



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 April 2010**

**8440/10**

**FIN 133**

**COVER NOTE**

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from:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	8 April 2010
to:	Mr Pierre de BOISSIEU, Secretary-General of the Council of the European Union
Subject:	Commission Decision of 8.4.2010 on the Internal Procedure provisions for the recovery of entitlements arising from direct management and the recovery of fines, lump sums and penalty payments under the Treaties, replacing Decision C-2002-5048/4 of 17 December 2002 (H/2003/118) as last amended by the Internal Rules on the implementation of the budget for 2009 - for the attention of the Commission departments

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Delegations will find attached Commission document C(2010) 1861 final.

Encl.: C(2010) 1861 final



EUROPEAN COMMISSION

Brussels, 8.4.2010  
C(2010)1861 final

**COMMISSION DECISION**

**of 8.4.2010**

**on the Internal Procedure provisions for the recovery of entitlements arising from direct management and the recovery of fines, lump sums and penalty payments under the Treaties, replacing Decision C-2002-5048/4 of 17 December 2002 (H/2003/118) as last amended by the Internal Rules on the implementation of the budget for 2009**

**For the attention of the Commission departments**

## COMMISSION DECISION

of 8.4.2010

**on the Internal Procedure provisions for the recovery of entitlements arising from direct management and the recovery of fines, lump sums and penalty payments under the Treaties, replacing Decision C-2002-5048/4 of 17 December 2002 (H/2003/118) as last amended by the Internal Rules on the implementation of the budget for 2009**

**For the attention of the Commission departments**

THE EUROPEAN COMMISSION,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002,

Having regard to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the Financial Regulation (hereafter “detailed implementing rules”),

Having regard to Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty,

Having regard to Annex I, point 1(2) to the Decision of the Representatives of the Governments of the Member States, meeting within the Council, of 27 February 2002<sup>1</sup>,

Whereas:

(1) The current internal procedure provisions need to be updated in the light of the reform of the Commission’s financial management initiated in March 2000 as part of Action 96 of the White Paper and the Communications on *More effective management of recovery of unduly paid funds* adopted by the Commission on 13 December 2000 and 3 December 2002<sup>2</sup>, and lessons need to be drawn from the experience gained in applying the various internal procedure provisions on recovery;

(2) There is a need for a single updated framework incorporating the provisions governing recovery linked to direct action taken by the Commission and for clarification of the role and responsibilities of the actors and departments concerned;

(3) Steps are needed to contribute to more effective recovery of amounts owed to the Communities, in particular by specifying, according to the type of Community entitlement, the timing and scope of the authorising officer’s obligations to draw up an estimate of the amount receivable as an aid to sound financial management, to establish the Community entitlement, and then to draw up the recovery order, and lastly to inform the debtor by sending the debit note;

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<sup>1</sup> OJ L 79, 22.3.2002, p. 42.

<sup>2</sup> COM(2002)671 final.

- (4) The Financial Regulation requires that implementation of the budget in euros be strengthened;
- (5) To ensure that there is no discrimination between debtors of the Communities, interest on late payment should be systematically established and claimed from the deadline indicated in the debit note, with steps being taken to make sure that the debtor receives this information in the case of the largest amounts;
- (6) Amounts that are not repaid by the deadline should be recovered by calling in the advance guarantee, where one has been given;
- (7) The Financial Regulation requires use of the procedure for recovering a Community entitlement by offsetting against any Community debt to the same person and, if the debtor fails to make payment by the time limit set in the formal demand, enforcement action either on the basis of an enforceable Commission decision within the meaning of Article 299 TFEU and Article 92 ECSC, or on the basis of an enforcement order obtained through legal action before the competent courts;
- (8) Use should be made of the expertise of the European Anti-Fraud Office (OLAF) at any time during the procedure, especially if there is any suspicion of fraud, corruption or any other illegal activity to the detriment of the financial interests of the European Union and Euratom (hereafter "the Union") or other funds administered by them and the need to make clear in connection with recovery the obligation to inform OLAF in accordance with the Commission Decision of 2 June 1999;
- (9) The specific nature of entitlements arising from the imposition of fines and penalty payments and the resulting requirements, especially the provisional nature of the payment of fines that are still subject to appeal, must be recognised.

HAS DECIDED AS FOLLOWS:

## **Part One**

### **Common provisions**

#### *Article 1* *Scope*

1. These provisions shall apply to the recovery of entitlements arising from direct management and to the recovery by the Commission of fines and penalty payments under the Treaty on the Functioning of the EU, the Euratom Treaty and the Treaty on European Union, with the exception of own resources.
2. Entitlements arising from shared, decentralised and joint management of European Union expenditure and other funds administered by the European Union are not concerned by these provisions, except for financial corrections recovered from the Member States.
3. The provisions of Part One shall apply without prejudice to the specific provisions in Part Two.

## *Article 2*

### *Estimate of amount receivable*

The authorising officer responsible as indicated in the internal rules on the implementation of the budget (hereafter “the authorising officer responsible”) shall draw up the estimate of the amount receivable referred to in Article 70(1) of the Financial Regulation as specified in Article 77 of the detailed implementing rules and in Article 4(3) and (4) of the detailed implementing rules for interest on prefinancing, using the same model as the recovery order specified in Article 4, where that information is relevant for an estimate of the amount receivable.

If, in the light of developments in the case, the estimate of the amount receivable appears incorrect, the authorising officer responsible shall correct or cancel the estimate of the amount receivable.

## *Article 3*

### *Establishment of Community entitlements*

1. In accordance with Article 71 of the Financial Regulation and Article 79 of the detailed implementing rules, the authorising officer responsible shall establish any amounts receivable which are certain, of a fixed amount and due.

In doing so, he/she shall carry out the checks provided for in Article 71 of the Financial Regulation and in Article 79 of the detailed implementing rules. He/she shall also ensure that no Community entitlement has already been established nor any recovery order drawn up for the same obligating event vis-à-vis the same debtor (an individual debtor or a number of jointly liable debtors) or any jointly liable person and ensure the debtor has been given a reasonable amount of time to present comments before the recovery order is drawn up.

