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Review of the Financial Regulation

Board of Governors

Brussels, 12, 13 & 14 April 2011

1. Issue

Following a review of the Financial Regulation, the Board of Governors is invited to approve a number of proposed changes to the Financial Regulation and its implementing rules.

2. Background

The Financial Regulation and its implementing rules were substantially reformed in 2007. The new regulations require that a further review should be carried out every three years.

Accordingly, in 2009, the Budgetary Committee created a working group with a mandate to review the regulations. The working group's report was presented to the Budgetary Committee at its meeting of October 2010 in document 2010-D-519-en-1, attached. The report suggested that the regulations do not require further major changes after only three years, but that some changes should be made in order to simplify and clarify some of the rules, mainly with regard to purchase procedures. The working group was unable to reach a consensus on one of the issues examined; the question of how to

respond to the recommendations in the report of the Court of Auditors that the European schools should consider fully applying the accrual based accounting principle.

The Committee took note of the report and agreed that the Secretary-General should consult the European Court of Auditors and European Patent Office on the proposed amendments.

The opinions of the Court of Auditors and the EPO were presented to the Budgetary Committee at its meeting of March 2011 with document 2011-02-D-26-en-1 attached. The Committee agreed the proposals for the revision of the Financial Regulation and the Implementing Rules as set out in section 5 below.

The main issues considered during the course of the review were:

- the new purchasing rules which took effect in 2008: it is now proposed to make some further changes to the regulations in order to simplify the procedures and relax the rules on low value purchases;
- the new Internal Control Standards, also introduced as part of the reform of the Financial Regulation of 2007: it was concluded that, while the implementation of these standards was causing difficulty, the principles are correct and there is no justification for any amendment to the basic text;
- the role of financial control: it was concluded that financial control should continue to evolve in the direction established in the reform of the Financial Regulation of 2007 and that no further changes in this respect should be made to the regulations at the present time;
- the accrual based accounting principle: the working group did not reach a consensus on this issue and differing opinions were expressed in the Budgetary Committee on whether such a system was appropriate for the European Schools; the interim conclusion was to carry out some further work on the lines of the proposal of the EPO to establish a comparative table of the differences between the current accounting procedures and a full accrual based accounting system, for further examination by the Budgetary Committee;
- various minor improvements to the regulations: these were agreed by the Budgetary Committee with some changes as recommended by the Court of Auditors.

The proposals take account of the opinions of the Court of Auditors and the EPO except that:

- the proposal on accrual based accounting does not go as far as the recommendation made by the Court of Auditors to develop "a roadmap and a timetable" for the full implementation of such an accounting system – however, the proposal is a preparatory step that could lead to such a roadmap and timetable after further consideration by the Budgetary Committee;
- with regard to article 70(b) of the Financial Regulation (which allows a derogation from the normal rules on competitive tendering in certain circumstances - see section 3.b of document 2011-02-D-26), the proposal to maintain the present text without change does not accord with the advice of the Court of Auditors – however, the reservations of the Court were already known in 2007 when the Board of Governors approved the present text; this article has proved useful in

reducing the workload of the schools and it is not considered to present a significant risk to the basic principles applicable to public contracts since it applies only to relatively low-value contracts.

3. Financial implications

There are no significant financial implications in the proposals, except perhaps for a small reduction in the pressure on staff time from the changes in the procurement rules.

4. Opinion of the Budgetary Committee

At its meeting of March 2011, the Budgetary Committee took note of the opinions of the European Court of Auditors and the European Patent Office and recommended that the Board of Governors should approve the proposals for the modification of the Financial Regulation and its implementing rules as set out in Section 5 below. With regard to the establishment of a roadmap and timetable for the implementation of an accrual based accounting system, the Committee took the view that the analysis should be pursued through the establishment of a comparative table between what is currently done and what could be done.

5. Proposal

It is proposed that the Board of Governors should:

- 1) agree that further work should be carried out to establish a comparative table of the differences between the current accounting procedures and a full accrual based accounting system, for further examination by the Budgetary Committee;
- 2) agree, subject to point (3) below, the proposed amendments to the Financial Regulation and the Implementing Rules as set out in annexes C and D of the report of the working group on the review of the Financial Regulation (in document 2010-D-519-en-1);
- 3) agree that, in accordance with the opinion of the Court of Auditors, article 28.3 of the Financial Regulation should not be deleted and article 67 should be replaced with the text at Annex C of document 2011-02-D-26-en-1;
- 4) maintain its decision of 2007 not to follow the advice of the Court of Auditors with regard to article 70(b) of the Financial Regulation and agree that this article should be maintained without change;
- 5) give a mandate to the Office of the Secretary-General to implement the recommendations of the Court of Auditors as summarised in section 2(b)(vi) and (vii) of document 2011-02-D-26-en-1.



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Review of the Financial Regulation

Budgetary Committee

Brussels, 15 & 16 March 2011

1. Issue

At its meeting in October 2010, the Budgetary Committee discussed the report of the working group on the review of the Financial Regulation (document 2010-D-519-en-1).

The Committee took note of the report and agreed that the Secretary-General should consult the Court of Auditors and European Patent Office on the proposed amendments to the Financial Regulation and the Implementing Rules.

The Secretary-General wrote to the Court of Auditors and the EPO on 19 November 2010. The opinion of the EPO was received on 7 March 2011 (see Annex A) and an advance copy of the opinion of the Court of Auditors was received on 8 March (see Annex B).

In the light of these opinions, the Budgetary Committee is invited to make recommendations to the Board of Governors on the revision of the Financial Regulation and the Implementing Rules.

The main issue for discussion concerns the question whether or not the European Schools should fully apply the accrual based accounting principle.

2. Background

a) The conclusions of the working group

The conclusions of the working group were summarised in Section 2 of its report (document 2010-D-519-en-1). In general, the working group concluded that the reform of the Financial Regulation of 2007, which was substantial in some areas, does not require further major changes after only three years.

However, the working group proposed a number of changes to the texts of the Financial Regulation and the Implementing Rules as set out in the report, mainly with the aim of simplifying some of the rules on purchase procedures.

The report also set out the other issues that had been discussed by the working group, including the question of accruals accounting, on which the group had not reached a consensus.

b) The opinion of the Court of Auditors

The opinion of the Court of Auditors (Annex B):

- i) encourages the European schools to develop a roadmap and a timetable for the full implementation of accrual based accounting;
- ii) welcomes the amendments proposed to the rules on purchase procedures;
- iii) points out that article 67 of the Financial Regulation has not been amended in line with amendments to the equivalent article in the EU regulations;
- iv) reiterates the objections that it already made when the Financial Regulation was amended in 2007 with regard to article 70(b) – this article allows the schools to make purchases without a call for tender if the supplier and the price is the same as in a contract concluded by a public sector organisation;
- v) disagrees with the proposal to delete from article 28 the obligation of the financial controller to inform the Administrative Board and/or the Secretary-General when he finds that a document establishing a debt has not been drawn up, or a sum has not been recovered;
- vi) proposes that consideration should be given to the consolidation of the rules in the Financial Regulation, the Implementing Rules and the Internal Rules of the Budgetary Committee;
- vii) suggests that the Budgetary Committee should monitor the evolution of the financial rules applicable to the EU budget and take them into account for the rules of the schools on a timely basis.

c) The opinion of the European Patent Office

The EPO expresses a positive opinion on the review of the Financial Regulation except for the non introduction of an accrual based accounting principle (Annex A).

3. Discussion

a) Accruals accounting

The Court of Auditors states that, while it appreciates that the implementation of accruals accounting will involve some short-term additional work for the Schools, it does not see any major obstacle to the implementation of accruals accounting, in line with long established international best practice.

The EPO points out that it has itself such a system in place and would welcome that the European School Munich would also have a similar accounting system. Also that the trend in the public sector is to shift gradually to such a system and, in the light of the previous reports of the Court of Auditors, such a shift thus seems unavoidable in the mid-term. The EPO suggests that it would be helpful to see a comparative table on what the differences would be in practice compared with the current system in the European Schools.

The report of the working group included a note by the financial controller (Annex A of 2010-D-519-en-1) which concluded that, while accruals accounting would provide a more accurate record of the financial situation, it is more complex and would require additional resources. Moreover, the financial controller questioned whether such a system would in practice add value as management information for the Board of Governors and whether it would lead to any change in management decisions. There could be simpler ways of supplying the required information to those who need it.

In the discussion by the Budgetary Committee in October 2010, the Directors endorsed the view that the aim should be a system which was simpler to apply, a system where transparency and rigour would be present, but adapted to the European Schools.

The report of the working group also included a note by the Internal Audit Service (Annex B of 2010-D-519-en-1) in favour of the introduction of accruals accounting, as a factor in discipline and in integration of financial flows and because it contributes to the accuracy of the picture conveyed by financial statements and to the improved comprehensibility and comparability of these statements. The IAS also pointed out that all the institutions and entities coming under the auspices of the EU (decentralised agencies etc.) have adopted this accounting system, as have a large number of national administrations.

