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I

(Information)

COURT OF AUDITORS

SPECIAL REPORT No 5/95

submitted pursuant to Article 188c (4), second indent, of the EC Treaty and concerning the signing without the prior approval of the Financial Controller of the contract for the building of the European Parliament's new chamber in Strasbourg, together with Parliament's replies

(96/C 27/01)

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1. INTRODUCTION

1.1. In its resolution of 25 March 1995 (paragraph 8) on the closing of the accounts (administrative expenditure) of the institution, Parliament found that the contract of 30 March 1994 concerning the building of the Strasbourg hemicycle had been signed without the Financial Controller's approval and asked the Court of Auditors to draw up a report on the subject before 15 July 1995.

1.2. In response to Parliament's request, the Court decided to draw up the report set out in these pages.

1.3. The aim of this report is to discover why a long lease contract was signed on 31 March 1994 between the European Parliament and a company trading under the name SERS without the Financial Controller's prior approval.

1.4. The Court therefore examined the situation leading up to the signing of the contract in the light of the provisions of the Financial Regulation, the implementing procedures thereof and other internal rules in force at Parliament, in particular those concerning the procedures for committing expenditure (Article 36 of the Financial Regulation) and compliance with the criteria of economy (Article 2 of the Financial Regulation) in the utilization of appropriations.

2. THE PROCEDURE FOLLOWED FOR THE STRASBOURG CONTRACT

Preparation of the draft contract

2.1. The draft contract for the construction of the Strasbourg hemicycle was preceded by a wide-ranging consultation of the various political and administrative bodies of Parliament. This broad request for opinions was not followed by a real consensus on the contents of the contract, in particular at the level of the 'building policy' working party (PIM group), which consisted of Members of Parliament designated by the Bureau, Parliament's body responsible for administrative and financial questions. The final wording and the signing of the contract were directly decided on by a majority vote by the Bureau itself. The following paragraphs look at the various aspects of the development of the draft contract.

Consultation of the competent bodies

2.2. With regard to the consultation of the competent bodies within Parliament, and in particular the Advisory Committee on Procurements and Contracts (ACPC) and the Financial Controller, the procedure followed was as follows.

2.3. The ACPC was first consulted in February 1994 concerning the first draft contract for the construction of the hemicycle (Opinion No 14/94). The ACPC was again consulted on the wording of the draft dated 24 March 1994.

2.4. In its opinion, the ACPC expresses considerable reservations similar to the Financial Controller's comments with regard to the cost of the land (FF 130 million, i.e. approximately ECU 20 million) and the purchase option mechanism. In spite of this, the ACPC did not deliver an unfavourable opinion, as its content might lead one to expect.

2.5. Parliament's consultation of its internal bodies and departments included the legal service (opinion of 8 March 1994) and the accountant (opinions of 16 February 1994 and 29 March 1994).

2.6. Throughout the negotiations, the main aspects of the contract were submitted to the PIM group for examination. Parliament's Budget Committee also expressed its opinion on the subject in its resolution of 23 February 1994 (Doc. EP 208.289).

2.7. External consultants were engaged to advise Parliament on the various problems posed by the construction of the hemicycle in Strasbourg in accordance with French building regulations, as well as on the financial aspects of the investment.

Finalization of the contract

2.8. In accordance with the mandate conferred upon him by the Bureau on 23 March 1994, the President of Parliament directly carried out the amendments to the contract for a long lease with the City of Strasbourg and SERS.

2.9. On the basis of the President's report to the Bureau of 28 March 1994, stating in detail the reasons why the lease was considered acceptable, a majority of the Bureau decided in favour of the signing of the contract on 31 March 1994, the date on which the contract was actually signed by the President of Parliament.

2.10. In its final version, the contract provides for the construction of a building, including the chamber, or 'hemicycle', 29 meeting rooms, a communications centre, a reception centre for visitors, two restaurants and other facilities (parking) and about 900 offices for the MEPs and the administration, all amounting to about 185 331 m² and covering a surface area of about 4,34 hectares.

2.11. This building complex, the provisional investment for which amounted to ECU 443 million, would be made available to Parliament on a long lease ('emphytéose') in return for the payment of an annual sum calculated at such a level that it would cover the

annual payments needed to write off the investment cost over 20 years, which figure corresponds, for the first six years, to annual repayments of around ECU 47,7 million, falling to ECU 31 million for the following four and rising to ECU 32,5 million for the last 10.

2.12. During the course of the lease, Parliament has the right to purchase the building from the City of Strasbourg. In such event, the sales price will correspond to the amount of the capital remaining to be reimbursed when the option is taken up. If this option is taken up before the 10th year, the price of the land is to be reduced by one half (FF 65 million instead of the FF 130 million laid down in the contract).

Forwarding of the draft(s) to the Financial Controller

2.13. The Financial Controller was consulted several times with regard to the four draft contracts.

2.14. However, when the negotiations were completed, the Financial Controller did not follow up a note sent by the competent authorizing officer, the Director-General of Administration, on 25 March 1994 asking him to approve the draft contract. This was because, on this occasion, he had neither clearly refused his approval nor clearly given it by putting his stamp on the pages of the document, the procedure provided for in the Financial Regulation by means of which he physically records his approval of draft contracts. In his view, the note of 25 March merely served to forward a new draft contract that was not definitive.

2.15. Nevertheless, in a note dated 28 March 1994 addressed to the Secretary-General, a copy of which was sent to the competent authorizing officer, the Financial Controller concluded explicitly that, in the absence of substantial modifications, the same 'draft contract must not be signed in its present form'.

The Financial Controller's observations on the draft contract(s)

2.16. The Financial Controller criticizes six main aspects of the content of the contract.

(a) The cost of the land

As emphasized by the ACPC, the Financial Controller wonders why the Parliament should have to take on the cost of land which could conceivably have been made available for a symbolic amount and which, in any case, ought not to cost more than the maximum figure of FF 49 million recommended by the experts, rather than the FF 130 million quoted in the contract (to which FF 31 million for the development of the site must be added).

(b) Taxation of the operation (VAT)

Regarding this question, the Société d'Aménagement de la Région de Strasbourg (SERS), a semi-public

company responsible for the construction of the hemicycle, opted to pay the VAT and then apply for its reimbursement, which was granted by the French authorities under the terms of the Protocol on the privileges and immunities of the European institutions. This meant that the Parliament had to pay interim interest calculated on a *higher* construction cost (the VAT was included) until the VAT had been reimbursed. This delay, theoretically one month, may be as much as 18 months. Moreover, there is no estimate in the contract as to the deadline by which SERS must transfer the VAT recovered and thus reduce the incidence of the VAT on the construction costs.