In the exceptional cases where the Financial Regulation allows payment in a currency other than the euro, the amount shall be converted into euro for the purpose of drawing up the recovery order in accordance with Articles 7 and 8 of the detailed implementing rules. Where no daily euro rate is published in the *Official Journal of the European Union* for the currency in question, the accounting rate to be used as specified in Article 7(3) of the detailed implementing rules shall be the INFOEURO rate.<sup>3</sup>

Once the Community entitlement has been established, the authorising officer responsible shall draw up the recovery order provided for in Article 4 without delay and shall send it to the accounting officer for registration.

Without prejudice to any obligation laid down by the relevant rules, contract or agreement, the deadline shall be:

- thirty calendar days from registration of the Community entitlement in the Commission's general accounts where the entitlement arises from a service or supply contract;

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<sup>3</sup> The rate can be found on-line at the Commission intranet site, <http://ec.europa.eu/budget/inforeuro> .

- forty-five calendar days from registration of the Community entitlement in the Commission's general accounts in other cases.

After the registration provided for in the previous subparagraph, the authorising officer responsible shall send a debit note to the debtor without delay in accordance with Article 5.

2. If there is any change to a Community entitlement once it has been established, the authorising officer responsible shall carry out the same checks and shall follow the same procedure as specified in paragraph 1. The authorising officer responsible shall inform the debtor of this change in accordance with Article 5 by sending an additional debit note if the change increases the Community entitlement, or a credit note if the change reduces or cancels the Community entitlement.

Where an entitlement is waived within the meaning of Article 14 and in the cases referred to in Article 87(1)(a) and (b) of the detailed implementing rules, no credit note shall be sent to the debtor.

3. By way of derogation from the above paragraphs, the authorising officer responsible shall not as a rule draw up a recovery order for legal costs which Member States owe to the Commission when the Court of Justice of the European Union or the General Court awards costs against them, unless the Member State concerned has adopted the principle of claiming the legal costs which the Commission owes to it as an item of expenditure.

#### *Article 3a* *Transmission of facts to OLAF*

Where establishment of an entitlement is related to a suspicion of fraud, corruption or any other illegal activity to the detriment of the Communities' financial interests and other funds administered by them, the authorising officer responsible shall send to OLAF the facts giving rise to the establishment of the entitlement.

#### *Article 4* *Drawing up the recovery order*

1. The recovery order shall contain all the particulars referred to in Article 81(1) of the detailed implementing rules plus the following information:
  - a) the code of the initiating officer,
  - b) the name of the case-handler within the authorising department and the reference number of the case;
  - c) the name of the bank and the number and designation of the Commission bank account into which payment is to be made;
  - d) the name and signature of the authorising officer responsible;
  - e) the name and full address of the debtor together, if possible, with the name of a contact person and, where appropriate, inclusion of an e-mail address;

- f) where appropriate, the names of any jointly liable natural or legal persons who could be required to honour the debt of the defaulting debtor;
  - g) where appropriate, an indication of any advance guarantee which has been given;
  - h) if an advance guarantee has been given, the amount and expiry date thereof;
  - i) an indication of any existing or imminent payment order to the same debtor that the authorising officer is aware of, to allow recovery by offsetting;
  - j) the detailed reasons for the amount receivable in (one of) the language(s) of the debtor, or of the contract or agreement with the debtor, together with the number of the project/contract/case, as appropriate, including an indication that the debtor has been given the opportunity to submit comments, together with the date and reference number of the letter sent to the debtor;
  - k) the full accounting code for the booking of the amount receivable in the accounting system;
  - l) the deadline laid down, without prejudice to the specific provisions in Part Two, in accordance with Article 3(1);
  - m) the rate of late payment interest stipulated in the contract or agreement or, in the absence thereof, the rate indicated in Article 86(2) of the detailed implementing rules.
2. The authorising officer responsible shall attach to the recovery order sent to the accounting officer a memo setting out the reasons and any other enclosure necessary to show the full grounds for the amount receivable.

## *Article 5*

### *Debit note*

1. After registration of the entitlement in the Commission's general accounts in accordance with the fifth subparagraph of Article 3(1), the authorising officer responsible shall draw up the debit note in (one of) the language(s) of the debtor, or of the contract or agreement with the debtor, and shall send it to the debtor without delay, with a copy to the contact person where appropriate.

The authorising officer shall send the debit note by registered letter with advice of delivery.

If the debit note is intended for an institution, a European Union body or a member of staff employed by a European Union institution or a European Union body, it may be sent by registered e-mail instead of by registered letter.

As the debit note is generated automatically at the end of a computerised financial circuit protected by passwords, signature of the debit note by the authorising officer shall be optional.

The authorising officer shall inform the accounting officer of the date of dispatch of the debit note and of the date of its receipt by the debtor and shall register these dates in the central accounting system.

2. The debit note, which may be accompanied by a letter setting out the reasons or any other enclosure, shall contain the particulars specified in Article 78 of the detailed implementing rules as well as the following, drafted in (one of) the language(s) of the debtor, or of the contract or agreement with the debtor:
  - a) all the particulars set out in Article 4(1) for the recovery order, with the exception of those set out in Article 4(1)(a) (f), (h) (i) and (k);
  - b) a statement that the debtor will bear all bank charges incurred.
3. The preceding rules shall also apply to a credit note by which the authorising officer responsible informs the debtor of any change in the initial establishment of the amount receivable entailing the reduction or cancellation of the debt to the European Union.

#### *Article 6* *Precautionary measures*

Whenever a recovery order has been issued for a Community entitlement, if the authorising officer responsible has information that the debtor in respect of whom the recovery order has been issued is no longer creditworthy (in particular that insolvency proceedings within the meaning of Regulation No 1346/2000<sup>4</sup> are under way or are threatened or that there is suspicion of bankruptcy fraud), he/she shall forward this information as soon as possible to the accounting officer, who shall take appropriate measures to safeguard the Commission's rights.

