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English edition

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I

(Information)

COURT OF AUDITORS

SPECIAL REPORT No 4/94

on the urban environment together with the Commission's replies

(94/C 383/01)

(Observations pursuant to Article 188C(4), paragraph 2, of the Treaty on European Union)

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0. INTRODUCTION

0.1. Observing the principle of subsidiarity, the Treaty gives the Community general responsibility for the preservation, protection and improvement of the quality of the environment and, therefore, of the urban environment. In addition to this, issues concerning the quality of life in urban areas are closely linked to all questions of economic and social development and are thus influenced by Community action in these areas. It was in this spirit that the Commission presented a 'green paper' on the urban environment in June 1990.

0.2. In its Resolution of 28 January 1991⁽¹⁾ on this 'green paper', the Council pointed to the Community dimension of any policy concerning the urban environment. It acknowledged that the solution of problems relating to the urban environment was an essential precondition for any sustainable development of towns and cities, and that close and continuing coordination of policies in the many domains that affect urban areas was vital to success in this field. The Council also stressed the importance of urban and regional planning as an integrating framework for decisions regarding land use, services and infrastructures, and it also acknowledged the important role that may be played by the exchange of experiences and demonstration projects.

0.3. In conjunction or in parallel with the distribution of the 'green paper', Community actions have given increasing attention to concerns about the urban environment, through various initiatives, the implementation of which will be examined in the following paragraphs.

1. DIFFICULTIES CONCERNING POLICY FOR THE PROTECTION OF THE URBAN ENVIRONMENT

1.1. Action to protect the urban environment is dependent on complicated factors. Air pollution, water pollution, noise pollution and the quality of city life are all factors that are linked to economic and industrial development, climatic conditions, the nature of the terrain and transport and energy policies. Essentially, it is good administrative management at local level, including utilization of suitable technologies, that will guarantee the conditions for harmonious urbanization and the development of quality for present and future urban populations.

1.2. Public aid may be used for studying problems, developing information resources, promoting research, experimenting with different methods and processes and improving training, but it cannot, alone, induce changes in behaviour patterns, which are far more dependent on legislative change and the will of the administrative

authorities. Similarly, public aid cannot rehabilitate all run-down sites and, in any case, one of the principles of intervention on environmental issues is that of prevention at source.

1.3. In this spirit, Community action to protect the urban environment concerns mainly the raising of awareness, exchanges of experience, pilot research projects and the devising of methods and models. It is an action that focuses on promotion and support, whose effectiveness is largely dependent on the commitment and diligence of local partners.

1.4. The Commission's green paper dates from June 1990 and, at that time, several initiatives that were likely to have an impact on the urban environment were already under way, in a piecemeal fashion, within the framework of various Community policies. This means that a considerable effort needs to be made to reach a more unitary overall approach, though this is a difficult objective, since each sectoral policy has other priorities that have to be combined with environmental concerns.

2. ACTIONS MANAGED BY ENVIRONMENTAL DEPARTMENTS

The 'Urban environment' unit

2.1. Within the Commission's DG XI, the Unit responsible for 'the urban environment, air quality, transport and noise' prepared the Commission's green paper of 1990 and provides the secretariat for the group of experts set up in application of the Council Resolution of 28 January 1991. Its main activities concern the development of legislation on, in particular, the use of fuels, urban transport strategies, air quality and noise control, including work on a database on air quality in several European towns and cities.

2.2. The Unit also tries to ensure that protection of the urban environment is taken into account in actions undertaken and, in some cases, funded by other Commission departments. This is an essential function to ensure that the actions of these other departments can benefit from the contribution of this specialized Unit and to limit the risk of parallel initiatives being conducted in an uncoordinated fashion.

2.3. In addition to these activities, the Unit manages a budget appropriation of some ECU 2,5 million a year, which was, until 1991, covered by a separate budget heading (item B4-3045, 'Urban environment') but has, since 1992, been incorporated into the appropriations covered by article B4-304, 'Environmental legislation'. This budget appropriation has to cover, in addition to

⁽¹⁾ OJ No C 33, 8. 2. 1991, p. 4.

the financing of studies concerning the development of the legislation, the funding of pilot projects, exchanges of experience, studies and seminars within the framework of specific actions concerning town planning, urban transport, historical heritage or the natural environment in towns and cities.

2.4. Contracts are subject to standardized monitoring, the various intermediate and final reports usually being presented correctly by contractors. However, the contribution of subsidized actions to the realization of Community objectives should be more carefully planned and assessed.

2.5. According to the budgetary remarks on article B4-304 for 1993, one of the main projects funded concerns aid granted to a body specializing in the urban environment, which was set up in December 1991 and is based in Berlin. During 1992 and 1993 this body received ECU 450 000, which accounted for approximately half of all the resources available to the body in question for that period. The body's activities for 1992-93 were, to the extent of about ECU 131 000, subcontracted to a Dutch establishment and to the extent of about ECU 61 000 to an American consultant. Both were selected by the contractor by direct negotiation, and consist mainly of training initiatives, seminars and exchanges, essentially for nationals of Eastern European countries, and are often held on the spot in those countries. These activities are not in conformity with the wording of article B4-304 of the 'Environmental legislation' budget and have little impact with regard to the objective of protecting the urban environment in the Community.

The 'LIFE' instrument

2.6. DG IX also finances similar measures to those under Article B4-304 using the LIFE financial instrument for the environment that was set up by Council Regulation (EC) No 1973/92 of 21 May 1992⁽¹⁾. One of its objectives concerns 'measures aiming to improve the quality of the environment in urban areas, both central and peripheral'. On the basis of this objective, two measures were supported in 1992 and eight in 1993, with total aid of ECU 5,7 million, for overall expenditure of some ECU 27 million (Table 1).

2.7. The two 1992 measures, concerning the cities of Dublin and Genoa, were selected on the basis of proposals which had been submitted by the Member States for the instruments preceding LIFE. For both of these measures difficulties emerged in defining the initiatives, which considerably delayed the launching of the measures. The Dublin project consists of drawing

up an inventory of information to identify and manage environmental problems in the city. It was first approved only in part. A new decision in October 1993 approved other parts, increased the aid by ECU 0,3 million and extended the completion date to June 1995. In the case of Genoa, the project approved in December 1992 should have been completed in December 1993 (aid of ECU 1,35 million for a total expenditure of ECU 5 million). However, the project had not even begun by that date and the city authorities were preparing a revised plan of action. The advance payment of 40 %, made in March 1993, had not been used.

2.8. In contrast with other areas of intervention covered by LIFE, actions concerning the urban environment to be implemented in 1993 were not the object of a call for tenders published in the Official Journal. Priorities were, however, defined by the Commission, with the assistance of a committee of representatives of the Member States, and were published (Official Journal No C 331 of 16 December 1992, p. 11). These priorities concern the definition and development of integrated management methods and, in particular, the development of practices whose purpose is to reduce the pressure of traffic in public urban areas, mixed use of land and the promotion of cleaner public transport systems.

2.9. The Member States submitted 119 proposals on this basis, of which eight were finally accepted. Clearer and well publicised priorities and conditions governing Community funding would have facilitated selection procedures, which were conducted using inadequately completed questionnaires. Most expenditure on projects accepted at present does not appear to be closely related to the declared priorities (Table 1): some projects concern the renovation of a district and one investment project is more to do with the development of tourism (construction of an amphitheatre and a riverside quay and purchase of a boat). Completion dates for the eight projects accepted range from the end of 1994 to the end of 1996.

3. URBAN PILOT PROJECTS FUNDED BY THE ERDF

Projects funded

3.1. Under Article 10 of Council Regulation (EC) No 4254/88 of 19 December 1988⁽²⁾, the ERDF may (chapter B2-18 of the budget for 'Temporary measures and

⁽¹⁾ OJ No L 206, 22. 7. 1992, p. 1.

⁽²⁾ OJ No L 374, 31. 12. 1988, p. 15.

innovative actions') contribute to the funding, at Community level, of pilot projects that:

- (a) promote the creation of infrastructures, investment in enterprises and other specific measures with a marked Community value, particularly in internal and external border areas of the Community;
- (b) encourage exchanges of experience and development cooperation among the Community's regions, as well as innovative actions.

3.2. Although it mainly relates to economic and social cohesion, expenditure under this Article 10 is closely linked to the issue of the urban environment, since, during the budget years 1990-1993, a total of 32 urban pilot projects, with execution periods varying between a year and a half and four and a half years, were funded, for an overall investment of ECU 204,3 million and Community aid of ECU 101,1 million. Selection of these projects was based on the following criteria: urban planning or renewal of European interest, innovative nature, demonstration potential, contribution to the development of the region concerned. The Court examined seven of these 32 projects.

3.3. The projects subsidized, which are listed in Table 2, cover four main areas of intervention: economic development in areas with social problems, environmental actions linked to economic ends, the revitalization of historic centres, and the utilization of technological advantages in towns and cities. Actions generally comprise the restoration of buildings, as well as exchanges of experience, training activities, study centres or service centres.

Selection of initiatives

3.4. Pilot projects and, therefore, the towns or cities to benefit from aid, were selected on the basis of bilateral mutual agreements, subject, moreover, to few formalities. The conditions for the granting of public aid seem to lack transparency and the methods applied do not make it possible, in particular, to ascertain whether the initiatives selected were in fact the most worthy. At the very least, the procedure for the granting of aid should include a simple but specific public call for tenders to ensure that potential initiatives can be identified, and it should also include the drawing-up of a set of criteria for assessment and comparison that make it possible to classify such initiatives in order of merit.

3.5. Such a procedure was applied in the case of the 18 studies relating to conservation of European cities

and funded under budget heading B2-6023 of the 1992 budget, with an appropriation of ECU 1,5 million. A *fortiori*, such a procedure should also be implemented in the case of pilot projects, the cost of which is 60 times higher.

The innovative nature of projects

3.6. The experimental or innovative nature of projects subsidized has still, in most cases, to be demonstrated. Actions similar to those funded as pilot projects can mostly be found in operational programmes covering Objectives 1 and 2, classed as, for example, aid for tourism, the improvement of run-down areas, environmental action or the renovation of historic centres. Even when a pilot project includes some more innovative aspect, this aspect is often difficult to put into action and, as the Court observed during its on-the-spot checks, remains only partially implemented, if at all.

3.7. In some cases (e.g. Bordeaux, Copenhagen, London, Lyons and Rotterdam), funding under Article 10 has made it possible to grant aid to municipalities which at that time would not otherwise have been eligible for any ERDF action. The project reports and information obtained on site by the Court with respect to the Fuenlabrada and Parla project in Spain showed that these municipalities had been chosen by the national authorities because they were the only large units south of Madrid that were not included in the areas eligible under Objective 2.

The state of progress of the projects examined

3.8. The aim of the Fuenlabrada and Parla project mentioned above is to improve the area around an industrial zone and create a kind of 'green belt'. The area in question is partly agricultural land and partly waste ground which is subject to illegal dumping of waste. Strictly speaking, the project hardly qualifies as 'urban'. The execution period originally stated ran from April 1991 to September 1993. At the end of 1993, work had still not begun because of problems concerning the availability of land and compulsory purchase procedures — questions that had not been settled prior to approval of the project. The deadline for completion of the work was extended to September 1994, though there was no guarantee that this second deadline could be met. At the end of 1993, the 50 % advance of ECU 2,3 million, which had been paid by the Commission in early 1992, remained available in the accounts of the autonomous region of Madrid.

3.9. The project concerning the city of Lyons covers five measures (scientific and technical research centre, employment centre, local employment scheme, workshops for artists and artisans, and the communication and dissemination of experience), which fall within the framework of traditional actions for the social development of urban districts. Only the scientific and technical research centre, the economic and social value of which continues to be speculative, is clearly innovative in nature; the other operations are typical of the Objective 2 operational programmes financed by the ERDF (for which this city is not eligible). Approved in December 1991, the project should, according to the original timetable, have been completed in December 1993. At that date, only the second and third measures were in progress, whilst the scientific and technical research centre, which accounts for more than half the total expenditure of ECU 3,9 million, had had to be completely redefined. In the meantime, the city of Lyons had requested two successive postponements of the dates set for the completion of commitments and payments.

3.10. In the case of Athens, the project, which was to be conducted between 1 January 1991 and 31 December 1993, consisted of the setting-up of a leisure centre, the rehabilitation of degraded land and the conversion of old buildings into an administration and training centre. In September 1993, only 9 % of the project had been executed and consisted mainly of work on infrastructures, which had been begun without any of the preliminary environmental impact studies required by the relevant national legislation having been carried out. The chances of the project being completed appeared to be in doubt because of the presence on the site of high and medium voltage electricity lines, which it would be difficult to move because of the lack of available space. Also, the junction of two major railway lines on a neighbouring plot is also causing significant problems as regards traffic and accessibility. The advance of ECU 2,3 million paid by the Commission in April 1991 was being kept by the recipient in an interest-earning account.

3.11. In Genoa, the project comprised the restoration of two historic buildings, which had been derelict for many years, and the creation of an archaeology park. These architectural works were to be accompanied by a more innovative action, comprising the setting-up of an urban observatory, with a view to developing information exchanges, research and promotion concerning urban issues. The execution period for the project, which was originally timetabled to run from 1 February 1992 to 31 December 1993, was extended by a year. In December 1993, the planned construction and restoration work was at an advanced state of progress, though this was, in the main, only the first phase of a

project to be completed later. By contrast, there were no clear prospects concerning the urban observatory.

3.12. A similar observation must be made with regard to the projects in Dublin, Copenhagen and Aalborg. Although the parts relating to infrastructures and traditional architectural work were progressing without too much difficulty, little progress was being made on the more innovative aspects of the projects (cultural actions, experimentation with eco-technological methods, exchanges of knowledge or information).

3.13. The use by the Commission of a technical assistance consultancy (the 'Bureau Recite', which was mainly managed by ECOTEC) in order to have the monitoring of the projects carried out is not entirely satisfactory. It is not clear to the managers of the projects what authority and responsibilities have been vested in the TAC and some prefer direct communication with DG XVI because of language problems.

