FINANCIAL REGULATION

of 27 July 1976

applicable to the fourth European Development Fund

(76/647/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the ACP-EEC Convention of Lomé (1), signed on 28 February 1975, hereinafter referred to as 'the Convention',

Having regard to Council Decision 76/568/EEC of 29 June 1976 on the association of the overseas countries and territories with the European Economic Community (2),

Having regard to Council Decision 75/250/EEC of 21 April 1975 on the definition and conversion of the European unit of account used for expressing the amounts of aid mentioned in Article 42 of the ACP-EEC Convention of Lomé (3),

Having regard to the Internal Agreement on the financing and administration of Community aid (4) signed on 11 July 1975, hereinafter referred to as 'the Internal Agreement', and in particular Article 30 thereof,

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

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

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

Whereas according to Article 30 of the Internal Agreement the provisions for implementing that Agreement shall be the subject of a Financial Regulation adopted, upon the entry into force of the Convention, by the Council acting by the qualified majority laid down in Article 18 (4) of the said Agreement,

HAS ADOPTED THIS FINANCIAL REGULATION:

TITLE I

FINANCIAL ARRANGEMENTS

Article 1

1. The financial contributions of the Member States shall be expressed in the European unit of account, hereinafter referred to as 'EUA', referred to in Article 3 of the Internal Agreement and defined by Decision 75/250/EEC. Each Member State shall pay the amount of its contribution in its national currency on the basis of the conversion rate calculated by the Commission pursuant to Article 2 of the said Decision.

2. The financial contributions shall be credited by each Member State to a special account entitled 'Commission of the European Communities — European Development Fund' opened with the Treasury of that Member State or the body designated by it.

3. Upon expiry of the Convention and Decision 76/568/EEC, that part of the contributions which the Member States remain obliged to make shall be called up by the Commission, as required, on the conditions laid down in this Financial Regulation.

Article 2

1. The Council Decision provided for in the first subparagraph of Article 7 (2) of the Internal Agreement and which relates to the schedule of calls for contributions, shall be notified to the Commission by 31 October each year.

2. The annual contributions shall normally be payable:

(a) before 20 January for the requirements of the EDF as forecast for the first seven months of the year in question;

(b) on 1 July for the balance of the annual contribution.

3. Each Member State shall make the payments referred to in paragraph 2 in proportion to its contributions as fixed in Article 1 (2) of the Internal Agreement.

(1) OJ No L 25, 30. 1. 1976, p. 1.
(2) OJ No L 176, 1. 7. 1976, p. 8.
(3) OJ No L 104, 24. 4. 1975, p. 35.
(4) OJ No L 25, 30. 1. 1976, p. 168.

4. Supplementary payments decided upon pursuant to the second subparagraph of Article 7 (2) of the Internal Agreement shall, unless otherwise decided by the Council, be due and be made within as brief a period as possible, which may not in any case be more than three months.

Article 3

1. In each Member State the Commission shall hold, with the bank of issue or the financial institution designated by that Member State, accounts under the same name as that opened pursuant to Article 1 (2).

2. For operations which are not currently undertaken by banks of issue or by post office giro centres, or in order to facilitate the payments which it has to make, the Commission shall open accounts at one or more banks.

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

Article 4

1. The Commission shall use the funds credited to the accounts referred to in Article 3 to make the necessary payments and transfers.

2. The Commission shall, as far as possible, make any withdrawals from the special accounts referred to in Article 1 (2) in such a way as to maintain a distribution of its assets amongst the various currencies corresponding to the proportion in which the currencies of the Member States enter into the composition of the EUA.

Article 5

By reference to the cash requirements for executing projects and programmes, the authorizing officer shall make the transfers needed to replenish the accounts opened on behalf of the Commission in accordance with Article 32 of Protocol 2 annexed to the Convention, hereinafter referred to as 'Protocol 2', and with Article 3 of this Financial Regulation.