If the Board of Governors adopts the recommendation of the Court of Auditors to develop a roadmap and a timetable for the full implementation of accrual based accounting, the next step would be to set up a working group, which would need substantial input from the financial experts of the Commission and/or the EPO, or perhaps external consultants with experience of accrual based accounting in the public sector.

It would be premature to change the Financial Regulation at least until the roadmap and timetable have been established. In any event, the present text of the Financial Regulation does not prohibit the adoption of accruals accounting.

b) Other issues

With regard to point (iii) above, there was no intention that article 67 should not follow the equivalent EU text (article 103 of the EU Financial Regulation.) It is therefore proposed to amend article 67 with a new text as at Annex C.

With regard to point (iv), article 70(b) was introduced in 2007 to provide an administratively simple way for the schools to place orders on the same terms as those obtained after competitive tendering by government bodies or EU institutions. It applies to purchases that fall below the limits of the EU Directive on procurement. The observations of the Court of Auditors on this point were reported to the Board of Governors before article 70(b) was included in the Financial Regulation of 2007 (in document 2006-D-1010-Addendum) and the Board agreed that the Court's objections should not be accepted. In practice, article 70(b) has proved useful in reducing the workload of the Schools. It is therefore proposed that the article should be retained without change.

With regard to point (v), the proposal to modify article 28 was intended to remove an unduly heavy requirement that is not considered to be justified in the circumstances of the European Schools. The main cases of non-recovery of debts owed to the schools concern unpaid school fees and outstanding differential adjustment. These are normally reported to the Administrative Boards by the schools' own administration. The financial controller regards this as sufficient to meet the reporting obligation and thinks it is unfortunate if this cannot be left to his discretion. However, it is not a point of major importance. It is therefore proposed to accept the Court's recommendation and to withdraw the proposal to delete this requirement.

With regard to point (vi), there would be no difficulty of principle in making a consolidated text, although the Internal Rules of the Budgetary Committee would seem to be a different type of text from the Financial Regulation and its Implementing Rules.

Similarly, with regard to point (vii), there would be no difficulty of principle. In practice, the Budgetary Committee would no doubt wish to rely on the Commission for information about changes to the rules applicable to the EU budget.

4. Proposal

It is proposed that the Budgetary Committee should:

- 1) express its opinion on the recommendation of the Court of Auditors to develop a roadmap and a timetable for the full implementation of accrual based accounting in the European Schools;
- 2) subject to point (3) below, recommend that the Board of Governors should agree to the proposed amendments to the Financial Regulation and the Implementing Rules as set out in annexes C and D of the report of the working group on the review of the Financial Regulation (in document 2010-D-519-en-1);
- 3) recommend to the Board of Governors that, in accordance with the opinion of the Court of Auditors, article 28.3 of the Financial Regulation should not be deleted and article 67 should be replaced with the text at Annex C;
- 4) recommend that the Board of Governors should maintain its decision of 2007 not to follow the advice of the Court of Auditors with regard to article 70(b) of the Financial Regulation and that this article should be maintained without change;
- 5) give a mandate to the Office of the Secretary-General to implement the recommendations of the Court of Auditors as summarised in section 2(b)(vi) and (vii) above.

Annex A

De: mcastellanos@epo.org
Envoyé: lundi 7 mars 2011 10:06
À: DAVIS Andrew; CHRISTMANN Renee
Cc: DEKA Ewa; GUILLICK Jacqueline; ROBIN Jean-Pol; fmuller@epo.org; ENSING Rudolph; awallrodt@epo.org
Objet: Re: Review of the Financial Regulation of the European Schools
Pièces jointes: 3811-L-2010-Robin.pdf; 2010-D-519-en-1.doc

Dear Ms Christmann,
dear Mr Davis,

please find below the opinion of the EPO on the Review of the Financial Regulation of the European Schools, as requested in the letter of Ms Christmann:

In principle, the EPO has a positive opinion on the Review of the Financial Regulation except for the non introduction of an accrual based accounting principle.

To this respect, the EPO has taken due note of the Note of the Financial Controller on the Accrual Based Accounting in the European Schools and of the reasons why in his opinion it does not seem justified to change the Financial Regulation with regard to the full-scale adoption of the accrual based accounting principle.

However, there are several reasons that speak in favour of switching to an accrual based accounting system. The EPO itself has such a system in place (IFRS) and would welcome that the European School Munich would also have a similar accounting system. The trend in public sector is also to shift gradually to accrual based accounting systems.

Moreover, the Court of Auditors has already highlighted this aspect in its reports thus switching to this system seems unavoidable in the mid-term.

Besides, in the note of the Financial Controller it is stated that in practice, the present accounting system of the European Schools is essentially a cash accounting enhanced system with some of the features of an accruals system. To this respect, the EPO would be grateful to see in a comparative table what would be in practice the differences between the proposed "enhanced cash accounting system" and a full accrual based system. This would help the EPO and (presumably) the rest of delegations to take a decision as to whether during a transitional phase - until a full accrual based system were in place - the implementation of an enhanced cash system could serve as compromise solution.

Best regards,

Maria Castellanos

Best regards / Mit freundlichen Grüßen / Sincères salutations

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Annex B

ΕΒΡΟΠΕΪΣΚΑ ΣΜΕΤΗΑ ΠΑΛΑΤΑ
TRIBUNAL DE CUENTAS EUROPEO
EVROPSKÝ ÚČETNÍ DVŮR
DEN EUROPÆISKE REVISIONSRET
EUROPÄISCHER RECHNUNGSHOF
EUROOPA KONTROLLIKODA
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ
EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
CÚIRT INIÚCHÓIRÍ NA HEORPA



CORTE DEI CONTI EUROPEA
EIROPAS REVIZIJAS PALĀTA
EUROPOS AUDITO RŪMAI

EURÓPAI SZÁMVEVŐSZÉK
IL-QORTI EWROPEA TAL-AWDITURI
EUROPESE REKENKAMER
EUROPEJSKI TRYBUNAŁ OBRACHUNKOWY
TRIBUNAL DE CONTAS EUROPEU
CURTEA DE CONTURI EUROPEANĂ
EURÓPSKY DVOR AUDÍTOROV
EVROPSKO RAČUNSKO SODIŠČE
EUROOPAN TILINTARKASTUOMIOISTUIN
EUROPEISKA REVISIONSRÄTTEN

Opinion No 3/2011

on a proposal for an amendment
to the Financial Regulation of the European Schools

THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Council Decision 94/557/EC, Euratom of 17 June 1994 authorizing the European Community and the European Atomic Energy Community to sign and conclude the Convention defining the Statute of the European Schools¹,

Having regard to the Convention defining the Statute of the European Schools of 1994², and in particular Articles 6, 10, 13, 20, and 25 thereof,

Having regard to the request for an opinion made by the Secretary-General of the European Schools on 19 November 2010, received at the Court on 24 November 2010,

Having regard to the proposed amendments to the Financial Regulation and to the proposed amendments to the Rules for Implementing the Financial Regulation prepared by a Working Group of the Budgetary Committee of the European Schools³,

HAS ADOPTED THE FOLLOWING OPINION

1. In its report on the annual accounts of the European Schools for the year 2009, the Court recommended to consider fully applying the accrual based accounting principle. The Court notes that the Working Group of the Budgetary Committee of the European Schools has discussed the issue of accrual based accounting but has not yet reached a consensus on the way forward. While the Court appreciates that the implementation of accruals accounting will involve some short-term additional work for the Schools, it does not see any major obstacle to the implementation of accruals accounting, in line with long

¹ OJ L 212, 17.8.1994, p. 1.

² OJ L 212, 17.8.1994, p. 3.

³ Annexes C and D of the Report of the Working Group on the Review of the Financial Regulation (Ref: 2010-D-519-en-1).

established international best practice. The Court therefore encourages the European Schools to develop a roadmap and a timetable for the full implementation of accrual based accounting.

2. The Court welcomes the amendments proposed by the Working Group to bring the rules for public procurement in line with EU legislation, notably with regard to the application of the open procedure.

3. The Court also notes the following departures from the Financial Regulation and the implementing rules applicable to the general budget of the European Communities, for which no amendments are proposed: (i) Article 67 of the European Schools' Financial Regulation which deals with the issue of suspending contracts in the case of substantial errors, irregularities or fraud is left unchanged, although the wording of the relevant article of the Financial Regulation applicable to the general budget was amended in 2006⁴. (ii) With regard to the current Article 70(b) of the European Schools' Financial Regulation, which allows exceptions from the obligation to issue invitations to tender, the Court reiterates its observations made in paragraph 7 of its Opinion No 5/2006⁵.

4. The Working Group proposes to delete from Article 28 of the Financial Regulation the obligation for the financial controller to inform the Administrative Board and/or the Secretary General when he finds that a document establishing a debt has not been drawn up, or a sum has not been recovered. The Court does not see why reporting such matters should in future be left to the discretion of the financial controller.