4. THE RECITE PROGRAMME FUNDED BY THE ERDF

European cooperation networks

4.1. Article 10 of Council Regulation (EC) No 4254/88, which we have already mentioned above, is also the legislative basis for funding of the RECITE (regions and Cities of Europe) programme, which was launched in 1991 to contribute to the setting-up of European cooperation networks among local or regional authorities with populations of more than 50 000. Each network has a certain number of members, including a network leader, and the objective is to encourage the exchange of knowledge and experience and, generally, to promote cooperation among member towns and regions.

4.2. At the end of 1993, 36 networks had been set up, with overall Community funding of ECU 47,8 million, corresponding to a participation rate that tends to vary between 50 % and 75 %, according to the network concerned. Some of these networks (urban observatory, Environet, districts in crisis, etc.) are closely linked to issues concerning the protection of the urban environment.

4.3. The design of the RECITE programme represents a relatively innovative approach to development problems, with the promotion of exchanges of information and experience and the establishment of practical forms of collaboration between the towns concerned. The improvement of information and contacts, the setting-up of common databases, the search for complementarity and a less isolated approach to problems could make for more active management and make it possible to act on the basis of more complete knowledge of the issues concerned.

Difficulties concerning monitoring and assessment

4.4. Because of its slightly experimental nature, this design also implies a certain flexibility in implementation and constant opportunities for adaptation. Network members may change, initiatives may prove less feasible than was envisaged and demand a significant change in the activities originally planned. This means that it is essential to have an effective structure for monitoring measures in order to ensure satisfactory results.

4.5. Now, the activity of each network essentially depends on the diligence and initiative of its leader. It is not practicable for the Commission itself to monitor the functioning of the various networks and it has, under contract, allocated on-going responsibility for monitoring and assessment to a firm of consultants, working in conjunction with correspondents in the various countries involved. For the monitoring and assessment of urban pilot projects and networks of towns and regions, for the period August 1992 to December 1994, a contract to the value of ECU 840 000 was awarded on the basis of a public call for tenders. In December 1992, an additional agreement reached by direct negotiation increased this expenditure by ECU 466 000 to cover additional services relating to the organization of a conference and other services generally carried out by further subcontractors. This procedure considerably reduces the value of the original call for tenders. In another case, concerning a contract with the same firm but relating to other activities, an additional agreement worth ECU 902 000 was reached *a posteriori*, with most of the services it covered having already been begun by the contractor.

4.6. The expenditure documentation submitted for the purpose of justifying the payment of Community aid is extremely varied. Some managers submit all their revenue and expenditure accounts, others confine themselves to an overall picture showing the breakdown between the main headings. Greater homogeneity should be aimed for in this field. The Court's audits (at Lyons, Roskilde, etc.) showed moreover that non-manager cities were very ill-informed of the overall management of the network.

4.7. For the first years of the 'Medium-sized cities Commission' network a sum of ECU 403 000, or 37% of total expenditure, was spent on travel, including travel to attend a seminar organized in Guadeloupe.

4.8. In Genoa, in connection with the 'urban observatory' network, it was discovered that the commitments entered into by the city's delegates as regards participation in the network had not been honoured. The municipal authorities had not been informed of the

undertakings agreed and there was an evident communication problem in this respect, which indicates the need for stricter monitoring to ascertain the impact of the networks on the policies of the towns concerned.

5. ACTIVITIES CONCERNING TRAINING, RESEARCH, TRANSPORT, ENERGY AND THE CULTURAL DOMAIN

5.1. Several Community programmes concerning training, research, transport and energy (STEP — science and technology for environmental protection; Joule — non-nuclear energy and the rational use of energy; Drive — road transport informatics and telecommunications; Thermie — European technologies for energy management; Euret — technology in the field of transport, PERU: regional and urban energy planning) also include actions that directly concern the urban environment. In its examination of the Commission's files the Court was unable to find any trace of coordination between these programmes which would help conclusions to be drawn in respect of improved development of the urban environment.

5.2. For example, the main aim of the Drive programmes (Community aid of some ECU 185 million) is the development of electronic systems to help to improve road-traffic management and, at the same time, to reduce the environmental impact of road transport. The aim of the projects is to increase road safety, ensure better absorption of traffic increases, reduce air pollution and other nuisances and ensure better transport management. Apart from the public and private institutions involved in road management or other technical aspects, it is mainly major firms in the automobile and electronics sectors that are participating in the projects funded. This programme mainly considers the effects of urban transport, rather than its causes. There should be improved liaison with initiatives being run in parallel by other departments of the Commission that concern, for example, reducing road traffic or alternative modes of transport to the motor-car.

5.3. Similarly and as provided for by Council Regulation (EC) No 2008/90 of 29 June 1990, the Thermie (Community contribution of ECU 710 million for the period 1990-94) programme aims to promote technologies for energy management. It represents, particularly as regards the rational use of energy and the use of renewable sources of energy, a direct link with issues concerning the protection of the urban environment, since it includes actions to reduce the air pollution caused, in particular, by means of transport and heating systems. The 10 projects examined by the Court (Community contribution of ECU 6,4 million to total eligible costs of ECU 17,5 million) involved actions concerning buildings, transport, geothermal energy and energy from biomass and wastes. Contact between the authorizing Directorate-General and the other Directorates-General

concerned, as documented in the files, is very limited, even though some of the projects concern conurbations that are also benefiting from intervention under the LIFE instrument (Bologna) or from urban pilot projects (Copenhagen).

5.4. With respect to training, the operational programmes of the Social Fund for Germany, Italy, Spain and Portugal contain actions in favour of the urban environment, which, however, cannot always be clearly identified in the files. In Germany, actions are being undertaken in the *Länder* of Berlin, Bremen and North Rhine-Westphalia, with planned Community aid of ECU 42,4 million, ECU 2,5 million and ECU 12,7 million, respectively. However, an on-site examination in Berlin made it possible to confirm that some of the training did not specifically concern the environment and that the number of trainees was much lower than expected. In Italy, actions concerned mainly water purification, the treatment of solid urban wastes and the optimization of the use of cultural and historical resources. For the regions of Molise, Campania, Sicily and Puglia, the measures benefited from allocations from the Fund of ECU 2,3 million, ECU 12,9 million, ECU 5,3 million and ECU 4,3 million, respectively, but their execution was characterized by long delays and, in some cases, had even been abandoned. In Portugal training/employment programmes for the unemployed concern the restoration of cultural and historical heritage, but it proved impossible to identify the funds granted in the files and an on-site examination by the Commission's departments led to the questioning of the quality and value of the training.

5.5. Item B3-2000 of the budget for the 'protection and promotion of Europe's cultural heritage' provides an appropriation (appropriations for commitment of ECU 6,8 million in 1993 and payment appropriations of ECU 4,5 million) to cover Community aid for actions for the conservation and protection of cultural heritage of European importance, as well as monuments and historic places. Various initiatives thus funded, such as the restoration of buildings or the landscaping of parks or gardens, have a direct link with the protection of the urban environment and are similar, in some respects, to projects funded under the LIFE instrument or the ERDF.

6. CONCLUSION

6.1. Disparate initiatives have been taken with a view to achieving better knowledge of the problems facing towns and cities and to helping find solutions. These initiatives make it possible to exchange experience and to support new approaches taken by local authorities to a new and complex problem. All actions are, however, still marked by a certain lack of precision as regards basic objectives in both the short and longer term. What type of town needs to be given priority? What type

of local environment needs to be promoted? What conditions need to be met for Community aid to be used judiciously?

6.2. Funded actions must not essentially be a response to piecemeal problems but must have a value as demonstration projects and be likely to have a multiplier effect. This means that they must be integrated into more long-term urban-planning programmes, must promote more generalized use of new methods of managing the life of urban districts and must be an effective alternative to the problems of property speculation, the destruction of the urban fabric or the inappropriate use of public land — all of which are concerns that should play a greater role in determining the granting of Community aid.

6.3. The various Community actions are also marked by considerable fragmentation. Their diversity may be an advantage and a source of expertise, but it also requires an overview that is generally lacking. The various Directorates-General take action in a highly independent way. Consultation among departments is usually organized within the framework of the procedure for the approval of decisions concerning aid, but it principally aims merely to prevent a single initiative from being funded from several sources.

6.4. This consultation is too fragmented, too rapid and takes place at too late a stage in the procedure to allow joint reflection and the seeking of closer cohesion and greater complementarity. Some kind of overview is sometimes undertaken at the level of beneficiary towns or bodies, but this is not always the case and, even at this level, knowledge of all the aspects of Community actions concerning a single area is not necessarily guaranteed.

6.5. Examination of the projects funded reveals a great lack of precision and summary preparation as regards the definition of the operations to be undertaken. Some applications submitted for Community aid are little more than working hypotheses, whose lack of practical feasibility emerges only later. This leads to delays in implementation and changes, sometimes major ones, to the operations that were originally planned and for which Community aid was granted. Above all, the adaptations required often lead to abandonment of the most difficult and innovative aspects of projects in favour of traditional work whose value is far more limited in terms of the construction of a model urban environment or the acquisition of knowledge in this area.

6.6. The difficulties may be partially explained by the experimental nature of some initiatives, which calls for room for adaptation of the projects from one phase to the next and for a flexible approach. From this point of view, the most interesting initiatives are also the most difficult, since they are the ones that make it possible to explore new forms of intervention, and it is only logical that they should encounter the greatest problems concerning their execution. It is not desirable that the Commission, simply to reduce the risks, should give priority to less innovative operations.

6.7. Whilst the most important aspect of the Commission's efforts in the field of the urban environment is their innovatory nature and whilst the real innovations must always be planned with a degree of flexibility, it is even more important that measures should be effectively coordinated, both at Community and at local level, and that the Commission should devote enough resources to it to ensure the precise and systematic monitoring of every measure.

This report was adopted by the Court of Auditors in Luxembourg at the Court meeting of 8 December 1994.

For the Court of Auditors
André J. MIDDELHOEK
President

Table 1: Financial instrument for the environment (LIFE) — Promotion of sustainable development and the quality of the environment — Projects financed under improvement of the quality of the environment in urban areas

(Situation at 31. 12. 1993)

Project		Investment	Eligible cost	Decision date	Date of end of work	Subsidy	%	Payments	%	Balance
Number	Description	(ECU)	(ECU)			(ECU)		(ECU)		(ECU)
92-IRL/013	Promotion of sustainable development and quality of the environment (Dublin).	1 473 380	1 473 380	10/12/92	30/6/94	403 706	27,4	161 482	40,0	242 224
93-IRL/3228	Dublin environment project (modification)			22/10/93	30/6/95	313 540	48,7	0	0,0	313 540
92-IT/005	CIVIS pilot project for the ecological rehabilitation of the historical centre of Genoa	5 000 000	5 000 000	30/12/92	31/12/93	1 350 000	27,0	540 000	40,0	810 000
93-D/143	Leipziger Ostraum-Modellprojekt einer Ökologisch orientierten Stadt-Umland-Entwicklung	9 520 029	8 620 077	22/10/93	22/11/96	2 155 019	25,0	862 008	40,0	1 293 011
93-F/570	Projet intégré de développement des transports urbains et des déplacements touristiques dans la communauté urbaine de Strasbourg	1 285 040	984 009	22/10/93	22/12/95	167 282	17,0	0	0,0	167 282
93-P/1020	Projecto de demonstração e de incentivo — revitalização duma zona ribeirinha de interior (Barquinha)	109 109	81 391	22/10/93	22/10/94	40 695	50,0	0	0,0	40 695
93-E/1652	Operaciones de mixticidad urbana inmovilidad alternativa en los barrios de case antic y gotic de Barcelona	7 074 819	2 159 233	22/10/93	22/10/95	300 133	13,9	0	0,0	300 133
93-I/2085	Auto elettriche e qualità urbana (Bologna)	1 113 100	671 579	22/10/93	22/5/95	201 474	30,0	0	0,0	201 474
93-UK/3098	Integrated environmental management scheme for air pollution in a strategic road corridor (London-Southwark)	601 161	601 161	22/10/93	22/4/95	291 563	48,5	116 625	40,0	174 938
93-UK/3227	MIST: Maidstone initiative for sustained transport	958 620	958 620	22/10/93	22/10/96	479 310	50,0	191 724	40,0	287 586
	Total	27 135 258	20 549 450			5 702 722	27,8	1 871 839	32,8	3 830 883

Source: DG XI and SINCOM.

