction from the contributions due to ATHENA, the balance of the budget outturn shall be repaid to the Member States concerned.

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8. Each Member State participating in an operation shall provide information by 31 March each year to the administrator, where appropriate through the Operation Commander, on the incremental costs it has incurred for the operation during the previous financial year. This information shall be broken down to show the main items of expenditure. The administrator shall compile this information in order to provide the Special Committee with an overview of the incremental costs of the operation.

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Article 39

Presentation of the accounts of an operation

1. When an operation is complete, the Special Committee may decide, on the basis of a proposal by the administrator or by a Member State, that the administrator, with the assistance of the accounting officer and of the operation commander, shall submit to the Special Committee the management accounts and the balance sheet for that operation, at least up to the date on which it was completed, and, if possible, up to the date on which it was wound up. The deadline imposed on the administrator may not be less than four months from the date on which the operation was completed.

2. If the management accounts and balance sheet cannot, within the given deadline, include the revenue and expenditure connected with the winding up of that operation, then that revenue and expenditure shall appear in the annual management account and balance sheet for ATHENA and shall be examined by the Special Committee in connection with the annual presentation of accounts.

3. The Special Committee shall approve the management account and balance sheet for the operation which have been submitted to it. It shall grant a discharge to the administrator, the accounting officer and each operation commander for the operation in question.

4. If reimbursement cannot be done by deduction from the contributions due to ATHENA, the balance of the budget outturn shall be repaid to the Member States concerned.

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CHAPTER 12

LEGAL LIABILITY

Article 40

1. The conditions governing the disciplinary or criminal liability of the operation commander, the administrator and other staff made available in particular by the Community institutions or Member States in the event of misconduct or negligence in the implementation of the budget shall be governed by the Staff Regulations or the arrangements applicable to them. In addition, ATHENA may at its own initiative or at the request of a contributing State bring a civil action against the above-mentioned staff.

2. In no case may the European Communities or the Secretary-General of the Council be held liable by a contributing State as a result of the performance of their duties by the administrator, the accounting officer or the staff assigned to them.

3. The contractual liability which may arise from contracts concluded in the context of implementation of the budget shall be covered through ATHENA by the contributing States. It shall be governed by the law applicable to the contracts in question.

4. In the case of non-contractual liability, any damage caused by the operation, headquarters, force headquarters and component headquarters of the crisis structure, the composition of which shall be approved by the operation commander, or by their staff in the course of their duties shall be covered through ATHENA by the contributing States, in accordance with the general principles common to the laws of the Member States and the Staff Regulations of the forces, applicable in the theatre of operations.

5. In no case may the European Communities or the Member States be held liable by a contributing State for contracts concluded in the framework of budget implementation or for damage caused by the units and departments of the crisis structure, the composition of which shall be approved by the operation commander, or by their staff in the course of their duties.

Article 41

Transitional provisions

1. The initial budget shall be adopted by 1 June 2004. The first financial year shall begin on the date of adoption of the initial budget and shall end on the following 31 December.

2. By 1 June 2004, the Special Committee shall appoint the first six members of the College of Auditors provided for in Article 37(4). Two members whose term in office will be one year, and two members whose term in office will be two years, will be decided by lot. The term in office of the other two members will be three years.

Article 42

Review

This Decision, including its Annexes, shall be reviewed after every operation and at least every 18 months. The first review shall take place before the end of 2004 at the latest. ATHENA's management bodies shall contribute to such reviews.

Article 43

Final provisions

This Decision shall enter into force on 1 March 2004. It shall be published in the *Official Journal of the European Union*.

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ANNEX I

Common costs borne by ATHENA whenever they are incurred

In cases when the following common costs cannot be linked directly to a specific operation, the Special Committee may decide to allocate the corresponding appropriations to the general part of the annual budget. These appropriations should, as much as possible, be entered in articles showing the operation to which they are most related.

1. Auditing costs
2. Mission expenditure incurred by the operation commander and his/her staff for submitting an operation's accounts to the Special Committee
3. Indemnities for damages and costs resulting from claims and actions to be paid through ATHENA
4. Banking costs (common costs will always be included in the general part of the annual budget)
5. Costs pursuant to any decision to store material which was acquired in common for an operation (where these costs are attributed to the general part of the annual budget, a link to a specific operation shall be indicated)

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ANNEX II

Operational common costs relative to the preparatory phase of an operation borne by ATHENA

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Incremental costs of transport and accommodation necessary for exploratory missions and preparations (in particular fact-finding missions and reconnaissance) by military forces with a view to a specific Union military operation.