(c) Conversion of costs from francs into ecu

The Financial Controller feels that Article 6.10 of the contract is ambiguously drafted. It could be interpreted in the sense that the cumulative amount of expenditure carried out to date should be converted each month. In that case, Parliament would bear the whole exchange risk, as is currently the case in the Brussels contract.

(d) The construction period and application of penalties

Contrary to what one might imagine on reading Article 3.3 of the contract, the 'overall' construction period granted to SERS before the application of penalties for failure to fulfil the contract on time is 45 months and not the 36 months provided for the completion of the work. The possibility thus given to SERS of extending the implementation deadline is to Parliament's disadvantage.

(e) The 'handing over' and 'completion' of the building

The procedure provided does not guarantee Parliament that the 'declaration of completion', and therefore the start of the lease, can be refused until after solutions have been found to all Parliament's observations and remarks on the quality of the construction.

(f) Provisional investment cost and control of costs

According to the Financial Controller, the 'cost ceiling' is not actually a ceiling, in particular as far as ancillary costs are concerned, which are only calculated in percentage terms and without an upper limit, as is also the case for general project work. Moreover, an upper limit should be clearly stated for the costs provided for under French law. Also, the Financial Controller does not accept the calculation base used for these costs and SERS's 'company costs'. Finally, he expresses reservations with regard to interim interest.

Account taken of the Financial Controller's comments

2.17. The Financial Controller was originally involved in the preparation of the wording of the contract as the

institution's adviser in accordance with a procedure laid down in a decision of the Bureau on building matters of 10 February 1988 (see paragraph 3.12).

2.18. The function of the Financial Controller, as understood by Parliament's Superior Authority, is given in the President's note of 28 March 1994 to the Bureau of Parliament. In this note, the President refers to the Financial Controller's declaration at the meeting of the PIM group of 22 March 1994, at which he (the Financial Controller) said that the majority of his 'suggestions' had been taken up in the wording of the draft basic contract. This being so, the President asked the Financial Controller to issue a definitive 'opinion' and submit his overall final recommendations to the Bureau so that it could come to a decision in full knowledge of the facts.

2.19. As already stated in paragraph 2.15, the Financial Controller's definitive opinion on the last draft contract was, however, that it should not be signed. Even if the justifications given in the President's note of 28 March were such as to provide answers to all the Financial Controller's comments on the content of the contract, the authorizing officer should, according to the Financial Regulation, have introduced a commitment proposal so as to enable the Financial Controller to give his opinion on the final wording of the contract as part of the discharge of his control duties (see paragraph 3.11).

Lack of a prior commitment proposal

2.20. The fact is that the Financial Regulation, the implementing rules, the Parliament's Rules of Procedure and the procedure established by the Bureau on 17 February 1988 provide that, after the first phase of consultation of the Financial Controller and after the Bureau has taken its decision, the draft contract should be submitted, together with a proposal for commitment, by the competent authorizing officer (the Director-General of Administration) for the Financial Controller's approval (Article 7 of the 1988 procedure).

2.21. In the case of Strasbourg, this second phase was not complied with and no proper proposal for a commitment was submitted to the Financial Controller after the Bureau had met. One of the main principles of the Financial Regulation (i.e. that the Financial Controller's prior approval of the commitment proposal and the draft contract should be obtained before signing) was not observed. The signing of the contract was therefore irregular in terms of Community budgetary law.

3. THE PROVISIONS OF THE FINANCIAL REGULATION APPLICABLE TO EXPENDITURE

3.1. The Strasbourg case, like the Brussels one, shows that the provisions of the Financial Regulation were not correctly complied with by Parliament's departments, in particular with regard to buildings expenditure. The relevant rules are as follows.

Provisions regarding decisions on expenditure (Articles 36 to 39 of the Financial Regulation)

3.2. The implementation of the various items of expenditure is governed by the provisions of Title III (implementation of the budget), Section III (commitment, validation, authorization and payment of expenditure), and in particular subsection 1 thereof (commitment of expenditure) in respect of decisions to carry out expenditure and the system of control prior to entering into legal commitments with third parties.

3.3. The objective of the provisions in question (Article 36) is essentially to ensure that decisions on any measures liable to give rise to expenditure (whether present or future) chargeable to the budget should be subject to *ex-ante* checks in order, in particular, to establish that appropriations are available, that the item of expenditure is in order ('regularity check') and complies with the relevant provisions and that the principles of sound financial management referred to in Article 2 have been applied (Article 38).

Procedures for implementing these provisions (Title VII of Commission Regulation (Euratom, ECSC, EC) No 3418/93)

3.4. The principles laid down in the Financial Regulation are explained in detail in Commission Regulation (Euratom, ECSC, EC) No 3418/93, laying down detailed rules for the implementation of certain provisions of the Financial Regulation. In particular, Articles 51 to 57 of Title VII (commitment of expenditure) specify the obligations of the competent authorizing officer in this context:

- (a) Article 52: *draft decisions of a general nature* entailing a spending commitment *vis-à-vis* third parties must be submitted to the Financial Controller;
- (b) Article 53: if a decision of principle must be taken by the institution before expenditure may be committed, *the draft decision of principle* must first be submitted to the Financial Controller for approval, accompanied by the corresponding proposal for a commitment;
- (c) Article 55: *if, in the case of certain measures, no exact figures can be given for the expenditure* when

the relevant proposal for a commitment is presented, *the authorizing officer must estimate the expenditure involved* and set out in his commitment proposal the basis on which he has arrived at his estimate;

- (d) Article 56: *all proposals for commitment must be submitted to the Financial Controller sufficiently early* for him to state his position and make any comments he considers appropriate, which may then be taken into account;
- (e) Article 57: *proposals for commitment must be accompanied by all relevant supporting documents* and, where appropriate, by any other documents and information which are necessary to enable the Financial Controller to establish the things he is required to establish by Article 38 (1) of the Financial Regulation.

Provisions concerning the Financial Controller in this connection (Articles 36 to 39 of the Financial Regulation and Title IX of the implementing provisions)

3.5. The Financial Regulation lays down a very strict procedure for the *ex-ante* control of decisions on expenditure. This involves the checking of the legality and sound financial management aspects of the transaction and thus gives substantial powers of investigation to the Financial Controller. When he subsequently gives or withholds his approval it must be quite clear to an outside observer that he has made use of those powers.