Article 6

1. Any transfers of assets from the currency of one Member State into that of another Member State which have been requested by the Commission for the management of the EDF shall be made at the current rate of exchange by the banks of issue or the financial institutions approved by the Member States.

2. Any exchange differences and costs shall be charged against EDF resources.

Article 7

The Commission shall communicate to the Council each year a statement of contribution payments and a progress report on EDF operations.

TITLE II

MANAGEMENT OF THE EDF

SECTION I

GENERAL PROVISIONS

Article 8

1. The EDF shall be adminstered financially in accordance with the principle that the authorizing officers and accounting officers are separate individuals. The appropriations shall be administered by the authorizing officers, who alone shall have the power to enter into commitments regarding expenditure, establish sums due to be collected and issue proof of revenue and payments.

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

3. An authorizing officer may not exercise the functions of financial controller or accounting officer.

Article 9

Within the limit of the appropriations provided for in Article 1 of the Internal Agreement the Commission shall, without prejudice to Article 11 (2) thereof, manage the EDF on its own responsibility under the conditions laid down in the Convention, in Decision 76/568/EEC, in the Internal Agreement and in this Financial Regulation. In accordance with Article 29 (1) of Protocol 2 the Commission shall appoint the chief authorizing officer of the EDF. The latter may have recourse to deputy authorizing

officers, whom he shall appoint subject to approval by the Commission. Each decision to delegate powers shall state the duration and extent of the mandate.

Those to whom powers are delegated may act only within the limits of the powers expressly conferred upon them.

Article 10

1. The Commission shall appoint the financial controller, who shall be responsible for monitoring the commitment, for authorizing expenditure and for monitoring revenue.

2. The special rules applicable to the financial controller shall be formulated in such a way as to ensure his independence in carrying out his duties. Measures taken in respect of his appointment and promotion, disciplinary action or transfers, and the various methods of interruption or termination of his appointment shall be the subject of reasoned decisions which shall be forwarded to the Council for information.

3. The person concerned or the Commission may institute proceedings before the Court of Justice.

Article 11

The collection of revenue and the payment of expenditure shall be carried out by an accounting officer appointed by the Commission. Subject to Article 33 (2) this accounting officer alone shall be empowered to manage funds and assets. He shall be responsible for their care.

Article 12

The Commission may delegate part of the duties of the accounting officer and part of the responsibility for monitoring to authorized agents appointed by it. The rules governing responsibilities adopted under this Title shall apply to such authorized agents within the limits of the powers delegated to them.

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

SECTION II

REVENUE

Article 13

1. The recovery of any sum due to the EDF shall give rise to the issue, by the authorizing officer, of a revenue order.

2. Revenue orders shall be transmitted by the authorizing officer to the financial controller and shall be subject to the latter's approval. The purpose of approval by the financial controller shall be to establish that:

(a) the revenue is correctly credited;

(b) the revenue order is in order and in conformity with the provisions applicable to the management of the EDF, with all acts taken in implementation of those provisions;

(c) the principles of sound financial management have been affected.

3. The financial controller may refuse his approval. The authorizing officer may, by means of a decision stating the full reasons therefor and on his sole responsibility, disregard this. The decision of the authorizing officer shall be implemented; it shall be communicated to the financial controller for information. The Commission shall inform the Audit Board provided for in Article 206 of the Treaty of each of these decisions.

4. When the authorizing officer waives the right to draw up a document establishing a debt or to recover sums due, he must inform the financial controller and the Audit Board.

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

Article 14

1. The accounting officer shall assume responsibility for revenue orders forwarded to him by the authorizing officer.

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

3. The accounting officer shall inform the authorizing officer and the financial controller of any revenue not recovered within the time limits laid down.

Article 15

A receipt shall be issued in respect of all cash payments made to the accounting officer.

SECTION III

COMMITMENT, CLEARANCE, AUTHORIZATION AND PAYMENT OF EXPENDITURE

1. Commitment of expenditure

Article 16

1. All measures which may give rise to expenditure payable by the EDF must be preceded by a proposal for commitment of expenditure from the authorizing officer.