⁴ See new wording of Article 103 introduced by Council Regulation (EC, Euratom) No 1995/2006(OJ L 390, 30.12.2006, p. 1).

⁵ Opinion on a proposal for an amendment to the Financial Regulation of the European Schools. Not published in the Official Journal, available on the website of the Court.

5. The Court notes that the financial rules of the European Schools are contained in three different legal instruments: the Financial Regulation, the Rules for Implementing the Financial Regulation and the Internal Rules of the Budgetary Committee. All three texts are decisions adopted by the Board of Governors. To reduce unnecessary complexity, consideration should be given to consolidating these three texts in a single financial rulebook.

6. The Court suggests that the Budgetary Committee of the European Schools should monitor more closely the evolution of the Financial Regulation and the implementing rules applicable to the general budget of the European Communities and consider their organisational implications. The Board of Governors should introduce a mechanism to take relevant modifications into account for the Financial Regulation of the Schools on a timely basis.

This Opinion was adopted by Chamber IV, headed by Mr Igors LUDBORŽS, Member of the Court of Auditors, in Luxembourg at its meeting of 8 February 2011.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA

President

Annex C

Annex C

Article 103 of the Financial Regulation Applicable to the General Budget of the EU

Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the institutions shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the institutions may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract.

Where such errors, irregularities or fraud are attributable to the contractor, the institutions may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.

Article 67 of the Financial Regulation of the European Schools – proposed new text

Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the Schools shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the Schools may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract.

Where such errors, irregularities or fraud are attributable to the contractor, the Schools may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.



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Report of the Working Group on the Review of the Financial Regulation

Budgetary Committee

Brussels, 28 & 29 October 2010

Issue

In 2009, the Budgetary Committee created a working group with a mandate to review the Financial Regulation. This document presents the working group's report and proposals.

Proposal

It is proposed that:

- the Budgetary Committee should give its opinion on the working group's report;
- on the basis of the Committee's opinion, the Secretary-General should then consult the Court of Auditors and the European Patent Office on the proposed amendments to the Financial Regulation and Implementing Rules (such consultation being the normal practice as recorded in the preamble to the regulations) ;

- the Secretary-General should report to the Budgetary Committee at its next meeting in March 2011 on the results of this consultation;
- the Budgetary Committee should make recommendations to the Board of Governors at its meeting in April 2011.

Report of the Working Group on the Review of the Financial Regulation

1. Background

In October 2006, the Board of Governors adopted a new Financial Regulation (211-D-2006) which entered into force in January 2007, with the exception of new rules on procurement procedures which entered into force in January 2008.

At the same time, the Board adopted new Implementing Rules (311-D-2006) which entered into force on the same dates.

In accordance with the requirements of the new Financial Regulation, the Board of Governors adopted standards for internal control procedures and a code of professional standards (2007-D-29-en-2) in October 2007.

Article 104 of the new Financial Regulation states,

"Every three years, or whenever it proves necessary to do so, this Regulation and its Implementing Rules shall be the subject of a review by the Office of the Secretary-General, which shall report on the matter to the Board of Governors."

In October 2009, the Budgetary Committee created a working group with the following mandate:

to review the Financial Regulation and the Implementing Rules adopted in 2006 and the Internal Control Standards and Code of Professional Standards introduced in October 2007, in particular taking into account:

- any subsequent developments in the texts of the EU institutions on which they are based;
- the impact of the new regulations and standards in the schools;
- the desirability of further changes in order to promote sound financial management, having regard to the particular circumstances of the European Schools;
- the observations of the Court of Auditors on the presentation of the consolidated accounts;

and to make proposals as appropriate in time for consideration by the Board of Governors at its meeting in April 2010.

The membership of the working group was established as follows:

- three members of the Budgetary Committee representing the Member States (Mr Y Van Honacker, Belgium; Mrs V Rhein, Luxembourg; Mr P Krekel, Netherlands);
- a representative of the Commission (Mr E Paquay);
- a representative of the Directors (Mr A Pino);
- a representative of the Administrator-bursars (Mr F Cattari);
- the financial controller (Mr A Davis).

The audit plan for 2009 of the new internal audit function that was established as one of the changes introduced by the Financial Regulation of 2007 included a consultancy on the amendment of the Financial Regulation. Representatives of the Internal Audit Service (Mrs B Dittmann and Mr R Delli Paoli) took part in the discussions of the working group as observers.

In March 2010, the working group made a brief interim report to the Budgetary Committee in which it informed the Committee that it was not able to make proposals in time for the April meeting of the Board of Governors but that it was making good progress and expected to be able to bring forward proposals in the second half of 2010.

The working group held three meetings at which it reviewed the various texts and the desirability of further changes in accordance with the mandate.

A review of the Financial Regulation of the Commission is currently being carried out. Initially, the working group hoped that the results of that review could be taken into account for the European Schools. In the event, however, this was not possible because the revision of the Commission's regulations will not be finalised until 2011.

2. Conclusions of the Working Group

In general, the working group concluded that the reform of the Financial Regulation of 2007, which was substantial in some areas, does not require further major changes after only three years.

However, the working group proposes a number of changes to the texts of the Financial Regulation and the Implementing Rules, as set out in Annexes C and D.

The discussions in the working group centred on the following issues:

- the new purchasing rules which took effect in 2008 following the reform of the Financial Regulation of 2007;
- the new Internal Control Standards, also introduced as part of the reform of the Financial regulation of 2007;
- the role of financial control;
- the observations of the Court of Auditors on the accrual based accounting principle.

The working group also looked at the Financial Regulation article by article to identify where improvements might be made.

Further details on these issues are given in paragraphs (a) to (e) below.

a) Purchasing rules

With regard to the impact of the new regulations and standards in the schools since 2007, the working group noted that the introduction of the new purchasing rules was one of the points that had given rise to the most difficulty.

These rules required new expertise but the staff of the schools considered that they had been faced with a lack of resources and training. Several tender exercises had been

cancelled part-way through because of irregularities that would have left the schools open to legal challenge. Contrary to what had been stated in the original proposals to the Board of Governors, the procedures had not proved to be significantly simplified compared with those of the Commission. In particular, the restricted procedure had proved to be heavier than the fully open procedure used by the Commission since it involves a two-stage process. The procedures for lower value contracts had also proved heavier than expected and were not applied correctly.

Although the present situation with regard to purchase procedures was not satisfactory, the working group agreed that it was not realistic to expect that the Financial Regulation could be changed fundamentally in this respect. For one thing, the Commission was prevented by its own Financial Regulation from making financial contributions to organisations that did not follow such rules. Nevertheless, the working group noted that there was a strong wish on the part of the administrator-bursars to change certain points in the regulations in order to simplify the procedures.

The working group therefore proposes amendments to the Financial Regulation and the Implementing Rules:

- to add the possibility of the fully open procurement procedure, in addition to the present options of restricted and negotiated procedures;
- to relax the rules on low value purchases;
 - (a) to allow purchases up to € 25 000 to be made by negotiated procedure with three suppliers, rather than five as at present (a change that would be in line with the present rules of the Commission); and
 - (b) to reduce the amount of paperwork required for low value purchases up to €6 000, since the rules are currently very heavy for such purchases and the Court of Auditors has reported that the Schools do not respect them – a relaxation of the rules is considered to be a realistic solution;
- to allow the schools to appoint representatives of another school or the Office to take part in the committees that must be set up to open and evaluate tenders, since in practice the Schools have found difficulty in finding volunteers to take part in these committees.

More generally, the working group noted that it would be necessary in any event to continue to develop the possibilities for better implementation of the purchasing rules and for reducing the workload in the schools. Consideration should perhaps be given to the possibility of using external experts to manage the procedures for major purchases. Another avenue would be to analyse the areas where the schools could take joint action or develop framework contracts. It was noted that the Bureau had issued an aide-memoire on purchase procedures together with model documents for many of the different steps. The working group agreed that this type of activity should be expanded and that the possibility should be explored of the Bureau establishing a specialist unit to give advice and assistance to the schools.

b) Internal Control Standards

The new internal control standards (ICS) adopted in October 2007 established 18 specific standards covering: ethics and integrity; mission, roles and tasks; staff competence; performance evaluation; procedures for delegation; planning and monitoring; risk analysis; management information systems; mail and filing systems;

reporting improprieties; familiarity with operational procedures; segregation of duties; supervision arrangements; exception reporting; continuity of operations; monitoring of internal control weaknesses; review of audit reports; and review of internal control arrangements.

The working group noted that the introduction of these standards was another aspect of the reform of the Financial Regulation of 2007 that had caused difficulty in the Schools, as highlighted by a report of the Internal Audit Service. Moreover, the ICS adopted for the Schools were based on a text of the Commission that had subsequently been revised. The working group therefore examined the question whether it would be desirable to make changes to the standards adopted for the Schools.

The representatives of the schools emphasised that they would like to find a balance between, on the one hand, the recommendations of the IAS and, on the other, the practical realities of school management. The rules were demanding and, although the schools did not contest the fundamental objectives, they were not in a position to apply them.