#### *Article 7* *Additional time for payment*

1. Without prejudice to the specific provisions of Chapter 2 of Part Two, the accounting officer may allow additional time for payment by any debtor other than a State, with the possibility of payment in instalments, only under the conditions set out in Article 85 of the detailed implementing rules.
2. The accounting officer shall inform the debtor and the authorising officer responsible of any additional time for payment or payment by instalments allowed.
3. In accordance with Article 86(4) of the detailed implementing rules, partial payments shall count first against costs and expenses, then against interest, and lastly against the principal.

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<sup>4</sup> Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ L 160, 30.6.2000, pp. 1-18, esp. Annex A).



*Article 8*  
*Late payment interest applicable*

Without prejudice to the specific provisions in the relevant rules, contract or agreement and the specific provisions of Part Two, the amount due shall bear interest from the day following the time limit laid down in the debit note at the rate stipulated in the debit note.

The recovery order establishing the late payment interest shall be drawn up on collection by the authorising officer responsible designated for this purpose by the internal rules on the implementation of the budget.

*Article 9*  
*Guarantee linked to additional time allowed for payment and to recovery of fines, periodic penalty payments and other penalties*

In the circumstances provided for in Articles 85 and 85a of the detailed implementing rules, the debtor shall furnish a guarantee from a financial institution approved by the accounting officer covering the debtor's obligations as regards both principal and interest, using the appropriate model form annexed (Annex 1 for the payment of miscellaneous debts in instalments, Annexes 2 or 3 for fines, periodic penalty payments or other penalties). This guarantee shall be accepted by the accounting officer, who shall keep the original and, where appropriate, call it in.

*Article 10*  
*Calling in guarantees*

Without prejudice to the provisions of Part Two, if full payment is not made by the deadline, the accounting officer shall examine with the authorising officer the possibility of calling in any guarantee lodged in advance in accordance with Article 84(1) of the detailed implementing rules. Where an advance guarantee exists, the accounting officer shall proceed to recover the Community entitlement by calling in the guarantee after informing the authorising officer responsible and the debtor.

*Article 11*  
*Recovery procedure for Community entitlements*

1. Without prejudice to the provisions of Chapter 2 of Part Two, if full payment has not been received by the Commission within one month of the deadline, and provided the circumstances referred to in Article 7 do not apply, the accounting officer shall send the debtor a reminder by registered letter with advice of delivery, with a copy to the authorising officer responsible. The reminder shall point out in particular that late payment interest will be added to the amount owed each day, starting the day after the deadline, at the rate referred to in Article 8.
2. If no payment is made within one month of the reminder being sent, the accounting officer shall send the debtor a registered letter with advice of delivery formally demanding payment within fifteen calendar days, with a copy to the authorising officer responsible. The letter shall, in particular, draw the debtor's attention to the

fact that late payment interest will be added to the amount owed each day, starting the day after the deadline, at the rate referred to in Article 8.

3. The fact that the debtor is or has been the source of recovery problems shall be flagged in the Commission's early-warning system<sup>5</sup>.
4. The authorising officer responsible shall reply within fifteen calendar days to requests for information on recovery matters made by the accounting officer, the Legal Service or OLAF. If specifically requested by the authorising officer responsible, this time limit may be extended to one calendar month in complex cases requiring detailed examination.
5. The accounting officer shall establish and keep up to date a list of all cases of recovery showing the stage reached, the guarantees referred to in Article 9 and any cases sent to the Legal Service for enforcement by the relevant authorities.

#### *Article 12* *Offsetting*

1. The accounting officer may proceed with offsetting as referred to in Article 73(1) of the Financial Regulation under the conditions laid down in Article 83 of the detailed implementing rules only where both a payment order and a recovery order exist, duly established and registered in the accounting system in accordance with the procedures laid down by the accounting officer.
2. If the contract, agreement or rules applicable provide for the joint financial liability of a person other than the debtor (jointly liable debtor), the accounting officer may likewise set off the amount due against any amounts owed by the European Union to this jointly liable debtor which are certain, of a fixed amount, and due, after informing the authorising officer responsible and giving the debtor and the jointly liable debtor the opportunity to submit their comments.

#### *Article 13* *Enforcement*

1. Failing voluntary payment within the time allowed and in the absence of any possibility of effecting recovery by offsetting or by calling in an adequate advance guarantee, the authorising officer responsible shall, where the debtor is not a State, draw up a decision formalising the recovery order in the shape of an enforceable Commission decision pursuant to Article 72(2) of the Financial Regulation, using the model in Annex 4.

The accounting officer shall request the Member State concerned to have the Commission decision referred to in the preceding subparagraph certified as enforceable and shall send the original copy of the decision duly endorsed with the order for its enforcement to the Legal Service.

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<sup>5</sup> Commission Decision 2008/969 of 16 December 2008 on the Early Warning System for the use of authorising officers of the Commission and the executive agencies (OJ L 344, 20.12.2008, p.125).

2. Where it is not possible to formalise the recovery order in the shape of an enforceable decision pursuant to Article 72(2) of the Financial Regulation, the accounting officer, after consulting the authorising officer responsible and after expiry of the time limit indicated in Article 11(2), shall instruct the Legal Service to take whatever legal measures are necessary to ensure recovery.

In accordance with Article 84(2) of the detailed implementing rules, the Legal Service shall seek to obtain an enforcement order before the competent courts, where necessary by joining a civil claim to criminal proceedings before the competent court concerning the protection of the Communities' financial interests, in conjunction with OLAF.

3. The Legal Service shall have the enforcement order obtained in accordance with paragraphs 1 and 2 executed.
4. The Legal Service shall inform the accounting officer and the authorising officer responsible of the progress of the enforcement procedure, and especially OLAF in all cases relating to entitlements arising from fraud or other presumed irregularities to the detriment of the financial interests of the Communities and other funds administered by them.