2. A provisional commitment may be entered into in respect of current expenditure.

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

Article 17

Proposals for commitments shall be referred to the financial controller. They shall in particular show the purpose of the expenditure, the estimated amount involved, the item to which it is to be charged and the name and description of the creditor. They shall be registered after approval by the financial controller.

Article 18

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

(a) the expenditure has been charged to the correct item;

(b) appropriations are available;

(c) the expenditure is in order and in conformity with the provisions applicable to the management of the EDF and with all acts taken in implementation of those provisions, in particular the general and special clauses of the financing agreement relating to the operation;

(d) the principles of sound financial management have been applied.

2. The financial controller shall take into account any observations made in the discharge decisions.

Article 19

1. Where the financial controller withholds his approval he shall furnish a written statement of his reasons therefor. The authorizing officer shall be notified accordingly.

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

2. Except where the availability of appropriations is in doubt, the Commission may, by means of a decision stating the full reasons therefor and on its sole responsibility, overrule such a refusal. This decision shall be implemented; it shall be communicated for information to the financial controller. The Commission shall inform the Audit Board of each of these decisions.

2. Clearance of expenditure

Article 20

The purpose of clearance of expenditure by the authorizing officer shall be:

(a) to verify the existence of the rights of the creditor;

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

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

Article 21

1. Clearance of any expenditure shall be subject to the submission of supporting documents showing the creditor's claim and, where appropriate, the service rendered.

2. However, for certain categories of expenditure, advances may be granted under the conditions laid down by the Commission.

3. The Commission shall lay down the nature and contents of the supporting documents to be enclosed with the payment orders.

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

3. Authorization of expenditure

Article 22

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

Article 23

The payment order shall state:

(a) the item against which payment shall be charged;

(b) the amount to be paid;

(c) the name and address of the payee;

(d) the method of payment;

(e) the purpose of the expenditure.

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

Article 24

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

2. Copies of the supporting documents, certified as true copies by the authorizing officer, may, in some cases, be accepted in place of the originals.

Article 25

1. For payments by instalment, the first payment order shall be accompanied by documents establishing the creditor's right to payment of the instalment in question.

2. Subsequent payment orders shall refer to the supporting documents already furnished and repeat the reference number of the first payment order.

Article 26

Payment orders shall be sent to the financial controller for prior approval. This prior approval shall confirm that:

(a) the payment order was properly issued;

(b) the payment order agrees with the commitment of expenditure and that the amount thereof is correct;

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

(d) the appropriations are available;

(e) the supporting documents are in order;

(f) the payee is correctly described.

Article 27

Should approval be withheld, Article 19 shall apply.

Article 28

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

4. Payment of expenditure

Article 29

1. Payment shall be the final act whereby the EDF is discharged of its obligations resulting from carrying out the operations financed.

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

Article 30

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

Article 31

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

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

Article 32

1. Payments shall, as a general rule, be effected through a bank account or a post office giro account. The procedure for opening, administering and using such accounts shall be determined by the Commission.

2. The procedures referred to in paragraph 1 shall in particular require two signatures on cheques and on post office or bank transfer orders, one signature necessarily being that of the accounting officer or of a duly authorized administrator of advance funds; they shall, moreover, determine the expenditure whose payment must necessarily be effected either by cheque or by post office or bank transfer.

Article 33

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

2. The rules governing the management of the advance funds offices shall in particular concern:

(a) the appointment of administrators of advance funds;

(b) the nature and maximum amount of each expenditure to be incurred;

(c) the maximum amount of the funds which may be advanced;

(d) the procedures for the production of supporting documents and the time within which they must be produced;

(e) the responsibility of the administrator of advance funds.