3.6. Where he considers the supporting documents to be insufficient or incomplete, he also has the authority to postpone his decision and return the proposal to the authorizing officer, specifying the nature of the supporting information he requires (Article 64 of the implementing procedures). In respect of the implementation of expenditure under contract, a commitment proposal must, in particular, be accompanied by the relevant *draft agreement* and *contract* and the opinion of the ACPC (Article 66 of the implementing procedures).

3.7. The agreement of the Financial Controller on preliminary commitment proposals is physically manifested by the placing of his stamp and the relevant date on the commitment proposal (Article 60, implementing procedures). In urgent cases, approval may be given in a note or by letter, telex or any other means *which leaves no doubt* as to the fact that the commitment proposal has been approved (Article 61, implementing procedures).

3.8. Except where the question of the availability of appropriations is concerned, the Superior Authority may, by a decision *stating the full reasons therefor*, and taken on its sole responsibility, overrule such a refusal (Article 39 of the Financial Regulation). The aim of this rule is to obviate situations where administrative activity is brought to a standstill without good reason.

Parliament's internal rules

3.9. Following the delivery of the Committee on Budgetary Control's opinion of 18 September 1986, the Parliament adopted the rules for the implementation of its expenditure at the Bureau meeting of 17 December 1986.

3.10. It is worth noting the provisions of Title II (implementation of the budget), Section II (procedure for the commitment of expenditure). These regard *the drawing up of a financial statement, whose adoption by the Superior Authority of Parliament constitutes the authorization for the relevant authorizing officer to draw up the expenditure commitment*. This statement is also the basis for the Financial Controller's monitoring, at an administrative level, of the activities of the authorizing officer and the accountant (Article 19). *Article 21 states specifically that the authorizing officer may only enter into a commitment with a third party if he is in possession of the corresponding, duly authorized, expenditure commitment*. Title II, Section XI (the Financial Controller) specifies the Financial Controller's functions within the institution.

3.11. With regard to building matters, a specific procedure was approved by the Bureau on 10 February 1988 (Doc. EP 207.513). The following points are relevant to the matter in hand.

3.12. '6. When all the information is available, but before any commitment is entered into with a third party, *the administration shall ask the Bureau for a decision* (if necessary, via the College of Quaestors) *on the basis of a written submission* which:

- (a) indicates what market investigations have been carried out and summarizes the bids received;
- (b) summarizes the possible options and the state of negotiations on the related bids; in principle, at least three options must be submitted;
- (c) is accompanied by a financial statement which gives a clear and comparative summary of the options to be taken into consideration:
 - *the rent, the rent per m², the costs of fitting out, and any direct and indirect costs (charges, heating, security, equipment, etc.) and sets out both the short-term figures (for example, for the first year) and the long-term figures (for example, for the duration of the lease);*
- (d) is also accompanied by updated opinions from the Financial Controller and the legal service;
- (e) concludes with a specific proposal.'

'C. Signing of the lease'

'7. *On the basis of the Bureau's decision, the administration shall conclude the negotiations, refer the draft lease and the expenditure commitment to the Financial Controller and then submit the result of these procedures to the President.*'

'8. The President shall authorize the renting of the property and shall sign the lease if the proposal submitted to him is consistent with the decision taken by the Bureau.'

'9. The President shall refer the matter back to the Bureau if the terms of the renting proposal submitted to him fall outside the mandate granted by the Bureau.'

'The same procedure must be followed, *mutatis mutandis*, for other agreements relating to premises and having financial or other implications for the institution.'

4. THE COMPULSORINESS OF THE PROVISIONS OF THE FINANCIAL REGULATION

4.1. The provisions of the Financial Regulation and its implementation procedures contain strict rules governing the activities of authorizing officers. In addition to the rules cited above, other provisions help to define the responsibilities of the parties involved in the budgetary implementation process (the authorizing officer, the Financial Controller and the accountant).

The powers conferred on authorizing officers

4.2. At issue here is the power to carry out expenditure. The only officials who are entitled to manage appropriations are those who have been formally delegated by the Superior Authority of the institution to act on its behalf. Such delegates or sub-delegates may only act within the limits of the powers that have been explicitly conferred upon them.

4.3. At the Parliament, the only official with sufficient powers to implement buildings expenditure (Articles 200 to 209 of the budget) is the Director-General of DG VI (Administration) (Decision of the Secretary-General of the Parliament of 14 December 1993 concerning the first half of 1994).

Application of the principle of legality and compliance with the principles of sound financial management

4.4. The authorizing officer is bound by the requirement that expenditure should be in order

('regular') and that it should comply with the relevant provisions, in particular in respect of the budget and all the Regulations, and of all Acts made in implementation of the Treaties and of the Regulations (Article 38 (1) (c) of the Financial Regulation).

4.5. He is also required to apply the principles of sound financial management referred to in Article 2 and, in particular, those of economy and cost/effectiveness (Article 38 (1) (d) of the Financial Regulation).

4.6. The requirements in question apply simultaneously and are not alternatives. Indeed it is not possible to ensure mere compliance with the Regulations without the application of the criteria of sound financial management and vice versa. It is not acceptable for an authorizing officer to claim that he was not able to comply with the rules in order to procure some presumed economic advantage for the institution. The actions of authorizing officers must be legal and, at the same time, must comply with the principles of sound management. If these two criteria were not complied with, appropriations could be managed in a purely arbitrary manner, without taking into account the principles of the Financial Regulation.

The function of prior approval in the expenditure procedure -

4.7. In this context, it is worth noting the expenditure procedure provided for in the Financial Regulation (Article 36 and ff.). This involves, in particular, the following stages:

- (a) where applicable, decision in principle by the institution, the draft project of which is submitted to the Financial Controller for prior approval;
- (b) search for a contractor (call for tenders, selection of the most advantageous bid);
- (c) presentation of a file to the ACPC (before the decision of the authorizing officer);
- (d) decision of the authorizing officer and submission of a proposal for the commitment of expenditure to the Financial Controller indicating the costs to be charged to the budget, accompanied by the supporting documents, including the draft contract;
- (e) approval or non-approval by the Financial Controller (on grounds of legality, compliance with the principles of sound financial management and the availability of appropriations) on the commitment proposal form;
- (f) entry of the commitment proposal in the accounts;
- (g) legal commitment (signature of the contract);
- (h) issuing of a payment order;

- (i) approval or non-approval of the payment order by the Financial Controller;
- (j) payment by the accountant.