*Article 13a*  
*Publication of the list of debtors covered*  
*by a court decision*

1. For the purposes of Article 81(4) of the implementing rules which provides for publication of a list of debtors covered by a court decision, the Legal Service shall provide the accounting officer every quarter with a list of recovery orders issued by the Commission for which a court decision has acquired the force of res judicata in the course of the quarter concerned. This list shall contain the name, legal status and country of residence or registered office of the debtor together with the amount of the entitlement.
2. The list to be published shall also contain the entitlements of the other institutions which have not been paid in spite of a court decision that has acquired the force of res judicata since 1 May 2007. These institutions shall provide the Commission with the particulars to be published on the list and those to be deleted. The institution concerned shall be responsible for the accuracy of these particulars.
3. The accounting officer shall draw up the interinstitutional list of entitlements concerned and shall publish them on the Commission website. He/she shall update this list every quarter, but shall immediately remove the particulars relating to any recovery order which has been fully discharged.

*Article 14*  
*Waiving recovery of a Community entitlement*

1. The authorising officer responsible may waive all or part of an established Community entitlement in the cases listed in Article 87(1)(a) and (b) of the detailed implementing rules, provided that all appropriate steps have been taken by the

departments responsible but have failed to secure recovery of all or part of the entitlement and provided that OLAF has not initiated an investigation into the facts underlying the entitlement.

2. For the purposes of paragraph 1, the decision to waive recovery of an established entitlement shall be taken by the authorising officer responsible for this type of implementing measure under the internal rules on the implementation of the budget, on the basis of the accounting officer's notes provided for under paragraph 4 or any other relevant document.

The authorising officer responsible shall draw up a file setting out the grounds for the waiver, using the model in Annex 5. Before waiving recovery of an established entitlement amounting to €1 000 or more, the authorising officer responsible shall first inform the Legal Service and, wherever the Community entitlement was established following investigations by OLAF, OLAF. If no information is received from these departments within a reasonable time calling into question the planned waiver, the authorising officer responsible shall draw up a negative recovery order in accordance with Articles 3 and 4, which he/she shall send to the accounting officer. He/she shall inform the Legal Service of the waiver and, in the abovementioned cases, OLAF.

3. The authorising officer responsible may, pursuant to the principles of regularity, sound financial management and proportionality, waive recovery of a Community entitlement in accordance with Article 87(1)(c) of the detailed implementing rules in the circumstances and in accordance with the procedure set out in the guidelines on the application of the principle of proportionality to the waiving of recovery of entitlements<sup>6</sup>.
4. For the purpose of paragraphs 1 and 2, the accounting officer shall, at the end of each quarter, send the authorising officers responsible reports with relevant indicators for analysis showing the age-based balance of recovery orders.

#### *Article 15*

##### *Cancellation of an established entitlement*

The authorising officer responsible under the internal rules on the implementation of the budget shall effect the full or partial cancellations referred to in Article 88 of the detailed implementing rules by means of a negative recovery order in accordance with Articles 3 and 4. He/she shall draw up the statement of grounds using the model in Annex 5.

#### *Article 16*

##### *Technical and accounting adjustment of the established amount receivable*

The authorising officer responsible shall effect the full or partial technical and accounting adjustments referred to in Article 89 of the detailed implementing rules

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<sup>6</sup> SEC(2001)1857 final of 21 November 2001 and updates: [http://www.cc.cec/budg/leg/internal/leg-070\\_internal\\_en.html](http://www.cc.cec/budg/leg/internal/leg-070_internal_en.html).

by drawing up an amending recovery order in accordance with Articles 3 and 4.  
He/she shall draw up the statement of grounds using the model in Annex 5.

## **Part Two**

### **Specific provisions**

#### **Chapter 1**

#### **Recovery of fines and penalty payments imposed under the Treaty on the Functioning of the European Union**

##### *Article 17*

##### *Specific provisions*

The provisions in Part One shall apply to the recovery of fines and penalty payments imposed on economic operators under the Treaty on the Functioning of the European Union, in particular under Articles 91, 95 and 103 TFEU (hereafter “EU fines and penalty payments”), subject to the derogations in this Chapter.

##### *Article 18*

##### *Commission decision*

The Commission’s accounting officer shall be consulted on the budgetary and financial aspects of any draft decision imposing EU fines or penalty payments. His/her opinion shall be sent to the Commission at the same time as the draft decision.

##### *Article 19*

##### *Estimate of the amount receivable*

As the situation referred to in Article 70(1) of the Financial Regulation is deemed, in the case of EU fines and penalty payments, to be the Commission decision imposing a fine or penalty payment, no estimate of the amount receivable need be drawn up for EU fines and penalty payments.

##### *Article 20*

##### *Determination of the deadline*

Any EU fine or penalty payment must be paid within three months after the debtor has been notified of the Commission decision, counting from the date of the advice of delivery.

##### *Article 21*

##### *Commission decision, notification of the decision and establishment of the entitlement*

1. Once the Commission decision has been notified, the Secretariat-General shall send a true copy of the letter of notification and of the decision to the authorising officer responsible, the accounting officer and the Legal Service.

2. The Secretary-General or, where appropriate, the Legal Service shall send a copy of the proof of notification referred to in paragraph 1 to the authorising officer responsible, the accounting officer and, where appropriate, the Legal Service.

Notification of the Commission decision shall be deemed equivalent to sending a debit note within the meaning of Article 5.

The responsible authorising officer by delegation shall draw up the recovery order without delay in accordance with the provisions of Part One.

*Article 22*  
*Recovery procedure in the event of an appeal*

1. When the debtor appeals to a court of the European Union against a Commission decision imposing a fine or a penalty payment under the Treaty on the Functioning of the European Union, the Legal Service shall immediately inform the authorising officer responsible and the accounting officer.

The Legal Service shall similarly inform them of the outcome of the legal proceedings.

2. In the circumstances referred to in paragraph 1, the accounting officer shall provisionally collect the amounts concerned from the debtor or request him to lodge a financial guarantee, as referred to in Article 9. The provisionally collected amounts shall be invested in such a way as to ensure the security and liquidity of the funds and generate income. The guarantee requested shall be independent of the obligation to pay the fine, periodic penalty payment or other penalty and shall be enforceable upon first call. Depending on the court's final decision, both the principal and the interest will be either definitively entered in the accounts as revenue or repaid proportionately to the economic operators as stipulated in the decision.

The guarantee shall cover the principal and the interest on late payment referred to in Article 86(5) of the detailed implementing rules.

