COUNCIL REGULATION (EC, Euratom, ECSC) No 2334/95

of 18 September 1995

amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, with regard to the treatment of fines, role of the financial controller, recovery of debts and late adjustment

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

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

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

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

Whereas provisions should be added to the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (4), hereinafter referred to as 'the Financial Regulation', to enhance the role of the financial controller, on the one hand, by guaranteeing him full access to documents or data on magnetic media and, on the other hand, by specifying more explicitly the need to secure prior approval;

Whereas the various stages of budgetary implementation as regards debts should be specified in more detail;

Whereas provision should be made for appropriate accounting and budgetary treatment of fines;

Whereas, in order to facilitate operation of imprest accounts, the time allowed for booking expenditure in the accounts should be adjusted by affording the arrangements currently laid down in Article 122 of the Financial Regulation general application;

Whereas appropriate additional time should be allowed for settling a number of accounting transactions after the end of the financial year;

Whereas the administrative operation of offices and suboffices within the Community is comparable to that of delegations outside the Community; whereas the scope of Title X of the Financial Regulation should be enlarged accordingly;

Whereas the Financial Regulation must therefore be accordingly amended;

Whereas conciliation has taken place as provided in the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975 (5) and in Article 127 of the Financial Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The Financial Regulation is hereby amended as follows:

1. Article 5 (1) shall be replaced by the following:

   '1. Subject to Article 28a, no revenue shall be collected and no expenditure effected unless credited to or charged against an article in the budget.';

2. Article 24 shall be amended as follows:

   (i) the second paragraph shall be replaced by the following:

   'He shall carry out his duties in accordance with the principles laid down in Article 2 and the provisions of Article 22 (3). He shall report to his institution on any problem he uncovers regarding the management of Community finances.';

   (ii) after the fifth subparagraph, the following subparagraph shall be inserted:

   'All documents and information produced or stored on a magnetic medium which the financial controller considers necessary for the performance of his duties shall be supplied to him at his request by the departments concerned in the institution.';

(1) OJ No C 221, 17. 8. 1993, p. 8, and OJ No C 225, 13. 8. 1994, p. 4.
(2) OJ No C 205, 25. 7. 1994, p. 537.
(3) OJ No C 348, 28. 12. 1993, p. 8.
(4) OJ No L 356, 31. 12. 1977, p. 1. Regulation as last amended by Regulation (EC, Euratom, ECSC) No 2333/95 (see page 1 of this Official Journal).
(5) OJ No C 89, 22. 4. 1975, p. 1.

3. Article 28 shall be replaced by the following:

'*Article 28*

1. All measures or situations which may give rise to or modify a debt due to Communities must be preceded by a forward estimate by the competent authorizing officer of the amount due.

Such forward estimates shall be sent to the financial controller of the institution for his approval and to the accounting officer for provisional registration.

They shall mention, in particular, the type of revenue and the budget item to which it is to be booked and, if possible, the estimated amount and the description of the debtor. The purpose of the approval of the financial controller shall be to establish that:

(a) the revenue is booked to the correct budget item;

(b) the forward estimate is in order and conforms to the relevant provisions, in particular of the budget and of the Regulations and also of all acts made in implementation of the Treaties and of the Regulations, and to the principles of sound financial management referred to in Article 2.

The financial controller may withhold his approval if he considers that the conditions laid down in (a) and (b) of the third subparagraph are not met.

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

2. The competent authorizing officer shall draw up, in respect of every debt identified as being a tangible and valid obligation to pay, a proposal that the debt be established and a recovery order, which shall be sent with supporting documents to the financial controller for his prior approval. Such debts shall, after they have received the approval of the financial controller, be registered by the accounting officer in accordance with the implementing measures provided for in Article 135.

Provisional establishments may be made for certain routine revenue items. Such provisional establishments and any amendments made to them prior to the closure of the accounts for the year shall be subject to the approval of the financial controller in accordance with the implementing measures provided for in Article 135.

The purpose of the approval shall be to establish that:

(a) the revenue is booked to the correct budget item

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

(c) the supporting documents are in order;

(d) the debtor is correctly described;

(e) the due date is indicated;

(f) the order conforms to the sound financial management referred to in Article 2;

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

If approval is withheld the fifth subparagraph of paragraph 1 shall apply.';

4. The following Article shall be inserted:

'*Article 28a*

Revenue received by way of fines, periodic penalty payments and other penalties imposed by the Commission on the basis of the relevant rules, and any accrued interest, shall not be finally recorded as budget revenue as long as the decisions imposing them may be annulled by the Court of Justice. Amounts collected shall be entered separately in a cash account set aside solely for any repayment of such amounts in whole or in part. The Commission report referred to in Article 34 (2) shall provide information on such revenue.

The appropriate adjustment shall be made by entering the final amount in the budget:

1. if no appeal is lodged, as soon as the time allowed for appeal has expired;

2. if an appeal is lodged, as soon as the Court of Justice has given final judgment.

The revenue and expenditure account and the reports on the implementation of the budget referred to in Article 34 shall show:

1. Commission decisions in this field with the date of notification; and

2. a summary table showing:

   (a) the amounts imposed;

   (b) fines paid definitively (not subject to appeal);

   (c) cases subject to appeal broken down as follows:

   — fines not paid but covered by a bank guarantee,

   — fines paid pending the judgement of the Court of Justice.';

5. Article 36 (1) shall be replaced by the following:

'1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorizing officer must draw up in advance a proposal for commitment and may not enter into any legally binding commitment with third parties until the financial controller has given approval. A provisional commitment may be entered into in respect of routine expenditure.';

6. Article 38 (1) shall be amended as follows:

(i) point (a) shall be replaced by the following:

'(a) the proposal for commitment has been presented in compliance with Article 36 (1);'

(ii) the present points (a), (b), (c) and (d) shall become points (b), (c), (d) and (e) respectively;

7. Article 54 shall be amended as follows:

(i) the present text shall be numbered paragraph 1;

(ii) the following paragraph shall be added:

'2. Expenditure involving payments made not later than 31 December under the imprest accounts may be booked to the accounts for that year up to 15 February of the following year.';

8. Article 72 shall be amended as follows:

(i) the present text shall be numbered paragraph 1;

(ii) the following paragraph shall be added:

'2. Any operation after the end of the financial year which, without affecting the Community's financial position, is necessary for a full, true and fair presentation of the financial statements may be effected up to the date of closure of the accounts, without prejudice to Article 6.';

9. Title X shall be amended as follows:

(a) the heading shall be replaced by the following:

'SPECIAL PROVISIONS APPLICABLE TO THE MANAGEMENT OF APPROPRIATIONS RELATING TO STAFF SERVING IN OFFICES AND SUBOFFICES IN THE COMMUNITY AND IN DELEGATIONS OUTSIDE THE COMMUNITY AND TO THEIR ADMINISTRATION';

(b) Article 122 shall be deleted.

Article 2

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

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

Done at Brussels, 18 September 1995.

For the Council

The President

P. SOLBES MIRA