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2022/0162 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the financial rules applicable to the general budget of the Union (recast)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Financial Regulation[1] lays down the principles and general financial rules for establishing and implementing the EU budget and controlling EU finances. The 2018 Financial Regulation is the result of a major revision, incorporating the previous Rules of Application into a single rulebook. The revision increased flexibility, simplified financial rules considerably and paved the way for the proposals under the 2021-2027 multiannual financial framework (MFF). These simpler rules need time to harness their full potential for the implementation of the 2021-2027 programmes and instruments, for example on the single audit approach, cross-reliance on audits and assessments, simplified cost options, reduced administrative burden, and the focus on results. Changing financial rules too often creates uncertainty for recipients of EU funds.

Therefore, the Commission is now proposing **a targeted amendment**, aiming to strike the right balance by focusing on changes that are really necessary. The main reason for this revision is the need to **align the Financial Regulation with the MFF package**, to maintain a **single rulebook** governing the expenditure of the Union, meaning that all general financial rules are included in the Financial Regulation. This will provide greater legal certainty for Union institutions and recipients of Union funds. The proposal also reflects declarations made by the EU institutions in the context of the MFF.

In addition, the proposal includes targeted improvements and simplifications. These have been identified since the entry into force of the 2018 Financial Regulation and some of them respond to recent events and trends. Improvements build on the lessons learned from the COVID-19 pandemic and focus on crisis management. They also aim to better protect EU financial interests (for example by making more use of digitalisation), better contribute to the achievement of the EU policy objectives and to achieve additional simplification for recipients of Union funds.

• Consistency with existing policy provisions in the policy area

This proposal comes after the adoption of the MFF package, to further improve the rules to be used in the implementation of the 2021-2027 programmes and instruments, and beyond.

The proposal reflects certain derogations to the current Financial Regulation that the Union legislator decided during the MFF negotiations, notably on sectoral legislation. Simplifying and improving EU financial rules should also increase the policies' impact and their results on the ground.

[1] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 322(1) of the Treaty on the Functioning of the European Union (TFEU).

• Subsidiarity (for non-exclusive competence)

The adoption of EU general financial rules falls under the exclusive competence of the EU.

• Proportionality

This proposal aligns the Financial Regulation with the 2021-2027 MFF package and includes targeted improvements and simplifications. It does not contain rules that would not be necessary to achieve the objectives of the Treaty.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

A public consultation on the proposed amendment of the Financial Regulation was held from July to October 2021, receiving 38 contributions. The contributions came from a wide range of stakeholders, including the general public, Member State authorities, international organisations, non-governmental organisations (NGOs) and business associations.

On strengthening the protection of the Union financial interests, most respondents would support additional transparency and protection measures. They considered flexibility and proportionality to be necessary, and saw confidentiality, data protection and consistent use of existing tools as important. Participants generally welcomed possible improvements of the early-detection and exclusion system (EDES). There was general support for the Commission to perform appropriate due diligence to ensure that entrusted entities comply with applicable Union law and agreed international and Union standards. Finally, stakeholders wanted to strengthen the Financial Regulation's role in preventing conflicting professional interests of candidates or tenderers. However, internal guidelines to EU staff could also play a role in this.

The participants in the public consultation agreed on the importance of simplifying and clarifying certain rules on programme implementation to reduce administrative burden. Stakeholders welcomed measures for the following topics: (i) EU security and strategic autonomy; (ii) financial instruments, budgetary guarantees and financial assistance, where there is clear support for streamlining reporting obligations; and (iii) digital controls and audits, where stakeholders acknowledged that human oversight should be maintained.

On crisis management, participants in the consultation encouraged the approach of building on lessons learned from the COVID-19 crisis to improve procurement rules. Stakeholders elaborated on possible changes, for example additional flexibility to conclude contract amendments, the acceptance of electronic documents, and facilitating support to global initiatives and programmes.

The Commission has carefully considered this feedback and reflected most of it in the draft proposal.

- **Impact assessment**

In line with the Commission's statement on future revisions of the Financial Regulation[2], no impact assessment is required. The Financial Regulation provides the general rules and the toolbox for the implementation of EU spending programmes and instruments. Therefore, revisions of the legislation do not have any direct economic, environmental or social impacts which could effectively be analysed in an impact assessment. The value added of impact assessments comes when making policy choices on specific spending programmes and instruments, which have to comply with the regulatory framework provided by the Financial Regulation. Instead, the Commission has carried out a public consultation for this proposal, which is common practice. The Commission has also build on the operational experience and lessons learned, in particular to identify and analyse the issues to be addressed and the added value of Union involvement.

- **Regulatory fitness and simplification**

The revision of the Financial Regulation does not fall under the regulatory fitness and performance programme (REFIT). However, by responding to the need to simplify, improve and align EU financial rules with the 2021-2027 MFF package, the revision contributes significantly to the better regulation agenda. The proposed approach is fully in line with the better regulation framework and the Commission's work on simplification.

For example, the proposal includes a reference to digital audits and emerging technologies to encourage their wider use, while keeping flexibility. The proposal also includes lessons learned from COVID-19 on procurement (e.g. joint procurement, procurement on behalf of the Member States, use of a central purchasing body, multiple sourcing for the same type of goods or services, electronic invoicing and better rules on external experts). It also contains simplification measures for grants (e.g. simplified forms of grants, simpler rules for use of volunteers, simpler calculation to show compliance with the no-profit principle, and simpler process for granting humanitarian aid). The ultimate goal of all these measures is to reduce the administrative burden for applicants and recipients of EU funds, without creating additional risks for the sound financial management of the EU budget.

The proposal does not exempt micro-enterprises from its scope. Such enterprises can be beneficiaries of EU funds and must therefore be subject to the general financial rules. The rules for the 2021-2027 funding period already make it easier for micro-enterprises to participate. For example, the Commission recently used the Financial Regulation's rules on simplified forms of funding to adopt a decision allowing owners of micro-enterprises to declare their staff costs as predefined unit costs under any funding programme, without need to provide evidence for the rates declared. Moreover, in certain areas, the proposal reduces costs for businesses, which are often micro-, small and medium-sized enterprises (MSMEs). The proposal aims to strengthen the implementation of the principle of proportionality by inter alia relying on the due diligence of partners implementing the budget under indirect management. This would enable a more flexible approach to MSMEs. More generally, many of the targeted simplification measures should benefit all enterprises and thus also small to medium-sized enterprises.

- **Fundamental rights**

The proposal complies with the Charter of Fundamental Rights of the European Union.

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[2] 2018/C 267 I/01.

4. BUDGETARY IMPLICATIONS

The proposal does not have budgetary implications.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

1.1. Alignment with the MFF and simplification

- **Alignment with the MFF (general):** some references to the basic acts of 2021-2027 and other legislation are added to the Financial Regulation. In addition, to ensure smooth implementation of the MFF Regulation[3], certain derogations from the budgetary principles set out in the sectoral basic acts are proposed to be reflected in the Financial Regulation in line with the single rulebook approach (Articles 12, 14, 15 and 18, Article 32(2), Article 41(2), Article 44(1) and (3), Article 48(2), Article 54, Article 96(1) and (2), Article 97(3), Article 106(1), Article 115(3), Article 214(3), Article 250(1)(b) and Article 253(1)(c) of the Financial Regulation). Moreover, to follow up on the joint declaration on the potential inclusion of the content of the General Conditionality Regulation[4], a reference to this Regulation is added under Title II on the principles from which sectoral legislation cannot derogate (Article 6).
- **Borrowing and lending:** the proposal aims to enhance reporting in line with the joint declaration 2020/C 444 I/06[5], in order to increase transparency and facilitate cooperation with the budgetary authority. The proposed amendment streamlines the reporting obligations for borrowing and lending operations. It codifies the current practice by including in the document annexed to the section of the budget relating to the Commission a comprehensive overview of the Commission's borrowing and lending operations (Article 52(1)).
- **Assigned revenue:** the proposal aims to increase the transparency and visibility of external assigned revenue in the documents accompanying the budget, in line with the joint declaration (Article 22(1) and Article 41(3) and (8)). It also aims to facilitate the management of additional contributions (including voluntary ones) from Member States (Article 21(2)), thus avoiding the need to request payments from Member States before actual payment needs arise.
- **Financial instruments and budgetary guarantees:** the proposal aims to enhancing legal clarity by: (i) addressing inconsistencies and redundancies in the current Financial Regulation; (ii) better reflecting the functioning of provisioning and of budgetary guarantees; and (iii) updating relevant rules (Article 2(9), new Article 2(15), new Article 2(33), new Article 212(3), Article 212(5), Article 213(4), Article 221 and Article 223(6), and new Article 213(5)).

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3 Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, (OJ L 433I , 22.12.2020, p. 11).

4 Appendix to the Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Regulation of the European Parliament and of the Council on a general regime of conditionality for the protection of the Union budget (COM(2020) 843 final).

5 Joint declaration of the European Parliament, the Council and the Commission on reassessing the external assigned revenue and borrowing and lending provisions in the Financial Regulation (2020/C 444 I/06).

- In addition, the proposal streamlines reporting to avoid duplications and inconsistencies. It strengthens reporting obligations in a working document attached to the draft budget and the integrated financial report under Article 253(1). This streamlining also means that current Article 250 must be deleted. Finally, the proposal strengthens Article 218 by moving certain provisions of former Article 41(5) to Article 218. This move makes sure that it is not necessary to prepare two parallel reports on the common provisioning fund with similar content (new Article 41(5)(g), Article 210(3) and Article 218).
- The proposal also clarifies how the provisioning and budgetary guarantees interact with the definitions and rules on budgetary commitments, legal commitments, recipients and publication of information on recipients (Article 2(38) and (58), Article 7(4), Article 10(3), Article 38(3)(c), Article 112(2), Article 113(1)(a), Article 113(4), Article 115(2) and Article 163).

1.2. Crisis management, modernisation and simplification

- **Non-financial donations by EU institutions:** the proposal includes a new instrument reflecting current practice. It will provide a framework for the EU institutions to donate goods, services, supplies or works. It will also provide a stable legal basis in particular for future emergency situations, more transparency, accountability and legal certainty for recipients (Article 2(1), (2), (3), (38), (50) and (58), Article 133, Article 154(3) and new Article 244).
- **Prizes:** similar to the introduction of non-financial donations, the EU institutions should also be able to award prizes which are not financial, such as vouchers, tickets and trips. This is also important for example in order to allow contests among young people who do not have a bank account in their Member State, but who can easily receive their reward in a practical form. The introduction of this possibility requires small modifications in Articles 2(52), 210(4) and 211(1).
- **Procurement and experts**: the proposal adapts the procurement rules that apply in crisis management situations to enable EU institutions or bodies to procure on behalf of Member States or to act as a central purchasing body. This central purchasing body would be able to donate or resell supplies and services to Member States, and launch joint procurement procedures, although the EU institutions would not be acquiring services and supplies for themselves (Article 169(1) and (2), new Article 169(3), and point 11.1(f) and point 12.2(a) of Annex I). The proposal also updates the definition of crisis to include public and animal health, food safety emergency situations and global health threats such as pandemics (Article 2(22)).

  Other simplification measures and technical corrections and updates enable multi-sourcing contracts, correct inconsistencies and omissions, and clarify digitisation of procurement procedures (new Article 2(46), Article 2(76), Article 164(5), Article 168(3), Article 171(1), Article 173(1), Article 174(2) and (3), Article 175, and point 1.2, point 6.2, point 6.3, point 6.4, point 6.6, point 9.3, point 9.4, point 9.5, point 11.1(a) and (c), point 11.1(h)(iv), point 11.1(j) and (m), point 11.2, point 16.3(f) and (g), point 18.1, point 18.7, point 19.2, point 20.2, point 21.1, point 24.3, point 27, point 28.1, point 28.2, new point 29.4, point 30.2, point 31.1, new point 34, point 35.1 and point 39.3 of Annex I).

  The proposals further align the procurement rules of the Financial Regulation with Directive 2014/24/EU on public procurement and Directive 2014/55/EU on electronic invoicing. For example, the proposal clarifies time limits that apply to

dynamic purchasing systems, and includes the possibility to assess – as award criteria – qualifications and experience of staff assigned to perform the contract (Article 117(3), Article 176(2), new Article 176(4) and (5), and Article 179(1)).

The proposal also responds to the need for more flexible rules for Union delegations in third countries, factoring in local market conditions and practices of Member States. Therefore, the threshold for and the rules on market access are aligned with those that currently apply to external action procurement. In addition, Union delegations that award contracts on their own account would be allowed to accept, for example, submission of application documents by hand delivery (Article 153(5)).

It is also proposed to apply the measures taken under the International Procurement Instrument[6] (IPI, not yet adopted) to EU institutions' procurement. Contracting authorities will have to apply IPI measures (in a form of score adjustment to bids received from or an exclusion of economic operators established in certain third countries) in the same manner as contracting authorities and contracting entities of Member States once the IPI Regulation enters into force and IPI measures are adopted and published in the Official Journal – the EU institutions should lead by example and apply the same rules (Article 179(1), new , and point 14 of Annex I).

The proposal responds to the need for simplification of procurement procedures for buildings. Furthermore, the proposal excludes from the scope of the procurement rules of this Regulation the authentication services provided by notaries, includes the possibility of having negotiated procedures without prior publication for services provided by Member State organisations and extends the scope for the use of a negotiated procedure without prior publication of a contract notice following an unsuccessful competitive procedure with negotiation (Article 164 and point 6 of the Annex I).

Under current case-law[7], tenderers have to provide evidence of the selection and exclusion criteria they have used before they take a decision to award a tender. The proposal ensures that the Financial Regulation is aligned with case-law on this (Article 2(51) and point 18.4 of Annex I).

The recitals highlight current rules on green public procurement.

Finally, the proposal makes rules for experts more comprehensive and aligns them with market reality. This would enable Union institutions to compete with remunerations offered by other players on the market when contracting remunerated external experts. New rules would also enable the Commission to use lists of experts for a longer time (Article 242).

- **Grants:** the proposal includes technical updates, simplification, clarifications and corrections. It clarifies rules on simplified forms of grants (Article 184(3) and Article 187) and lays down that the 50% limit for volunteers' costs applies to the total financing of an action (Article 194(2)).

  Moreover, the proposal clarifies that an adversarial procedure is not systematically required to reject a participant from an award procedure (Article 135).

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6 Amended proposal for a Regulation of the European Parliament and of the Council on the access of third-country goods and services to the Union's internal market in public procurement and procedures supporting negotiations on access of Union goods and services to the public procurement markets of third countries (COM(2016) 34 final – 2012/0060(COD)).

7 Judgment of 8 July 2020, T-661/18, Securitec v Commission, EU:T:2020:319.

The proposal also simplifies calculations under the no-profit principle (Article 196(4)) and the provision of financial support to third parties for special cases (Article 208, third subparagraph).

To increase transparency, a definition of NGOs is added, while grant applicants would need to declare their legal status and confirm whether they are NGOs (new Article 2(46) and Article 200(1)(a)).

Finally, the definition and use of 'public contracts' under Title VIII are corrected (Article 2(16) and Article 205(1) and (2)).

- **Donations to the EU institutions**: the proposal allows deciding faster whether to accept or reject donations when a rapid reaction is needed, in exceptional circumstances and with appropriate safeguards, where such donations are made for the purposes of humanitarian aid, emergency support, civil protection or crisis management aid (Article 25(3)).
- **Digitalisation:** the proposal supports the Commission's commitment to be digital by default. It increases the efficiency and quality of controls and audits with the help of digitalisation and emerging technologies such as data-mining, machine learning, robotic process automation and artificial intelligence. Giving these aspects more visibility should lead to wider and more consistent use of digital audits and controls. This, in turn, should increase the level of assurance, while decreasing the cost of audits and controls (Article 36, Article 63(4)(a), Article 74(5) and (6), Article 150(1)).

  The proposal also aims to improve the quality and interoperability of data on recipients of Union funding for controls and audits, including through the use of a single integrated IT system for data-mining and risk-scoring (further details under point 3 below).

  Certain rules and procedures on procurement and experts should be amended to reflect progress on digitalisation.
- **Green transition:** this proposal also aims to adjust the Financial Regulation to ensure that budget implementation effectively helps achieve the European Green Deal. To this end, an explicit reference to the do-no-significant-harm principle should be inserted in Article 33(2), in line with the Commission's commitment to sustainable financing and the green transition.

  Furthermore, to facilitate the greening of EU buildings, the possibility to use loans to finance building renovation is inserted in Article 271.

  Finally, when relevant, calls for tenders in public procurement procedures should include green award or selection criteria to incentivise economic operators to offer more sustainable options.

  In line with Article 6(4) of the Climate Law, the Commission considers that the proposals above are consistent with the climate-neutrality objective set out in Article 2(1) of the Climate law, as well as the Union 2030 and 2040 climate targets. These proposals are also consistent with ensuring progress on adaptation, as referred to in Article 5 of the Climate Law, and aligned with the objectives of the Climate law.

1.3. Enhanced protection of the EU's financial interests and indirect management

- **Early-detection and exclusion system:** it is proposed to strengthen the system by better targeting its application to funds under both shared management and direct

management where funds are disbursed as financial contributions to Member States, for instance under the Recovery and Resilience Facility[8]. The objective is to prevent Member State authorities from selecting fraudulent economic operators to carry out projects, and to better protect the Union budget against serious misconduct without waiting for the final outcome of national procedures. On the cross-territorial dimension of the implementation of projects, it is proposed that exclusion of entities and persons at Union level applies to all Union funding for project implementation across all Member States. Such exclusion would be subject to several limitations and safeguards. Its scope would be limited to an exhaustive list of the most serious forms of misconduct (e.g. corruption, fraud, money laundering and terrorism) found in: (i) a final Union audit, a report of the European Anti-Fraud Office (OLAF) or an investigation by the European Public Prosecutor's Office (EPPO); or (ii) a national audit, judgment or administrative decision (Article 138(2), Article 139(1) and Article 145(5)).

In addition to the above, autonomous grounds for exclusion are added, based on the refusal to cooperate in investigations, checks or audits carried out by an authorising officer, OLAF, EPPO or the Court of Auditors and on the incitement to hatred or discrimination (new Article 139(1)(i) and 139(1)(c)(vi), respectively). It is also proposed to explicitly mention the breach of conflict of interest as an autonomous ground of exclusion within the notion of grave professional misconduct (Article 139(1)(c)(iv)). An expedited procedure is proposed for cases whosenature or circumstances require it (new Article 139(6)). The proposal also includes the possibility to exclude beneficial owners and affiliated entities if the requirements to attribute liability are considered fulfilled (new Article 138(2)(h) and (i), Article 139(2) and new Article 139(5)). Other amendments address current shortcomings in the system, for example by creating a legal presumption of notification of the content of adversarial letters and administrative decisions (new Article 138(2)(g), Article 139(1), Article 139(1)(d)(i), Article 139(1)(e), Article 139(7), Article 140(1), Article 143, Article 145(5), Article 146(2), new Article 147, new Article 152(3), Article 152(2)(h), Article 153 and new Article 156(6)).

- **Single integrated IT system for data-mining and risk-scoring:** the proposal aims to improve the quality and interoperability of data on recipients of Union funding and on those ultimately benefitting, directly or indirectly, from Union funding. To effectively prevent, detect, investigate and correct frauds or remedy irregularities, it is necessary to be able to identify the natural persons who are the beneficial owners of the recipients and who ultimately profit from the misuse of Union funding. This is achieved by standardising the electronic recording and storage of data on the recipients of Union funding and their beneficial owners for control and audit purposes. Moreover, there would be an obligation to use a single integrated IT system for data-mining and risk-scoring (provided by the Commission) to access and analyse those data on the recipients of Union funding. This system would considerably facilitate the identification of risks of fraud, corruption, double funding, conflict of interest and other irregularities. The Commission would be responsible for the development, management and supervision of the single integrated IT system for data-mining and risk-scoring (Articles 36, 159 and 275). The rules on the recording,

[8] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

storage, transfer and processing of data should comply with applicable data protection rules. Finally, the proposal applies Article 36 to cases where Member States receive and implement Union funding under direct management. The above obligations would apply to programmes adopted under and financed from the post-2027 MFF to allow enough time to adapt electronic data systems and to provide guidance and training. During the transition period, voluntary application will remain possible and will be encouraged. This proposal plays a key role in the actions for digitalisation explained in point 2 above.

- **Transparency:** the proposal aims to improve the information provided to the public on the use of the Union budget and on recipients of Union funding. This is achieved by requiring Member States implementing the Union budget under shared management, entities implementing the Union budget under indirect management, and other Union institutions and bodies to send information to the Commission on their recipients of Union funding at least once a year. The Commission would add to the above information the data it has on direct management and would be responsible for consolidating, centralising and publishing the information in a database on a single website, covering all methods of Union budget implementation, including by other Union institutions and bodies. The resulting single website would be an improved version of the Financial Transparency System currently in use for direct management (Articles 38, 159 and 275). Finally, the proposal applies Article 38 to cases where Member States receive and implement Union funding under direct management. The above obligations would apply to programmes adopted under and financed from the post-2027 MFF, to ensure a smooth transition and adapt electronic data systems.

- **Indirect management:** indirect management relies on the rules, systems and procedures of Union implementing partners to provide adequate protection of the EU's financial interests. The proposal aims to strengthen the application of proportionality as a general principle of law, notably when assessing partners and imposing contractual obligations. This would improve cooperation with Union implementing partners. It is also consistent with the rules recently agreed under the Neighbourhood, Development and International Cooperation Instrument. Unnecessary administrative burden should be avoided, in particular for final recipients that are MSMEs or comparable economic operators with equivalent turnover or balance sheet total. Relevant provisions need to be adjusted, and cross-references need to be updated. As a simplification, the proposal provides for the option to exempt managing authorities under shared management from pillar assessment, as their rules are already assessed under shared management. The current possibility for decentralised agencies to be exempted from pillar assessment would become an exemption by default and would be extended to fully self-financed agencies and CFSP missions. Finally, rules on transparency for recipients of EU funding are changed and technical clarifications are added (Article 62(1), Articles 158 and 159, Article 160(3), new Article 212(3) and Article 212(4)).

- **Union award procedures concerning security or public order:** this proposal aims to lay down specific conditions for the participation of third country entities in Union award procedures that concern security or public order. It also aims to apply these conditions in line with the international obligations of the Union, in particular in the area of public procurement. These rules concern award procedures for all kinds of budget implementation instruments: grants, procurement, prizes, indirect management, etc. (new Article 137).

- **Conflict of interest**: this proposal includes a clarification of the notion of applicable law, which includes national law on conflict of interest (Article 61).
- **Professional conflicting interests** that may negatively affect performance of a procurement contract. Following up on the European Ombudsman's investigation into the award of a contract[9] , it is proposed to add a definition and an explicit ground for rejecting participants from award procedures for such reasons (Article 144). In addition, all tenderers must submit a declaration on honour confirming that they do not have any professional conflicting interests, and provide relevant information when required (point 18.4 of Annex I). Finally, the proposal highlights the contracting authority's obligation to assess whether there are such interests (point 20.1 of Annex I).
- **Member States' assistance in the recovery of EU claims** must be ensured by extending the assistance mechanism already applied between Member States under Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures to also cover the Commission. In order to recover EU claims more effectively, the Commission's accounting officer must be able to rely on Member States' assistance to effectively notify debtors and identify debtors' assets (new Article 104).
- **Foreign subsidies:** the Commission proposal for a regulation on foreign subsidies[10] is currently being negotiated. Depending on how the proposals progress, the Financial Regulation may be aligned to that new regulation in the course of the negotiations.

1.4. Miscellaneous simplifications and technical updates

The following technical changes and updates to the Financial Regulation are proposed:

- addressing omissions and wrong cross-references in Article 49(1), Article 71, Article 114(4), Article 154(3), Article 163(4) and Article 253(1)(d) and (f);
- completing the list of working documents in Article 41(3)(e) by a document on building policy;
- amending Article 41(4)(j) to reflect the International Public Sector Accounting Standards;
- adjusting specific commitment rules for the European Agricultural Guarantee Fund in Article 114 to facilitate better alignment with standard accounting practices.This technical change also affects the specific rules for payments made in advance under Article 270 but has no impact on payments to Member States or to beneficiaries;
- inserting technical updates in Article 252 on advanced deadlines for consolidated accounts, and changing the dates for document submission in Article 271;
- updating references to repealed Union legislation.

The following other necessary changes to the Financial Regulation are proposed:

- ensuring an appropriate budgetary treatment and avoiding undue financial strain on the expenditure side of the Union budget, making it possible to deduct interests, and

[9] joint enquiry 853/2020/KR

[10] Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market (COM(2021) 223 final).

any other charge due where a fine, other penalty or sanction has been cancelled or the amount has been reduced, including any negative return related to such fines, other penalties or sanctions from the revenue side of the Union budget (negative revenue), while also ensuring an adequate compensation in the event of the reimbursement of provisionally paid fines (Article 48(1) and new Article 48(2), Article 99(4), Article 108(2), Article 109(1), Article 109(2) and Article 109(4)). These changes integrate those already proposed by the Commission, on account of the urgency of the matter, in the stand-alone Commission proposal on the Financial Regulation amendment concerning the treatment of cancelled or reduced competition fines[11];

- simplifying the rules on imprest accounts to address issues encountered by EU delegations (Articles 88 and 89) and on treasury management, notably the use of credit cards and modern payment methods (Article 86).

[11] COM(2022) 184 final.

↓ 2018/1046 (adapted)

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Proposal for a

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on the financial rules applicable to the general budget of the Union~~, *amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012*~~(recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular ~~point (d) of Article 46, Article 149, point (a) of Article 153(2), Articles 164, 172, 175, 177 and 178,~~ Article~~s~~ ~~189(2), 212(2) and~~ 322(1) ~~and Article 349~~ thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors[12],

Having regard to the opinion of the European Economic and Social Committee[13],

Having regard to the opinion of the Committee of the Regions[14],

Acting in accordance with the ordinary legislative procedure,

Whereas:

⇩ new

(1) A number of amendments are to be made to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[15]. In the interests of clarity, that Regulation should be recast.

[12] OJ C […], […], p. […].

[13] OJ C […], […], p. […].

[14] OJ C […], […], p. […].

[15] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (*OJ L 193, 30.7.2018, p. 1*).

↓ 2018/1046 recital 1

(2) Following three years of implementation, further amendments should be made to the financial rules applicable to the general budget of the Union (the 'budget') in order to remove bottlenecks in implementation by increasing flexibility, to simplify delivery for the stakeholders and the services, to focus more on results, and to improve accessibility, transparency and accountability. Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[16] should therefore be repealed and replaced by this Regulation.

↓ 2018/1046 recital 2

(3) In order to reduce the complexity of the financial rules applicable to the budget and to include the relevant rules in one single regulation, the Commission should repeal Delegated Regulation (EU) No 1268/2012[17]. In the interest of clarity, the main rules from Delegated Regulation (EU) No 1268/2012 should be included in this Regulation, while other rules should be included in guidance for services.

⇩ new

(4) This Regulation should provide for the financial rules applicable to the general budget of the Union within the meaning of Article 322 TFEU and does not regulate or affect the implementation of restrictive measures adopted on the basis of the TFEU and the TEU, including in the framework of implementation of the Union budget.

(5) Taking into account the experience gained with the implementation of the financial rules applicable to the general budget of the Union (the 'budget') and following the adoption of Council Regulation (EU, Euratom) 2020/2093[18] which laid down the Multiannual Financial Framework from 2021 to 2027, certain targeted amendments should be made in order to align the general financial rules to the new legal framework, adapt them to the needs of efficient crisis management and enhance the protection of the Union's financial interests. Furthermore, targeted simplifications, technical updates and corrections should be made.

(6) Following the adoption of the Multiannual Financial Framework for 2021 to 2027, the references to basic acts, to Decision (EU, Euratom) 2020/2053[19], to Council Regulation (EU, Euratom) 2021/768 and to the Interinstitutional Agreement of 16

[16] Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

[17] Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

[18] Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, *OJ L 433I , 22.12.2020, p. 11*.

[19] Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L 424, 15.12.2020, p. 1).

December 2020 should be replaced or be added to the references used throughout this Regulation.

(7) In the interest of clarity, all references to the repealed Regulation (EC) 45/2001[20] shall be replaced by references to Regulation (EU) 2018/1725 of the European Parliament and of the Council[21] .

(8) In the interest of legal certainty, a number of cross-references should be corrected.

(9) It is necessary to better reflect the specific nature and functioning of the provisioning of financial liabilities and of the budgetary guarantees. Certain definitions and rules on budgetary guarantees, budgetary commitments, legal commitments, payment appropriations, recipients and publication of information on recipients should therefore be adjusted. A definition of the constitution phase of the provisioning of financial liabilities should be added. Additionally, definitions should be updated to reflect in particular amendments to procurement rules and the introduction of rules on non-financial donations.

(10) In order to enhance transparency on recipients of Union funds which are non-governmental organisations, there should be a definition of non-governmental organisations providing for criteria to identify them and grant applicants should declare their legal status, including whether they are non-governmental organisations.

(11) A reference to the general regime of conditionality for the protection of the Union budget laid down in Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council[22] should be inserted in this Regulation. Regulation (EU, Euratom) 2020/2092 is a cornerstone of the legal framework for the implementation of the Union budget.

↓ 2018/1046 recital 3

(12) The fundamental budgetary principles should be maintained. Existing derogations from those principles for specific areas such as research, external actions and structural funds should be reviewed and simplified as far as possible, taking into account their continuing relevance, their added value for the budget, and the burden they impose on stakeholders.

↓ 2018/1046 recital 4

(13) Rules on the carry-over of appropriations should be presented more clearly and a distinction should be made between automatic and non-automatic carry-overs. The

[20] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

[21] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

[22] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433I , 22.12.2020, p. 1

Union institutions concerned should provide information to the European Parliament and to the Council on both automatic and non-automatic carry-overs.

↓ 2018/1046 recital 5

(14) The carrying-over and use of external assigned revenue for the succeeding programme or action should be allowed with a view to using such funds efficiently. It should be possible to carry over internal assigned revenue only to the following financial year, except where this Regulation provides otherwise.

⇩ new

(15) Following the adoption of the Multiannual Financial Framework for 2021 to 2027 and related basic acts thereto, certain rules related to budgetary principles, in particular as regards cancellation and carry-over, decommitments and making appropriations corresponding to decommitments available again, laid down in Regulation 2021/2116[23] of the European Parliament and of the Council, Regulation (EU, Euratom) 2020/2093, Regulation (EU) 2021/836 of the European Parliament and of the Council[24], Regulation (EU) 2021/947 of the European Parliament and of the Council[25], Regulation (EU) 2021/1529 of the European Parliament and of the Council[26], Council Decision (EU) 2021/1764[27], Council Regulation (Euratom) 2021/948[28] and Regulation (EU) No 2021/1060 of the European Parliament and Council[29], should be incorporated into this Regulation.

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[23] Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013, *OJ L 435, 6.12.2021, p. 187*.

[24] Regulation (EU) 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism, OJ L 185, 26.5.2021, p. 1.

[25] Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009, *OJ L 209, 14.6.2021, p. 1–78*

[26] Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing the Instrument for Pre-Accession assistance (IPA III), OJ L 330, 20.9.2021, p. 1.

[27] Council Decision (EU) 2021/1764 of 5 October 2021 on the association of the Overseas Countries and Territories with the European Union including relations between the European Union on the one hand, and Greenland and the Kingdom of Denmark on the other (Decision on the Overseas Association, including Greenland), OJ L 355, 7.10.2021, p. 6.

[28] Council Regulation (Euratom) 2021/948 of 27 May 2021 establishing a European Instrument for International Nuclear Safety Cooperation complementing the Neighbourhood, Development and International Cooperation Instrument – Global Europe on the basis of the Treaty establishing the European Atomic Energy Community, and repealing Regulation (Euratom) No 237/2014, OJ L 209, 14.6.2021, p. 79.

[29] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231, 30.6.2021, p. 159.

↓ 2018/1046 recital 6

(16) With regard to internal assigned revenue, the financing of new building projects with the revenue from lettings and the sale of buildings should be allowed. To that end, such revenue should be considered as internal assigned revenue which can be carried over until it is fully used.

⇩ new

(17) In the interest of simplification and in order to align better the timing of contributions from Member States with the corresponding payment needs, all additional financial contributions from Member States to Union's actions and programmes, including voluntary contributions, should be subject to the same treatment and be considered as external assigned revenue.

(18) In order to increase transparency in the presentation of assigned revenue, detailed information on the estimated amount of the external assigned revenue to be received, and the foreseen allocation to the relevant budget lines should be provided in an annex, which forms an integral part of the budget.

(19) The rules on transfers subject to special provisions should be updated to take into account the Solidarity and Emergency Aid Reserve established pursuant to Regulation (EU, Euratom) 2020/2093. In addition, adjustments should be made in order to reflect that draft amending budgets are no longer required for the mobilisation of the Solidarity and Emergency Aid Reserve.

↓ 2018/1046 recital 7

(20) Union institutions should be able to accept any donation made to the Union.

⇩ new

(21) In order to allow a rapid reaction in exceptional circumstances, the Commission should be able to accept in-kind donations, irrespective of their value, where such donations are made for the purposes of humanitarian aid, emergency support, civil protection or crisis management aid. In order to ensure appropriate safeguards, the Commission should only accept such donations where acceptance is in accordance with the principles of sound financial management and transparency, does not give rise to conflicts of interest and does not harm the image of the Union. The donor should not be, at the moment of acceptance, in one of the exclusion situations under the early-detection and exclusion system and should not be registered as excluded in the corresponding database.

↓ 2018/1046 recital 8

(22) A provision should be introduced to allow for in-kind sponsorship by a legal person of an event or activity for promotional or corporate social responsibility purposes.

↓ 2018/1046 recital 9

(23) The concept of performance as regards the budget should be clarified. Performance should be linked to the direct application of the principle of sound financial management. The principle of sound financial management should also be defined, and a link should be established between objectives set and performance indicators, results and economy, efficiency and effectiveness in the use of appropriations. For reasons of legal certainty, while avoiding conflicts with existing performance frameworks of the different programmes, performance terminology, in particular output and results, should be defined.

⇩ new

(24) Considering the importance of addressing climate and environmental challenges and in order to ensure that budget implementation contributes to the achievement of the European Green Deal[30], the concept of performance as regards the budget should be extended to include the implementation of programmes and activities in a sustainable way, which would not hinder the achievement of the environmental objectives of climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems.

↓ 2018/1046 recital 10

(25) In accordance with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[31], Union legislation should be of high quality and should focus on areas where it has the greatest added value for citizens and is as efficient and effective as possible in delivering the common policy objectives of the Union. Making existing and new spending programmes and activities entailing significant spending subject to evaluation can help achieve those objectives.

[30] The European Green deal, Communication from the Commission to the European Parliament, the European Council, the Council the European Economic and Social Committee and the Committee of the Regions, COM/2019/640 final.

[31] OJ L 123, 12.5.2016, p. 1.

⇩ new

(26) In order to implement the Commission's commitment to be digital by default and to foster more efficient and qualitative controls and audits by increasing the level of assurance while decreasing the cost, it is appropriate to introduce an explicit reference to the use of digital tools and emerging technologies such as machine learning, robotic process automation, data-mining and artificial intelligence.

(27) In order to enhance the protection of the Union budget against fraud, corruption, conflicts of interest, double funding and other irregularities, standardised measures to collect, compare and aggregate information on the recipients of Union funding should be introduced. In particular, in order to effectively prevent, detect, investigate and correct frauds or remedy irregularities, it is necessary to be able to identify the natural persons that ultimately benefit, directly or indirectly, from Union funding and who ultimately profit from the misuse of EU funding. The electronic recording and storage of data on the recipients of Union funding, including their beneficial owners as defined in Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council[32] and the regular making of those data available in a single integrated IT system for data-mining and risk-scoring provided by the Commission, should facilitate risk assessment for the purposes of selection, award, financial management, monitoring, investigation, control and audit and contribute to effective prevention, detection, correction and follow-up of fraud, corruption, conflicts of interest, double funding and other irregularities. The Commission should be responsible for the development, management and supervision of the single integrated IT system for data-mining and risk-scoring. The Commission, the Member States, the persons or entities implementing the budget, the European Anti-Fraud Office ('OLAF') and other Union investigative and control bodies should have the necessary access to those data within the exercise of their respective competences. The rules related to the recording, storage, transfer and processing of data should comply with applicable data protection rules.

🡻 2018/1046 recital 11

(28) In accordance with the principle of transparency enshrined in Article 15 of the Treaty on the Functioning of the European Union (TFEU), Union institutions are to conduct their work as openly as possible. With regard to budget implementation, the application of that principle implies that citizens should know where, and for what purpose, funds are spent by the Union. Such information fosters democratic debate, contributes to the participation of citizens in the Union's decision-making process, reinforces institutional control and scrutiny over Union expenditure, and contributes to boosting its credibility. Communication should be more targeted and should aim to increase the visibility of the Union contribution for citizens. Such objectives should be achieved by the publication, preferably using modern communication tools, of relevant information concerning all recipients of funds financed from the budget which takes

[32] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141 5.6.2015, p. 73).

into account those recipients' legitimate interests of confidentiality and security and, as far as natural persons are concerned, their right to privacy and the protection of their personal data. Union institutions should therefore adopt a selective approach in the publication of information, in accordance with the principle of proportionality. Decisions to publish should be based on relevant criteria in order to provide meaningful information.

↓ 2018/1046 recital 12 (adapted)
⇨ new

(29) Without prejudice to the rules on the protection of personal data, the utmost transparency regarding information on recipients should be sought. The information on recipients of Union funds ~~implemented under direct management~~ should be published on a dedicated website of Union institutions, such as the Financial Transparency System~~,~~. ~~and~~ ⇨ Publication requirements should cover all methods of budget implementation, including by other Union institutions and bodies. To that end, Member States, persons and entities implementing the budget and other Union institutions and bodies should transmit to the Commission, at least on a yearly basis, information on their recipients of Union funding. That information ⇦ should include at least the name ⇨ , a unique identifier ⇦ and the locality of the recipient, the amount ~~legally~~ committed and the purpose of the measure. That information should take into account relevant criteria such as the periodicity, the type and the importance of the measure.

↓ 2018/1046 recital 13

(30) It should be possible for the Commission to implement the budget indirectly through Member State organisations. For reasons of legal certainty, it is therefore appropriate to define a Member State organisation as an entity established in a Member State as a public-law body, or as a body governed by private law entrusted with a public-service mission and provided with adequate financial guarantees by that Member State. Financial backing provided to such private-law bodies by a Member State in accordance with existing requirements set out in Union law, in a form decided by that Member State and not necessarily requiring a bank guarantee, should be considered as adequate financial guarantees.

↓ 2018/1046 recital 14

~~For prizes, grants and contracts awarded following the opening-up of a public procedure to competition, and in particular for contests, calls for proposals and calls for tenders, in order to respect the principles of the TFEU and in particular the principles of transparency, proportionality, equal treatment and non-discrimination, the name and locality of the recipients of Union funds should be published. Such publication should contribute to the control of the award procedures by the unsuccessful applicants in the competition.~~

↓ 2018/1046 recital 15

(31) Personal data referring to natural persons should not be publicly available for longer than the period during which the funds are being used by the recipient and should therefore be removed after two years. ~~The same should apply to personal data referring to legal persons whose official name identifies one or more natural persons.~~

↓ 2018/1046 recital 16

(32) In most of the cases covered by this Regulation, the publication concerns legal persons. Where natural persons are concerned, the publication of personal data should respect the principle of proportionality between the importance of the amount granted and the need to control the best use of the funds. In such cases, the publication of the region on level 2 of the common classification of territorial units for statistics (NUTS) is consistent with the objective of publication of information on recipients and ensures equal treatment between Member States of different sizes while respecting the recipients' right to private life and, in particular, the protection of their personal data.

↓ 2018/1046 recital 17
⇨ new

(33) For reasons of legal certainty and in accordance with the principle of proportionality, the situations in which publication should not take place should be specified. For example, information should not be published with regard to scholarships or other forms of direct support paid to natural persons most in need, to certain contracts with a very low value or to financial support below a certain threshold provided through financial instruments ⇨ or budgetary guarantees ⇦ , or in cases where disclosure risks threatening the rights and freedoms of the individuals concerned as protected by the Charter of Fundamental Rights of the European Union or causing harm to the commercial interests of the recipients. For grants, however, there should be no special exemption from the obligation to publish information on the basis of a specific threshold, in order to maintain the current practice and to allow for transparency.

↓ 2018/1046 recital 18

(34) Where personal data of recipients is published for the purposes of transparency in relation to the use of Union funds and the control of award procedures, those recipients should be informed of such publication, as well as of their rights and the procedures applicable for exercising those rights, in accordance with Regulations (EU) 2018/1725 ~~(EC) No 45/2001[33]~~ and (EU) 2016/679[34] of the European Parliament and of the Council.

[33] ~~Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).~~

↓ 2018/1046 recital 19

(35) In order to ensure that the principle of equal treatment is respected for all recipients, the information related to natural persons should also be published, in line with the obligation for Member States to establish a large degree of transparency for contracts above the thresholds laid down in Directive 2014/24/EU of the European Parliament and of the Council[35].

↓ 2018/1046 recital 20
⇨ new

(36) In the case of indirect and shared management, the persons, entities or designated bodies implementing Union funds should make available information on recipients and final recipients. In the case of shared management, the information should be published in accordance with sector-specific rules. ⇨ Member States that receive and implement Union funds under direct management should make available information on their recipients in accordance with this Regulation. ⇦ The Commission should make available information about a single website, including a reference to its address, where the information on recipients and final recipients can be found.

↓ 2018/1046 recital 21

(37) In the interest of increased readability and transparency of data on financial instruments implemented under direct and indirect management, it is appropriate to merge all reporting requirements into one single working document to be attached to the draft budget.

⇩ new

(38) In order to ensure transparency, avoid duplication and align the timing of reporting with the availability of the relevant data, the information on budgetary guarantees, the common provisioning fund and contingent liabilities should be regrouped under these three categories and presented in a comprehensive way in the respective reports.

(39) In order to increase transparency and accuracy in reporting, the information on financial instruments presented in the working document attached to the draft budget should include information on realised losses from assets.

[34] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

[35] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

(40) In order to ensure synchronisation with the timeline for the adoption of the statement of estimates, the working document on the building policy of the Commission should be attached to the draft budget.

↓ 2018/1046 recital 22 (adapted)

(41) In order to promote best practices in the implementation of the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD), and the European Maritime, ~~and~~ Fisheries ⌦ and Aquaculture ⌫ Fund (~~EMFF~~ ⌦ EMFAF ⌫), as well as the European Agricultural Guarantee Fund (EAGF), the Commission should, for information purposes, be able to make available to bodies responsible for management and control activities a non-binding methodological guide setting out its own control strategy and approach, including checklists, and examples of best practice. That guide should be updated whenever necessary.

⇩ new

(42) It is necessary to allow deducting from the revenue of the general budget of the Union any interest or other charge due, on the amounts of cancelled or reduced fines, other penalties or sanctions, including any negative return related to those amounts. In order to comply with the general principle of restoration to the prior state (restitutio in integrum) applicable to fines, other penalties or sanctions imposed by Union institutions that are later cancelled or reduced by the Court of Justice, it is necessary to provide that any negative return on the provisionally collected amount of such fines, other penalties or sanctions imposed by Union institutions is not deducted from the amount to be repaid. To compensate for the loss of enjoyment of monies from the date the undertaking provisionally paid the fine to the Commission until the date of repayment, the amount to be repaid should be increased by an interest at the rate applied by the European Central Bank to its principal refinancing operations increased by one and a half percentage points as an adequate compensation for the undertaking in such situations, which excludes the need to apply any other interest rate on that amount. Furthermore, that rate corresponds to the interest rate applicable in relation to the debtor when the debtor chooses to defer the payment of a fine, another penalty or a sanction, and provides a financial guarantee instead of payment. In order to secure sufficient cash flow to compensate the concerned third parties for the loss of enjoyment of monies in the cases referred to in Article 109(4), it is necessary to allow for the amounts received by way of fines, other penalties or sanctions and any accrued interest or other income generated by them to be entered in the budget by the end of the following financial year.