The debtor may request – and be allowed – to replace a financial guarantee lodged earlier by a provisional payment.

## **Chapter 2**

### **Recovery of lump sums and penalty payments imposed by the Court of Justice of the Communities under Article 260 of the Treaty on the Functioning of the EU and Article 143 of the Euratom Treaty**

#### *Article 23* *Specific provisions*

The provisions of Part One shall apply to the recovery of the lump sums and penalty payments imposed by the Court of Justice of the European Union (hereafter "the Court of Justice") under Article 260 of the Treaty on the Functioning of the European Union and Article 143 of the Euratom Treaty, subject to the derogations in this Chapter.

#### *Article 24* *Estimate of the amount receivable*

The authorising officer responsible shall draw up an estimate of the amount receivable within the meaning of Article 2 as soon as the Commission has decided to refer the case to the Court of Justice of the European Union under Article 260(2) TFEU or Article 143(2) Euratom.

#### *Article 25* *Establishment of entitlement and recovery order(s)*

1. When the judgment by the Court of Justice imposes a lump sum penalty on a Member State, the authorising officer responsible shall establish the entitlement and draw up the corresponding letter requesting payment. The letter requesting payment shall be addressed to the Member State in accordance with Article 26.

If the Court of Justice does not impose a lump sum penalty on the Member State, the authorising officer responsible shall cancel the estimate of the amount receivable referred to in Article 24.

2. When the judgment by the Court of Justice imposes a penalty payment on a Member State, the authorising officer responsible shall establish the entitlement every month after judgment is given and prepare the corresponding letters requesting payment for a period of one month. The letter requesting payment shall be addressed to the Member State in accordance with Article 26.

The amounts established shall be modified, where applicable, as soon as the Commission has been able to ascertain that the Member State has taken measures to comply with the Court's judgment against it for failure to perform its obligations.

If the Court of Justice does not impose a penalty payment, the authorising officer responsible shall cancel the estimate of the amount receivable referred to in Article 24.



3. Once the letter requesting payment has been sent in accordance with Article 26, the Secretariat-General shall send a copy of the advice of delivery to the authorising officer responsible, the accounting officer and the Legal Service.
4. All lump sums and penalty payments must be paid within the payment period laid down in Article 26. The authorising officer responsible shall draw up the recovery order with the deadline corresponding to this payment period. He/she shall not send a debit note.

*Article 26*  
*Notification of the Member State*

The Secretary-General, in agreement with the accounting officer and the Legal Service, shall send the letter requesting payment mentioned in Article 25 to the Permanent Representation to the Union of the Member State concerned, with advice of delivery.

Sending the letter requesting payment shall be deemed equivalent to sending a debit note within the meaning of Article 5 of these provisions. Unless the Court's judgment sets a specific deadline for payment, the Member State shall be asked to pay by a deadline which shall be set at 45 calendar days following receipt of the letter requesting payment in accordance with Articles 8 and 10.

*Article 27*  
*Recovery procedure and interest on late payment applicable*

1. If the Member State against which the Court of Justice has found under Article 260 TFEU or Article 143 Euratom has not effected payment by the deadline specified in the letter requesting payment, the accounting officer shall immediately send a letter of formal notice, asking it to pay the amount owed within fifteen calendar days, plus default interest at the rate referred to in Article 8.
2. If payment has still not been made on expiry of the fifteen calendar days following receipt of the letter of formal notice by the Member State, the accounting officer shall recover the amount by offsetting in accordance with the procedure set out in Article 29 after having informed the authorising officer responsible and having given the indebted Member State the opportunity to submit comments.

*Article 28*  
*Final payment of the amount owed*

1. As the Court's judgment under Article 260 TFEU or Article 143 Euratom is final, payments made by the Member State in line with the Court's verdict shall also be final, subject to the second subparagraph of paragraph 2.
2. In the case of penalty payments, it is for the Commission to determine the date on which the Member State took measures to comply with the Court's judgment against it for failure to perform its obligations and immediately put an end to the recovery procedure.

Any surplus penalty payments collected after that date shall be repaid to the Member State, and the monthly recovery orders in question shall be amended or cancelled. In accordance with Article 106 of the detailed implementing rules, surplus penalty payments collected shall be repaid without interest.

3. Until the total amount of the penalty payment is fixed definitively, any sums collected under this heading shall not be definitively recorded as revenue.

*Article 29*  
*Offsetting*

In the circumstances provided for in Article 27(2), the total amount of the fine or penalty payment imposed by the Court, plus interest, shall be deducted from payments due to the Member State.

## **Chapter 3**

### **Transitional provisions for the recovery of fines and penalty payments imposed by the Commission under the ECSC Treaty<sup>7</sup>**

#### *Article 30* *Specific provisions*

The provisions of Part One shall apply to the recovery of fines and penalty payments imposed under the ECSC Treaty, in particular under Articles 47, 58, 59, 64, 65, 66 and 68 ECSC (hereafter “ECSC fines and penalty payments”), subject to the derogations in this Chapter.

#### *Article 31* *Determination of the deadline*

Any ECSC fine or penalty payment shall remain due counting from the three months after the debtor has been notified of the Commission decision (confirmed by the date of the advice of delivery).

#### *Article 32* *Decision and notification of the decision*

Notification of the Commission decision by the Secretary-General shall be deemed equivalent to sending a debit note within the meaning of Article 5 of these provisions.

Once the Commission decision has been notified, the Secretariat-General shall send a copy of the letter of notification to the authorising officer responsible, the accounting officer and the Legal Service.

The authorising officer responsible shall draw up the recovery order without delay in accordance with the provisions of Part One. He/she shall not send a debit note.

#### *Article 33* *Recovery procedure in the event of an appeal*

1. When the debtor appeals to the Community court against a Commission decision imposing a fine or a penalty payment under the ECSC Treaty, the Legal Service shall immediately inform the authorising officer responsible and the accounting officer.

