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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, ECSC, EURATOM) No 762/2001

of 9 April 2001

amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities as regards separating the internal audit function from the *ex ante* financial control function

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Having regard to the proposals 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:

(1) The combining of the internal audit and *ex ante* financial control functions by the financial controller, under the second sentence of the fifth paragraph of Article 24 of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities [4], might in some cases give rise to a blurring of the two functions, without necessarily ensuring a proper balance between the two.

(2) Pending the recasting of the Financial Regulation, the internal audit function should, where necessary, be separated from the financial controller's other functions. The result of this would be that the financial controller will continue to fulfil his present functions, including *ex ante* financial control, but not that of internal audit, which will be performed by an internal auditor independent of the financial controller.

(3) In the specific case of the Commission, the large volume of transactions carried out and the type of transactions involved, in particular their operational nature, require that the internal audit function be separated from the financial controller's other functions.

(4) The internal auditor will enjoy the same benefits and prerogatives as those granted to the financial controller in Article 24 of the Financial Regulation.

(5) In order to bring greater transparency to budget implementation, each institution's financial controller and internal auditor should produce an annual report illustrating the main lessons to be learned from the last financial year.

(6) The financial controller's *ex ante* financial control function and guaranteed independence in the performance of his duties should not in any way be hampered by the application of this Regulation. The financial controller should be able to fulfil his function in accordance with Article 24 of the Financial Regulation. The Commission, for Section III, and the other institutions, for their own expenditure, should ensure that the financial controller continues to enjoy the resources and autonomy required for the performance of his duties.

(7) The European Parliament and the Council reached a broad convergence of views on separating the internal audit function from the *ex ante* financial control function; they thus concluded that it was not necessary, in this particular case, to convene the Conciliation Committee pursuant to the Joint Declaration of 4 March 1975 of the European Parliament, the Council and the Commission [5],

[1] OJ C 311 E, 31.10.2000, p. 328 and OJ C 62 E, 27.2.2001, p. 294.
[2] Opinion delivered on 5 October 2000 (not yet published in the Official Journal).
[3] OJ C 327, 17.11.2000, p. 1.
[4] OJ L 356, 31.12.1977, p. 1. Regulation as last amended by Regulation (EC, ECSC, Euratom) No 2673/1999/OJ L 326, 18.12.1999, p. 1.
[5] OJ C 89, 22.4.1975, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

The Financial Regulation shall be amended as follows:

1. In Article 24:

   (a) 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. He shall draw up an annual report on his work.';

   (b) the fifth paragraph shall be replaced by the following:

   'Monitoring shall be carried out by that official by means of inspection of the files relating to expenditure and revenue and, if necessary, on the spot.'

2. The following Article shall be inserted:

'*Article 24a*

1. The Commission shall appoint an internal auditor who is independent of the financial controller. He shall be appointed in the same way as the financial controller and shall, for the purposes of his duties, have access to the same information as the financial controller and, in order to maintain his independence, be subject to the same special rules and measures as are applicable to the financial controller under the second paragraph, the second sentence of the fourth paragraph, and the fifth, sixth, eighth and ninth paragraphs of Article 24.

The internal audit shall include, in particular, an evaluation of the effectiveness of the management and control systems and verification of the regularity of operations. These duties shall be performed in accordance with the implementing rules provided for in Article 139.

The internal auditor shall not be either an authorising officer or an accounting officer.

2. The Commission, under the authority of its President, shall take all the means necessary to enable the internal auditor to fulfil his functions in accordance with paragraph 1.

3. Institutions other than the Commission may each appoint an internal auditor who is independent of the financial controller and shall carry out his duties in accordance with the conditions and arrangements laid down in paragraph 1. If no internal auditor is appointed, the financial controller shall be responsible for internal auditing in accordance with the conditions and arrangements laid down in paragraph 1.

4. The internal auditor shall submit an annual internal audit report to his institution showing the number and type of internal audits carried out, the audit recommendations made and the action taken on those recommendations.'

Article 2

This Regulation shall enter into force on the seventh 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 Luxembourg, 9 April 2001.

For the Council

The President

A. LINDH

Statements regarding Regulation (EC, ECSC, Euratom) No 762/2001 of 9 April 2001 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities as regards separating the internal audit function from the *ex ante* financial control function

1. 'The European Parliament and the Council reached a broad convergence of views on separating the internal audit function from the *ex ante* financial control function. In conformity with new Article 24a(3) of the Financial Regulation, they confirm their willingness to implement internally the separation of the internal audit function from the *ex ante* financial control function. They will carry out this separation as soon as their internal control systems and procedures are fully operational.'

2. 'The Commission considers that the internal audit should be carried out in accordance with the relevant international rules, as laid down by the proposal amending the Commission Regulation of 1993 laying down detailed rules for the implementation of the Financial Regulation, adopted on 15 November 2000 and currently under consultation at the European Parliament and the Council, and on the basis of a risk assessment, as provided for in the proposed revision of the Financial Regulation of 21 December 1977 adopted by the Commission on 26 July 2000.'