Article 34

The conversion rates to be used for the calculation in EUA of payments to be made for the purpose of the projects or programmes referred to in Title IV of the Convention and in the corresponding provisions of Decision 76/568/EEC shall be those in force on the effective date of such payments. This date shall correspond to that in which the Commission accounts referred to in Article 32 of Protocol 2 and in Article 3 were debited.

SECTION IV

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

Article 35

Without prejudice to Article 30 (5) of Protocol 2, authorizing officers who, when establishing entitlements to be recovered, when issuing collection orders, entering into commitments of expenditure or signing payment orders, do so without complying with this Financial Regulation, shall be liable to disciplinary action and, where appropriate, to pay compensation. The same shall apply if they omit to draw up a document establishing a claim or if they neglect to issue revenue orders or are, without justification, late in issuing them.

Article 36

Financial controllers render themselves liable to disciplinary action and, where appropriate, to payment of compensation if they allow appropriations to be exceeded or are guilty of serious negligence in carrying out their duties.

Article 37

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

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

Under the same conditions, they shall be responsible for the correct execution of orders received by them in respect of the use and administration of bank and post office giro accounts, and in particular:

(a) if the payments or recoveries made by them do not agree with the amounts on the payment orders or collection orders;

(b) if they effect payment to a party other than the entitled payee.

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

(a) if they cannot show due warrant with proper documents for payments made by them;

(b) if they effect payments to a party other than the entitled payee.

They shall be liable to disciplinary action and to payment of compensation in respect of any loss or deterioration of the monies, assets and documents in their charge as a result of an intentional mistake or serious negligence on their part.

3. Accounting officers and administrators of advance funds shall insure themselves against any financial risks they may incur *vis-à-vis* the Commission under this Article.

The Commission shall cover the relevant insurance costs. It shall specify the categories of officials

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

4. A special indemnity shall be granted to accounting officers and administrators of advance funds.

The sums corresponding to this indemnity shall be credited each month to an account opened by the Commission on behalf of each of these officials in order to establish a guarantee fund to cover any cash or bank shortage for which the person concerned might render himself liable, in so far as such a shortage has not been covered by refunds from insurance companies.

The credit balance in these guarantee accounts shall be paid over to the persons concerned after they terminate their appointment as accounting officer or administrator of advance funds and after they have been given final discharge for their financial administration.

Article 38

The liability of authorizing officers, financial controllers, accounting officers and administrators of advance funds to payment of compensation and disciplinary action may be determined in accordance with Articles 22 and 86 to 89 of the Staff Regulations of officials of the European Communities.

Article 39

The Commission shall be allowed a period of two years from the date on which the account for revenue and expenditure is submitted to take a decision on the final discharge to be given to accounting officers for the transactions relating thereto.

SECTION V

ACCOUNTS

Article 40

1. The accounts shall be kept, expressed in EUA, by the double entry method and on the basis of the calendar year. They shall show all revenue and expenditure between 1 January and 31 December of each year and shall include the supporting documents.

2. The revenue and expenditure account and the balance sheet shall be drawn up in EUA.

Article 41

1. Entries shall be made on the basis of an accounting system comprising a nomenclature of budgetary items which makes a clear distinction between the accounts which permit the balance sheet to be drawn up and those which permit the revenue and expenditure account to be drawn up. These entries shall be recorded in books or on cards, which must make it possible to draw up a general monthly balance.

2. The accounting system shall be set out in a Commission Decision.

SECTION VI

GENERAL PROVISIONS

Article 42

The Audit Board shall be notified of the appointment of the authorizing officer, the financial controller, the accounting officer and of the administrator of advance funds, of any delegation of powers pursuant to Articles 9 and 12 and of the accounting system referred to in Article 41.

TITLE III

IMPLEMENTING MEASURES

SECTION I

EXECUTION OF EDF OPERATIONS

Article 43

The Commission shall, in respect of those resources of the EDF which it administers, inform the Council each year of the results of invitations to tender for the preceding year. Where appropriate it shall notify the Council of any measures it has taken or proposes to take to improve the terms of competition for participation in invitations to tender issued by the EDF.