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<sup>7</sup> The Treaty establishing the ECSC expired on 23 July 2002, but the assets of the ECSC in liquidation continue to exist in accordance with Annex I, point 1(2) of Decision 2002/234/ECSC of the Representatives of the Governments of the Member States, meeting within the Council, of 27 February 2002, on the financial consequences of the expiry of the ECSC Treaty and on the research fund for coal and steel (OJ L 79, 22.3.2002, p.42).

The Legal Service shall similarly inform them of the outcome of the legal proceedings.

2. In the circumstances referred to in paragraph 1, the accounting officer shall provisionally collect the amounts concerned from the debtor or request him/her to lodge a financial guarantee, as referred to in Article 9. The guarantee requested shall be independent of the obligation to pay the fine, penalty payment or other penalty and shall be enforceable upon first call. Depending on the court's final decision, both the principal and the interest will be either definitively entered in the accounts or repaid proportionately to the economic operators as stipulated in the decision.

The guarantee shall cover the principal and the interest on late payment referred to in Article 86(5) of the detailed implementing rules.

The debtor may request – and be allowed – to replace a financial guarantee lodged earlier by a provisional payment.

## **Part Three**

### **Final provisions**

#### *Article 34* *Scope of these provisions*

1. These internal procedure provisions for the recovery of debts replace:
  - the internal procedure provisions for the recovery of debts under the EEC and Euratom Treaties adopted by the Commission on 29 July 1987 by written procedure E/967/87 – SEC(87)1258;
  - the internal procedure provisions for the recovery of fines and penalty payments by the Commission under the EEC Treaty adopted by the Commission on 29 October 1986 by written procedure E/1374/86 – SEC(86)1748;
  - the internal procedure provisions for the recovery of fines and penalty payments by the Commission under the ECSC Treaty adopted by the Commission on 4 July 1986 by written procedure E/824/86 – SEC(86)1136;
  - the Commission Decision of 6 January 1982 concerning the recovery of court fees, adopted by the Commission by written procedure E/284/82 on 16 March 1982 – C(82)333;
  - and the Commission Decision on the recovery of lump sums or penalty payments imposed by the Court of Justice in pursuance of Article 171 EC, adopted by written procedure PE/1973/94 on 7 December 1994, SEC(1994)2103.
2. They shall be annexed to the Internal rules on the implementation of the general budget of the European Union and, where applicable, amended when the Internal Rules are adopted each year.

#### *Article 35* *Computer systems*

The computer systems necessary to implement these internal procedure provisions for the recovery of entitlements shall be made available to Commission departments.

#### *Article 36* *Entry into force*

These provisions shall enter into force on 1 January 2010.

Done at Brussels, 8.4.2010

*For the Commission*

*[...]*

*Member of the Commission*

## **ANNEX VIII IR 2009**

### **Internal procedure provisions for the recovery of entitlements**

#### **List of annexes**

##### **Annex 1**

containing the standard financial guarantee for the payment by instalments of miscellaneous amounts in accordance with Article 9 of these internal procedure provisions for the recovery of entitlements arising from direct management and the recovery of fines and penalty payments under the Treaties

##### **Annex 2**

containing the standard financial guarantee for the payment of fines (valid for an unlimited period) in accordance with Article 9 of these internal procedure provisions for the recovery of entitlements arising from direct management and the recovery of fines and penalty payments under the Treaties

##### **Annex 3**

containing the standard financial guarantee for the payment of fines (valid for a limited period) in accordance with Article 9 of these internal procedure provisions for the recovery of entitlements arising from direct management and the recovery of fines and penalty payments under the Treaties

##### **Annex 4**

containing the standard Commission Decision concerning recovery in accordance with the first subparagraph of Article 13(1) of these internal procedure provisions for the recovery of entitlements arising from direct management and the recovery of fines and penalty payments under the Treaties

##### **Annex 5**

containing the standard grounds for a proposal to waive or cancel the Community entitlement or make a technical and accounting adjustment of the amount receivable in accordance with Articles 14, 15 and 16 of these internal procedure provisions for the recovery of entitlements arising from direct management and the recovery of fines and penalty payments under the Treaties

## ANNEX 1

### STANDARD FINANCIAL GUARANTEE ON FIRST CALL

(repayment in instalments)

We, the undersigned guarantor, irrevocably and unconditionally undertake to pay to the European Commission upon first call a sum equivalent to the following amounts:

- No 3240 debit note..... for EUR [...], issued to [...], hereinafter referred to as "the addressee of the debit note", repayable to the European Commission since **[payment deadline of the debit note]** relating to project/contract/decision [...];
- interest on this amount calculated from the deadline indicated in the debit note, i.e. [...], to the date of the actual payment of the debt, on the basis of the interest rate applied by the European Central Bank to its principal refinancing operations for the month of [...], i.e. [...], as published in the Official Journal of the European Union C [...] of [...], plus [...] percentage points, that is a combined rate of [...] %;
- reduced by any amounts repaid.

This undertaking may not be withdrawn without the prior agreement of the European Commission.

The guarantor waives the right both to require exhaustion of remedies against the company and the right to require the creditor to claim proportionally from each guarantor (should there be several).

If the amounts and dates of the respective instalments shown in the attached schedule of repayments (i.e. [...] monthly **[or other]** instalments of EUR [...], followed by a final payment of EUR [...]), are not scrupulously respected by **[the addressee of the debit note]**, this guarantee shall be executed unconditionally on receipt of the first written demand from the European Commission indicating the amount of principal and interest due.

This financial guarantee constitutes an original right that is independent of the relationship between the European Commission and the addressee of the debit note, on the one hand, and of the relationship between the guarantor and the addressee of the debit note, on the other.

This guarantee shall be governed by the national substantive law of the Kingdom of Belgium.

This financial guarantee is not subject to any national time limitation whatsoever.

Any payment under this guarantee shall be made notwithstanding any objection by the addressee of the debit note or by any other party of whatever capacity and shall be free of any deduction, interest or charges whatsoever. In the event of the insolvency or liquidation of the addressee of the debit note, the European Commission shall have the right to exercise the guarantee immediately, whereby the guarantor may not invoke the deadlines set out in the attached schedule of repayments.

