FINANCIAL REGULATION
of 17 March 1981
applicable to the Fifth European Development Fund

(81/215/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Second ACP-EEC Convention, signed at Lomé on 31 October 1979, hereinafter referred to as 'the Convention',

Having regard to the Internal Agreement on the financing and administration of Community aid, signed in Brussels on 20 November 1979, hereinafter referred to as 'the Internal Agreement', and in particular Article 28 thereof,

Having regard to Council Decision 80/1186/EEC of 16 December 1980 on the association of the overseas countries and territories with the European Economic Community [1], hereinafter referred to as 'the Decision',

Having regard to Council Decision 80/1184/EEC of 18 December 1980 on the replacement of the European unit of account by the ECU to express the amounts of financial assistance under the Second ACP-EEC Convention and the previous Conventions [2],

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

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

Having regard to the opinion of the Court of Auditors [3],

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

Whereas, under Article 28 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 17 (4) of the said Agreement,

HAS ADOPTED THIS FINANCIAL REGULATION:

TITLE I

FINANCIAL ARRANGEMENTS

Article 1

1. The Council shall notify the Commission by 31 October each year of the decision which it adopts pursuant to the first subparagraph of Article 6 (2) of the Internal Agreement and which relates to the schedule of calls for contributions.

2. Annual contributions shall in principle be called up in four equal instalments payable on:

— 20 January,

— 1 April,

— 1 July,

— 1 October.

3. Supplementary payments decided upon pursuant to the second subparagraph of Article 6 (2) of the Internal Agreement shall, unless otherwise

(1) OJ No L 361, 31. 12. 1980, p. 1.

(2) OJ No L 349, 23. 12. 1980, p. 34.
(3) OJ No C 45, 4. 3. 1981, p. 3.

decided by the Council, be due and be made within as brief a period as possible which shall be laid down in the decision to call for such payments and which may not in any case be more than three months.

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

Article 2

1. The financial contributions of the Member States shall be expressed in ECU as defined by Decision 80/1184/EEC.

2. Each Member State shall pay the amount of its contribution on its national currency on the basis of the conversion rate of the ECU in force on the first working day following the 15th day of the month preceding the payment.

3. 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.

4. Upon expiry of the Convention and the Decision, 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 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 2 (3).

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 2 (3) 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 make up the ECU.

Article 5

On the basis of the cash requirements for the execution of projects and programmes, the Commission shall make the transfers needed to replenish the accounts opened in its name in accordance with Article 124 of the Convention and 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 administered financially in accordance with the principle that authorizing officers and accounting officers are separate individuals. Appropriations shall be administered by authorizing officers, who alone shall have the power to enter into commitments regarding expenditure, establish sums due to be collected and issue proof of receipt and payments out.

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

3. The duties of authorizing officer, financial controller and accounting officer shall be mutually incompatible.

Article 9

Within the limit of the appropriations provided for in Article 1 of the Internal Agreement, the Commission shall, without prejudice to Article 10 (2) thereof, manage the EDF on its own responsibility in accordance with the conditions laid down in the Convention, the Decision, the Internal Agreement and this Financial Regulation. In accordance with Article 121 (1) of the Convention, 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. Decisions to delegate powers shall be notified to those to whom powers are delegated, to the accounting officer, the financial controller, the authorizing officers and the Court of Auditors.

Article 10

1. The Commission shall appoint the financial controller, who shall be responsible for monitoring the commitment and authorization of 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 transfer, 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 its 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 Financial 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 recovery order.

2. Recovery 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 recovery order is correct and in conformity with the provisions applicable to the management of the EDF and with all measures taken in implementation of those provisions;

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

3. The financial controller may refuse his approval. The Commission may, by means of a decision giving the reasons therefor and on its sole responsibility, disregard this. Such decision shall be final and binding; it shall be communicated for information to the financial controller. The Commission shall inform the Court of Auditors every three months of all such decisions.

4. If the authorizing officer waives the right to recover an established debt, he shall send beforehand a proposal for cancellation to the financial controller for his approval and to the accounting officer for his information.

The purpose of approval by the financial controller shall be to establish that the waiver is in order and conforms with the principles of sound financial management. The proposal concerned shall be registered by the accounting officer.

If approval is withheld, the Commission may, by a decision stating the full reasons therefor and on its sole responsibility, overrule this refusal. This decision shall be final and binding; it shall be communicated for information to the financial controller. The Commission shall inform the Court of Auditors every three months of all such decisions.

5. Where 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 recovery 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, accompanied by the supporting documents, shall be referred to the financial controller and to the accounting officer. 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

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 conforms to the provisions applicable to the management of the EDF and to all acts made in implementation of those provisions, in particular the general and special conditions of the financing agreement relating to the operation;

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

Article 19

1. Where the financial controller withholds his approval he shall furnish a written statement giving 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 taken on its sole responsibility, overrule such a refusal. This decision shall be final and binding; it shall be communicated for information to the financial controller. The Commission shall inform the Court of Auditors every three months of all such decisions.