In its report, the Commission shall provide the Council with information enabling it to assess

whether the measures taken by the Commission have actually afforded all firms of the various Member States, of the ACP States and of the associated countries and territories equal opportunity of access to works and supply contracts financed by the EDF.

Article 44

Under Article 19 of Protocol 2 and the corresponding provisions of Decision 76/568/EEC, a favourable opinion from the EDF Committee shall be required for the award of contracts by direct agreement or after restricted invitations to tender and for the performance thereof through public works departments.

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

Article 45

1. Tenders for supply contracts financed by the EDF shall be drawn up and payments made, at the option of the tenderer, in EUA, in the currency of the recipient State, country or territory, in the currency of the country of his registered place of business or in that of the country producing the supplies.

2. Tenders for works contracts and for technical assistance contracts and contracts for the supervision of works financed by the EDF shall be drawn up and payments made in the currency of the recipient State, country or territory. However, the tenderer may request in his tender that a justified part of the nominal amount of his tender be paid in the currency of the country of his registered place of business on the basis of the conversion rate in force on the first day of the month preceding the month in which the date set for the opening of tenders falls. He may also draw up that part in EUA on the basis of the conversion rate stipulated above.

3. Tenders for study contracts financed by the EDF shall be drawn up and payments made at the option of the contractor either in EUA or in the currency of the country in which the contractor has his registered place of business.

However, that part of the services provided which corresponds to expenditure in the currency of the recipient State, country or territory shall be paid in that currency. Where the sums to be paid in the various currencies are defined by reference to another currency the conversion shall be effected on the basis of the rate specified in the contract.

4. Where tenders are drawn up in EUA, payments connected with the debt shall, as appropriate, be made in the currency of a Member State or in the currency of a recipient State, country or territory specified in the contract on the basis of the equivalent value of the EUA on the day preceding payment.

5. Where payment is made in a currency other than the currency of the recipient State, country or territory or other than the currency of the country where the contractor has his registered place of business, it must be through the intermediary of an approved bank or agency, established in the country where the contractor has his registered place of business.

SECTION II

FINANCIAL COMMITMENTS

Article 46

Where the EDF's resources managed by the Commission are involved a financing agreement shall be drawn up and concluded in EUA between the Commission, acting for the Community, and the Government of the recipient State or the competent authority of the recipient country or territory for any project or programme on which a financing decision is taken.

The financing agreement shall specify the details of the EDF's financial commitment, the arrangements for and terms of the financing, and the persons or institutions responsible for supervision, payments and recoveries.

Article 47

No expenditure in excess of the amount laid down in the financing agreement may be charged to the EDF unless a decision has been taken to commit additional funds thereto under the conditions laid down in Articles 16 to 19 and in Article 56.

The request for the commitment of additional funds shall be addressed to the Commission and examined under the conditions laid down in Article 33 of Protocol 2.

Article 48

The transfer agreement referred to in Article 22 of the Convention and in the corresponding provisions of Decision 76/568/EEC shall state the data on which calculation of the annual transfer in EUA is based, the currencies in which the transfer of this amount is to be made and, where appropriate, the conditions for the reconstitution of the resources made available to the stabilization system referred to in Title II of the Convention.

SECTION III

SPECIAL LOANS

Article 49

1. A decision to grant special loans shall set the limit to the Community's commitment. Contracts relating to such loans, drawn up jointly with the Bank for the parts which concern the latter, shall be concluded by the Commission on behalf of the Community.

2. The amounts of the appropriations corresponding to each loan granted shall be expressed in EUA. If an appropriation is cancelled before all or part of the payments relating thereto have been made the unpaid part shall be regarded as not having been granted.

3. Loans shall be paid in the currency or currencies of the Member States as fixed by the Commission after consultation with the borrower. By way of derogation from Article 34, the sums paid shall be charged against the appropriations on the basis of the conversion rates in force, on the day preceding that of payment, between the EUA and the currency or currencies used for the payment.