The working group concluded that the main difficulty was not so much the text of the ICS but the underlying procedures needed to put them into effect. Even if the ICS themselves were revised, the principles would remain the same and so would the difficulties of implementation. The objective should be to identify which of the ICS were the most important and to establish priorities for their implementation progressively, not necessarily all at the same time, making use of the management tools developed by the Commission where appropriate.

The working group therefore makes no proposal to change the text of the Internal Control Standards adopted by the Board of Governors in 2007.

With regard to the Code of Professional Standards, also introduced in October 2007, this relates to staff designated by the authorising officer as responsible for the function of *ex ante* financial verification. No such staff have yet been formally designated since this function is still carried out by the financial controller, so there is as yet no operational experience of this code. The working group considers that it is premature to examine this document in the current circumstances.

c) The role of financial control

Another issue examined by the working group was the future role of financial control, in the light of the creation of an internal audit function as part of the reform of the Financial Regulation in 2007. On the issue of duplication of activity between the two functions, it was noted that the primary role of financial control is to carry out *ex ante* verification of financial transactions, whereas internal audit has the objective of assessing systems and is not involved in day-to-day management.

In any event, the need for some form of *ex ante* control is a fundamental principle of financial management which must be maintained. The question is therefore whether to maintain such a control on the present centralised basis or whether it should be decentralised and carried out in the schools. The working group noted that the Directors supported a centralised control which they found helpful in ensuring compliance with the Financial Regulation. While a centralised system raised the question of who was ultimately responsible for financial management, the present system was not thought to diminish the responsibility of the Directors as authorising officers since it was based on sample checks which could not take the place of the Directors' own responsibilities. The working group concluded that, in any event, a

change to decentralised control could not be made until the necessary tools were in place at the local level and this was not the case.

The new Financial Regulation of 2007 already widened the role of financial control by explicitly recognising the competence to issue recommendations on best practice and advice on administrative procedures. This part of the role is becoming more important as part of the corporate responsibilities of the Office of the Secretary-General to follow up the recommendations of the internal auditors. The working group considered that financial control should continue to evolve in this direction.

For these reasons, the working group does not propose that any further changes should be made to article 20 of the Financial Regulation at the present time.

d) The accrual based accounting principle

The report of the Court of Auditors for the financial year 2008 included the observation that the consolidated accounts are not presented fairly, in all material respects, in accordance with the relevant accounting standards, with regard to the accrual based accounting principle. The report for 2009 again referred to this point and recommended, in view of the on-going review of the Financial Regulation, to consider fully applying the accrual based accounting principle in the balance sheets of the Schools in order to reflect all the transactions and events with financial impact which occurred during the financial year or which have potential financial impact (e.g. outstanding legal cases provision or provision for salary adjustments).

On the question of the desirability of accruals accounting in the European Schools, the representatives of the Schools recognised that modern accounting systems in the public sector had moved in this direction. The objective of such a change would be to give a better picture of the financial situation but there were concerns about the need to ensure that any new accounting rules would be appropriate to the circumstances of the European Schools. The difference between the financial year and the school year could be a particular problem. Accrual based accounting would undoubtedly be more complex and the question arose as to whether this additional complexity would be justified and what additional information was needed compared with the information that was currently supplied.

In parallel with the discussions of the working group, a presentation on accruals accounting was made by the Commission at a meeting of the administrator-bursars of all the schools, who expressed similar concerns. The Commission confirmed that implementation of accrual accounting was more dependent on adequate IT tools than difficulties linked to implementation of rules or potential additional tasks.

The working group noted that the Financial Regulation in its present form did not exclude the possibility of implementing the specific recommendations of the Court of Auditors to give additional information as part of the accounts. For example, the Schools had already implemented the Court's recommendation of 2008 to identify present obligations in the explanatory notes to the balance sheet. Other recommendations could be implemented in the same way. The working group did not reach a consensus on this aspect but it appears necessary that the development of a new accounting tool and progressive implementation of monitoring and reporting tools should converge with – in parallel – an implementation of accrual accounting requirements.

A note by the financial controller on accrual based accounting in the European Schools is attached at Annex A. A note on the subject together with other comments by the Internal Audit Service is attached at Annex B.

e) Review of other points

The working group proposes a number of further minor improvements, included in the amendments listed in Annexes C and D, with a brief explanatory note for each point.

f) Future work

The note by the Internal Audit Service at Annex B includes a reference to the discussions of a different working group on planning and monitoring as well as comments on the roles and responsibilities of the various actors and the controls to be put in place in the area of financial management to reflect the decisions of the Board of Governors on the reform of the European Schools. The working group was not able to take these comments into account in the present review exercise, at least not without postponing the group's report. These issues will require further consideration in preparation for the next review of the Financial Regulation.

3. Financial implications

The working group considers that there would be no significant financial implications in its proposals, except perhaps a small reduction in the pressure on staff time from the changes in the procurement rules.

With regard to the costs of the working group itself, the travel and subsistence expenses charged to the budget for the three meetings held by the group amounted to € 1888.

4. Proposal

The working group proposes that the Financial Regulation and Implementing Rules should be amended as set out in Annexes C and D and that the issue of accruals accounting should be referred to the Budgetary Committee for further consideration.

Note by the Financial Controller on Accrual Based Accounting in the European Schools

1. The remarks of the Court of Auditors

When proposals to change the Financial Regulation were under review in 2006, the Court of Auditors commented, *"the Office has failed to make use of the opportunity ... to impose more modern accounting rules (accruals accounting adapted to the context of the Schools)."*

More recently, the report of the Court of Auditors for the financial year 2008 included the observation *"the consolidated accounts are not presented fairly, in all material respects, in accordance with the relevant accounting standards, with regard to the unsatisfactory application of the accrual based accounting principle."*

The report for 2009 again referred to this point and included the recommendation *"in view of the on-going review of the Financial Regulation, to consider fully applying the accrual based accounting principle in the balance sheets of the Schools in order to reflect all the transactions and events with financial impact which occurred during the financial year or which have potential financial impact (e.g. outstanding legal cases provision or provision for salary adjustments)".*

2. What is accrual based accounting?

As stated in the findings of the Court of Auditors, the principle of accrual based accounting requires that transactions and events should be entered in the accounts when they occur and not when the amounts are actually paid or recovered. They should be booked to the financial years to which they relate. This means that the final accounts should be prepared in such a way that they show all expenditure that is payable, whether or not it has actually been paid, and all income that is receivable, whether or not it has actually been received, if that expenditure and income arises as a result of the activity of the period in question.

The alternative system that records expenditure and income as it is actually paid out or received is known as cash accounting.

In an accrual based accounting system, current cash inflows and outflows relating to the period in question are combined with future expected cash inflows and outflows relating to the same period. This means that the total cost of providing goods or services can be matched with the total revenue gained, not just the expenditure and the income that happened to take place during the period in question.

In addition, the value of all assets owned and all liabilities owed is shown in the balance sheet. This includes the value of expected income and potential liabilities, even if these are not certain.

In the private sector, this matching of revenue and costs means that the true profit can be calculated, taking account of all money earned even if not actually received and all money spent even if not actually paid out. The inclusion of all assets and liabilities, including potential ones, means that the true net value of the business can be shown.

The accounts must therefore be adjusted at the end of the financial year to allow for:

- expenses incurred but not yet paid;
- expenses paid that relate to the following period;
- income due but not yet received;
- income received that is not income related to the activities of the present year but that has been received in advance for goods or services to be provided in a future period.

The objective is to provide better quality financial information, showing the true costs and income arising from an organisation's activities and a complete picture of assets and liabilities.

The accounts of the European Schools are kept on a cash accounting basis with some, but not all, elements of accrual based accounting (see section 5 below).

3. How would this affect the European Schools?

The prime example cited by the Court of Auditors is the annual salary increase,

"The salary increase of 1.85% (1.8 million euro) approved by the European Council for the period as of 01/07/2009 onwards was paid in February 2010. As a result, it was recorded as an expense in 2010, although it is an expense of the period 2009. This is not in conformity with the accrual based accounting principle. Furthermore for the additional 1.85% (1.8 million euro) that was not approved by the European Council and is subject to the decision of the European Court of Justice, no provision or disclosure was made by the Schools for this contingent liability."

This relates to the procedure in the European Schools under which, each year, the Board of Governors gives approval in January for a back-dated salary increase that is applicable from the previous July. The Schools normally make the payment of the salary arrears in January or February. Under the present accounting system, the cash payment is made in the current year and is recorded as an expense of the current year. However, under the accrual based accounting principle, it is an expense of the previous year and should be shown as such.

Furthermore, in 2010, there is a possibility of a further back-dated salary increase that is subject to a decision by the European Court of Justice. The accrual based accounting principle requires that this potential liability should also be shown in the accounts of 2009. The potential liabilities arising from other legal action taken against the schools should also be quantified and recorded, for example the claims of locally recruited teachers in Belgium and the claims of parents in Belgium and Luxembourg against the increases in school fees.