4.8. Where the Financial Controller comments on the content of a contract after it has been signed (sub-paragraph (g) above), as was the case in Brussels (withholding of approval No 6/93) (Doc. EP 206.007), the Superior Authority may merely point out that there is a legal obligation to pay and overrule the Financial Controller's refusal to give approval. Withholding of approval before the signature of the contract (suparagraph (e)) has, on the contrary, a real effect, in that it forces the authorizing officer to explain why he thinks he must sign a contract whose contents clearly do not comply with the principles of sound financial management.

The explicit nature of the Financial Controller's approval

4.9. The approval procedure provided for in the Financial Regulation satisfies the requirement that the Financial Controller's decision to grant or withhold his approval should be clear and unambiguous. The procedure should be based on a commitment proposal correctly submitted by the authorizing officer so as to enable him to check whether the contracts observe the criteria in respect of legality and sound financial management.

4.10. Moreover, approval cannot be conditional. The Financial Controller must specifically grant or withhold his approval. The provisions in question do not allow any interpreting of the Financial Controller's intentions.

4.11. Thus, the Financial Regulation excludes any possibility of approval being granted or withheld *de facto*, as the European Parliament's legal service claimed it had been in the case of Strasbourg.

Limits to the possibility of overruling the Financial Controller's decision

4.12. The rules on approval also provide for the possibility of overriding refusals to grant approval by the Financial Controller. The Court considers that this possibility is not unlimited and does not represent an absolute power which enables the institution to overrule any such refusal, regardless of the fact that it may be justified by irregularities or other circumstances (e.g. non-compliance with the principles of sound financial management).

4.13. Where overriding the Financial Controller leads to confirming violations of the Financial Regulation, the

Court is of the opinion that such a decision cannot result in the 'legalization' within the institution of an irregular situation, which will therefore remain an irregular situation and one that the authorities in question are required to remedy. Otherwise, an unlimited power (with the exception of the question of the availability of appropriations) to override the Financial Controller would ultimately mean that whenever compliance with a provision of the Financial Regulation could be considered, at a pinch, superfluous, that provision could be ignored.

4.14. The fact that the Financial Controller's refusal to grant approval cannot be ignored where the requisite appropriations are not available, as is provided in the last sub-paragraph of Article 39 (see also Articles 28 and 47), constitutes an absolute restriction: no expenditure can be carried out when there are no appropriations available under the budget heading concerned. However, in the case of property contracts like the Strasbourg one, involving payments chargeable to future budgets, and given the fact that the operating budget provides for non-differentiated appropriations that can be utilized on an annual basis, the availability of the appropriations must be assessed in relation to foreseeable payments (1998) and there is no requirement for the whole sum to be available under the budgetary heading concerned at the time the contract is signed (Article 1.3 of the Financial Regulation). Otherwise, no contracts of this type could be signed, given the non-availability of appropriations beyond the financial year in which they are entered in the budget.

Impossibility of ignoring *de facto* the Financial Controller's refusal to grant approval

4.15. The procedure provided for in Articles 36 to 39 may be summed up under the principle that the validity of acts is strictly dependent on the observance of the related formalities. This is especially true of the need to give reasons for any decision to overrule the Financial Controller and to communicate them to the authorizing officer, the Financial Controller and the accountant in order to avoid any uncertainty as to whether the appropriations have been managed correctly. In any event, the Court was not informed of the reasons in this case.

4.16. In the context of the Financial Regulation, therefore, it is not acceptable to advance the possibility, as the Parliament's legal service did in the Strasbourg case, of a *de facto* overruling of the Financial Controller's decision by the Superior Authority (see paragraphs 4.9 to 4.11).

5. THE SIGNING OF THE STRASBOURG CONTRACT

Non-observance of the Financial Regulation

The administration's position

5.1. In view of the existing rules, the authorizing officer should already have referred a commitment

proposal to the Financial Controller at the time when the decision was taken in principle to rent and/or take out a long lease on the Strasbourg buildings (decisions of the Bureau of 1990 and 1993).

5.2. Similarly, after the Bureau's decision of 31 March 1994, the authorizing officer was required to refer the decision to sign the contract to the Financial Controller by submitting a correctly presented commitment proposal (Articles 6 and 7 of the Rules of Procedure of 1988).

5.3. The administration sidestepped these obligations. In particular, the note of 25 March 1994 referred to by the administration as a commitment proposal may not be considered as such. This note (which was, moreover, submitted before the Bureau's decision) does not satisfy requirements expressly set out in the Financial Regulation and the Rules of Procedure of 1986 (Article 16) in order to be considered a valid accounting document.

5.4. In this connection, it was also argued that the fact that there were no immediate payments (relating to the current financial year) that might justify the submission of a commitment proposal meant that it was not necessary to refer the matter to the Financial Controller, given the feature that is typical of the institutions' operating budgets, namely that they are annual in nature.

5.5. In this case, the Court is of the opinion that 'expenditure' must be distinguished from 'payment'. It is possible for an expenditure decision not to involve payments during the same financial year (as in the Strasbourg case) while at the same time, as such, constituting a measure liable to give rise to expenditure chargeable to future budgets (Article 36 of the Financial Regulation), sometimes amounting to very large sums (a total of ECU 870 million for Strasbourg, including interest) in respect of which prior control as to legality and compliance with the principle of sound financial management is essential.

5.6. In general, with regard to compliance with Article 36 of the Financial Regulation (submission of prior commitment proposals), the Court wishes to point out that it has been drawing attention to the Parliament's failure to comply with this provision for many years (since the 1987 Annual Report). Despite the assurances given in the Parliament's reply to the observations set out in the 1992 Annual Report (OJ No C 309 of 16 November, paragraphs 15.2 to 15.9), compliance with these rules is still unsatisfactory, whereas the rules in question are substantial in nature and authorizing officers are only empowered to carry out expenditure provided they comply with them.

The role of the Financial Controller

5.7. As regards property matters (Brussels and Strasbourg), the Financial Controller was consulted

during the period preceding the signing of the contract on the basis of a 1988 decision by the Bureau (see paragraph 3.12), and was asked to give his opinion on the various draft contracts.