Table 2: Urban pilot projects

(situation at 31. 12. 1993)

MS	Town	ERDF No	Date of decision	Execution period			Type of project	Total amount (ECU)	ERDF subsidy (ECU)	%	Payments (ECU)	%	Completed? Y/N
				From	To	Extended to							
B	Brussels	90/99/29/015	27.12.1990	1/91	12/92	12/93	(1)	2 910 000	1 455 000	50	1 164 000	80	N
	Antwerp	93/10/29/001	15.11.1993	11/93	6/96		(1)	3 000 000	1 500 000	50	0	0	N
	Liège	93/10/29/002	15.11.1993	11/93	6/96		(1)	4 625 000	1 500 000	32	0	0	N
DK	Aalborg	91/01/29/001	09.12.1991	9/92	12/93	6/94	(1)	2 000 000	1 000 000	50	800 000	80	N
	Copenhagen	91/01/29/002	09.12.1991	1/92	12/93	12/94	(1)	4 552 000	2 276 000	50	1 138 000	50	N
D	Berlin	90/02/29/001	27.07.1990	6/90	10/94		(2)	10 800 000	5 400 000	50	2 160 000	40	N
	Neunkirchen	90/99/29/017	31.12.1990	1/91	12/92	12/93	(2)	4 000 000	2 000 000	50	1 600 000	80	N
	Bremen	92/02/29/001	06.05.1992	4/92	6/94		(1)	3 200 000	1 600 000	50	800 000	50	N
	Dresden	93/02/29/001	15.11.1993	11/93	6/96		(1)	7 634 000	3 500 000	46	1 750 000	50	N
GR	Athens	90/99/29/014	27.12.1990	1/91	12/93	12/94	(2)	7 680 000	5 760 000	75	2 304 000	40	N
	Thessalonika	91/08/29/003	09.12.1991	1/92	12/93	12/94	(2)	7 300 000	5 475 000	75	2 737 500	50	N
E	Madrid	91/11/29/001	27.05.1991	4/91	9/93	12/94	(2)	9 199 000	4 600 000	50	2 300 000	50	N
	Bilbao	93/11/29/001	15.11.1993	11/93	6/96		(1)	8 202 000	3 267 000	40	0	0	N
	Valladolid	93/11/29/002	15.11.1993	11/93	6/96		(4)	5 733 330	3 000 000	52	0	0	N
F	Marseille	89/03/29/001	15.02.1990	12/89	12/91	6/93	(1)	10 230 000	4 000 000	39	3 200 000	80	N
	Lyon	91/03/29/005	09.12.1991	1/92	12/93	6/94	(1)	3 900 000	1 950 000	50	975 000	50	N
	Toulouse	92/03/29/001	31.07.1992	4/92	12/93		(4)	14 290 000	3 600 000	25	1 800 000	50	N
	Montpellier	92/03/29/002	31.07.1992	3/92	12/93		(4)	12 700 000	6 150 000	48	3 075 000	50	N
	Bordeaux	92/03/29/003	31.07.1992	6/92	12/93		(4)	571 430	250 000	44	125 000	50	N
IRL	Dublin	90/99/29/009	27.12.1990	1/91	6/92	6/94	(2)	9 400 000	4 700 000	50	3 760 000	80	N
	Cork	93/04/29/001	15.11.1993	11/93	6/96		(2)	2 912 250	1 750 000	60	0	0	N
I	Genoa	92/05/29/001	06.05.1992	2/92	12/93	12/94	(2)	7 000 000	3 500 000	50	1 750 000	50	N
	Venice	92/05/29/002	31.07.1992	6/92	12/94		(4)	10 000 000	4 000 000	40	2 000 000	50	N
NL	Rotterdam	90/07/29/001	28.09.1990	7/90	12/92	6/93	(1)	5 260 000	2 630 000	50	1 315 000	50	N
	Groningen	92/07/29/001	06.05.1992	4/92	6/94		(1)	3 180 000	1 590 000	50	795 000	50	N
P	Lisbon	90/99/29/016	27.12.1990	12/90	9/91		(2)	385 370	269 758	70	269 758	100	Y
		91/12/29/001	09.12.1991	1/92	12/93		(2)	7 554 492	5 665 000	75	2 832 500	50	N
	Porto	93/12/29/001	15.11.1993	11/93	6/96		(2)	5 700 000	3 515 000	62	0	0	N
UK	London	89/09/29/001	15.02.1990	12/89	12/91		(1)	10 200 000	5 100 000	50	4 967 901	97	Y
	Gibraltar	90/99/29/018	27.12.1990	10/90	9/92	9/93	(2)	5 600 000	2 800 000	50	2 240 000	80	N
	Belfast	91/09/29/001	09.12.1991	1/92	12/94		(2)	6 715 000	3 357 000	50	1 678 500	50	N
	Stoke-on-Trent	91/09/29/002	09.12.1991	1/92	12/93		(2)	4 000 000	2 000 000	50	1 000 000	50	N
	Paisley	92/09/29/001	06.05.1992	4/92	12/94		(1)	3 900 000	1 950 000	50	975 000	50	N
Total								204 333 872	101 109 758	49	49 512 159	49	

(1) Economic development in areas with social problems.

(2) Actions in favour of the environment linked to economic aims.

(3) Revitalization of historic centres.

(4) Utilization of technological advantages in towns and cities.

Source: DG XVI and Garfield (DG XVI data-processing system).

COMMISSION REPLY

to the observations of the Court of Auditors on the urban environment

0. INTRODUCTION

0.1.-0.3. In its introduction, the Court traces the origins of the urban environment policy to the Commission's Green book on the urban environment and the Council Resolution of 28 January 1991⁽¹⁾ which underlined its importance.

The Urban Environment has subsequently been incorporated as an essential theme requiring development as part of the 5th Action Programme: a new strategy for the environment and sustainable development⁽²⁾. The targets to be achieved for the protection of the urban environment have been specified in terms of integrating the environment into the industry, energy, transport and tourism sectors, focusing especially on themes of air, water and noise. The principal aims are to encourage the optimum use of resources and to assist the responsible partners to implement the relevant legislation.

2. ACTIONS MANAGED
BY ENVIRONMENTAL DEPARTMENTS

The 'Urban environment' unit

2.4. The Commission notes the Court's comments and has already taken measures to ensure that all projects to receive financial support are gauged against criteria which ensure consistency and coherence with Community policy on the urban environment. An ex-post evaluation of the projects is also carried out before the release of the final payment on the project. The Commission will nevertheless re-examine how and where the ex-post evaluation can be improved.

2.5. The budget commentary on B4-304 for 1993, concerning the European Urban Environment Academy in Berlin, was introduced by the European Parliament.

The Commission's contribution to the Berlin Academy is based on the requests received from the Academy. These requests outlined the projects which were to be carried out. The level of funding in the earlier years was kept modest as required by the budgetary authority.

The principles underlying a grant of a financial contribution imply that the Commission does not manage the projects in question. As the operational management

lies with the beneficiary, the Commission can determine neither the choice of subcontractors nor the experts chosen by the beneficiary.

The Commission also notes that the budget commentary does provide for the policy coordination in conjunction with third countries in Europe.

The LIFE instrument

2.7. Limited by the budgetary funds available for LIFE projects, the Commission rations the resources to the best projects. In the case cited by the Court, the Commission, following the consultations of the LIFE committee, decided to allocate ECU 403 706, in 1992, to the Dublin project. Following a review, again agreed by the LIFE committee, it chose to grant a further ECU 313 540 on the 1993 budget to ensure that the project could be followed in its entirety, as foreseen by the initial application.

The Commission is aware that the 40% advance on the Genoa project remains to be used. The cause for the project's delay is due to rapid change in the Genovese political situation. The Commission hopes that, once this situation is stabilized, the project may be able to proceed. In the meanwhile, the Commission has taken administrative measures to ensure that the project duration is extended to reflect the current reality. (See also the reply to paragraph 3.11.)

2.8-2.9. No matter the route by which a LIFE project is received, the Commission ensures transparency by publishing each year the type of activities to be accorded priority.

The projects do meet the priorities of the programmes which were either active at the time or were in the process of adoption and had been agreed by the Urban Environment Committee, which consists of the representatives of the Member States. This situation was transitional and, at that moment, the proposed Council Regulation for LIFE [COM(91) 28 final of 31 January 1991] did foresee that action and demonstration projects could be taken for the restoration and safeguard of urban centres. The reference to the Urban Environment project was encompassed by the Commission's then proposed plans to present the 5th Action Programme as mentioned in the proposed Regulation for LIFE.

⁽¹⁾ OJ No C 33, 8. 2. 1991.

⁽²⁾ OJ No C 138, 17. 5. 1993.

3. URBAN PILOT PROJECTS FUNDED BY ERDF

Selection of initiatives

3.4-3.5. It is true that there has not been an overall formal procedure for the selection of Urban Pilot Projects. When the first such projects were launched in 1990 (London and Marseille), it was not expected that urban issues would arouse such interest at Community level.

On the basis of past experience, the Commission will however in the future adopt a more systematic approach in this area.

A call for proposals was required for participation in the studies on the conservation of European cities (budget line B2-6023), given the absence of a formal legal basis. No such call for proposals was carried out in the context of urban pilot projects under Article 10 of Regulation (EEC) No 4254/88, since these are required to comply with all the relevant requirements of the Regulations on the Reform of the Funds.

The innovative nature of projects

3.6-3.7. The innovatory character of the Urban Pilot Projects resides both in the types of measures supported and in the way different measures are linked together and/or the approach envisaged to implement them, involving the local actors concerned in both the public and the private domain.

As the Court of Auditors remarks, the more innovative elements a project includes, the more difficult it is to implement. This is in the nature of pilot actions and indeed an extra effort is required to assist in their task the authorities managing more innovative projects.

Article 10 of Regulation (EEC) No 4254/88 has allowed assistance to be given to cities or parts of cities not eligible under objectives 1, 2 or 5b of the Structural Funds. Many of the worst urban problems are to be found in large cities not eligible under the Funds. The projects selected in London, Lyon and Rotterdam are typical examples. It is interesting to note that for example in France, among the 11 'Grands Projets Urbains' selected by the French government for special assistance, only two are eligible under Objective 1, 2 or 5b.

In other Member States, the situation is similar.

The state of progress of the projects examined

3.8. Madrid

The Madrid (Fuenlabrada and Parla) project is a genuine urban project because it has connections with the decline of the urban economy of Madrid and the redevelopment

programme is of importance within the context of the economic and environmental development of the Madrid conurbation.

The project experienced significant delays due to problems in land acquisition and obtaining planning permission. Planning permission for the centre was only received in May 1994. As a result expenditure so far is indeed low: up to May 1994 the project had spent Pts 94,4 million (about ECU 597 000) and committed Pts 243,3 million.

3.9. Lyon

The project experienced initial delays due to administrative reasons and the complexity of the arrangements for implementing the actions, notably establishing the necessary partnerships. However, significant progress has been made and it appears that the project will be completed by 30 June 1995 (payments deadline). The 'centre de découverte' is expected to be completed as currently planned.

The 'centre de découverte' is not the only innovatory action. Innovatory elements are included in the 2nd action, 'maison de l'emploi', which concerns the development of 'parcours d'emploi' (i.e. alternating different types of training with a period of employment by industrialists themselves). The third action, 'structure de l'emploi local', concerns the innovative idea of a period of training followed by practice in the context of a real job leading to the self employment of trainees, that is the establishment of their own enterprises under the guidance of a more experienced person. Overall the project tries to promote partnership between private enterprise and the authorities responsible for training and employment actions.

In June 1993 the project requested an extension of six months on both the commitments and the payments deadlines. A second extension was requested in June 1994 for a further six months, but only on the commitments deadline. The reason for requesting the second extension was that the commitments for two of the five actions were not made by the deadline of 30 June 1994. For one of these two actions ('ateliers d'artistes et d'artisans') the commitments were made on 4 July 1994. The commitments for the other action, exchange of experience and communication (small budget: FF 345 000), will be made in autumn 1994, but its financing has been assured by the partners.

3.10. Athens

The project experienced initial delay due to the long procedure for the settlement of property rights (12 public organizations shared the right of use of the particular piece of land).

Environmental Impact Study: As regards environmental impact, one of the main objectives is to improve overall environmental quality in Western Athens. In the first stage of the project, the managing organization has examined the environmental conditions of the area and the basic environmental parameters were discussed during a workshop which took place in Athens in April 1992. As stated in the interim report of May 1994, the environmental impact study of the whole project has been commissioned and its conclusions will be submitted together with the final report.

The electric cables occupy a part of the land which is not under development at the moment and is not part of the project. In any case, the public power corporation has proposed a specific plan for the removal of these cables over the next two years.

The railway lines are not part of the project. However, the railway company has plans to remove the line on the east side so that the two rail lines no longer intersect. The existence of this type of traffic in the area is considered positive by the project manager because it will bring in more visitors and increase accessibility.

3.11. Genoa

The urban observatory project experienced considerable delays due to successive changes in municipal administration (three changes over a two year period). However, the new administration has approved the project, which will continue as planned. In April 1994 the realization of the observatory was assigned to an external agency and activities have already commenced.

3.12. Dublin, Copenhagen and Aalborg

The Dublin and Aalborg projects will present their final reports before the end of 1994 and Copenhagen by the end of 1995. It is expected that the innovative elements will be stressed in all three reports.

3.13. The follow-up of the projects would hardly be feasible without a technical assistance office, in this particular case the Ecotec/Recite Office, due to the large number of complex projects involved and the limited human resources available for this work in the Commission's services.

The responsibilities of the Recite Office have gradually been better specified. At present, the position has been clarified for all project managers. A management guide has been published and distributed. The Recite office has the role of monitoring/evaluation and technical assistance. The Commission takes the decisions on all contractual obligations.

4. THE RECITE PROGRAMME FUNDED BY THE ERDF

Difficulties concerning monitoring and assessment

4.4. The launch of the Recite Office (monitoring/evaluation and technical assistance) was a first attempt at creating an effective structure for the Recite networks and the urban pilot projects. On this basis, consideration is now being given to experimenting between 1994 and 1999 with other structures for the effective monitoring and assessment of measures.

4.5. The original contract with Ecotec already foresaw the firm's collaboration in the preparation of an International Conference on Interregional Cooperation. This participation turned out to be on a larger scale than originally envisaged, and additional financing was formalized in the amendment to the contract referred to by the Court.

Consequently, there was no reason to organize a public call for tenders to finance the Conference.

In the other case mentioned by the Court, the authorizing department's proposal for commitment of expenditure, involving an addition to the existing contract, failed to win the approval of the financial controller. However, in so far as approval was withheld on account of internal problems at the Commission for which the contractor could not be held responsible, the Commission decided to overrule the financial controller's decision.

4.6. The differences referred to reflect the systems of the various local or regional authorities concerned. With the support of the Recite Office, the Commission therefore developed a guide for project managers, including guidance on financial presentation by the networks and pilot projects. As for the communication of information, the Recite Office publishes a periodic news-letter and a bulletin which is distributed to all partners of the networks. These publications give information about the progress and results of all pilot projects and networks co-financed under Article 10 of the ERDF Regulation.

4.7. The network 'Commission des Villes' encouraged a one year programme of exchange of experience between 40 cities across 11 Member States in four areas of common interest: integration in urban areas; urban engineering; technological developments in the service of cities; and urban renewal. Given the nature of the project and the large number of partners, it is normal for expenditure to be of the order described in the report.

4.8. The Commission does not engage in the day-to-day monitoring of all participants in Recite networks. This is the responsibility of the *chef de file*, in this case, the lead city of the European Urban Observatory (EUO),

Barcelona, which has established contacts with Genoa in order to clarify the exact status of their participation in this network.

5. ACTIVITIES CONCERNING TRAINING, RESEARCH, TRANSPORT, ENERGY AND THE CULTURAL DOMAIN

5.2. The report states that it is principally the big automobile and electronics companies that participate in the DRIVE programme. However, out of 495 participants in DRIVE projects from large and small industries, administrations and research establishments, only 116, i.e. 23 %, are assured by large industries, for a total of ECU 41 million, i.e. 38 % of the funding of the programme.