(43) In view of the increased volume of borrowing and lending operations carried out by the Commission on behalf of the Union to finance the recovery from the COVID-19 pandemic, transparency regarding those operations should be further enhanced. To address the increased complexity of those operations and in order to ensure better visibility of their content, a comprehensive overview of borrowing and lending operations carried out by the Commission should be added to the document annexed to the section of the budget relating to the Commission.

↓ 2018/1046 recital 23

(44) It is appropriate to provide for the possibility for Union institutions to conclude service-level agreements with each other in order to facilitate the implementation of their appropriations and also for the possibility to conclude such agreements between departments of Union institutions, Union bodies, European offices, bodies or persons entrusted with implementation of specific actions in the common foreign and security policy (CFSP) pursuant to Title V of the Treaty on European Union (TEU) and the Office of the Secretary-General of the Board of Governors of the European schools for the provision of services, supply of products or execution of works or of building contracts.

⇩ new

(45) For reasons of legal certainty, it is necessary to clarify that the applicable law, under which any appropriate actions are to be taken with regard to conflict of interests, includes EU and national law relating to conflict of interests.

(46) In order to increase inclusiveness, private or EU-law bodies established in a Member State and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, should be added to the list of entities under point (c) of the first subparagraph of article 62 (1) insofar as they are controlled by public law bodies or private law bodies with public service mission eligible under indirect management, and are provided with adequate financial guarantees. Where such private or EU-law bodies do not benefit from financial backing provided by a Member State, adequate financial guarantees should take the form of joint and several liability by the controlling bodies or equivalent financial guarantees.

↓ 2018/1046 recital 24

(47) It is appropriate to lay down the procedure for setting up new European offices and to distinguish between obligatory and non-obligatory tasks of such offices. A possibility for Union institutions, Union bodies and other European offices to delegate the powers of the authorising officer to the director of a European office should be introduced. European offices should also have the possibility to conclude service-level agreements for the provision of services, supply of products or execution of works or of building contracts. It is appropriate to set out specific rules for the drawing-up of accounting records, provisions authorising the accounting officer of the Commission to delegate some of his or her tasks to staff in those offices and operating procedures for bank accounts which the Commission should be able to open in the name of a European office.

↓ 2018/1046 recital 25

(48) In order to improve the cost-effectiveness of executive agencies and in light of the practical experience gained with other Union bodies, it should be possible to entrust

the accounting officer of the Commission with all or part of the tasks of the accounting officer of the executive agency concerned.

↓ 2018/1046 recital 26

(49) For reasons of legal certainty, it is necessary to clarify that directors of executive agencies act as authorising officers by delegation when managing operational appropriations of programmes delegated to their agencies. To achieve the full effect of efficiency gains resulting from a global centralisation of certain support services, the possibility for executive agencies to implement administrative expenditure should be explicitly provided for.

↓ 2018/1046 recital 27

(50) It is necessary to establish rules on the powers and responsibilities of financial actors, in particular authorising officers and accounting officers.

↓ 2018/1046 recital 28

(51) The European Parliament, the Council, the Court of Auditors and the accounting officer of the Commission should be informed of the appointment or termination of the duties of an authorising officer by delegation, internal auditor and accounting officer within two weeks of such appointment or termination.

↓ 2018/1046 recital 29

(52) Authorising officers should be fully responsible for all revenue and expenditure operations executed under their authority, and for internal control systems, and should be held accountable for their actions, including, where necessary, through disciplinary proceedings.

↓ 2018/1046 recital 30

(53) The tasks, responsibilities and principles of the procedures to be observed by the authorising officers should also be laid down. Authorising officers by delegation should ensure that the authorising officers by subdelegation and their staff receive information and training concerning the control standards and the respective methods and techniques and that measures are taken in order to ensure the functioning of the control system. The authorising officer by delegation should report to his or her Union institution on the performance of the duties in the form of an annual report. That report should include the required financial and management information to support that officer's declaration of assurance on the performance of his or her duties, including the information on the overall performance of the operations carried out. The supporting documents relating to the operations carried out should be kept for at least five years. The various forms of negotiated procedure for the award of public contracts should be

the subject of a special report from the authorising officer by delegation to the Union institution concerned and of a report from that Union institution to the European Parliament and to the Council, since those procedures represent derogations from the usual award procedures.

↓ 2018/1046 recital 31

(54) The double role of Heads of Union delegations, and of their deputies in their absence, as authorising officers by subdelegation for the European External Action Service (EEAS) and, as regards operational appropriations, for the Commission should be taken into account.

↓ 2018/1046 recital 32

(55) The delegation of powers of budget implementation by the Commission concerning the operational appropriations of its own section of the budget to the deputy Heads of Union delegations should be restricted to situations where the performance of those tasks by the deputy Heads of Union delegations is strictly necessary in order to ensure business continuity during the absence of Heads of Union delegations. The deputy Heads of Union delegations should not be allowed to exercise those powers on a systematic basis or for reasons of internal work division.

↓ 2018/1046 recital 33

(56) The accounting officer should be responsible for the proper implementation of payments, the collection of revenue and the recovery of amounts receivable. The accounting officer should manage the treasury, bank accounts and third-party files, keep the accounts and be responsible for drawing up the financial statements of Union institutions. The accounting officer of the Commission should be the only person who is entitled to lay down the accounting rules and the harmonised charts of accounts, while the accounting officers of all other Union institutions should lay down accounting procedures applicable in their institutions.

↓ 2018/1046 recital 34

(57) The arrangements for the appointment and termination of the duties of the accounting officer should also be established.

↓ 2018/1046 recital 35

(58) The accounting officer should set up procedures to ensure that the accounts opened for the requirements of treasury management and imprest accounts are not in debit.

⇩ new

(59) It is appropriate to align the means of payment authorised for treasury management with modern payment methods, including credit cards and electronic wallets.

(60) Considering that payments by Union delegations through the standard rules for budgetary, treasury and accounting operations ("budgetary procedures") are increasingly executed through the central treasury and, as a consequence, the number of transactions and the amounts paid through imprest accounts decrease, it is appropriate to simplify the rules on the creation, administration and control of imprest accounts.

🡻 2018/1046 recital 36

(61) The conditions for the use of imprest accounts, a system of management which constitutes an exception to normal budgetary procedures and only concerns limited amounts, should be laid down, and the tasks and responsibilities of the imprest administrators, as well as those of the authorising officer and the accounting officer in connection with the control of imprest accounts, should be set out. ~~The Court of Auditors should be informed of any appointment of an imprest administrator.~~ For reasons of efficiency, imprest accounts should be set up in Union delegations for appropriations from both the sections of the budget relating to the Commission and to the EEAS. It is also appropriate to allow, under specific conditions, for the use of imprest accounts in the Union delegation for payments of limited amounts by budgetary procedures. As regards the appointment of imprest administrators, it should be possible to select them also from personnel employed by the Commission in the field of crisis-management aid and humanitarian aid operations whenever there is no available Commission staff covered by the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68[36] ('Staff Regulations').

🡻 2018/1046 recital 37

(62) In order to take into account the situation in the field of crisis-management aid and humanitarian aid operations whenever there are no Commission staff covered by the Staff Regulations available and the technical difficulties to have all legal commitments signed by the authorising officer responsible, it should be allowed for the personnel employed by the Commission in that field to enter into legal commitments of a very low value up to EUR 2500 which are linked to the payments executed from imprest accounts, and for Heads of Union delegations or their deputies to enter into legal commitments on the instruction of the authorising officer responsible of the Commission.

[36] OJ L 56, 4.3.1968, p. 1.

↓ 2018/1046 recital 38

(63) Once the tasks and responsibilities of financial actors have been defined, it is only possible to hold them liable under the conditions laid down in the Staff Regulations. Specialised financial irregularities panels have been set up in Union institutions pursuant to Regulation (EU, Euratom) No 966/2012. However, due to the limited number of cases submitted to them and for reasons of efficiency, it is appropriate to transfer their functions to an interinstitutional panel established pursuant to this Regulation ('the panel'). The panel should be set up to assess requests and issue recommendations on the need to take decisions on exclusion and imposition of financial penalties referred to it by the Commission or other Union institutions and bodies, without prejudice to their administrative autonomy in respect of members of their staff. That transfer also aims to avoid duplication and to mitigate the risks of contradictory recommendations or opinions, in cases where both an economic operator and a member of staff of a Union institution or body are involved. It is necessary to maintain the procedure by which it is possible for an authorising officer to seek confirmation of an instruction which that officer considers to be irregular or contrary to the principle of sound financial management, and thus be released from any liability. The composition of the panel should be modified when it fulfils this role. The panel should have no investigative powers.

↓ 2018/1046 recital 39
⇨ new

(64) As regards revenue, it is necessary to address negative adjustments of own resources covered by Council Regulation (EU, Euratom) No 609/2014[37] ⇨ , Council Regulation (EU, Euratom) No 2021/770[38] and Council Regulation (EU, Euratom) [XXX] on the methods and procedure for making available own resources based on the Emissions Trading System, the Carbon Border Adjustment Mechanism and reallocated profits and on the measures to meet cash requirements[39] ⇦ . Except in the case of own resources, it is necessary to maintain the existing tasks and controls falling within the responsibility of the authorising officers at the different stages of the procedure: establishment of the estimate of amounts receivable, issuing of recovery orders, dispatch of the debit note informing the debtor that the amount receivable has been established and the decision, where necessary, to waive an entitlement subject to criteria guaranteeing compliance with sound financial management in order to ensure an efficient collection of revenue.

[37] Council Regulation (EU, Euratom) No 609/2014 of 26 May 2014 on the methods and procedure for making available the traditional, VAT and GNI-based own resources and on the measures to meet cash requirements (OJ L 168, 7.6.2014, p. 39).

[38] Council Regulation (EU, Euratom) 2021/770 of 30 April 2021 on the calculation of the own resource based on plastic packaging waste that is not recycled, on the methods and procedure for making available that own resource, on the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income (OJ L 165, 11.5.2021, p. 15).

[39] ** OJ […], […], p. […].

↓ 2018/1046 recital 40

(65) The authorising officer should be able to waive totally or partially the recovery of an established amount receivable when the debtor has entered into any of the insolvency proceedings as defined in Regulation (EU) 2015/848 of the European Parliament and of the Council[40], in particular in cases of judicial arrangements, compositions and analogous proceedings.

↓ 2018/1046 recital 41

(66) Specific provisions on procedures for the adjustment or the reduction to zero of an estimate of the amount receivable should be laid down.

↓ 2018/1046 recital 42

(67) It is necessary to clarify the timing of the entry in the budget of amounts received by way of fines, other penalties and sanctions, and of any accrued interest or other income generated by them.

↓ 2018/1046 recital 43

(68) Due to the recent developments on the financial markets and the interest rate applied by the European Central Bank (ECB) to its principal refinancing operations, it is necessary to review the provisions concerning the interest rate for fines or other penalties ~~and to provide for rules in the case of a negative interest rate~~.

↓ 2018/1046 recital 44

(69) To reflect the specific nature of amounts receivable consisting in fines or other penalties imposed by Union institutions under the TFEU or the Treaty establishing the European Atomic Energy Community (the Euratom Treaty), it is necessary to introduce specific provisions on the interest rates applicable to amounts due but not yet paid, in the event that such amounts are increased by the Court of Justice of the European Union.

↓ 2018/1046 recital 45

(70) The rules on recovery should be both clarified and strengthened. In particular, it should be specified that the accounting officer is to recover amounts by offsetting

[40] Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19).

them also against amounts owed to the debtor by an executive agency when it implements the budget.

↓ 2018/1046 recital 46

(71) In order to guarantee legal certainty and transparency, rules regarding the deadlines within which a debit note is to be sent should be laid down.

⇩ new

(72) In order to ensure sound financial management and to guarantee the efficient recovery of Union claims, it is necessary for the accounting officer of the Commission to be able to rely on the assistance from Member States for the notification and recovery of Union claims. Such assistance should be conducted in a similar way to the one between Member States for the notification and recovery of their claims pursuant to Council Directive 2010/24/EU[41]. The purpose of the assistance should not only be to allow to recover whenever the debtor has sizeable assets, but also to provide sufficient and reliable information to the accounting officer in cases of insolvency of the debtor so that a waiver decision to waive a recovery, can be adopted in cases where the debtor is insolvent or cannot be located. The assistance regarding notification to the debtor by the Member State should be done in accordance with the applicable national procedures. It should include not only the enforceable decisions pursuant to Article 299 of the Treaty on the Functioning of the European Union (TFEU) but also the preparatory acts prior to the adoption of such a decision, including the notification of debit notes, reminders and letters of formal notice and precautionary measures to safeguard the rights of the Union in cases where enforceable decisions have been adopted but either have not yet been notified or are waiting for the order for its enforcement to be appended pursuant to Article 299 TFEU. The details of such assistance should be laid down in an agreement between the Commission and Member States either bilaterally or multilaterally. Nevertheless, the obligation to provide such assistance shall exist even if no such agreement is signed.

↓ 2018/1046 recital 47

(73) In order to secure the management of assets whilst also aiming at yielding a positive return, it is necessary to have amounts relating to fines, other penalties or sanctions imposed under the TFEU or the Euratom Treaty, such as competition fines which are being contested, provisionally collected and invested in financial assets, and to determine the assignment of the return on them. Since the Commission is not the only Union institution which is entitled to impose fines, other penalties or sanctions, it is necessary to lay down provisions concerning such fines, other penalties or sanctions imposed by other Union institutions and to lay down rules for their recovery which should be equivalent to those applicable to the Commission.

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[41] Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.

↓ 2018/1046 recital 48

(74) In order to ensure that the Commission has all the necessary information for the adoption of financing decisions, it is necessary to lay down the minimum requirements for the contents of financing decisions on grants, procurement, Union trust funds for external actions ('Union trust funds'), prizes, financial instruments, blending facilities or platforms and budgetary guarantees. At the same time, in order to give a longer-term perspective to the potential recipients, it is necessary to allow for financing decisions to be adopted for more than one financial year while specifying that the implementation is subject to the availability of budget appropriations for the respective financial years. Furthermore, it is necessary to reduce the number of the elements required for the financing decision. In line with the aim of simplification, the financing decision should at the same time constitute an annual or multiannual work programme. Since contributions to the Union bodies referred to in Articles 70 and 71 are already established in the budget, there should be no requirement to adopt a specific financing decision in that respect.

↓ 2018/1046 recital 49

(75) As regards expenditure, the relationship between financing decisions, global budgetary commitments and individual budgetary commitments as well as the concepts of budgetary and legal commitment should be clarified in order to establish a clear framework for the different stages of budget implementation.

↓ 2018/1046 recital 50

(76) In order to take into account in particular the number of legal commitments entered into by Union delegations and Union representations and the exchange-rate fluctuations experienced by them, provisional budgetary commitments should be possible also in cases where the final payee and the amount are known.

⇩ new

(77) In order to align the European Agricultural Guarantee Fund (EAGF) with the general accounting and budgetary procedures as soon as it is technically possible, it should be allowed to proceed with individual budgetary commitments to make the payments, without the need to first make a global provisional commitment to make the payments followed by individual commitments within a period of up to two months, or, under certain conditions, a longer period. Furthermore, to be able to proceed with individual budgetary commitments and payments for the first month of the financial year in December, routine management expenditure for the EAGF should be added to the types of expenditure for which payments made in advance are authorised.

↓ 2018/1046 recital 51

(78) As regards the typology of payments which it is possible for authorising officers to make, clarification of the various types of payments should be provided, in accordance with the principle of sound financial management. The rules for clearing of pre-financing payments should further be clarified, in particular for situations where no interim clearing is possible. To that effect, appropriate provisions should be included in legal commitments entered into.

↓ 2018/1046 recital 52

(79) This Regulation should stipulate that payments are to be made within specified time limits and that, in the event of failure to respect such time limits, creditors will be entitled to default interests to be charged to the budget, except in the case of Member States, the European Investment Bank (EIB) and the European Investment Fund (EIF).

⇩ new

(80) The core elements of electronic invoices in public procurement should be based on the rules set out in Directive 2014/55/EU.

(81) For the sake of clarity, the definition of unsuitable tenders in public procurement should be revised to include tenders where the economic operator does not have access to procurement referred to in Articles 180,181 and 183.

(82) It is necessary to clarify that specific contracts under framework contracts concluded with a single economic operator may be awarded and modified within the limits of the terms foreseen in the framework contract.

(83) In order to take account of the specific characteristics of the real estate market and to simplify procurement procedures for buildings, the requirement of having a minimum number of candidates participating in the procedures should be removed.

(84) Considering that the *ex ante* publicity measures are the same for open, restricted and competitive procedures with negotiation, the use of a negotiated procedure without prior publication of a contract notice following an unsuccessful competitive procedure with negotiation should be allowed under certain conditions.

(85) It is necessary to exclude from the scope of the procurement rules of this Regulation the document certification and authentication services provided by notaries, provided that the procedures governing these services in the Member State concerned are not open to competition.

(86) It is appropriate to provide for the possibility of having negotiated procedures without prior publication for services provided by Member State organisations which cannot participate in competitive procedures.

(87) In order to ensure compliance with the case law of the Court of Justice (judgment of the General Court in Case T-661/18, *Securitec v Commission*), the authorising officer should request the evidence for exclusion and selection criteria to be submitted before the award decision.

↓ 2018/1046 recital 53

(88) It is appropriate to integrate the provisions concerning validation and authorisation of expenditure in one article and to introduce a definition of ‘decommitments’. Since the transactions are carried out in computerised systems, the signing of a ‘passed for payment’ voucher in order to express the validation decision should be replaced by an electronically secured signature, except in a limited number of cases. It is also necessary to clarify that the validation of expenditure applies to all eligible costs, including, as is the case for the clearing of pre-financing, costs which are not associated with a payment request.

↓ 2018/1046 recital 54

(89) In order to reduce complexity, streamline existing rules and improve the readability of this Regulation, rules common to more than one budget implementation instrument should be established. For those reasons, certain provisions should be regrouped, the wording and scope of other provisions should be aligned and unnecessary repetitions and cross-referencing should be removed.

↓ 2018/1046 recital 55

(90) Each Union institution should establish an internal audit progress committee tasked with ensuring the independence of the internal auditor, monitoring the quality of the internal audit work and ensuring that internal and external audit recommendations are properly taken into account and followed up by its services. The composition of that internal audit progress committee should be decided by each Union institution, taking into account its organisational autonomy and the importance of independent expert advice.

↓ 2018/1046 recital 56

(91) More emphasis should be put on performance and results of projects financed from the budget. It is thus appropriate to define an additional form of financing not linked to costs of the relevant operations in addition to the forms of Union contribution already well established (reimbursement of the eligible costs actually incurred, unit cost, lump sums and flat-rate financing). The additional form of financing should be based on the fulfilment of certain conditions *ex ante* or on the achievement of results measured by reference to previously set milestones or through performance indicators.

↓ 2018/1046 recital 57

(92) Where the Commission carries out assessments of the operational and financial capacity of recipients of Union funds or of their systems and procedures, it should be able to rely on the assessments already conducted by itself, other entities or donors such as national agencies and international organisations, in order to avoid duplicating

assessments of the same recipients. The possibility for cross-reliance on assessments conducted by other entities should be used where such assessments were made in compliance with conditions equivalent to those set out in this Regulation for the applicable method of implementation. Therefore, in order to foster cross-reliance on assessments among donors, the Commission should promote the recognition of internationally accepted standards or international best practices.

↓ 2018/1046 recital 58

(93) It is also important to avoid situations in which recipients of Union funds are audited several times by different entities on the use of those funds. It should therefore be possible to rely on audits already carried out by independent auditors provided that there is sufficient evidence of their competence and independence and provided that the audit work is based on internationally accepted audit standards providing reasonable assurance, and that they have been conducted on the financial statements and reports setting out the use of the Union contribution. Such audits should then form the basis of the overall assurance on the use of Union funds. To that end, it is important to ensure that the report of the independent auditor and the related audit documentation is made available on request to the European Parliament, the Commission, the Court of Auditors and the audit authorities of Member States.

↓ 2018/1046 recital 59

(94) For the purpose of relying on assessments and audits and in order to reduce the administrative burden on persons and entities receiving Union funds, it is important to ensure that any information already available at Union institutions, managing authorities or other bodies and entities implementing Union funds, is reused to avoid multiple requests to recipients or beneficiaries.

↓ 2018/1046 recital 60

(95) In order to provide for a long-term cooperation mechanism with recipients, the possibility of signing financial framework partnership agreements should be provided for. Financial framework partnerships should be implemented through grants or through contribution agreements with persons and entities implementing Union funds. For that purpose, the minimum content of such contribution agreements should be specified. Financial framework partnerships should not unduly restrict access to Union funding.

↓ 2018/1046 recital 61

(96) The conditions and procedures for suspending, terminating or reducing a Union contribution should be harmonised across the different budget implementation instruments such as grants, procurement, indirect management, prizes, etc. The grounds for such suspension, termination or reduction should be defined.

↓ 2018/1046 recital 62

(97) This Regulation should establish standard periods for which documents relating to Union contributions should be kept by recipients so as to avoid divergent or disproportionate contractual requirements while still providing the Commission, the Court of Auditors and the European Anti-Fraud Office (OLAF) with sufficient time to obtain access to such data and documents and perform the *ex post* checks and audits. In addition, any person or entity receiving Union funds should be obliged to cooperate in the protection of the financial interests of the Union.

↓ 2018/1046 recital 63

(98) In order to provide adequate information to participants and recipients and to ensure that they have the possibility to exercise their right of defence, participants and recipients should be allowed to submit their observations before adoption of any measure adversely affecting their rights and they should be informed of the means of redress available to them for challenging such a measure.

⇩ new

(99) In the context of an award procedure, it is not necessary for the authorising officer responsible to provide an opportunity to a participant to submit observations where that participant has been rejected from an award procedure. In order to ensure legal certainty, this should also be specified in the provision on adversarial procedures and means of redress.

(100) Considering the increasingly challenging geopolitical environment with rapidly evolving hybrid and cyber threats, as well as the need for a digital transformation with its inherent exposure to technical vulnerabilities, the Union needs to ensure the protection of the security and the public order of the Union or its Member States, as reflected in public policy and law. This concerns the preservation of fundamental interests of society such as ensuring the security of energy supply, combating organized crime and fraud. Whilst respecting any international agreements of the Union, the award of Union funds in relation to strategic assets and interests, such as digital or space infrastructure, communication and information systems and services, may require the application of specific conditions to ensure such protection including for the integrity of communication and information systems, and related supply chains. The types of conditions and requirements for applying them should be clarified.

↓ 2018/1046 recital 64

(101) In order to protect the financial interests of the Union, a single early-detection and exclusion system should be set up by the Commission.

🡻 2018/1046 recital 65

(102) The early-detection and exclusion system should apply to participants, recipients, entities on whose capacity the candidate or tenderer intends to rely, subcontractors of a contractor, any person or entity receiving Union funds where the budget is implemented under indirect management, any person or entity receiving Union funds under financial instruments implemented under direct management, participants or recipients on which entities implementing the budget under shared management have provided information, and sponsors.

⇩ new

(103) In order to enhance the protection of the Union financial interests the early-detection and exclusion system should be reinforced. It is important to avoid that a person or entity in an exclusion situation is able to apply to, or to be selected for implementing funds, or to receive such funds under a programme in shared management. Where there is a final judgment or a final administrative decision, the authorising officer responsible should be able to exclude a person or entity, provided that the latter is in an exclusion situation and deemed as not reliable by having engaged in certain serious misconducts referred to in Article 139(1). In the absence of a final judgment or a final administrative decision, the authorising officer responsible should be able to exclude, on the basis of a preliminary classification in law made by the panel referred to in Article 146, having regard to facts and findings established in the context of audits or investigations carried out by European Anti-fraud Office (OLAF), European Public Prosecutor Office (EPPO), the European Court of Auditors (ECA) or any other check, audit or control performed under the responsibility of the authorising officer. Such exclusion should be registered in the early-detection and exclusion system database established under Article 138(1). Member States' authorities should take it into account by rejecting such persons or entities from being selected to implement Union funds or from receiving such funds. Payment applications from Member States under shared management, including expenditure related to a person or entity that has been excluded, should not be reimbursed. Where funds are disbursed to Member States under performance-based frameworks, specific rules shall apply, as set out in sector-specific legislation.

(104) It is important to underline that the EDES system should only apply in respect of Union funds disbursed to the Member States under direct management, such as those under Regulation (EU) 2021/241 of the European Parliament and of the Council[42], where Member States have the responsibility to take all the appropriate measures to protect the financial interests of the Union, to the extent that the Commission has relevant responsibilities under the respective legal framework and with due regard to the *sui generis* nature of the funds. Therefore, the responsibilities of the Commission should be limited to the obligation to refer a case to the panel for the purpose of excluding a person or entity if the authorising officer becomes aware of serious misconducts through final judgments and administrative decisions or facts and

[42] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

findings established in the context of audits or investigations carried out concerning those funds by the European Anti-fraud Office (OLAF), the European Public Prosecutor Office (EPPO), the European Court of Auditors (ECA) or any other check, audit, or control performed under the responsibility of the authorising officer. Without prejudice to these responsibilities of the Commission, the Member States remain responsible to verify the information on decisions of exclusion registered in the EDES database, to enforce such decisions and to ensure that no payment application is submitted related to a person or entity that is in such an exclusion situation.

↓ 2018/1046 recital 66

(105) It should be clarified that, where a decision to register a person or entity in the early-detection and exclusion system database is taken on the basis of an exclusion situation relating to a natural or legal person that is a member of the administrative, management or supervisory body of that person or entity, or that has powers of representation, decision or control with regard to that person or entity, or to a natural or legal person that assumes unlimited liability for the debts of that person or entity or to a natural person who is essential for the award or for the implementation of the legal commitment, the information registered in the database is to include the information concerning those persons.

↓ 2018/1046 recital 67

(106) The decision on the exclusion of a person or entity from participation in award procedures or the imposition of a financial penalty on a person or entity and the decision on the publication of the related information should be taken by the authorising officers responsible, in light of their autonomy in administrative matters. In the absence of a final judgment or final administrative decision and in cases related to a serious breach of contract, the authorising officers responsible should take their decision on the basis of a preliminary classification in law, having regard to the recommendation of the panel. The panel should also assess the duration of an exclusion in cases where the duration has not been set by the final judgment or the final administrative decision.

↓ 2018/1046 recital 68

(107) The role of the panel should be to ensure the coherent operation of the exclusion system. The panel should be composed of a standing chair, two representatives of the Commission and a representative of the requesting authorising officer.

⇩ new

(108) In order to align the early-detection and exclusion system to public procurement rules and to enhance its effectiveness, attempting to influence the award of Union funds or unduly obtaining Union funds including in relation to conflicts of interests should be explicitly included as a specific situation of exclusion under the ground of grave

professional misconduct with a proportionate penalty, consistent with the seriousness of the misconduct.

(109) Having due regard to the principle of proportionality, the authorising officer responsible should exclude a person or entity when it has shown lack of integrity by having engaged in any wrongful conduct that is incompatible with the values enshrined in Article 2 of the Treaty on European Union and the Charter of fundamental rights of the European Union, such as incitement to discrimination, hatred or violence against a group of persons or a member of a group, where the conduct may negatively affect the performance of the contract.

(110) An autonomous ground of exclusion with a proportionate penalty, consistent with the seriousness of the misconduct, should be added in the case of unjustified lack of cooperation in the context of investigations, checks or audits carried out by an authorising officer, OLAF, EPPO or the European Court of Auditors as this may have severe implications on the protection of the Union's financial interests.

↓ 2018/1046 recital 69

(111) The preliminary classification in law does not prejudge the final assessment of the conduct of the person or entity concerned by the competent authorities of Member States under national law. The recommendation of the panel, as well as the decision of the authorising officer responsible, should therefore be reviewed following the notification of such a final assessment.

↓ 2018/1046 recital 70
⇨ new

(112) A person or entity should be excluded by the authorising officer responsible where it has been established by a final judgment or a final administrative decision that the person or entity is guilty of grave professional misconduct, of non-compliance, whether intentional or not, with the obligations relating to the payment of social security contributions or taxes, of the creation of an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations, of fraud affecting the budget, of corruption, of conduct related to a criminal organisation, of money laundering or terrorist financing, of terrorist offences or offences linked to terrorist activities, of child labour or other offences concerning trafficking in human beings or of the commitment of an irregularity. A person or entity should also be excluded in the event of a serious breach of a legal commitment or of bankruptcy ⇨ or in cases of refusal to co-operate in inverstigations, checks or audits. In assessing these grounds for exclusion, unreasonably injurious acts condemned in international trade law could be considered a relevant factor, where they involve grave professional misconduct. ⇦

↓ 2018/1046 recital 71

(113) When taking a decision on the exclusion of a person or entity, or the imposition of a financial penalty on a person or entity, and on the publication of the related

information, the authorising officer responsible should ensure compliance with the principle of proportionality, in particular by taking into account the seriousness of the situation, its budgetary impact, the time which has elapsed since the relevant conduct, the duration of the conduct and its recurrence, whether the conduct was intentional or the degree of negligence shown and the degree of collaboration of the person or entity with the relevant competent authority and the contribution of that person or entity to the investigation.

↓ 2018/1046 recital 72

(114) The authorising officer responsible should also be able to exclude a person or entity where a natural or legal person assuming unlimited liability for the debts of the economic operator is bankrupt or in a similar situation of insolvency or where that natural or legal person fails to comply with its obligations to pay social security contributions or taxes, where such situations have an impact on the financial situation of that economic operator.

⇩ new

(115) In order to further enhance the protection of the Union's financial interests, it should be possible for the authorising officer to exclude or impose a financial penalty on beneficial owners and affiliated entities of the excluded entity that were involved in the misconduct of the excluded entity. The possibility to exclude beneficial owners and affiliated entities is intended to prevent that a person or entity that has been excluded from being selected to implement Union's funds could continue to participate in procurement and award procedures, through a new company or existing affiliated entities.

(116) In order to increase its effectiveness, the early-detection and exclusion system should also apply to natural persons who are deemed responsible for the misconduct of an entity, so that they are unable to participate in award procedures or selected to implement Union funds either in a personal capacity or through a new corporate identity, without prejudice to the right to be heard.

(117) At the request of the authorising officer, the panel of the early-detection and exclusion system should have the ability to issue its recommendations by means of an expedited procedure, without prejudice to the right to be heard. Such procedure should be used when the circumstances or the nature of the case requires so, for instance where a final judgment or a final administrative decision has been issued by a Member State's authority but the duration of the exclusion is not set; or a final judgment or a final administrative decision has been issued by a third country; or a sanction equivalent to an exclusion has been already imposed on the person or entity by virtue of a decision of international organisations.

↓ 2018/1046 recital 73

(118) A person or entity should not be subject to a decision on exclusion when it has taken remedial measures, thus demonstrating its reliability. That possibility should not apply in cases of the most severe criminal activities.

↓ 2018/1046 recital 74

(119) In light of the principle of proportionality, a distinction should be made between cases where it is possible to impose a financial penalty as an alternative to exclusion, on the one hand, and cases where the gravity of the conduct of the recipient concerned in respect of attempting to unduly obtain Union funds justifies the imposition of a financial penalty in addition to the exclusion so as to ensure a deterrent effect, on the other. The maximum amount of the financial penalty which can be imposed by the contracting authority should also be defined.

↓ 2018/1046 recital 75

(120) A financial penalty should only be imposed on a recipient and not on a participant given that the amount of the financial penalty to be imposed is calculated on the basis of the value of the legal commitment at stake.

↓ 2018/1046 recital 76

(121) The possibility to take decisions on exclusion or to impose financial penalties is independent from the possibility to apply contractual penalties, such as liquidated damages.

↓ 2018/1046 recital 77

(122) The duration of an exclusion should be limited in time, as is the case under Directive 2014/24/EU, and should be in accordance with the principle of proportionality.

↓ 2018/1046 recital 78

(123) It is necessary to determine the commencement date and the duration of the limitation period for taking decisions on exclusion or imposing financial penalties.

↓ 2018/1046 recital 79

(124) It is important to be able to reinforce the deterrent effect achieved by the exclusion and the financial penalty. In that regard, the deterrent effect should be reinforced by the possibility to publish the information related to the exclusion and/or to the financial

penalty in a manner that satisfies the data-protection requirements set out in Regulations (EU) 2018/1725 ~~(EC) No 45/2001~~ and (EU) No 2016/679. Such publication should contribute to ensuring that the same conduct is not repeated. For reasons of legal certainty and in accordance with the principle of proportionality it should be specified in which situations a publication should not take place. In its assessment, the authorising officer responsible should have regard to any recommendation of the panel. As far as natural persons are concerned, personal data should only be published in exceptional circumstances justified by the seriousness of the conduct or its impact on the financial interests of the Union.

↓ 2018/1046 recital 80

(125) Information related to an exclusion or to a financial penalty should only be published in certain cases such as grave professional misconduct, fraud, a significant deficiency in complying with the main obligations of a legal commitment financed by the budget, or an irregularity, or where an entity is created in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations.

↓ 2018/1046 recital 81

(126) The criteria for exclusion should be clearly separated from the criteria leading to a possible rejection from an award procedure.

↓ 2018/1046 recital 82

(127) The information on the early detection of risks and on decisions on exclusion and the imposition of financial penalties on a person or entity should be centralised. For that purpose, related information should be stored in a database set up and operated by the Commission as the owner of the centralised system. That system should operate in compliance with the right to privacy and the protection of personal data.

↓ 2018/1046 recital 83

(128) While the setting-up and the operation of the early-detection and exclusion system should be the responsibility of the Commission, other Union institutions and bodies, as well as all persons and entities implementing Union funds under direct, shared and indirect management, should participate in that system by transmitting relevant information to the Commission. The authorising officer responsible and the panel should guarantee the right of defence of the person or entity. The same right should be given to a person or entity, in the context of an early detection, where an act envisaged by an authorising officer could adversely affect the rights of the person or entity concerned. In cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union which are not yet subject to a final judgment, it should be possible for the authorising officer responsible to defer the notification of the person or entity and for the panel to defer the right of the person or entity to submit its observations. Such deferral should only be justified where there are compelling

legitimate grounds to preserve the confidentiality of the investigation or of national judicial proceedings.

↓ 2018/1046 recital 84

(129) The Court of Justice of the European Union should be given unlimited jurisdiction with regard to decisions on exclusion and financial penalties imposed pursuant to this Regulation, in accordance with Article 261 TFEU.

⇩ new

(130) In order to address attempts by entities to elude possible adverse consequences of their misconduct, rules of notification should be established under precise conditions in the context of early detection and exclusion procedures. Furthermore, the use of electronic exchanges system should apply to such procedures.

↓ 2018/1046 recital 85

(131) In order to facilitate the protection of the financial interests of the Union across all methods of budget implementation, it should be possible for the persons and entities involved in budget implementation under shared and indirect management to take into account, as appropriate, exclusions decided upon by the authorising officers at Union level.

↓ 2018/1046 recital 86

(132) This Regulation should foster the objective of e-government, in particular the use of electronic data in the exchange of information between Union institutions and third parties.

↓ 2018/1046 recital 87

(133) Progress towards the electronic exchange of information and the electronic submission of documents, including e-procurement, where appropriate, which constitute a major simplification measure, should be accompanied by clear conditions for the acceptance of the systems to be used, so as to establish a legally sound environment while preserving flexibility in the management of Union funds for the participants, recipients and the authorising officers as provided for in this Regulation.

⇩ new

(134) In order to improve governance and quality of interoperable digital public services, the Union institutions, the executive agencies and the Union bodies, such as those referred

to in Articles 70 and 71 should follow and apply to the greatest possible extent the European Interoperability Framework.

↓ 2018/1046 recital 88

(135) Rules on the composition and tasks of the committee in charge of evaluating application documents in procurement procedures, grant award procedures and in contests for prizes should be laid down. It should be possible for the committee to include external experts where that possibility is provided for in the basic act.

↓ 2018/1046 recital 89

(136) In line with the principle of good administration, the authorising officer should request clarifications or missing documents while respecting the principle of equality of treatment and without substantially changing the application documents. The authorising officer should have the possibility to decide not to do so only in duly justified cases. In addition, the authorising officer should be able to correct an obvious clerical error or request the participant to correct it.

↓ 2018/1046 recital 90

(137) Sound financial management should require that the Commission protects itself by requesting guarantees at the time of paying pre-financing. The requirement for contractors and beneficiaries to lodge guarantees should not be automatic, but should be based on a risk analysis. Where, in the course of implementation, the authorising officer discovers that a guarantor is not or is no longer authorised to issue guarantees in accordance with the applicable national law, the authorising officer should be able to require replacement of the guarantee.

↓ 2018/1046 recital 91

(138) The different sets of rules for direct and indirect management, in particular as regards the concept of 'budget implementation tasks', have created confusion and entailed risks of errors of qualification both for the Commission and for its partners and should thus be simplified and harmonised.

↓ 2018/1046 recital 92
⇨ new

(139) The provisions on the *ex ante* pillar assessment of persons and entities implementing Union funds under indirect management should be revised to enable the Commission to rely as much as possible on the systems, rules and procedures ⇨ , including due diligence, ⇦ of those persons and entities which have been deemed equivalent to the ones used by the Commission. In addition, it is important to clarify that, where the assessment reveals areas in which the procedures in place are not sufficient to protect

the financial interests of the Union, the Commission should be able to sign contribution agreements while taking appropriate supervisory measures. It is also important to clarify in which cases it is possible for the Commission to decide not to require an *ex ante* pillar assessment in order to sign contribution agreements.

⇩ new

(140) In order to ensure efficient implementation of the Union budget, it is appropriate to further clarify the application of the principle of proportionality to indirect management. While the principle of proportionality cannot affect the nature of the obligations imposed by the relevant applicable legal framework, it should be systematically used in the cooperation with Union implementing partners, in order to strike the right balance between protection of the Union's financial interests and preserving the Union's ability to implement its policies. Certain adjustments and restructuring of the relevant provisions should be made. This should not be interpreted as limiting in practice the necessary rights and access required for the authorising officer responsible, for EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, for OLAF, for the Court of Auditors, and, where appropriate, for the relevant national authorities, to comprehensively exert their respective competences.

(141) In line with the principle of proportionality, it is necessary to provide for an application of the obligations provided for by this Regulation to the final recipients receiving support from the Union budget under financial instruments or budgetary guarantees. This application should take into due consideration and be commensurate to the nature of the final recipients and of the action, and the financial risks involved. Unnecessary administrative burden should be avoided in particular where final recipients are Micro, Small and Medium Enterprises and comparable economic operators with equivalent turnover or balance sheet total.

(142) The proportionality principle also needs to be applied to the assessment of rules, systems and procedures of entities that have already been successfully assessed, such as entities using rules established by the Commission, which shall be exempted from ex ante assessment. It should also be possible to exempt from ex ante assessment Member States organisations entrusted with the implementation of Union funds under shared management.

(143) It is necessary to clarify that when entities are selected to work under indirect management as a result of a call for expression of interest, the principles of equal treatment and non-discrimination apply.

🡻 2018/1046 recital 93

(144) Remuneration of persons and entities implementing the budget should, where relevant and possible, be performance-based.

⇩ new

(145) To ensure the integrity of the Union budget when implemented under indirect management, it is appropriate to request from implementing partners that they inform the Commission of suspected cases of fraud, corruption or any other illegal activity and to include such obligation in agreements that they concluded with third parties under indirect management.

🡻 2018/1046 recital 94

(146) The Commission enters into partnerships with third countries by means of financing agreements. It is important to clarify the content of such financing agreements, in particular for those parts of an action that are implemented by the third country under indirect management.

🡻 2018/1046 recital 95

(147) It is important to recognise the specific nature of blending facilities or platforms where the Commission blends its contribution with that of finance institutions and to clarify the application of the provisions on financial instruments and budgetary guarantees.

🡻 2018/1046 recital 96

(148) Procurement rules and principles applicable to public contracts awarded by Union institutions on their own account should be based on the rules set out in Directive 2014/23/EU of the European Parliament and of the Council[43] and Directive 2014/24/EU.

⇩ new

(149) Experience has shown that the application of the rules on procurement under this Regulation is not appropriate for the award of public contracts for financial services directly related to the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2014/65/EU of the European Parliament and of the Council, used by the Commission in the context of its borrowing and lending, asset management and treasury operations. This includes services provided by central banks, the European Stability Mechanism, the European Investment Bank and other international financial institutions, and national entities entrusted with the issuance and management of sovereign debt. For that reason and in accordance with Article 10 of Directive 2014/24/EU the rules on procurement laid down in this Regulation should not apply to those services.

[43] Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concessions contracts (OJ L 94, 28.3.2014, p. 1).

(150) In light of the Covid-19 pandemic, it is appropriate to modify the definition of crisis, which applies in particular to the common provisions and to procurement in the field of external actions and covers public and animal health, food safety emergencies and global health threats. In order to allow the flexibility needed to ensure a rapid response to unforeseen circumstances of extreme urgency resulting from a crisis, the contracting authority should be allowed to apply simplified procurement rules, such as use of negotiated procedure without prior publication of a contract notice applicable to crisis situations and acceptance of evidence on exclusion and selection criteria from the presumed successful tenderer after the award decision but in any case before the signature of the contract. The contracting authority should also have flexibility to exceptionally modify a contract or a framework contract, beyond the thresholds referred to in Article 176(3), without a procurement procedure in order to respond to a crisis. A declaration of crisis should be required in line with the relevant internal rules prior to having recourse to such simplified rules, except for procurement in the field of external action where such declaration is not required. In addition, the authorising officers responsible should justify case-by-case the extreme urgency resulting from the declared crisis.

↓ 2018/1046 recital 97

(151) In the case of mixed contracts, the methodology of the contracting authorities for determining the applicable rules should be clarified.

↓ 2018/1046 recital 98

(152) The *ex ante* and *ex post* publicity measures necessary to launch a procurement procedure should be clarified for contracts equal to or greater than the thresholds set out in Directive 2014/24/EU, for contracts below those thresholds and for contracts falling outside the scope of that Directive.

↓ 2018/1046 recital 99

(153) This Regulation should include an exhaustive list of all the procurement procedures available to Union institutions regardless of the thresholds.

↓ 2018/1046 recital 100

(154) In the interests of administrative simplification and in order to encourage the participation of small and medium-sized enterprises (SMEs), negotiated procedures for middle-value contracts should be provided for.

⇩ new

(155) Where necessary, it should be possible to carry out a joint procurement between, on the one hand, one or more contracting authorities from Member States and, on the

other hand, Union institutions and bodies referred to in Articles 70 and 71 or executive agencies referred to in Article 69, without those institutions, bodies or agencies being bound to acquire works, supplies or services. In order to allow contracting authorities to fully benefit from the potential of the internal market in terms of economies of scale and risk-benefit sharing, the possibilities for Union institutions, Union bodies or executive agencies to purchase supplies or services on behalf of Member States should be extended. A Union institution, Union body or an executive agency should be able to conduct the relevant procurement procedure on behalf or in the name of Member States based on an agreement between the parties, or act as a wholesaler, by buying, stocking and reselling or donating supplies and services, including rentals, to Member States or partner organisations it has selected.

🡻 2018/1046 recital 101

(156) As is the case in Directive 2014/24/EU, this Regulation should allow for market consultation prior to the launch of a procurement procedure. In order to ensure that an innovation partnership is used only when the desired works, supplies and services do not exist on the market or as a near-to-market development activity, an obligation to carry out such preliminary market consultation before using an innovation partnership should be laid down in this Regulation.

🡻 2018/1046 recital 102

(157) The contribution of contracting authorities to the protection of the environment and the promotion of sustainable development, while ensuring that they obtain the best value for money for their contracts, in particular through requiring specific labels or through the use of appropriate award methods, should be clarified.