5.8. The Financial Controller was not, however, given the option of granting or withholding approval, as might have been justified by the comments he made on the draft contracts. It must be remembered (see paragraph 5.1) that the authorizing officer did not submit a proper prior commitment, as he should have done.

5.9. Any refusal by the Financial Controller to grant approval would have meant that, had it wished to proceed, the Superior Authority of Parliament would have had to overrule him and would have had to justify this decision in the light of the Financial Controller's observations, in particular concerning the question of compliance with the principles of sound financial management.

5.10. The ambiguous situation in which the Financial Controller was obliged to work in the field of building matters, in particular in the Strasbourg case (and also Brussels) did not enable him fully to discharge his duties, contrary to the principles laid down for the implementation of the budget, which are based on a balance of powers between the Administration and the internal auditor regarding the implementation and the control of expenditure.

Effects of the situation of irregularity on the contract

Illegality at an internal level within the institution

5.11. In the Court's opinion, shades of distinction must be made in resolving situations where the institution has 'validly' contracted debts with third parties without the prior approval of the Financial Controller.

5.12. It should be specified that, while legal commitments towards third parties are valid (the third party having signed the contract in good faith), the act in question is completely illegal at an internal level if it has not been preceded by an accounting commitment. Such an absence of commitment is quite contrary to the Financial Regulation and is often combined with the absence of a proper estimate, which, under the Financial Regulation, would have constituted an even stronger obstacle to entering into commitments with third parties.

5.13. Internal control should intervene at the time of the decision to approve an item of expenditure and before the signing of a contract. Otherwise, it is practically useless to refuse approval when payment is due for reasons relating to the contents of the contract, as the institution is already legally committed towards a third party.

Financial consequences

5.14. In the case of a legal commitment towards a third party which has been entered into in the absence of a prior commitment and/or available appropriations, it is clear that, in spite of that, the institution must pay the debts that it has incurred.

5.15. This means that the institution must find, within its budget, the necessary appropriations for the current year and, where the debt is spread out over a number of years, for the years to come.

5.16. However, the mere fact that these payments can be made does not justify the signing of a contract in violation of the Financial Regulation. In such cases, the authorizing officer may be held responsible from a disciplinary and, where appropriate, from a financial, point of view for all infringements of the Financial Regulation (Article 73 of the Financial Regulation).

6. THE RESPONSIBILITIES OF THE AUTHORIZING OFFICER AND THE FINANCIAL CONTROLLER

6.1. In the case of the Strasbourg contract, no commitment proposal was submitted prior to the signing of the long lease (the note sent to the Financial Controller on 25 March 1994 was insufficient to meet the requirement). The authorizing officer thus bears the sole responsibility from a disciplinary and, where appropriate, a financial, point of view for this omission (Article 73 of the Financial Regulation). It must, however, be established whether the authorizing officer was acting on the orders of his superior. In order to be able to disclaim responsibility in the event of a measure which is irregular, the authorizing officer must have received a written order (Article 21.3 of the Staff Regulations).

6.2. However, because of the confusion existing in the area of property matters within the Parliament as to the limits of the respective spheres of activity of the 'decision-makers' (the President, the Bureau and the College of Questors) and the 'authorizing officers' (a function entrusted to officials), it is not easy to assess the possible responsibilities of the latter.

6.3. However, the idea that urgency or 'political' constraints of any sort may justify failure to submit a proper proposal for the commitment of expenditure to the Financial Controller should be excluded. It should be remembered, in this connection, that the Financial Controller's approval is an absolute requirement and that it can be granted, even in an emergency, by any means that show unambiguously that the commitment proposal has been approved.

6.4. The responsibilities of authorizing officers, Financial Controllers and accountants are clearly specified in the Treaty, the Financial Regulation (Article 73 and ff.) and the internal rules.

6.5. Title V of the Financial Regulation (responsibilities of authorizing officers, Financial Controllers, accounting officers and administrators of advance funds) provides that they will render themselves liable to disciplinary action and, where appropriate, to the payment of compensation, by the simple fact of not complying with the Financial Regulation (Article 73 and ff.).

6.6. Community precedent shows that the provisions in question are not often put into practice. Nevertheless, they are an indispensable complement to the provisions on the commitment, settlement, authorization and payment of expenditure. Their correct application is essential in order to guarantee the implementation of the provisions of the Financial Regulation.

7. CONCLUSION

7.1. In the Strasbourg case, the conditions laid down in the Financial Regulation and the internal rules for the signing of a contract in compliance with the Financial

Regulation and the principles of sound financial management were not observed.

7.2. The rules laid down, in particular in Articles 36 (prior commitment) and 38 (approval by the Financial Controller) of the Financial Regulation were evaded by the administration. It must also be pointed out the administration did not observe its own Rules of Procedure of February 1988 governing expenditure on buildings, which require it first to seek the opinion of the Financial Controller and then to obtain his approval before a contract is signed.

7.3. This omission must be seen in the more general context of the application of the Financial Regulation by the administration of Parliament. A clear separation of the functions of the various bodies of Parliament responsible for administrative matters (as regards decision-making and implementation of the budget) could help to clarify this situation.

7.4. The simple fact that the contract has been signed means Parliament is bound to pay the future instalments concerning the construction of the Strasbourg hemicycle. At the internal level, Parliament is required to remedy the irregular situations that have been observed, as in the case of the signing of the contract in question.

This report was adopted by the Court of Auditors of the European Communities in Luxembourg at the Court meeting of 13 and 14 December 1995.

For the Court of Auditors

André J. MIDDELHOEK

President

THE EUROPEAN PARLIAMENT'S REPLIES

The Bureau's reply

Having taken note of the report by the Court of Auditors, the Bureau would first of all like to thank the Court for responding quickly to Parliament's request to submit a report on the signing of a contract for the building of the European Parliament's chamber (IPE IV) in Strasbourg.

The Court's services forwarded preliminary observations to the administration on 16 June 1995 and, following a number of meetings between representatives of the two institutions, the final report was forwarded to Parliament on 6 November.

The Bureau would like to place the many steps which led to the signing of the contract in context.

The decision taken by Parliament's supreme administrative body represented the culmination of the long process of consultation involving all the bodies concerned in accordance with the rules in force. However, in the final analysis, it was a *political* decision taken by a *political* body.