It should also be noted that the programme addresses not only the effects of urban transport but also its causes. The possibilities for reducing road traffic and alternatives to the private car are also examined. In fact, urban traffic control, public transport and management of transport demand are components of urban projects that have been designed by the city authorities themselves and that integrate telematics solutions into their overall transport planning. Telematics for public transport and demand management comprise two out of the seven areas of the transport telematics programme.

Regarding coordination within the Commission, the programme contributes positively to the establishment of the Community policies on transport and environment. An example of current coordination is the Polis network of cities, which includes 40 cities and was set up with the active support of the Regional Fund. The cities involved in the Polis network have promoted the successful parts of the Thermie programme, thus contributing to the complementarity of the two programmes. These coordination efforts will be further increased in the 4th Framework Programme.

5.3. The Commission would stress that the authorizing Directorate-General is perfectly aware of the environmental policies drawn up by the Commission's other departments. It should be emphasized that, in that Directorate-General, the competent department is engaged in a constant liaison process and, for example, maintains regular contacts so as to ensure that environmental policy is integrated into the development of technology in the energy field.

Moreover, the Thermie programme, which the Commission acknowledges as one of the main tools with which to achieve the Community objective of stabilizing CO₂ emissions by 2000, has been the subject of close cooperation between the departments concerned as regards the publication of annual public calls for tender, on which European industry bases proposals for projects concerning emissions of pollutants. Particularly where the urban environment is concerned, the Thermie programme issued calls for tender for specific projects in the building and transport sectors. As the project descriptions show, the environmental component is very significant.

It should also be mentioned that the Directorates-General concerned jointly organize events concerning energy and the environment, e.g. the European Biofuels Forum in Tours in June 1994, the 'Buses serving the public' Week in Brussels in October 1994 and an 'energy and the environment' stand at the Thermie exhibition in Berlin in September 1994.

None the less, the Commission is aware of the growing significance of the environmental component and will take all appropriate action to strengthen contacts and collaboration between the Directorates-General concerned by the problems and policies relating to the urban environment.

5.4. The issues raised by the Court in this paragraph are currently being examined by the Directorate-General concerned.

In particular, the Court's remarks concerning Berlin will be examined with the authorities concerned as part of an on-the-spot control mission.

5.5. The Commission's funding for cultural activities under item B3-2000 of the budget for the 'Protection and promotion of Europe's cultural heritage' is characterized by its concentration on cultural projects. The aim is to highlight projects which set an example of how to conserve Europe's heritage and to encourage exchanges of information on appropriate methods and techniques for restoring certain types of monument.

With this in mind, pilot projects are organized around a different theme each year and the winning projects are selected on the advice of a panel of experts. The annual themes are chosen according to the specific problems which arise in connection with the conservation of buildings and it would not be appropriate to distinguish arbitrarily between monuments located in urban, urbanized and rural areas. Most of the projects referred to in the report place emphasis on the search for innovative solutions. The approach taken is different from that for the conservation and restoration of the cultural heritage, which attaches prime importance to preserving traditional methods and know-how. The pilot-project approach thus complements, but differs from, the approach in the urban environment field. Moreover, the objectives and procedures of this approach, which are designed mainly to strengthen cooperation between Member States and practitioners, particularly by swapping experience and know-how in the field of heritage conservation, are very different from those on which the aforementioned action in favour of the urban environment is based. The Commission (DG X) will endeavour to take account of, or include, the conservation of cultural heritage in all Community programmes and policies, particularly those in support of the urban environment, in conformity with Article 128 (4) of the Treaty on European Union.

Finally, it should be noted that, at the Council's request and as a result of the entry into force of Article 128 of

the new Treaty, the Commission will be presenting before the end of the year a communication on cultural heritage proposing a coherent programme of action. Within this framework the current work under the pilot projects on the conservation of buildings will be reviewed, particularly in order to take account of the specific needs in this area.

6. CONCLUSION

6.1-6.2. The Commission agrees with the Court's general assertion that the management of the urban environment is an innovative and a complex matter. However, it does not share the Court's view that the basic objectives — short or long term — to be achieved, are imprecise.

The Commission, as part of the annual budget exercise, presents the budgetary authority, not only with details of the short term objectives to be achieved, but also how they are to be achieved. Concerning the long term, the Community's 5th Action Programme clearly outlines the objectives to be achieved over an eight year period, together with the instruments to be used and an indication of the economic and social actors (e.g. local authorities and enterprises) urged to co-operate and collaborate in protecting the environment. The activities to be supported have, as a pre-condition, that they be demonstration projects having a multiplier effect or be projects necessary for policy formulations.

6.3 and 6.7. The Commission is sensitive to the Court's implicit request for improved coordination of projects which appear to be autonomous. It has recognised the need to give more attention at Community level to the problems of cities and to contribute to the implementation of urban policies developed at the national, regional and local levels, whilst respecting the principles of subsidiarity.

The Commission will continue to seek to ensure improved coherence of the actions aimed at resolving the problems of urban areas.

As concerns its internal coordination, the Commission is aware that certain shortcomings require attention, principally at the procedural level where internal consultations sometimes take place at too late a stage. It would point out however that in view of the varied nature of the actions undertaken, and the fact that many different scientific and social disciplines are involved in dealing with the complexities of modern cities, coordination is necessarily more difficult than in other fields. Some programme management problems do arise from various technical constraints.

At present the Commission coordinates the programmes and projects to protect and improve the urban environment through formal structures such as coordination meetings, both at unit and department levels (e.g. the establishment of integration/environment correspondents in Directorates General). There has been some progress towards a more coordinated approach between the departments involved, and the Commission will take steps to encourage the necessary further development in this area.

Coordination within DG XVII will be improved as result of an internal reorganization which took effect on 1 June 1994. The new organization chart features a newly created Unit A5 within which a new section 'programme evaluation' has been created. One of the new section's tasks will be to make proposals for improving coordination between the different programmes managed by the Directorate-General.

6.4 and 6.7. Further to the publication of the Green paper on the Urban Environment⁽¹⁾ in June 1990 and the 5th Action Programme on environment and sustainable development, the Commission has issued, in December 1992, a review of the 'Community Activities in Urban Matters' which was updated in July 1994. In parallel with these developments the Commission issued a Communication [COM(93) 645 final of 14. 2. 1994] on Energy and Economic and Social Cohesion which in particular dwelt on the urban aspects of energy use. These efforts, complemented by the work of the Urban Environment Group on the sustainable cities project running from 1993 to 1995, indicate that the Community perspective on the Urban environment is reviewed and updated on a regular basis. These reviews and their dissemination ensure that Community policy on the urban environment and its actions are coherent with the many initiatives being undertaken at national and local levels. Nevertheless, given the multitude of activities undertaken, each one emphasising a particular aspect of the problems associated with the urban environment, it is natural for the Court to imply that a further cross fertilisation of information on these projects can be beneficial.

6.5-6.6. The Commission notes the Court's conclusion relating to improvements in the definition and description of projects and will seek to ensure that future projects are defined with greater precision. Nevertheless, when dealing with innovative and demonstration projects, experience shows that considerable modifications to the projects are necessary and this forms part of the learning process. The Commission emphasises that its flexibility in monitoring the projects' progress should not be taken as evidence of imprecision in project definitions.

⁽¹⁾ COM(90) 218 final, 27. 6. 1990.

II

(Preparatory Acts)

COURT OF AUDITORS

OPINION No 4/94

of the Court of Auditors on a proposed council Regulation (EC, ECSC, Euratom) amending the financial Regulation of 21 December 1977 applicable to the general budget of the European Communities

(94/C 383/02)

THE COURT OF AUDITORS,

PART ONE: OBSERVATIONS

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

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

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

Having regard to the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽¹⁾, as last amended by Council Regulation (ECSC, EC, Euratom) No 2730/94 of 31 October 1994 ⁽²⁾, and in particular Article 127 thereof,

Having regard to the proposal from the Commission of 22 July 1994 ⁽³⁾,

Having regard to the Council's request for an opinion on this proposal, dated 16 August 1994,

HAS ADOPTED THE FOLLOWING OPINION:

1. Preliminary observations

1.1. It is not possible to understand the new budgetary system envisaged for the JRC merely by reading the Commission proposal. A series of other documents must also be taken into consideration ⁽⁴⁾⁽⁵⁾⁽⁶⁾⁽⁷⁾⁽⁸⁾⁽⁹⁾. These

⁽⁴⁾ The Council Conclusions of 26 April 1994 on the role of the Joint Research Centre (JRC), OJ No C 126, 7. 5. 1994, p. 1.

⁽⁵⁾ Decision No 1110/94/EC of the European Parliament and of the Council of 26 April 1994 concerning the fourth framework programme of the European Community for activities in the field of research and technological development and demonstration (1994 to 1998), OJ No L 126, 18. 5. 1994, p. 1.

⁽⁶⁾ The Council Decision of 26 April 1994 concerning a framework programme of Community activities in the field of research and training for the European Atomic Energy Community, Decision 94/268/Euratom, OJ No L 115, 6. 5. 1994, p. 31.

⁽⁷⁾ The Proposal for a Council Decision adopting a specific research and development programme to be carried out for the European Community, — on the one hand, by means of direct action (JRC), and on the other, by means of activities within the framework of a competitive approach and intended for scientific and technical support to Community policies (1995-1998), Doc. COM(94) 68 final, OJ No C 228, 17. 8. 1994, p. 219, Proposal amended by Doc. COM(94) 243 final, OJ No C 262, 20. 9. 1994, p. 30.

⁽⁸⁾ The Preliminary draft general budget of the European Communities for the financial year 1995, especially Volume 4. COM(94) 400, 15. 6. 1994.

⁽⁹⁾ Council Decision of 21 November 1994 concerning the rules for the participation of undertakings, research centres and universities in research, technological development and demonstration activities of the European Community, OJ No L 306, 30. 11. 1994, p. 8.

⁽¹⁾ OJ No L 356, 31. 12. 1977, p. 1.

⁽²⁾ OJ No L 293, 12. 11. 1994, p. 7.

⁽³⁾ Doc. COM(94) 338 final and OJ No C 237, 25. 8. 1994, p. 3.

texts form a coherent whole and some have already been adopted in anticipation of a revision of the Financial Regulation along the lines proposed by the Commission. Under these circumstances, the prospects of the Court of Auditors' observations, which come almost at the end of this process, being taken into account in the revision of the Financial Regulation appear seriously compromised. The Court must reject such a procedure of drafting new legislation through the production and then the adoption of legal texts the legislative bases of which are still non-existent.

1.2. The Court is of the opinion that the presentation of the budget from 1988 onwards, in the part of the budget relating to the JRC's appropriations has been in breach of the Financial Regulation. The Commission has again proposed for 1995 a preliminary draft budget on the same basis. The proposal of the Commission does not correct this fault.

1.3. The Commission's proposal is to revise the provisions of the Financial Regulation that apply to the JRC, and not those relating to research as a whole. Accordingly, the Court has limited its observations and recommendations to the same extent.

1.4. An explanatory diagram is included in the opinion to show, in global terms, how the budgetary structure proposed by the Court compares with that already included in the Preliminary Draft Budget for 1995 (see Appendix).

2. The Court's position

2.1. The Court takes the view that any increase in the commercial dynamism of the JRC constitutes progress, as does also the assimilation, at least partially, of its relations with other Commission departments, within the framework of scientific and technical support activities, to genuine customer-contractor relationships open to competition. The Court has expressed this view on several previous occasions⁽¹⁾. The Court now welcomes the fact that the Commission, after having strongly opposed these suggestions in the past in its replies to the Court's observations⁽²⁾, is now introducing a proposal that will reinforce the JRC's move to a more competitive approach.

(1) — Annual report on the financial year 1989, OJ No C 313, 12. 12. 1990, paragraphs 9.23-9.26, 9.28, 9.32, 9.34, 9.37, 9.38 and 9.48-9.54.

— Annual report on the financial year 1991, OJ No C 330, 15. 12. 1992, paragraphs 13.6, 13.15-13.26, 13.44, 13.47.

— Special report No 2/91 on the exploitation of research results, OJ No C 133, 23. 5. 1991, paragraphs 3.48 and 5.41-5.45.

(2) — Annual report on the financial year 1989, OJ No C 313, 12. 12. 1990, replies to paragraphs 9.23-9.25.

— Special Report No 2/91 on the exploitation of research results, OJ No C 133, 25. 3. 1991, replies to paragraphs 5.41-5.45.

2.2. The Court also considers that, with a view to improving the scientific efficiency and the commercial competitiveness of the JRC, the latter ought to be given greater flexibility in the management of staff and other resources and the apportioning of the corresponding budgetary appropriations between these resources.

2.3. It should also be given a considerable degree of freedom as far as its competitive activities are concerned, especially its services to third parties. It is the responsibility of the JRC to identify promising market sectors and to seek out and select its clients. This freedom must also be extended to the determination of the content of 'exploratory research', which is itself essential to keep abreast of progress and 'open up new avenues'⁽³⁾, which cannot, by their nature, be programmed in advance.

2.4. On the other hand, regarding the objectives of the specific programmes, which result from policy decisions, the Commission should not be given greater freedom of choice and adaptation than it has for any other common policy. As the policy decisions have been laid down by the responsible authority, the Commission must confine itself to 'implementing the budget within the limits of the appropriations' (Article 205 of the EC Treaty).

2.5. In accordance with Article 93 (1) of the Financial Regulation, the budgetary nomenclature concerning the JRC's activities must be 'based on the purpose of the expenditure in achieving research and technological development objectives or in the other activities of the JRC'. This is an application of the principle of defining appropriations in terms of objectives. For reasons of both effectiveness and transparency, this principle must be upheld without exception.

3. Analysis of the Commission's proposal

3.1. *Main features of the budgetary system proposed by the Commission*

The new budgetary system envisaged for the JRC would consist of:

- (a) the opening to competition of a proportion of the activities of scientific and technical support for other Commission departments (which hitherto have been carried out exclusively by the JRC);
- (b) the introduction of a genuine 'customer-contractor' relationship for these 'competitive support activities', the management of the corresponding appropriations being removed from JRC responsibility and entrusted to the customer departments;

(3) New outlook for the Joint Research Centre, Doc. COM(87) 491 final/2 of 20 April 1988, p. 9.