⇩ new

(158) In line with the objectives of the Communication on the European Green Deal, progress towards implementation of greening aspects should be ensured by including, when relevant, for the calls for tenders, green selection or award criteria, which will incentivise the economic operators to offer more sustainable options.

🡻 2018/1046 recital 103

(159) In order to ensure that, when executing contracts, economic operators comply with the applicable environmental, social and labour law obligations established by Union law, national law, collective agreements or the international social and environmental conventions listed in Annex X to Directive 2014/24/EU, such obligations should be part of the minimum requirements defined by the contracting authority and should be integrated in the contracts signed by the contracting authority.

↓ 2018/1046 recital 104

(160) It is appropriate that different cases usually referred to as situations of conflict of interests be identified and treated distinctly. The notion of a 'conflict of interests' should be solely used for cases where a person or entity with responsibilities for budget implementation, audit or control, or an official or an agent of a Union institution or national authorities at any level, is in such a situation. Attempts to unduly influence an award procedure or obtain confidential information should be treated as grave professional misconduct which can lead to the rejection from the award procedure and/or exclusion from Union funds. In addition, economic operators might be in a situation where they should not be selected to implement a contract because of a professional conflicting interest. For instance, a company should not evaluate a project in which it has participated or an auditor should not be in a position to audit accounts it has previously certified.

⇩ new

(161) In order to ensure the absence of professional conflicting interests that may affect or risk affecting the capacity to perform the contract in an independent, impartial and objective manner, it is necessary to clarify the obligations of the contracting authority and of the candidates or tenderers. On the one hand, the candidates, tenderers, and, where appropriate, entities on whose capacity they rely as well as envisaged subcontractors should declare the absence of such conflicting interests, and to provide related information where requested. On the other hand, the contracting authority should assess the existence of such professional conflicting interests when declared or on the basis of additional information. Where such professional conflicting interests are established, this should lead to rejection from the award.

↓ 2018/1046 recital 105

(162) In accordance with Directive 2014/24/EU, it should be possible to verify whether an economic operator is excluded, to apply selection and award criteria, as well as to verify compliance with the procurement documents in any order. As a result, it should be possible to reject tenders on the basis of award criteria without a prior check of the corresponding tenderer with regard to exclusion or selection criteria.

↓ 2018/1046 recital 106

(163) Contracts should be awarded on the basis of the most economically advantageous tender in line with Article 67 of Directive 2014/24/EU.

↓ 2018/1046 recital 107
⇨ new

(164) In the interests of legal certainty, it is necessary to clarify that the selection criteria are strictly linked to the evaluation of candidates or tenderers and that the award criteria are strictly linked to the evaluation of the tenders. ⇨ In order to align Union procurement rules with Directive 2014/24/EU of the European Parliament and of the Council, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to perform the contract, where they can significantly affect the quality of contract performance and, as a result, the economic value of the tender. Contracting authorities which make use of any of those award criteria should ensure, by appropriate contractual means, that the staff assigned to contract performance effectively fulfil the specified quality standards. The contracting authorities should give their consent to any replacement of such staff and should verify whether replacing staff affords an equivalent level of quality as the replaced staff. Furthermore, it should be ensured that there is no overlap and double evaluation of the same element under the selection and award criteria. ⇦ ~~In particular, the qualifications and experience of staff assigned to perform the contract should only be used as a selection criterion and not as an award criterion, as this would introduce a risk of overlap and double evaluation of the same element. Furthermore, if such qualifications and experience were used as an award criterion, any change in the staff assigned to perform the contract, even where justified through illness or a change in position, would call into question the conditions under which the contract was awarded and thereby create legal uncertainty.~~

⇩ new

(165) It is necessary to simplify the rules governing dynamic purchasing systems to enable contracting authorities to take full advantage of the possibilities afforded by that purchasing method. In particular, the systems should be operated in the form of a restricted procedure, thus allowing for any economic operator that submits a request to participate and meets the exclusion and selection criteria to take part in procurement procedures carried out through the dynamic purchasing system over its period of validity, which should not be limited to four years. Tenders may also be presented in the form of an electronic catalogue particularly for off-the-shelf products or services generally available on the market. Moreover, in order to reduce the administrative burden given the dynamic nature of the systems, the requirement to appoint an opening and evaluation committee should be waived for specific procurements under a dynamic purchasing system. Considering the progress in digitalisation of procurement procedures, it should be clarified that public openings for open procedures may be organised remotely via video conferences.

(166) In order to simplify and align with the rules applicable to procurement by Union institutions on their own account, the obligation to publish the list of selected candidates to be invited to submit a tender on the Commission's website should be removed in the field of external actions.

↓ 2018/1046 recital 108

(167) Union procurement should ensure that Union funds are used in an effective, transparent and appropriate way, while reducing administrative burden on recipients of Union funds. In that regard, e-procurement should contribute to the better use of Union funds and enhance access to contracts for all economic operators. All Union institutions conducting procurement should publish clear rules on their websites regarding acquisition, expenditure and monitoring, as well as all contracts awarded, including the value thereof.

⇩ new

(168) In electronic procurement, the electronic exchange of information with participants should rely to the largest extent possible on existing standards, such as the European Single Procurement Document and e-Invoicing standards mandated respectively by Commission Implementing Regulation (EU) 2016/7 and by Directive 2014/55/EU of the European Parliament and of the Council on electronic invoicing in public procurement.

↓ 2018/1046 recital 109

(169) The existence of an opening phase and an evaluation for any procedure should be clarified. An award decision should always be the outcome of an evaluation.

↓ 2018/1046 recital 110

(170) When notified of the outcome of a procedure, candidates and tenderers should be informed of the grounds on which the decision was taken and should receive a detailed statement of reasons based on the content of the evaluation report.

↓ 2018/1046 recital 111 (adapted)
⇨ new

(171) ~~Given that criteria are applied in no particular order,~~ ⌦ It is appropriate to specify that, upon request, unsuccessful ⌫ ~~rejected~~ tenderers ~~who~~ ⌦ which ⌫ submitted compliant tenders should receive information on the characteristics and the relative advantages of the successful tender ~~if they so request~~. ⇨ Unsuccessful tenderers should, upon request, receive additional information even where the compliance of their tender has not been checked due to the selected order of criteria. ⇦

⇩ new

(172) It should also be clarified that tenderers rejected on the basis of Article 144 or any other grounds for rejection should not have access to such information.

↓ 2018/1046 recital 112

(173) For framework contracts with reopening of competition, there should be no obligation to provide information on the characteristics and the relative advantages of the successful tender to an unsuccessful contractor, on the basis that the receipt of such information by parties to the same framework contract each time a competition is reopened might prejudice fair competition between them.

↓ 2018/1046 recital 113

(174) A contracting authority should be able to cancel a procurement procedure before the contract is signed, without the candidates or tenderers being entitled to claim compensation. This should be without prejudice to situations where the contracting authority has acted in such a way that it is possible to hold it liable for damages in accordance with the general principles of Union law.

⇩ new

(175) In the case of procedures awarded in lots or through multiple sourcing, a contracting authority should be able to partially cancel a procurement procedure, before the contract is signed, without the candidates or tenderers being entitled to claim compensation. This should be without prejudice to situations where the contracting authority has acted in such a way that it is possible to hold it liable for damages in accordance with the general principles of Union law.

(176) The award of contracts following multiple sourcing procurement, should be allowed in duly justified cases, in particular, in order to avoid the over-reliance on a single provider, for critical equipment and services, taking into account the objectives of technological independence and continuity of services.

↓ 2018/1046 recital 114

(177) As is the case in Directive 2014/24/EU, it is necessary to clarify the conditions under which it is possible to modify a contract during its performance without a new procurement procedure. In particular, a new procurement procedure should not be required in the event of administrative changes, universal succession and application of clear and unequivocal revision clauses or options that do not alter the minimum requirements of the initial procedure. A new procurement procedure should be required in the case of material modifications to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including as regards the distribution of intellectual property rights. Such modifications demonstrate the parties' intention to renegotiate the essential terms or conditions of that contract, in particular if the modifications would have had an influence on the outcome of the procedure had the modified terms or conditions been part of the initial procedure.

⇩ new

(178) Experience gained has shown that it is necessary to clarify in which cases a modification is considered altering the subject matter of the contract.

🡻 2018/1046 recital 115

(179) It is necessary to provide for the option of requiring a performance guarantee in relation to works, supplies and complex services in order to guarantee compliance with substantial contractual obligations and to ensure proper performance throughout the duration of the contract. It is also necessary to provide for the option of requiring a retention money guarantee to cover the contract liability period, in line with customary practice in the sectors concerned.

🡻 2018/1046 recital 116

(180) In order to determine the applicable thresholds and procedures, it is necessary to clarify whether Union institutions, executive agencies and Union bodies are deemed to be contracting authorities. They should not be deemed to be contracting authorities in cases where they purchase from a central purchasing body. In addition, Union institutions form a single legal entity and their departments cannot conclude contracts, but only service-level agreements, between themselves.

🡻 2018/1046 recital 117 (adapted)
⇨ new

(181) It is appropriate to include a reference in this Regulation to the ~~two~~ thresholds set out in Directive 2014/24/EU applicable to works and to supplies and services ⇨ and in Directive 2014/23/EU for concessions ⇦ ~~, respectively~~. ~~Those thresholds should also be applicable to concession contracts for reasons of simplification, as well as sound financial management, considering the specificities of the contracting needs of Union institutions.~~ The revision of those thresholds as provided for in ~~Directive~~ ⌦ Directives ⌫ 2014/24/EU ⌦ and 2014/23/EU ⌫ should therefore be directly applicable to procurement ⇨ and respectively concessions ⇦ under this Regulation.

⇩ new

(182) The award of concession contracts should be simplified by applying the thresholds of Directive 2014/23/EU to concessions.

🡻 2018/1046 recital 118

(183) For harmonisation and simplification purposes, the standard procedures applicable to procurement should also be applied to purchases provided for under the light regime

for contracts for social and other specific services referred to in Article 74 of Directive 2014/24/EU. Therefore, the threshold for light regime purchases should be aligned with the threshold for service contracts.

⇩ new

(184) In order to better adapt procedures to market conditions outside the Union, this Regulation should include specific provisions under which Union delegations award contracts on their own account in third countries. Therefore, it is appropriate to revise the thresholds for awarding contracts applied by the Union delegations in third countries and align them to those applied for awarding contracts in the field of external actions.

🡻 2018/1046 recital 119

(185) It is necessary to clarify the conditions of application of the standstill period to be observed before signing a contract or framework contract.

🡻 2018/1046 recital 120

(186) The rules applicable to procurement in the field of external actions should be consistent with the principles laid down in Directives 2014/23/EU and 2014/24/EU.

⇩ new

(187) The rules on access to procurement, applicable both at the time of tender submission and during contract implementation, should include the conditions laid down in implementing acts (International Procurement Instrument measures) adopted under Regulation 20xx/xxx[44] [IPI Regulation] as well as the respective obligations upon successful tenderers set out in that Regulation.

🡻 2018/1046 recital 121

(188) In order to reduce complexity, streamline existing rules and improve the readability of the procurement rules, it is necessary to regroup the general provisions on procurement and the specific provisions applicable to procurement in the field of external actions and to remove unnecessary repetitions and cross-referencing.

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[44]

↓ 2018/1046 recital 122

(189) It is necessary to clarify which economic operators have access to procurement under this Regulation depending on their place of establishment and to provide explicitly for the possibility of such access also for international organisations.

⇩ new

(190) In duly justified cases, where the contract is to be awarded in a third country, the authorising officer responsible should be allowed to open access to the procurement procedure to natural or legal persons established in a third country that does not have a special agreement with the Union in the field of procurement. This flexibility should be provided in particular where there are no natural or legal persons established in countries that have access to the procurement under a special agreement with the Union in the field of procurement who can provide the required work, supplies or services. The rules on access to procurement, applicable both at the time of tender submission and during contract implementation, should include the conditions laid down in implementing acts (International Procurement Instrument measures) adopted under Regulation 20xx/xxx [IPI Regulation].

↓ 2018/1046 recital 123

(191) In order to achieve a balance between the need for transparency and greater coherence of procurement rules on the one hand, and the need to provide flexibility on certain technical aspects of those rules on the other, the technical rules on procurement should be set out in an annex to this Regulation and the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amendments to that Annex.

↓ 2018/1046 recital 124

(192) It is necessary to clarify the scope of the Title on grants, particularly with regard to the type of action or body eligible for a grant, as well as with regard to legal commitments that can be used to cover grants. In particular, grant decisions should be phased out due to their limited use and the progressive introduction of e-grants. The structure should be simplified by moving the provisions on instruments which are not grants to other parts of this Regulation. The nature of bodies which can receive operating grants should be clarified by no longer referring to bodies pursuing an aim of general Union interest since those bodies are covered by the notion of bodies having an objective forming part of and supporting a Union policy.

↓ 2018/1046 recital 125

(193) In order to simplify procedures and improve the readability of this Regulation, provisions related to the content of the grant application, of the call for proposals and of the grant agreement should be simplified and streamlined.

↓ 2018/1046 recital 126

(194) In order to facilitate the implementation of actions financed by multiple donors where the overall financing of the action is not known at the time of commitment of the Union contribution, it is necessary to clarify the way the Union contribution is defined and the method of verifying its use.

↓ 2018/1046 recital 127

(195) Experience gained in the use of lump sums, unit costs or flat-rate financing has shown that such forms of financing significantly simplify administrative procedures and substantially reduce the risk of error. Regardless of the field of Union intervention, lump sums, unit costs and flat rates are suitable forms of financing, in particular for standardised and recurrent actions, such as mobility or training activities. Moreover, as institutional cooperation between public administrations of Member States and of beneficiary or partner countries (institutional twinning) is implemented by Member State institutions, the use of simplified cost options is justified and should foster their engagement. In the interest of increased efficiency, Member States and other recipients of Union funds should be able to make more frequent use of simplified cost options. In this context, the conditions for using lump sums, unit costs and flat rates should be made more flexible. It is necessary to provide explicitly for the establishment of single lump sums covering the entire eligible costs of the action or the work programme. In addition, in order to foster focus on results, priority should be given to output-based funding. Input-based lump sums, unit costs and flat rates should remain an option where output-based ones are not possible or appropriate.

⇩ new

(196) In order to ensure legal certainty, it is necessary to clarify that, where a grant takes the form of financing not linked to costs, the provisions on an estimated budget, co-financing and no double funding do not apply since they cannot be applied in a case where the amount to be reimbursed is linked to defined conditions or results and is decoupled from the underlying costs.

↓ 2018/1046 recital 128

(197) The administrative procedures for authorising lump sums, unit costs and flat rates should be simplified by vesting the power for such authorisation in the authorising officers responsible. Where appropriate, such authorisation can be given by the

Commission in light of the nature of the activities or of the expenditure or in light of the number of authorising officers concerned.

↓ 2018/1046 recital 129

(198) In order to bridge the gap in the availability of data used to establish lump sums, unit costs and flat rates, the use of an expert judgement should be allowed.

↓ 2018/1046 recital 130

(199) While the potential of more frequent use of simplified forms of financing should be realised, compliance with the principle of sound financial management, and in particular the principles of economy, efficiency and no double funding, should be ensured. For that purpose, simplified forms of financing should ensure that the resources employed are adequate to the objectives to be achieved, that the same costs are not financed more than once from the budget, that the co-financing principle is respected and that overall overcompensation of recipients is avoided. Therefore, simplified forms of financing should be based on statistical or accounting data, similar objective means or expert judgement. In addition, suitable checks, controls and periodic assessments should continue to apply.

↓ 2018/1046 recital 131

(200) The scope of checks and controls as opposed to the periodic assessments of lump sums, unit costs or flat rates should be clarified. Those checks and controls should focus on the fulfilment of the conditions triggering the payment of lump sums, unit costs or flat-rates, including, where required, the achievement of outputs and/or results. Those conditions should not require reporting on the costs actually incurred by the beneficiary. Where the amounts of lump sums, unit costs or flat-rate financing have been determined *ex ante* by the authorising officer responsible or by the Commission they should not be challenged by *ex post* controls. This should not prevent the reduction of a grant in the event of poor, partial or late implementation or of irregularity, fraud or a breach of other obligations. In particular, a grant should be reduced where the conditions triggering the payment of lump sums, unit costs or flat rates have not been fulfilled. The frequency and scope of the periodic assessment should depend on the evolution and the nature of the costs, in particular taking into account substantial changes in market prices and other relevant circumstances. The periodic assessment could lead to adjustments of the lump sums, unit costs or flat rates applicable to future agreements, but should not be used for questioning the value of the lump sums, unit costs or flat rates already agreed upon. The periodic assessment of lump sums, unit costs or flat rates might require access to the accounts of the beneficiary for statistical and methodological purposes and such access is also necessary for fraud-prevention and detection purposes.

⇩ new

(201) Where a grant takes the form of a flat rate, unit cost or lump sum and there is thus no *ex post* verification of the underlying costs, it is not possible to check that the eligible costs were incurred during the lifetime of the action. In order to ensure legal certainty, it should be clarified that *ex post* checks and controls on beneficiaries will verify that the fulfilment of the conditions triggering the payment of the flat rate, unit costs, or lump sum was achieved during the implementation period.

🡻 2018/1046 recital 132

(202) In order to facilitate the participation of small organisations in the implementation of the Union policies in an environment of limited availability of resources, it is necessary to recognise the value of the work provided by volunteers as eligible costs. As a result, such organisations should be able to rely to a greater extent on volunteers' work for the sake of providing co-financing to the action or the work programme. Without prejudice to the maximum co-financing rate specified in the basic act, in such cases, the Union grant should be limited to the estimated eligible costs other than those covering volunteers' work. As volunteers' work is a work provided by third parties without a remuneration being paid to them by the beneficiary, the limitation avoids reimbursing costs which the beneficiary did not incur. In addition, the value of the volunteers' work should not exceed 50 % of the in-kind contributions and any other co-financing.

⇩ new

(203) To ensure legal certainty, it should be clarified that, where in-kind contributions from third parties in the form of volunteers' work are presented as eligible costs in the estimated budget, the co-financing to which the 50% limit is applied should include all the sources of financing, that is the Union grant, in-kind contributions and other sources of financing.

🡻 2018/1046 recital 133

(204) In order to protect one of the fundamental principles of public finances, the no-profit principle should be retained in this Regulation.

⇩ new

(205) To ensure legal certainty when calculating the Union contribution in the case of a profit in a grant funded by the Union budget, it should be clarified that the recovery of the percentage of the profit corresponding to the Union contribution to the eligible costs should not differentiate between actually incurred costs and simplified costs.

🡻 2018/1046 recital 134

(206) In principle, grants should be awarded following a call for proposals. Where exceptions are allowed, they should be interpreted and applied restrictively in terms of scope and duration. The exceptional possibility to award grants without a call for proposals to bodies with a de facto or de jure monopoly should only be used where the bodies concerned are the only ones capable of implementing the relevant types of activities or have been vested with such a monopoly by law or by a public authority.

🡻 2018/1046 recital 135

(207) In the framework of moving towards e-grants and e-procurement, applicants and tenderers should be asked to provide a proof of their legal status and financial viability only once within a specific period and should not be required to resubmit supporting documents in each award procedure. It is therefore necessary to align the requirements for the number of years for which documents will be requested under grant award procedures and procurement procedures.

⇩ new

(208) A beneficiary of a grant can provide financial support to a third party based on the fulfilment of certain conditions, and the amount paid to any third party should not exceed EUR 60 000. That amount may only be exceeded where achieving the objectives of the action would otherwise be impossible or overly difficult. In order to allow more flexibility for implementing the budget in crisis and emergency situations, it should also be possible to exceed EUR 60 000 without case-by-case justification in the cases of humanitarian aid, emergency support operations, civil protection operations or crisis management aid.

(209) Where the implementation of an action or a work programme requires a beneficiary to carry out procurement, it should be clarified that any beneficiary may use its own purchasing practices provided they ensure best value for money, or as appropriate, lowest price, irrespective of whether the beneficiary awards a public contract and is a contracting authority within the meaning of this Regulation. The definition of "contract" should be amended accordingly.

🡻 2018/1046 recital 136

(210) As a valuable type of financial support not related to predictable costs, the use of prizes should be facilitated and the applicable rules should be clarified. Prizes should be seen as complementing, not substituting, other funding instruments such as grants.

🡻 2018/1046 recital 137

(211) In order to allow for the more flexible implementation of prizes, the obligation under Regulation (EU, Euratom) No 966/2012 to publish contests for prizes with a unit value

of EUR 1000000 or more in the statements accompanying the draft budget should be replaced by an obligation to submit prior information to the European Parliament and to the Council and to explicitly mention such prizes in the financing decision.

↓ 2018/1046 recital 138

(212) Prizes should be awarded in accordance with the principles of transparency and equal treatment. In that context, the minimum characteristics of contests should be laid down, in particular the arrangements for paying the prize to the winners after its award, and the appropriate means of publication It is also necessary to establish a clearly defined award procedure, from submission of the applications to the provision of information to applicants and notification of the winning applicant, which mirrors the grant award procedure.

↓ 2018/1046 recital 139

(213) This Regulation should lay down the principles and conditions applicable to financial instruments, budgetary guarantees and financial assistance and the rules on the limitation of the financial liability of the Union, the fight against fraud and money laundering, the winding down of financial instruments and reporting.

↓ 2018/1046 recital 140

(214) In recent years the Union has increasingly used financial instruments that allow a higher leverage of the budget to be achieved but, at the same time, they generate a financial risk for the budget. Those financial instruments include not only the financial instruments covered by Regulation (EU, Euratom) No 966/2012, but also other instruments, such as budgetary guarantees and financial assistance, that previously have been governed only by the rules established in their respective basic acts. It is important to establish a common framework to ensure the homogeneity of the principles applicable to that set of instruments and to regroup them under a new Title in this Regulation, comprising sections on budgetary guarantees and on financial assistance to Member States or third countries in addition to the existing rules applicable to financial instruments.

↓ 2018/1046 recital 141

(215) Financial instruments and budgetary guarantees can be valuable in multiplying the effect of Union funds when those funds are pooled with other funds and include a leverage effect. Financial instruments and budgetary guarantees should only be implemented if there is no risk of distortion of competition in the internal market or inconsistency with State aid rules.

↓ 2018/1046 recital 142

(216) Within the framework of the annual appropriations authorised by the European Parliament and by the Council for a given programme, financial instruments and budgetary guarantees should be used on the basis of an *ex ante* evaluation demonstrating that they are effective for the achievement of the policy objectives of the Union.

↓ 2018/1046 recital 143

(217) Financial instruments, budgetary guarantees and financial assistance should be authorised by means of a basic act. Where in duly justified cases financial instruments are established without a basic act, they should be authorised by the European Parliament and by the Council in the budget.

↓ 2018/1046 recital 144

(218) The instruments that potentially fall under Title X, such as loans, guarantees, equity investments, quasi-equity investment and risk-sharing instruments, should be defined. The definition of 'risk-sharing instruments' should allow for the inclusion of credit enhancements for project bonds, covering the debt service risk of a project and mitigating the credit risk of bond holders through credit enhancements in the form of a loan or a guarantee.

↓ 2018/1046 recital 145

(219) Any repayment from a financial instrument or budgetary guarantee should be used for the instrument or guarantee which produced the repayment with a view to enhancing the efficiency of that instrument or guarantee, unless otherwise specified in the basic act, and should be taken into account when proposing future appropriations to that instrument or guarantee.

⇩ new

(220) It is important that the audited financial statements for financial instruments and budgetary guarantees implemented under indirect management be provided in time for the Court of Auditors to take them into account when making its observations on the provisional accounts.

↓ 2018/1046 recital 146

(221) It is appropriate to recognise the alignment of interests in pursuing policy objectives of the Union and, in particular, that the EIB and the EIF have the specific expertise to implement financial instruments and budgetary guarantees.

↓ 2018/1046 recital 147

(222) The EIB and the EIF, acting as a group, should have the possibility to transfer part of the implementation to each other, where such transfer might benefit the implementation of a given action and as further defined in the relevant agreement with the Commission.

⇩ new

(223) For consistency and in order to take account of the Multiannual Financial Framework for 2021 to 2027, for financial instruments and budgetary guarantees, it is necessary to clarify certain provisions on reporting by the persons or entities entrusted with the implementation of Union funds in accordance with Article 62(1)(c), on the application of Title X in case of combination thereof with ancillary support from the budget, including grants, and on combination with funds implemented under shared management.

↓ 2018/1046 recital 148

(224) It should be clarified that, where financial instruments or budgetary guarantees are combined with ancillary forms of support from the budget, the rules on financial instruments and budgetary guarantees should apply to the whole measure. Such rules should be complemented, where applicable, by specific requirements set out in the sector-specific rules.

↓ 2018/1046 recital 149

(225) The implementation of financial instruments and budgetary guarantees financed by the budget should adhere to the Union policy on non-cooperative jurisdictions for tax purposes, and updates thereto, as laid down in relevant legal acts of the Union and in Council conclusions, in particular the Council conclusions of 8 November 2016 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes[45] and the Annex thereto, as well as the Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes[46] and the Annexes thereto.

↓ 2018/1046 recital 150

(226) Budgetary guarantees and financial assistance to Member States or third countries are generally off-budget operations that have a significant impact on the balance sheet of the Union. While remaining generally off-budget operations, their inclusion in this

[45] OJ C 461, 10.12.2016, p. 2.
[46] OJ C 438, 19.12.2017, p. 5.

Regulation provides a stronger protection of the financial interests of the Union and a clearer framework for their authorisation, management and accounting.

↓ 2018/1046 recital 151

(227) The Union has recently launched important initiatives based on budgetary guarantees such as the European Fund for Strategic Investments (EFSI) or the European Fund for Sustainable Development (EFSD). The characteristics of those instruments are that they generate a contingent liability for the Union and imply the provisioning of funds to make available a liquidity cushion that allows the budget to respond in an orderly manner to the payment obligations that might arise from those contingent liabilities. In order to guarantee the credit rating of the Union and, hence, its capacity to deliver effective financing, it is essential that the authorisation, provisioning and monitoring of contingent liabilities follow a robust set of rules that should be applied to all budgetary guarantees.

↓ 2018/1046 recital 152

(228) The contingent liabilities arising from budgetary guarantees can cover a wide range of financing and investment operations. The possibility of a budgetary guarantee being called cannot be scheduled with full certainty on a yearly basis as in the case of loans that have a defined schedule for repayment. It is, therefore, indispensable to set up a framework for the authorisation and monitoring of contingent liabilities ensuring full respect, at any moment, for the ceiling for annual payment appropriations set out in ~~Council~~ Decision (EU, Euratom) 2020/2053~~2014/335/EU, Euratom~~[47].

↓ 2018/1046 recital 153

(229) That framework should also provide for management and control, including regular reporting on the financial exposure of the Union. The rate of provisioning of financial liabilities should be set on the basis of a proper risk assessment of the financial risks arising from the related instrument. The sustainability of the contingent liabilities should be assessed annually in the context of the budgetary procedure. An early warning mechanism should be established to avoid a shortage of provisions to cover financial liabilities.

↓ 2018/1046 recital 154

(230) The increasing use of financial instruments, budgetary guarantees and financial assistance requires a significant volume of payment appropriations to be mobilised and provisioned. In order to deliver leverage while ensuring an adequate level of protection against financial liabilities, it is important to optimise the amount of provisioning required and to achieve efficiency gains by pooling those provisions into

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[47] ~~Council Decision 2014/335/EU, Euratom of 26 May 2014 on the system of own resources of the European Union (OJ L 168, 7.6.2014, p. 105).~~

a common provisioning fund. In addition, the more flexible use of those pooled provisions permits an effective global provisioning rate that delivers the protection requested with an optimised amount of resources.

↓ 2018/1046 recital 155

(231) In order to ensure the proper functioning of the common provisioning fund for the post-2020 programming period, the Commission should, by 30 June 2019, submit an independent external evaluation of the advantages and disadvantages of entrusting the financial management of the assets of the common provisioning fund to the Commission, to the EIB, or to a combination of the two, taking into account the relevant technical and institutional criteria used in comparing asset management services, including the technical infrastructure, comparison of costs for the services given, institutional set-up, reporting, performance, accountability and expertise of each institution and the other asset management mandates for the budget. The evaluation should be accompanied, where appropriate, by a legislative proposal.

↓ 2018/1046 recital 156

(232) The rules applicable to provisioning and to the common provisioning fund should provide a solid internal control framework. The guidelines applicable to the management of the resources in the common provisioning fund should be established by the Commission after having consulted the accounting officer of the Commission. The authorising officers of the financial instruments, budgetary guarantees or financial assistance should actively monitor the financial liabilities under their responsibility and the financial manager of the resources of the common provisioning fund should manage the cash and the assets in the fund following the rules and procedures set out by the accounting officer of the Commission.

↓ 2018/1046 recital 157

(233) Budgetary guarantees and financial assistance should follow the same set of principles established for financial instruments. Budgetary guarantees, in particular, should be irrevocable, unconditional and on demand. They should be implemented under indirect management or, only in exceptional cases, under direct management. They should only cover financing and investment operations and their counterparts should contribute their own resources to the operations covered.

↓ 2018/1046 recital 158

(234) Financial assistance to Member States or third countries should take the form of a loan, of a credit line or any other instrument deemed appropriate to ensure the effectiveness of the support. To that end, the Commission should be empowered in the relevant basic act to borrow the necessary funds on the capital markets or from financial institutions, avoiding the involvement of the Union in any transformation of maturities that would expose it to an interest risk or to any other commercial risk.

↓ 2018/1046 recital 159

(235) The provisions related to financial instruments should apply as soon as possible in order to achieve the simplification and effectiveness sought. The provisions related to the budgetary guarantees and to financial assistance, as well as to the common provisioning fund, should apply as from the post-2020 multiannual financial framework. That calendar will allow a thorough preparation of the new tools for managing contingent liabilities. It will also permit an alignment between the principles set out in Title X and, on the one hand, the proposal for the post-2020 multiannual financial framework and, on the other hand, the specific programmes related to that framework.

↓ 2018/1046 recital 160

(236) Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council[48] lays down rules for, inter alia, the funding of political parties and political foundations at European level, in particular with regard to funding conditions, the award and distribution of funding, donations and contributions, financing of campaigns for elections to the European Parliament, reimbursable expenditure, the prohibition of certain funding, accounts, reporting and audit, implementation and control, penalties, cooperation between the Authority for European political parties and foundations, the Authorising Officer of the European Parliament and Member States, and transparency.

↓ 2018/1046 recital 161

(237) Rules should be included in this Regulation on contributions from the budget to European political parties as envisaged by Regulation (EU, Euratom) No 1141/2014.

↓ 2018/1046 recital 162

(238) The financial support given to European political parties should take the form of a specific contribution, to match the specific needs of those parties.

↓ 2018/1046 recital 163

(239) Although financial support is awarded without an annual work programme being required, European political parties should justify *ex post* the sound use of Union funding. In particular, the authorising officer responsible should verify if the funding has been used to pay reimbursable expenditure as established in the call for contributions within the time limits laid down in this Regulation. Contributions to

[48] Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (OJ L 317, 4.11.2014, p. 1).

European political parties should be spent by the end of the financial year following that of their award, after which, any unspent funding should be recovered by the authorising officer responsible.

↓ 2018/1046 recital 164

(240) Union funding awarded to finance the operating costs of European political parties should not be used for other purposes than those established in Regulation (EU, Euratom) No 1141/2014, in particular to directly or indirectly finance third parties such as national political parties. European political parties should use the contributions to pay a percentage of current and future expenditure and not expenditure or debts incurred before the submission of their applications for contributions.

↓ 2018/1046 recital 165

(241) The award of contributions should also be simplified and adapted to the specificities of European political parties, in particular by the absence of selection criteria, the establishment of a single full pre-financing payment as a general rule, and by the possibility to use lump sums, flat-rate financing and unit costs.

↓ 2018/1046 recital 166

(242) The contributions from the budget should be suspended, reduced or terminated if European political parties infringe Regulation (EU, Euratom) No 1141/2014.

↓ 2018/1046 recital 167

(243) Penalties that are based both on this Regulation and on Regulation (EU, Euratom) No 1141/2014 should be imposed in a coherent way and should respect the principle of *ne bis in idem*. In accordance with Regulation (EU, Euratom) No 1141/2014, administrative and/or financial penalties provided for by this Regulation are not to be imposed in one of the cases for which penalties have already been imposed on the basis of Regulation (EU, Euratom) No 1141/2014.

↓ 2018/1046 recital 168

(244) This Regulation should establish a general framework under which budget support can be used as an instrument in the field of external actions including the obligation for the third country to provide the Commission with adequate and timely information to evaluate the fulfilment of the agreed conditions and provisions ensuring the protection of the financial interests of the Union.

🡻 2018/1046 recital 169

(245) In order to reinforce the role of the European Parliament and of the Council, the procedure for establishing Union trust funds should be clarified. It is also necessary to specify the principles applicable to the contributions to Union trust funds, in particular the importance of securing contributions from other donors which justify their establishment with regard to added value. It is also necessary to clarify the responsibilities of the financial actors and of the board of the Union trust fund and to define rules ensuring a fair representation of the participating donors on the board of the Union trust fund and a mandatory vote in favour by the Commission for the use of the funds. It is also important to set out in more detail the reporting requirements applicable to Union trust funds.

⇩ new

(246) The Union should be able to participate in global initiatives, when such participation contributes to the achievement of Union policy objectives. In order to provide a suitable legal framework for Union participation in global initiatives, Union contribution to such initiatives should be included as a new budget implementation instrument. The use of this new financial vehicle would be subject to conditions and limited to cases where other instruments provided in the Financial Regulation do not enable the achievement of the respective EU policy objectives with the same scale and impact.

(247) In order to adapt to the progress on digitalisation, the lists of external experts drawn up following a call for expression of interest should be valid longer than the duration of the multiannual programme provided a rotation of the experts is ensured and new experts are able to express their interest. In addition, it is necessary to allow Union institutions to attract highly skilled external experts in order to ensure the evaluation process and the specific opinions and advice provided by the experts is of high quality. In order to successfully compete with other actors on the market, the Union institutions should be allowed to offer more competitive remuneration in exceptional and duly justified cases. Finally, in the interest of legal certainty, the rules applicable to remunerated external experts should be clarified to mirror the different steps of the award procedure.

(248) In order to provide a clear legal framework for the Union institutions to donate services, supplies or works, non-financial donations should be included as a new budget implementation instrument. This instrument should not be confused with the general framework of support provided by the Union to third countries which is of a broader nature but can include non-financial donations. In light of the COVID-19 pandemic, such an instrument should provide a stable legal basis in particular for future crisis and emergency situations and ensure that the Union institutions have the appropriate budget support tools to help Member States, other persons and entities when support is most needed. That instrument should be implemented under direct management. Related provisions, such as definitions, suspension, termination and reduction, and evaluation committee should be adjusted accordingly.

(249) Similar to the introduction of non-financial donations, the EU institutions should also be able to award prizes which are not financial. This is also important in order to allow

contests among young people who do not have a bank account in their Member State, but who can easily receive their reward in a practical form. For this purpose, the definition and the provisions on ‘prizes’ should be adjusted accordingly.

↓ 2018/1046 recital 170

(250) In line with the streamlining of the existing rules and in order to avoid undue repetition, the special provisions set out in Part Two of Regulation (EU, Euratom) No 966/2012, applicable to the EAGF, to research, to external actions and to specific Union funds, should only be introduced in the relevant parts of this Regulation, provided that the provisions are still used and relevant.

↓ 2018/1046 recital 171

(251) The provisions on the presentation of accounts and accounting should be simplified and clarified. It is therefore appropriate to group together all provisions on annual accounts and other financial reporting.

⇩ new

(252) The deadlines for the observations by the Court of Auditors on the provisional accounts and for the submission of the final accounts should be adjusted to take into account the timetable of the discharge procedure.

↓ 2018/1046 recital 172

(253) The manner in which Union institutions currently report on building projects to the European Parliament and to the Council should be improved. Union institutions should be allowed to finance new building projects with the revenue received for buildings already sold. Consequently, a reference to the provisions on internal assigned revenue should be introduced in the provisions on building projects. This would allow meeting the changing needs in the building policy of Union institutions, while saving costs and introducing more flexibility.

⇩ new

(254) In its Communication on the European Green Deal, the Commission encourages the renovation of buildings in order to reduce their emissions and make them more energy efficient. Taking into account the rapid evolution of the market for energy efficient buildings, there is an acute need for the Union institutions to incorporate the Green Deal commitments in their own building policy and to renovate their buildings. In addition, the recent development of working methods accelerated by the Covid-19 pandemic requires adapting the institutions’ office stock in order to develop a dynamic office policy. As a consequence, financing of structural renovations by loans should be

allowed. The interpretation of the concept of new building projects should be broadened and, in particular, include any project concerning structural renovation.

↓ 2018/1046 recital 173

(255) In order to adapt the rules applicable to certain Union bodies, the detailed rules on procurement and the detailed conditions and the minimum ratio for the effective provisioning rate, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the framework financial regulation for bodies set up under the TFEU and the Euratom Treaty, the model financial regulation for public-private partnership bodies, amendments to Annex I to this Regulation, the detailed conditions and methodology for the calculation of the effective provisioning rate and the amendment of the defined minimum ratio of the effective provisioning rate, which should not be set at a level lower than 85 %. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

↓ 2018/1046 recital 174 (adapted)

~~In order to ensure that the European Union Programme for Employment and Social Innovation (EaSI), established by Regulation (EU) No 1296/2013 of the European Parliament and of the Council[49], swiftly provides adequate resources to support changing political priorities, the indicative shares for each of the three axes and the minimum percentages for each of the thematic priorities within each axis should allow for a greater flexibility, while maintaining an ambitious deployment rate for EURES cross-border partnerships. This should improve the management of EaSI and allow for the focusing of budgetary resources on actions that produce better employment and social results.~~

↓ 2018/1046 recital 175 (adapted)

~~In order to facilitate investments in cultural and sustainable tourism infrastructure, without prejudice to the application of legal acts of the Union in the environmental field, in particular Directives 2001/42/EC[50] and 2011/92/EU[51] of the European Parliament and of the Council, as~~

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49 ~~Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ('EaSI') and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion (OJ L 347, 20.12.2013, p. 238).~~

50 ~~Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, p. 30).~~

~~appropriate, certain restrictions as regards the scope of support under Regulation (EU) No 1301/2013 of the European Parliament and of the Council[52] for such investments should be clarified. It is therefore necessary to introduce clear restrictions as regards limiting the scale of the contribution of the ERDF to such investments from 2 August 2018.~~

↓ 2018/1046 recital 176 (adapted)

~~In order to respond to the challenges posed by increasing flows of migrants and refugees, the objectives to which the ERDF can contribute in its support of migrants and refugees should be spelled out with a view to enabling Member States to provide investments focusing on legally staying third-country nationals, including applicants for asylum and beneficiaries of international protection.~~

↓ 2018/1046 recital 177 (adapted)

~~With a view to facilitating the implementation of operations under Regulation (EU) No 1303/2013 of the European Parliament and of the Council[53], the scope of potential beneficiaries should be enlarged. Therefore, it should be allowed for managing authorities to consider natural persons as beneficiaries and a more flexible definition of beneficiaries in the context of State aid should be set out.~~

↓ 2018/1046 recital 178 (adapted)

~~As a matter of practice, macroregional strategies are agreed upon the adoption of Council conclusions. As the case has been since the entry into force of Regulation (EU) No 1303/2013, such conclusions can, where appropriate, be endorsed by the European Council, taking into account the powers of that institution laid down in Article 15 TEU. The definition of 'macroregional strategies' set out in that Regulation should therefore be amended accordingly.~~

↓ 2018/1046 recital 179 (adapted)

~~With a view to ensuring sound financial management of the ERDF, the ESF, the Cohesion Fund, the EAFRD and the EMFF ('the European Structural and Investment Funds' – 'ESI~~

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51 ~~Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012, p. 1).~~

52 ~~Regulation (EU) No 1301/2013 of the European Parliament and of the Council of 17 December 2013 on the European Regional Development Fund and on specific provisions concerning the Investment for growth and jobs goal and repealing Regulation (EC) No 1080/2006 (OJ L 347, 20.12.2013, p. 289).~~

53 ~~Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).~~

~~Funds') which are implemented under shared management, and to clarify Member States' obligations, the general principles set out in Article 4 of Regulation (EU) No 1303/2013 should refer to the principles set out in this Regulation concerning internal control of budget implementation and avoidance of conflicts of interests.~~

↓ 2018/1046 recital 180 (adapted)

~~With a view to maximising the synergies between all Union funds to address the challenges of migration and asylum in an effective way, it should be ensured that, when the thematic objectives are translated into priorities in the Fund-specific rules, such priorities cover the appropriate use of each ESI Fund for those areas. Where appropriate, coordination with the Asylum, Migration and Integration Fund should be ensured.~~

↓ 2018/1046 recital 181 (adapted)

~~In order to ensure coherence of programming arrangements, an alignment between Partnership Agreements and the amendments of programmes approved by the Commission in the preceding calendar year should be carried out once per year.~~

↓ 2018/1046 recital 182 (adapted)

~~In order to facilitate the preparation and implementation of community-led local development strategies, the lead Fund should be allowed to cover preparatory, running and animation costs.~~

↓ 2018/1046 recital 183 (adapted)

~~In order to facilitate the implementation of community-led local development and integrated territorial investments, the roles and responsibilities of local action groups as regards community-led local development strategies, and of local authorities, regional development bodies or non-governmental organisations as regards integrated territorial investments (ITIs), in relation to other programme bodies should be clarified. Designation as an intermediate body in accordance with the Fund-specific rules should only be required in cases where the relevant bodies carry out additional tasks that fall under the responsibility of the managing or certifying authority or of the paying agency.~~

↓ 2018/1046 recital 184 (adapted)

~~Managing authorities should have the possibility to implement financial instruments through a direct award of a contract to the EIB and to international financial institutions.~~

↓ 2018/1046 recital 185 (adapted)

~~Many Member States have established publicly-owned banks or institutions that operate under a public policy mandate to promote economic development activities. Such publicly-~~

~~owned banks or institutions have specific characteristics which differentiate them from private commercial banks in relation to their ownership, their development mandate and the fact that they do not primarily focus on maximising profits. The primary role of such publicly-owned banks or institutions is to mitigate market failures where in certain regions or for certain policy areas or sectors financial services are underprovided by commercial banks. Those publicly-owned banks or institutions are well-placed to promote access to the ESI Funds while maintaining competitive neutrality. Their specific role and characteristics can allow Member States to increase the use of financial instruments in order to maximise the impact of the ESI Funds in the real economy. Such an outcome would be in line with the Commission policy to facilitate the role of such publicly-owned banks or institutions as fund managers both in the implementation of ESI Funds as well as in the combination of the ESI Funds with EFSI financing, as set out in particular in the Investment Plan for Europe. Without prejudice to contracts already awarded for the implementation of financial instruments in compliance with applicable law, it is justified to clarify that it is possible for managing authorities to award contracts directly to such publicly-owned banks or institutions. Nevertheless, in order to ensure that the possibility of direct award remains consistent with the principles of the internal market, strict conditions to be fulfilled by publicly-owned banks or institutions should be laid down.~~

> ~~Such conditions should include that there is to be no direct private-capital participation, with the exception of non-controlling and non-blocking forms of private-capital participation in line with the requirements set out in Directive 2014/24/EU. Moreover, and strictly limited to the scope of application of Regulation (EU) No 1303/2013, a publicly-owned bank or institution should also be allowed to implement financial instruments where the private-capital participation confers no influence on decisions regarding the day-to-day management of the financial instrument supported by the ESI Funds.~~

↓ 2018/1046 recital 186 (adapted)