2. **Clearance of expenditure**

Article 20

The clearance of expenditure shall be the act whereby the authorizing officer:

(a) verifies the existence of the creditor's claim;

(b) determines or verifies the existence and the amount of sum due; and

(c) verifies 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 supporting documents relating to the accounts and to the establishment of the revenue and expenditure account and the balance sheet referred to in Article 41 shall be kept for a period of five years following the date of the decision giving discharge in respect of the implementation of the EDF, referred to in Article 29 of the Internal Agreement.

However, the documents relating to transactions not finally closed shall be kept beyond this period.

5. 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, in words and figures, showing the currency;

(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 statement of the authorizing officer confirming that the amounts to be paid are correct and that the supplies have been received or the service performed. 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 duly warranted 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. The purpose of this prior approval shall be to establish 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 named and 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. Without prejudice to the provisions of Article 122 (3) of the Convention concerning the responsibilities of the national authorizing officer, 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 payment be effected.

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 procedure 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, specify the expenditure in respect of which payment must necessarily be made either by cheque or by post office or bank transfer.

Article 33

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

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

(a) the appointment of administrators of advance funds;

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

(c) the maximum amounts 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 ECU of payments to be made for the purpose of the projects or programmes referred to in Title VII of the Convention and in the corresponding provisions of the Decision shall be those in force on the effective date of such payments. This date shall correspond to that on which the Commission accounts referred to in Article 124 of the Convention and in Article 3 of this Financial Regulation were debited.

SECTION IV

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

Article 35

Without prejudice to Article 122 (3) of the Convention, authorizing officers who, when establishing entitlements to be recovered, or issuing recovery orders, entering into commitments of expenditure or signing payment orders, do so without complying with this Financial Regulation, shall render themselves liable to disciplinary action, and where appropriate, to payment of compensation. The same shall apply if they omit to draw up a document establishing a claim or if they neglect to issue recovery 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 for any action taken during their term of office, in particular where they approve expenditure in excess of appropriations.

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 30.

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) where the recoveries or payments made by them do not agree with the amounts on the corresponding recovery or payment orders;

(b) where they effect payments 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) where they cannot show due warrant with proper documents for payments made by them;

(b) where 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 risk they may incur 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 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 management.

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 revenue and expenditure account 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 in ECU, 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 be substantiated by supporting documents.

2. The revenue and expenditure account and the balance sheet shall be drawn up by the Commission not later than 15 April of the following year.

3. The revenue and expenditure account shall be drawn up in ECU and shall include the following documents:

(a) a table of revenue showing:

— estimated revenue for the calendar year,

— amendments to the revenue estimates,

— entitlements established in the course of the calendar year,

— amounts still to be collected at the end of the calendar year,

— additional revenue;

(b) a table showing the decisions taken by the Commission or the Council during the calendar year and a table showing the overall situation regarding sums committed;

(c) a table showing the situation regarding delegated appropriations and expenditure authorizations effected during the calendar year and a table showing the overall situation regarding delegated appropriations and expenditure authorizations effected;

The tables referred to in (a), (b) and (c) shall be accompanied by a cumulative statement showing for each recipient country or territory the aggregate figure for the commitment decisions taken, for delegated appropriations granted and for expenditure authorizations effected.

4. The balance sheet shall be drawn up in ECU. It shall set out the assets and liabilities of the EDF as at 31 December of the previous year.

It shall be accompanied by a statement showing the movements and balances of the accounts drawn up on the same date.

Article 41

1. Entries shall be made on the basis of an accounting plan 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 detailed conditions for drawing up and operating the accounting plan shall be defined by the Commission.

SECTION VI

GENERAL PROVISIONS

Article 42

The Court of Auditors 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 plan referred to in Article 41.

TITLE III

IMPLEMENTING MEASURES

SECTION I

EXECUTION OF EDF OPERATIONS ADMINISTERED BY THE COMMISSION

Article 43

The Commission shall take all appropriate measures to provide effective information for the economic operators concerned, in particular by publishing every two months a bulletin containing details of clearly identified projects, up to the stage of their being put out to tender.

Article 44

The Commission shall 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 in fact given all undertakings 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 45

Under Article 127 (2) of the Convention and the corresponding provisions of the Decision, favourable opinion from the EDF Committee shall be required for the placing of contracts after restricted invitations to tender, the conclusion of contracts by direct agreement 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 46

The results of international competition referred to in this Section and as far as possible of the contracts concluded by direct agreement shall be published as soon as possible in the *Official Journal of the European Communities*.