In that connection, the statement made on 31 March 1994 to the Bureau by the President of Parliament at the time should be quoted:

'Heard a statement by the President pointing out that

- he had given an undertaking to the French authorities that the Bureau would take a decision as quickly as possible,
- the Bureau had already taken a political decision by giving him a negotiating mandate and that he regarded the results obtained as satisfactory,
- he took the view, in the light of the majority proposal from the WPPP, that the negotiations could be regarded as concluded and that the Bureau could therefore take a political decision,
- the Bureau, by taking a decision in full knowledge of all the opinions delivered by the competent services, including that of the Financial Controller, was exercising its political powers and was thus in a position to overrule the reservations which had been expressed.' (1).

(1) Minutes of the Bureau meeting of 31 March 1994.

In addition, the Bureau, which will shortly examine Parliament's property policy, will certainly take that opportunity to review once again the decision-making procedures.

In essence, the Court's observations focus on two matters:

- was the Bureau authorized to take, in March 1994, a final decision on the signing of the draft contract for the IPE IV building in Strasbourg?
- was a commitment proposal valid only if submitted on a pre-printed form?

As regards the first point, there can be no doubt that the Bureau, having sought the opinions of all the bodies concerned, including that of the Financial Controller, and having taken the view that the negotiations had been satisfactorily concluded, had every right to take a vote on the draft contract. Parliament's supreme administrative body was in possession of all the information it needed to take a decision in full knowledge of the facts.

As regards the second point, the failure to use a pre-printed form when submitting a commitment proposal, the Court's observation is rather surprising. The Financial Regulation explicitly lays down the conditions which must be met: Article 37 stipulates that proposals for commitments must show the purpose of the expenditure, the estimated amount involved, indicating the currency where possible, the budget item to which it is to be charged and the name and description of the creditor. The draft contract and the documents attached to it supply these items of information and many others besides, with the exception of the budget item to which the expenditure is to be charged. However, in 1994 that expenditure was ECU 0, making the information irrelevant.

By way of information, it could be added that such a form had not been used on earlier similar occasions and neither the Court nor the Financial Controller had voiced criticisms.

The Bureau therefore takes the view, not least on the basis of the detailed report forwarded to it by the Court, that it is justified in concluding that Parliament acted in accordance with the requirements of the Financial Regulation. However, in its resolution of 12 October 1995 giving discharge in respect of implementation of the budget for the 1993 financial year, Parliament instructed its Committee on Budgetary Control to prepare a draft

revised version of the internal rules and relevant sections of the Rules of Procedure in order to make for consistency between the provisions governing discharge procedures and those concerning decisions to overrule refusals of approval by the Financial Controller. It also instructed its Secretary-General to submit proposals for a

procedure for dealing with purchases entailing budgetary consequences extending over several years. The Court of Auditors' report will be of great assistance in this connection.

Finally, detailed replies are set out in the attached text.

The administration's reply

Paragraph 2.1.

Very wide-ranging consultation at both political and administrative level took place before the 'IPE IV Strasbourg' contract was signed. The consultations involved the Bureau, the Working Party on property policy, the President, the Secretary-General, DG VI, the Financial Controller, the legal service and the accounting officer. Ultimately, at the meeting of the European Parliament's Bureau on 31 March 1994, four members of the Working Party on property policy were in favour of signing the contract, with two against, while the Bureau voted eight to two for the 'IPE IV Strasbourg' contract.

Paragraph 2.4.

In its Opinion 58/94, a document to which the Court makes no reference, the CCAM delivered a favourable opinion.

Paragraph 2.7.

Parliament did indeed make use of a number of three outside consultants, all of whom agreed that Parliament's interests are safeguarded by the contract.

Paragraph 2.13.

The steps taken by the authorizing officer to consult the Financial Controller throughout this process should be restated:

- on 13 January 1994, the draft contract dated 7 January 1994 was referred to the Financial Controller;
- on 31 January 1994, the Financial Controller issued Observations 94/06, a 15-page document on the 7 January 1994 text;
- on 3 February 1994, the authorizing officer submitted a 31-page reply to those observations;
- on 9 February 1994, the Financial Controller issued Observations 94/07, an additional nine-page document;

- on 25 February 1994, in a note to the Secretary-General, the Financial Controller insisted that any new version of the draft contract be referred to him again;
- on 4 March 1994, the draft contract dated 28 February 1994 was referred to the Financial Controller by the authorizing officer;
- on 7 March 1994, the Financial Controller forwarded Observations 94/16, a 23-page document, to the authorizing officer;
- on 9 March 1994, the authorizing officer submitted a 10-page reply to him;
- on 24 March 1994, the Secretary-General asked the Financial Controller to deliver a definitive opinion;
- on 25 March 1994, the authorizing officer asked the Financial Controller to approve the draft contract dated 24 March 1994;
- on 28 March 1994, the Financial Controller issued Observations 94/21, a 17-page document;
- on 30 March 1994, in a note to the Secretary-General, the authorizing officer replied to those observations.

Furthermore, the Financial Controller attended the meetings of the Working Party on property policy when it discussed the 'IPE IV Strasbourg' question (the first version of the draft contract was forwarded by the authorizing officer to the members of the Working Party on property policy on 3 November 1993). The Financial Controller was therefore kept informed, and indeed kept himself informed, about this complex matter.

Paragraph 2.14.

Having noted the positions of all the parties concerned, and wishing to reach a conclusion, the political authority looked to the Financial Controller in turn to deliver a definitive opinion either in favour of or against the draft contract. Prior to the Bureau meeting of 31 March 1994,

the Financial Controller had not adopted a final position in spite of a formal request by the authorizing officer⁽¹⁾.

Paragraph 2.15.

The Court restates the negative position expressed by the Financial Controller in his note dated 28 March 1994. It does not mention the fact that the President of Parliament replied to the Financial Controller's objections in a note sent to the Bureau on the same day. The Financial Controller finally gave his views to the Bureau on 31 March 1994; after noting the Financial Controller's opinion, the Bureau approved the signing of the contract.

Paragraph 2.16.

(a) The figures quoted by the Court are not correct. The sum approved by the Bureau at its meeting of 31 March 1994 was FF 96 million (land and development).

(b) By letter of 29 March 1994 Mr SARKOZY, at the time Minister for the Budget, confirmed that 'the requisite measures will be taken to ensure that reimbursement is effected very quickly, three weeks to a month ... after payment of the tax'. That letter was added to the papers for the Bureau meeting of 31 March 1994. In practice, reimbursement takes no more than two weeks. The VAT reimbursed in francs to SERS is immediately converted into ecu to be credited to the IPE IV loan account held by SERS with its banks. The only additional cost which Parliament might incur is interim interest for a period of 15 days; in view of the relevant French legislation, that appears inevitable.