The Court of Auditors also cites the example of bank interest received in January and recorded in the accounts as income for the current year, although it related to funds held on deposit during the previous year.

The accrual based accounting principle would also require changes in the way in which school fees are recorded. These are normally received by the Schools firstly as an advance payment of 25% in June for the coming school year, with the remainder normally being received in October and November. Some late payments are received in the following financial year (or even later). Under the current accounting system, the school fees are shown in the accounts as income at the date when they are received.

However, since the school fees relate to the whole of the school year running from September to July, they would have to be shown under the accrual based accounting principle as relating partly to the period from September to December in the current financial year and partly for the period from January to July of the following financial year.

4. Would these changes be easy to implement?

The change to an accrual based accounting system would not be easy to implement.

As can be seen from the examples given above, such a change would require the Schools to increase greatly the amount of their record-keeping and would make the accounting procedures considerably more complicated.

For example, the salary arrears referred to above, amounting to around 1.8 million euro, do not consist of just one figure. They are the sum total of all the individual payments to each member of staff, for each month, and for each of the different expenditure headings affected by the increase. These include not just the basic monthly salaries but also, for seconded staff, family allowances and the differential adjustment, etc. as well as specific payments affected by the new rates, such as departure allowances.

Moreover, for seconded staff, the salary system of the European Schools is, by its nature, always in arrears in a number of other respects, not just with regard to back-dated salary increases. For example, the differential adjustment is not normally finalised for at least one or two years after the period to which it relates, because the national tax statements are not available any earlier. There is also frequently a delay in receiving information about the national salaries of seconded staff, which are deducted from the amounts payable by the Schools. All these aspects would also need to be reflected in the accounts.

With regard to school fees, the difference between the financial year and the school year would add to the complexity in recording income against the period to which it relates. Some of the difficulties could be resolved if the timing of the financial year were changed to correspond with the school year. However, that could give rise to other difficulties.

The system of school fee reduction would give rise to complications in recording income due but not yet received, since requests for fee reduction are normally still open at the end of the financial year. At present, there is a relatively simple procedure under which, from the accounting point of view, the invoice is treated as though it were cancelled when a request for reduction is received, with a revised invoice being issued when the amount of the reduction is finalised. Under the accrual based system, it would be necessary to make estimates of the amount of income likely to be received.

The need to quantify the potential liability arising from court cases brought against the schools would also create difficulty since the range of possibilities can be very wide.

The implementation of the type of changes described above, which are only examples and not a complete list, would need to be managed as a project, probably requiring outside expertise. Changes would be needed to the ICT systems to produce the data in the form required. There would need to be a programme of staff training and possibly a permanent increase in the number of accounting staff in the schools.

5. Would the additional information be useful?

It is undeniable that the final accounts drawn up under an accrual based accounting system would provide a more accurate record of the financial situation.

However, it seems questionable whether these figures would in practice add value as management information for the Board of Governors or whether they would lead to any change in management decisions. The European Schools are not a "business" in the sense of needing to calculate profit and loss or the value of the organisation on a particular date. The essential objectives of the accounting system of the European Schools are to provide a record of expenditure and revenue and to provide the basis for the calculation of the financial contribution by the Commission and the European Patent Office. Those contributions must relate to the actual cash needs of the year in question, not the accrued or potential liabilities. When payments are made, the money is needed in the bank at the time of payment, whether or not the payments relate to activities in a past or future period.

It should be noted that some of the information available from an accrual based system is already provided by the European Schools' current system, which is not purely a cash accounting system, but rather a "cash-plus" system.

In particular, with regard to expenses incurred but not yet paid and income due but not yet received (see section 2 above), the present end-year accounts show in the balance sheet all the amounts that are owed to the Schools by their current debtors, for example unpaid school fees (assets), and the amounts owed by the Schools to their current creditors, for example unpaid invoices from suppliers (liabilities). With regard to the need to show the value of all assets owned, the balance sheet also records the value of the items recorded in the inventory, adjusted to take account of depreciation.

In addition, information on certain potential liabilities, such as court cases brought against the school, is given as footnotes to the accounts (although the usefulness of the figures is open to question in view of the difficulty of making reliable estimates.) For significant matters, separate reports are provided to the Board of Governors, for example the report made to the Board in December 2009 on the claim for holiday allowance by locally recruited teachers in Belgium (2009-D-76-en-2).

What is missing from the accounts of the European Schools therefore, compared to a full-scale accrual based system, are primarily (a) the end-year adjustments in respect of expenses and income that relate to a previous or following period and (b) a provision in the accounts themselves for future liabilities.

With regard to the first point, in global terms, the pattern of expenditure and income in the European Schools is relatively stable from one year to the next. If adjustments were made to re-allocate expenditure and income to previous or future years, it is likely that the net result would normally be much the same.

For example, with regard to the annual salary increase cited by the Court of Auditors, the procedure is the same each year; the annual increase is paid in January or February with arrears relating to the period from July to December of the previous year. Under the accruals system, the arrears would be recorded as expenditure of the previous year and the current year's expenditure would be reduced. But then, the arrears paid in January or February of the following year would be recorded as expenditure for the current year and the current year's expenditure would thus be increased. The net result would be just the difference between the reduction and the increase.

Even if that information is considered useful as a more accurate record of the real costs of the year in question, it would still be necessary to provide the purely cash-based information as produced by the current system in order to provide the basis for the calculation of the financial subsidy provided by the Commission. That contribution must relate to the actual cash needs of the year in question, not the accrued or potential liabilities. The same considerations apply to the contribution made by the European Patent Office for the school of Munich. The present system needed to record actual expenditure and receipts would therefore have to continue, even if the accrual based system were introduced. The accrual based system would be an addition, not a replacement.

With regard to provision for future liabilities, the present approach of using notes to the accounts, rather than entries in the accounts themselves, is considered a reasonable approach in the context of the European Schools, and may in fact be a clearer method of providing information to non-specialists.

A further difference is that, with regard to assets, a true accrual based system would spread the cost as expenditure over the life of the asset. That is also information that is missing from the European Schools' current accounting system. Again, however, the information that is really relevant to the European schools is the full cost in the year of purchase, since that is the basis on which the contributions from the Commission and the EPO are required. As noted above, the balance sheet records the value of the items recorded in the inventory, adjusted to take account of depreciation.

In 2006, the Court of Auditors referred to "*accruals accounting adapted to the context of the Schools*". To a large extent, that is the accounting system that currently exists.

There are of course some points that could be reviewed in this respect; for example the budgets are currently drawn up on the assumption that the annual salary increase will be paid during the budget year to which it relates, i.e. the expected increase decided in January 2011 is included in the budget of 2010. And commitments carried forward from one year to the next are currently treated as expenditure in the first year, not the second when the payments are actually made. But these questions could be examined without the need for a full-scale change to the accounting system.

Moreover, it should be noted that the management information system of the European Schools does not currently even provide a breakdown of costs between the secondary, primary and nursery cycles. Information that can be used as performance indicators is difficult to obtain. If a more sophisticated system for providing information is to be developed, it would perhaps be preferable to start in this sort of area.

6. Conclusion

An accrual based accounting system would provide a more accurate record of the financial situation. It would show costs and income for the period of activity to which they relate, rather than the period when the money was paid out or received. It would provide a more comprehensive statement of assets and liabilities, including potential liabilities.

However, such a system would be more complex and would require additional resources. The practical value of the information that it would provide is open to question. In practice, the present accounting system of the European Schools, which is essentially cash accounting enhanced with some of the features of an accruals system, provides adequate accounting data for management purposes and is the right basis for establishing the contribution of the Commission and the EPO.

A more pressing priority might be to provide a more detailed breakdown of the data presently available, in particular to show the costs of the secondary, primary and nursery cycles, and to develop performance indicators.

With regard to factors mentioned by the Court of Auditors which have potential financial impact (for example, outstanding legal cases or provision for salary adjustments), the present arrangements could be improved and refined to give information by way of more complete notes to the accounts rather than by changes to the accounting rules.

For these reasons, it does not seem justified to change the Financial Regulation with regard to the full-scale adoption of the accrual based accounting principle. There are simpler ways of supplying the required information to those who need it.

Translation

From: Bernard.MAGENHANN@ec.europa.eu
Sent: Friday 17 September 2010 15:01
To: DAVIS Andrew
Cc: CHRISTMANN Renee; Kivinen Kari; DELLI PAOLI Romuald; Anna-Ghita.RUSSO@ec.europa.eu
Subject: Review of the Financial Regulation of the ES

Dear Mr Davis,

We are writing in response to your last message, consulting us about the review of the Financial Regulation of the European Schools. We are sending you some comments and suggestions which we hope may be of use to you. We apologise for the late reply, which is due to the annual holiday period.

By way of introduction, we would point out that the IAS attended as an observer some of the meetings of the working group on review of the Financial Regulation.