Any dispute between the guarantor and the European Commission concerning the validity, interpretation or execution of the present financial guarantee shall fall within the exclusive jurisdiction provided for by the Treaty on the Functioning of the European Union.



## Annex 2

### STANDARD FINANCIAL GUARANTEE ON FIRST CALL (fines - limited period of validity) (referral to the General Court or to the Court of Justice of the European Communities)

We, the undersigned guarantor, irrevocably and unconditionally undertake to pay to the European Commission upon first call a sum equivalent to the following amounts:

- the fine of EUR [...] imposed on [**name of company, hereafter "the company"**] by the decision of the European Commission of [...] in Case No [...];

- interest on this sum calculated from [**due date of the fine, i.e. three months after receipt by the addressee of the letter giving notice of the Commission's decision**] to the date of actual payment of the fine, on the basis of the rate applied by the European Central Bank to its principal refinancing operations for the month of [...] that is [...]%, published in the Official Journal of the European Union C [...] of [...], plus one and a half percentage points, that is a combined rate of [...]%.

This undertaking may not be withdrawn without the prior agreement of the European Commission.

The guarantor waives the right both to require exhaustion of remedies against the company and the right to require the creditor to claim proportionally from each guarantor (should there be several).

The present financial guarantee constitutes an original right that is independent of the relationship between the European Commission and the company and that is independent of the relationship between the guarantor and the company.

This guarantee shall be executed unconditionally on first written demand of the Commission indicating the amount of the principal and the interest and certifying that this amount is due from the company on the basis of a definitive judgment of the General Court or the Court of Justice.

This financial guarantee is not subject to any national time limitation whatsoever. It shall expire five years after the definitive judgment of the General Court or of the Court of Justice concerning the fine imposed on the company.

This guarantee shall be governed by the national substantive law of the Kingdom of Belgium.

Any payment under this guarantee shall be made notwithstanding any objection by the company or by any other party of whatever capacity and shall be free of any deduction, interest or charges whatsoever. In the event of the company's insolvency or liquidation, the European Commission shall have the right to exercise the guarantee at any time; the guarantor may not object that the time for payment has not elapsed.

Any dispute between the guarantor and the European Commission concerning the validity, interpretation or execution of the present financial guarantee shall fall within the exclusive jurisdiction provided for by the Treaty on the Functioning of the European Union.

### Annex 3

#### STANDARD FINANCIAL GUARANTEE (fines - limited period of validity)

We, the undersigned guarantor, irrevocably and unconditionally undertake to pay to the European Commission a sum equivalent to the following amounts:

the fine of EUR [...] imposed on [**name of company hereafter "the company"**] by the decision of the European Commission of [...] in case No [...];

interest on this sum calculated from [**due date of the fine, i.e. three months after receipt by the addressee of the letter giving notice of the Commission's decision**] to the date of actual payment of the fine, on the basis of the rate applied by the European Central Bank to its principal refinancing operations for the month of [...], that is [...]%, published in the Official Journal of the European Union C [...] of [...], plus one and a half percentage points, that is a combined rate of [...]%.

This undertaking may not be withdrawn without the prior agreement of the European Commission.

The guarantor waives the right both to require exhaustion of remedies against the company and the right to require the creditor to claim proportionally from each guarantor (should there be several).

The present financial guarantee constitutes an original right that is independent of the relationship between the European Commission and the company and that is independent of the relationship between the guarantor and the company.

This guarantee shall be executed unconditionally on first written demand of the Commission indicating the amount of the principal and the interest and certifying that this amount is due from the company on the basis of a definitive judgment.

This guarantee shall expire one year after the date of issue. However, it has been expressly agreed that it will be automatically extended for additional periods of one year from the date of issue or each future due date, unless we, [**name and address of the guarantor**], give notice by registered post 45 calendar days before this date that we wish to abstain from extension of this guarantee for an additional period against payment of the guaranteed amounts.

This notice shall be addressed to the Accounting Officer of the European Commission (Directorate-General for Budgets) and shall be followed within fifteen calendar days of receipt of the letter of notice by payment of the fine plus the interest accrued, even if no decision has been taken by the Court of First Instance or the Court of Justice of the European Union in the case pending in connection with the fine imposed on the company.

This guarantee shall be governed by the national substantive law of the Kingdom of Belgium.

This guarantee is not subject to any national time limitation.

../..

Any payment under this guarantee shall be made notwithstanding any objection by the company or by any other party of whatever capacity and shall be free of any deduction, interest or charges whatsoever. In the event of the company's insolvency or liquidation, the European Commission shall have the right to exercise the guarantee at any time; the guarantor may not object that the time for payment has not elapsed.

Any dispute concerning the validity, interpretation or execution of the present financial guarantee shall fall within the exclusive jurisdiction of the Court of Justice of the European Union.

## **ANNEX 4**

**to the Internal Procedure provisions for the recovery of entitlements arising from direct management and from fines, lump sums and penalty payments under the Treaties**

**Instructions to authorising departments:**

**The following particulars must be contained in any enforceable recovery decision within the meaning of Article 299 of the TFEU, which is to be drawn up and completed by the authorising officer depending on the case:**

- appropriate explanation of the facts giving rise to the debt (e.g. failure to perform the contract, non-eligibility of costs, incorrect beneficiary, payment not due),
- indication of whether the debtor was able to put forward his/her comments beforehand and, where applicable, the action taken in response (right of defence),
- dates of reminder and letter of formal notice,
- explanation of the total amount (principal + interest accumulated),
- time allowed for payment,
- number of bank account and reference to be given on payment.