(c) The loan taken out by SERS is denominated in ecu. The only exchange rate difference — positive or negative — which may arise is between the time when a call on funds is made to its banks and the time when the invoiced amount is converted into ecu. Conversion takes place monthly. Contrary to what is stated by the Court of Auditors, the cumulative amount of expenditure effected is, of course, not converted.

(d) The assertion that the construction period is 45 months is not true: Article 3.2 of the 'IPE IV Strasbourg' contract stipulates a construction period of 39 months, which might even be reduced to 36 months. The period has been accepted by Parliament.

(e) Parliament's interests are amply safeguarded by Article 4 of the contract, which stipulates *inter alia*

(¹) Note dated 25 March 1994 from the authorizing officer to the Financial Controller: 'je vous serais reconnaissant de viser ce texte en vue de sa signature' (Unofficial translation: I should be grateful if you would approve this text, with a view to signing.).

that 'the building shall be deemed completed either on the date of acceptance ... or on the date of the last acceptance procedure ... , where they take place successively or in parts, save where the European Parliament raises a duly substantiated objection concerning non-compliance with all elements of the building brief'.

- (f) Under Article 22 of the contract, SERS 'shall be responsible for the execution of the building works with due regard for the financial constraints represented by the estimated cost and the modifications accepted by the parties'. Article 6.3 of the contract is very clear on the question of interim interest, and the contract makes no provision for a profit margin for SERS, which is a public-law company. The financial statement refers to SERS' fees, i.e. payment for the work carried out by SERS and not some form of profit margin for it.

Paragraph 2.18.

Further to this restatement of the facts, it should be added that the Financial Controller received, on 25 March 1994, an express request from the authorizing officer for approval and that the Financial Controller gave his views to the Bureau on 31 March 1994, enabling that body to take a decision 'in full knowledge' of all the opinions (Bureau minutes of 31 March 1994).

Paragraph 2.20.

On the basis of briefs issued by the Bureau in September 1990 and July 1991, a draft contract was negotiated in permanent consultation with the political and administrative authorities, including the Financial Controller, culminating in submission of the contract by the authorizing officer for the Financial Controller's approval.

Paragraph 2.21.

The Court of Auditors' assertion that after the Bureau's deliberations, no proper commitment proposal was submitted to the Financial Controller is misleading.

Under Article 37 of the Financial Regulation, expenditure commitments need not necessarily be submitted on a standard form. It does require the expenditure commitment to state 'the purpose of the expenditure, the estimated amount involved, indicating the currency where possible, the budget item to which it is to be charged and also the name and description of the creditor'.

All this information required by the Financial Regulation was included in the documentation submitted on 25 March 1994 to the Financial Controller for approval (apart from the budget item for charging, which was ECU 0 in 1994). Moreover, the Financial Controller at no time disputed the existence of the referral by the authorizing officer or the form in which it was submitted by him.

In the past, neither the Court of Auditors nor the Financial Controller has criticized the fact that an expenditure commitment form was not used, with good reason, since the provisions of Article 51 et seq. of the detailed rules for the implementation of the Financial Regulation do not lay down substantive requirements in this connection.

The Court of Auditors' conclusion that the signing of the 'IPE IV Strasbourg' contract was 'illegal in terms of Community budgetary law' is not tenable, since it is neither borne out by the facts nor substantiated by provisions in the Financial Regulation and the detailed rules for its implementation.

Paragraph 3.1.

Given the preceding replies, Parliament fails to see what provisions of the Financial Regulation were not observed by the authorizing officer.

Paragraph 4.10.

The Court asserts that the Financial Controller must specifically grant or withhold his approval. In this instance, the Financial Controller neither granted nor withheld his approval. Given this attitude, what should have been the political authority's response? At the meeting on 3 August 1995 with the Court of Auditors at which both cases were put, the Court staff advanced the theory that the concept of 'reasonable period' should apply in such a case. At the end of that period, the Financial Controller should give his views in order to enable the political authority to take its decision.

The Bureau did indeed act as recorded in the minutes of the meeting of 31 March 1994: 'the Bureau, by taking a decision in full knowledge of all the opinions delivered by the competent services, *including that of the Financial Controller*, was exercising its political powers and was thus in a position to overrule the reservations which had been expressed'.

Paragraph 4.11.

The analysis of the notion of 'de facto withholding of approval' stems from a legal service note dated 2 March 1995 in response to the question from the Committee on Budgetary Control as to whether Parliament could have the contract set aside by the competent courts by challenging the *external legality* of the contract (and above all the authority of the President of the European Parliament to sign such a contract).

Paragraphs 4.12 to 4.14.

The aim of the procedure to overrule refusals is to make a payment or perform a contract where the Superior Authority, on grounds which it feels are appropriate

under the Financial Regulation, deems that the institution's overriding interests are at stake. The decision to overrule, and hence the will expressed by the authority competent to adopt such a decision, takes precedence over withholding of approval, without prejudice to possible liability.

The fact is that the Financial Regulation makes the power to overrule subject to no conditions apart from that concerning the availability of appropriations. The Court of Auditors' criticism is in fact a criticism of the Financial Regulation.

Paragraph 5.1.

See replies to previous paragraphs.

Paragraph 5.2.

The Bureau had already considered the 'IPE IV' question at its meeting of 3 November 1993. The matter was subsequently referred to the Financial Controller by the authorizing officer on 25 March 1994. It was not necessary to refer the matter to the Financial Controller a second time following the Bureau meeting of 31 March 1994.

Paragraph 5.5.

The figures put forward by the Court — ECU 870 million for the Strasbourg project — are tentative, and indeed uncertain, and are based on an interest rate of 7,3% and a 20-year financing period. It should be noted that the provisional investment cost is ECU 421,4 million.

Paragraph 5.8.

This assertion is not correct (see above replies).

Paragraph 5.10.

This assertion is not correct either (see above replies). Parliament would like to know what has prompted the Court to state that the Financial Controller was obliged to work in an 'ambiguous situation'.

Paragraph 5.12.

In view of the above, the IPE IV contract is in no way illegal at an internal level.

Paragraphs 5.16 and 6.1.

It is true that the authorizing officer did not use the customary expenditure commitment form; under the

detailed rules for implementation of the Financial Regulation, that form is not mandatory.