- (c) retaining another part of the support activities for the Commission departments ('institutional support activities') in a situation where they are protected from competition, with the corresponding appropriations remaining the responsibility of the JRC;
- (d) the option, for the JRC, of participating in shared-cost research projects, like any other third party;
- (e) the option, for the JRC, of contributing, in return for payment and on a basis of competition, to the implementation of Community policies;
- (f) the Commission to be regarded as an outside body in relation to the JRC in these new competitive activities (the revenue which the JRC derived from these activities would be treated as revenue from activities for outside bodies or individuals);
- (g) exclusion from the budget of certain specific headings (exploratory research, institutional support, contribution to the implementation of Community policies using appropriations entered outside the research subsection);
- (h) increases in the Commission's powers concerning transfers of appropriations and resources pertaining to the JRC (without authorization from the budgetary authority);
- (i) the retention of a hybrid budget nomenclature (appropriations that are allocated in some cases for research objectives and in others for resource categories).

3.2. Observations on the Commission's proposal

3.2.1. Positive aspects of the proposal

The Court fully approves the new provisions which tend in the directions indicated in (a), (b), (d), (e) and (f) above. These new provisions mainly reiterate previous recommendations made by the Court in favour of a more competitive approach.

3.2.2. Shortcomings in the organisation of the customer-contractor relationship

3.2.2.1. The proposed method by which the research appropriations earmarked for support would be shared between the customer departments would still be of an administrative and extra-budgetary nature. Following the Council's conclusions of 26 April 1994⁽¹⁾, the management of appropriations designated for institutional support would appear to retain the present system of management by the JRC and not by the

customer department. In the case of competitive support, by contrast, the customer DGs would be declared to be the managers and authorizers of these appropriations. The Court understands the Commission's intentions to be as follows: the appropriations for institutional support activities would be apportioned in the same way as the appropriations for scientific and technical support for the Commission's departments have been hitherto, namely by the inter-DG committee chaired by the JRC's Director of programmes. The JRC would thus continue to evaluate the relative priorities of the projects put forward by the various departments; there would be no customer-contractor relationship in this area. In the case of appropriations allocated for competitive support activities, it would be the Secretary General of the Commission who would arbitrate between the requests put forward by departments — a solution which is a slight improvement on the previous one, in that it allows for the more objective assessment of priorities. It is in fact the budget that should define the resources allocated to each common policy and it is the customer departments that should be the authorizers. Even in this case, care must be taken to ensure that the JRC will really be treated on an equal footing with other outside bodies, given that, in reality, the JRC and the Commission are not independent from each other.

3.2.2.2. The proposal also makes no mention of the possibility that the departments which administer the appropriations for the dissemination and exploitation of research might commission certain work from the JRC. The present impossibility of doing that, on the grounds that the Commission departments are not outside bodies in relation to the JRC, has been criticised by the Court⁽²⁾. The Financial Regulation should state specifically that in future exploitation work could be entrusted to the JRC by way of funding from the appropriations concerned (amendment No 2).

3.2.2.3. The content of the institutional support has been frozen for four years in the scientific annex of the Commission proposal for a specific programme (EC) for the JRC (1995-98)⁽³⁾. However, demand for scientific and technological support is, by nature, difficult to predict and is ill-suited to rigid multiannual planning. There should be provision for the possibility of submitting proposals for new work at any time. The system under consideration must, therefore, be replaced by the introduction of a budget heading with separate appropriations (amendment No 1).

⁽²⁾ Special report No 2/91 on the exploitation of research results, OJ No C 133, 23. 5. 1991, paragraphs 3.48 and 5.44.

⁽³⁾ The Proposal for a Council Decision adopting a specific research and development programme to be carried out for the European Community, — on the one hand, by means of direct action (JRC), and on the other, by means of activities within the framework of a competitive approach and intended for scientific and technical support to Community policies (1995-1998), Doc. COM(94) 68 final, OJ No C 228, 17. 8. 1994, p. 219, Proposal amended by Doc. COM(94) 243 final, OJ No C 262, 20. 9. 1994, p. 30.

⁽¹⁾ The Council Conclusions of 26 April 1994 on the role of the Joint Research Centre (JRC), OJ No C 126, 7. 5. 1994, p. 1.

3.2.2.4. The institutional support activities would still not be subject to competition, their appropriations continuing to be managed by the JRC rather than the customer DGs. The 'neutrality' and 'independence' of the JRC, which are often cited⁽¹⁾ to justify maintaining a 'protected sector' for certain support activities, in reality play no part. Instead, by virtue of the fact that the JRC has technical expertise in certain areas, it is being awarded an effective monopoly over these activities that is devoid of any considerations of competitiveness. The scientific annex to the proposal for a specific programme (EC) of the JRC for 1995-98⁽²⁾ clearly shows that research and institutional support activities cover the same scientific areas and that these correspond to the JRC's areas of expertise. Whilst agreeing that the JRC's transition to a more competitive approach needs to be gradual, the Court considers that it is desirable, at least in the long run, for the customer-contractor relationship to be improved, even in the case of the institutional support activities.

3.2.2.5. The proposed wording of Article 92 (1e) and (3) appears, however, to preclude any possibility that a Directorate-General might commission non-institutional support work from the JRC by private treaty, without exposing it to any competition. In fact, in its Title IV, the Financial Regulation sets out the basic principle that 'contracts shall be concluded after an invitation to tender has been issued' (Article 56 (1) first subparagraph) and then goes on to provide for the exceptions, where contracts may be made by private treaty in a limited number of cases (Article 56 (1), second subparagraph and Article 58). These provisions are general in scope and are therefore also applicable to research, including the relations between DGs and the JRC, which in future will be deemed to be an outside body in relation to the DGs concerned. The provisions of Article 92 must therefore be supplemented with a reference to Title IV of the Financial Regulation (amendment No 4).

(1) — New outlook for the JRC [see Note (3) on p. 16], p. 34.
 — Conclusions of the Council of 26 April 1994 concerning the role of the JRC, OJ No C 126, 7. 5. 1994, paragraph 2 and Annex 1.1 (b).
 — Explanatory memorandum to the Commission proposal, p. 1.

(2) The Proposal for a Council Decision adopting a specific research and development programme to be carried out for the European Community, — on the one hand, by means of direct action (JRC), and on the other, by means of activities within the framework of a competitive approach and intended for scientific and technical support to Community policies (1995-1998), Doc. COM(94) 68 final, OJ No C 228, 17. 8. 1994, p. 219, Proposal amended by Doc. COM(94) 243 final, OJ No C 262, 20. 9. 1994, p. 30.

3.2.3. Increasing the portion of the JRC's resources which is protected from any binding objective

3.2.3.1. The Commission's freedom of management of the JRC has been extended as a result of the introduction of an increasing number of provisions which have legislated for increasingly radical departures from basic budget principles. Until 1987 the JRC budget nomenclature was, in accordance with the Financial Regulation of the time, drawn up in terms of 'the purpose of the expenditure resulting from the realization of research and investment objectives or from the other activities' of the JRC (Article 89, first paragraph, of the Financial Regulation in the version then in force). From 1988, in breach of this provision, the Commission introduced in its preliminary draft budgets a heading for (JRC) expenditure relating to 'persons associated with the institution', thus removing part of the appropriations from the definition by objectives in favour of a definition in terms of the nature of the resources used. In December 1988, in its proposal for a general revision of the Financial Regulation⁽³⁾, the Commission tried to get this practice ratified, by merely stating by way of justification that 'the proposed new nomenclature ... takes into account the presentation for 1988 and 1989'. This is tantamount to claiming that a continuing irregularity, by the very fact of its existence, can form the basis for a change in the law.

3.2.3.2. Once this exemption had been ratified [Article 93(2) of the new version of the Financial Regulation]⁽⁴⁾, the Commission introduced, in the preliminary draft budget for 1991, a new derogation, which was just as irregular. Three separate budget headings were created, relating this time to the 'implementation' resources (administrative and technical infrastructure, scientific and technical support and major installations). All that was left in the appropriations defined by objectives were the so-called 'direct operating appropriations', earmarked for expenditure via procurements and contracts. The total expenditure relating to the management of existing resources was transferred to headings that were defined without any reference to objectives. Taking matters still further, the Commission merged the aforementioned three headings into a single heading as of the 1993 financial year. Thus, in one way or another, the budgetary nomenclature pertaining to the JRC has been constantly irregular from 1988 onwards.

3.2.3.3. The present situation therefore is that more than three-quarters of the JRC appropriations (both commitments and payments) are unaffected by any budgetary definition of objectives. The table of equivalence in Annex I of the budget (as required by Article 94 of the Financial Regulation) does indeed provide a

(3) Doc. COM(88) 838 final, 21.12.1988 and OJ No C 115, 8. 5. 1989, p. 1.

(4) Council Regulation (Euratom, ECSC, EEC) No 610/90 of 13 March 1990, amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, OJ No L 70, 16. 3. 1990, p. 1.

breakdown of appropriations by objectives and by nature of resources. The Commission, however, regards this annex as merely indicative (except, of course, for the amounts which repeat directly the allocations entered against the budget headings). An examination of the 1995 preliminary draft budget confirms that the Commission's proposal would preserve this system intact. The fact that the annex is indicative needs to be confirmed in the Financial Regulation (see amendment No 6).

3.2.3.4. As the Court emphasised in its Opinion No 1/89 of 9 February 1989⁽¹⁾, the creation of budgetary headings linked to specific resources 'will jeopardise the survival of the system of management by objectives. This system, in fact implies that all expenditure .. must be covered by objectives'. The Court therefore recommends a change in the budgetary structure of the JRC so that there would be no separate budget headings for personnel costs and 'implementation' resources. Instead appropriations shown at present under these headings would be distributed amongst the headings for scientific programmes and other activities. The Court is strongly of the view that the Financial Regulation should be amended in line with this (amendment No 5). In this way, with no need to give greater details, the Commission will enjoy every freedom to transfer allocations within a given budget heading between all the different resources available (i.e. human and 'implementation' resources and so-called 'direct operating appropriations').

3.2.4. Increased freedom for the Commission to effect transfers

3.2.4.1. Its determination to increase its freedom in managing the JRC has led the Commission to propose amendments to the Financial Regulation, which accentuate the anomalous nature of the JRC's system of appropriation transfers. Until 1990 it was the budget which set out each year, in accordance with the Financial Regulation [Article 94 (2)], the limits to the Commission's power to transfer appropriations from one article to another and from one item to another within the headings relating to direct action. Successive budgets have limited this power, by specifying the budget headings to which this right applied and by limiting the extent of this right to a percentage of the primary budgetary allocation affected by the transfer. In the case of specific programme headings, the percentage rose to 7% by 1984, 10% by 1987, and has reached 15% since then. With the introduction of exploratory research in 1989, the latter allocation could not be increased by more than 5% of the total allocation for all the specific programmes. The 1990 reform of the Financial Regulation⁽²⁾ froze these percentages, thus excluding

them from the budgetary procedure. However, the reform increased the Commission's powers of transfer in another way. The Commission's margin for manoeuvre, which, until 1990, was limited to transfers from specific programme to specific programme, within the same article, was extended to the level of transfers from one chapter to another (whereas the specific programmes were located at the item level), thus making possible a redistribution of resources between the main fields of science and technology.

3.2.4.2. The present proposal would constitute a further increase in the Commission's powers regarding transfers between budget headings which concern the JRC:

- (a) the percentage limits of 15% and 5% would be increased to 22% and 6% respectively;
- (b) these percentage limits would concern only the commitment appropriations, because the right of transfer would be granted without limitation in the case of payment appropriations;
- (c) the Commission's powers would be extended to include transfers from one title to another and this power would include staff appropriations and implementing resources, which would link all the JRC appropriations.

3.2.4.3. In the Court's view, any provisions by virtue of which the Commission would enjoy wider powers of transfer should be confined to competitive activities, to which it would be appropriate to add exploratory research. On the other hand, the Court sees no reason to extend this power to direct action programmes and institutional support (amendments Nos 8, 9 and 10). The Commission should not have greater freedom to make transfers in this field than it has for indirect action programmes.

3.2.5. Further increases in the Commission's freedom to transfer appropriations from one category of resources to another

3.2.5.1. An examination of the other documents referred to in paragraph 1.1 above reveals that the Commission is succeeding in increasing its freedom to transfer resources allocated to the JRC using other approaches than a revision of the Financial Regulation.

⁽¹⁾ OJ No C 72, 20.3.1989, p. 7, paragraph 8.1.

⁽²⁾ Council Regulation (Euratom, ECSC, EEC) No 610/90 of 13 March 1990, amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities, OJ No L 70, 16. 3. 1990, p. 1.

In the preliminary draft budget for 1995 there is no separate heading for institutional support activities or for exploratory research. The reader is therefore obliged to refer to the scientific annex to the proposed specific JRC programme (EC) for the period 1995-98⁽¹⁾, which subdivides each scientific field into 'institutional research activities' and 'institutional, scientific and technical support activities'. Exploratory research is merely mentioned, without any financial specifications, in a recital and in Article 4 (1). But, in the financial annex, resources are only broken down in terms of scientific fields. Neither institutional support nor exploratory research are given distinct resources in this text.

3.2.5.2. Institutional support and exploratory research are thus to be financed from the same headings as the research programmes, that is to say from 'persons associated with the institution', 'implementation' resources and the various headings for direct operating appropriations corresponding to the specific objectives broken down by research field. Neither the budget nor the specific programmes would then provide the means to identify the amounts provided for institutional support and exploratory research.

3.2.5.3. The Commission would thus acquire, in the absence of any transparency, an unlimited freedom to allocate and redistribute financial resources between research proper, institutional support and exploratory research. It is true that the Commission's proposal would continue to limit transfers towards exploratory research to 6% (Article 95, sub-paragraph 2). This makes no sense, however, in the context of a budget without a heading for 'exploratory research', since transfers, within the meaning of the Financial Regulation, can only be carried out from one budget heading to another.

3.2.5.4. It thus follows that the Commission has always used two main ways of widening its management freedom. On the one hand, it has tried in the Financial Regulation to increase its freedom to make transfers.