1) Implementation of ABAC

We think that the introduction of an accrual accounting system into an organisation is a factor in discipline and in integration of financial flows. It also enables the exhaustiveness of the recording of financial operations to be ensured, thus contributing to the accuracy of the picture conveyed by financial statements and, more generally, to the improved comprehensibility and comparability of these statements for third parties (including the Court of Auditors). In recent years all the institutions and entities coming under the auspices of the European Union (decentralised agencies, etc.) have adopted this accounting system. A large number of national administrations have already gone down the same road and in a few years' time, most of them are likely to have effected this transition.

Whilst it may be thought that during the launch phase, implementation of an accrual accounting system might probably require mobilisation of certain resources and expertise, its use (post-implementation) ought not to generate more work, as all that is involved is simply a change to the accounting method.

2) Impact of the discussions of the 'Planning & Monitoring' Working Group

In recent months we have met several times to determine how it would be possible to improve the planning and reporting system in the schools and at the Office of the Secretary-General, in the spirit of the new governance of the European Schools defined by the Board of Governors at its meeting in Stockholm. At those meetings we noted the existence of many reports prepared by the schools or by the Office of the Secretary-General. The objective and usefulness of certain reports was questioned at length by the participants and we found that the integration/consolidation of the information contained in all those reports, including the timeframe for their production, should be reviewed in the spirit of the decisions taken by the Board of Governors.

We think that in this area your organisation has a major opportunity for simplification and rationalisation which would result in significant resource savings.

The essential rationalisation resulting from our working group's discussions is not reflected in this new revised version of the Financial Regulation.

3) Other comments

In general, we think that the roles and responsibilities of the different parties and the controls to be implemented in the financial management area should be developed to a greater extent and reflect the decisions taken by the Board of Governors at its meeting in Stockholm. The same applies to all the 'deliverables' (work plans, annual reports, etc.), for which the roles and responsibilities of the parties involved and the production sequences (deadlines) should be reviewed.

One particular point P. 12 – deletion of point 3: in the current state of organisation of procedures, the role and responsibilities of the Financial Controller are very important. The independence of his action must be preserved. In a centralised system he would be required to inform the authorising officers/authorising officers by delegation and the Board of Governors of the financial 'shortcomings' identified. In a more decentralised system, where the Financial Controller would be more of a financial auditor, he would nevertheless need to inform the authorising officer/authorising officer by delegation for whom he exercises a control responsibility.

Yours sincerely,

Bernard Magenmann

Head of Unit – Regulatory Agencies

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Annex C

Proposed Amendments to the Financial Regulation

Only those articles where an amendment is proposed are reprinted below. The full text of the current Financial Regulation is published as Document 211-D-2006.

The amendments are indicated as follows:

Deletions: **Deletions**

Insertions: **Insertions**

Article 1

1. The budget of the European Schools (hereinafter called "the budget") is the instrument which sets out forecasts of, and authorises in advance, the expected revenue and expenditure of the Schools for each year, in accordance with the structure described in Article 17.

For the purposes of this Financial Regulation, the revenue and expenditure of the Schools shall comprise:

- that of the Schools themselves
- that of the Office of the Secretary-General.

References to the Schools shall include the Office of the Secretary-General unless stated otherwise.

2. The appropriations entered in the budget shall be authorised for the duration of one financial year. They shall constitute the upper limit of expenditure which may be paid or authorised during each financial year.

Administrative Expenditure resulting from contracts which have been concluded in accordance with local usage for periods going beyond the financial year shall be charged to the budget for the financial year in which it is effected.

Reason for change: Drafting amendments for clarity.

Article 4

1. Subject to Article 26, all revenue and expenditure shall be entered in full in the budget and in the accounts, without any adjustment against each other. All revenue shall be used to cover all expenditure; revenue shall not be assigned to a specific purpose.
2. The Schools ~~and the Office of the Secretary-General~~ may accept donations and subsidies. **Where such donations and subsidies are not included in the budget, they may be re-used in accordance with the provisions of article 26(2).**

The Schools may accept donations which may involve some financial charge only subject to prior authorisation from the Board of Governors.

Notwithstanding paragraph 1, this revenue, earmarked for a specific purpose, may not be used for any other purpose.

Reason for change: To avoid the need for an amending budget, which is necessary at present to allow the Schools to spend monetary donations and subsidies that are not foreseen in the budget.

Article 15

3. All amending budgets must be approved by the Board of Governors at the latest by 15 November of the financial year in question.

No change but comment: The representatives of the schools suggested that this date should be later, in order to allow last-minute transfers of appropriations between the schools, particularly in the current economic climate where budget margins are tight. They recognised that this would only be possible where no change is required to the contribution of the Commission or the EPO. However, the Commission argued for an earlier date than is currently specified. In the absence of consensus on a different date, it was agreed that no change should be made to this article.

Article 17

The budget shall show:

4. in the general statement of revenue **and expenditure and**
- ~~— the estimated revenue of the Schools and of the Office of the Secretary-General for the financial year in question;~~
 - ~~— the revenue for the preceding financial year;~~
 - ~~— appropriate remarks on each subdivision;~~

2.

in the section for each of the Schools ~~or~~ **and** for the Office of the Secretary-General

(a) as regards the statement of revenue:

- the estimated revenue for the financial year in question;
- the revenue entered in the budget for the preceding financial year and the revenue established for the last financial year for which accounts have been closed;
- appropriate remarks on each revenue heading;

(b) as regards the statement of expenditure:

- the appropriations made available for the financial year in question;
- the appropriations made available for the preceding financial year and the actual expenditure in the last financial year for which the accounts have been closed;
- appropriate remarks on each subdivision;

(c) as regards total staff:

- in an annex to the budget, a list of posts fixing the number of permanent and temporary posts full time and part time in each service and, within the service, the nature of the duties. The list of posts shall constitute an absolute limit for each School and for the Office of the Secretary-General; no appointment may be made in excess of the limit set;
- appropriate remarks.

Reason for change:

Article 17 (a): Drafting amendments for clarity.

No change but comment:

Article 17(c): The representatives of the schools argued that the present text should be changed since it does not correspond with reality and its requirements are not respected. In practice, the budget does not specify the number of posts for locally recruited teachers and it is essential that the schools should retain the flexibility to recruit such staff as needed, subject to the funds available in the budget. The same considerations apply to auxiliary service staff (budget item 1320). The Commission took the view that this article states an important principle and must be retained. Measures must therefore be found to apply these provisions.

Article 19

9. With the exception of decisions overruling the financial controller, provided for in Articles 27, 36 and 45, each authorising officer may delegate his/her powers in accordance with the conditions laid down by rules of procedure, approved by the Administrative Boards **and or** by the Secretary-General **in so far as the Office of the Secretary-General is concerned**, and within the limits they themselves lay down in the act of delegation.

Those so empowered may act only within the limits of the powers expressly conferred upon them in accordance with the implementing rules provided for in Article 104.

The acts of delegation shall be communicated to the Administrative Boards, the Secretary-General and the financial controller.

Reason for change: Drafting amendments for clarity.

Article 24

In each School, the collection of revenue and the payment of expenditure shall be carried out by an accounting officer. Each School's administrator-bursar shall be appointed accounting officer for the purposes of this Financial Regulation.

The Secretary-General shall appoint the accounting officer of the Office of the Secretary-General, who shall be responsible, in particular, for consolidation.

Subject to the third paragraph of Article 49 and to Article 50 of this Regulation, the accounting officers alone are empowered to manage monies and other assets. They shall be responsible for their safekeeping.

The accounting officers shall be responsible for preparing the financial statements provided for in Articles 75, 76, 77 and 78 of this Regulation. In each School, the accounting officer may be assisted in his duties by one or more assistant accounting officers, appointed by the Administrative Boards **or by the Secretary-General in so far as the Office of the Secretary-General is concerned**.

Reason for change: To confirm that the text applies to the Office of the Secretary-General in the same way as for the schools.

Article 25

1. Appropriations shall be earmarked for specific purposes by chapter, article and item.
2. Subject to article 25.3, authorising officers may effect transfers from one item to another, from one article to another and from one chapter to another within each budget section. In each school, the Administrative Board shall be informed of these transfers at its next following meeting.
3. Transfers from items relating to remuneration and allowances of staff into items relating to other types of expenditure shall be subject to the prior agreement of the Administrative Board in so far as the budgetary section of a School is concerned, and to the prior agreement of the

Secretary-General in so far as the Office of the Secretary-General is concerned. These transfers are also subject to the prior agreement of the Administrative and Financial Committee.

4. Every proposal for a transfer within a section must be duly substantiated. The Head of the school, and the Deputy Secretary-General with regard to the Office of the Secretary-General, shall certify that the appropriations are available and that the transfer is consistent with the basic principles of implementation of the budget.
- ~~5. Appropriations may be transferred only to budget items for which the budget has authorised appropriations or carries a token entry.~~

Reason for change: In practice, the only effect of paragraph 5 is that all budget items with no appropriations carry a token entry (shown as "P.M"). This creates unnecessary complications in producing the budget which would be resolved if this restriction is abolished.