4. Reimbursements and interest payments shall be credited to the Community's account with the Bank. The Bank shall recover such reimbursements and interest payments by virtue of special terms of reference conferred upon by the Commission. acting for the Community, after consulting the EDF Committee.

5. The amounts to be reimbursed and interest due in respect of special loans shall be expressed in EUA. Reimbursements and interest payments shall be made in one or more of the currencies of the Member States, chosen by the borrower.

6. The rates for converting EUA into the currencies of the Member States for the purpose of paying sums due in the form of reimbursements, interest payments and any commission due shall be those in force on the 10th day preceding payment.

SECTION IV

RISK CAPITAL

Article 50

1. Any decision to grant risk capital shall set a limit in EUA to the Community's commitment and financial responsabilities and to the extent of the rights in the company attaching to such operations.

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

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

3. Following the signing of each contract, the Bank shall communicate to the Commission the estimated dates and amounts of the calls for funds. Whenever called upon by the Bank to do so, the Commission shall pay to it the amount it needs for carrying out risk capital operations in the currency or currencies fixed by the Bank.

4. Payments relating to receipts, income and repayments in respect of risk capital operations shall be made to the Bank for the Community.

Article 51

The quasi-capital aid referred to in Article 4 of Protocol 2 and in the corresponding provisions of Decision 76/568/EEC shall serve to finance:

— primarily, fixed investments in public, private or semi-public firms,

— secondarily, specific studies for the preparation of projects and assistance for firms during the starting-up period.

Where such aid is granted to a consultancy firm it shall normally, on execution of the project, be incorporated in the capital or quasi-capital assistance to which the promoting firm may also be entitled for the execution of the project.

SECTION V

SUBSIDIZED LOANS FROM THE BANK

Article 52

1. Pursuant to Article 5 of Protocol 2 and the corresponding provisions of Decision 76/568/EEC, the aggregate amount of interest rate subsidies on loans from the Bank shall be calculated in EUA in terms of its current value on the effective date of signing of the loan contract, on the basis of a compound interest rate fixed by the Council and the Bank in agreement with the Commission.

For periods of less than one month the calculation shall be made on the basis of simple interest.

2. The Bank shall make the calculation of current value referred to in paragraph 1 by reference to the following two schedules:

(a) an estimated schedule for paying out and repaying the loan;

(b) an estimated schedule for the amounts required to cover the interest rate subsidies when they fall due.

The Bank shall communicate to the Commission as soon as possible the schedules and the total amount of the interest rate subsidies at their current value on the date fixed for the signing of the loan contract.

Where the actual schedule for paying out the loan proves to differ appreciably from the estimated schedule, the amount of the subsidy on the interest paid to the Bank shall be recalculated.

Should the date fixed for the signing be changed the Bank shall revise the calculation of the current value and shall forthwith communicate to the Commission the total amount of the interest rate subsidies at their current value on the new date fixed for the signing together with the appropriate grounds therefor.

3. The up-dated total amount of the interest rate subsidy shall be paid to the Bank by the Commission on the date on which the loan contract is signed.

4. If all or part of an appropriation which has been opened is cancelled or all or part of a loan which has been made is repaid in advance the Bank shall pay back into the special account opened with the Bank in the name of the Community under Article 68 an amount corresponding to that part of the appropriation which has been cancelled or that part of the loan which has been repaid, plus the compound interest, up-dated at the same rate as that stipulated in paragraph 1, for the period between the date of payment of the up-dated total amount of the interest rate subsidies and the date of repayment. The latter date may not be more than 30 days after the complete or partial cancellation or advance repayment of the subsidized loan.

5. All payments provided for in this Article shall be expressed in EUA and movements of funds relating thereto shall be made in the currencies of the Member States on the basis of the composition of the EUA.