Article 47

1. Tenders for supply contracts financed by the EDF shall be drawn up and payments made, at the option of the tenderer, in ECU, 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 service contracts 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 or in the currency of one of the Member States 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 express this part in ECU on the basis of the conversion rate referred to above.

The justification required under this paragraph shall be assessed in the light of the verifiable facts as regards the real origin of the services to be provided and of the expenditure to which they give rise.

3. Tenders for service contracts in respect of studies financed by the EDF shall be drawn up and payments made, at the option of the contractor, either in ECU 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 ECU, 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 ECU on the day preceding payment.

5. Where payment is made in the currency of the recipient State, country or territory it must be made through a bank established in the recipient country.

Where payment is made in another currency it must be made 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 48

1. The financing agreement referred to in Article 115 of the Convention and in the corresponding provisions of the Decision shall specify the amount of the EDF's financial commitment in respect of the operation in question.

2. No expenditure in excess of this amount 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 58.

The request for the commitment of additional funds shall be addressed to the Commission and appraised under the conditions laid down in Article 117 of the Convention and in the corresponding provisions of the Decision.

Article 49

The transfer agreement referred to in Article 40 of the Convention and in the corresponding provisions of the Decision shall state the data on which calculation of the annual transfer in ECU is based, the currencies in which the transfer of this amount is to be made and, where appropriate, the conditions for the replenishment of the resources made available to the stabilization system referred to in Title II of the Convention.

SECTION III

SPECIAL LOANS

Article 50

1. The 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 ECU. 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 ECU 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 it 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 ECU. 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 ECU 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.

Article 51

In accordance with Article 56 of the Convention and the corresponding provisions of the Decision, the implementing measures concerning special loans shall also apply in respect of the aid granted from the special financing facility for the mining sector.

SECTION IV

RISK CAPITAL

Article 52

1. Any decision to grant risk capital shall set a limit in ECU to the Community's commitment and financial responsibilities 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 in ECU the amount it needs for carrying out risk capital operations.

4. Payments relating to receipts, income and repayments in respect of risk capital operations shall be credited to the Community's account with the Bank.

SECTION V

SUBSIDIZED LOANS FROM THE BANK

Article 53

1. Pursuant to Article 104 of the Convention and the corresponding provisions of the Decision, the aggregate amount of interest rate subsidies on loans from the Bank shall be calculated in ECU 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 and hereinafter referred to as 'the current value rate'.

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

(a) the date fixed for the signing of the loan contract and the rate of interest applicable on the date the calculation is made;

(b) an estimated schedule for paying out the loan;

(c) an estimated schedule for repaying the loan on the basis of the subsidized interest rate;

(d) 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 factors involved in the calculation and the total amount of the interest rate subsidies at their current value on the date fixed for the signing of the loan contract.

3. The up-dated total amount of the interest rate subsidy shall be paid to the Bank by the Commis-

sion on the date fixed for the signing of the loan contract.

4. As soon as a subsidized loan has been fully paid out, account being taken of any cancellation of part of the appropriation, the Bank will carry out the final calculation of the interest rate subsidy relating to the loan taking into account the relevant data, and in particular the date on which the loan contract was signed, the rate of interest being charged by the Bank on that date, the schedule of payments and any adjustments to the schedule of repayments.

Should the result of the final calculation of the interest rate subsidy be at variance with that given by the estimated calculation carried out in accordance with paragraph 2, the Bank shall be entitled to receive payment of a further subsidy by the Commission or, where appropriate, shall be obliged to reimburse any overpayment to the Commission.

5. If all of an appropriation is cancelled or all or part of a loan which has been made is repaid in advance, the Bank shall pay back to the Commission an amount of the subsidy corresponding to the amount of the appropriation or that part of the loan which has been repaid.

6. The sums reimbursed to the Commission will be charged against the amount of 175 million ECU corresponding to EDF grants for financing interest rate subsidies, in accordance with Article 4 of the Internal Agreement.

7. The amounts of the additional payments to be made by the Commission and sums to be reimbursed by the Bank pursuant to paragraphs 4 and 5 will be increased by compound interest and updated at the same rate as that stipulated in paragraph 1 for the period between the date of payment of the updated total amount of the interest rate subsidies and the date of the operation specified in the second subparagraph of paragraph 4. The latter date may not be more than 30 days after the complete or partial cancellation or advance repayment of the subsidized loan.

8. All payments provided for in this Article shall be expressed and made in ECU.

SECTION VI

MANAGEMENT OF THE EXPORT EARNINGS STABILIZATION SYSTEM

Article 54

1. For the calculation in ECU of the reference level and of the actual earnings referred to in Articles 36 and 37 of the Convention and in the corresponding provisions of the Decision, the exchange rates applicable shall be the average rates in force in the periods to which the amounts concerned refer.