(¹) The Proposal for a Council Decision adopting a specific research and development programme to be carried out for the European Community, — on the one hand, by means of direct action (JRC), and on the other, by means of activities within the framework of a competitive approach and intended for scientific and technical support to Community policies (1995-1998), Doc. COM(94) 68 final, OJ No C 228, 17. 8. 1994, p. 219, Proposal amended by Doc. COM(94) 243 final, OJ No C 262, 20. 9. 1994, p. 30.

This, whilst open to criticism, is at least transparent. On the other hand, it has also merged several budget headings with heterogeneous purposes. The appropriations of the new heading are then shared out or redistributed between these purposes, during the course of the financial year, by means of internal administrative procedures. These procedures are not subject to the decision-making and budgetary authorities.

3.2.5.5. Articles B6-291 and B6-391, of the 1995 Preliminary Draft Budget which provide for (EC) and (Euratom) allocations for 'the participation of the Joint Research Centre in shared-cost action projects' do not disclose the total amount assigned to the JRC for this participation. Contributions are also to come from the 'staff expenditure' and 'implementation' resources headings. But no amounts are specified in the preliminary draft budget, the framework programme or the proposed specific JRC programme.

3.2.5.6. The financial resources allocated to the various JRC activities must be identified separately, using separate budget headings (amendments Nos 1 and 2). As a result, the existing limitations on the Commission's own powers of transfer would apply to these activities (amendments Nos 8 and 9).

4. Conclusion

Certain of the amendments proposed by the Commission — those leading to a greater competitiveness at the JRC and those introducing a genuine customer-contractor relationship between the JRC and the other DGs — are very appropriate. These amendments were also necessary in order to ensure that the Financial Regulation would be in accordance with the Council's conclusions of 26 April 1994. However, the Commission has added other amendments, which introduce an increased amount of management freedom. This increased freedom is acceptable as far as competitive activities are concerned. However, the Court is strongly of the opinion that the activities of implementation of the specific programmes, which are subject to the policy objectives of the decision-making authorities, should not enjoy the same freedom.

PART TWO: SPECIFIC OBSERVATIONS

In the following synoptic table the Court sets out its proposed amendments to the Commission's proposal, with additional comments on their justification.

Synoptic table comparing the text proposed by the Commission and the Court's opinion

Note: The underlined parts of the Commission's text correspond to the changes proposed by the Commission, compared with the present text. The underlined parts of the Court's text correspond to the changes to the Commission's proposal which the Court is recommending.

THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSED AMENDMENTS	COMMENTS
<p style="text-align: center;">TITLE VII</p> <p>SPECIAL PROVISIONS APPLICABLE TO RESEARCH AND TECHNOLOGICAL DEVELOPMENT APPROPRIATION</p> <p style="text-align: center;"><i>Article 91</i></p> <p>The provisions of Titles I to VI, Title XI and Part III shall apply to the research and technological development appropriations entered in the special subsection provided for in Article 92, save as otherwise provided in this Title:</p> <p style="text-align: center;"><i>Article 92</i></p> <p>1. The appropriations relating to the activities covered by this Title shall be entered in a special subsection of Part B of the Commission section.</p> <p>This subsection shall contain the appropriations intended for the realization of research and technological development objectives through the implementation of the following:</p>		
<p>(a) direct action consisting of research programmes and exploratory research and scientific and technical support activities of an institutional nature carried out by the establishments of the Joint Research Centre (JRC) and in principle entirely financed from the general budget of the European Communities;</p>	<p>(a) direct action carried out in the establishments of the <u>Joint Research Centre (JRC)</u>, in principle entirely financed from the <u>general budget of the European Communities</u>, and consisting of:</p> <ul style="list-style-type: none"> — <u>research programmes</u>, — <u>exploratory research activities</u>, — <u>scientific and technical support activities of an institutional nature</u>. <p><u>The appropriations for each of the research programmes, the exploratory research and the</u></p>	<p>The dispersal of the exploratory research appropriations over various headings specialized by programme is contrary to the principle of transparency (it makes it impossible to single out in the budget, and even in the specific programmes, the amounts allocated to this activity) and has the effect of fragmenting this activity in fields where the JRC already possesses well established expertise, whereas the very object of such research is to 'open new avenues' (1). The argument to the effect that grouping all these resources under one heading would be impossible because the framework programme provides for no</p>

(1) New outlook for the Joint Research Centre, Doc. COM(87) 491 final/2 of 20 April 1988, p. 9.

	THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSED AMENDMENTS	COMMENTS
1		<p><u>institutional support activities shall be entered under separate headings.</u></p>	<p>specific resources for this activity must be rejected. The fact is that the framework programme must abide by the provisions of the Financial Regulation and thus, where appropriate, be adapted to its amendments. Exploratory research must therefore be given its own appropriations under a separate heading.</p> <p>The allocation of appropriations to specific research programmes and to institutional support activities must be distinctly identifiable in the budget. This is:</p> <ul style="list-style-type: none"> (a) for reasons of transparency; (b) so as not to give the Commission excessive powers of allocation or redistribution of financial resources between the two types of activity; (c) because whilst the specific research programmes lend themselves to the forecasting of objectives on a multiannual basis, the same is not true of support for services, whether 'institutional' or 'competitive', because such support must satisfy changing needs which can only be subject to, at the most, annual forecasting. <p>Separate budget headings should therefore be created for the specific programmes, for institutional support and for exploratory research activities (see also sections 3.2.2.3 and 3.2.5.6 of this opinion).</p>
2	<p>(b) indirect action consisting of programmes carried out under contracts to be concluded with third parties. <u>The JRC may participate in these activities on the same basis as third parties. These activities shall in principle be partially financed from the general budget of the European Communities</u> (shared-cost action projects);</p>	<p>(b) indirect action consisting of programmes carried out under contracts to be concluded with third parties, <u>including programmes for the application of research results. The JRC may participate in these activities on the same basis as third parties. In general, indirect action programmes shall only partially finance the work carried out under this heading</u> (shared-cost action projects). <u>In the case of</u></p>	<p>According to the conclusions of the Council of 26 April 1994⁽¹⁾, 'within the framework programmes (1994/1998) the JRC will be allocated an operational budget which will cover (...) costs not covered by the shared-cost contracts'. No mention is made in the Commission's proposal of these costs. The preliminary draft budget for 1995 provides for two headings with appropriations for that purpose. As a result of a serious lack of</p>

(1) The Council Conclusions of 26 April 1994 on the role of the Joint Research Centre (JRC), OJ No C 126, 7. 5. 1994, p. 1.

	THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSED AMENDMENTS	COMMENTS
2		<p><u>the JRC, the rest of the expenditure shall be covered by the centre itself from appropriations entered under a separate budget heading.</u></p>	<p>transparency, these funds do not cover all the expenditure corresponding to the objective proposed for the JRC. The rest will be met from other budget headings. The Court criticizes the very existence of these headings in section 3.2.3.4 of this opinion and in amendment No 5. In order to remedy this oversight and eliminate the lack of transparency, the appropriations needed must be entered in full under a separate heading (see also sections 3.2.2.2 and 3.2.5.6 of this opinion).</p>
	<p>(c) concerted action consisting of work undertaken by the Community to coordinate the individual research projects carried out in the Member States, in respect of which the administrative expenditure alone is financed from the general budget of the European Communities;</p> <p>(d) possible financial contributions by the Community to supplementary programmes in accordance with Article 130 K of the EC Treaty, or to research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes, in accordance with Article 130 L of the EC Treaty, or cooperation with third countries or international organizations as provided for in Article 130 M of the EC Treaty, or participation in the joint undertakings provided for in Article 130 N of the EC Treaty;</p> <p>(e) other activities of a competitive nature carried out by the JRC:</p> <ul style="list-style-type: none"> — <u>scientific and technical support activities under the R&TD framework programmes in principle entirely financed from the general budget;</u> — services for third parties. <p>2. The appropriations for projects under the framework programme of activities in the field of</p>		

	THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSED AMENDMENTS	COMMENTS
	research and technological development shall be entered separately in this subsection.		
3	3. <u>Notwithstanding paragraph 1, the JRC may receive appropriations entered elsewhere than in the subsection referred to in that paragraph in respect of its participation on a competitive basis in activities implemented under Community policies financed, in principle, entirely from the general budget.</u>	3. Notwithstanding paragraph 1, the JRC may receive <u>financing that is booked to appropriations entered elsewhere than in the subsection referred to in that paragraph in respect of its participation on a competitive basis in activities implemented under Community policies financed, in principle, entirely from the general budget.</u>	The drafting is not clear. The JRC would not 'receive appropriations entered elsewhere than in the research subsection', which would amount to actual transfers, but instead certain JRC activities would be financed from appropriations entered elsewhere than under the research subsection.
4		New paragraph: 4. <u>The provisions of Title IV on the conclusion of contracts shall apply in the cases considered in Article 92 (1) (e), first indent, and (3).</u>	This is designed to avoid any doubt as to the applicability of Title IV on the conclusion of contracts to the cases considered at Article 92 (1) (e), first indent and (3) as to the possibility to make contracts by private treaty in the limited number of cases listed in Article 58 (see also section 3.2.2.5 of the opinion).
	<p style="text-align: center;"><i>Article 93</i></p> <p>1. The nomenclature of the special subsection provided for in Article 92 shall be based on the purpose of the expenditure in achieving research and technological development objectives or in the other activities referred to in that Article.</p> <p>The remarks for each subdivision shall also show:</p> <ul style="list-style-type: none"> — the number of staff authorized for the current year, — details of supplementary programmes, programmes undertaken by several Member States and cooperation with third countries or international organizations, with an indication of the amount of any financial contribution from the Community. 		

	THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSED AMENDMENTS	COMMENTS
5	2. However, staff appropriations for the Joint Research Centre shall be entered separately in a single chapter.	Delete	This deletion is intended to restore the principle of defining appropriations in terms of objectives. Of course, the irregular practice which turned the implementing resources into a budgetary chapter must also cease (see also section 3.2.3.4 of the opinion).
6	<p><i>Article 94</i></p> <p>The following shall be annexed to the special subsection referred to in Article 92:</p> <p>— a table of equivalence giving the breakdown by purpose and type of expenditure of the appropriations made available in the subsection, as specified in the implementing rules provided for in Article 126.</p> <p>For management purposes, the Commission may create appropriation accounts corresponding to the instruments of implementation,</p>	<p>Additions</p> <p>At the end of the first indent, sub-paragraph 1:</p> <p><u>The breakdown of appropriations by type of expenditure is indicative.</u></p>	<p>However, the Financial Regulation must confirm that the table of equivalence is only indicative in nature, at least for all amounts that are not a mere repetition of actual budgetary allocations entered under the research subsection. It naturally follows that, as the Commission has moreover proposed, the present third indent of Article 95 must also be deleted (see also section 3.2.3.4 of the opinion).</p>
7	— a provisional schedule of commitments and payments showing the planned utilization of the commitment appropriations and the corresponding payment appropriations. The schedule shall be reviewed annually.	<p>Additions after the second indent</p> <p><u>In order to enable all necessary comparisons to be made between budget estimates and budgetary implementation, the table of equivalence and the schedule of commitments and payments shall be presented with the same subdivisions and headings in both the budget and the revenue and expenditure account.</u></p>	<p>In the part of the revenue and expenditure account concerning the JRC, the Commission does not always repeat accurately the amount of the initial appropriations mentioned in the table of equivalence to Annex I of the budget. This practice prevents a comparison of budgetary estimates and implementation. This lack of transparency should be prohibited.</p>
8	<p><i>Article 95</i></p> <p>Notwithstanding Article 26 and without prejudice to paragraph 7 thereof, the Commission may, within the subsection referred to in Article 92, transfer appropriations from one Title to another and from one chapter to another in respect of the activities referred to in Article 92 (1) (a).</p>	<p>Notwithstanding Article 26, and without prejudice to paragraph 7 thereof, the Commission may transfer, from one budget heading to another, both commitment and payment appropriations relating to the competitive activities of the JRC and exploratory research.</p>	<p>— Cf. comments under 2 above.</p> <p>By removing all limits to its powers to transfer payment appropriations, the Commission is calling into question not only the principle of speciality but also that of budgetary annuality, as understood at the level of a given budget heading. As the commitments for the various headings have been entered into, the Commission would thus have the option of accelerating payments relating to some of them and slowing</p>

	THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSED AMENDMENTS	COMMENTS
8			<p>down others, subject to the observance of the multiannual objectives at the end of the period covered by the programmes. However, annuality is a fundamental and traditional principle of the budgetary law of public bodies. Any attempt to call that principle into question ought to be preceded by an overall examination of the system of differentiated appropriations in general. Although the reasons cited by the Commission in its explanatory memorandum are weak (the transfers of payment appropriations have 'nothing political ... at stake', it is merely a question of adjusting 'the flow of cash required to cope with actual payments'), it is true that the principle of annuality has been maintained in all its rigidity without enough thought being given to its justification. The Court cannot accept this system of exceptions, apart from the cases of competitive and exploratory research activities, where freedom of management is particularly advisable (see also sections 3.2.4.3 and 3.2.5.6 of the opinion).</p>
9	<p>These transfers may not have the effect of increasing or decreasing by more than 22 % in commitment appropriations XXX the initial allocation entered in the budget for each of the programmes referred to in Article 92 (1) (a), <u>excluding exploratory research</u>. They may not have the effect of increasing the appropriations earmarked for exploratory research by more than 6 % in commitment appropriations XXX of the initial allocation for the total of the programmes referred to above.</p>	<p>Delete</p>	<p>— Cf. comments under 8.</p> <p>— The power to transfer 5 % of the original allocation of the specific research programmes to exploratory research was motivated by the fact that 'exploratory research' was, in principle, initially given only a token entry. Transfers of funds from these programmes were necessary in order to achieve the financing objective of 5 % of direct action programmes. Bearing in mind the Court's proposal set out above (amendment No 1), there is no longer any need for this transfer power (see also sections 3.2.4.3 and 3.2.5.6 of the opinion).</p>

	THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSED AMENDMENTS	COMMENTS
	<p>Deletes this indent:</p> <p>['This special provision does not concern staff appropriations for the JRC.']</p>		<p>The Court supports this deletion.</p>
10	<p>For the purposes of the application of Article 26, the budget headings relating to the activities referred to in Article 92 (1) (b) (excluding JRC participation), (c) and (d) shall be regarded as chapters.</p>	<p>For the purposes of the application of Article 26, the budget headings related to the activities referred to in Articles 92 (1) (a) (except for exploratory research) (b) (for the part of the expenditure financed by indirect action programmes), (c) and (d) shall be regarded as chapters.</p>	<p>— The parenthesis ('excluding JRC participation') is confusing: the reader might take it to mean that financing reserved for the JRC in respect of shared cost research projects is to be excluded from the provision. In reality, when 'indirect action' is defined in Article 92 (1) (b), there should also be a precise description regarding the financing of the JRC in the event of their participating in such projects (see also amendment No 2).</p> <p>— Moreover, the Commission should not have more freedom to make transfers for direct action (except exploratory research) than it has for indirect action.</p>
	<p style="text-align: center;"><i>Article 96</i></p> <p>1. The Commission may provide services for outside bodies or individuals, in accordance with the remarks in the budget for the chapters and articles in question.</p> <p>Notwithstanding Article 5, the resulting revenue may give rise to additional appropriations:</p> <ul style="list-style-type: none"> — in commitments, equal to the amount of the repayments provided for in the contracts concluded with the outside bodies or individuals, — in payments, equal to the entitlements established from these repayments. <p>2. Notwithstanding Article 7 (2), additional appropriations shall be maintained until they are cancelled by means of the revenue and expenditure account.</p>		

	THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSED AMENDMENTS	COMMENTS
	<p>3. Where provision is made in the remarks column for certain categories of expenditure to be repaid to the general budget, such repayments shall be booked to the statement of revenue, in accordance with the implementing rules, under headings entered specifically for this purpose.</p>		
11	<p>4. <u>The appropriations relating to the activities referred to in Article 92 (1) (b), as regards the participation of the JRC on a competitive basis, and (e) and (3) shall be treated as revenue from services to third parties provided for in paragraphs 1 and 2.</u></p>	<p>4. <u>The utilization of appropriations relating to the activities referred to in Article 92 (1) (b), (as regards the financing of work carried out by the JRC on a competitive basis), (e) and paragraph 3 shall, on the one hand, be treated as Commission expenditure that has been authorized by various Directorates-General and booked to these appropriations. On the other hand, for the JRC they shall be treated as revenue from services to third parties, as provided for in paragraphs 1 and 2.</u></p>	<p>It is not possible to assimilate 'appropriations', which are expenditure authorizations, to 'revenue'. Moreover, there is a need to specify the budgetary consequences of treating the financing of competitive activities by the JRC granted by the general budget as equivalent to revenue from services rendered to third parties. In particular, there is a need to explain that, although in such cases there is no movement of funds, since these are, as it were, payments by the Commission to itself, such operations are broken down into two distinct fictitious operations: an item of expenditure charged to the budget heading that supports the financing and an item of revenue for the JRC.</p> <p>The mechanisms — for crediting the latter to the statement of revenue (Article 622), for creating additional appropriations, or, on the contrary, for reimbursing the general budget — laid down in Article 96 (1) and (3) of the Financial Regulation may then be applied (see also section 3.1 (f) of the opinion).</p>
	<p style="text-align: center;"><i>Article 97</i></p> <p>1. With regard to the award of contracts in the fields falling under this Title, the implementing rules provided for in Article 126 may lay down special provisions on:</p> <ul style="list-style-type: none"> — the limit values determining the conditions for concluding contracts, — the operation and the determination of the powers of the advisory committee on procurements and contracts. 		

	THE COMMISSION'S PROPOSAL	THE COURT'S PROPOSED AMENDMENTS	COMMENTS
	<p>2. By way of derogation from the first subparagraph of Article 66, the sale of scientific and technical equipment shall be permitted without prior notice, on the basis of a decision by the authorizing officer taken after the Advisory Committee on Procurements and Contracts has delivered its opinion.</p>		

This Opinion was adopted by the Court of Auditors at the Court meeting of 8 December 1994.

For the Court of Auditors

André J. MIDDELHOEK

President

APPENDIX

ANNEX 1
of the preliminary draft budget for 1995

Structure of the preliminary draft budget 1995

a) Human and material resources:

Staff	(A)
Resources	(B)

b) Specific programmes:

Specific programme No 1	(C)
Specific programme No 2	(D)
Specific programme No 3	(E)

c) Other activities:

Services for outside bodies	(F)
Competitive support	(G)

TOTAL	(R)
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b) Specific programmes:

Specific programme No 1				
Specific programme No 2				
Specific programme No 3				

c) Other activities:

Services for outside bodies				
Competitive support				

TOTAL	(A)	(B)	(H)	(R)
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	Staff	Resources	DOA (¹)	TOTAL
Specific programme No 1			(C)	(J)
Specific programme No 2			(D)	(K)
Specific programme No 3			(E)	(L)
Services for outside bodies			(F)	(M)
Competitive support			(G)	(N)

Structure of the budget as proposed in the Court's draft opinion

b) Specific programmes:

Specific programme No 1	(J') (²) (³)
Specific programme No 2	(K') (²) (³)
Specific programme No 3	(L') (²) (³)

c) Other activities:

Services for outside bodies	(M') (³)
Competitive support	(N') (³)

Institutional support	(O)
Exploratory research	(P)
Shared cost research (the fraction of the costs to be borne by the JRC as contractor)	(Q)

TOTAL	(R)
-------	-----

(¹) Direct operating appropriations.

(²) J', K' and L' will be less than J, K and L respectively as institutional support (O) and exploratory research (P) will have been deducted from the specific programme headings and included in separate headings.

(³) J', K', L', M' and N' will be less than J, K, L, M and N respectively as the general total of the budget (R), being a fixed amount, means that it will be necessary to deduct from J, K, L, M and/or N the financing of the shared cost research (Q), that the preliminary draft budget for 1995 omitted to mention.

OPINION No 5/94

of the Court of Auditors of the European Communities on:

- a proposal for a Council (EC) Regulation amending Council Regulation (EEC) No 729/70 concerning the financing of the common agricultural policy, and
- a proposal for a Council (EC) Regulation amending the financial Regulation of 21 December 1977 applicable to the general budget of the European Communities

(94/C 383/03)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Community, and in particular Articles 43 and 209 thereof,

having regard to Council Regulation (EEC) No 729/70 of 21 April 1970⁽¹⁾ concerning the financing of the Common Agricultural Policy,

having regard to the Financial Regulation of 21 December 1977 applicable to the General Budget of the European Communities⁽²⁾, as last amended by Council Regulation (EEC, ECSC and Euratom) No 2730/94 of 31 October 1994⁽³⁾,

having regard to Commission Decision No 94/442/EC of 1 July 1994 concerning the establishment of a conciliation procedure within the context of the settlement of the EAGGF-Guarantee accounts⁽⁴⁾,

having regard to the proposals submitted by the Commission on 1 July 1994⁽⁵⁾,

having regard to the Council's request for the consultation of the Court of Auditors on these proposals, which was received by the Court on 2 September 1994,

whereas a combination of lack of resources and procedural difficulties has led to long delays in the clearance decisions and caused legal and financial insecurity at the level of the national administrations,

whereas this has led to a situation where the Commission has been unable to provide, as part of the annual clearance procedure, reasonable assurance that the expenditure recorded in the accounts of the Member States and entered against the general budget of the Community is materially correct and was incurred in conformity with Community legislation,

whereas the Court has spoken out on several occasions against this situation, as well as criticising the weakness of the internal control of the EAGGF-Guarantee payment systems and the irregularities that result from that weakness, especially in the area of export refunds⁽⁶⁾;

whereas it is not expected that the Commission will be in a position to meet the conditions which would allow a single comprehensive decision to be delivered and that, consequently, the proposal by which the clearance of accounts is to be split into two separate procedures aims to revise the objectives of the clearance system in the direction of preventive and corrective actions to be carried out at the same time as, or shortly after, the operations, and to organise better collaboration between the Member States and the Commission,

⁽⁶⁾ See the following:

(a) Annual reports:

- Observations on the clearance procedure:
 - Annual report on 1986, § 5.26 (OJ No C 336, 15. 12. 1987).
 - Annual report on 1988, § 5.1-5.32 (OJ No C 312, 12. 12. 1989)
- Observations on Member States:
 - Annual report on 1989 (OJ No C 313, 12. 12. 1990)
 - Annual report on 1990 (OJ No C 324, 13. 12. 1989)
 - Annual report on 1991 (OJ No C 330, 15. 12. 1992)
 - Annual report on 1992 (OJ No C 309, 16. 11. 1993)
 - Annual report on 1993 (OJ No C 327, 24. 11. 1994).

(b) Special reports:

- No 2/89 on fresh and processed fruit and vegetables (OJ No C 128, 24. 5. 1989)
- No 2/90 on the management and control of export refunds (OJ No C 133, 31. 5. 1990)
- No 2/92 on export refunds paid to selected major traders (OJ No C 101, 22. 4. 1992)
- No 4/93 on the implementation of the milk quota system (OJ No C 227, 23. 8. 1993)
- No 7/93 on irregularities and frauds in the agricultural area (OJ No C 307, 13. 11. 1993)
- No 8/93 on the market in raw tobacco (OJ No C 64, 2. 3. 1994).

⁽¹⁾ OJ No L 94, 28. 4. 1970, p. 13.

⁽²⁾ OJ No L 356, 31. 12. 1977.

⁽³⁾ OJ No L 293, 12. 11. 1994, p. 7.

⁽⁴⁾ OJ No L 182, 16. 7. 1994, p. 45.

⁽⁵⁾ OJ No C 284, 12. 10. 1994, p. 5 and COM(94) 240, 1. 7. 1994.

whereas in this context the proposed organization and procedures of the paying agencies responsible for the decentralised management of Community expenditure, as well as those relating to the clearance of accounts itself, are to be clarified and strengthened;

whereas, in order to reform the management of the EAGGF, it appears necessary to provide for the payment of interest on arrears in cases where sums owed are not paid to the Commission by the due date, or where the recovery of unwarranted payments is necessary,

HAS ADOPTED THE FOLLOWING OPINION:

PART ONE:
GENERAL CONSIDERATIONS

1. The Court reiterates its adherence to the principle of a single, annual EAGGF-Guarantee clearance decision, as postulated by Regulation (EEC) No 729/70 in its first version. It regrets that the Commission has not been able to promote the satisfactory application of that principle by developing an appropriate methodology in respect of the control and administrative regulation of cases of non-compliance or irregularity and by allocating the necessary resources to it.

2. The Court has noted this situation on several occasions in its annual and special reports⁽¹⁾, as well as

⁽¹⁾ See the following:

(a) Annual reports:

- Observations on the clearance procedure:
 - Annual report on 1986, § 5.26 (OJ No C 336, 15. 12. 1987).
 - Annual report on 1988, § 5.1-5.32 (OJ No C 312, 12. 12. 1989)
- Observations on Member States:
 - Annual report on 1989 (OJ No C 313, 12. 12. 1990)
 - Annual report on 1990 (OJ No C 324, 13. 12. 1989)
 - Annual report on 1991 (OJ No C 330, 15. 12. 1992)
 - Annual report on 1992 (OJ No C 309, 16. 11. 1993)
 - Annual report on 1993 (OJ No C 327, 24. 11. 1994).

(b) Special reports:

- No 2/89 on fresh and processed fruit and vegetables (OJ No C 128, 24. 5. 1989)
- No 2/90 on the management and control of export refunds (OJ No C 133, 31. 5. 1990)
- No 2/92 on export refunds paid to selected major traders (OJ No C 101, 22. 4. 1992)
- No 4/93 on the implementation of the milk quota system (OJ No C 227, 23. 8. 1993)
- No 7/93 on irregularities and frauds in the agricultural area (OJ No C 307, 13. 11. 1993)
- No 8/93 on the market in raw tobacco (OJ No C 64, 2. 3. 1994).

the weaknesses in the internal control of the systems for the execution of EAGGF-Guarantee expenditure. It has also deplored the fact that the management of the EAGGF-Guarantee is subject to irregularities, especially in the field of export refunds, but also in the field of interventions and direct aid.

3. In this context, the Commission's proposal looks like a compromise solution, taking account of the weaknesses observed in the clearance procedure but not remedying them completely. In the light of its previous recommendations, the Court therefore recommends prudence. As it favours a shortening of the clearance period, it suggests that it should be undertaken at the end of a trial period, after the Commission has carried out an assessment. The Court considers that the Commission will have to rely on, amongst other things, the initial results of the conciliation procedure provided for in Article 5(2c) of its proposal, so as subsequently to be able to justify any more fundamental amendment of the texts at present in force.

4. The Commission's proposal provides that the shortening of the clearance period will not apply to the financial consequences of these irregularities. With a view to preserving the legitimate rights of the European Union beyond the specific area of irregularities, the Court favours an extension of the exceptions to the shortening of the clearance period to include cases of negligence, as provided for by the provisions of Article 8(2) of Regulation No 729/70.

5. This is the point of view from which the Court sets out the following specific comments which, in its view, are such as to improve the wording of the proposed texts.

PART TWO:
SPECIFIC COMMENTS

A) On the proposal amending Regulation No 729/70.

Paying agencies accreditation

6. Given the key role of the paying agencies in the implementation of the EAGGF-Guarantee policy, the Court underlines the need for careful and thorough procedures for their accreditation. Therefore the criteria to be fulfilled by the paying agencies, or bodies delegated by them, should be clearly laid down by the Commission as part of the conditions for accreditation specified in Article 4, paragraph 7, of Regulation No 729/70. Furthermore, in order to avoid discrepancies in assessments of the paying agencies' systems of internal control and administrative organization, any national accreditation should be given on the basis of a specific Commission opinion (Article 4, paragraph 1, of Regulation No 729/70).

Clearance of accounts procedure

7. The Commission's proposal splits the clearance of accounts operation into two separate audit procedures:

- (a) an annual audit by independent auditors of the paying agencies' accounts, based on their available supporting documents, which is intended to confirm that the revenue and the expenditure of a single financial year have been entered correctly, completely and reliably in the accounts;
- (b) multiannual compliance audits⁽¹⁾, relating to different financial years, which are intended to verify the substance of the underlying transactions and the compliance of the corresponding expenditure and revenue with the Community legislation.