SECTION VI

MANAGEMENT OF THE EXPORT EARNINGS STABILIZATION SYSTEM

Article 53

1. For the calculation in EUA of the reference level and of the actual earnings referred to in Article 19 (1) and (2) respectively of the Convention and in the corresponding provisions of Decision 76/568/EEC, the exchange rates applicable shall be the average rates in force in the periods to which the amounts concerned refer.

2. For the purposes of payments relating to the transfers referred to in Article 19 (3) and (6) of the Convention and in the corresponding provisions of Decision 76/568/EEC, the conversion rates to be used between the EUA and the currency or currencies used for payment shall be those in force on the day preceding payment.

3. For the purposes of payments relating to the contributions towards the reconstitution of resources referred to in Article 21 (2) of the Convention and in the corresponding provisions of Decision 76/568/EEC, the conversion rates to be used between the EUA and the currency or currencies used for payment shall be those in force on the 10th day preceding payment.

Article 54

In the event of advance use of the following year's instalment, the advances referred to in Article 19 (6) of the Convention and in the corresponding provisions of Decision 76/568/EEC shall be reduced proportionately.

SECTION VII

EXECUTIVE AGENTS

Chapter I

The chief authorizing officer

Article 55

1. The chief authorizing officer of the EDF, referred to in Article 29 of Protocol 2, shall take all measures necessary for the implementation of the provisions of Chapter 8 of Protocol 2 and of the corresponding provisions of Decision 76/568/EEC.

2. The chief authorizing officer shall ensure, before the publication of an invitation to tender, that the documents relating to tenders do not contain any direct or indirect discriminatory provisions. He shall ensure that tenders are compared under equal conditions and in particular that the import duties or taxation of the recipient State, country or territory do not constitute an obstacle to participation in invitations to tender.

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

4. The chief authorizing officer shall ensure that when a contractor is designated and a contract is awarded Articles 18 and 20 of Protocol 2 are respected.

Where he deems it appropriate, the chief authorizing officer shall consult experts chosen for their technical competence and their independence *vis-à-vis* the firms concerned by the award of the contract.

Article 56

Under Article 33 (3) of Protocol 2 and the corresponding provisions of Decision 76/568/EEC decisions to commit the additional funds required to cover any excess expenditure incurred under a project shall be taken:

— in accordance with the procedures laid down in Articles 19 and 20 of the Internal Agreement where the excess expenditure is higher than a ceiling of 15 % of the original commitment set out in the financing decision,

— by the chief authorizing officer of the EDF where the excess expenditure is equal to or lower than the 15 % ceiling.

Chapter II

The national authorizing officer

Article 57

In the performance of his duties, the national authorizing officer shall comply with the provisions of this Financial Regulation regarding commitment, clearance and authorization of expenditure.

Article 58

Where the chief authorizing officer of the EDF is aware of delays in the procedures relating to projects financed by the EDF he shall, in conjunction with the national authorizing officer, make all contacts necessary to remedy the situation.

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

Chapter III

The Commission delegate

Article 59

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

Article 60

The delegate shall comply with this Financial Regulation in the performance of his duties.

Article 61

In the event of failure to comply with this Financial Regulation, of misconduct or gross negligence in the performance of his duties, the delegate shall be answerable to the Commission.

Chapter IV

The paying agent

Article 62

In the performance of his duties, the paying agent referred to in Article 32 of Protocol 2 shall comply with this Financial Regulation.

Article 63

In the event of failure to observe the provisions in force of misconduct or of gross negligence which entail financial loss for the Community, the paying agent shall be held financially responsible under the conditions and in accordance with the terms laid down in the contract binding him to the Commission.

SECTION VIII

PRESENTING AND AUDITING ACCOUNTS

Article 64

1. The balance sheet and revenue and expenditure account, expressed in EUA, shall be adopted by the Commission at the close of each financial year. Without prejudice to Article 31 (4) of the Internal Agreement, they shall be submitted no later than 31 March of the following financial year together with documentary evidence, for examination by the Audit Board.