Article 26

2. By way of derogation from Articles 4 and 5, the following sums may be reused:
 - (a) revenue arising from the refund of amounts paid in error against budget appropriations;
 - (b) proceeds from the supply of goods and services to other organizations;
 - (c) insurance payments received;
 - (d) revenue from the sale of publications;
 - (e) refunds of taxes – incorporated in the price of the products or services provided to the Schools – effected by Member States pursuant to the agreements signed by the Member State in which one or more European Schools are located and the Board of Governors;
 - (f) revenue from the supply of goods and services against payment;
 - (g) proceeds from the sale of vehicles, equipment and installations which are being replaced;
 - (h) donations and subsidies other than those included in the budget.**

Such sums must be re-used before the end of the financial year following that in which the revenue was collected.

The accounting plan shall include suspense accounts in order to record the re-use of sums in respect of revenue and of expenditure.

3. Notwithstanding Article 4, repayments made by third parties may be deducted from expenditure in cases where the School has effected a payment for which it is legally liable to its creditors but where all or part thereof has been paid on behalf of those third parties.
4. By way of derogation from Article 4, adjustments may be made in respect of exchange differences occurring in budget operations.

The final gain or loss shall be entered in the balance for the year.

Reason for change: Linked to the change at article 4.

Article 28

1. The accounting officer shall assume responsibility for the recovery of orders duly drawn up. He shall exercise all due diligence to ensure that the resources due to the School are recovered at the due dates indicated in the recovery orders and shall ensure that its rights are safeguarded.

The accounting officer shall inform the authorising officer and the financial controller of any revenue not recovered within the time limits laid down. If necessary, he shall initiate the recovery procedure.

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

The purpose of the approval of the financial controller shall be to establish that the waiver is in order and conforms with the principles of sound financial management. The proposal concerned shall be registered by the accounting officer. If approval is withheld, the procedure laid down in the fourth subparagraph of Article 24(1) shall apply.

~~3. When the financial controller finds that a document establishing a debt has not been drawn up, or that a sum has not been recovered, he shall inform the Administrative Board and/or the Secretary-General thereof.~~

3. The implementing conditions in respect of this Article shall be determined by the implementing rules provided for in Article 104.

Reason for change: To remove an unduly heavy requirement. The financial controller has other powers to report such matters if he thinks it necessary.

Article 43

For payments by instalment, the first payment order shall be accompanied by documents establishing the creditor's claim to payment of the instalment in question. Subsequent payment orders shall refer to the supporting documents already furnished, and repeat the reference number of the first payment order.

The authorising officer may grant advances to personnel if the staff regulations or a provision laid down by Regulation or by rules drawn up by the Secretary-General specifically provide therefor.

The authorising officer may grant advances to cover disbursements to be effected by a member of staff on behalf of the School. The implementing conditions for this subparagraph shall be determined by the implementing rules provided for in Article 104.

Apart from the imprest accounts referred to in Article 50, no advance may be paid unless it has been approved beforehand by the financial controller.

Reason for change: To provide a legal basis for the current practice of allowing advances to staff to cover expenses arising at the start of their secondment.

Article 55

1. Procurement procedures shall take one of the following forms:

(a) the open procedure;

(a b) the restricted procedure;

(b c) the negotiated procedure.

2. For contracts where the value exceeds the thresholds provided for in Article 69, use of the negotiated procedure shall be authorised only in the cases provided for in the implementing rules.

3. The thresholds below which the contracting authority may either use a negotiated procedure or, by way of derogation from the first subparagraph of Article 52(1), simply pay costs against invoices shall be determined in the implementing rules.

4. The procedures applicable to low value contracts shall be determined in the implementing rules.

Reason for change: To allow the possibility of the open procurement procedure and to permit the simplification of the rules for low value contracts.

Article 72

The sale of movable property shall be suitably advertised in accordance with the implementing rules provided for in Article 104.

Apart from sales by public auction, members of the School's staff may not acquire any movable property resold **or otherwise disposed of** by the said School.

Reason for change: To make it clear that members of staff may not in any circumstances acquire property disposed of by the schools, to avoid any risk of suspicion that property is being disposed of in the interest of staff.

Article 76

The accounting plan shall make a clear distinction between budgetary accounts and **cash general** accounts

Reason for change: Correction of an error.

Article 87

Each School, after ~~discussion and~~ approval by its Administrative Board, shall, not later than 1 April, transmit to the Office of the Secretary-General the information required for drawing up the revenue and expenditure account and the balance sheet, together with a contribution to the analysis of the financial management referred to in Article 88.

Reason for change: To recognise that the timing of Administrative Board meetings now means that approval can only be given by written procedure, without discussion.

Article 93

1. The Court of Auditors transmits to the Secretary-General and to the Heads of the Schools, by 15 July, any comments which are, in its opinion, of such a nature that they should appear in the annual report. The comments must remain confidential.

~~After examination by the Administrative Boards,~~ The replies of the **Secretary-General Representative of the Board of Governors** and of the Heads of the Schools shall be forwarded to the Court of Auditors by 31 October at the latest.

2. The comments of the Court of Auditors and the replies that have been sent to it shall be drawn to the attention of the **Administrative Boards and to the** Board of Governors which at its

meeting of the first quarter of the calendar year shall examine them and make its own comments and recommendations.

Reason for change: As for article 87.

Article 98

Should the administrative surplus transfer result in the limits referred to in Article 97 being exceeded, the balance of these surpluses ~~shall~~ **would** be entered as budget revenue for the next financial year, under the item "administrative surplus".

Reason for change: Drafting amendment for clarity.

Article 100

1. Pursuant to Article 99 (1), use, on a written proposal by the Head or by the Deputy Secretary-General in so far as the Office of the Secretary-General is concerned, of the Reserve Fund referred to in Article 96 (1) shall be subject to a duly substantiated decision by the Secretary-General, with the approval of the financial controller.

Reason for change: To confirm that the text applies to the Office of the Secretary-General in the same way as for the schools.

Article 102

The Board of Governors shall be assisted by the Budgetary Administrative and Financial Committee.

Reason for change: To reflect the change of name.

Preamble and Final Provisions

These will require amendment of the date of adoption etc.

Differences between the language versions

There are some discrepancies between the various language versions which need to be corrected. For example, the English versions of articles 25 and 67 need to be aligned with the French version.

Annex D

Proposed Amendments to the Rules for Implementing the Financial Regulation

Only those articles where an amendment is proposed are reprinted below. The full text of the current Implementing Rules is published as Document 311-D-2006.

The amendments are indicated as follows:

Deletions: **Deletions**

Insertions: Insertions

Article 49

Apart from the advances provided for by the staff regulations or a provision laid down by Regulation **or by rules drawn up by the Secretary-General**, the authorising officer may grant advances to cover expenditure to be effected by a member of staff on behalf of the School or the Office. This expenditure may be incurred as a result of a specific assignment or connected with probable expenditure whose nature or amount is unspecified.

Reason for change: Consequence of the change to article 43 of the Financial Regulation.

Article 63

Advertising of contracts covered by Directive 2004/18/EC, with the exception of contracts referred to in Annex IIB thereto

1. Publication shall consist in a pre-information notice, a contract notice and an award notice.
2. The pre-information notice is the notice by which the contracting authorities make known, by way of indication, the contracts which they intend to award during a budgetary year, but excluding contracts under the negotiated procedure without prior publication of a contract notice. The pre-information notice shall be compulsory only where the contracting authority intends to make use of the possibility of shortening time limits for receipt of tenders in accordance with Article 82(4).

The pre-information notice shall be sent to OPOCE as soon as possible and in any event by no later than 31 March of each budgetary year in the case of supply and service contracts and, in the case of works contracts, as soon as possible after the decision approving the programme for those contracts.

3. The contract notice is the means by which the contracting authorities launch a procedure for the award of a contract or framework contract. The contract notice shall be compulsory for contracts with an estimated value equal to or above the thresholds laid down in points (a) and (c) of Article 99, without prejudice to contracts concluded after a negotiated procedure, as referred to in Article 70.

In an open procedure, the contract notice shall specify the date, time and place of the meeting of the opening committee, which shall be open to the tenderers.

Contracting authorities shall state whether or not they authorise variants and shall specify the minimum capacity levels they demand if they make use of the possibility provided for in the second subparagraph of Article 77(2). They shall set out the selection criteria referred to in Article 77 that they intend to use.

4. The award notice shall give the outcome of the procedure for the award of contracts. In the case of contracts with a value equal to or above the thresholds laid down in points (a) and (b) of Article 99, the award notice shall be compulsory.

The award notice shall be sent to the OPOCE no later than 48 calendar days after the procedure is closed, that is to say, from the date on which the contract or framework contract is signed.

5. The notices shall be drawn up in accordance with the standard forms adopted by the Commission pursuant to Directive 2004/18/EC.

Reason for change: Consequential amendments arising from the addition of the open procurement procedure in article 55 of the Financial Regulation.