Paragraphs 7.1. to 7.4.

In the main, the Court's conclusions must be rejected.

It is undeniable that by note of 25 March 1994 from the authorizing officer, following a very lengthy consultation procedure, the 'IPE IV Strasbourg' draft contract was legitimately referred to the Financial Controller for approval.

At the meeting with the Court of Auditors' departments at which both sides' cases were put, the Court staff put forward the theory that the concept of 'reasonable period' should apply in such a case. Following that period, the Financial Controller should give his views in order to enable the political authority to take its decision.

At an internal level, there are no 'situations of irregularity' to be remedied.

The Court of Auditors furthermore disregards the powers of the Bureau, which, under Rule 22(2) of Parliament's Rules of Procedure, may take financial, organizational and administrative decisions concerning the internal organization of Parliament. In its decision of 10 February 1988, the Bureau reaffirmed that it had 'the final say on any administrative or financial decision'.

In conclusion, it seems that the Court of Auditors' criticisms concern the fact that the authorizing officer did not use the standard expenditure commitment form. That criticism is not warranted, since the draft contract was referred to the Financial Controller, which is equivalent to commitment. Rightly, the Financial Controller neither insisted that the standard form be used nor requested the authorizing officer to be more specific about the referral.

The Financial Controller's reply

in accordance with paragraph 10 of the European Parliament's Resolution of 27 October 1993 (OJ No. C 315, p. 89), to the draft special report of the Court of Auditors on the signature of the IPE IV contract without prior approval

The Financial Controller of the European Parliament concurs fully with the conclusions expressed at paragraphs 7.1 to 7.4 of the draft special report of the Court of Auditors which he received on 8 September 1995. The problems that arose at the conclusion of the contract for the IPE IV building were caused by the failure of Parliament's administration to respect Article 36 of the Financial Regulation (OJ No C 80, 25. 3. 1991, as amended), Article 51 of the implementing measures (OJ No L 315, 16. 12. 1993) and Article 21 of Parliament's internal rules for the implementation of its budget. These provisions require authorizing officers to obtain the approval of the Financial Controller on a commitment proposal before entering into a binding obligation with a third party.

Article 51 of the implementing measures requires that commitment proposals '... shall in principle be drawn up in accordance with a standard form' to be adopted by unanimous agreement by the authorizing officer, the accounting officer and the Financial Controller.' These provisions are reiterated in Articles 16 and 20 of Parliament's internal rules. A standard form for commitment proposals, agreed between the officers concerned, has been in use for many years in the European Parliament.

As explained at paragraphs 5.1 to 5.6 of the Court's draft report, no valid commitment proposal, drawn up in

the form required by law, was presented in the case of the IPE IV draft contract. The institution's accounting officer has confirmed in writing that the presentation of a draft contract *cannot* be regarded as 'an acceptable substitute for a commitment proposal.' He concludes: 'It would therefore be clearly impossible for the accounting officer to accept any instructions unless those were submitted on the official standard forms which, at the time of their inception, have been approved by the Secretary-General, the Director of Finance, yourself as Financial Controller and myself as accounting officer.'

As pointed out by the Court, for example, in its annual report for 1992 (OJ No C 309, 26. 11. 1992, p. 362), 'Only after the Financial Controller's approval has been given is the authorizing officer justified in entering into a commitment *vis-à-vis* third parties that is binding on the institution, and providing, obviously, that it also abides by the principles of economy and cost-effectiveness laid down in Article 2 of the Financial Regulation.' A valid commitment proposal was not presented to the Financial Controller, not did the draft contract conform to the principles of economy and sound financial management.

The rules governing the conclusion of building contracts and leases, drawn up by the Bureau of Parliament, make a clear distinction between, on the one hand, the *opinions* uttered by the Financial Controller, the legal service, the Advisory Committee on Procurements and

Contracts and outside experts, and, on the other hand, the requirement, once Bureau approval to a draft contract has been given, for a commitment proposal to be presented to the Financial Controller for *approval*. In the case of the IPE IV, Parliament's administration did not abide by these clearly stipulated rules, and limited its actions to seeking opinions before signing the contract.

The opinions which were uttered, by the instances concerned, on successive drafts of the contract showed that the version as negotiated and submitted for the first time on 13 January 1994 was deeply flawed, from Parliament's viewpoint. That version ran to 30 articles; it attracted some 150 suggestions for amelioration, amendment and correction. These came from the Financial Controller, the outside advisers, the legal service, the accounting officer and from the Advisory Committee on Procurements and Contracts.

The Financial Controller put forward four comprehensive texts, in all, on successive versions of the draft contract, highlighting the many weaknesses therein and making specific recommendations for use by the authorizing officer in negotiation. Further suggestions came from various other instances.

On the morning of 25 March 1994 the Financial Controller received a request from the Secretary-General, who is the principal authorizing officer, to give a definitive opinion on the latest draft of the contract.

On 28 March 1994, the Financial Controller sent to the Secretary-General (with a copy to the sub-delegated authorizing officer) a comprehensive document entitled 'Opinion on the latest version of the draft lease for IPE IV, Strasbourg'. It stated that '... it is the opinion of

the Financial Control service that there remain, in the draft lease submitted on 25 March 1994, a *number of material issues that have not been resolved*. It is also the opinion of financial control that, unless and until substantial progress has been made in the resolution of these issues, *the draft lease should not be signed in its present form.*'

Thus the position of the Financial Controller on that version was entirely clear.

The opinion of 28 March 1994 found the draft contract still disadvantageous to Parliament because many major problems had not been solved. Suggested solutions, with supporting arguments, were put forward in a format that would assist the authorizing officer in further negotiations. The issues involved were substantial: they concerned land costs, VAT aspects, the conversion of investment cost into ecu, the construction period, penalties, 'acceptance' and 'completion' of the building, the provisional investment cost and the control of costs. The main problems raised in the opinion were sustained, in an oral intervention, by the Financial Controller at the Bureau meeting on 31 March 1994.

After the Bureau had pronounced on 31 March 1994, EU law and the Bureau's own rules required the authorizing officer to establish a commitment proposal and submit this for financial control approval. The contract could then only have been signed, in accordance with the law, after the Financial Controller had approved the proposal, or, in the case of a withholding, after the President had uttered an overruling decision. But the authorizing officer did not submit a commitment proposal, and therefore did not enable the procedure to be concluded in accordance with EU law.

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