~~In order to maintain the possibility for the ERDF and EAFRD to contribute to joint uncapped guarantee and securitisation financial instruments in favour of SMEs, it is necessary to provide that it is possible for Member States to use the ERDF and EAFRD to contribute to such instruments during the entire programming period and to update relevant provisions relating to that option, such as those on ex ante assessments and evaluations and to introduce for the ERDF the possibility of programming at priority axis level.~~

↓ 2018/1046 recital 187 (adapted)

~~The adoption of Regulation (EU) 2015/1017 of the European Parliament and of the Council[54], was intended to enable Member States to use the ESI Funds to contribute to the financing of eligible projects supported under the EFSI. A specific provision should be inserted in Regulation (EU) No 1303/2013 setting out the terms and conditions to allow for better~~

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[54] ~~Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).~~

~~interaction and complementarity that will facilitate the possibility to combine the ESI Funds with EIB financial products under the EFSI's EU Guarantee.~~

↓ 2018/1046 recital 188 (adapted)

~~In carrying out their operations, the bodies implementing financial instruments should adhere to the Union policy on non-cooperative jurisdictions for tax purposes, and updates thereto, as laid down in relevant legal acts of the Union and in Council conclusions, in particular the Council conclusions of 8 November 2016 and the Annex thereto, as well as the Council conclusions of 5 December 2017 and the Annexes thereto.~~

↓ 2018/1046 recital 189 (adapted)

~~In order to simplify and harmonise the control and audit requirements and to improve the accountability of the financial instruments implemented by the EIB and other international financial institutions, it is necessary to amend the provisions on management and control of financial instruments to facilitate the assurance process. That amendment should not apply to financial instruments referred to in point (a) of Article 38(1) and Article 39 of Regulation (EU) No 1303/2013 which were established by a funding agreement signed before 2 August 2018. For such financial instruments, Article 40 of that Regulation as applicable at the moment of the signature of the funding agreement should continue to apply.~~

↓ 2018/1046 recital 190 (adapted)

~~In order to ensure uniform conditions for the implementation of Regulation (EU) No 1303/2013 in respect of the models for the control reports and the annual audit reports referred to in Article 40(1) of that Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[55].~~

↓ 2018/1046 recital 191 (adapted)

~~In order to ensure consistency with the treatment of financial corrections during the 2007-2013 programming period, it is necessary to clarify that, in the case of financial instruments, it should be possible to allow for a contribution cancelled as a result of an individual irregularity to be reused for regular expenditure within the same operation so that the related financial correction will not have the consequence of a net loss for the financial instrument operation.~~

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55 ~~Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).~~

↓ 2018/1046 recital 192 (adapted)

~~In order to provide more time for the signature of funding agreements allowing for use of escrow accounts for payments for investments in final recipients after the end of the eligibility period for equity-based instruments, the deadline for signature of such funding agreements should be extended until 31 December 2018.~~

↓ 2018/1046 recital 193 (adapted)

~~In order to incentivise investors operating under the market economy principle to co-invest in public policy projects, the concept of differentiated treatment of investors, which allows under specific conditions for the ESI Funds to take a subordinated position to an investor operating under the market economy principle and to EIB financial products under the EFSI's EU Guarantee, should be introduced. At the same time, the conditions for application of such a differentiated treatment when implementing the ESI Funds should be laid down.~~

↓ 2018/1046 recital 194 (adapted)

~~Given the protracted low-interest environment and in order not to unduly penalise bodies implementing financial instruments, it is necessary, subject to active treasury management, to enable financing of negative interest generated as a result of investments of the ESI Funds pursuant to Article 43 of Regulation (EU) No 1303/2013 from resources paid back into the financial instrument.~~

↓ 2018/1046 recital 195 (adapted)

~~In order to align reporting requirements with the new provisions on differentiated treatment of investors and to avoid duplication of certain requirements, Article 46(2) of Regulation (EU) No 1303/2013 should be amended.~~

↓ 2018/1046 recital 196 (adapted)

~~In order to facilitate the implementation of the ESI Funds, it is necessary to grant Member States the possibility to implement technical assistance actions through the direct award of a contract to the EIB, other international financial institutions and publicly-owned banks or institutions.~~

↓ 2018/1046 recital 197 (adapted)

~~In order to further harmonise the conditions for operations generating net revenue after their completion, the relevant provisions of this Regulation should apply to already selected but still ongoing operations and to operations which are still to be selected under that programming period.~~

↓ 2018/1046 recital 198 (adapted)

~~In order to give a strong incentive for the implementation of energy-efficiency measures, cost-savings that result from improved energy efficiency by an operation should not be treated as net revenue.~~

↓ 2018/1046 recital 199 (adapted)

~~With a view to facilitating the implementation of revenue-generating operations, the reduction of the co-financing rate should be allowed at any time during the implementation of the programme, and possibilities for the establishment of flat-rate net-revenue percentages at national level should be provided for.~~

↓ 2018/1046 recital 200 (adapted)

~~Due to the late adoption of Regulation (EU) No 508/2014 of the European Parliament and of the Council[56] and the fact that aid intensity levels have been established by that Regulation, it is necessary to set out certain exemptions in Regulation (EU) No 1303/2013 for the EMFF as regards revenue-generating operations. As those exemptions provide more favourable conditions for certain revenue-generating operations for which amounts or rates of support are defined in Regulation (EU) No 508/2014, it is necessary to establish a different date of application for those exemptions to ensure equal treatment of operations supported on the basis of Regulation (EU) No 1303/2013.~~

↓ 2018/1046 recital 201 (adapted)

~~In order to reduce administrative burden for beneficiaries, the threshold which exempts certain operations from the requirement to calculate and take into account revenue generated during their implementation should be raised.~~

↓ 2018/1046 recital 202 (adapted)

~~In order to facilitate synergies between the ESI Funds and other Union instruments, it should be possible for expenditure incurred to be reimbursed from different ESI Funds and Union instruments based on a proportion agreed in advance.~~

[56] ~~Regulation (EU) No 508/2014 of the European Parliament and of the Council of 15 May 2014 on the European Maritime and Fisheries Fund and repealing Council Regulations (EC) No 2328/2003, (EC) No 861/2006, (EC) No 1198/2006 and (EC) No 791/2007 and Regulation (EU) No 1255/2011 of the European Parliament and of the Council (OJ L 149, 20.5.2014, p. 1).~~

↓ 2018/1046 recital 203 (adapted)

~~In order to promote the use of lump sums, and given the fact that lump sums are to be based on a fair, equitable and verifiable calculation method which ensures sound financial management, the applicable upper limit for their use should be removed.~~

↓ 2018/1046 recital 204 (adapted)

~~In order to reduce the administrative burden of the implementation of projects by beneficiaries, a new simplified cost option for financing based on conditions others than the costs of the operations should be introduced.~~

↓ 2018/1046 recital 205 (adapted)

~~In order to simplify the rules governing the use of funds and to reduce the associated administrative burden, Member States should increasingly make use of simplified cost options.~~

↓ 2018/1046 recital 206 (adapted)

~~Taking into account the fact that, in accordance with Article 71 of Regulation (EU) No 1303/2013, the obligation to ensure the durability of investment operations applies from the final payment to the beneficiary, and that, when the investment consists in the lease purchase of a new machinery and equipment, the final payment occurs at the end of the contract period, that obligation should not apply to that type of investment.~~

↓ 2018/1046 recital 207 (adapted)

~~In order to ensure a broad application of simplified cost options, an obligatory use of standard scales of unit costs, lump sums or flat rates should be set out for operations or projects forming part of an operation receiving support from the ERDF and the ESF below a certain threshold, subject to relevant transitional provisions. The managing authority, or the monitoring committee for the programmes under the European territorial cooperation goal, should be given the possibility to extend the transitional period for a period it considers appropriate if it considers that such obligation creates a disproportionate administrative burden. Such obligation should not apply to operations receiving support within the framework of State aid that does not constitute de minimis aid. For such operations, all forms of grants and repayable assistance should continue to be an option. At the same time, the use of draft budgets as an additional methodology for determining simplified costs should be introduced for all ESI Funds.~~

↓ 2018/1046 recital 208 (adapted)

~~In order to facilitate earlier and more targeted application of simplified cost options, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of supplementing Regulation (EU) No 1303/2013 with additional specific rules on the role, liabilities and responsibility of bodies implementing financial instruments, related selection criteria and products that it is possible to deliver through financial instruments, supplementing the provisions of Regulation (EU) No 1303/2013 on the standard scales of unit costs or the flat-rate financing, the fair, equitable and verifiable calculation method on which they might be established, and by specifying detailed modalities concerning the financing based on the fulfilment of conditions related to the realisation of progress in implementation or the achievement of objectives of programmes rather than on costs and their application. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.~~

↓ 2018/1046 recital 209 (adapted)

~~In order to reduce the administrative burden, the use of flat rates which do not require a methodology to be established by Member States should be increased. Two additional flat rates should therefore be introduced: one for calculating direct staff costs and the other one for calculating the remaining eligible costs based on staff costs. In addition, further clarification should be provided on the methods to calculate staff costs.~~

↓ 2018/1046 recital 210 (adapted)

~~With a view to improving the effectiveness and impact of operations, implementation of operations which cover the whole territory of a Member State or operations covering different programme areas should be facilitated and possibilities for expenditure outside the Union for certain investments should be increased.~~

↓ 2018/1046 recital 211 (adapted)

~~In order to encourage Member States to make use of appraisals of major projects by independent experts, the declaration of expenditure relating to the major project to the Commission prior to the positive appraisal by the independent expert should be allowed once the Commission has been informed about the submission of the relevant information to the independent expert.~~

↓ 2018/1046 recital 212 (adapted)

~~In order to promote the use of joint action plans which will reduce administrative burden for beneficiaries, it is necessary to reduce regulatory requirements linked to the setting-up of a joint action plan while maintaining an appropriate focus on horizontal principles, including gender equality and sustainable development, which have generated important contributions to the effective implementation of the ESI Funds.~~

↓ 2018/1046 recital 213 (adapted)

~~In order to avoid unnecessary administrative burden for beneficiaries, the rules on information, communication and visibility should respect the principle of proportionality. Accordingly, it is important to clarify the scope of application of those rules.~~

↓ 2018/1046 recital 214 (adapted)

~~With a view to reducing the administrative burden and ensuring the effective use of technical assistance across the ERDF, the ESF and the Cohesion Fund and across categories of regions, flexibility for the calculation and monitoring of the respective limits applicable to technical assistance of Member States should be increased.~~

↓ 2018/1046 recital 215 (adapted)

~~With a view to streamlining implementation structures, it should be clarified that the possibility for the managing authority, certifying authority and the audit authority to be part of the same public body is also available to programmes under the European territorial cooperation goal.~~

↓ 2018/1046 recital 216 (adapted)

~~The responsibilities of the managing authorities regarding the verification of expenditure when simplified cost options are being used should be specified in more detail.~~

↓ 2018/1046 recital 217 (adapted)

~~In order to ensure that beneficiaries can fully benefit from the simplification potential of e-governance solutions in the implementation of the ESI Funds and the Fund for European Aid to the Most Deprived (FEAD), especially with a view to facilitating full electronic document management, it is necessary to clarify that a paper trail is not necessary if certain conditions are met.~~

↓ 2018/1046 recital 218 (adapted)

~~In order to increase proportionality of controls and to ease the administrative burden resulting from overlapping controls, especially for small beneficiaries, without undermining the principle of sound financial management, the single audit principle for the ERDF, the ESF, the Cohesion Fund and the EMFF should prevail and the thresholds below which an operation is not to be subject to more than one audit should be doubled.~~

↓ 2018/1046 recital 219 (adapted)

~~It is important to enhance the visibility of the ESI Funds and to raise awareness of their results and achievements with the public. Information and communication activities and measures to enhance visibility for the public remain essential in publicising the achievements of the ESI Funds and in demonstrating how the Union's financial resources are invested.~~

↓ 2018/1046 recital 220 (adapted)

~~With a view to facilitating access of certain target groups to the ESF, the collection of data for certain indicators referred to in Annex I to Regulation (EU) No 1304/2013 of the European Parliament and of the Council[57] should not be required.~~

↓ 2018/1046 recital 221 (adapted)

~~In order to ensure equal treatment of operations supported on the basis of this Regulation, it is necessary to establish the date of application of certain amendments to Regulation (EU) No 1303/2013.~~

↓ 2018/1046 recital 222 (adapted)

~~In order to ensure that the entire programming period for Regulations (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013 and Regulation (EU) No 223/2014 of the European Parliament and of the Council[58] is governed by a coherent set of rules, it is necessary for some of the amendments to those Regulations to apply from 1 January 2014. By providing for a retroactive application of those amendments, legitimate expectations are taken into account.~~

57 ~~Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006 (OJ L 347, 20.12.2013, p. 470).~~

58 ~~Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11 March 2014 on the Fund for European Aid to the Most Deprived (OJ L 72, 12.3.2014, p. 1).~~

↓ 2018/1046 recital 223 (adapted)

~~In order to expedite implementation of financial instruments combining support from the ESI Funds with EIB financial products under the EFSI's EU guarantee and to provide a continuous legal basis for the signature of funding agreements allowing for use of escrow accounts for equity-based instruments, it is necessary for some of the amendments to this Regulation to apply with effect from 1 January 2018. By providing for a retroactive application of those amendments, the advanced facilitation of the financing of projects through combined support from the ESI Funds and the EFSI is ensured and a legal gap between the expiry date of certain provisions in Regulation (EU) No 1303/2013 and the date of entry into force of their extension by virtue of this Regulation is avoided.~~

↓ 2018/1046 recital 224 (adapted)

~~The simplifications and changes made to sector-specific rules should apply as soon as possible in order to facilitate an acceleration of implementation during the current programming period and should therefore apply from 2 August 2018.~~

↓ 2018/1046 recital 225 (adapted)

~~The European Globalisation Adjustment Fund (EGF) should continue, after 31 December 2017, to temporarily provide assistance to young people not in employment, education or training (NEETs) who reside in regions disproportionately impacted by major redundancies. In order to allow for continued assistance to NEETs, the amendment to Regulation (EU) No 1309/2013 of the European Parliament and of the Council[59] ensuring such continued assistance should apply with effect from 1 January 2018.~~

↓ 2018/1046 recital 226 (adapted)

~~It should be possible to establish blending facilities under Regulation (EU) No 1316/2013 of the European Parliament and of the Council[60] for one or more of the Connecting Europe Facility (CEF) sectors. Such blending facilities could finance blending operations which are actions combining non-reimbursable forms of support, such as support from Member States' budgets, CEF grants, the ESI Funds and financial instruments from the Union budget, including combinations of CEF equity and CEF debt financial instruments and financing from the EIB Group, from national promotional banks, from development or other finance institutions, from investors and private financial support. Financing from the EIB Group should include EIB financing under the EFSI and private financial support should include~~

59 ~~Regulation (EU) No 1309/2013 of the European Parliament and of the Council of 17 December 2013 on the European Globalisation Adjustment Fund (2014-2020) and repealing Regulation (EC) No 1927/2006 (OJ L 347, 20.12.2013, p. 855).~~

60 ~~Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ L 348, 20.12.2013, p. 129).~~

~~both direct and indirect financial contributions as well as support received through public-private partnerships.~~

↓ 2018/1046 recital 227 (adapted)

~~The design and set up of blending facilities should be based on an ex ante assessment carried out in accordance with this Regulation and should reflect the results of lessons learned from the implementation of the CEF 'Blending Call' referred to in the Commission Implementing Decision of 20 January 2017 amending Commission Implementing Decision C(2014)1921 establishing a Multi-Annual Work Programme 2014-2020 for financial assistance in the field of Connecting Europe Facility (CEF) – Transport sector. CEF blending facilities should be established by the multiannual and/or annual work programmes and adopted in accordance with Articles 17 and 25 of Regulation (EU) No 1316/2013. The Commission should ensure transparent and timely reporting to the European Parliament and to the Council on the implementation of any CEF blending facility.~~

↓ 2018/1046 recital 228 (adapted)

~~The objective of CEF blending facilities should be to facilitate and streamline one application for all forms of support, including Union grants from the CEF and private sector finance. Such blending facilities should aim to optimise the application process for project promoters by providing a single evaluation process, from the technical and financial points of view.~~

↓ 2018/1046 recital 229 (adapted)

~~CEF blending facilities should increase flexibility for submitting projects and simplify and streamline the process of project identification and financing. They should also increase the ownership and commitment of the financial institutions involved, thereby mitigating risks associated with the projects.~~

↓ 2018/1046 recital 230 (adapted)

~~CEF blending facilities should result in enhanced coordination, exchange of information and cooperation between Member States, the Commission, the EIB, national promotional banks and private investors with the aim of generating and supporting a healthy pipeline of projects pursuing CEF policy objectives.~~

↓ 2018/1046 recital 231 (adapted)

~~CEF blending facilities should aim to enhance the multiplier effect of Union spending by attracting additional resources from private investors, thus ensuring a maximum degree of private investor involvement. In addition, they should ensure that the actions supported become economically and financially viable and help to avoid a lack of investment leverage. They should contribute to the achievement of the Union objectives on meeting the targets set at the Paris Climate Conference (COP 21), job creation and cross-border connectivity. It is~~

~~important that, when the CEF and the EFSI are both used for financing actions, the Court of Auditors examine whether the financial management has been sound in accordance with Article 287 TFEU and with Article 24(2) of Regulation (EU) No 1316/2013.~~

↓ 2018/1046 recital 232 (adapted)

~~In most cases, grants in the transport sector are expected to remain the primary means of supporting policy objectives of the Union. The application of CEF blending facilities should therefore not reduce the availability of such grants.~~

↓ 2018/1046 recital 233 (adapted)

~~Participation of private co-investors in the transport projects could be facilitated by mitigating the financial risk. First-loss guarantees provided by the EIB under the joint financial mechanisms supported by the budget such as blending facilities can be appropriate to that end.~~

↓ 2018/1046 recital 234 (adapted)

~~Funding from the CEF should be based on the selection and award criteria established in the multiannual and the annual work programmes pursuant to Article 17(5) of Regulation (EU) No 1316/2013 regardless of the form of funding used, or combination thereof.~~

↓ 2018/1046 recital 235 (adapted)

~~The experience gained with blending facilities should be taken into consideration in the evaluations of Regulation (EU) No 1316/2013.~~

↓ 2018/1046 recital 236 (adapted)

~~The introduction of CEF blending facilities by this Regulation should not be understood to prejudge the outcome of the negotiations on the post-2020 multiannual financial framework.~~

↓ 2018/1046 recital 237 (adapted)

~~Taking into account the very high rate of execution of the CEF in the transport sector and in order to support the implementation of projects with most value added for the Trans-European Transport Network concerning the core network corridors, cross-border projects, projects on the other section of the core network and projects eligible under the horizontal priorities as listed in Annex I to Regulation (EU) No 1316/2013, it is necessary to exceptionally allow for additional flexibility in the use of the multiannual work programme allowing the amount of the financial envelope to reach up to 95 % of the financial budgetary resources referred to in Regulation (EU) No 1316/2013. It is, however, important that further support be provided in the remaining CEF implementing period to priorities covered by annual work programmes.~~

↓ 2018/1046 recital 238 (adapted)

~~Due to the different nature of the CEF telecom sector as compared to the CEF transport and CEF energy sectors, namely the smaller average size of grants and differences in the type of costs and the type of projects, unnecessary burden on beneficiaries and Member States participating in related actions should be avoided through a less burdensome certification obligation, without weakening the principle of sound financial management.~~

↓ 2018/1046 recital 239 (adapted)

~~Under Regulation (EU) No 283/2014 of the European Parliament and of the Council[61], it is currently only possible to use grants and procurement to support actions in the area of digital service infrastructures. In order to ensure that digital service infrastructures function as efficiently as possible, other financial instruments which are currently used under the CEF, including innovative financial instruments, should also be made available to support such actions.~~

↓ 2018/1046 recital 240 (adapted)

~~In order to avoid unnecessary administrative burden for managing authorities that could hinder efficient implementation of the FEAD, it is appropriate to simplify and facilitate the procedure for amendment of non-essential elements of operational programmes.~~

↓ 2018/1046 recital 241 (adapted)

~~With a view to further simplifying the use of the FEAD, it is appropriate to establish additional provisions as regards eligibility of expenditure, in particular as regards the use of standard scales of unit costs, lump sums and flat rates.~~

↓ 2018/1046 recital 242 (adapted)

~~In order to avoid unfair treatment of partner organisations, irregularities that are imputable only to the body in charge of purchasing the assistance should not affect the eligibility of expenditure of partner organisations.~~

↓ 2018/1046 recital 243 (adapted)

~~In order to simplify the implementation of the ESI Funds and the FEAD and avoid legal uncertainty, certain responsibilities of Member States with regard to management and control should be clarified.~~

[61] ~~Regulation (EU) No 283/2014 of the European Parliament and of the Council of 11 March 2014 on guidelines for trans-European networks in the area of telecommunications infrastructure and repealing Decision No 1336/97/EC (OJ L 86, 21.3.2014, p. 14).~~

⇩ new

(256) Some modifications regarding the transmission to the Commission of data on recipients for the purposes of publication, and regarding the electronic recording and storage of data on recipients and the use of the single integrated IT system for data-mining and risk-scoring to access and analyse those data should apply only to programmes adopted under and financed from the post-2027 multiannual financial framework in order to ensure a smooth transition by allowing sufficient time for the necessary adaption of electronic data systems and of relevant agreements, as well as the provision of guidance and training.

(257) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on XX/XX 20XX.

(258) This Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union,

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🡻 2018/1046 recital 244 (adapted)

~~Considering the need for the coherent application of the relevant financial rules within the financial year, it is in principle advisable that Part One of this Regulation (the Financial Regulation) starts applying at the beginning of a financial year. However, in order to ensure that important simplification provided for in this Regulation, both as regards the Financial Regulation and the amendments to sector-specific rules, benefit the recipients of Union funds as early as possible, it is appropriate to provide, exceptionally, for the application of this Regulation from its entry into force. At the same time, in order to allow additional time for adaptation to the new rules, Union institutions should continue to apply Regulation (EU, Euratom) No 966/2012 until the end of the financial year 2018 with regard to the implementation of their respective administrative appropriations.~~

🡻 2018/1046 recital 245 (adapted)

~~Some modifications regarding financial instruments, budgetary guarantees and financial assistance should only apply from the date of application of the post-2020 multiannual financial framework in order to allow sufficient time to adapt the applicable legal bases and programmes to the new rules.~~

🡻 2018/1046 recital 246 (adapted)

~~The information on the annual average of full-time equivalents and on the estimated amount of assigned revenue carried over from preceding years should be provided for the first time together with the draft budget to be presented in 2021 in order to allow sufficient time for the Commission to adapt to the new obligation,~~

↓ 2018/1046 (adapted)
⇨ new

HAVE ADOPTED THIS REGULATION:

~~PART ONE~~

~~*FINANCIAL REGULATION*~~

TITLE I

SUBJECT MATTER, DEFINITIONS AND GENERAL PRINCIPLES

Article 1

Subject matter

This Regulation lays down the rules for the establishment and the implementation of the general budget of the European Union and of the European Atomic Energy Community ('the budget') and the presentation and auditing of their accounts.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

(1) 'applicant' means a natural person or an entity with or without legal personality who has submitted an application in a grant award procedure ⇨ , in a non-financial donation award procedure ⇦ or in a contest for prizes;

(2) 'application document' means a tender, a request to participate, ⇨ an application further to a call for expression of interest, ⇦ a grant application ⇨ , an application for a non-financial donation ⇦ or an application in a contest for prizes;

(3) 'award procedure' means a procurement procedure, a grant award procedure, a contest for prizes ⇨ , an award procedure for a non-financial donation ⇦ or a procedure for the selection of experts or persons or entities implementing the budget pursuant to ~~point (c) of the first subparagraph of~~ Article 62(1)<u>, point (c), first subparagraph</u>;

(4) 'basic act' means a legal act, other than a recommendation or an opinion, which provides a legal basis for an action and for the implementation of the corresponding expenditure entered in the budget or of the budgetary guarantee or financial assistance backed by the budget, and which may take any of the following forms:

(a) in implementation of the Treaty on the Functioning of the European Union (TFEU) and the Treaty establishing the European Atomic Energy Community (the Euratom Treaty), the form of a regulation, a directive or a decision within the meaning of Article 288 TFEU; or

(b) in implementation of Title V of the Treaty on European Union (TEU), one of the forms specified in Articles 28(1) and 31(2), Article 33, and Articles 42(4) and 43(2) TEU;

(5) 'beneficiary' means a natural person or an entity with or without legal personality with whom a grant agreement has been signed;

(6) 'blending facility or platform' means a cooperation framework established between the Commission and development or other public finance institutions with a view to combining non-repayable forms of support and/or financial instruments and/or budgetary guarantees from the budget and repayable forms of support from development or other public finance institutions, as well as from private-sector finance institutions and private-sector investors;

(7) 'budget implementation' means the carrying out of activities relating to the management, monitoring, control and auditing of budget appropriations in accordance with the methods provided for in Article 62;

(8) 'budgetary commitment' means the operation by which the authorising officer responsible reserves the budget appropriations necessary to cover subsequent payments to honour legal commitments;

(9) 'budgetary guarantee' means ~~a legal commitment of~~ ⇨ an instrument through which ⇦ the Union ~~to support~~ ⌦ supports ⌫ a programme of actions by taking on the budget ~~a~~ ⇨ an irrevocable and unconditional ⇦ financial obligation that can be called upon should a specified event materialise during the implementation of the programme, and that remains valid for the duration of the maturity of the commitments made under the supported programme;

(10) 'building contract' means a contract covering the purchase, exchange, long lease, usufruct, leasing, rental or hire purchase, with or without option to buy, of land, buildings or other immovable property. It covers both existing buildings and buildings before completion provided that the candidate has obtained a valid building permit for it. It does not cover buildings designed in accordance with the specifications of the contracting authority that are covered by works contracts;

(11) 'candidate' means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a competitive dialogue, an innovation partnership, a design contest or a negotiated procedure;

(12) 'central purchasing body' means a contracting authority providing centralised purchasing activities and, where applicable, ancillary purchasing activities;

(13) 'check' means the verification of a specific aspect of a revenue or expenditure operation;

(14) 'concession contract' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities within the meaning of Articles 178~~174~~ and 182~~178~~, in order to entrust the execution of works or the provision and management of services to an economic operator (the 'concession'), and where:

(a) the remuneration consists either solely in the right to exploit the works or services or in that right together with payment;

(b) the award of the concession contract involves the transfer to the concessionaire of an operating risk in exploiting those works or services encompassing demand risk or supply risk, or both. The concessionaire shall be deemed to assume an operating risk where, under normal operating conditions, there is no guarantee of recouping the investments made or the costs incurred in operating the works or the services concerned;

⇩ new

(15) 'constitution phase' means the period during which the global provisioning is paid into the common provisioning fund;

🡻 2018/1046 (adapted)
⇨ new

(16~~15~~) 'contingent liability' means a potential financial obligation that could be incurred depending on the outcome of a future event;

(17~~16~~) 'contract' means a public contract or a concession contract ⇨ or, for Title VIII, a subcontract or purchase contract concluded by a beneficiary ⇦ ;

(18~~17~~) 'contractor' means an economic operator with whom a public contract has been signed;

(19~~18~~) 'contribution agreement' means an agreement concluded with persons or entities implementing Union funds pursuant to points (c)(ii) to (viii) of the first subparagraph of Article 62(1);

(20~~19~~) 'control' means any measure taken to provide reasonable assurance regarding the effectiveness, efficiency and economy of operations, the reliability of reporting, the safeguarding of assets and information, the prevention and detection and correction of fraud and irregularities and their follow-up, and the adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned. Controls may involve various checks, as well as the implementation of any policies and procedures to achieve the objectives referred to in the first sentence;

(21~~20~~) 'counterpart' means the party that is granted a budgetary guarantee;

(22~~21~~) 'crisis' means:

(a) a situation of immediate or imminent danger threatening to escalate into an armed conflict or to destabilise a country or its neighbourhood;

(b) a situation caused by natural disasters, man-made crisis such as wars and other conflicts or extraordinary circumstances having comparable effects related, *inter alia*, to climate change, ⇨ public and animal health, food safety emergencies and global health threats such as pandemics, ⇦ environmental degradation, privation of access to energy and natural resources or extreme poverty;

(23~~22~~) ‘decommitment’ means an operation whereby the authorising officer responsible cancels wholly or partly the reservation of appropriations previously made by means of a budgetary commitment;

(24~~23~~) ‘dynamic purchasing system’ means a completely electronic process for making commonly used purchases of items generally available on the market;

(25~~24~~) ‘economic operator’ means any natural or legal person, including a public entity, or a group of such persons, who offers to supply products, execute works or provide services or supply immovable property;

(26~~25~~) ‘equity investment’ means the provision of capital to a company, invested directly or indirectly in return for total or partial ownership of that company and where the equity investor may assume some management control of the company and may share the company’s profits;

(27~~26~~) ‘European office’ means an administrative structure set up by the Commission, or by the Commission with one or more other Union institutions, to perform specific cross-cutting tasks;

(28~~27~~) ‘final administrative decision’ means a decision of an administrative authority having final and binding effect in accordance with the applicable law;

(29~~28~~) ‘financial asset’ means any asset in the form of cash, an equity instrument of a publicly or privately held entity or a contractual right to receive cash or another financial asset from such entity;

(30~~29~~) ‘financial instrument’ means a Union measure of financial support provided from the budget to address one or more specific policy objectives of the Union which may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and which may, where appropriate, be combined with other forms of financial support or with funds under shared management or funds of the European Development Fund (EDF);

(31~~30~~) ‘financial liability’ means a contractual obligation to deliver cash or another financial asset to another entity;

(32~~31~~) ‘framework contract’ means a public contract concluded between one or more economic operators and one or more contracting authorities, the purpose of which is to establish the terms governing specific contracts under it to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged;

(33~~32~~) ‘global provisioning’ means the total amount of resources deemed necessary over the entire lifetime of a budgetary guarantee ⇨ or financial assistance to a third country ⇦ as a result of applying the provisioning rate referred to in Article 215~~211~~(1) to the amount of the budgetary guarantee ⇨ or financial assistance to a third country ⇦ authorised by the basic act referred to in points (b) ⇨ and (c) ⇦ of Article 214~~210~~(1);

(34~~33~~) ‘grant’ means a financial contribution by way of donation. Where such a contribution is provided under direct management, it shall be governed by Title VIII;

(35~~34~~) ‘guarantee’ means a written commitment to assume responsibility for all or part of a third party’s debt or obligation or for the successful performance by

that third party of its obligations if an event occurs which triggers such guarantee, such as a loan default;

(36~~35~~) ‘guarantee on demand’ means a guarantee that must be honoured by the guarantor upon the counterpart’s demand, notwithstanding any deficiencies in the enforceability of the underlying obligation;

(37~~36~~) ‘in-kind contribution’ means non-financial resources made available free of charge by third parties to a beneficiary;

(38~~37~~) ‘legal commitment’ means an act whereby the authorising officer responsible enters into or establishes an obligation which results in ⌦ a ⌫ subsequent payment ~~or payments~~ and the recognition of expenditure ⇨ covered by a budgetary commitment ⇦ ~~charged to the budget~~, ⇨ or in an obligation to provide a non-financial donation, ⇦ and which includes specific agreements and contracts concluded under financial framework partnership agreements and framework contracts;

(39~~38~~) ‘leverage effect’ means the amount of reimbursable financing provided to eligible final recipients divided by the amount of the Union contribution;

(40~~39~~) ‘liquidity risk’ means the risk that a financial asset held in the common provisioning fund might not be sold during a certain period of time without incurring a significant loss;

(41~~40~~) ‘loan’ means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period and under which the borrower is obliged to repay that amount within the agreed period;

(42~~41~~) ‘low value grant’ means a grant lower than or equal to EUR 60000;

(43~~42~~) ‘Member State organisation’ means an entity established in a Member State as a public law body, or as a body governed by private law entrusted with a public service mission and provided with adequate financial guarantees from the Member State;

(44~~43~~) ‘method of implementation’ means any of the methods of budget implementation referred to in Article 62, that is direct management, indirect management and shared management;

(45~~44~~) ‘multi-donor action’ means any action where Union funds are pooled with at least one other donor;

⇩ new

(46) ‘multiple sourcing procurement’ means a procurement where it is intended to award multiple contracts concluded in writing in parallel between multiple economic operators and one or more contracting authorities within the meaning of Article 178(1), in order to entrust the execution of identical or quasi-identical services, supplies or works to be performed in parallel by different contractors;

🡻 2018/1046

(47~~45~~) ‘multiplier effect’ means the investment by eligible final recipients divided by the amount of the Union contribution;

⇩ new

(48) ‘non-governmental organisation’ means a voluntary, independent from government, non-profit organisation, which is not a political party or a trade union;

🡻 2018/1046
⇨ new

(49~~46~~) ‘output’ means the deliverables generated by the action determined in accordance with sector-specific rules;

(50~~47~~) ‘participant’ means a candidate or tenderer in a procurement procedure, an applicant in a grant award procedure ⇨ or in a non-financial donation award procedure ⇦ , an expert in a procedure for selection of experts, an applicant in a contest for prizes or a person or entity participating in a procedure for implementing Union funds pursuant to ~~point (c) of the first subparagraph of~~ Article 62(1), point (c), first subparagraph;

⇩ new

(51) ‘presumed successful tenderer’ means any tenderer in a procurement procedure that is ranked first, subject to further checks and provision of supporting documents on exclusion and/or selection criteria in order to be proposed by the evaluation committee as a successful tenderer. Where the award procedure foresees to award the contract to several tenderers, then the presumed successful tenderer shall be deemed to refer to the best ranked tenderers equal to the number of contracts to be awarded.

🡻 2018/1046

(52~~48~~) ‘prize’ means a ~~financial~~ contribution given as a reward following a contest. Where such a contribution is provided under direct management, it shall be governed by Title IX;

(53~~49~~) ‘procurement’ means the acquisition by means of a contract of works, supplies or services and the acquisition or rental of land, buildings or other immovable property, by one or more contracting authorities from economic operators chosen by those contracting authorities;

(54~~50~~) ‘procurement document’ means any document produced or referred to by the contracting authority to describe or determine elements of the procurement procedure, including:

(a) the publicity measures set out in Article 167~~163~~;

(b) the invitation to tender;

(c) the tender specifications, including the technical specifications and the relevant criteria, or the descriptive documents in the case of a competitive dialogue;

(d) the draft contract;

⇩ new

(55) 'professional conflicting interests' means a situation in which the previous or ongoing professional activities of an economic operator affect or risk affecting its capacity to perform a contract in an independent, impartial and objective manner;

🡻 2018/1046 (adapted)
⇨ new

(56~~51~~) 'public contract' means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities within the meaning of Articles 178~~174~~ and 182~~178~~, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services, comprising:

(a) building contracts;

(b) supply contracts;

(c) works contracts;

(d) service contracts;

(57~~52~~) 'quasi-equity investment' means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and which can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or into preferred equity;

(58~~53~~) 'recipient' means a beneficiary, a contractor, a remunerated external expert or a person or entity receiving prizes ⇨ , non-financial donations ⇦ or ~~funds~~ ⇨ support from the budget ⇦ under a financial instrument ⇨ or a budgetary guarantee, ⇦ or implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1);

(59~~54~~) 'repurchase agreement' means the sale of securities for cash with an agreement to repurchase them on a specified future date, or on demand;

(60~~55~~) 'research and technological development appropriation' means an appropriation entered either in one of the titles of the budget relating to the policy areas linked to 'Indirect research' or 'Direct research' or in a chapter relating to research activities in another title;

(61~~56~~) 'result' means the effects of the implementation of an action determined in accordance with sector-specific rules;

(62~~57~~) ‘risk-sharing instrument’ means a financial instrument which allows for the sharing of a defined risk between two or more entities, where appropriate in exchange for an agreed remuneration;

(63~~58~~) ‘service contract’ means a contract covering all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts;

(64~~59~~) ‘sound financial management’ means implementation of the budget in accordance with the principles of economy, efficiency and effectiveness;

(65~~60~~) ‘Staff Regulations’ means the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union laid down in Regulation (EEC, Euratom, ECSC) No 259/68;

(66~~61~~) ‘subcontractor’ means an economic operator that is proposed by a candidate or tenderer or contractor to perform part of a contract or by a beneficiary to perform part of the tasks co-financed by a grant;

(67~~62~~) ‘subscription’ means sums paid to bodies of which the Union is member, in accordance with the budgetary decisions and the conditions of payment established by the body concerned;

(68~~63~~) ‘supply contract’ means a contract covering the purchase, leasing, rental or hire purchase, with or without option to buy, of products, and which may include, as an incidental matter, siting and installation operations;

(69~~64~~) ‘technical assistance’ means, without prejudice to sector-specific rules, support and capacity-building activities necessary for the implementation of a programme or an action, in particular preparatory, management, monitoring, evaluation, audit and control activities;

(70~~65~~) ‘tenderer’ means an economic operator that has submitted a tender;

(71~~66~~) ‘Union’ means the European Union, the European Atomic Energy Community, or both, as the context may require;

(72~~67~~) ‘Union institution’ means the European Parliament, the European Council, the Council, the Commission, the Court of Justice of the European Union, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman, the European Data Protection Supervisor or the European External Action Service (the ‘EEAS’); the European Central Bank shall not be considered to be a Union institution;

(73~~68~~) ‘vendor’ means an economic operator registered in a list of vendors to be invited to submit requests to participate in or submit tenders;

(74~~69~~) ‘volunteer’ means a person working on a non-compulsory basis for an organisation without being paid;

(75~~70~~) ‘ ⌦ a ⌫ work’ means the outcome of building or civil engineering works taken as a whole that is sufficient in itself to fulfil an economic or technical function;

(76~~71~~) ‘works contract’ means a contract covering either:

(a) the execution or both the execution and design of a work; ⌦ or ⌫

(b) the execution or both the execution and design of ~~a work~~ ⌦ works ⌫ related to one of the activities referred to in Annex II to Directive 2014/24/EU; or

(c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

Article 3

Compliance of secondary legislation with this Regulation

1. Provisions concerning the implementation of the revenue and expenditure of the budget, and contained in a basic act, shall comply with the budgetary principles set out in Title II.

2. Without prejudice to paragraph 1, any proposal or amendment to a proposal submitted to the legislative authority containing derogations from the provisions of this Regulation other than those set out in Title II, or from delegated acts adopted pursuant to this Regulation, shall clearly indicate such derogations and shall state the specific reasons justifying them in the recitals and in the explanatory memorandum of such proposals or amendments.

Article 4

Periods, dates and time limits

Unless otherwise provided in this Regulation, Council Regulation (EEC, Euratom) No 1182/71[62] shall apply to the deadlines set out in this Regulation.

Article 5

Protection of personal data

This Regulation is without prejudice to Regulations (EU) 2018/1725~~(EC) No 45/2001~~ and (EU) No 2016/679.

TITLE II

~~*BUDGET AND BUDGETARY*~~ *PRINCIPLES*

Article 6

Respect for budgetary principles ⌦ and general regime of conditionality for the protection of the Union budget ⌫

1. The budget shall be established and implemented in accordance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management and transparency as set out in this Regulation.

[62] Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

⇩ new

2. The establishment and implementation of the budget shall also comply with the provisions of Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget.

🡻 2018/1046
⇨ new

CHAPTER 1

PRINCIPLES OF UNITY AND OF BUDGETARY ACCURACY

Article 7

Scope of the budget

1. For each financial year, the budget shall forecast and authorise all revenue and expenditure considered necessary for the Union. It shall comprise:

(a) the revenue and expenditure of the Union, including administrative expenditure resulting from the implementation of the provisions of the TEU relating to the common foreign and security policy (CFSP), and operational expenditure occasioned by implementation of those provisions where it is charged to the budget;

(b) the revenue and expenditure of the European Atomic Energy Community.

2. The budget shall contain differentiated appropriations, which consist of commitment appropriations and payment appropriations, and non-differentiated appropriations.

The appropriations authorised for the financial year shall consist of:

(a) appropriations provided in the budget, including by amending budgets;

(b) appropriations carried over from preceding financial years;

(c) appropriations made available again in accordance with Article 15;

(d) appropriations arising from pre-financing payments which have been repaid in accordance with point (b) of Article 12(4);

(e) appropriations provided following the receipt of revenue assigned during the financial year or carried over from preceding financial years.

3. Commitment appropriations shall cover the total cost of the legal commitments entered into during the financial year, subject to Article 115~~114~~(2).

4. Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years. ⇨ They shall also cover the provisioning of financial liabilities referred to in Article 215. ⇦

5. Paragraphs 2 and 3 of this Article shall not prevent appropriations being committed globally or budgetary commitments being made in annual instalments as respectively provided for in point (b) of the first subparagraph of Article 113~~112~~(1) and in Article 113~~112~~(2).

Article 8

Specific rules on the principles of unity and budgetary accuracy

1. All revenue and expenditure shall be booked to a budget line.

2. Without prejudice to authorised expenditure arising from contingent liabilities as provided for in Article 214~~210~~(2), no expenditure may be committed or authorised in excess of the authorised appropriations.

3. An appropriation shall be entered in the budget only if it is for an item of expenditure considered necessary.

4. Interest generated by pre-financing payments made from the budget shall not be due to the Union except as otherwise provided in the contribution agreements or the financing agreements concerned.

CHAPTER 2

PRINCIPLE OF ANNUALITY

Article 9

Definition

The appropriations entered in the budget shall be authorised for a financial year which shall run from 1 January to 31 December.

Article 10

Budgetary accounting for revenue and appropriations

1. The revenue of a financial year shall be entered in the accounts for that year on the basis of the amounts collected during it. However, the own resources for the month of January of the following financial year may be made available in advance pursuant to Regulation (EU, Euratom) No 609/2014.

2. The entries in respect of the Value Added Tax (VAT) and Gross National Income-based own resources may be adjusted in accordance with Regulation (EU, Euratom) No 609/2014.

⇩ new

3. The entries in respect of the own resources referred to in point (c) of Article 2(1) of Decision (EU, Euratom) 2020/2053 may be adjusted in accordance with Regulation (EU, Euratom) No 2021/770.

4. [The entries in respect of the own resources referred to in points (e), (f) and (g) of Article 2(1) of Decision (EU, Euratom) 2020/2053 may be adjusted in accordance with Regulation (EU, Euratom) [XXX].]

↓ 2018/1046
⇨ new

53. Commitments shall be entered in the accounts for a financial year on the basis of the legal commitments entered into ⇨ and of the provisioning of financial liabilities referred to in Article 215 made, ⇦ up to 31 December of that year. However, the global budgetary commitments referred to in Article 113112(4) shall be entered in the accounts for a financial year on the basis of the budgetary commitments up to 31 December of that year.

64. Payments shall be entered in the accounts for a financial year on the basis of the payments made by the accounting officer by 31 December of that year.

75. By way of derogation from paragraphs 53 and 64:

(a) the expenditure of the European Agricultural Guarantee Fund (EAGF) shall be entered in the accounts for a financial year on the basis of the repayments made by the Commission to Member States by 31 December of that year, provided that the payment order has reached the accounting officer by 31 January of the following financial year;

(b) expenditure implemented under shared management with the exception of the EAGF shall be entered in the accounts for a financial year on the basis of the reimbursements made by the Commission to Member States by 31 December of that year, including the expenditure charged by 31 January of the following financial year as laid down in Articles 30 and 31.

Article 11

Commitment of appropriations

1. The appropriations entered in the budget may be committed with effect from 1 January, once the budget has been definitively adopted.

2. As of 15 October of the financial year, the following expenditure may be committed in advance against the appropriations provided for the following financial year:

(a) routine administrative expenditure, provided that such expenditure has been approved in the last budget duly adopted, and only up to a maximum of one quarter of the total corresponding appropriations decided upon by the European Parliament and by the Council for the current financial year;

(b) routine management expenditure for the EAGF, provided that the basis for such expenditure is laid down in an existing basic act, and only up to a maximum of three quarters of the total corresponding appropriations decided upon by the European Parliament and by the Council for the current financial year.