Article 67

Types of procurement procedure (Article 55 of the Financial Regulation)

1. Contracts shall be awarded using the **open**, restricted or negotiated procedure after publication of a contract notice or by restricted or negotiated procedure without prior publication of a contract notice.

2. Calls for tenders are open where all interested economic operators may submit a tender.

3. In a restricted procedure, all economic operators may request to participate and only candidates satisfying the selection criteria referred to in Article 77 and invited simultaneously and in writing by the contracting authorities may submit a tender.

4. In a negotiated procedure, the contracting authorities shall consult tenderers of their choice who satisfy the selection criteria laid down in Article 77, and negotiate the terms of the contract with one or more of them.

Reason for change: Consequential amendments arising from the addition of the open procurement procedure in article 55 of the Financial Regulation.

Article 68

Number of candidates in restricted or negotiated procedures (Article 55 of the Financial Regulation)

1. **(a) In a restricted procedure**, the number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria.

In any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.

1.(b) In a negotiated procedure, the number of candidates will be determined according to the provisions of Article 71.

2. In a negotiated procedure, the provisions of paragraph 1 above shall not apply to the following:

(a) contracts involving very small amounts, as referred to in Article 71(4 2);

(b) contracts for legal services within the meaning of Annex IIB of Directive 2004/18/EC.

3. Where the number of candidates meeting the selection criteria and the minimum levels is below **the minimum number specified in paragraph 1, five** the contracting authority may continue the procedure by inviting the candidate or candidates with the required capacities. However, the contracting authority may not include other economic operators who did not ask to

take part (in the case of a restricted procedure with publication of a contract notice), or candidates who do not have the required capacities.

Reason for change: To allow a reduction in the number of candidates in a negotiated procedure for contracts below €25 000 (see also article 71 below).

Article 71

Low-value contracts (Article 55 of the Financial Regulation)

1. A restricted procedure without publication of a contract notice **with consultation of at least five candidates** may be used for contracts with a value below the thresholds referred to in article 99.

2. A negotiated procedure **with consultation of at least five candidates** may be used for contracts with a value of less than EUR 60 000.

If, following consultation of the candidates, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the exclusion, selection and award criteria are met.

3. For contracts with a value less than EUR 25 000, the procedure referred to in paragraph 2 with consultation of at least three candidates may be used.

4. Contracts with a value of less than EUR 6 000 may be awarded on the basis of a single tender. **In such cases, provided that the invitation to tender is issued in writing, the contracting authority may derogate from the requirements of articles 72, 76, 88 and 89.**

5. Payments of amounts lower than EUR 600 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender.

Reason for change: For contracts below €25 000, to allow a reduction in the number of candidates in a negotiated procedure. For contracts below €6 000, to simplify the requirements on the form and content of the invitation to tender, declarations by tenderers, the need for a written evaluation of tenders and notes for the file regarding contracts with tenderers.

Article 82

Time limits for receipt of tenders and requests to participate (Article 62(1) of the Financial Regulation)

1. The time limits for the receipt of tenders and requests to participate, laid down in calendar days by the contracting authorities, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders, taking particular account of the complexity of the contract or the need to visit the site or consult on the spot the documents annexed to the specifications.

2. In open procedures for contracts with a value equal to or above the thresholds set in Article 99, the time limit for receipt of tenders shall be no less than fifty-two days from the date on which the contract notice is dispatched.

3. In restricted procedures with publication of a contract notice for contracts with a value equal to or above the thresholds set in Article 99, the time limit for receipt of requests to participate shall be no less than 37 days from the date on which the contract notice is dispatched.

In restricted procedures for contracts with a value equal to or above the thresholds set in Article 99, the time limit for receipt of tenders shall be no less than 40 days from the date on which the invitation to tender is dispatched.

4. Where the contracting authorities, in accordance with Article 63(2), have sent a pre-information notice for publication, the time limit for the receipt of tenders may generally be reduced to 36 days but shall in no circumstances be less than 22 days from the date of dispatch of the contract notice or the invitation to tender.

The shortened time limits referred to in the first subparagraph shall be permitted only if the pre-information notice satisfies the following conditions:

(a) it contains all the information required for the contract notice, insofar as that information is available at the time the notice is published;

(b) it was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.'

Reason for change: Consequential amendments arising from the addition of the open procurement procedure in article 55 of the Financial Regulation.

Article 83

Time allowed for access to invitation to tender documents (Article 62(1) of the Financial Regulation)

1. Provided that the request was made in good time before the deadline for submission of tenders, the specifications and additional documents shall be sent, within six calendar days of the receipt of the request, to all economic operators who have requested the specification or expressed interest in submitting a tender. Contracting authorities are not bound to reply to requests for documents made less than five working days before the deadline for submission of tenders.

2. Provided that the request was made in good time before the deadline for submission of tenders, additional information relating to the specification or additional documents shall be supplied simultaneously to all economic operators who have been invited to submit a tender no later than six days before the deadline for the receipt of tenders or, in the case of requests for information received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request. Contracting authorities are not bound to reply to requests for additional information made less than five working days before the deadline for submission of tenders.

3. If, for whatever reason, additional documents or information cannot be supplied within the time-limits set in paragraphs 1, or where tenders can be made only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time limits for receipt of tenders referred to in Article 82 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. That extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 63 to 66.

Reason for change: Consequential amendments arising from the addition of the open procurement procedure in article 55 of the Financial Regulation.

Article 86

Opening of tenders and requests to participate (Article 62(2) of the Financial Regulation)

1. All requests to participate and tenders that satisfy the requirements of Article 85 shall be opened.

2. Where the value of a contract exceeds the threshold laid down in Article 71(2), the authorising officer responsible shall appoint a committee to open the tenders.

For the Schools, the opening committee shall be made up of at least three persons representing at least two entities among those comprising the Administrative Board **of the School which is the contracting authority and/or the Administrative Board of another European School, an administrative unit of the Office of the Secretary-General and/or the Community entities present on the spot.**

For the Office of the Secretary-General, the opening committee shall be made up of at least three persons representing at least two organisational entities which may be the administrative units of the Office, the entities comprising the Administrative Board of a European School and/or the Community entities present on the spot.

To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 18(2) of the Financial Regulation.

3. Where tenders are submitted by post, one or more members of the opening committee shall initial the documents proving the date and time of dispatch of each tender.

They shall also initial:

(a) either each page of each tender; or

(b) the cover page and the pages containing the financial details of each tender, the integrity of the initial tender being guaranteed by any appropriate technique employed by a department that is independent of the authorising department.

Where the contract is awarded under the automatic award procedure in accordance with point (a) of Article 80(1), the prices quoted in tenders satisfying the requirements shall be made public.

The members of the committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which satisfy the requirements and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 85.

Reason for change: To allow the schools to appoint representatives of another school or the Office to take part in the committee appointed to open the tenders.

Article 87

Committee for the evaluation of tenders and requests to participate (Article 62(3) of the Financial Regulation)

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee set up for each of the two stages on the basis of the pre-announced exclusion and selection criteria and the award criteria respectively

That committee shall be appointed by the authorising officer responsible to give an advisory opinion for contracts with a value above the threshold referred to in Article 71(2).

2. **For the Schools**, the evaluation committee shall be made up of at least three persons representing at least two entities among those comprising the Administrative Board **of the School which is the contracting authority and/or the Administrative Board of another European School, an administrative unit of the Office of the Secretary-General and/or the Community entities present on the spot.**

For the Office of the Secretary-General, the evaluation committee shall be made up of at least three persons representing at least two organisational entities which may be the administrative units of the Office, the entities comprising the Administrative Board of a European School and/or the Community entities present on the spot.

To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 18(2) of the Financial Regulation.

The evaluation committee may be composed of the same members as the committee opening the tenders.

Outside experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 18(2) of the Financial Regulation.

3. Requests to participate and tenders which do not satisfy all the essential requirements set out in the supporting documentation for invitations to tender or the specific requirements laid down therein shall be eliminated.

However, the evaluation committee or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time limit it specifies.

Requests to participate and tenders which are not excluded and which meet the selection criteria shall be considered admissible.

4. In the case of abnormally low tenders as referred to in Article 81 of this Regulation, the evaluation committee shall request any relevant information concerning the composition of the tender.

Reason for change: To allow the schools to appoint representatives of another school or the Office to take part in the committee appointed to evaluate the tenders.

Article 98

Thresholds for pre-information notices

The thresholds referred to in Article 63 for publication of a pre-information notice shall be:

- (a) EUR 750 000 for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC;
- (b) EUR **4 845 000** for works contracts.

Reason for change: To apply the current threshold values as used by the Commission.

Article 99

Thresholds for application of the procedures under Directive 2004/18/EC

The thresholds referred to in Article 69 of the Financial Regulation shall be:

- (a) EUR **125 000** for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC;
- (b) EUR **193 000** for the service contracts listed in Annex IIB to Directive 2004/18/EC;
- (c) EUR **4 845 000** for works contracts.

Reason for change: To apply the current threshold values as used by the Commission.

Preamble and Final Provisions

These will require amendment of the date of adoption etc.