**The language rules must also be respected (see Regulation No 1 determining the languages to be used by the EEC, OJ 17 of 6 October 1958, p. 358).**

***NB The enforceable decision should not be accompanied by a financial statement even when it is submitted to the Commission.***

**An example of the decision follows:**

### **COMMISSION DECISION**

**of [...]**

**relating to the recovery of [...]**

**THE EUROPEAN COMMISSION,**

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 299 thereof,

[Having regard to the Treaty establishing the European Atomic Energy Community,]

*(If the entitlement originates from funds which have been financed in full or in part with the EAEC Treaty as a legal base)*

[Having regard to the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities<sup>8</sup>,]

*(To be cited only for contracts signed before 1 January 2003)*

[Having regard to Commission Regulation (Euratom, ECSC, EC) No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977<sup>9</sup>, and in particular Article 94(1) thereof,]

*(To be cited only for contracts signed before 1 January 2003)*

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>10</sup>, and in particular Article 72(2) thereof,

Having regard to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>11</sup>, and in particular Article 86(2) thereof,

Whereas:

(1) [Appropriate explanation of the obligating event (e.g. salary paid to a former auxiliary staff member after expiry of the contract or too high an advance on mission expenses) with express reference to the name, status (examples: former auxiliary staff member, former seconded national expert, pensioner) and address of the debtor]

**Example:** The advance received by Mr/Mrs ..., former seconded national expert (SN...) domiciled at ... for his/her mission to ... (country) on ... was too high. His/her contract expired on ....

(2) **[Reference to the possibility already given to the debtor to present observations and any action that has been taken on these observations]**

(3) By debit note No [...] sent on [...], [***name of debtor***] was requested to pay the sum of EUR [**principal amount in figures (*amount in words*)**] by [...] and attention was brought to the fact that failing payment by the deadline the debt to the European Union would bear interest at the rate applied by the European Central Bank to its principal refinancing operations in euro which is published every month in the C series of the *Official Journal of the European Union* and which is in force on the first day of the month in which the due date falls plus [3.5 or 7 percentage points, as appropriate] and that the Commission reserved the right to enforce payment of the debt pursuant to Article 299 of the Treaty.

(4) Since [***name of the debtor***] did not comply with the request for payment, the Commission sent a reminder on [...].

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<sup>8</sup> [ OJ L 356, 31.12.1977, p. 1.]

<sup>9</sup> [ OJ L 315, 16.12.1993, p.1. Regulation last amended by Commission Decision 2002/443/EC (OJ L 153, 13.6.2002, p.15).]

<sup>10</sup> OJ L 248, 16.9.2002, p. 1.

<sup>11</sup> OJ L 357, 31.12.2002, p. 1.

(5) By letter of formal notice which **[name of debtor]** received on **[date as confirmed by the advice of delivery]**, the Commission demanded payment of the principal plus default interest from the deadline stipulated in the debit note. The letter indicated that the Commission would take legal action to enforce recovery of both the principal and interest should the above sum not be repaid within fifteen days.

(6) The calculation of daily interest is based on the EU rules applicable when the contract is signed (Article 94(1) of Regulation (Euratom, ECSC, EC) No 3418/93 if the contract was signed before 1 January 2003 or Article 86(2) of Regulation (EC, Euratom) No 2342/2002 if the contract was signed on or after 1 January 2003).

(7) Under the circumstances, and because **[name of debtor]** has not replied to invitations to pay the amount in question requested by the debit note, the reminder and the letter of formal notice, the procedure provided for in Article 299 of the Treaty on the Functioning of the EU must be applied.

(8) Under Article 299 of the Treaty, enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. It may be suspended only by a decision of the Court of Justice of the European Union. However, the courts of the country concerned have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

HAS DECIDED AS FOLLOWS:

#### Article 1

**[Name and address of debtor]** owes the European Commission EUR **[amount in figures]** (*amount in words: example: eight hundred and sixty seven euro and fifty two cents*) in principal, plus default interest of EUR **[amount in figures]** (*amount in words*) at [...], giving a total of EUR **[amount in figures]** (*amount in words*) on the date indicated above, to be increased by EUR **[amount in figures]** (*amount in words*) for every additional day of delay from [...].

#### Article 2

The amounts stated in Article 1, comprising the principal sum plus interest incurred up to the date of payment, shall be paid into European Commission account No 074/EDC/0509300 (IBAN code IT24N0569611091EDCEU0509300, SWIFT code POSOIT22) at the Banca Popolare di Sondrio, Piazza Garibaldi 16, I-23100 SONDRIO (SO) with the message: “**debit note No ...**”.

#### Article 3

Should the debtor fail to make payment in its entirety within 15 days of receipt of this Decision, as confirmed by the date of the advice of delivery, enforcement proceedings shall be initiated in accordance with the third paragraph of Article 299 of the Treaty on the Functioning of the EU. The debtor shall be responsible for the fees and costs involved in the enforced recovery procedure. In accordance with Article 299 TFEU, enforcement (and thus the payment of costs) is governed by the national law of the Member State in which it is carried out.

#### Article 4

This Decision is addressed to **[name and address of debtor]**.

It is enforceable under the first paragraph of Article 299 of the Treaty on the Functioning of the EU.

Done at Brussels, [...]

*For the European Commission*

*by delegation*

*Director-General [or Head of Service]*



## Annex 5

### GROUND FOR THE PROPOSED WAIVER, CANCELLATION OR TECHNICAL AND ACCOUNTING ADJUSTMENT

- **Directorate-General** and authorising department:

.....

- Name and position of the case-handler: .....

Waiver

recovery impossible (old recovery order or insolvent debtor)

cost-effectiveness reasons

Cancellation

Technical and accounting adjustment

**No of original recovery order:** .....

**NAME** of debtor:.....

**Original amount** :.....

**Balance** outstanding: .....

**Amount** of the proposed waiver/cancellation/technical and accounting adjustment:

.....  
.....

**Reasons** for the proposed waiver/cancellation/technical and accounting adjustment, accompanied by supporting documents:

**Course** of the recovery procedure:

Reminder dated .....

Letter of formal notice dated:.....

Recovery passed on by the accounting officer to the Legal Service on .....

Other (specify)

**Waiver** by Commission under the Internal Rules on the implementation of the budget

**Waiver** by authorising officer responsible as designated by the Internal Rules on the implementation of the budget

**Cancellation** by the authorising officer responsible as designated by the Internal Rules on the implementation of the budget

**Technical and accounting adjustment** by the authorising officer responsible as designated by the Internal Rules on the implementation of the budget

Date: ..... Name and signature of the authorising officer:

**NB The decision to waive recovery of a debt should not be accompanied by a financial statement even when it is submitted to the Commission.**