Article 12

Cancellation and carry-over of appropriations

1. Appropriations which have not been used by the end of the financial year for which they were entered shall be cancelled, unless they are carried over in accordance with paragraphs 2 to 8.

2. The following appropriations may be carried over by a decision taken pursuant to paragraph 3, but only to the following financial year:

(a) commitment appropriations and non-differentiated appropriations, for which most of the preparatory stages of the commitment procedure have been completed by 31 December of the financial year. Such appropriations may be committed up to 31 March of the following financial year, with the exception of non-differentiated appropriations related to building projects which may be committed up to 31 December of the following financial year;

(b) appropriations which are necessary when the legislative authority has adopted a basic act in the final quarter of the financial year and the Commission has been unable to commit the appropriations provided for that purpose by 31 December of that year. Such appropriations may be committed up to 31 December of the following financial year;

(c) payment appropriations which are needed to cover existing commitments or commitments linked to commitment appropriations carried over, where the payment appropriations provided for in the relevant budget lines for the following financial year are insufficient;

(d) non-committed appropriations relating to the actions referred to in Article 5(2)~~4(1)~~ of Regulation (EU) ~~No 1306/2013~~ 2021/2116 ~~of the European Parliament and of the Council~~[63].

⇩ new

By way of derogation from point (d), non-committed appropriations of the agricultural reserve referred to in Article 16 of Regulation (EU) 2021/2116 shall be carried over without time limitation to finance the agricultural reserve in the following financial years. Those appropriations shall be carried over in accordance with paragraph 4.

🡻 2018/1046 (adapted)
⇨ new

With regard to point (c) of the first subparagraph, the Union institution concerned shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.

Carry-overs of non-committed appropriations as referred to in ~~point (d) of the first subparagraph of~~ this paragraph, first subparagraph, point (d), shall not exceed, within a limit of 2 % of the initial appropriations voted by the European Parliament and by the Council, the amount of the adjustment of direct payments applied in accordance with Article 17~~26~~ of Regulation (EU)~~No 1306/2013~~ 2021/2116 during the preceding financial year. Appropriations which are carried over shall be returned to the budget lines which cover the actions referred to in Article 5(2), point (c), of Regulation (EU) 2021/2116 ~~point (b) of Article 4(1) of Regulation (EU) No 1306/2013~~.

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63 ~~Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).~~

3. The Union institution concerned shall take its decision on carry-overs as referred to in paragraph 2 by 15 February of the following financial year. It shall inform the European Parliament and the Council by 15 March of that year of the carry-over decision it has taken. It shall also state, for each budget line, how the criteria in points (a), (b) and (c) of the first subparagraph of paragraph 2 have been applied to each carry-over.

4. Appropriations shall be automatically carried over in respect of:

(a) ~~commitment~~ appropriations for the ⌦ Solidarity and ⌫ Emergency Aid Reserve and for the European Union Solidarity Fund. Such appropriations may be carried over only to the following financial year and may be ⇨ used ⇦ ~~committed~~ up to 31 December of that year ⇨ . The carried-over appropriations shall be used first in the following financial year ⇦ ;

(b) appropriations corresponding to internal assigned revenue. Such appropriations may be carried over only to the following financial year and may be committed up to 31 December of that year, with the exception of the internal assigned revenue from lettings and the sale of buildings and land which may be carried over until it is fully used. Commitment appropriations, as referred to in Regulation (EU) No 1303/2013, ~~and~~ in Regulation (EU) No 514/2014 of the European Parliament and of the Council[64] ⇨ and Regulation (EU) 2021/1060 ⇦ , which are available on 31 December arising from repayments of pre-financing payments may be carried over until the closure of the programme and used when necessary, provided that other commitment appropriations are no longer available;

(c) appropriations corresponding to external assigned revenue. Such appropriations shall be fully used by the time all the operations relating to the programme or action to which they are assigned have been carried out or they may be carried over and used for the succeeding programme or action. This shall not apply to the revenue referred to in point (iii) of Article 21(2)(g) for which appropriations not committed within five years shall be cancelled;

⇩ new

(d) payment appropriations resulting from payment suspensions under the EAGF. Notwithstanding paragraph 7, those appropriations may be used for the reimbursement of the suspended amounts after the lifting of the EAGF payment suspensions.

(e) commitment and payment appropriations under Regulation (EU) 2021/947, Regulation (EU) 2021/1529, Council Decision (EU) 2021/ 1764 and, Council Regulation (Euratom) 2021/948. Such appropriations may be committed and used up to 31 December of the following year. The carried-over amounts shall be used first in the following financial year;

(f) commitment and payment appropriations for the Union Civil Protection Mechanism. Such appropriations which have not been used by the end of the financial year for which they were entered in the annual budget shall be

[64] Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime and crisis management (OJ L 150, 20.5.2014, p. 112).

automatically carried over and may be committed and used up to 31 December of the following year. Those carried-over appropriations shall be used solely for response actions and shall be used first in the following financial year;

(g) appropriations related to the agricultural reserve in accordance with Article 16 of Regulation (EU) 2021/2116.

🡻 2018/1046 (adapted)
⇨ new

5. The treatment of external assigned revenue as referred to in point (c) of paragraph 4 of this Article resulting from the participation of European Free Trade Association (EFTA) States in certain Union programmes in accordance with point (e) of Article 21(2) shall be in line with Protocol No 32 annexed to the Agreement on the European Economic Area (EEA Agreement).

6. In addition to the information provided for in paragraph 3, the Union institution concerned shall submit to the European Parliament and to the Council information on appropriations which were automatically carried over, including the amounts involved and the provision of this Article under which the appropriations were carried over.

7. Non-differentiated appropriations legally committed at the end of the financial year shall be paid until the end of the following financial year.

8. Without prejudice to paragraph 4, appropriations placed in reserve and appropriations for staff expenditure shall not be carried over. For the purposes of this Article, staff expenditure comprises remuneration and allowances for members and for staff of Union institutions who are subject to the Staff Regulations.

Article 13

Detailed provisions on cancellation and carry-over of appropriations

1. The commitment appropriations and the non-differentiated appropriations referred to in point (a) of the first subparagraph of Article 12(2) may be carried over only if the commitments could not be made before 31 December of the financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to expect that the commitment will be made by 31 March of the following financial year, or, in relation to building projects, by 31 December of the following financial year.

2. The preparatory stages referred to in point (a) of the first subparagraph of Article 12(2), which shall be completed by 31 December of the financial year in order to allow a carry-over to the following financial year, are in particular:

(a) for individual budgetary commitments within the meaning of point (a) of the first subparagraph of Article 113~~112~~(1), the completion of the selection of potential contractors, beneficiaries, prize winners or delegates;

(b) for global budgetary commitments within the meaning of point (b) of the first subparagraph of Article 113~~112~~(1), the adoption of a financing decision or the closing of the consultation of the departments concerned within each Union institution on the adoption of the financing decision.

3. Appropriations carried over in accordance with point (a) of the first subparagraph of Article 12(2) which have not been committed by 31 March of the following financial year, or by 31 December of the following financial year for amounts relating to building projects, shall be automatically cancelled.

The Commission shall inform the European Parliament and the Council of the appropriations cancelled in accordance with the first subparagraph within one month following the cancellation.

Article 14

Decommitments

1. Where budgetary commitments are decommitted in any financial year after the year in which they were made as a result of the total or partial non-implementation of the actions for which they were earmarked, the appropriations corresponding to such decommitments shall be cancelled, unless otherwise provided in Regulation~~s~~ (EU) No 1303/2013, ~~and~~ Regulation (EU) No 514/2014 ⇨ , Regulation (EU) No 223/2014, Regulation (EU) 2021/1060 and Regulation (EU) 2021/2116 ⇦ and ~~without prejudice to~~ ⌦ notwithstanding ⌫ Article 15 of this Regulation.

2. Commitment appropriations referred to in Regulation~~s~~ (EU) No 1303/2013, Regulation ~~and~~ (EU) No 514/2014 ⇨ , Regulation (EU) No 223/2014, Regulation (EU) 2021/1060 and Regulation (EU) 2021/2116 ⇦ shall be decommitted automatically in accordance with those Regulations.

3. This Article does not apply to external assigned revenue referred to in Article 21(2).

Article 15

Making appropriations corresponding to decommitments available again

1. The appropriations corresponding to decommitments referred to in Regulation~~s~~ (EU) No 1303/2013, Regulation (EU) No 223/2014, Regulation ~~and~~ (EU) No 514/2014 ⇨ , Regulation (EU) 2021/1060 and Regulation (EU) 2021/2116 ⇦ may be made available again in the event of a manifest error attributable solely to the Commission.

To that end, the Commission shall examine decommitments made during the preceding financial year and shall decide, by 15 February of the current financial year, on the basis of requirements, whether it is necessary to make the corresponding appropriations available again.

2. In addition to the case referred to in paragraph 1 of this Article, the appropriations corresponding to decommitments shall be made available again in the event of ⇨ the decommitment of resources transferred back to the Fund from which they have been initially transferred in line with the provisions of Article 26 of Regulation (EU) 2021/1060 ⇦ ~~:~~

~~(a) the decommitment from a programme under the arrangements for the implementation of the performance reserve established in Article 20 of Regulation (EU) No 1303/2013;~~

~~(b) the decommitment from a programme dedicated to a specific financial instrument in favour of small and medium-sized enterprises (SMEs) following the discontinuance of the participation of a Member State in the financial instrument, as referred to in the seventh subparagraph of Article 39(2) of Regulation (EU) No 1303/2013.~~

3. Commitment appropriations corresponding to the amount of decommitments made as a result of total or partial non-implementation of corresponding research projects may also be made available again to the benefit of the research programme the projects belong to or its successor in the context of the budgetary procedure.

⇩ new

4. Commitment appropriations corresponding to the amount of decommitments made as a result of total or partial non implementation of an action under Regulation (EU) 2021/947, Regulation (EU) 2021/1529, Decision (EU) 2021/1764 and Council Regulation (Euratom) 2021/948 shall be made available again to the benefit of the budget line of origin.

🡻 2018/1046
⇨ new

Article 16

Rules applicable in the event of late adoption of the budget

1. If the budget has not been definitively adopted at the beginning of the financial year, the procedure set out in the first paragraph of Article 315 TFEU (the provisional twelfths regime) shall apply. Commitments and payments may be made within the limits laid down in paragraph 2 of this Article.

2. Commitments may be made per chapter up to a maximum of one quarter of the total appropriations authorised in the relevant chapter of the budget for the preceding financial year plus one twelfth for each month which has elapsed.

The limit of the appropriations provided for in the draft budget shall not be exceeded.

Payments may be made monthly per chapter up to a maximum of one twelfth of the appropriations authorised in the relevant chapter of the budget for the preceding financial year. That sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget.

3. The appropriations authorised in the relevant chapter of the budget for the preceding financial year, as referred to in paragraphs 1 and 2, shall be understood as referring to the appropriations voted in the budget, including by amending budgets, and after adjustment for the transfers made during that financial year.

4. If the continuity of Union action and management needs so require, the Council, acting by qualified majority on a proposal from the Commission, may authorise expenditure in excess of one provisional twelfth but not exceeding a total of four provisional twelfths, except in duly justified cases, both for commitments and for payments over and above those automatically made available in accordance with paragraphs 1 and 2. The Council shall without delay forward its decision on authorisation to the European Parliament.

The decision referred to in the first subparagraph shall enter into force 30 days after its adoption unless the European Parliament takes any of the following actions:

(a) acting by a majority of its component members, decides to reduce the expenditure before the expiry of the 30 days, in which case the Commission shall submit a new proposal;

(b) informs the Council and the Commission that it does not wish to reduce the expenditure, in which case the decision shall enter into force before the expiry of the 30 days.

The additional twelfths shall be authorised in full and shall not be divisible.

5. If, for a given chapter, the authorisation of four provisional twelfths granted in accordance with paragraph 4 is not sufficient to cover the expenditure necessary to avoid a break in continuity of Union action in the area covered by the chapter in question, authorisation may exceptionally be given to exceed the amount of the appropriations entered in the corresponding chapter of the budget for the preceding financial year. The European Parliament and the Council shall act in accordance with the procedures provided for in paragraph 4. However, the overall total of the appropriations available in the budget of the preceding financial year or in the draft budget, as proposed, shall in no circumstances be exceeded.

CHAPTER 3

PRINCIPLE OF EQUILIBRIUM

Article 17

Definition and scope

1. Revenue and payment appropriations shall be in balance.

2. The Union and the Union bodies referred to in Articles 70 and 71 shall not raise loans within the framework of the budget.

Article 18

Balance from financial year

1. The balance from each financial year shall be entered in the budget for the following financial year as revenue in the event of a surplus or as a payment appropriation in the event of a deficit.

2. The estimates of the revenue or payment appropriations referred to in paragraph 1 of this Article shall be entered in the budget during the budgetary procedure and in a letter of amendment submitted pursuant to Article 42 of this Regulation. The estimates shall be drawn up in accordance with Article 1 of Council Regulation (EU, Euratom) 2021/768[65]~~No 608/2014[66]~~.

3. After the presentation of the provisional accounts for each financial year, any discrepancy between those accounts and the estimates shall be entered in the budget for the following financial year through an amending budget devoted solely to that discrepancy. In such a case, the Commission shall submit the draft amending budget simultaneously to the European Parliament and to the Council within 15 days of submission of the provisional accounts.

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65 Council Regulation (EU, Euratom) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union and repealing Regulation (EU, Euratom) No 608/2014, OJ L 165, 11.5.2021, p. 1.

66 ~~Council Regulation (EU, Euratom) No 608/2014 of 26 May 2014 laying down implementing measures for the system of own resources of the European Union (OJ L 168, 7.6.2014, p. 29).~~

CHAPTER 4

PRINCIPLE OF UNIT OF ACCOUNT

Article 19

Use of euro

1. The multiannual financial framework and the budget shall be drawn up and implemented in euro and the accounts shall be presented in euro. However, for the cash-flow purposes referred to in Article 77, the accounting officer and, in the case of imprest accounts, the imprest administrators, and, for the needs of the administrative management of the Commission and the EEAS, the authorising officer responsible, shall be authorised to carry out operations in other currencies.

2. Without prejudice to specific provisions laid down in sector-specific rules, or in specific contracts, grant agreements, contribution agreements and financing agreements, conversion by the authorising officer responsible shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union* of the day on which the payment order or recovery order is drawn up by the authorising department.

If no such daily rate is published, the authorising officer responsible shall use the one referred to in paragraph 3.

3. For the purposes of the accounts provided for in Articles 82, 83 and 84, conversion between the euro and another currency shall be made using the monthly accounting exchange rate of the euro. That accounting exchange rate shall be established by the accounting officer of the Commission by means of any source of information regarded as reliable, on the basis of the exchange rate on the penultimate working day of the month preceding that for which the rate is established.

4. Currency conversion operations shall be carried out in such a way as to avoid having a significant impact on the level of the Union co-financing or a detrimental impact on the budget. Where appropriate, the rate of conversion between the euro and other currencies may be calculated using the average of the daily exchange rate in a given period.

CHAPTER 5

PRINCIPLE OF UNIVERSALITY

Article 20

Scope

Without prejudice to Article 21, total revenue shall cover total payment appropriations. Without prejudice to Article 27, all revenue and expenditure shall be entered in the budget in full without any adjustment against each other.

Article 21

Assigned revenue

1. External assigned revenue and internal assigned revenue shall be used to finance specific items of expenditure.

2. The following shall constitute external assigned revenue:

(a) specific additional financial contributions from Member States ⇨ , including voluntary contributions, ⇦ to ~~the following types of actions and programmes:~~ ⇨ Union programmes, instruments and activities; ⇦ ~~(i) certain supplementary research and technological development programmes;~~

~~(ii) certain external aid actions or programmes financed by the Union and managed by the Commission;~~

(b) appropriations relating to the revenue generated by the Research Fund for Coal and Steel established by Protocol No 37 on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel, annexed to the TEU and to the TFEU.

(c) the interest on deposits and the fines provided for in Council Regulation (EC) No 1467/97[67];

(d) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests, including the earmarked revenue specific to each Union institution;

(e) financial contributions to Union activities from third countries or from bodies other than those set up under the TFEU or the Euratom Treaty;

(f) internal assigned revenue referred to in paragraph 3, to the extent that it is ancillary to external assigned revenue referred to in this paragraph;

(g) revenue from the activities of a competitive nature conducted by the Joint Research Centre (JRC) which consist of any of the following:

(i) grant and procurement procedures in which the JRC participates;

(ii) activities of the JRC on behalf of third parties;

(iii) activities undertaken under an administrative agreement with other Union institutions or other Commission departments, in accordance with Article 59, for the provision of technical-scientific services.

3. The following shall constitute internal assigned revenue:

(a) revenue from third parties in respect of goods, services or work supplied at their request;

(b) revenue arising from the repayment, in accordance with Article 101, of amounts wrongly paid;

(c) proceeds from the supply of goods, services and works to other departments within an Union institution, or to other Union institutions or bodies, including refunds by other Union institutions or bodies of mission allowances paid on their behalf;

(d) insurance payments received;

(e) revenue from lettings and from the sale of buildings and land;

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67 Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure (OJ L 209, 2.8.1997, p. 6).

(f) repayments to financial instruments or budgetary guarantees pursuant to the second subparagraph of Article 213~~209~~(3);

(g) revenue arising from subsequent reimbursement of taxes pursuant to point (b) of the first subparagraph of Article 27(3).

4. Assigned revenue shall be carried over and transferred in accordance with points (b) and (c) of Article 12(4) and with Article 32.

5. A basic act may assign the revenue for which it provides to specific items of expenditure. Unless otherwise specified in the basic act, such revenue shall constitute internal assigned revenue.

6. The budget shall include lines to accommodate external assigned revenue and internal assigned revenue and shall, wherever possible, indicate the amount.

Article 22

Structure to accommodate assigned revenue and provision of corresponding appropriations

1. Without prejudice to point (c) of the first subparagraph of paragraph 2 of this Article and to Article 24, the structure to accommodate assigned revenue in the budget shall comprise:

(a) in the statement of revenue of each Union institution's section, a budget line to receive the revenue;

(b) in the statement of expenditure, the remarks, including general remarks, showing which budget lines may receive the appropriations corresponding to the assigned revenue which are made available;~~.~~

⇩ new

(c) an attached annex, forming an integral part of the budget, setting out all the budget lines for which external assigned revenue is foreseen and providing information on the estimated amount of such revenue to be received.

🡻 2018/1046 (adapted)

In the case referred to in point (a) of the first subparagraph, a token entry *pro memoria* shall be made and the estimated revenue shall be shown for information in the remarks.

2. The appropriations corresponding to assigned revenue shall be made available automatically, both as commitment appropriations and as payment appropriations, when the revenue has been received by the Union institution, save in any of the following cases:

(a) in the case provided for in point (a) of Article 21(2) for financial contributions from Member States and where the contribution agreement is expressed in euro, commitment appropriations may be made available upon signature of the contribution agreement by the Member State;

(b) in the cases provided for in point (b) of Article 21(2) and in points (i) and (iii) of Article 21(2)(g), the commitment appropriations shall be made available as soon as the amount receivable has been estimated;

(c) in the case provided for in point (c) of Article 21(2), the entry of the amounts in the statement of revenue shall give rise to the provision, in the statement of expenditure, of commitment and payment appropriations.

Appropriations referred to in point (c) of the first subparagraph of this paragraph shall be implemented in accordance with Article 20.

3. The estimates of amounts receivable referred to in points (b) and (g) of Article 21(2) shall be sent to the accounting officer for registration.

Article 23

Contributions from Member States to research programmes

1. The contributions from Member States to the financing of certain supplementary research programmes, ~~provided for~~ referred to in Article 5 of Regulation (EU, Euratom) No 609/2014, shall be paid as follows:

(a) seven twelfths of the sum entered in the budget shall be paid by 31 January of the current financial year;

(b) the remaining five twelfths shall be paid by 15 July of the current financial year.

2. Where the budget has not been definitively adopted before the start of a financial year, the contributions provided for in paragraph 1 shall be based on the sum entered in the budget for the preceding financial year.

3. Any contribution or additional payment owed by Member States to the budget shall be entered in the Commission's account or accounts within thirty calendar days of the call for funds.

4. Payments made shall be entered in the account provided for in Regulation (EU, Euratom) No 609/2014 and shall be subject to the conditions laid down by that Regulation.

Article 24

Assigned revenue resulting from the participation of EFTA States in certain Union programmes

1. The budget structure to accommodate the revenue from the participation of EFTA States in certain Union programmes shall be as follows:

(a) in the statement of revenue, a budget line with a token entry *pro memoria* shall be entered to accommodate the full amount of each EFTA State's contribution for the financial year;

(b) in the statement of expenditure, an annex, forming an integral part of the budget, shall set out all the budget lines covering the Union activities in which EFTA States participate, and shall include information on the estimated amount of the participation of each EFTA State.

2. Under Article 82 of the EEA Agreement, the amounts of the annual participation of EFTA States, as confirmed to the Commission by the Joint Committee of the European

Economic Area in accordance with Article 1(5) of Protocol No 32 annexed to the EEA Agreement, shall give rise to the provision, at the start of the financial year, of the full amounts of the corresponding commitment appropriations and payment appropriations.

3. The use of the revenue arising from the financial contribution of EFTA States shall be monitored separately.

Article 25

Donations

1. Union institutions may accept any donation made to the Union, such as income from foundations, subsidies, gifts and bequests.

2. Acceptance of a donation of a value of EUR 50000 or more which involves a financial charge, including follow-up costs, exceeding 10 % of the value of the donation made, shall be subject to the authorisation of the European Parliament and of the Council. The European Parliament and the Council shall act on the matter within two months of receiving a request for such an authorisation from the Union institutions concerned. If no objection is made within that period, the Union institutions concerned shall take a final decision regarding the acceptance of the donation. The Union institutions concerned shall in their request to the European Parliament and to the Council explain the financial charges entailed by the acceptance of donations made to the Union.

⇩ new

3. Notwithstanding paragraph 2, in exceptional circumstances, the Commission may accept any in-kind donation made to the Union, irrespective of its value, where such a donation is made for the purposes of humanitarian aid, emergency support, civil protection or crisis management aid.

The Commission may accept such a donation provided that:

(a) acceptance is in accordance with the principles of sound financial management and transparency;

(b) it does not give rise to conflicts of interest;

(c) it does not harm the image of the Union;

(d) the donor is not, at the time of the acceptance, in one of the situations referred to in Articles 139(1) and 144(1) and is not registered as excluded in the database referred to in Article 145(1). The donor shall submit the declaration referred to in Article 140.

🡻 2018/1046 (adapted)

Article 26

Corporate sponsorship

1. ‘Corporate sponsorship’ means an agreement by which a legal person supports in-kind an event or an activity for promotional or corporate social responsibility purposes.

2. On the basis of specific internal rules, which shall be published on their respective websites, Union institutions and bodies may exceptionally accept corporate sponsorship provided that:

(a) there is due regard to the principles of non-discrimination, proportionality, equal treatment and transparency at all stages of the procedure for accepting corporate sponsorship;

(b) it contributes to the positive image of the Union and is directly linked to the core objective of an event or of an activity;

(c) it does neither generate conflict of interests nor concern exclusively social events;

(d) the event or activity is not exclusively financed through corporate sponsorship;

(e) the service in return for the corporate sponsorship is limited to the public visibility of the trademark or name of the sponsor;

(f) the sponsor is not, at the time of the sponsorship procedure, in one of the situations referred to in Articles 139~~136~~(1) and 144~~141~~(1) and is not registered as excluded in the database referred to in Article 145~~142~~(1).

3. Where the value of the corporate sponsorship exceeds EUR 5000, the sponsor shall be listed in a public register that includes information on the type of event or activity being sponsored.

Article 27

Rules on deductions and exchange rate adjustments

1. The following deductions may be made from payment requests which shall then be passed for payment of the net amount:

(a) penalties imposed on parties to contracts or beneficiaries;

(b) discounts, refunds and rebates on individual invoices and cost statements;

(c) interest generated by pre-financing payments;

(d) adjustments for amounts unduly paid.

The adjustments referred to in point (d) of the first subparagraph may be made, by means of direct deduction, against a new interim payment or payment of a balance to the same payee under the chapter, article and financial year in respect of which the excess payment was made.

Union accounting rules shall apply to the deductions referred to in points (c) and (d) of the first subparagraph.

2. The cost of products or services, provided to the Union, incorporating taxes refunded by Member States pursuant to Protocol No 7 on the privileges and immunities of the European Union, annexed to the TEU and to the TFEU, shall be charged to the budget for the ex-tax amount.

3. The cost of products or services, provided to the Union, incorporating taxes refunded by third countries on the basis of relevant agreements, may be charged to the budget for any of the following amounts:

(a) the ex-tax amount;

(b) the tax-inclusive amount.

In the case referred to in point (b) of the first subparagraph, subsequently reimbursed taxes shall be treated as internal assigned revenue.

4. Adjustments may be made in respect of exchange differences occurring in budget implementation. The final gain or loss shall be included in the balance for the financial year.

CHAPTER 6

PRINCIPLE OF SPECIFICATION

Article 28

General provisions

1. Appropriations shall be earmarked for specific purposes by title and chapter. The chapters shall be further subdivided into articles and items.

2. The Commission and the other Union institutions may transfer appropriations within the budget subject to the specific conditions laid down in Articles 29 to 32.

Appropriations may only be transferred to budget lines for which the budget has authorised appropriations or which carry a token entry *pro memoria*.

The limits referred to in Articles 29, 30 and 31 shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget, including amending budgets.

The amount to be taken into consideration for the purposes of calculating the limits referred to in Articles 29, 30 and 31 shall be the sum of the transfers to be made on the budget line from which transfers are being made, after adjustment for earlier transfers made. The amount corresponding to the transfers which are carried out autonomously by the Commission, or by any other Union institution concerned without a decision of the European Parliament and of the Council, shall not be taken into consideration.

Proposals for transfers and all information for the European Parliament and for the Council concerning transfers made under Articles 29, 30 and 31 shall be accompanied by appropriate and detailed supporting documents showing the most recent information available for the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the budget lines to which the appropriations are to be transferred and for those from which they are to be taken.

Article 29

Transfers by Union institutions other than the Commission

1. Any Union institution other than the Commission may, within its own section of the budget, transfer appropriations:

(a) from one title to another up to a maximum of 10 % of the appropriations for the financial year shown on the budget line from which the transfer is made;

(b) from one chapter to another without limit.

2. Without prejudice to paragraph 4 of this Article, three weeks before making a transfer, as referred to in paragraph 1, the Union institution shall inform the European Parliament and the Council of its intention to do so. In the event that duly justified objections are raised

within that period by either the European Parliament or the Council, the procedure laid down in Article 31 shall apply.

3. Any Union institution other than the Commission may propose to the European Parliament and to the Council, within its own section of the budget, transfers from one title to another exceeding the limit referred to in point (a) of paragraph 1 of this Article. Those transfers shall be subject to the procedure laid down in Article 31.

4. Any Union institution other than the Commission may, within its own section of the budget, make transfers within articles without informing the European Parliament and the Council beforehand.

Article 30

Transfers by the Commission

1. The Commission may, within its own section of the budget, autonomously:

(a) transfer appropriations within each chapter;

(b) with regard to expenditure on staff and administration which is common to several titles, transfer appropriations from one title to another up to a maximum of 10 % of the appropriations for the financial year shown on the budget line from which the transfer is made, and up to a maximum of 30 % of the appropriations for the financial year shown on the budget line to which the transfer is made;

(c) with regard to operational expenditure, transfer appropriations between chapters within the same title up to a maximum of 10 % of the appropriations for the financial year shown on the budget line from which the transfer is made;

(d) with regard to research and technological development appropriations implemented by the JRC, within the title of the budget relating to the 'Direct research' policy area, transfer appropriations between chapters of up to a maximum of 15 % of the appropriations on the budget line from which the transfer is made;

(e) with regard to research and technological development, transfer operational appropriations from one title to another, provided that the appropriations are used for the same purpose;

(f) with regard to operational expenditure of the funds implemented under shared management, with the exception of the EAGF, transfer appropriations from one title to another, provided that the appropriations concerned are for the same objective within the meaning of the Regulation establishing the fund concerned or constitute technical assistance expenditure;

(g) transfer appropriations from the budgetary item of a budgetary guarantee to the budgetary item of another budgetary guarantee, in the exceptional cases when the provisioned resources in the common provisioning fund of the latter are insufficient to pay a guarantee call and subject to the subsequent restoring of the amount transferred in accordance with the procedure set out in Article 216~~212~~(4).

The expenditure referred to in point (b) of the first subparagraph of this paragraph shall cover, for each policy area, the items referred to in Article 47(4).

Where the Commission transfers EAGF appropriations pursuant to the first subparagraph after 31 December, it shall take its decision by 31 January of the following financial year. The Commission shall inform the European Parliament and the Council within two weeks after its decision on those transfers.

Three weeks before making the transfers referred to in point (b) of the first subparagraph of this paragraph, the Commission shall inform the European Parliament and the Council of its intention to do so. In the event that duly justified objections are raised within that period by the European Parliament or by the Council, the procedure laid down in Article 31 shall apply.

By way of derogation from the fourth subparagraph, the Commission may, during the last two months of the financial year, autonomously transfer appropriations concerning expenditure on staff, external personnel and other agents from one title to another within the total limit of 5 % of the appropriations for that year. The Commission shall inform the European Parliament and the Council within two weeks after its decision on those transfers.

2. The Commission may, within its own section of the budget, decide on the following transfers of appropriations from one title to another, provided it immediately informs the European Parliament and the Council of its decision:

(a) transfer of appropriations from the 'provisions' title referred to in Article 49 of this Regulation, where the only condition for lifting the reserve is the adoption of a basic act pursuant to Article 294 TFEU;

(b) in duly justified exceptional cases such as international humanitarian disasters and crises occurring after 1 December of the financial year, transfer of unused appropriations for that year still available in the titles falling under the heading of the multiannual financial framework dedicated to Union external action to the titles concerning crisis management aid and humanitarian aid operations.

Article 31

Transfer proposals submitted to the European Parliament and to the Council by Union institutions

1. Each Union institution shall submit its transfer proposals simultaneously to the European Parliament and to the Council.

2. The Commission may submit proposals for transfers of payment appropriations to the funds implemented under shared management with the exception of the EAGF to the European Parliament and to the Council by 10 January of the following financial year. The transfer of the payment appropriations may be made from any budgetary item. In such cases, the six-week period referred to in paragraph 4 shall be reduced to three weeks.

If the transfer is not approved or only partially approved by the European Parliament and by the Council, the corresponding part of the expenditure referred to in point (b) of Article 10(5) shall be charged to the payment appropriations of the following financial year.

3. The European Parliament and the Council shall take decisions on transfers of appropriations in accordance with paragraphs 4 to 8.

4. Except in urgent circumstances, the European Parliament and the Council, the latter acting by qualified majority, shall deliberate upon each transfer proposal within six weeks of its receipt by both institutions. In urgent circumstances, the European Parliament and the Council shall deliberate within three weeks of receipt of the proposal.

5. Where the Commission intends to transfer EAGF appropriations in accordance with this Article, it shall submit transfer proposals to the European Parliament and to the Council by 10 January of the following financial year. In such cases, the six-week period referred to in paragraph 4 shall be reduced to three weeks.

6. A transfer proposal shall be approved or considered to be approved, if, within the six-week period, any of the following occurs:

(a) the European Parliament and the Council approve it;

(b) either the European Parliament or the Council approves it and the other institution refrains from acting;

(c) neither the European Parliament nor the Council takes a decision to amend or refuse the transfer proposal.

7. Unless either the European Parliament or the Council requests otherwise, the six-week period referred to in paragraph 4 shall be reduced to three weeks in the following cases:

(a) the transfer represents less than 10 % of the appropriations of the budget line from which the transfer is made and does not exceed EUR 5000000;

(b) the transfer concerns only payment appropriations and the overall amount of the transfer does not exceed EUR 100000000.

8. If either the European Parliament or the Council has amended the amount of the transfer while the other institution has approved it or refrains from acting, or if the European Parliament and the Council have both amended the amount of the transfer, the lesser of the two amounts shall be deemed approved, unless the Union institution concerned withdraws its transfer proposal.

Article 32

Transfers subject to special provisions

1. Appropriations corresponding to assigned revenue may be transferred only if such revenue is used for the purpose for which it is assigned.

2. Decisions on transfers to allow the use of the ⌦ Solidarity and ⌫ Emergency Aid Reserve ⌦ under Article 9(1), point (b), of Regulation (EU, Euratom) 2020/2093 ⌫ shall be taken by the European Parliament and by the Council on a proposal from the Commission.

For the purposes of this paragraph, the procedure set out in Article 31(3) and (4) shall apply. If the European Parliament and the Council do not agree to the Commission proposal and cannot reach a common position ~~on the use of the Emergency Aid Reserve~~, they shall refrain from acting on that proposal.

Proposals for transfers from the ⌦ Solidarity and ⌫ Emergency Aid Reserve ⌦ for assistance under Article 9(1), point (b), of Regulation (EU, Euratom) 2020/2093 ⌫ shall be accompanied by appropriate and detailed supporting documents demonstrating:

(a) the most recent information available for the implementation of appropriations and the estimate of requirements up to the end of the financial year for the budget line to which the transfer is to be made;

(b) an analysis of the possibilities of reallocating appropriations.

CHAPTER 7

PRINCIPLE OF SOUND FINANCIAL MANAGEMENT AND PERFORMANCE

Article 33

Performance and principles of economy, efficiency and effectiveness

1. Appropriations shall be used in accordance with the principle of sound financial management, and thus be implemented respecting the following principles:

(a) the principle of economy which requires that the resources used by the Union institution concerned in the pursuit of its activities shall be made available in due time, in appropriate quantity and quality, and at the best price;

(b) the principle of efficiency which concerns the best relationship between the resources employed, the activities undertaken and the achievement of objectives;

(c) the principle of effectiveness which concerns the extent to which the objectives pursued are achieved through the activities undertaken.

2. In line with the principle of sound financial management, the use of appropriations shall focus on performance and for that purpose:

(a) objectives for programmes and activities shall be established *ex ante*;

(b) progress in the achievement of objectives shall be monitored with performance indicators;

(c) progress in, and problems with, the achievement of objectives shall be reported to the European Parliament and to the Council in accordance with ~~point (h) of the first subparagraph of~~ Article 41(3), first subparagraph, point (h), and with ~~point (e) of~~ Article 253~~247~~(1), point (e);~~.~~

⇩ new

(d) programmes and activities should be implemented to achieve their set objectives without doing significant harm to the environmental objectives of climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems, as set out in Article 9 of Regulation (EU) 2020/852 of the European Parliament and of the Council[68].

[68] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance), OJ L 198, 22.6.2020, p. 13.

↓ 2018/1046 (adapted)
⇨ new

3. Specific, measurable, attainable, relevant and time-bound objectives as referred to in paragraphs 1 and 2 and relevant, accepted, credible, easy and robust indicators shall be defined where relevant.

Article 34

Evaluations

1. Programmes and activities which entail significant spending shall be subject to *ex ante* and retrospective evaluations, which shall be proportionate to the objectives and expenditure.

2. Ex ante evaluations supporting the preparation of programmes and activities shall be based on evidence on the performance of related programmes or activities and shall identify and analyse the issues to be addressed, the added value of Union involvement, objectives, expected effects of different options and monitoring and evaluation arrangements.

For major programmes or activities that are expected to have significant economic, environmental or social impacts, the *ex ante* evaluation may take the form of an impact assessment that, in addition to meeting the requirements set out in the first subparagraph, analyses the various options concerning the methods of implementation.

3. Retrospective evaluations shall assess the performance of the programme or activity, including aspects such as effectiveness, efficiency, coherence, relevance and EU added value. Retrospective evaluations shall be based on the information generated by the monitoring arrangements and indicators established for the action concerned. They shall be undertaken at least once during the term of every multiannual financial framework and where possible in sufficient time for the findings to be taken into account in *ex ante* evaluations or impact assessments which support the preparation of related programmes and activities.

Article 35

Compulsory financial statement

1. Any proposal or initiative submitted to the legislative authority by the Commission, the High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative') or by a Member State, which may have an impact on the budget, including changes in the number of posts, shall be accompanied by a financial statement showing the estimates in terms of payment and commitment appropriations, by an assessment of the different financing options available, and by an *ex ante* evaluation or impact assessment as provided for in Article 34.

Any amendment to a proposal or initiative submitted to the legislative authority which may have an appreciable impact on the budget, including changes in the number of posts, shall be accompanied by a financial statement prepared by the Union institution proposing the amendment.

The financial statement shall contain the financial and economic data necessary for the assessment by the legislative authority of the need for Union action. It shall provide appropriate information as regards coherence with other activities of the Union and any possible synergy.

In the case of multiannual operations, the financial statement shall contain the foreseeable schedule of annual requirements in terms of commitment and payment appropriations and posts, including for external personnel, and an evaluation of their medium-term and, where possible, long-term financial impact.

2. During the budgetary procedure, the Commission shall provide the necessary information for a comparison between changes in the appropriations required and the initial forecasts made in the financial statement in the light of the progress of deliberations on the proposal or initiative submitted to the legislative authority.

3. In order to reduce the risk of fraud, irregularities and non-achievement of objectives, the financial statement shall provide information on the internal control system set up, an estimate of the costs and benefits of the controls implied by such a system and an assessment of the expected level of risk of error, as well as information on existing and planned fraud prevention and protection measures.

Such assessment shall take into account the likely scale and type of errors, as well as the specific conditions of the policy area concerned and the rules applicable thereto.

4. When presenting revised or new spending proposals, the Commission shall estimate the costs and benefits of control systems, as well as the expected level of risk of error as referred to in paragraph 3.

Article 36

Internal control of budget implementation

1. Pursuant to the principle of sound financial management, the budget shall be implemented in compliance with the effective and efficient internal control appropriate to each method of implementation, and in accordance with the relevant sector-specific rules.

2. For the purposes of budget implementation, internal control shall be applied at all levels of management and shall be designed to provide reasonable assurance of achieving the following objectives:

(a) effectiveness, efficiency and economy of operations;

(b) reliability of reporting;

(c) safeguarding of assets and information;

(d) prevention, detection, correction and follow-up of fraud ⇨ , corruption, conflicts of interest, double funding ⇦ and ⌦ other ⌫ irregularities ⇨ , including through the electronic recording and storage of data on the recipients of Union funds including their beneficial owners, as defined in Article 3, point (6), of Directive (EU) 2015/849 , and through the use of a single integrated IT system for data-mining and risk-scoring provided by the Commission to access and analyse those data ⇦ ;

(e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.

3. Effective internal control shall be based on best international practices and include, in particular, the following elements:

(a) segregation of tasks;

(b) an appropriate risk management and control strategy that includes control at recipient level;

~~(c) avoidance of conflict of interests;~~

(c~~d~~) adequate audit trails and data integrity in data systems ⇨ including electronic ones ⇦ ;

(d~~e~~) procedures for monitoring effectiveness and efficiency;

(e~~f~~) procedures for follow-up of identified internal control weaknesses and exceptions;

(f~~g~~) periodic assessment of the sound functioning of the internal control system.

4. Efficient internal control shall be based on the following elements:

(a) the implementation of an appropriate risk management and control strategy ⇨ and of an anti-fraud strategy ⇦ coordinated among appropriate actors involved in the control chain;

(b) the accessibility for all appropriate actors in the control chain of the results of controls carried out;

(c) reliance, where appropriate, on management declarations of implementation partners and on independent audit opinions, provided that the quality of the underlying work is adequate and acceptable and that it was performed in accordance with agreed standards;

(d) the timely application of corrective measures including, where appropriate, dissuasive penalties;

(e) clear and unambiguous legislation underlying the policies concerned, including basic acts on the elements of the internal control;

(f) the elimination of multiple controls;

(g) the improvement of the cost benefit ratio of controls.

5. If, during implementation, the level of error is persistently high, the Commission shall identify the weaknesses in the control systems, analyse the costs and benefits of possible corrective measures and take or propose appropriate action, such as simplification of the applicable provisions, improvement of the control systems and redesign of the programme or delivery systems.

⇩ new

6. For the purposes of point (d) of paragraph 2, the following data shall be recorded and stored electronically in an open, interoperable and machine-readable format and regularly made available in the single integrated IT system for data-mining and risk-scoring provided by the Commission:

(a) the recipient's full legal name in the case of legal persons, the first and last name in the case of natural persons, their VAT identification number or tax identification number where available or another unique identifier at country level and the amount of funding. If a natural person, also the date of birth;

(b) the first name(s), last name(s), date of birth, and VAT identification number(s) or tax identification number(s) where available or another unique identifier at country level of beneficial owner(s) of the recipients, where the recipients are not natural persons.

7. The single integrated IT system for data-mining and risk-scoring shall be designed to facilitate risk assessment for the purposes of selection, award, financial management, monitoring, investigation, control and audit and contribute to effective prevention, detection, correction and follow-up of fraud, corruption, conflicts of interest, double funding and other irregularities.

The use of and access to the data processed by the single integrated IT system for data-mining and risk-scoring shall comply with applicable data protection rules and shall be limited to the Commission or an executive agency as referred to in Article 69, the Member States implementing the budget pursuant to Article 62(1), first subparagraph, point (b), the Member States that receive and implement Union funds pursuant to budget implementation under Article 62(1), first subparagraph, point (a), the persons or entities implementing the budget pursuant to Article 62(1), first subparagraph, point (c), OLAF, the Court of Auditors, EPPO and other Union investigative and control bodies, within the exercise of their respective competences.

The Commission shall be the controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725 and shall be responsible for the development, management and supervision of the single integrated IT system for data-mining and risk-scoring, for ensuring the security, integrity and confidentiality of data, the authentication of the users and for protecting the IT system against mismanagement and misuse.

8. Member States that receive and implement Union funds, pursuant to budget implementation under Article 62(1), first subparagraph, point (a), shall apply paragraphs 1 to 7 of this Article.

9. For the purposes of the application of the requirements of paragraphs 2, 3 and 6 of this Article by Member States implementing the budget under Article 62(1), first subparagraph, point (b), references to recipients shall be understood as references to beneficiaries as defined in sector-specific rules.

10. As part of its control strategy, the Commission shall, where appropriate, design and perform controls and audits that use automated IT tools and emerging technologies.

🡻 2018/1046
⇨ new

CHAPTER 8

PRINCIPLE OF TRANSPARENCY

Article 37

Publication of accounts and budgets

1. The budget shall be established and implemented and the accounts presented in accordance with the principle of transparency.

2. The President of the European Parliament shall have the budget and any amending budget, as definitively adopted, published in the *Official Journal of the European Union*.

The budgets shall be published within three months of the date on which they are declared definitively adopted.

Pending official publication in the *Official Journal of the European Union*, the final detailed budget figures shall be published in all languages on the website of Union institutions, on the Commission's initiative, as soon as possible and no later than four weeks after the definitive adoption of the budget.

The consolidated annual accounts shall be published in the *Official Journal of the European Union* and on the website of Union institutions.

Article 38

Publication of information on recipients and other information

1. The Commission shall make available ⇨ on its website ⇦ ~~, in an appropriate and timely manner,~~ information on recipients of funds financed from the budget ⇨ no later than 30 June of the year following the financial year in which the funds were legally committed ⇦ , where the budget is implemented by it in accordance with ~~point (a) of the first subparagraph of~~ Article 62(1), first subparagraph, point (a) ⇨, by Union institutions in accordance with Article 59(1), and by the Union bodies referred to in Articles 70 and 71 ⇦ .

⇩ new

Where the budget is implemented in accordance with Article 62(1), first subparagraph, points (b) and (c), and with Member States in accordance to Article 62(1), first subparagraph, point (a), the Commission shall make available on its website information on recipients no later than 30 June of the year following the financial year in which the contract or agreement setting out the conditions of support was established. Where the budget is implemented in accordance with Article 62(1), first subparagraph, point (b), references in this Article to recipients shall be understood as references to beneficiaries as defined in sector-specific rules.