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Medical services: the cost of emergency medical evacuations (Medevac) of persons taking part in exploratory missions and preparations by military forces with a view to a specific Union military operation, when medical treatment cannot be provided in theatre.

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ANNEX III

III-A

Operational common costs relative to the active phase of operations always borne by ATHENA

For any Union military operation, ATHENA will bear as operational common costs the incremental costs required for the operation defined below.

1. Incremental costs for (deployable or fixed) headquarters for EU-led operations or exercises

(a) Headquarters (HQ):	operation, force and component headquarters;
(b) Operation Headquarters (OHQ):	the static, out-of-area headquarters of the operation commander, which is responsible for building up, launching, sustaining, and recovering an EU force. The definition of common costs applicable to an OHQ for an operation shall also be applicable to the General Secretariat of the Council and ATHENA in so far as they are acting directly for that operation;
(c) Force Headquarters (FHQ):	the headquarters of an EU force deployed to the area of operations;
(d) Component Headquarters (CCHQ):	the headquarters of an EU component commander deployed for the operation (i. e. air, land, maritime and other specific functions commanders that could be deemed necessary to designate depending on the nature of the operation);
(e) transport costs:	transport to and from the theatre of operations to deploy, sustain and recover FHQs and CCHQs; transport costs incurred by the OHQ necessary to an operation;
(f) administration:	additional office and accommodation equipment, contractual services and utilities, maintenance costs of the buildings;
(g) locally hired personnel:	civilian personnel, international consultants and locally hired (national and expatriate) personnel needed for the conduct of the operation over and above the normal operational requirements (including any overtime compensation payments);
(h) communications:	capital expenditure for the purchase and the use of additional communications and IT equipment and costs for rendered services (lease and maintenance of modems, telephone lines, satphones, cryptofax, secure lines, internet providers, data lines, local area networks);
(i) transportation/travel (excluding 'per diem' costs) within the operations area of HQs:	expenditure related to vehicle transportation and other travel by other means and freight costs, including travel by national augmentees and visitors; incremental costs of fuel over and above what normal operations would have cost; lease of additional vehicles; costs of official journeys between the operational location and Brussels and/or EU-organised meetings; third-party insurance costs imposed by some countries upon international organisations conducting operations on their territory;

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(j) barracks and lodging/infrastructure:	expenditure for acquisition, rental or refurbishing of required HQ facilities in theatre (rental of buildings, shelters, tents), if required;
(k) public information:	costs related to information campaigns and to inform media at OHQ and FHQ, in accordance with the information strategy developed by the operational HQ;
(l) representation and hospitality:	representational costs; costs at HQ level necessary for the conduct of an operation.

2. Incremental costs incurred for providing support to the force as a whole

The costs defined below are those incurred following the force deployment to its location:

(a) infrastructure:	expenditure absolutely needed for the force as a whole to fulfil its mission (common used airport, railway, harbours, roads, power and water supply);
(b) essential additional equipment:	the rental or purchase in the course of the operation of unforeseen specific equipment essential for the execution of the operation, decided by the operation commander and approved by the Special Committee, in so far as the purchased equipment is not repatriated at the end of the mission;
(c) identification marking:	specific identification marks, 'European Union' identity cards, badges, medals, flags in European Union colours or other Force or HQ identification marking (excluding clothes, hats or uniforms);
(d) medical services:	the cost of emergency medical evacuations (Medevac) when medical treatment cannot be provided in theatre.

3. Incremental costs incurred by EU recourse to NATO common assets and capabilities made available for an EU-led operation

The cost for the European Union of the application for one of its military operations of the arrangements between the EU and NATO relating to release, monitoring and return or recall of NATO common assets and capabilities made available for an EU-led operation.

III-B

Operational common costs relative to the active phase of a specific operation, borne by ATHENA when the Council so decides

Transport costs:	transport to and from the theatre of operations to deploy, support and recover the forces necessary for the operation;
Barracks and lodging/infrastructure:	expenditure for acquisition, rental or refurbishing of premises in theatre (rental of buildings, shelters, tents), as necessary for the forces deployed for the operation.

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ANNEX IV

Operational common costs relative to the winding-up of an operation, borne by ATHENA

Costs incurred for finding the final destination for the equipment and infrastructure commonly funded for the operation.

Incremental costs of drawing up the accounts for the operation. The eligible common costs shall be determined in accordance with Annex III, keeping in view the fact that the staff needed to draw up the accounts belong to the headquarters for that operation, even after the latter has ceased its activities.