2. The powers conferred upon the Audit Board shall be exercised by its members, who shall take collective action and assume collective responsibility.

The Audit Board may instruct one or more of its members to carry out certain tasks or certain audits. Any member or members so instructed may on his or their initiative seek assistance from officers of the board.

The tasks delegated to such officers must be specifically laid down and limited to the time necessary for their completion. The board itself or one of its members shall notify these tasks to the authorities with whom the relevant officers are to carry out their work.

Article 65

1. The audit carried out by the Audit Board shall be based on records and, if necessary, performed on the spot. It shall be concerned with operations and projects financed from EDF resources managed by the Commission and its purpose shall be to establish that all revenue has been received and all expenditure incurred in a lawful and regular manner with regard to the provisions applicable, and that the financial management has been sound.

2. In the performance of its task the Audit Board may, under the conditions laid down in paragraph 4, consult all documents and information relating to the financial management of the departments subject to its inspection; it has the power to hear any official responsible for revenue and expenditure operations and to use any of the auditing procedures appropriate to those departments.

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

4. The Commission shall provide the Audit Board with all the facilities and information which the latter deems necessary for the performance of its task.

In particular, it shall place at the disposal of the Audit Board all documents concerning the conclusion of contracts and all accounts in cash or materials, all accounting records or supporting documents and the administrative documents pertaining thereto, as well as all documents relating to revenue and expenditure.

To this end, officials subject to audit by the Audit Board shall in particular:

(a) make available for inspection their cash in hand, any other cash, securities and all types of assets, the supporting documents in respect of their management of the funds of which they are the depositaries and any books, registers and other documents relating thereto;

(b) present the correspondence or any other document required for the full implementation of the audits.

The information referred to under (b) may be requested only by the Audit Board or by one of its members, and such request shall be in writing.

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

Article 66

1. Any comments which the Audit Board considers should appear in the annual report provided for in Article 206 of the Treaty shall be communicated to the Commission.

The Commission shall forward its replies to the Audit Board. The Audit Board shall attach to its report an assessment of the soundness of the financial management.

2. The Audit Board shall conclude its report on the accounts for the preceding financial year not later than 15 July.

The revenue and expenditure account, the balance sheet and the report of the Audit Board, together with the replies to the comments, shall be submitted by the Commission to the European Parliament and the Council not later than 31 October.

3. The European Parliament and the Council may request the Audit Board to forward, in addition to the annual report, reports or analyses in respect of specific problems relating to operations which have been closed.

The Audit Board may, on its own initiative, place similar reports or analyses before the European Parliament or the Council.

Article 67

1. Before 30 April of the following year the Commission shall be given a discharge in respect of the financial management of the EDF for the past year, in accordance with Article 31 (3) of the Internal Agreement.

2. The Commission shall take all appropriate steps to act on the comments appearing in the decision giving discharge. At the request of the European Parliament or the Council it shall report on the measures taken in the light of these comments and in particular on the instructions given to those of its departments which are responsible for the management of the EDF. This report shall also be forwarded to the Audit Board.

Subject to the second sentence of the preceding paragraph the Commission must, in an Annex to the revenue and expenditure account for the next financial year, give an account of the measures taken further to the comments appearing in the decision giving discharge.

3. The revenue and expenditure account and balance sheet for each financial year and the decision giving the discharge shall be published in the *Official Journal of the European Communities.*

SECTION IX

GENERAL AND FINAL PROVISIONS

Article 68

The sums collected by the Bank either in the form of repayments, interest or charges in respect of special loans or in the form of products, revenue or repayments from risk capital operations shall be centralized in a special account opened with the Bank on behalf of the Community.

Repayments in respect of interest rate subsidies received shall also be centralized in this account.

Article 69

This Regulation shall be applicable for the same period as the Internal Agreement.

Done at Brussels, 27 July 1976.

For the Council

The President

M. van der STOEL