🡻 2018/1046
⇨ new

The first subparagraph of this paragraph shall also apply to other Union institutions when they implement the budget pursuant to Article 59(1).

2. Save in the cases referred to in paragraph~~s~~ 3 ~~and 4~~, the following information shall be published ⇨ in an open, interoperable and machine-readable format, which allows data to be sorted, searched, extracted, compared and reused⇦ , having due regard for the requirements of confidentiality and security, in particular the protection of personal data:

⇩ new

(a) whether the recipient is a natural or a legal person;

🡻 2018/1046 (adapted)
⇨ new

(b~~a~~) ⇨ the recipient's full legal name in the case of a legal person and their VAT identification number or tax identification number where available or another unique identifier established at country level, ⇦ the ⌦ first and last ⌫ name of the recipient ⌦ in the case of a natural person ⌫ ;

(c~~b~~) the locality of the recipient, namely:

(i) the address of the recipient when the recipient is a legal person;

(ii) the region on NUTS 2 level when the recipient is a natural person ⇨ and is domiciled in the European Union or the country when the recipient is a natural person and is not domiciled in the European Union ⇦ ;

(d~~c~~) the amount ~~legally~~ committed ⇨ and, in case of a commitment with multiple recipients, the breakdown of this amount per recipient where available ⇦ ;

(e~~d~~) the nature and purpose of the measure.~~The information referred to in the first subparagraph of this paragraph shall only be published for prizes, grants and contracts which have been awarded as a result of contests, grant award procedures or procurement procedures, and for experts selected pursuant to Article 237(2).~~

3. The information referred to in ~~the first subparagraph of~~ paragraph 2 shall not be published ⇨ and shall not be submitted for publication in accordance with paragraph 6 of this Article for ⇦ :

(a) education supports paid to natural persons and other direct support paid to natural persons most in need as referred to in ~~point (b) of~~ Article 195~~191~~(4), point (b);

(b) very low value contracts awarded to experts selected pursuant to Article 242~~237~~(2) as well as very low value contracts below the amount referred to in point 14.4 of Annex I;

(c) financial support provided through financial instruments ⇨ or budgetary guarantees ⇦ for an amount lower than EUR 500 000;

(d) where disclosure risks threatening the rights and freedoms of the persons or entities concerned as protected by the Charter of Fundamental Rights of the European Union or harming the commercial interests of the recipients;~~.~~

⇩ new

(e) where it is not required for publication in sector-specific rules where the budget is implemented in accordance with Article 62(1), first subparagraph, point (b) .

🡻 2018/1046
⇨ new

In the cases referred to in point (c) of the first subparagraph, the information made available shall be limited to statistical data, aggregated in accordance with relevant criteria, such as

geographical situation, economic typology of recipients, type of support received and the Union policy area under which such support was provided.

Where natural persons are concerned, the disclosure of the information referred to in ~~the first subparagraph of~~ paragraph 2 shall be based on relevant criteria such as the frequency or the type of the measure and the amounts involved.

4. Persons or entities implementing Union funds pursuant to ~~point (c) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c), shall publish information on recipients in accordance with their rules and procedures, to the extent that those rules are deemed equivalent following the assessment carried out by the Commission pursuant to ~~point (e) of the first subparagraph of~~ Article 158 ⇨ (3) and ⇦ ~~154~~(4), first subparagraph, point (e), and provided that any publication of personal data is subject to safeguards equivalent to those set out in this Article.

Bodies designated pursuant to Article 63(3) shall publish information in accordance with sector-specific rules. Those sector-specific rules may, in accordance with the relevant legal basis, derogate from paragraphs 2 and 3 of this Article~~, in particular for the publication of personal data, where justified on the basis of the criteria referred to in the third subparagraph of paragraph 3 of this Article,~~ and taking into account the specificities of the sector concerned.

⇩ new

Member States that receive and implement Union funds, pursuant to budget implementation under Article 62(1), first subparagraph, point (a), shall ensure *ex post* publication of information on their recipients, in a single website, in accordance with paragraphs 2 and 3 of this Article.

🡻 2018/1046
⇨ new

5. ~~The information referred to in paragraph 1 shall be published on the websites of Union institutions, no later than 30 June of the year following the financial year in which the funds were legally committed.~~

The websites of Union institutions shall contain a reference to the address of the website where the information referred to in paragraph 1 can be found if it is not published directly on a dedicated website of Union institutions.

The Commission shall make available, in an appropriate and timely manner, information about a single website, including a reference to its address, where the information as provided by the ⇨ Member States, ⇦ persons, entities or bodies referred to in paragraph 4 can be found.

⇩ new

6. For the purposes of the first and second subparagraphs of paragraph 1 of this Article and without prejudice to paragraph 4 and to sector-specific rules, Union institutions implementing the budget pursuant to Article 59(1), Member States implementing the budget pursuant to Article 62(1), first subparagraph, point (b), Member States that receive and

implement Union funds pursuant to budget implementation under Article 62(1), first subparagraph, point (a), persons or entities implementing the budget pursuant to Article 62(1), first subparagraph, point (c) and Union bodies referred to in Articles 70 and 71 shall transmit electronically to the Commission, in an open, interoperable and machine-readable format, at least once a year and at the latest by 31 March of the year following the financial year in which the funds were legally committed or in which the contract or agreement setting out the conditions of support was established, whichever is applicable, the data on their recipients referred to in paragraph 2 of this Article with the exception of the data referred to in the first subparagraph of paragraph 3 of this Article.

In addition, the data to be transmitted shall also include the VAT identification number or tax identification number of natural persons where available or another unique identifier established at country level with a view to improve the quality of the data transmitted without it being used for publication.

↓ 2018/1046

7~~6~~. Where personal data are published, the information shall be removed two years after the end of the financial year in which the funds were legally committed. ~~This shall also apply to personal data referring to legal persons whose official name identifies one or more natural persons.~~

⇩ new

Where the budget is implemented in accordance with Article 62(1), first subparagraph, points (b) and (c), the personal data shall be removed two years after the end of the financial year in which the contract or agreement setting out the conditions of support was established.

↓ 2018/1046
⇨ new

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

ESTABLISHMENT OF THE BUDGET

Article 39

Estimates of revenue and expenditure

1. Each Union institution other than the Commission shall draw up an estimate of its revenue and expenditure, which it shall send to the Commission, and in parallel, for information, to the European Parliament and to the Council, before 1 July each year.

2. The High Representative shall hold consultations with the members of the Commission responsible for development policy, neighbourhood policy, international cooperation, humanitarian aid and crisis response, regarding their respective responsibilities.

3. The Commission shall draw up its own estimates, which it shall send, directly after their adoption, to the European Parliament and to the Council. In preparing its estimates, the Commission shall use the information referred to in Article 40.

Article 40

Estimated budget of the Union bodies referred to in Article 70

By 31 January each year, each Union body referred to in Article 70 shall, in accordance with the instrument establishing it, send the Commission, the European Parliament and the Council its draft single programming document containing its annual and multi-annual programming with the corresponding planning for human and financial resources.

Article 41

Draft budget

1. The Commission shall submit a proposal containing the draft budget to the European Parliament and to the Council by 1 September of the year preceding that in which the budget is to be implemented. It shall transmit that proposal, for information, to the national parliaments.

The draft budget shall contain a summary general statement of the revenue and expenditure of the Union and shall consolidate the estimates referred to in Article 39. It may also contain different estimates from those drawn up by Union institutions.

The draft budget shall follow the structure and presentation set out in Articles 47 to 52.

Each section of the draft budget shall be preceded by an introduction drawn up by the Union institution concerned.

The Commission shall draw up the general introduction to the draft budget. The general introduction shall comprise financial tables covering the main data by titles and justifications for the changes in the appropriations from one financial year to the next by categories of expenditure of the multiannual financial framework.

2. In order to provide more precise and reliable forecasts of the budgetary implications of legislation in force and of pending legislative proposals, the Commission shall attach to the draft budget an indicative financial programming for the following years, structured by category of expenditure, policy area and budget line. The complete financial programming shall cover the categories of expenditure covered by point 26~~30~~ of the Interinstitutional Agreement of 16~~2~~ December 2020~~2013~~ between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management[69]. Summary data shall be provided for the categories of expenditure not covered by point 26~~30~~ of that Interinstitutional Agreement.

The indicative financial programming shall be updated after the adoption of the budget to incorporate the results of the budgetary procedure and any other relevant decisions.

3. The Commission shall attach to the draft budget:

[69] OJ C 373, 20.12.2013, p. 1.

(a) a comparative table including the draft budget for other Union institutions and the original estimates of other Union institutions as sent to the Commission and, where applicable, setting out the reasons for which the draft budget contains estimates different from those drawn up by other Union institutions;

(b) any working document it considers useful in connection with the establishment plans of Union institutions, showing the latest authorised establishment plan and presenting:

(i) all staff employed by the Union, displayed by type of employment contract;

(ii) a statement of the policy on posts and external personnel and on gender balance;

(iii) the number of posts actually filled on the last day of the year preceding the year in which the draft budget is presented and the annual average of full-time equivalents actually in place for that preceding year, indicating their distribution by grade, by gender and by administrative unit;

(iv) a list of posts broken down per policy area;

(v) for each category of external personnel, the initial estimated number of full-time equivalents on the basis of the authorised appropriations, as well as the number of persons actually in place at the beginning of the year in which the draft budget is presented, indicating their distribution by function group and, as appropriate, by grade;

(c) for the Union bodies referred to in Articles 70 and 71, a working document presenting the revenue and expenditure, as well as all information on staff as referred to in point (b) of this subparagraph;

(d) a working document on the planned implementation of appropriations for the financial year ⇨ , information on the implementation of the assigned revenue in the preceding year, including information on the amounts carried over to the financial year ⇦ and on commitments outstanding;

(e) as regards appropriations for administration, a working document presenting administrative expenditure to be implemented by the Commission under its section of the budget ⇨ and a working document on the Commission's building policy as referred to in Article 271(1) ⇦ ;

(f) a working document on pilot projects and preparatory actions which also contain an assessment of the results and the follow-up envisaged;

(g) as regards funding to international organisations, a working document containing:

(i) a summary of all contributions, with a breakdown per Union programme or fund and per international organisation;

(ii) a statement of reasons explaining why it is more efficient for the Union to fund those international organisations rather than to act directly;

(h) programme statements or any other relevant document containing the following:

(i) an indication of which Union policies and objectives the programme is to contribute to;

(ii) a clear rationale for intervention at Union level in accordance, inter alia, with the principle of subsidiarity;

(iii) progress in achieving programme objectives, as specified in Article 33;

(iv) a full justification, including a cost-benefit analysis for proposed changes in the level of appropriations;

(v) information on the implementation rates of the programme for the current and preceding financial year;

(i) a summary statement of the schedule of payments summarising per programme and per heading payments due in subsequent financial years to meet budgetary commitments proposed in the draft budget entered into in preceding financial years.

Where public-private partnerships make use of financial instruments, the information relating to those instruments shall be included in the working document referred to in paragraph 4.

4. Where the Commission makes use of financial instruments, it shall attach to the draft budget a working document presenting for each financial instrument the following:

(a) a reference to the financial instrument and its basic act, together with a general description of the instrument, its impact on the budget, its duration and the added value of the Union contribution;

(b) the financial institutions involved in implementation, including any issues relating to the application of Article 159(2)~~155(2)~~;

(c) the contribution of the financial instrument to the achievement of the objectives of the programme concerned as measured by the indicators established including, where applicable, the geographical diversification;

(d) the envisaged operations, including target volumes based on the target leverage and expected private capital to be mobilised or, when unavailable, on the leverage effect arising from the existing financial instruments;

(e) budget lines corresponding to the relevant operations and the aggregate budgetary commitments and payments from the budget;

(f) the average duration between the budgetary commitment to the financial instruments and the legal commitments for individual projects in the form of equity or debt, where that duration exceeds three years;

(g) revenue and repayments under Article 213~~209~~(3), presented separately, including an evaluation of their use;

(h) the value of equity investments, with respect to preceding years;

(i) the total amount of provisions for risks and liabilities, as well as any information on the financial risk exposure of the Union, including any contingent liability;

(j) ⇨ realised losses from ⇦ ~~impairments of~~ assets and called guarantees both for the preceding year and the respective accumulated figures;

(k) the performance of the financial instrument, including the investments realised, the target and the achieved leverage and multiplier effects, and also the amount of private capital mobilised;

(l) the provisioned resources in the common provisioning fund and, when applicable, the balance on the fiduciary account.

The working document referred to in the first subparagraph shall also include an overview of the administrative expenditure arising from management fees and other financial and operating charges paid for the management of financial instruments in total and per managing party and per financial instrument managed.

The Commission shall explain the reasons for the duration referred to in point (f) of the first subparagraph and shall, where appropriate, provide an action plan for the reduction of the duration in the framework of the annual discharge procedure.

The working document referred to in the first subparagraph shall summarise in a clear and concise table information per financial instrument.

5. Where the Union has granted a budgetary guarantee, the Commission shall attach to the draft budget a working document presenting for each budgetary guarantee and for the common provisioning fund the following:

(a) a reference to the budgetary guarantee and its basic act, together with a general description of the budgetary guarantee, its impact on the financial liabilities of the budget, its duration and the added value of the Union support;

(b) the counterparts for the budgetary guarantee, including any issues relating to the application of Article 159(2)~~155(2)~~;

(c) the budgetary guarantee's contribution to the achievement of the objectives of the budgetary guarantee as measured by the indicators established, including, where applicable, the geographical diversification and the mobilisation of private sector resources;

(d) information on operations covered by the budgetary guarantee on an aggregated basis by sectors, countries and instruments, including, where applicable, portfolios and support combined with other Union actions;

(e) the amount transferred to recipients as well as an assessment of the leverage effect achieved by the projects supported under the budgetary guarantee;

(f) information aggregated on the same basis as referred to in point (d) on calls on the budgetary guarantee, losses, returns, amounts recovered and any other payments received;

(g) ⇨ amount of provisioning for liabilities arising from each budgetary guarantee, an assessment of the adequacy of its provisioning rate and of the need for its replenishment ⇦ ~~information about the financial management, the performance and the risk of the common provisioning fund at the end of the preceding calendar year~~;

(h) the effective provisioning rate of the common provisioning fund and, where applicable, the subsequent operations in accordance with Article 217~~213~~(4).~~;~~

~~(i) the financial flows in the common provisioning fund during the preceding calendar year as well as the significant transactions and any relevant information on the financial risk exposure of the Union;~~

~~(j) pursuant to Article 210(3), an assessment of the sustainability of the contingent liabilities borne by the budget arising from budgetary guarantees or financial assistance.~~

6. Where the Commission makes use of Union trust funds for external actions, it shall attach to the draft budget a detailed working document on the activities supported by those trust funds, including:

(a) on their implementation, containing, inter alia, information on the monitoring arrangements with the entities implementing the trust funds;

(b) their management costs;

(c) the contributions from other donors than the Union;

(d) a preliminary assessment of their performance based on the conditions set out in Article 238~~234~~(3);

(e) a description on how their activities have contributed to the objectives laid down in the basic act of the instrument from which the Union contribution to the trust funds were provided.

7. The Commission shall attach to the draft budget a list of its decisions imposing fines in the area of competition law and the amount of each fine imposed, together with information on whether the fines have become definitive or whether they are or could still become subject to an appeal before the Court of Justice of the European Union, as well as, where possible, information on when each fine is expected to become definitive.

~~8. The Commission shall attach to the draft budget a working document indicating, for each budget line receiving internal or external assigned revenue:~~

~~(a) the estimated amount of such revenue to be received;~~

~~(b) the estimated amount of such revenue carried over from preceding years.~~

8~~9~~. The Commission shall also attach to the draft budget any further working document it considers useful for the European Parliament and for the Council to assess the budget requests.

9~~10~~. In accordance with Article 8(5) of Council Decision 2010/427/EU[70], the Commission shall transmit to the European Parliament and to the Council, together with the draft budget, a working document presenting, in a comprehensive way:

(a) all administrative and operational expenditure relating to the external actions of the Union, including CFSP and common security and defence policy tasks, and financed from the budget;

(b) the EEAS' overall administrative expenditure for the preceding year, broken down into expenditure per Union delegation and expenditure for the central administration of the EEAS, together with operational expenditure, broken down by geographic area (regions, countries), thematic areas, Union delegations and missions.

10~~11~~. The working document referred to in paragraph 10 shall also:

(a) show the number of posts for each grade in each category and the number of permanent and temporary posts, including contractual and local staff authorised within the limits of the appropriations in each Union delegation, as well as in the central administration of the EEAS;

[70] Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

(b) show any increase or reduction, compared to the preceding financial year, of posts by grade and category in the central administration of the EEAS, and in all Union delegations;

(c) show the number of posts authorised for the financial year and for the preceding financial year, as well as the number of posts occupied by diplomats seconded from Member States, and by Union officials;

(d) provide a detailed picture of all personnel in place in Union delegations at the time of presenting the draft budget, including a breakdown by geographic area, gender, individual country and mission, distinguishing between establishment plan posts, contract agents, local agents and seconded national experts, and of appropriations requested in the draft budget for such types of personnel with corresponding estimates of the number of full-time equivalents on the basis of the appropriations requested.

Article 42

Letter of amendment to the draft budget

On the basis of any new information which was not available at the time the draft budget was established, the Commission may, on its own initiative or if requested by another Union institutions in respect of its respective section, submit simultaneously to the European Parliament and to the Council one or more letters of amendment to the draft budget before the Conciliation Committee referred to in Article 314 TFEU is convened. Such letters may include a letter of amendment updating, in particular, expenditure estimates for agriculture.

Article 43

Obligations of Member States as a result of the adoption of the budget

1. The President of the European Parliament shall declare the budget definitively adopted in accordance with the procedure provided for in Article 314(9) TFEU and Article 106a of the Euratom Treaty.

2. Once the budget has been declared definitively adopted, each Member State shall, from 1 January of the following financial year or from the date of the declaration of definitive adoption of the budget if that occurs after 1 January, be bound to make the payments due to the Union, as specified in Regulation (EU, Euratom) No 609/2014 ⇨ , Regulation (EU, Euratom) No 2021/770 and Regulation (EU, Euratom) [XXX] ⇦ .

Article 44

Draft amending budgets

1. The Commission may present draft amending budgets which are primarily revenue-driven in the following circumstances:

(a) to enter in the budget the balance of the preceding financial year, in accordance with the procedure laid down in Article 18;

(b) to revise the forecast of own resources on the basis of updated economic forecasts;

(c) to update the revised forecast of own resources and other revenue, as well as to review the availability of, and need for, payment appropriations.

If there are unavoidable, exceptional and unforeseen circumstances, ~~in particular in view of the mobilisation of the European Union Solidarity Fund,~~ the Commission may present draft amending budgets which are primarily expenditure-driven.

2. Requests for amending budgets, in the same circumstances as referred to in paragraph 1, from Union institutions other than the Commission shall be sent to the Commission.

Before presenting a draft amending budget, the Commission and the other Union institutions concerned shall examine the scope for reallocation of the relevant appropriations, with particular reference to any expected under-implementation of appropriations.

Article 43 shall apply to amending budgets. Amending budgets shall be substantiated by reference to the budget the estimates of which they are amending.

3. The Commission shall, except in duly justified exceptional circumstances ~~or in the case of the mobilisation of the European Union Solidarity Fund for which a draft amending budget can be presented at any time of the year~~, submit its draft amending budgets simultaneously to the European Parliament and to the Council by 1 September of each financial year. It may attach an opinion to the requests for amending budgets from other Union institutions.

4. Draft amending budgets shall be accompanied by statements of reasons and information on budget implementation for the preceding and current financial years available at the time of their establishment.

Article 45

Early transmission of estimates and draft budgets

The Commission, the European Parliament and the Council may agree to bring forward certain dates for the transmission of the estimates, and for the adoption and transmission of the draft budget. Such an arrangement shall not, however, have the effect of shortening or extending the periods for which provision is made for consideration of those texts under Article 314 TFEU and Article 106a of the Euratom Treaty.

CHAPTER 2

STRUCTURE AND PRESENTATION OF THE BUDGET

Article 46

Structure of the budget

The budget shall consist of the following:

(a) a general statement of revenue and expenditure;

(b) separate sections for each Union institution, with the exception of the European Council and of the Council which shall share the same section, subdivided into statements of revenue and expenditure.

Article 47

Budget nomenclature

1. Commission revenue and the revenue and expenditure of the other Union institutions shall be classified by the European Parliament and by the Council according to their type or the use to which they are assigned under titles, chapters, articles and items.

2. The statement of expenditure for the section of the budget relating to the Commission shall be set out on the basis of a nomenclature adopted by the European Parliament and by the Council and classified according to the purpose of the expenditure.

Each title shall correspond to a policy area and each chapter shall, as a rule, correspond to a programme or an activity.

Each title may include operational appropriations and administrative appropriations. The administrative appropriations for a title shall be grouped in a single chapter.

The budget nomenclature shall comply with the principles of specification, sound financial management and transparency. It shall provide the clarity and transparency necessary for the budgetary process, facilitating the identification of the main objectives as reflected in the relevant legal bases, making choices on political priorities possible and enabling efficient and effective implementation.

3. The Commission may request the addition of a token entry *pro memoria* on an entry without authorised appropriations. Such a request shall be approved in accordance with the procedure laid down in Article 31.

4. When presented by purpose, administrative appropriations for individual titles shall be classified as follows:

(a) expenditure on staff authorised in the establishment plan, which shall include an amount of appropriations and a number of establishment plan posts corresponding to that expenditure;

(b) expenditure on external personnel and other expenditure referred to in point (b) of the first subparagraph of Article 30(1) and financed under the 'administration' heading of the multiannual financial framework;

(c) expenditure on buildings and other related expenditure, including cleaning and maintenance, rental and hiring, telecommunications, water, gas and electricity;

(d) expenditure on external personnel and technical assistance directly linked to the implementation of programmes.

Any administrative expenditure of the Commission of a type which is common to several titles shall be set out in a separate summary statement classified by type.

Article 48

Negative revenue

1. The budget shall not contain negative revenue~~, except where it results from negative remuneration of deposits in total~~.

⇩ new

2. By way of derogation from paragraph 1, the following shall be deducted from the revenue of the budget:

(a) negative remuneration of deposits in total;

(b) where the amounts of the fines, other penalties or sanctions under the TFEU or the Euratom Treaty referred to in Article 109(1) are cancelled or reduced by the Court of Justice of the European Union, any interest or other charge due to the parties concerned, including any negative return related to those amounts.

↓ 2018/1046

3~~2~~. The own resources paid under Decision (EU, Euratom) 2020/2053~~2014/335/EU, Euratom~~ shall be net amounts and shall be shown as such in the summary statement of revenue in the budget.

Article 49

Provisions

1. Each section of the budget may include a 'provisions' title. Appropriations shall be entered in that title in any of the following cases:

(a) no basic act exists for the action concerned when the budget is established;

(b) there are serious grounds for doubting the adequacy of the appropriations or the possibility of implementing, under conditions in accordance with the principle of sound financial management, the appropriations entered on the budget lines concerned.

The appropriations in that title may be used only after transfers in accordance with the procedure laid down in ~~point (c) of the first subparagraph of~~ Article 30(2~~1~~), point (a), of this Regulation, where the adoption of the basic act is subject to the procedure laid down in Article 294 TFEU, and in accordance with the procedure laid down in Article 31 of this Regulation, for all other cases.

2. In the event of serious implementation difficulties, the Commission may, in the course of a financial year, propose that appropriations be transferred to the 'provisions' title. The European Parliament and the Council shall take a decision on such transfers as provided for in Article 31.

Article 50

Negative reserve

The section of the budget relating to the Commission may include a 'negative reserve' limited to a maximum amount of EUR 200 000 000. Such a reserve, which shall be entered in a separate title, shall comprise payment appropriations only.

That negative reserve shall be drawn upon before the end of the financial year by means of transfers in accordance with the procedure laid down in Articles 30 and 31.

Article 51

Emergency Aid Reserve

1. The section of the budget relating to the Commission shall include a reserve for emergency aid for third countries.

2. The reserve referred to in paragraph 1 shall be drawn upon before the end of the financial year by means of transfers in accordance with the procedure laid down in Articles 30 and 32.

Article 52

Presentation of the budget

1. The budget shall show:

(a) in the general statement of revenue and expenditure:

(i) the estimated revenue of the Union for the current financial year concerned ('year n');

(ii) the estimated revenue for the preceding financial year and the revenue for year n-2;

(iii) the commitment and payment appropriations for year n;

(iv) the commitment and payment appropriations for the preceding financial year;

(v) the expenditure committed and the expenditure paid in year n–2, the latter also expressed as a percentage of the budget of year n;

(vi) appropriate remarks on each subdivision, as set out in Article 47(1), including the references of the basic act, where one exists, as well as all appropriate explanations concerning the nature and purpose of the appropriations;

(b) in each section, the revenue and expenditure following the same structure as set out in point (a);

(c) with regard to staff:

(i) for each section, an establishment plan setting the number of posts for each grade in each category and in each service and the number of permanent and temporary posts authorised within the limits of the appropriations;

(ii) an establishment plan for staff paid from the research and technological development appropriations for direct action and an establishment plan for staff paid from the same appropriations for indirect action; the establishment plans shall be classified by category and grade and shall distinguish between permanent and temporary posts, authorised within the limits of the appropriations;

(iii) an establishment plan setting the number of posts by grade and by category for each Union body referred to in Article 70 which receives a contribution charged to the budget. The establishment plans shall show, next to the number of posts authorised for the financial year, the number authorised for the preceding year. The staff of the Euratom Supply Agency shall appear separately in the Commission establishment plan;

(d) with regard to financial assistance and budgetary guarantees:

(i) in the general statement of revenue, the budget lines corresponding to the relevant operations and intended to record any reimbursements received

from recipients who initially defaulted. Those lines shall carry a token entry *pro memoria* and be accompanied by appropriate remarks;

(ii) in the section of the budget relating to the Commission:

– the budget lines containing the budgetary guarantees in respect of the operations concerned. Those lines shall carry a token entry *pro memoria*, provided that no effective charge which has to be covered by definitive resources has arisen;

– remarks giving the reference to the basic act and the volume of the operations envisaged, the duration and the financial guarantee provided by the Union in respect of such operations;

(iii) in a document annexed to the section of the budget relating to the Commission, as an indication, also of the corresponding risks:

– ongoing capital operations and debt management;

– the capital operations and debt management for year n;

⇩ new

– a comprehensive overview of borrowing and lending operations;

🡻 2018/1046 (adapted)
⇨ new

(e) with regard to financial instruments to be established without a basic act:

(i) budget lines corresponding to the relevant operations;

(ii) a general description of the financial instruments, including their duration and their impact on the budget;

(iii) the envisaged operations, including target volumes based on the expected multiplier and leverage effect;

(f) with regard to the funds implemented by persons or entities pursuant to point (c) of the first subparagraph of Article 62(1):

(i) a reference to the basic act of the relevant programme;

(ii) corresponding budget lines;

(iii) a general description of the action, including its duration and its impact on the budget;

(g) the total amount of CFSP expenditure entered in a chapter, entitled ‘CFSP’, with specific articles covering CFSP expenditure and containing specific budget lines identifying at least the single major missions.

2. In addition to the documents referred to in paragraph 1, the European Parliament and the Council may attach any other relevant documents to the budget.

Article 53

Rules on the establishment plans for staff

1. The establishment plans referred to in point (c) of Article 52(1) shall constitute an absolute limit for each Union institution or body. No appointment shall be made in excess of the limit set.

However, save in the case of grades AD 14, AD 15 and AD 16, each Union institution or body may modify its establishment plans by up to 10 % of posts authorised, subject to the following conditions:

(a) the volume of staff appropriations corresponding to a full financial year is not affected;

(b) the limit of the total number of posts authorised by each establishment plan is not exceeded;

(c) the Union institution or body has taken part in a benchmarking exercise with other Union institutions and bodies as initiated by the Commission's staff screening exercise.

Three weeks before making the modifications referred to in the second subparagraph, the Union institution shall inform the European Parliament and the Council of its intention to do so. In the event that duly justified objections are raised within this period by either the European Parliament or the Council, the Union institution shall refrain from making the modifications and the procedure laid down in Article 44 shall apply.

2. By way of derogation from the first subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments.

CHAPTER 3

BUDGETARY DISCIPLINE

Article 54

Compliance with the M~~m~~ultiannual F~~f~~inancial F~~f~~ramework and ⌦ the decision on the system of own resources of the European Union ⌫ ~~Decision 2014/335/EU, Euratom~~

The budget shall comply with the M~~m~~ultiannual F~~f~~inancial F~~f~~ramework and Decision (EU, Euratom) 2020/2053~~2014/335/EU, Euratom~~.

Article 55

Compliance of Union acts with the budget

Where the implementation of a Union act exceeds the appropriations available in the budget, such an act shall not be implemented in financial terms until the budget has been amended accordingly.

TITLE IV

BUDGET IMPLEMENTATION

CHAPTER 1

GENERAL PROVISIONS

Article 56

Budget implementation in accordance with the principle of sound financial management

1. The Commission shall implement the revenue and expenditure of the budget in accordance with this Regulation, under its own responsibility and within the limits of the appropriations authorised.

2. The Member States shall cooperate with the Commission so that the appropriations are used in accordance with the principle of sound financial management.

Article 57

Information on transfers of personal data for audit purposes

⇨ In award procedures, including ⇦ i~~I~~n any call made in the context of grants, ⇨ non-financial donations, ⇦ procurement or prizes implemented under direct management, potential beneficiaries, candidates, tenderers and participants shall, in accordance with Regulation (EU) 2018/1725~~(EC) No 45/2001~~ be informed that, for the purposes of safeguarding the financial interests of the Union, their personal data may be transferred to internal audit services, to the Court of Auditors ⇨ , to the EPPO, ⇦ or to the ~~European Anti-Fraud Office (~~OLAF~~)~~ and between authorising officers of the Commission, and the executive agencies referred to in Article 69 of this Regulation and the Union bodies referred to in Articles 70 and 71 of this Regulation.

Article 58

Basic act and exceptions

1. Appropriations entered in the budget for any Union action shall only be used if a basic act has been adopted.

2. By way of derogation from paragraph 1, and subject to the conditions set out in paragraphs 3, 4 and 5, the following appropriations may be implemented without a basic act provided the actions which they are intended to finance fall within the competences of the Union:

(a) appropriations for pilot projects of an experimental nature designed to test the feasibility of an action and its usefulness;

(b) appropriations for preparatory actions in the field of application of the TFEU and the Euratom Treaty, designed to prepare proposals with a view to the adoption of future actions;

(c) appropriations for preparatory measures in the field of Title V of the TEU;

(d) appropriations for one-off actions, or for actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level pursuant to the TFEU and to the Euratom Treaty, other than its right of legislative initiative to submit proposals as referred to in point (b) of this paragraph, and under specific powers directly conferred on it by Articles 154, 156, 159 and 160 TFEU, Articles 168(2), 171(2) and 173(2) TFEU, the second paragraph of Article 175 TFEU, Article 181(2) TFEU, Article 190 TFEU and Articles 210(2) and 214(6) TFEU and Articles 70 and 77 to 85 of the Euratom Treaty;

(e) appropriations for the operation of each Union institution under its administrative autonomy.

3. With regard to appropriations referred to in point (a) of paragraph 2, the relevant commitment appropriations may be entered in the budget for not more than two consecutive financial years. The total amount of appropriations for pilot projects shall not exceed EUR 40000000 in any financial year.

4. With regard to appropriations referred to in point (b) of paragraph 2, preparatory actions shall follow a coherent approach and may take various forms. The relevant commitment appropriations may be entered in the budget for not more than three consecutive financial years. The procedure for the adoption of the relevant basic act shall be concluded before the end of the third financial year. In the course of that procedure, the commitment of appropriations shall correspond to the particular features of the preparatory action with regard to the activities envisaged, the aims pursued and the recipients. As a result, the amount of the appropriations committed shall not correspond to the amount of those envisaged for financing the definitive action itself.

The total amount of appropriations for new preparatory actions referred to in point (b) of paragraph 2 shall not exceed EUR 50000000 in any financial year, and the total amount of appropriations actually committed for preparatory actions shall not exceed EUR 100000000.

5. With regard to the appropriations referred to in point (c) of paragraph 2, preparatory measures shall be limited to a short period of time and shall be designed to establish the conditions for Union action in fulfilment of the objectives of the CFSP and for the adoption of the necessary legal instruments.

For the purpose of Union crisis management operations, preparatory measures shall be designed, inter alia, to assess the operational requirements, to provide for a rapid initial deployment of resources, or to establish the conditions on the ground for the launching of the operation. Preparatory measures shall be agreed by the Council, on a proposal by the High Representative.

In order to ensure the rapid implementation of preparatory measures, the High Representative shall inform the European Parliament and the Commission as early as possible of the Council's intention to launch a preparatory measure and, in particular, of the estimated resources required for that purpose. The Commission shall take all the measures necessary to ensure a rapid disbursement of the funds.

The financing of measures agreed by the Council for the preparation of Union crisis management operations under Title V TEU shall cover incremental costs directly arising from a specific field deployment of a mission or team involving, inter alia, personnel from Union institutions, including high-risk insurance, travel and accommodation costs and per diem payments.

Article 59

Budget implementation by Union institutions other than the Commission

1. The Commission shall confer on the other Union institutions the requisite powers for the implementation of the sections of the budget relating to them.

2. In order to facilitate the implementation of their appropriations, Union institutions may conclude service-level agreements with each other laying down the conditions governing the provision of services, supply of products, execution of works or of building contracts.

Those agreements shall enable the transfer of appropriations or the recovery of costs, which result from their implementation.

3. Service-level agreements referred to in paragraph 2 may also be agreed upon between departments of Union institutions, Union bodies, European offices, bodies or persons entrusted with implementation of specific actions in the CFSP pursuant to Title V of the TEU and the Office of the Secretary-General of the Board of Governors of the European schools. The Commission and other Union institutions shall report regularly to the European Parliament and to the Council on the service-level agreements they conclude with other Union institutions.

Article 60

Delegation of budget implementation powers

1. The Commission and each of the other Union institutions may, within their departments, delegate their powers of budget implementation in accordance with the conditions laid down in this Regulation and their internal rules and within the limits laid down in the instrument of delegation. Those so empowered shall act within the limits of the powers expressly conferred upon them.

2. In addition to paragraph 1, the Commission may delegate its powers of budget implementation concerning the operational appropriations of its own section of the budget to Heads of Union delegations and, in order to ensure business continuity during their absence, to deputy Heads of Union delegations. Such delegation shall be without prejudice to the responsibility of Heads of Union delegations for budget implementation. Where the absence of a Head of Union delegation exceeds four weeks, the Commission shall revise its decision to delegate powers of budget implementation. When Heads of Union delegations, and their deputies in the absence of the former, act as authorising officers by subdelegation of the Commission, they shall apply the Commission rules for budget implementation and shall be subject to the same duties, obligations and accountability as any other authorising officer by subdelegation of the Commission.

The Commission may withdraw the delegation of powers referred to in the first subparagraph in accordance with its own rules.

For the purposes of the first subparagraph, the High Representative shall take the measures necessary to facilitate cooperation between Union delegations and Commission departments.

3. The EEAS may exceptionally delegate its powers of budget implementation concerning the administrative appropriations of its own section of the budget to Commission staff of Union delegations where this is necessary in order to ensure the continuity in the administration of such delegations in the absence of the EEAS competent authorising officer from the country where his or her delegation is based. In the exceptional cases where Commission staff of Union delegations act as authorising officers by subdelegation of the

EEAS, they shall apply the EEAS internal rules for budget implementation and shall be subject to the same duties, obligations and accountability as any other authorising officer by subdelegation of the EEAS.

The EEAS may withdraw the delegation of powers referred to in the first subparagraph in accordance with its own rules.

Article 61

Conflict of interests

1. Financial actors within the meaning of Chapter 4 of this Title and other persons, including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, shall not take any action which may bring their own interests into conflict with those of the Union. They shall also take appropriate measures to prevent a conflict of interests from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interests.

2. Where there is a risk of a conflict of interests involving a member of staff of a national authority, the person in question shall refer the matter to his or her hierarchical superior. Where such a risk exists for staff covered by the Staff Regulations, the person in question shall refer the matter to the relevant authorising officer by delegation. The relevant hierarchical superior or the authorising officer by delegation shall confirm in writing whether a conflict of interests is found to exist. Where a conflict of interests is found to exist, the appointing authority or the relevant national authority shall ensure that the person in question ceases all activity in the matter. The relevant authorising officer by delegation or the relevant national authority shall ensure that any further appropriate action is taken in accordance with the applicable law ⇨ , including, in the cases involving a member of staff of a national authority, with the national law relating to conflict of interests ⇦ .

3. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

CHAPTER 2

METHODS OF IMPLEMENTATION

Article 62

Methods of budget implementation

1. The Commission shall implement the budget in any of the following ways:

(a) directly ('direct management') as set out in Articles 126~~125~~ to 157~~153~~, by its departments, including its staff in the Union delegations under the authority of their respective Head of delegation, in accordance with Article 60(2), or through executive agencies as referred to in Article 69;

(b) under shared management with Member States ('shared management') as set out in Articles 63 and 126~~125~~ to 130~~129~~;

(c) indirectly ('indirect management') as set out in Articles 126~~125~~ to 153~~149~~ and 158~~154~~ to 163~~159~~, where this is provided for in the basic act or in the cases referred to Article 58(2), points (a) to (d), by entrusting budget implementation tasks to:

(i) third countries or the bodies they have designated ⇨ , as referred to in Article 162 ⇦ ;

(ii) international organisations or their agencies, within the meaning of Article 160~~156~~;

(iii) the European Investment Bank ('the EIB') or the European Investment Fund ('the EIF') or both of them acting as a group ('the EIB group');

(iv) Union bodies referred to in Articles 70 and 71;

(v) public law bodies, including Member State organisations;

(vi) bodies governed by private law with a public service mission, including Member State organisations, to the extent that they are provided with adequate financial guarantees;

(vii) bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

(viii) bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act;~~.~~

⇩ new

(ix) bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by bodies as set out in point (v) or (vi) and are provided with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support.

🡻 2018/1046 (adapted)
⇨ new

With regard to points (c)(vi) ⇨ and (vii) ⇦ of the first subparagraph, the amount of the financial guarantees required may be set out in the relevant basic act and ~~may~~ be limited to the maximum amount of the Union contribution to the body concerned. In the case of multiple guarantors, the repartition of the amount of the total liability to be covered by the guarantees shall be specified in the contribution agreement, which may provide for the liability of each guarantor to be proportionate to the share of their respective contribution to the body.

2. For the purposes of direct management, the Commission may use the instruments referred to in Titles VII, VIII, IX, X and XII.

For the purposes of shared management, the instruments for budget implementation shall be the ones provided for in sector-specific rules.

For the purposes of indirect management, the Commission shall apply Title VI and, in the case of financial instruments and budgetary guarantees, Titles VI and X. The implementing entities shall apply the instruments for budget implementation set out in the contribution agreement concerned.

3. The Commission is responsible for budget implementation in accordance with Article 317 TFEU and shall not delegate those tasks to third parties, where such tasks involve a large measure of discretion implying political choices.

The Commission shall not, through contracts in accordance with Title VII of this Regulation, outsource tasks involving the exercise of public authority and discretionary powers of judgement.

Article 63

Shared management with Member States

1. Where the Commission implements the budget under shared management, tasks relating to budget implementation shall be delegated to Member States. The Commission and Member States shall respect the principles of sound financial management, transparency and non-discrimination and shall ensure the visibility of the Union action when they manage Union funds. To that end, the Commission and Member States shall fulfil their respective control and audit obligations and assume the resulting responsibilities laid down in this Regulation. Complementary provisions shall be laid down in sector-specific rules.

2. When executing tasks relating to budget implementation, Member States shall take all the necessary measures, including legislative, regulatory and administrative measures, to protect the financial interests of the Union, namely by:

(a) ensuring that actions financed from the budget are implemented correctly and effectively and in accordance with the applicable sector-specific rules;

(b) designating bodies responsible for the management and control of Union funds in accordance with paragraph 3, and supervising such bodies;

(c) preventing, detecting and correcting irregularities and fraud;

(d) cooperating, in accordance with this Regulation and sector-specific rules, with the Commission, OLAF, the Court of Auditors and, for those Member States participating in enhanced cooperation pursuant to Council Regulation (EU) 2017/1939[71], with the European Public Prosecutor's Office (EPPO).

In order to protect the financial interests of the Union, Member States shall, while respecting the principle of proportionality, and in compliance with this Article and the relevant sector-specific rules, carry out *ex ante* and *ex post* controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions. They shall also recover funds unduly paid and bring legal proceedings where necessary in that regard.

Member States shall impose effective, dissuasive and proportionate penalties on recipients where provided for in sector-specific rules or in specific provisions in national law.

[71] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

As part of its risk assessment and in accordance with sector-specific rules, the Commission shall monitor the management and control systems established in Member States. The Commission shall, in its audit work, respect the principle of proportionality and shall take into account the level of risk assessed in accordance with sector-specific rules.

3. In accordance with the criteria and procedures laid down in sector-specific rules, Member States shall, at the appropriate level, designate bodies to be responsible for the management and control of Union funds. Such bodies may also carry out tasks not related to the management of Union funds and may entrust certain of their tasks to other bodies.

When deciding on the designation of bodies, Member States may base their decision on whether the management and control systems are essentially the same as those already in place for the previous period and whether they have functioned effectively.

If audit and control results show that the designated bodies no longer comply with the criteria set out in sector-specific rules, Member States shall take the measures necessary to ensure that deficiencies in the implementation of the tasks of those bodies are remedied, including by ending the designation in accordance with sector-specific rules.

Sector-specific rules shall define the role of the Commission in the process set out in this paragraph.

4. Bodies designated pursuant to paragraph 3 shall:

(a) set up and ensure the functioning of an effective and efficient internal control system ⇨ , which, where appropriate, may rely on digital controls as referred to in Article 36(9) ⇦ ;

(b) use an accounting system that provides accurate, complete and reliable information in a timely manner;

(c) provide the information required under paragraphs 5, 6 and 7;

(d) ensure *ex post* publication in accordance with Article 38(2) to (~~6~~ ⇨ 7 ⇦).

Any processing of personal data shall comply with Regulation (EU) 2016/679.

5. Bodies designated pursuant to paragraph 3 shall, by 15 February of the following financial year, provide the Commission with:

(a) their accounts on the expenditure that was incurred, during the relevant reference period as defined in sector-specific rules, in the execution of their tasks and that was presented to the Commission for reimbursement;

(b) an annual summary of the final audit reports and of controls carried out, including an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned.

6. The accounts referred to in point (a) of paragraph 5 shall include pre-financing and sums for which recovery procedures are ongoing or have been completed. They shall be accompanied by a management declaration confirming that, in the opinion of those in charge of the management of the funds:

(a) the information is properly presented, complete and accurate;

(b) the expenditure was used for its intended purpose, as defined in sector-specific rules;

(c) the control systems put in place ensure the legality and regularity of the underlying transactions.

7. The accounts referred to in point (a) of paragraph 5 and the summary referred to in point (b) of that paragraph shall be accompanied by an opinion of an independent audit body, drawn up in accordance with internationally accepted audit standards. That opinion shall establish whether the accounts give a true and fair view, whether expenditure for which reimbursement has been requested from the Commission is legal and regular, and whether the control systems put in place function properly. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration referred to in paragraph 6.

The deadline of 15 February set out in paragraph 5 may exceptionally be extended by the Commission to 1 March, upon communication by the Member State concerned.

Member States may, at the appropriate level, publish the information referred to in paragraphs 5 and 6 and in this paragraph.