2. For payments relating to the transfers referred to in Articles 39 and 40 of the Convention and in the corresponding provisions of the Decision, the conversion rates to be used between the ECU and the currency or currencies used for payment shall be those in force on the day preceding payment.

3. For payments relating to the contributions towards the replenishment of resources referred to in Article 43 of the Convention and in the corresponding provisions of the Decision, the conversion rates to be used between the ECU and the currency or currencies used for payment shall be those in force on the tenth day preceding payment.

Article 55

In the event of advance use of the following year's instalment, the advances referred to in Article 40 (3) of the Convention and in the corresponding provisions of the Decision shall be reduced proportionately.

Article 56

1. The Commission shall inform the Council every three months concerning the financial situation of the system.

2. The information referred to in paragraph 1 shall be supplemented or updated whenever proposals for transfers are laid before the Member States.

SECTION VII

EXECUTIVE AGENTS

Chapter I

The chief authorizing officer

Article 57

1. The chief authorizing officer of the EDF, referred to in Article 121 of the Convention, shall take all measures necessary for the implementation

of the provisions of Chapter 7 of Title VII of the Convention and the corresponding provisions of the Decision.

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 documents in replacement thereof. 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 contractors are designated and contracts awarded in compliance with Articles 126 and 128 of the Convention.

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 58

Under Article 117 of the Convention and the corresponding provisions of the Decision, 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 18 and 19 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 59

In the performance of his duties, as laid down in Article 122 of the Convention, the national authorizing officer shall comply with the provisions of this Financial Regulation regarding commitment, clearance and authorization of expenditure.

Article 60

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 gives rise to 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 right as creditor *vis-à-vis* the national authorities.

Chapter III

The Commission delegate

Article 61

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 62

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

Article 63

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 64

In the performance of its tasks, as laid down in Article 124 of the Convention, the paying agent shall comply with this Financial Regulation.

Article 65

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 it to the Commission.

SECTION VIII

PRESENTING AND AUDITING ACCOUNTS

Article 66

1. The balance sheet and revenue and expenditure account, expressed in ECU, shall be adopted by the Commission at the close of each financial year. Without prejudice to Article 29 (4) of the Internal Agreement, they shall be submitted no later than 15 April of the following financial year to the European Parliament, the Council and the Court of Auditors.

2. The Court of Auditors and its members may in carrying out the task of the Court, seek assistance from officers of the Court.

Tasks delegated to such officers must be specified and limited to the time necessary for their completion. The Court itself or one of its members shall notify these tasks to the authorities with whom the person delegated is to carry out his work.

Article 67

1. The audit carried out by the Court of Auditors shall be based on records and shall, if necessary, be 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 Court of Auditors 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 Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositaries or against offical memoranda of cash and securities held. The Court may itself carry out such checks.

4. The Commission shall provide the Court of Auditors 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 Court of Auditors all documents concerning the conclusion and implementation of contracts and all accounts of cash or materials, all accounting records or supporting documents and also the administrative documents pertaining thereto, all documents relating to revenue and expenditure, all inventories, and all lists of posts in the departments which the Court of Auditors may consider necessary.

To this end, officials subject to audit by the Court of Auditors shall in particular:

(a) make available for inspection their cash in hand and any other cash, securities or assets of any kind, the supporting documents in respect of their management 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 Court of Auditors.

The Court of Auditors 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 departments responsible for decisions on such revenue and expenditure.

Article 68

1. The Court of Auditors shall communicate to the Commission, not later than 15 July, any observations which it considers should appear in the annual report provided for in Article 206a of the Treaty.

The Commission shall forward its replies to the Court of Auditors not later than 31 October.

2. The Court of Auditors shall attach to its report an assessment of the soundness of the financial management.

3. The Court of Auditors may also, at any time, submit observations on specific questions and deliver opinions at the request of one of the institutions of the Community.

Article 69

The Court of Auditors shall send its annual report, together with the Commission's replies, not later than 30 November to the European Parliament, to the Council and to the Commission and shall ensure its publication in the *Official Journal of the European Communities*.

Article 70

1. Before 30 April of the following year the European Parliament, acting on the recommendation of the Council, shall give the Commission a discharge in respect of the financial management of the EDF for the preceding year, in accordance with Article 29 (3) of the Internal Agreement.

2. The financial controller shall take account of the observations appearing in the decision giving discharge.

3. The Commission shall take all appropriate steps to act on the observations 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 observations 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 Court of Auditors.

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 observations appearing in the decision giving discharge.

4. 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 71

The sums collected by the Bank either in the form of repayments, interest or charges in respect of special loans or the aid granted from the special financing facility 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 and denominated in ECU; these sums shall be managed by the Bank.

Article 72

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

Done at Brussels, 17 March 1981.

For the Council

The President

D. F. van der MEI