In order to ensure the coherence of the overall clearance procedure, the objectives, scope, and methodology followed for each of these two audit phases need to be clearly defined.

8. The annual accounts clearance decision must be based to a great extent on attestations regarding the completeness, correctness and reliability of the accounts of the paying agencies. Underlining the Commission's final responsibility and given the vital importance of these attestations in this context, it should be specified in the revised Regulation that:

- (a) the organizations which examine the accounts must be functionally and hierarchically independent of the paying agencies (Article 4, paragraph 3, of Regulation No 729/70);
- (b) the names of the organizations which will examine the accounts must be communicated to the Commission (Article 4, paragraph 3, of Regulation No 729/70);
- (c) before relying on the attestations, and in order to ensure that they are homogeneous and reliable, the Commission should satisfy itself that the audits have been executed in accordance with internationally accepted auditing standards, including an examination of the effectiveness of the internal control systems (Article 5, paragraph 1, of Regulation No 729/70), and that the results provide a sufficient basis for these attestations.

9. The compliance audit should be transaction-based. It should examine, on a representative basis, whether the appropriations of the EAGGF-Guarantee budget have been expended in conformity with Community

legislation. It should also include an examination of the legality and regularity of the underlying operations, so that final beneficiaries can be identified, more particularly in areas at risk, as well as an examination of the substance of the operative events.

10. For the reasons of prudence mentioned in paragraph 3 above, the Court considers that the immediate reduction of the clearance period set by the Commission to three years, covering the current financial year and the two previous ones (Article 5, paragraph 2(c) of Regulation (EEC) No 729/70), is excessive and should be changed to five years, covering the current financial year and the four previous ones. Due to this new timing, and in order to ensure effective coverage of all expenditure, the Commission should establish, at the beginning of every year, a rolling multiannual programme for the compliance audits, covering the current year and the following two years (Article 5, paragraph 2(c) of Regulation No 729/70) and should simultaneously produce an activity report on the audits carried out during the previous year (Article 5, paragraph 2(b) of Regulation No 729/70).

11. The decisions taken as a result of the compliance audits, being either a deduction from or an addition to the Community financing, will each time relate to specific budget areas and will usually cover the expenditure of more than one budget year. To ensure adequate transparency, these decisions should specify for each of the Member States the amounts by budget area(s) as well as by budget year(s).

12. Finally, it is necessary for precise time limits to be fixed at all stages of the clearance procedure, in particular so as to preclude prolonged delays in closing files. Likewise, it is essential that provision be made for the payment of interest on arrears in cases where sums due on specific maturity dates are paid late, and during the recovery of unwarranted payments.

13. The Court notes that the Commission has already decided⁽²⁾ on a conciliation procedure in the context of the results of the compliance audit, provided for in Article 5, paragraph 2(c) of Regulation 729/70, final paragraph of the revised Regulation. Given the possible impact of this new procedure on the future clearance decisions, the Commission should carefully evaluate the conciliation procedure and its results after some years of experience, but not later than 31 December 1998.

⁽¹⁾ Checks as to the substance of the operative events and the legality/regularity of the expenditure.

⁽²⁾ Commission Decision of 1.7.1994 concerning the introduction of a conciliation procedure in the context of the clearance of the accounts of the EAGGF-Guarantee, OJ No L 182, 16. 7. 1994, p. 45.

Evaluation of the new system

14. The changes in the clearance of accounts procedures, as they are now proposed, are important. In many respects it is difficult to foresee their impact on the implementation of the EAGGF-Guarantee policy. The Court considers, therefore, that the Commission should submit to the budgetary authorities, before 31 December 1998, an evaluation of the functioning of the new procedures, covering:

- the accreditation of paying agencies;
- the attestation of the accounts;
- the compliance audit;
- the conciliation procedure.

This evaluation should also be presented to the Court of Auditors (Article 2 of the proposed Council Regulation).

B) On the proposal amending the Financial regulation

15. The aim of the Commission's proposal is to adapt the provisions of the Financial Regulation to the proposed amendments to Regulation (EEC) No 729/70.

16. The Court considers that the recommendations it has made above concerning this Regulation are applicable *mutatis mutandis* to the proposal to amend the Financial Regulation. However, the Court also believes that Article 102, paragraph 5, concerning the results of the compliance audit should also cover the possibility of an increase in expenditure.

PART THREE:
PROPOSED AMENDMENTS

17. In the following tables the Court has set out the amendments to, and comments on, the Commission proposals which were adumbrated in Parts One and Two.

Table No 1: Proposal for a Council Regulation (EC) amending Council Regulation (EEC) No 729/70 concerning the financing of the Common Agricultural Policy

THE COMMISSION'S PROPOSALS	THE COURT'S PROPOSALS	COMMENTS
<i>Article one</i>		
Regulation (EEC) No 729/70 is hereby amended as follows:		
1. Article 4 is replaced by the following: 'Article 4 1. Each Member State shall communicate to the Commission:	1. Article 4 is to be replaced by the following: 'Article 4 1. Member States shall <u>accredit paying agencies on the basis of guidelines laid down by the Commission and after taking into account the Commission's opinion as established on relevant information.</u> Each Member State shall communicate to the Commission:	See Section 6 (1) of Part One.
a) details of the authorities and bodies it accredits to pay the expenditure referred to in Articles 2 and 3, hereinafter referred to as the paying agencies, only paying agencies providing sufficient assurance concerning the proper functioning of their administrative organization and of their system of internal control may be accredited.	No change.	

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b) where more than one paying agency is accredited, details of the authority or body it charges with gathering the information to be supplied to the Commission and sending the same, and with ensuring the uniform application of Community rules, hereinafter referred to as the coordinating body;

Only expenditure effected by accredited paying agencies shall be financed.

2. Each Member State shall limit the number of accredited paying agencies to the minimum needed to allow the expenditure referred to in Articles 2 and 3 to be effected, subject to their administrative organization and system of internal control being satisfactory, without prejudice to the Member State's constitutional provisions and its institutional structure.

3. Each Member State communicates ...

4. Where one or more of the conditions...

5. The financial resources...

6. The accredited paying agencies...

2. Each Member State shall limit the number of accredited paying agencies to the absolute minimum needed to allow the expenditure referred to in Articles 2 and 3 to be effected, subject to their administrative organization and system of internal control being satisfactory, without prejudice to the Member State's constitutional provisions and its institutional structure.

No change.

Insert as paragraph 3 (a):
Each Member State shall ensure that a government department, or body which is hierarchically and functionally independent of the paying and coordinating agencies, examines the annual accounts referred to in article 5 (1) (b). The names and the legal statuses of these organizations shall be communicated to the Commission.

No change.

No change.

No change.

The wording of the French text might be interpreted as meaning that the number of paying bodies must be higher than or equal to a certain minimum, whereas the opposite is the intention.

See Section 8 of Part One

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7. Detailed rules for the application of this Article, covering, in particular, the conditions and procedure for the accreditation referred to in paragraph 1, and the number of paying agencies which may be accredited, shall be adopted in accordance with the procedure laid down in Article 13.'

7. Detailed rules for the application of this Article, covering, in particular, the conditions and procedures for the accreditation referred to in paragraphs 1 and 3 (a) and the number of paying agencies which may be accredited, shall be adopted in accordance with the procedure laid down in Article 13.'

The French text (the original) should be amended by adding the qualification: 'sur les conditions et les procédures pour...'

2. Article 5 is replaced by the following:

2. Article 5 is replaced by the following:

'Article 5

'Article 5

1. Member States shall ...

No change.

Insert as paragraph 1 (a):

The Commission shall examine whether the attestations have been properly drawn up and whether the underlying audits, including an examination of the effectiveness of the internal control systems, have been carried out in accordance with internationally accepted auditing standards.

See Section 8 of Part One

2. The Commission, after consulting the Fund Committee:

a) shall decide...

a) No change.

b) shall, before 30 April of the year following the financial year concerned, on the basis of the information referred to in paragraph 1(b), clear the accounts of the accredited paying agencies. The accounts clearance decision shall cover the integrity, exactitude and veracity of the accounts submitted. The decision shall not prejudice the adoption of a subsequent decision pursuant to point (c);

b) shall, before 30 April of the year following the financial year concerned, on the basis of the information referred to in paragraph 1 (b) and the examination thereof referred to in paragraph 1 (a), clear the accounts of the accredited paying agencies. The accounts clearance decision shall cover the completeness, correctness and reliability of the accounts submitted. The decision shall not prejudice the adoption of a subsequent decision pursuant to points (c) and (d);

to take into account the added proposed paragraph 1 (a)
English terminology to be changed.

THE COMMISSION'S PROPOSALS

- c) shall decide on the expenditure to be deducted from the community financing referred to in Article 2 and 3 where it finds that the expenditure has not been effected in compliance with Community rules. The Commission shall evaluate the amounts to be deducted having regard in particular to the significance of the non-compliance found.

A refusal to finance may not involve expenditure effected prior to the two financial years preceding notification to the Member State by the Commission of the results of those checks. This provision shall not apply to the financial consequences:

- of irregularities as referred to in Article 8, point 2
- concerning national aids, of infringements, for which the procedures referred to in Article 93 and 169 of the Treaty have been initiated.

The Commission's findings and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to conciliate their respective positions concerning the action to be taken, before a decision is taken to refuse financing.

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- c) shall decide on the expenditure to be deducted from the Community financing referred to in Article 2 and 3 where it finds that the expenditure has not been effected in compliance with Community rules. The Commission shall evaluate the amounts to be deducted on the basis of an audit which includes the verification of representative underlying transactions and transactions in risk areas, having regard in particular to the significance of the non-compliance found.

A refusal to finance may not involve expenditure effected prior to the four financial years preceding notification to the Member State by the Commission of the start of its checks. This provision shall not apply to the financial consequences:

- of irregularities or negligence as referred to in Article 8, point 2
- concerning national aids, of infringements, for which the procedures referred to in Article 93 and 169 of the Treaty have been initiated.

The decision on the expenditure to be deducted from the Community financing shall specify the budget articles and the budget years to which the decision relates.

The Commission's findings and the replies of the Member State concerned shall be notified in writing, after which the two parties shall endeavour to conciliate their respective positions concerning the action to be taken, before a decision is taken to refuse financing.

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See Section 9 of Part One

See Section 10 of Part Two

See Section 11 of Part Two

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COMMENTS

	<p>d) <u>the provisions of subparagraph c) above shall apply mutatis mutandis to any additional expenditure to be added to Community financing.</u></p>	<p>See Section 11 of Part Two. The purpose is to protect Community interests.</p>
	<p>Insert as paragraph 2 (a): <u>The Commission shall ensure that all expenditure is covered in the audit during any five-year period. The Commission shall present an activity report on the audits carried out in the previous year to the Fund Committee before 1 February of every year.</u></p>	<p>See Section 10 of Part Two</p>
<p>3. Detailed rules for the application of this Article shall be adopted in accordance with the procedure laid down in Article 13. Those rules shall cover in particular the procedures relating to the attestation of the accounts referred to in paragraph 1, and to the decisions referred to in paragraph 2.</p>	<p>a) The Commission's text becomes part a)</p>	
	<p>b) <u>These rules shall apply precise time limits for the various stages of the clearance procedures. In particular, there must be a reasonable deadline by which the Commission shall reach its final decision.</u></p>	<p>See Section 12 of Part Two</p>
<p>3. Article 8, paragraph 2, second indent, shall be replaced by the following text: 'Sums that have been recovered shall be paid to the approved paying agencies and booked by them as a reduction in expenditure financed by the Fund.'</p>	<p>Add a third indent to paragraph 2: <u>'Sums due to the Fund and not paid over at maturity, along with recoveries of unwarranted payments, shall give rise to the payment of interest on arrears. The procedure for calculating interest on arrears shall be laid down in the implementing rules drawn up according to the procedure provided for in Article 13.'</u></p>	<p>See Section 12 of Part One</p>
<p>4. Article 9, paragraph 2, ...</p>	<p>No change.</p>	
<i>Article 2</i>		
<p>1. This Regulation shall enter...</p>	<p>No change.</p>	

THE COMMISSION'S PROPOSALS	THE COURT'S PROPOSALS	COMMENTS
2. The monthly advances...	No change.	
3. Refusal to grant financing...	No change.	
	4. <u>The Commission shall submit to the budgetary authorities before 31 December 1998 an evaluation of the functioning of the procedures, subject to this Regulation. The evaluation is also to be presented to the Court of Auditors.</u>	See Section 14 of Part Two

Table No 2: Proposal for a Council Regulation (EC) amending the Financial Regulation of 21 December 1977 applicable to the General Budget of the European Communities

THE COMMISSION'S PROPOSALS	THE COURT'S PROPOSALS	COMMENTS
<i>Article one</i>		
Financial Regulation of 21 December 1977 is amended as follows:		
Article 102 is replaced by the following:	No change.	
<i>'Article 102</i>		
1. The object of the clearance of accounts...		
2. The aim of the decisions covered in Article 5, paragraph 2, point c) of Regulation (EEC) No 729/70 is to determine the expenditure which, as a result of the fact that the related measures have not been taken in accordance with Community rules, shall be excluded from the Community financing referred to in Articles 2 and 3 of the Regulation in question.	2. The aim of the decisions covered in Article 5, paragraph 2, points c) and d) of Regulation (EEC) No 729/70 is to determine the expenditure which, as a result of the fact that the related measures have not been taken in accordance with Community rules, shall be excluded from or added to the Community financing referred to in Articles 2 and 3 of the Regulation in question.	See Section 11 of Part Two
3. The schedule for the clearance...	No change.	

THE COMMISSION'S PROPOSALS	THE COURT'S PROPOSALS	COMMENTS
4. The outcome of the clearance...	No change.	
5. The outcome of the decisions referred to in paragraph 2 shall be booked under a single article as a reduction in expenditure.	The outcome of the decisions referred to in paragraph 2 shall be booked under a single article as <u>additional expenditure or a reduction in expenditure.</u>	See Section 16 of Part Two

This Opinion was adopted by the Court of Auditors in Luxembourg at the Court meeting of 15 December 1994.

For the Court of Auditors
André J. MIDDELHOEK
President

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