In addition, Member States may provide to the European Parliament, to the Council and to the Commission declarations signed at the appropriate level based on the information referred to in paragraphs 5 and 6 and in this paragraph.

8. In order to ensure that Union funds are used in accordance with the applicable rules, the Commission shall:

(a) apply procedures for the examination and acceptance of the accounts of the designated bodies, ensuring that the accounts are complete, accurate and true;

(b) exclude from Union financing expenditure for which disbursements have been made in breach of applicable law;

(c) interrupt payment deadlines or suspend payments where provided for in sector-specific rules.

The Commission shall end all or part of the interruption of payment deadlines or suspension of payments after a Member State has presented its observations and as soon as it has taken any necessary measures. The annual activity report referred to in Article 74(9) shall cover all the obligations under this paragraph.

9. Sector-specific rules shall take account of the needs of European Territorial Cooperation programmes as regards, in particular, the content of the management declaration, the process set out in paragraph 3 and the audit function.

10. The Commission shall compile a register of bodies responsible for management, certification and audit activities under sector-specific rules.

11. Member States may use resources allocated to them under shared management in combination with operations and instruments carried out under Regulation (EU) 2015/1017 in accordance with the conditions set out in the relevant sector-specific rules.

CHAPTER 3

EUROPEAN OFFICES AND UNION BODIES

SECTION 1

EUROPEAN OFFICES

Article 64

Scope of competences of European offices

1. Before setting up a new European office, the Commission shall make a cost-benefit study and an assessment of the associated risks, inform the European Parliament and the Council of the results thereof and propose to enter the necessary appropriations in an annex to the section of the budget relating to the Commission.

2. Within the scope of their competences, European offices:

(a) shall perform obligatory tasks provided for in their act of establishment or in other legal acts of the Union;

(b) may, in accordance with Article 66, perform non-obligatory tasks authorised by their Management Committees having considered the costs, benefits and associated risks for the parties involved.

3. This Section shall apply to the operation of OLAF, with the exception of paragraph 4 of this Article, Article 66 and Article 67(1), (2) and (3).

4. The internal auditor of the Commission shall exercise all responsibilities laid down in Chapter 8 of this Title.

Article 65

Appropriations regarding European offices

1. The appropriations authorised to implement obligatory tasks of each European office shall be entered in a specific budget line within the section of the budget relating to the Commission and shall be set out in detail in an annex to that section.

The annex referred to in the first subparagraph shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.

The appropriations entered in that annex:

(a) shall cover all the financial requirements of each European office in the performance of the obligatory tasks provided for in its act of establishment or in other legal acts of the Union;

(b) may cover financial requirements of a European office in the performance of tasks requested by Union institutions, Union bodies, other European offices and agencies established by or under the Treaties and authorised in accordance with the act of establishment of the office.

2. The Commission shall, in respect of the appropriations entered in the annex for each European office, delegate the powers of authorising officer to the Director of the European office concerned, in accordance with Article 73.

3. The establishment plan of each European office shall be annexed to that of the Commission.

4. The Director of each European office shall take decisions on transfers within the annex referred to in paragraph 1. The Commission shall inform the European Parliament and the Council of such transfers.

Article 66

Non-obligatory tasks

1. For the non-obligatory tasks referred to in point (b) of Article 64(2), a European office may:

(a) receive delegation to its Director from Union institutions, Union bodies and other European offices, together with a delegation of the powers of the authorising officer concerning appropriations entered in the section of the budget relating to the Union institution, Union body or other European office;

(b) conclude ad-hoc service-level agreements with Union institutions, Union bodies, other European offices or third parties.

2. In the cases referred to in point (a) of paragraph 1, Union institutions, Union bodies and other European offices concerned shall set the limits and conditions for the delegation of powers. Such delegation shall be agreed in accordance with the act of establishment of the European office, in particular as regards the conditions and modalities of the delegation.

3. In the cases referred to in point (b) of paragraph 1, the Director of the European office shall, in accordance with its act of establishment, adopt the specific provisions governing the implementation of the tasks, the recovery of costs incurred, and the keeping of the corresponding accounting records. The European office shall report the result of such accounting records to the Union institutions, Union bodies or other European offices concerned.

Article 67

Accounting records of European offices

1. Each European office shall draw up accounting records of its expenditure, enabling the proportion of its services supplied to each of Union institutions, Union bodies or other European offices to be determined. The Director of the European office concerned shall, after approval by its Management Committee, adopt the criteria upon which the accounting records shall be based.

2. The remarks concerning the specific budget line, in which the total appropriations for each European office to which the powers of authorising officer have been delegated in accordance with point (a) of Article 66(1) are entered, shall show an estimate of the costs of services supplied by that office to each of the Union institutions, Union bodies and other European offices concerned. This shall be based on the accounting records provided for in paragraph 1 of this Article.

3. Each European office to which authorising officer powers have been delegated in accordance with point (a) of Article 66(1) shall notify the Union institutions, Union bodies

and other European offices concerned of the results of the accounting records provided for in paragraph 1 of this Article.

4. Each European office's accounting records shall form an integral part of the Union's accounts in accordance with Article 247~~241~~.

5. The accounting officer of the Commission, acting on a proposal from the Management Committee of the European office concerned, may delegate to a member of staff of the European office some of the officer's tasks relating to the collection of revenue and the payment of expenditure made directly by the European office concerned.

6. To meet the cash requirements of the European office, bank accounts or post office giro accounts may be opened in its name by the Commission, acting on a proposal from the Management Committee. The final cash position for each year shall be reconciled and adjusted between the European office concerned and the Commission at the end of the financial year.

SECTION 2

AGENCIES AND UNION BODIES

Article 68

Applicability to the Euratom Supply Agency

This Regulation shall apply to the implementation of the budget for the Euratom Supply Agency.

Article 69

Executive agencies

1. The Commission may delegate powers to executive agencies to implement all or part of a Union programme or project, including pilot projects and preparatory actions and the implementation of administrative expenditure, on its behalf and under its responsibility, in accordance with Council Regulation (EC) No 58/2003[72]. Executive agencies shall be created by means of a Commission decision and shall have legal personality under Union law. They shall receive an annual contribution.

2. The directors of executive agencies shall act as authorising officers by delegation as regards the implementation of the operational appropriations relating to the Union programmes which they manage in whole or in part.

3. The steering committee of an executive agency may agree with the Commission that the accounting officer of the Commission shall also act as the accounting officer of the executive agency concerned. The steering committee may also entrust the accounting officer of the Commission with part of the tasks of the accounting officer of the executive agency concerned, taking into account cost-benefit considerations. In both cases, the arrangements necessary to avoid any conflict of interests shall be made.

[72] Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 11, 16.1.2003, p. 1).

Article 70

Bodies set up under the TFEU and the Euratom Treaty

1. The Commission is empowered to adopt delegated acts in accordance with Article ~~269~~ 274 of this Regulation to supplement this Regulation with a framework financial regulation for bodies which are set up under the TFEU and the Euratom Treaty and which have legal personality and receive contributions charged to the budget.

2. The framework financial regulation shall be based on the principles and rules set out in this Regulation, taking into account the specificities of the bodies referred to in paragraph 1.

3. The financial rules of the bodies referred to in paragraph 1 shall not depart from the framework financial regulation except where their specific needs so require and subject to the Commission's prior consent.

4. Discharge for the implementation of the budgets of the bodies referred to in paragraph 1 shall be given by the European Parliament on the recommendation of the Council. The bodies referred to in paragraph 1 shall fully cooperate with the Union institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies.

5. The internal auditor of the Commission shall exercise the same powers over the bodies referred to in paragraph 1 as those exercised in respect of the Commission.

6. An independent external auditor shall verify that the annual accounts of each of the bodies referred to in paragraph 1 of this Article properly present the income, expenditure and financial position of the relevant body prior to the consolidation in the Commission's final accounts. Unless otherwise provided in the relevant basic act, the Court of Auditors shall prepare a specific annual report on each body in line with the requirements of Article 287(1) TFEU. In preparing that report, the Court of Auditors shall consider the audit work performed by the independent external auditor and the action taken in response to the auditor's findings.

7. All aspects of the independent external audits referred to in paragraph 6, including the reported findings, shall remain under the full responsibility of the Court of Auditors.

Article 71

Public-private partnership bodies

Bodies having legal personality that are set up by a basic act and entrusted with the implementation of a public-private partnership shall adopt their own financial rules.

Those rules shall include a set of principles necessary to ensure sound financial management of Union funds.

The Commission is empowered to adopt delegated acts in accordance with Article 274 ~~269~~ to supplement this Regulation with a model financial regulation for public-private partnership bodies laying down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 158 ~~154~~.

The financial rules of the public-private partnership bodies shall not depart from the model financial regulation except where their specific needs so require and subject to the Commission's prior consent.

Article 70(4) to (7) shall apply to public-private partnership bodies.

CHAPTER 4

FINANCIAL ACTORS

SECTION 1

PRINCIPLE OF SEGREGATION OF DUTIES

Article 72

Segregation of duties

1. The duties of authorising officer and accounting officer shall be segregated and mutually exclusive.

2. Each Union institution shall provide each financial actor with the resources required to perform his or her duties and a charter describing in detail his or her tasks, rights and obligations.

SECTION 2

AUTHORISING OFFICER

Article 73

Authorising officer

1. Each Union institution shall perform the duties of authorising officer.

2. For the purposes of this Title, 'staff' means persons covered by the Staff Regulations.

3. Each Union institution shall, in compliance with the conditions in its rules of procedure, delegate the duties of authorising officer to staff at an appropriate level. It shall, in its internal administrative rules, indicate the staff to whom it delegates those duties, the scope of the powers delegated and whether the persons to whom those powers are delegated may subdelegate them.

4. The powers of authorising officer shall be delegated or subdelegated only to staff.

5. The authorising officer responsible shall act within the limits set by the instrument of delegation or subdelegation. The authorising officer responsible may be assisted by one or more members of staff entrusted, under his or her responsibility, with the carrying out of certain operations necessary for budget implementation and the production of the financial and management information.

6. Each Union institution and each Union body referred to in Article 70 shall inform the European Parliament, the Council, the Court of Auditors and the accounting officer of the Commission within two weeks of the appointment and the termination of the duties of authorising officers by delegation, internal auditors and accounting officers, and of any internal rules it adopts in respect of financial matters.

7. Each Union institution shall inform the Court of Auditors of delegation decisions and of the appointment of imprest administrators under Articles 79 and 88.

Article 74

Powers and duties of the authorising officer

1. The authorising officer shall be responsible in the Union institution concerned for implementing revenue and expenditure in accordance with the principle of sound financial management, including through ensuring reporting on performance, and for ensuring compliance with the requirements of legality and regularity and equal treatment of recipients.

2. For the purposes of paragraph 1 of this Article, the authorising officer by delegation shall, in accordance with Article 36 and the minimum standards adopted by each Union institution and having due regard to the risks associated with the management environment and the nature of the actions financed, put in place the organisational structure and the internal control systems suited to the performance of his or her duties. The establishment of such structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost effectiveness and performance considerations.

3. To implement expenditure, the authorising officer responsible shall make budgetary and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminary steps for the implementation of appropriations.

4. To implement revenue, the authorising officer responsible shall draw up estimates of amounts receivable, establish entitlements to be recovered and issue recovery orders. Where appropriate, the authorising officer responsible shall waive established entitlements.

5. In order to prevent errors and irregularities before the authorisation of operations and to mitigate risks of non-achievement of objectives, each operation shall be subject at least to an *ex ante* control relating to the operational and financial aspects of the operation, on the basis of a multiannual control strategy which takes risk into account. ⇨ As referred to in Article 36(9), *ex ante* controls shall use, where appropriate, automated IT tools and other emerging technologies. ⇦

The extent in terms of frequency and intensity of the *ex ante* controls shall be determined by the authorising officer responsible taking into account the results of prior controls as well as risk-based and cost-effectiveness considerations, on the basis of the authorising officer's own risk analysis. In case of doubt, the authorising officer responsible for validating the relevant operations shall, as part of the *ex ante* control, request complementary information or perform an on-the-spot control in order to obtain reasonable assurance.

For a given operation, the verification shall be carried out by staff other than those who initiated the operation. The staff who carry out the verification shall not be subordinate to the members of staff who initiated the operation.

6. The authorising officer by delegation may put in place *ex post* controls to detect and correct errors and irregularities of operations after they have been authorised. Such controls may be organised on a sample basis according to risk and shall take account of the results of prior controls as well as cost-effectiveness and performance considerations. ⇨ As referred to in Article 36(9), *ex post* controls shall use, where appropriate, automated IT tools and other emerging technologies. ⇦

The *ex post* controls shall be carried out by staff other than those responsible for the *ex ante* controls. The staff responsible for the *ex post* controls shall not be subordinate to the members of staff responsible for the *ex ante* controls.

The rules and modalities, including timeframes, for carrying out audits of the beneficiaries shall be clear, consistent and transparent, and shall be made available to the beneficiaries when signing the grant agreement.

7. Authorising officers responsible and staff responsible for budget implementation shall have the necessary professional skills.

In each Union institution, the authorising officer by delegation shall ensure the following:

(a) that the authorising officers by subdelegation and their staff receive regularly updated and appropriate information and training concerning the control standards and the methods and techniques available for that purpose;

(b) that measures are taken, where needed, to ensure the effective and efficient functioning of the control systems in accordance with paragraph 2.

8. If a member of staff, involved in the financial management and control of transactions, considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principle of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform his or her hierarchical superior accordingly. If the member of staff does so in writing, the hierarchical superior shall reply in writing. If the hierarchical superior fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the authorising officer by delegation in writing. If that officer does not reply within a reasonable time given the circumstances of the case and in any event within a month, the member of staff shall inform the relevant panel referred to in Article 146~~143~~.

In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, the member of staff shall inform the authorities and bodies designated in the Staff Regulations and in the decisions of Union institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the interests of the Union. Contracts with external auditors carrying out audits of the financial management of the Union shall provide for an obligation of the external auditor to inform the authorising officer by delegation of any suspected illegal activity, fraud or corruption which may harm the interests of the Union.

9. The authorising officer by delegation shall report to his or her Union institution on the performance of his or her duties in the form of an annual activity report containing financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:

(a) the information contained in the report presents a true and fair view;

(b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management; and

(c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The annual activity report shall include information on the operations carried out, by reference to the objectives and performance considerations set in the strategic plans, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems. The report shall include an overall assessment of the costs and benefits of controls and information on the extent to which the operational expenditure authorised contributes to the achievement of strategic objectives of the Union and generates EU added value. The Commission shall prepare a summary of the annual activity reports for the preceding year.

The annual activity reports for the financial year of the authorising officers and, where applicable, authorising officers by delegation of Union institutions, Union bodies, European offices and agencies shall be published by 1 July of the following financial year on the website of the respective Union institution, Union body, European office or agency in an easily accessible way, subject to duly justified confidentiality and security considerations.

10. The authorising officer by delegation shall, for each financial year, record contracts concluded by negotiated procedures in accordance with points (a) to (f) of point 11.1 and point 39 of Annex I. If the proportion of negotiated procedures in relation to the number of ~~contracts~~ ⇨ procedures ⇦ awarded by the same authorising officer by delegation increases significantly in relation to earlier years or if that proportion is distinctly higher than the average recorded for the Union institution, the authorising officer responsible shall report to the Union institution setting out any measures taken to reverse that trend. Each Union institution shall send a report on negotiated procedures to the European Parliament and to the Council. In the case of the Commission, that report shall be annexed to the summary of the annual activity reports referred to in paragraph 9 of this Article.

Article 75

Keeping of supporting documents by authorising officers

The authorising officer shall set up paper-based or electronic systems for the keeping of original supporting documents relating to budget implementation. Such documents shall be kept for at least five years from the date on which the European Parliament gives discharge for the financial year to which the documents relate.

Without prejudice to the first paragraph, documents relating to operations shall in any case be kept until the end of the year following that in which those operations are definitively closed.

Personal data contained in supporting documents shall, where possible, be deleted when those data are not necessary for budgetary discharge, control and audit purposes. Article 4 ~~37(2)~~ of Regulation (EU) 2018/1725~~(EC) No 45/2001~~ shall apply to the conservation of traffic data.

Article 76

Powers and duties of Heads of Union Delegations

1. Where Heads of Union delegations act as authorising officers by subdelegation in accordance with Article 60(2), they shall be subject to the Commission as the Union institution responsible for the definition, exercise, monitoring and appraisal of their duties and responsibilities as authorising officers by subdelegation and shall cooperate closely with the Commission with regard to the proper implementation of the funds, in order to ensure, in particular, the legality and regularity of financial transactions, respect for the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union. They shall be subject to the internal rules of the Commission and to the Commission Charter for the implementation of the financial management tasks subdelegated to them. They may be assisted in their duties by Commission staff of Union delegations.

To this effect, Heads of Union delegations shall take the measures necessary to prevent any situation likely to put at risk the Commission's capacity to fulfil its responsibility for budget implementation subdelegated to them, as well as any conflict of priorities which is likely to have an impact on the implementation of the financial management tasks subdelegated to them.

Where a situation or conflict referred to in the second subparagraph arises, Heads of Union delegations shall without delay inform the Directors-General responsible of the Commission and of the EEAS thereof. Those Directors-General shall take appropriate steps to remedy the situation.

2. If Heads of Union delegations find themselves in a situation as referred to in Article 74(8), they shall refer the matter to the panel referred to in Article 146~~143~~. In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, they shall inform the authorities and bodies designated by the applicable legislation.

3. Heads of Union delegations acting as authorising officers by subdelegation in accordance with Article 60(2) shall report to their authorising officer by delegation so that the latter can integrate their reports in his or her annual activity report referred to in Article 74(9). The reports of Heads of Union delegations shall include information on the efficiency and effectiveness of internal control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and provide the assurance referred to in the third subparagraph of Article 92(5). Those reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the European Parliament and to the Council having due regard, where appropriate, to their confidentiality.

Heads of Union delegations shall fully cooperate with Union institutions involved in the discharge procedure and provide, as appropriate, any necessary additional information. In this context, they may be requested to attend meetings of the relevant bodies and assist the authorising officer by delegation responsible.

Heads of Union delegations acting as authorising officers by subdelegation in accordance with Article 60(2) shall reply to any request by the authorising officer by delegation of the Commission at the Commission's own request or, in the context of discharge, at the request of the European Parliament.

The Commission shall ensure that the subdelegating of powers to Heads of Union delegations is not detrimental to the discharge procedure under Article 319 TFEU.

4. Paragraphs 1, 2 and 3 shall also apply to deputy Heads of Union delegations when they act as authorising officers by subdelegation in the absence of Heads of Union delegations.

SECTION 3

ACCOUNTING OFFICER

Article 77

Powers and duties of the accounting officer

1. Each Union institution shall appoint an accounting officer who shall be responsible in that institution for the following:

(a) properly implementing payments, collecting revenue and recovering amounts established as being receivable;

(b) preparing and presenting the accounts in accordance with Title XIII;

(c) keeping the accounts in accordance with Articles 82 and 84;

(d) laying down the accounting rules, procedures and the chart of accounts, in accordance with Articles 80 to 84;

(e) laying down and validating the accounting systems and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information;

(f) treasury management.

With respect to the tasks referred to in point (e) of the first subparagraph, the accounting officer shall be empowered to verify at any time compliance with the validation criteria.

2. The responsibilities of the accounting officer of the EEAS shall concern only the section of the budget relating to the EEAS as implemented by the EEAS. The accounting officer of the Commission shall remain responsible for the entire section of the budget relating to the Commission, including accounting operations relating to appropriations subdelegated to Heads of Union delegations.

The accounting officer of the Commission shall also act as the accounting officer of the EEAS in respect of the implementation of the section of the budget relating to the EEAS.

Article 78

Appointment and termination of duties of the accounting officer

1. Each Union institution shall appoint an accounting officer from officials subject to the Staff Regulations.

The accounting officer shall be chosen by the Union institution on the grounds of his or her particular competence as evidenced by diplomas or by equivalent professional experience.

2. Two or more Union institutions or bodies may appoint the same accounting officer.

In such case, they shall make the necessary arrangements in order to avoid any conflict of interests.

3. A trial balance shall be drawn up without delay in the event of termination of the duties of the accounting officer.

4. The trial balance accompanied by a hand-over report shall be transmitted to the new accounting officer by the accounting officer who is terminating his or her duties or, if it is not possible, by an official in his or her department.

The new accounting officer shall sign the trial balance in acceptance within one month from the date of transmission and may make reservations.

The hand-over report shall contain the result of the trial balance and any reservations made.

Article 79

Powers which may be delegated by the accounting officer

The accounting officer may, in the performance of his or her duties, delegate certain tasks to subordinate staff and to imprest administrators appointed in accordance with Article 89(1).

The instrument of delegation shall set out those tasks.

Article 80

Accounting rules

1. The accounting rules to be applied by Union institutions, European offices and the agencies and Union bodies referred to in Section 2 of Chapter 3 of this Title shall be based on

internationally accepted accounting standards for the public sector. Those rules shall be adopted by the accounting officer of the Commission following consultation with the accounting officers of other Union institutions, European offices and Union bodies.

2. The accounting officer may deviate from the standards referred to in paragraph 1 if he or she considers this necessary in order to give a fair presentation of the assets and liabilities, charges, income and cash flow. Where an accounting rule diverges materially from those standards, the notes to the financial statements shall disclose that fact and the reasons for it.

3. The accounting rules referred to in paragraph 1 shall lay down the structure and content of the financial statements, as well as the accounting principles underlying the accounts.

4. The budget implementation reports referred to in Article 247~~241~~ shall respect the budgetary principles laid down in this Regulation. They shall provide a detailed record of budget implementation. They shall record all revenue and expenditure operations provided for in this Title and give a fair presentation thereon.

Article 81

Organisation of the accounts

1. The accounting officer of each Union institution or body shall draw up and keep updated documents describing the organisation of the accounts and the accounting procedures of his or her Union institution or body.

2. Revenue and expenditure shall be recorded in a computerised system according to the economic nature of the operation, as current revenue or expenditure or as capital.

Article 82

Keeping the accounts

1. The accounting officer of the Commission shall be responsible for laying down the harmonised charts of accounts to be applied by Union institutions, by European offices and by the agencies and Union bodies referred to in Section 2 of Chapter 3 of this Title.

2. The accounting officers shall obtain from authorising officers all the information necessary for the production of accounts which give a fair presentation of the financial situation of Union institutions and of budget implementation. The authorising officers shall guarantee the reliability of that information.

3. Before the adoption of the accounts by the Union institution or the Union body referred to in Article 70, the accounting officer shall sign them off, thereby certifying that he or she has reasonable assurance that the accounts give a fair presentation of the financial situation of the Union institution or the Union body referred to in Article 70.

For that purpose, the accounting officer shall verify that the accounts have been prepared in accordance with the accounting rules referred to in Article 80, and the accounting procedures referred to in point (d) of the first subparagraph of Article 77(1), and that all revenue and expenditure is entered in the accounts.

4. The authorising officer by delegation shall, in accordance with the rules adopted by the accounting officer, send the accounting officer any financial and management information required for the performance of the accounting officer's duties.

The accounting officer shall be informed, regularly and at least for the closure of the accounts, by the authorising officer of the relevant financial data of the fiduciary bank accounts in order to allow the use of Union funds to be reflected in the accounts of the Union.

The authorising officers shall remain fully responsible for the proper use of the funds they manage, the legality and regularity of the expenditure under their control and the completeness and accuracy of the information sent to the accounting officer.

5. The authorising officer responsible shall notify the accounting officer of all developments or significant modifications of a financial management system, an inventory system or a system for the valuation of assets and liabilities, if it provides data for the accounts of the Union institution or is used to substantiate data thereof, so that the accounting officer can verify compliance with the validation criteria.

At any time, the accounting officer may re-examine a financial management system already validated and may request that the authorising officer responsible establishes an action plan in order to correct, in due time, possible weaknesses.

The authorising officer shall be responsible for the completeness of information sent to the accounting officer.

6. The accounting officer shall be empowered to check the information received as well as to carry out any further checks he or she deems necessary in order to sign off the accounts.

The accounting officer shall, if necessary, make reservations, explaining exactly the nature and scope of such reservations.

7. A Union institution's accounting system shall serve to organise the budgetary and financial information in such a way that figures can be entered, filed and registered.

8. The accounting system shall consist of general accounts and budget accounts. The accounts shall be kept in euro and on the basis of the calendar year.

9. The authorising officer by delegation may also keep detailed management accounts.

10. Supporting documents for the accounting system and for the preparation of the accounts referred to in Article 247~~241~~ shall be kept for at least five years from the date on which the European Parliament gives discharge for the financial year to which the documents relate.

However, documents relating to operations not definitively closed shall be kept until the end of the year following that in which the operations are closed. Article 4~~37(2)~~ of Regulation (EU) 2018/1725~~(EC) No 45/2001~~ shall apply to the conservation of traffic data.

Each Union institution shall decide in which department the supporting documents are to be kept.

Article 83

Content and keeping of budget accounts

1. The budget accounts shall for each subdivision of the budget show:

(a) in the case of expenditure:

(i) the appropriations authorised in the budget, including the appropriations entered in amending budgets, the appropriations carried over, the appropriations available following collection of assigned revenue, transfers of appropriations and the total appropriations available;

(ii) the commitment appropriations and payment appropriations in respect of the financial year;

(b) in the case of revenue:

(i) the estimates entered in the budget, including the estimates entered in amending budgets, assigned revenue and the total amount of estimated revenue;

(ii) the entitlements established and the amounts recovered in respect of the financial year;

(c) the commitments still to be paid and the revenue still to be recovered, carried forward from preceding financial years.

The commitment appropriations and payment appropriations referred to in point (a) of the first subparagraph shall be entered and shown separately.

2. The budget accounts shall show separately:

(a) the use of appropriations carried over and the appropriations for the financial year;

(b) the clearance of outstanding commitments.

On the revenue side, amounts still to be recovered from preceding financial years shall be shown separately.

Article 84

General accounts

1. The general accounts shall, in chronological order using the double-entry method, record all events and operations which affect the economic and financial situation and the assets and liabilities of Union institutions and of the agencies and Union bodies referred to in Section 2 of Chapter 3 of this Title.

2. Balances and movements in the general accounts shall be entered in the accounting ledgers.

3. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which the entries shall refer.

4. The accounting system shall be such as to leave a clear audit trail for all accounting entries.

Article 85

Bank accounts

1. For the requirements of treasury management, the accounting officer may, in the name of his or her Union institution, open accounts with financial institutions or national central banks or request for such accounts to be opened. The accounting officer shall also be responsible for closing those accounts or for ensuring that they are closed.

2. The terms governing the opening, operation and use of bank accounts shall, depending on internal control requirements, provide that cheques, bank credit transfer orders or any other banking operations must be signed by one or more duly authorised members of staff. Manual instructions shall be signed by at least two duly authorised members of staff, or by the accounting officer.

3. Within the implementation of a programme or an action, fiduciary accounts may be opened on behalf of the Commission in order to allow for their management by an entity pursuant to point (c)(ii), (iii), (v) or (vi) of the first subparagraph of Article 62(1).

Such accounts shall be opened under the responsibility of the authorising officer in charge of the implementation of the programme or action in agreement with the accounting officer of the Commission.

Such accounts shall be managed under the responsibility of the authorising officer.

4. The accounting officer of the Commission shall lay down rules for the opening, management and closure of fiduciary accounts and their use.

Article 86

Treasury management

1. Unless otherwise provided in this Regulation, only the accounting officer shall be empowered to manage cash and cash equivalents. The accounting officer shall be responsible for their safekeeping.

2. The accounting officer shall ensure that his or her Union institution has at its disposal sufficient funds to cover the cash requirements arising from budget implementation within the applicable regulatory framework and shall set up procedures to ensure that none of the accounts opened in accordance with Articles 85(1) and 89(3) is in debit.

3. Payments shall be made by bank credit transfer, by cheque ~~or, from imprest accounts~~, or if specifically authorised by the accounting officer, by ⇨ credit card, ⇦ debit card, ⇨ electronic wallets, ⇦ direct debit or other means of payment, in accordance with the rules laid down by the accounting officer.

Before entering into a commitment towards a third party, the authorising officer shall confirm the payee's identity, establish the legal entity and payment details of the payee and enter them in the common file by the Union institution for which the accounting officer is responsible ~~in order to ensure transparency, accountability and proper payment implementation~~.

The accounting officer may only make payments if the payee's legal entity and payment details have first been entered in a common file by the Union institution for which the accounting officer is responsible.

Authorising officers shall inform the accounting officer of any change in the legal entity and payment details communicated to them by the payee and shall check that those details are valid before they authorise any payment.

Article 87

The inventory of assets

1. Union institutions and agencies or Union bodies referred to in Section 2 of Chapter 3 of this Title shall keep inventories showing the quantity and value of all their tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

They shall also check that entries in their respective inventories correspond to the actual situation.

All items acquired with a period of use greater than one year, which are not consumables, and whose purchase price or production cost is higher than that indicated by the accounting

procedures referred to in Article 77 shall be entered in the inventory and recorded in the fixed assets accounts.

2. The sale of the Union's tangible assets shall be suitably advertised.

3. Union institutions and agencies or Union bodies referred to in Section 2 of Chapter 3 of this Title shall adopt provisions on safeguarding the assets included in their respective inventories and decide which administrative departments are responsible for the inventory system.

SECTION 4

IMPREST ADMINISTRATOR

Article 88

⌦ Creation of ⌫ ~~i~~Imprest accounts

⇩ new

1. The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer of the Union institution specifying the operating terms and the conditions for use of the imprest account.

🡻 2018/1046
⇨ new

2~~1~~. Imprest accounts may be set up for the payment of expenditure where, owing to the limited amounts involved, it is materially impossible or inefficient to carry out payment operations ~~by budgetary procedures~~ ⇨ in line with general rules for expenditure operations. The maximum amount which may be paid by the imprest administrator in such cases shall be established by the accounting officer for each type of expenditure in the decision referred to in paragraph 1 ⇦. Imprest accounts may also be set up for the collection of revenue ~~other than own resources~~.

⇩ new

In the field of crisis management aid and humanitarian aid operations, imprest accounts may be used without any limitation on the amount, while respecting the level of payment appropriations decided by the European Parliament and by the Council on the corresponding budget line for the current financial year and in accordance with the internal rules of the Commission.

🡻 2018/1046 (adapted)
⇨ new

In Union delegations, imprest accounts may also be used to execute payments ~~of limited amounts by budgetary procedures~~ ⇨ in line with general rules for expenditure operations of

amounts limited to EUR 60 000 for each item of expenditure ⇦ , if such use is efficient and effective due to local requirements. ⇨ Where they are needed for the payment of expenditure from both the sections of the budget relating to the Commission and to the EEAS, they shall be set up as separate imprest accounts. ⇦ ~~The maximum amount which may be paid by the imprest administrator where it is materially impossible or inefficient to carry out payment operations by budgetary procedures shall be established by the accounting officer and shall in any case not exceed EUR 60000 for each item of expenditure.~~

~~However, in the field of crisis management aid and humanitarian aid operations, imprest accounts may be used without any limitation on the amount, while respecting the level of appropriations decided by the European Parliament and by the Council on the corresponding budget line for the current financial year and in accordance with the internal rules of the Commission.~~

~~2. In Union delegations, imprest accounts shall be set up for the payment of expenditure from both the sections of the budget relating to the Commission and to the EEAS, ensuring full traceability of expenditure.~~

Article 89

~~Creation and~~ Aadministration of imprest accounts

~~1. The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer of the Union institution, on the basis of a duly substantiated proposal from the authorising officer responsible. That decision shall set out the respective responsibilities and obligations of the imprest administrator and the authorising officer.~~

1. Imprest administrators shall be chosen from officials or, should the need arise and only in duly substantiated cases, from other members of staff or in accordance with the conditions established in the internal rules of the Commission from personnel employed by the Commission in the field of crisis management aid and humanitarian aid operations provided that their employment contracts guarantee equivalent level of protection in terms of liability as applicable to staff pursuant to Article 95. ~~Imprest administrators shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.~~

~~2. In proposals for decisions to create an imprest account, the authorising officer responsible shall ensure that:~~

~~(a) priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;~~

~~(b) imprest accounts are used only in duly substantiated cases.~~

~~In decisions to create an imprest account, the accounting officer shall specify the operating terms and the conditions for use of the imprest account.~~

~~The amendment of the operating terms for an imprest account shall also be the subject of a decision by the accounting officer on a duly substantiated proposal from the authorising officer responsible.~~

~~3. Bank accounts for the imprest shall be opened and monitored by the accounting officer, who shall also authorise delegated signatures on them on the basis of a duly substantiated proposal from the authorising officer responsible.~~

24. Imprest accounts shall be endowed ⇨ under supervision of ⇦ by the accounting officer of the Union institution ⌦ concerned ⌫ and shall be placed under the responsibility of imprest administrators.

35. Payments made shall be followed by formal final validation decisions or payment orders signed by the authorising officer responsible.

The imprest transactions ⇨ carried out outside general rules for expenditure operations ⇦ shall be settled by the authorising officer by the end of the following month, so that the accounting balance and the bank balance can be reconciled.

46. The accounting officer shall ⇨ supervise ⇦ carry out checks, or have them carried out by a staff member in his or her own department or in the authorising department specifically empowered for that purpose. Those checks shall as a general rule be effected on the spot and, where necessary, without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time limit set. The accounting officer shall communicate the findings of those checks to the authorising officer responsible.

CHAPTER 5

LIABILITY OF FINANCIAL ACTORS

SECTION 1

GENERAL RULES

Article 90

Withdrawal of delegation of powers to and suspension of duties of financial actors

1. Authorising officers responsible may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.

2. Accounting officers or imprest administrators, or both, may at any time be suspended temporarily or definitively from their duties by the authority which appointed them.

3. Paragraphs 1 and 2 shall be without prejudice to any disciplinary action taken in respect of the financial actors referred to in those paragraphs.

Article 91

Liability of financial actors for illegal activity, fraud or corruption

1. This Chapter is without prejudice to any liability under criminal law which the financial actors referred to in Article 90 may incur as provided for in applicable national law and in the provisions in force concerning the protection of the financial interests of the Union and the fight against corruption involving Union officials or officials of Member States.

2. Without prejudice to Articles 92, 94 and 95 of this Regulation, each authorising officer responsible, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, or for the personnel employed by the Commission in the field of crisis management aid and humanitarian aid operations as referred to in Article 89(1) of this Regulation in their employment contracts. In the event of illegal activity, fraud or corruption which may harm the

interests of the Union, the matter shall be referred to the authorities and bodies designated by the applicable legislation, in particular to OLAF.

SECTION 2

RULES APPLICABLE TO AUTHORISING OFFICERS RESPONSIBLE

Article 92

Rules applicable to authorising officers

1. The authorising officer responsible shall be liable for payment of compensation as laid down in the Staff Regulations.

2. The obligation to pay compensation shall apply in particular if the authorising officer responsible, whether intentionally or through gross negligence on his or her part:

(a) determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation;

(b) omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the Union institution liable to civil action by third parties.

3. An authorising officer by delegation or sub-delegation who receives a binding instruction which he or she considers to be irregular or contrary to the principle of sound financial management, in particular because the instruction cannot be carried out with the resources allocated to him or her, shall inform the authority from which he or she received the delegation or subdelegation about that fact in writing. If the instruction is confirmed in writing and that confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer by delegation or subdelegation has challenged, the authorising officer by delegation or subdelegation shall not be held liable. He or she shall carry out the instruction, unless it is manifestly illegal or constitutes a breach of the relevant safety standards.

The same procedure shall apply in cases where an authorising officer considers that a decision, which is his or her responsibility to take, is irregular or contrary to the principle of sound financial management or where an authorising officer learns, in the course of acting on a binding instruction, that the circumstances of the case could give rise to such a situation.

Any instructions confirmed in the circumstances referred to in this paragraph shall be recorded by the authorising officer by delegation responsible and mentioned in his or her annual activity report.

4. In the event of subdelegation within his or her service, the authorising officer by delegation shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation.

5. In the event of subdelegation to Heads of Union delegations and their deputies, the authorising officer by delegation shall be responsible for the definition of the internal management and control systems put in place, as well as their efficiency and effectiveness. Heads of Union delegations shall be responsible for the adequate setting up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry out within the Union delegation under their responsibility. Before taking up their duties, they shall complete

specific training courses on the tasks and responsibilities of authorising officers and budget implementation.

Heads of Union delegations shall in accordance with Article 76(3) report on their responsibilities pursuant to the first subparagraph of this paragraph.

Each year, Heads of Union delegations shall provide to the authorising officer by delegation of the Commission assurance on the internal management and control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and the results thereof, in order to allow the authorising officer to make the statement of assurance provided for in Article 74(9).

This paragraph shall also apply to deputy Heads of Union delegations when they act as authorising officers by subdelegation in the absence of Heads of Union delegations.

Article 93

Treatment of financial irregularities on the part of a member of staff

1. Without prejudice to the powers of OLAF and to the administrative autonomy of Union institutions, Union bodies, European offices or bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU in respect of members of their staff and with due regard to the protection of whistle-blowers, any infringement of this Regulation, or of a provision relating to financial management or the checking of operations, resulting from an act or omission of a member of staff shall be referred for an opinion to the panel referred to in Article 146~~143~~, by any of the following:

(a) the appointing authority in charge of disciplinary matters;

(b) the authorising officer responsible, including Heads of Union delegations and their deputies in their absence acting as authorising officers by subdelegation in accordance with Article 60(2).

Where the panel is directly informed of a matter by a member of staff, it shall transmit the file to the appointing authority of the Union institution, Union body, European office or body or person concerned and shall inform the member of staff accordingly. The appointing authority may request the panel's opinion on the case.

2. A request for an opinion of the panel pursuant to the first subparagraph of paragraph 1 shall be accompanied by a description of the facts and the act or omission which the panel is asked to assess, as well as by relevant supporting documents, including reports of any investigation which has taken place. Wherever possible, the information shall be produced in anonymised form.

Before submitting a request or any additional information to the panel, the appointing authority or the authorising officer, as appropriate, shall give the member of staff involved the opportunity to submit its observations, after having notified to him or her the supporting documents referred to in the first subparagraph, insofar as that notification does not seriously undermine the pursuit of further investigations.

3. In the cases referred in paragraph 1 of this Article, the panel referred to in Article 146~~143~~ shall be competent to assess whether, on the basis of the elements submitted to it pursuant to paragraph 2 of this Article and any additional information received, a financial irregularity has occurred. On the basis of the opinion of the panel, the Union institution, Union body, European office or body or person concerned shall decide on the appropriate follow-up actions in accordance with the Staff Regulations. If the panel detects systemic

problems, it shall make a recommendation to the authorising officer and to the authorising officer by delegation, unless the latter is the member of staff involved, as well as to the internal auditor.

4. Where the panel gives the opinion referred to in paragraph 1 of this Article, it shall be composed of the members referred to in Article 146~~143~~(2), subparagraph 1, points (a) and (b), as well as the following ~~three~~ additional members, which shall be appointed taking into account the need for avoiding any conflicts of interests:

(a) a representative of the appointing authority in charge of disciplinary matters of the Union institution, Union body, European office or body or person concerned ⇨ when the case in referred in accordance with Article paragraph 1(a) or a representative of the authorising officer responsible when the case is referred in accordance with paragraph (1)(b) ⇦ ;

(b) a member appointed by the staff committee of the Union institution, Union body, European office or body or person concerned;

(c) a member of the legal service of the Union institution employing the member of staff concerned.

Where the panel gives the opinion referred to in paragraph 1, it shall be addressed to the appointing authority of the Union institution, Union body, European office or body or person concerned.

5. The panel shall have no investigative powers. The Union institution, Union body, European office or body or person concerned shall cooperate with the panel with a view to ensuring that it has all the information necessary for giving its opinion.

6. Where the panel considers that the case is a matter for OLAF, it shall in accordance with paragraph 1 transmit the file to the relevant appointing authority without delay and inform OLAF immediately.

7. The Member States shall fully support the Union in the enforcement of any liability, under Article 22 of the Staff Regulations, of temporary staff to whom point (e) of Article 2 of the Conditions of Employment of Other Servants of the European Union applies.

SECTION 3

RULES APPLICABLE TO ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS

Article 94

Rules applicable to accounting officers

An accounting officer shall be liable to disciplinary action and payment of compensation, as laid down in, and in accordance with, the procedures in the Staff Regulations. An accounting officer may, in particular, become liable as a result of any of the following forms of misconduct on his or her part:

(a) losing or damaging funds, assets or documents in his or her keeping;

(b) wrongly altering bank accounts or postal giro accounts;

(c) recovering or paying amounts which are not in conformity with the corresponding recovery or payment orders;

(d) failing to collect revenue due.

Article 95

Rules applicable to imprest administrators

An imprest administrator may in particular become liable as a result of any of the following forms of misconduct on his or her part:

(a) losing or damaging funds, assets or documents in his or her keeping;

(b) not providing proper supporting documents for the payments he or she has made;

(c) making payments to persons other than those entitled to such payments;

(d) failing to collect revenue due.

CHAPTER 6

REVENUE OPERATIONS

SECTION 1

MAKING OWN RESOURCES AVAILABLE

Article 96

Own resources

1. An estimate of revenue constituted by own resources, as referred to in Decision (EU, Euratom) 2020/2053~~Decision 2014/335/EU, Euratom~~ shall be entered in the budget in euro. The corresponding own resources shall be made available in accordance with Regulation (EU, Euratom) No 609/2014 ⇨, with Regulation (EU, Euratom) No 2021/770 and Regulation (EU, Euratom) [XXX]⇦ .

2. The authorising officer shall draw up a schedule indicating when the own resources defined in Decision (EU, Euratom) 2020/2053 ~~Decision 2014/335/EU, Euratom~~ will be made available to the Commission.

Own resources shall be established and recovered in accordance with the rules adopted pursuant to that Decision.

For accounting purposes, the authorising officer shall issue a recovery order for credits and debits to the account for own resources referred to in Regulation (EU, Euratom) No 609/2014 ⇨, Regulation (EU, Euratom) No 2021/770 and Regulation (EU, Euratom) [XXX]⇦ .

SECTION 2

ESTIMATE OF AMOUNTS RECEIVABLE

Article 97

Estimate of amounts receivable

1. When the authorising officer responsible has sufficient and reliable information in respect of any measure or situation which may give rise to an amount being owed to the Union, the authorising officer responsible shall make an estimate of the amount receivable.

2. The estimate of the amount receivable shall be adjusted by the authorising officer responsible as soon as he or she is aware of an event modifying the measure or the situation which gave rise to the estimate being made.

When establishing the recovery order on a measure or situation that had previously given rise to an estimate of amounts receivable, that estimate shall be adjusted accordingly by the authorising officer responsible.

If the recovery order is drawn up for the same amount as the original estimate of amounts receivable, that estimate shall be reduced to zero.

3. By way of derogation from paragraph 1, no estimate of the amount receivable shall be made before Member States make available to the Commission the amounts of own resources defined in Decision (EU, Euratom) 2020/2053~~Decision 2014/335/EU, Euratom~~, which are paid at fixed intervals by Member States. The authorising officer responsible shall issue a recovery order in respect of those amounts.

SECTION 3

ESTABLISHMENT OF AMOUNTS RECEIVABLE

Article 98

Establishment of amounts receivable

1. In order to establish an amount receivable, the authorising officer responsible shall:

(a) verify that the debt exists;

(b) determine or verify the reality and the amount of the debt; and

(c) verify the conditions according to which the debt is due.

The establishment of an amount receivable shall constitute recognition of the right of the Union in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.

2. Any amount receivable that is identified as being certain, of a fixed amount and due shall be established by a recovery order by which the authorising officer responsible instructs the accounting officer to recover the amount. It shall be followed by a debit note sent to the debtor, except for the cases where a waiver procedure is carried out immediately in accordance with the second subparagraph of paragraph 4. Both the recovery order and the debit note shall be drawn up by the authorising officer responsible.

The authorising officer shall send the debit note immediately after establishing the amount receivable and at the latest within a period of five years from the time when the Union institution was, in normal circumstances, in a position to claim its debt. Such period shall not apply where the authorising officer responsible establishes that, despite the efforts which the Union institution has made, the delay in acting was caused by the debtor's conduct.

3. To establish an amount receivable the authorising officer responsible shall ensure that:

(a) the amount receivable is certain, meaning that it is not subject to any condition;

(b) the amount receivable is fixed, expressed precisely in cash terms;

(c) the amount receivable is due and is not subject to any payment time;

(d) the particulars of the debtor are correct;

(e) the amount is booked to the correct budgetary item;

(f) the supporting documents are in order; and

(g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) or (b) of the first subparagraph of Article 101(2).

4. The debit note shall be to inform the debtor that:

(a) the Union has established the amount receivable;

(b) if payment of the debt is made within the deadline, as specified in the debit note, no default interest will be due;

(c) failing payment of the debt within the deadline referred to in point (b) of this subparagraph the debt shall bear interest at the rate referred to in Article 99, without any prejudice to any specific regulations applicable;

(d) failing payment of the debt by the deadline referred to in point (b) the Union institution will effect recovery either by offsetting or by enforcement of any guarantee lodged in advance;

(e) the accounting officer may in exceptional circumstances effect recovery by offsetting before the deadline referred to in point (b), where it is necessary to protect the financial interests of the Union when he or she has justified grounds to believe that the amount due to the Union would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting;

(f) if, after taking all the steps set out in points (a) to (e) of this subparagraph, the amount has not been recovered in full, the Union institution will effect recovery by enforcement of a decision secured either in accordance with Article 100(2) or by legal action.

Where following the verification of the particulars of the debtor or on the basis of other relevant information available at the time, it is clear that the debt falls under the cases referred to in point (a) or (b) of the first subparagraph of Article 101(2), or that the debit note has not been sent in accordance with paragraph 2 of this Article, the authorising officer shall, after having established the amount receivable, decide to directly waive recovery in accordance with Article 101 without sending a debit note, in agreement with the accounting officer.

In all other cases, the authorising officer shall print out the debit note and send it to the debtor. The accounting officer shall be informed of the dispatch of the debit note through the financial information system.

5. Amounts wrongly paid shall be recovered.

Article 99

Default interest

1. Without prejudice to any specific provisions deriving from the application of specific regulations, any amount receivable not repaid on the deadline referred to in point (b) of the first subparagraph of Article 98(4) shall bear interest in accordance with paragraphs 2 and 3 of this Article.

2. Except in the case referred to in paragraph 4 of this Article, the interest rate for amounts receivable not repaid on the deadline referred to in point (b) of the first subparagraph of Article 98(4) shall be the rate applied by the European Central Bank to its principal

refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by:

(a) eight percentage points where the obligating event is a supply contract or a service contract;

(b) three and a half percentage points in all other cases.

3. Interest shall be calculated from the calendar day following the deadline referred to in point (b) of the first subparagraph of Article 98(4) up to the calendar day on which the debt is repaid in full.

The recovery order corresponding to the amount of the default interest shall be issued when that interest is actually received.

4. In the case of fines, ~~or~~ other penalties ⇨ or sanctions ⇦ , the interest rate for amounts receivable not paid ⇨ or covered by a financial guarantee acceptable to the accounting officer of the Commission ⇦ within the deadline ~~referred to in point (b) of the first subparagraph of Article 98(4)~~ ⇨ set in the decision of the Union institution imposing a fine, other penalty or sanction ⇦ shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the decision imposing a fine, ~~or~~ other penalty ⇨ or sanction ⇦ has been adopted, increased by~~:~~

~~(a) one and a half percentage points where the debtor provides a financial guarantee which is accepted by the accounting officer instead of payment;~~

~~(b)~~ three and a half percentage points ~~in all other cases~~.

Where the Court of Justice of the European Union, in the exercise of its competence under Article 261 TFEU, increases the amount of a fine or other penalty, interest on the amount of the increase shall run from the date of the judgment of the Court.

5. In cases where the overall interest rate would be negative it shall be set at zero percent.

SECTION 4

AUTHORISATION OF RECOVERY

Article 100

Authorisation of recovery

1. The authorising officer responsible shall, by issuing a recovery order, instruct the accounting officer to recover an amount receivable which that authorising officer responsible has established (‘the authorisation of recovery’).

2. A Union institution may formally establish an amount as being receivable from persons other than Member States by means of a decision which shall be enforceable within the meaning of Article 299 TFEU.

If the efficient and timely protection of the financial interests of the Union so requires, other Union institutions may, in exceptional circumstances, request the Commission to adopt such an enforceable decision for their benefit with respect to claims arising in relation to staff or in relation to members or former members of a Union institution, provided that those institutions have agreed with the Commission on the practical modalities for the application of this Article.

Such exceptional circumstances shall be deemed to exist when there is no prospect of recovery of the debt by the Union institution concerned by means of a voluntary payment or by means of offsetting as provided for in Article 101(1) and the conditions for waiving the recovery under Article 101(2) and (3) are not met. In all cases, the enforceable decision shall specify that the amounts claimed shall be entered in the section of the budget relating to the Union institution concerned, which shall act as authorising officer. The revenue shall be entered as general revenue except if it constitutes assigned revenue as provided for in Article 21(3).

The requesting Union institution shall inform the Commission of any event likely to alter the recovery and shall intervene in support of the Commission in the event of an appeal against the enforceable decision.

SECTION 5

RECOVERY

Article 101

Rules on recovery

1. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. The accounting officer shall exercise due diligence to ensure that the Union receives its revenue and shall ensure that the Union's rights are safeguarded.

Partial reimbursement by a debtor who is subject to several recovery orders shall first be posted on the oldest entitlement unless otherwise specified by the debtor. Any partial payments shall first cover the interest.

The accounting officer shall recover amounts due to the budget by offsetting them in accordance with Article 102.

2. The authorising officer responsible may waive recovery of all or part of an established amount receivable only in the following cases:

(a) where the foreseeable cost of recovery would exceed the amount to be recovered and the waiver would not harm the image of the Union;

(b) where the amount receivable cannot be recovered in view of its age, of delay in the dispatch of the debit note in the terms defined in Article 98(2), of the insolvency of the debtor, or of any other insolvency proceedings;

(c) where recovery is inconsistent with the principle of proportionality.

Where the authorising officer responsible plans to waive or partially waive recovery of an established amount receivable, he or she shall ensure that the waiver is in order and is in accordance with the principles of sound financial management and proportionality. The decision to waive recovery shall be substantiated. The authorising officer may delegate the power to take that decision.

3. In the case referred to in point (c) of the first subparagraph of paragraph 2, the authorising officer responsible shall act in accordance with predetermined procedures established within his or her Union institution and shall apply the following criteria which are compulsory and applicable in all circumstances:

(a) the facts, having regard to the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeated offence, intent, diligence, good faith, manifest error);

(b) the impact that waiving recovery would have on the operation of the Union and its financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law).

4. Depending on the circumstances of the case, the authorising officer responsible shall, where appropriate, take the following additional criteria into account:

(a) any distortion of competition that would be caused by the waiving of recovery;

(b) the economic and social damage that would be caused were the debt to be recovered in full.

5. Each Union institution shall send to the European Parliament and to the Council each year a report on the waivers granted by it pursuant to paragraphs 2, 3 and 4 of this Article. Information on waivers below EUR 60000 shall be provided as a total amount. In the case of the Commission, that report shall be annexed to the summary of the annual activity reports referred to in Article 74(9).

6. The authorising officer responsible may cancel an established amount receivable in full or in part. The partial cancellation of an established amount receivable does not imply the waiver of the remaining established Union entitlement.

In the event of a mistake, the authorising officer responsible shall cancel totally or partially the established amount receivable and include adequate reasons.

Each Union institution shall in its internal rules lay down the conditions and procedure for delegating the power to cancel an established amount receivable.

7. Member States shall have primary responsibility for carrying out controls and audits and for recovering amounts unduly spent, as provided for in sector-specific rules. To the extent that Member States detect and correct irregularities on their own account, they shall be exempt from financial corrections by the Commission concerning those irregularities.

8. The Commission shall make financial corrections on Member States in order to exclude expenditure incurred in breach of applicable law from Union financing. The Commission shall base its financial corrections on the identification of amounts unduly spent, and the financial implications for the budget. Where such amounts cannot be identified precisely, the Commission may apply extrapolated or flat-rate corrections in accordance with sector-specific rules.

The Commission shall, when deciding on the amount of a financial correction, take account of the nature and gravity of the breach of applicable law and the financial implications for the budget, including deficiencies in management and control systems.

The criteria for establishing financial corrections and the procedure to be followed may be laid down in sector-specific rules.

9. The methodology for applying extrapolated or flat-rate corrections shall be laid down in accordance with sector-specific rules with a view to enabling the Commission to protect the financial interests of the Union.

Article 102

Recovery by offsetting

1. Where the debtor has a claim on the Union, or on an executive agency when it implements the budget, that is certain within the meaning of point (a) of Article 98(3), of a fixed amount and due relating to a sum established by a payment order, the accounting officer shall, after expiry of the deadline referred to in point (b) of the first subparagraph of Article 98(4), recover established amounts receivable by offsetting.

In exceptional circumstances, where it is necessary to safeguard the financial interests of the Union and where the accounting officer has justified grounds to believe that the amount due to the Union would be lost, the accounting officer may recover by offsetting before the expiry of the deadline referred to in point (b) of the first subparagraph of Article 98(4).

The accounting officer may also recover by offsetting before the expiry of the deadline referred to in point (b) of first subparagraph of Article 98(4) when the debtor agrees.

2. Before proceeding with any recovery in accordance with paragraph 1 of this Article, the accounting officer shall consult the authorising officer responsible and inform the debtors concerned, including of the means of redress in accordance with Article 135~~133~~.

Where the debtor is a national authority or one of its administrative entities, the accounting officer shall also inform the Member State concerned of his or her intention to resort to recovery by offsetting at least 10 working days in advance of proceeding with it. However, in agreement with the Member State or administrative entity concerned, the accounting officer may proceed with the recovery by offsetting before that deadline has passed.

3. The offsetting referred to in paragraph 1 shall have the same effect as a payment and discharge the Union for the amount of the debt and, where appropriate, of the interest due.

⇩ new

4. The opening of insolvency proceedings shall not affect the right of the accounting officer to proceed with a recovery by means of offsetting as referred to in paragraph 1.

🡻 2018/1046

Article 103

Recovery procedure failing voluntary payment

1. Without prejudice to Article 102, if the full amount has not been recovered by the deadline referred to in point (b) of the first subparagraph of Article 98(4), the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.

2. Without prejudice to Article 102, where the recovery method referred to in paragraph 1 of this Article cannot be used and the debtor has failed to pay in response to a letter of formal notice sent by the accounting officer, the accounting officer shall effect recovery by enforcement of a decision secured either in accordance with Article 100(2) or by legal action.

⇩ new

Article 104

Assistance from Member States in the notification and recovery of Union claims

1. The accounting officer of the Commission may require the competent authorities of the Member States as defined by Article 4(1) of Directive 2010/24/EU to provide assistance for the notification and recovery of any financial claim of the Union, or of an executive agency when it implements the budget, or of claims pursuant to Article 100(2), the second subparagraph of this Regulation.

2. Such claims, including the interests related to them, shall include in particular:

(a) financial claims stemming from any public procurement contract, grant agreement or from grant decisions awarded by the Commission or an executive agency, or claims pursuant to Article 100(2), the second subparagraph;

(b) financial claims stemming from sanctions, administrative measures of recovery and fines or penalty payments imposed by the Union.

3. The requested Member State shall assist the accounting officer of the Commission by providing information on the identity, solvency and known domicile or registered address of the debtor, beneficial owners in case of legal persons, any assets of the debtor and any other relevant information. Upon request, it shall also notify any necessary documents to debtors, and proceed to seizures and recoveries of the claims and take the necessary precautionary measures.

4. A Member State shall not be obliged to grant assistance if the total amount of the claims for which the assistance is requested is below the threshold foreseen in Article 18(3) of Directive 2010/24/EU.

5. Member States may only proceed to the recovery or the adoption of precautionary measures concerning claims under paragraph 1 further to a Decision enforceable pursuant to Article 299 TFEU.

6. Upon request of the accounting officer of the Commission, and on the basis of a Decision enforceable pursuant to Article 299 TFEU, the requested Member State authority shall:

(a) take precautionary measures as soon as the Decision has been adopted, if allowed by its national law and in accordance with its administrative practices, to ensure recovery.

(b) enforce recovery of the claim, which shall be treated as if it was a claim of the requested Member State of the same nature.

The requested Member State authority shall recover the claim in its own currency. Conversions to euro shall be done in accordance with the provisions of Article 19 of this Regulation.

7. The requested Member State authority shall make use of the powers and procedures provided under its national laws, regulations or administrative provisions applying to claims of the same nature, including provisions allowing the debtor additional time to pay or authorising payment in instalments.

8. Matters of procedure shall be governed by the applicable law of the requested Member State. Any substantive matters that may arise shall be governed by the substantive Union law and, if applicable, national law applicable to the claim. Questions concerning periods of limitation including the suspension, interruption or prolongation of periods of limitation, shall be governed solely by the provisions of this Regulation.

9. The Commission and the Member States may conclude an agreement covering further arrangements on matters such as the payment by the Commission of fees and costs to the Member State, means of communications or the disclosure of information and the language to be used.

↓ 2018/1046

Article 105~~104~~

Additional time for payment

The accounting officer may, in collaboration with the authorising officer responsible, allow additional time for payment only at the written request of the debtor, with due indication of the reasons, and provided that the following conditions are fulfilled:

(a) the debtor undertakes to pay interest at the rate specified in Article 99 for the entire additional period allowed, starting from the deadline referred to in point (b) of the first subparagraph of Article 98(4);

(b) in order to safeguard the rights of the Union, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the accounting officer of the Union institution.

The guarantee referred to in point (b) of the first paragraph may be replaced by a joint and several guarantee by a third party approved by the accounting officer of the Union institution.

In exceptional circumstances, following a request by the debtor, the accounting officer may waive the requirement of a guarantee referred to in point (b) of the first paragraph when, on the basis of his or her assessment, the debtor is willing and able to make the payment in the additional time period but is not able to lodge such guarantee and is in a situation of financial distress.

Article 106~~105~~

Limitation period

1. Without prejudice to the provisions of specific regulations and the application of Decision (EU, Euratom) 2020/2053~~Decision 2014/335/EU, Euratom~~, entitlements of the Union in respect of third parties and entitlements of third parties in respect of the Union shall be subject to a limitation period of five years.

2. The limitation period for entitlements of the Union in respect of third parties shall begin to run on the expiry of the deadline referred to in point (b) of the first subparagraph of Article 98(4).

The limitation period for entitlements of third parties in respect of the Union shall begin to run on the date on which the payment of the third party's entitlement is due according to the corresponding legal commitment.

3. The limitation period for entitlements of the Union in respect of third parties shall be interrupted by any act of a Union institution or a Member State acting at the request of a Union institution, notified to the third party and aiming at recovering the debt.

The limitation period for entitlements of third parties in respect of the Union shall be interrupted by any act notified to the Union by its creditors or on behalf of its creditors aiming at recovering the debt.

4. A new limitation period of five years shall begin to run on the day following the interruptions referred to in paragraph 3.

5. Any legal action relating to an entitlement as referred to in paragraph 2, including actions brought before a court which later declares itself not to have jurisdiction, shall interrupt the limitation period. A new limitation period of five years shall not begin to run until a judgment having the force of res judicata is given or there is an extrajudicial settlement between the same parties on the same action.

6. Where the accounting officer allows the debtor additional time for payment in accordance with Article 105~~104~~, this shall be considered as an interruption of the limitation period. A new limitation period of five years shall begin to run on the day following the expiry of the extended time for payment.

7. Entitlements of the Union shall not be recovered after the expiry of the limitation period, as provided for in paragraphs 2 to 6.

Article 107~~106~~

National treatment for entitlements of the Union

In the event of insolvency proceedings, entitlements of the Union shall be given the same preferential treatment as entitlements of the same nature due to public bodies in Member States where the recovery proceedings are being conducted.

Article 108~~107~~

Fines, other penalties, sanctions and accrued interest imposed by Union institutions

1. Amounts received by way of fines, other penalties and sanctions, and any accrued interest or other income generated by them, shall not be entered in the budget as long as the decisions imposing them are or could still become subject to an appeal before the Court of Justice of the European Union.

2. The amounts referred to in paragraph 1 shall be entered in the budget as soon as possible following the exhaustion of all legal remedies. Under duly justified exceptional circumstances or where the exhaustion of all legal remedies occurs after 1 September of the current financial year, the amounts may be entered in the budget in the following financial year.

⇩ new

For the purposes of applying Article 48(2), point (b), the necessary amounts referred to in paragraph 1 may be entered in the budget by the end of the following financial year.

↓ 2018/1046 (adapted)
⇨ new

Amounts that are to be returned to the entity that paid them, following a judgment of the Court of Justice of the European Union, shall not be entered in the budget.

3. Paragraph 1 shall not apply to decisions on clearance of accounts or financial corrections.

Article 109~~108~~

Recovery of fines, other penalties or sanctions imposed by Union institutions

1. Where an action is brought before the Court of Justice of the European Union against a decision of a Union institution imposing a fine, other penalty or sanction under the TFEU or the Euratom Treaty and until such time as all legal remedies have been exhausted, the debtor shall either provisionally pay the amounts concerned on the bank account designated by the accounting officer of the Commission or lodge a financial guarantee acceptable to the accounting officer of the Commission. The guarantee shall be independent of the obligation to pay ~~the~~ ⌦ a ⌫ fine, other penalty or sanction and shall be enforceable on demand. It shall cover the claim as to principal and interest ~~due as specified in Article 99(4)~~ ⇨ that the debtor shall pay in the case referred to in point (b) of paragraph 3 at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union, in force on the first calendar day of the month in which the decision imposing a fine, other penalty or sanction has been adopted, increased by one and a half percentage points, as from the deadline set in the decision of the Union institution imposing a fine, other penalty or sanction ⇦ .

2. The Commission ~~shall secure~~ ⇨ may invest ⇦ the provisionally collected amounts ~~by having them invested~~ in financial assets, ~~thereby ensuring~~ ⇨ prioritising ⇦ the ⇨ aim of ⇦ security and liquidity of the monies ⇨ in accordance with the principle of sound financial management ⇦ ~~whilst also aiming at yielding a positive return~~.

3. After the exhaustion of all legal remedies and where the fine, other penalty or sanction has been confirmed by the Court of Justice of the European Union, or where the decision imposing such a fine, other penalty or sanction may no longer become subject to an appeal before the Court of Justice of the European Union, one of the following measures shall be taken:

(a) the provisionally collected amounts and the return on them shall be entered in the budget in accordance with Article 108~~107~~(2);

(b) where a financial guarantee has been lodged, it shall be enforced and the corresponding amounts entered in the budget.

Where the amount of the fine, other penalty or sanction has been increased by the Court of Justice of the European Union, points (a) and (b) of the first subparagraph of this paragraph shall apply up to the amounts of the original decision of the Union institution or, if applicable, to the amount laid down in a former judgment by the Court of Justice of the European Union in the same proceedings. The accounting officer of the Commission shall collect the amount corresponding to the increase and the interest due as specified in Article 99(4), which shall be entered in the budget.

4. After all legal remedies have been exhausted and where the fine, other penalty or sanction has been cancelled or the amount has been reduced, one of the following measures shall be taken:

(a) the provisionally collected amounts or, in the event of a reduction, the relevant part thereof shall be repaid to the third party concerned;

(b) where a financial guarantee has been lodged, it shall be released accordingly.

⇩ new

The amount or the relevant part thereof referred to in point (a) of the first subparagraph shall be increased by interest at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the Official Journal of the European Union in force on the first calendar day of the month in which the decision imposing a fine, other penalty or sanction was adopted, increased by one and a half percentage points.

🡻 2018/1046
⇨ new

~~In the cases referred to in point (a) of the first subparagraph, where the overall return on the provisionally collected amount is negative, the loss incurred shall be deducted from the amount to be repaid.~~

Article 110~~109~~

Compensatory interests

Without prejudice to Articles 99(2) and 117~~116~~(5), and for cases other than fines, other penalties and sanctions as referred to in Articles 108~~107~~ and 109~~108~~, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union or as a result of an amicable settlement, the interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month. The interest rate shall not be negative. The interest shall run from the date of payment of the amount to be reimbursed until the date at which the reimbursement is due.

In cases where the overall interest rate would be negative it shall be set at zero percent.

CHAPTER 7

EXPENDITURE OPERATIONS

Article 111~~110~~

Financing decisions

1. A budgetary commitment shall be preceded by a financing decision adopted by the Union institution or by the authority to which powers have been delegated by the Union institution. The financing decisions shall be annual or multiannual.

The first subparagraph of this paragraph shall not apply in the case of appropriations for the operations of each Union institution under its administrative autonomy that can be implemented without a basic act in accordance with point (e) of Article 58(2), of administrative support expenditure and of contributions to the Union bodies referred to in Articles 70 and 71.

2. The financing decision shall at the same time constitute the annual or multiannual work programme and shall be adopted, as appropriate, as soon as possible after the adoption of the draft budget and in principle no later than 31 March of the year of implementation. Where the relevant basic act provides for specific modalities for the adoption of a financing decision or a work programme or both, those modalities shall be applied to the part of the financing decision constituting the work programme, in compliance with the requirements of that basic act. The part which constitutes the work programme shall be published on the website of the Union institution concerned immediately after its adoption and prior to its implementation. The financing decision shall indicate the total amount it covers and shall contain a description of the actions to be financed. It shall specify:

(a) the basic act and the budget line;

(b) the objectives pursued and the expected results;

(c) the methods of implementation;

(d) any additional information required by the basic act for the work programme.

3. In addition to the elements referred to in paragraph 2, the financing decision shall set out the following:

(a) for grants: the type of applicants targeted by the call for proposals or direct award and the global budgetary envelope reserved for the grants;

(b) for procurement: the global budgetary envelope reserved for procurements;

(c) for contributions to Union trust funds referred to in Article 238~~234~~: the appropriations reserved for the trust fund for the year together with the amounts planned over its duration, from the budget as well as from other donors;

(d) for prizes: the type of participants targeted by the contest, the global budgetary envelope reserved for the contest and a specific reference to prizes with a unit value of EUR 1000000 or more;

(e) for financial instruments: the amount allocated to the financial instrument;

(f) in the event of indirect management: the person or entity implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or the criteria to be used to select the person or entity;

(g) for contributions to blending facilities or platforms: the amount allocated to the blending facility or platform and the list of entities participating in the blending facility or platform;

(h) for budgetary guarantees: the amount of annual provisioning and, where applicable, the amount of the budgetary guarantee to be released.

4. The authorising officer by delegation may add any additional information considered appropriate either in the respective financing decision constituting the work programme or in any other document published on the website of the Union institution.

A multiannual financing decision shall be consistent with the financial programming referred to in Article 41(2) and shall specify that the implementation of the decision is subject to the

availability of budget appropriations for the respective financial years after the adoption of the budget or as provided for in the system of provisional twelfths.

5. Without prejudice to any specific provision of a basic act, any substantial change in a financing decision already adopted shall follow the same procedure as the initial decision.

Article 112~~111~~

Expenditure operations

1. Every item of expenditure shall be committed, validated, authorised and paid.

At the end of the periods referred to in Article 115~~114~~, the unused balance of budgetary commitments shall be decommitted.

When executing operations, the authorising officer responsible shall ensure that the expenditure is in compliance with the Treaties, the budget, this Regulation, and other acts adopted pursuant to the Treaties as well as with the principle of sound financial management.

2. Budgetary commitments shall be made and legal commitments entered into by the same authorising officer, except in duly justified cases. In particular, in the field of crisis management aid and humanitarian aid operations, legal commitments may be entered into by Heads of Union delegations, or in their absence by their deputies, on the instruction of the authorising officer responsible of the Commission who remains fully responsible, however, for the underlying transaction. The personnel employed by the Commission in the field of crisis management aid and humanitarian aid operations may sign legal commitments linked to payments executed from imprest accounts of a value not exceeding EUR 2500.

The authorising officer responsible shall make a budgetary commitment before entering into a legal commitment with third parties ⇨ , provisioning of financial liabilities referred to in Article 215, ⇦ or transferring funds to a Union trust fund referred to in Article 238~~234~~.

The second subparagraph of this paragraph shall not apply:

(a) to legal commitments concluded following a declaration of a crisis situation in the framework of a business continuity plan, in accordance with the procedures adopted by the Commission or by any other Union institution under its administrative autonomy;

(b) in the case of humanitarian aid operations, civil protection operations and crisis management aid, if efficient delivery of the Union's intervention requires that the Union enter into a legal commitment with third parties immediately and if prior booking of the individual budgetary commitment is not possible;~~.~~

⇩ new

(c) to non-financial donations.

🡻 2018/1046 (adapted)
⇨ new

In the cases referred to in point (b) of the third subparagraph, the budgetary commitment shall be booked without delay after entering into a legal commitment with third parties.

3. The authorising officer responsible shall validate expenditure by accepting that an item of expenditure is charged to the budget, after having checked the supporting documents attesting the creditor's entitlement as per the conditions set in the legal commitment when there is a legal commitment. For that purpose, the authorising officer responsible shall:

(a) verify the existence of the creditor's entitlement;

(b) determine or verify the reality and the amount of the claim through the endorsement 'certified correct';

(c) verify the conditions according to which payment is due.

Notwithstanding the first subparagraph, the validation of expenditure shall also apply to interim or final reports not associated with a payment request in which case the impact on the accounting system is limited to the general accounts.

4. The validation decision shall be expressed through electronically secured signature in accordance with Article 150~~146~~ by the authorising officer, or by a technically competent member of staff duly empowered by a formal decision of the authorising officer, or, exceptionally, for paper workflow take the form of a stamp incorporating that signature.

With the endorsement 'certified correct' the authorising officer responsible, or a technically competent member of staff duly empowered by the authorising officer responsible, shall certify:

(a) for pre-financing: that the conditions required in the legal commitment for the payment of the pre-financing are met;

(b) for interim and balance payments in contracts: that the services provided for in the contract have been properly provided, the supplies properly delivered or that the work has been properly carried out;

(c) for interim and balance payments in grants: that the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement, including, where applicable that the costs declared by the beneficiary are eligible.

In the case referred to in point (c) of the second subparagraph, cost estimates shall not be deemed to comply with the eligibility conditions set out in Article 190~~186~~(3). The same principle shall also apply to interim and final reports not associated to a payment request.

5. In order to authorise the expenditure, the authorising officer responsible shall, after having verified that the appropriations are available, issue a payment order to instruct the accounting officer to pay the amount of expenditure which was previously validated.

Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, the authorising officer may, subject to that officer's risk analysis, order the application of a direct debit system from an imprest account. The application of such a system may also be ordered if it is specifically authorised by the accounting officer in accordance with Article 86(3).

Article 113~~112~~

Types of budgetary commitments

1. Budgetary commitments shall fall into one of the following categories:

(a) individual: when the recipient and the amount of the expenditure are known ⇨ or the budgetary commitment is made for provisioning of financial liabilities referred to in Article 215 ⇦ ;

(b) global: when at least one of the elements necessary to identify the individual commitment is still not known;

(c) provisional: to cover routine management expenditure for the EAGF as referred to in Article 11(2), and routine administrative expenditure where either the amount or the final payees are not definitively known.

Notwithstanding point (c) of the first subparagraph, routine administrative expenditure relating to Union delegations and Union representations may be covered by provisional budgetary commitments also when the amount and final payee are known.

2. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the basic act so provides or where they relate to administrative expenditure.

3. A global budgetary commitment shall be made on the basis of a financing decision.

The global budgetary commitment shall be made at the latest before the decision on the recipients and amounts is taken and, where implementation of the appropriations concerned involves the adoption of a work programme, at the earliest after that programme has been adopted.

4. A global budgetary commitment shall be implemented ~~either~~ by the conclusion of a financing agreement~~,~~ ~~itself~~ providing for the subsequent entering into one or more legal commitments, ~~or~~ by entering into one or more legal commitments ⇨ , or by provisioning of financial liabilities referred to in Article 215 ⇦ .

Financing agreements in the field of direct financial assistance to third countries, including budget support, which constitute legal commitments may give rise to payments without entering into other legal commitments.

Where the global budgetary commitment is implemented by the conclusion of a financing agreement, the second subparagraph of paragraph 3 shall not apply.

5. Each individual legal commitment entered into following a global budgetary commitment shall, prior to signature, be registered by the authorising officer responsible in the central budgetary accounts and booked to the global budgetary commitment.

6. Provisional budgetary commitments shall be implemented by entering into one or more legal commitments giving rise to an entitlement to subsequent payments. However, in cases relating to expenditure on staff management, expenditure on members or former members of a Union institution or expenditure on communication engaged in by Union institutions for the coverage of Union events, or in the cases referred to in point 14.5 of Annex I, they may be implemented directly by payments without entering into prior legal commitments.

Article 114~~113~~

Commitments for EAGF appropriation~~s~~

1. For each financial year, the EAGF appropriations shall include non-differentiated appropriations for expenditure related to measures referred to in Article 5(2)~~4(1)~~ of Regulation (EU) 2021/2116~~No 1306/2013~~. Expenditure related to the measures referred to in Article 5(3)~~4(2)~~ and Article 7~~6~~ of that Regulation, with the exception of measures financed

under non-operational technical assistance and contributions to executive agencies, shall be covered by differentiated appropriations.

2. The Commission decisions fixing the amount of reimbursement of expenditure related to the EAGF incurred by Member States ⇨ may ⇦ ~~shall~~ constitute global provisional budgetary commitments, which shall not exceed the total appropriations entered in the budget for the EAGF.

3. Global provisional budgetary commitments for the EAGF which have been made for a financial year and which have not given rise to a commitment on specific budget lines by 1 February of the following financial year shall be decommitted in respect of the financial year concerned.

4. ⇨ Where a global provisional budgetary commitment referred to in paragraph 2 is constituted, ⇦ E~~e~~xpenditure effected by the authorities and bodies referred to in the rules relating to the EAGF shall, within two months of receipt of the statements sent by Member States, be the subject of a commitment by chapter, article and item. Such commitments may be made after the expiry of that two-month period where a procedure for a transfer of appropriations concerning the relevant budget lines is necessary. Except where payment has not yet been made by Member States or where eligibility is in doubt, the amounts shall be charged as payments within the same two-month period.

The commitments referred to in the first subparagraph of this paragraph shall be deducted from the global provisional budgetary commitment referred to in paragraph 2~~1~~.

5. Paragraphs 2 and 3 shall apply subject to the examination and acceptance of the accounts.

Article 115~~114~~

Time limits for commitments

1. Without prejudice to Articles 112~~111~~(2) and 269~~264~~(3), legal commitments relating to individual or provisional budgetary commitments shall be entered into by 31 December of year n, year n being the one in which the budgetary commitment was made.

2. Global budgetary commitments shall cover the total cost of the corresponding legal commitments entered into ⇨ , or the amounts of the provisioning of financial liabilities referred to in Article 215 made, ⇦ up to 31 December of year n+1.

Where the global budgetary commitment gives rise to the award of a prize referred to in Title IX, the legal commitment referred to in Article 211~~207~~(4) shall be entered into by 31 December of year n+3.

In external actions, where the global budgetary commitment gives rise to a financing agreement concluded with a third country, the financing agreement shall be concluded by 31 December of year n+1. In that case, the global budgetary commitment shall cover the total costs of legal commitments implementing the financing agreement entered into within a period of three years following the date of conclusion of the financing agreement.

However, in the following cases, the global budgetary commitment shall cover the total costs of legal commitments entered into until the end of the period of implementation of the financing agreement:

(a) multi-donor actions;

(b) blending operations;

(c) legal commitments relating to ⇨ communication and visibility activities, ⇦ audit and evaluation;

(d) the following exceptional circumstances:

(i) modifications made to legal commitments which have already been entered into;

(ii) legal commitments that are to be entered into after early termination of an existing legal commitment;

(iii) changes of the implementing entity.

3. The third ~~and fourth~~ subparagraph~~s~~ of paragraph 2 shall not apply to ~~the following~~ multiannual programmes that are implemented through split commitments ⌦ under ⌫ :

~~(a) the Instrument for Pre-accession Assistance established by Regulation (EU) No 231/2014 of the European Parliament and of the Council[73];~~

~~(b) the European Neighbourhood Instrument established by Regulation (EU) No 232/2014 of the European Parliament and of the Council[74].~~

⇩ new

(a) Regulation (EU) 2021/947 of the European Parliament and of the Council;

(b) Regulation (EU) 2021/1529 of the European Parliament and of the Council;

(c) Regulation (EU) 2021/1059 of the European Parliament and of the Council[75] with regard to external cooperation programmes;

(d) Decision (EU) 2021/1764 of the Council;

(e) Council Regulation (Euratom) 2021/948.

🡻 2018/1046

In the cases referred to in the first subparagraph, the appropriations shall be automatically decommitted by the Commission in accordance with sector-specific rules.

4. The individual and provisional budgetary commitments for actions extending over more than one financial year shall, except in the case of staff expenditure, have a final date for implementation set, in accordance with the conditions in the legal commitments to which they refer, and taking into account the principle of sound financial management.

5. Any parts of budgetary commitments which have not been implemented by payments six months after the final date for implementation shall be decommitted.

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[73] ~~Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11).~~

[74] ~~Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).~~

[75] Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (OJ L 231, 30.6.2021, p. 94).

6. The amount of a budgetary commitment for which no payment within the meaning of Article 116~~115~~ has been made within two years of the entering into the legal commitment shall be decommitted, except where that amount relates to a case under litigation before judicial courts or arbitral bodies, where the legal commitment takes the form of a financing agreement with a third country or where there are special provisions laid down in sector-specific rules.

Article 116~~115~~

Types of payments

1. Payment of expenditure shall be made by the accounting officer within the limits of the funds available.

2. Payment shall be made on production of proof that the relevant action is in accordance with the contract, the agreement or the basic act and shall cover one or more of the following operations:

(a) payment of the entire amount due;

(b) payment of the amount due in any of the following ways:

(i) pre-financing providing a float, which may be divided into a number of payments in accordance with the principle of sound financial management; such pre-financing amount shall be paid either on the basis of the contract, the agreement or the basic act, or on the basis of supporting documents which make it possible to check that the terms of the contract or agreement in question are complied with;

(ii) one or more interim payments as a counterpart of a partial execution of the action or partial performance of the contract or agreement, which may clear pre-financing in whole or in part, without prejudice to the basic act;

(iii) one payment of the balance of the amounts due where the action is completely executed, or the contract or agreement is completely performed;

(c) payment of a provision into the common provisioning fund established pursuant to Article 216~~212~~.

The payment of the balance shall clear all preceding expenditure. A recovery order shall be issued to recover unused amounts.

3. A distinction shall be made in budgetary accounting between the different types of payment referred to in paragraph 2 at the time each payment is made.

4. The accounting rules referred to in Article 80 shall include the rules for clearing the pre-financing in the accounts and for the acknowledgment of the eligibility of costs.

5. Pre-financing payments shall be cleared regularly by the authorising officer responsible, according to the economic nature of the project and, at the latest, at the end of the project. The clearing shall be performed on the basis of information on costs incurred or confirmation of the conditions for payment being fulfilled in accordance with Article 126~~125~~ as validated by the authorising officer in accordance with Article 112~~111~~(3).

For grant agreements, contracts or contribution agreements above EUR 5000000, the authorising officer shall obtain at each year-end at least the information needed to calculate a reasonable estimate of the costs. That information shall not be used for clearing the pre-

financing, but may be used by the authorising officer and the accounting officer to comply with Article 82(2).

For the purposes of the second subparagraph, appropriate provisions shall be included in the legal commitments entered into.

Article 117~~116~~

Time limits for payments

1. Payments shall be made within:

(a) 90 calendar days for contribution agreements, contracts and grant agreements involving technical services or actions which are particularly complex to evaluate and for which payment depends on the approval of a report or a certificate;

(b) 60 calendar days for all other contribution agreements, contracts and grant agreements for which payment depends on the approval of a report or a certificate;

(c) 30 calendar days for all other contribution agreements, contracts and grant agreements.

2. The time allowed for making payments shall be understood to include validation, authorisation and the payment of expenditure.

It shall begin to run from the date on which a payment request is received.

3. A payment request shall be registered by the authorised department of the authorising officer responsible as soon as possible and is deemed to be received on the date it is registered.

The date of payment is deemed to be the date on which the Union institution's account is debited.

A payment request shall include the following essential elements:

(a) the creditor's identification;

(b) the amount;

(c) the currency;

(d) the date.

⇩ new

An electronic invoice in public procurement shall include the following essential elements:

(a) process and invoice identifiers;

(b) the invoice period;

(c) contractor's information;

(d) contracting authority's information;

(e) contractor's tax representative information;

(f) contract reference;

(g) delivery details;

(h) payment instructions;

(i) allowance or charge information;

(j) invoice line item information;

(k) invoice totals;

(l) VAT breakdown (when applicable);

(m) currency.

↓ 2018/1046

Where at least one essential element is missing, the payment request shall be rejected.

The creditor shall be informed in writing of a rejection and the reasons for it as soon as possible and in any case within 30 calendar days from the date on which the payment request was received.

4. The authorising officer responsible may suspend the time limit for payment where:

(a) the amount of the payment request is not due; or

(b) the appropriate supporting documents have not been produced.

If information comes to the notice of the authorising officer responsible which puts in doubt the eligibility of expenditure in a payment request, he or she may suspend the time limit for payment for the purpose of verifying, including by means of on-the-spot-checks, that the expenditure is eligible. The remaining time allowed for payment shall begin to run from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out.

The creditors concerned shall be informed in writing of the reasons for a suspension.

5. Except in the case of Member States, the EIB and the EIF, on the expiry of the time limits laid down in paragraph 1, the creditor shall be entitled to interest in accordance with the following conditions:

(a) the interest rates shall be those referred to in Article 99(2);

(b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment laid down in paragraph 1 up to the day of payment.

However, in the event that the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only on a request submitted within two months of receiving late payment.

6. Each Union institution shall submit to the European Parliament and Council a report on the compliance with and the suspension of the time limits laid down in paragraphs 1 to 4 of this Article. The report of the Commission shall be annexed to the summary of the annual activity reports referred to in Article 74(9).

CHAPTER 8

INTERNAL AUDITOR

Article 118~~117~~

Appointment of the internal auditor

1. Each Union institution shall establish an internal audit function which shall be performed in compliance with the relevant international standards. The internal auditor appointed by the Union institution concerned shall be accountable to the latter for verifying the proper operation of budget implementation systems and procedures. The internal auditor shall not be the authorising officer or the accounting officer.

2. For the purposes of the internal auditing of the EEAS, Heads of Union delegations, acting as authorising officers by subdelegation in accordance with Article 60(2), shall be subject to the verifying powers of the internal auditor of the Commission for the financial management subdelegated to them.

The internal auditor of the Commission shall also act as the internal auditor of the EEAS in respect of the implementation of the section of the budget relating to the EEAS.

3. Each Union institution shall appoint its internal auditor in accordance with arrangements adapted to its specific features and requirements. Each Union institution shall inform the European Parliament and the Council of the appointment of its internal auditor.

4. Each Union institution shall determine, in accordance with its specific features and its requirements, the scope of the mission of its internal auditor and shall lay down in detail the objectives and procedures for the exercise of the internal audit function with due respect for international internal audit standards.

5. Each Union institution may appoint as internal auditor, by virtue of their particular competence, an official or other servant covered by the Staff Regulations selected from nationals of Member States.

6. If two or more Union institutions appoint the same internal auditor they shall make the necessary arrangements for the internal auditor to be declared liable for his or her actions as laid down in Article 122~~121~~.

7. Each Union institution shall inform the European Parliament and Council when the duties of its internal auditor are terminated.

Article 119~~118~~

Powers and duties of the internal auditor

1. The internal auditor shall advise his or her Union institution on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The internal auditor shall in particular be responsible for:

(a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them;

(b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each budget implementation operation.

2. The internal auditor shall perform his or her duties in relation to all the activities and departments of the Union institution concerned. He or she shall enjoy full and unlimited access to all information required to perform his or her duties, if necessary also on-the-spot access, including in Member States and in third countries.

The internal auditor shall take note of the annual report of the authorising officers and any other pieces of information identified.

3. The internal auditor shall report to the Union institution concerned on his or her findings and recommendations. The Union institution concerned shall ensure that action is taken with regard to recommendations resulting from audits.

Each Union institution shall consider whether the recommendations made in the reports of its internal auditor are suitable for an exchange of best practices with other Union institutions.

4. The internal auditor shall submit to the Union institution concerned an annual internal audit report indicating the number and type of internal audits carried out, the principal recommendations made and the action taken with regard to those recommendations.

That annual internal audit report shall mention any systemic problems detected by the panel set up pursuant to Article 146~~143~~ where it gives the opinion referred to in Article 93.

5. The internal auditor shall, during the elaboration of the report, particularly focus on the overall compliance with the principles of sound financial management and performance, and shall ensure that appropriate measures have been taken in order to steadily improve and enhance their application.

6. Each year, the Commission shall, in the context of the discharge procedure and in accordance with Article 319 TFEU, forward on request its annual internal audit report with due regard to confidentiality requirements.

7. Each Union institution shall make available the contact details of its internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.

8. Each year each Union institution shall draft a report containing a summary of the number and type of internal audits carried out, a synthesis of the recommendations made and the action taken on those recommendations and forward it to the European Parliament and to the Council as provided for in Article 253~~247~~.

9. The reports and findings of the internal auditor, as well as the report of the Union institution concerned, shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.

10. Each Union institution shall provide its internal auditor with the resources required for the proper performance of the internal audit function and a mission charter detailing the tasks, rights and obligations of its internal auditor.

Article 120~~119~~

Work programme of the internal auditor

1. The internal auditor shall adopt the work programme and shall submit it to the Union institution concerned.

2. Each Union institution may ask its internal auditor to carry out audits not included in the work programme referred to in paragraph 1.

Article 121~~120~~

Independence of the internal auditor

1. The internal auditor shall enjoy complete independence in the conduct of the audits. Special rules applicable to the internal auditor shall be laid down by the Union institution concerned and shall be such as to guarantee that the internal auditor is totally independent in the performance of his or her duties, and to establish the internal auditor's responsibility.

2. The internal auditor shall not be given any instructions nor be restricted in any way as regards the performance of the functions which, by virtue of his or her appointment, are assigned to him or her under this Regulation.

3. If the internal auditor is a member of staff, he or she shall exercise exclusive audit functions in full independence and shall assume responsibility as laid down in the Staff Regulations.

Article 122~~121~~

Liability of the internal auditor

Each Union institution alone, proceeding in accordance with this Article, may act to have its internal auditor, as a member of staff, declared liable for his or her actions.

Each Union institution shall take a reasoned decision to open an investigation. That decision shall be communicated to the interested party. The Union institution concerned may put in charge of the investigation, under its direct responsibility, one or more officials of a grade equal to or higher than that of the member of staff concerned. In the course of the investigation, the views of the interested party shall be heard.

The investigation report shall be communicated to the interested party, who shall then be heard by the Union institution concerned on the subject of that report.

On the basis of the report and the hearing, the Union institution concerned shall adopt either a reasoned decision terminating the proceedings or a reasoned decision in accordance with Articles 22 and 86 of and Annex IX to the Staff Regulations. Decisions imposing disciplinary measures or financial penalties shall be notified to the interested party and communicated, for information purposes, to other Union institutions and the Court of Auditors.

The interested party may bring an action in respect of such decisions before the Court of Justice of the European Union, as provided for in the Staff Regulations.

Article 123~~122~~

Action before the Court of Justice of the European Union

Without prejudice to the remedies allowed by the Staff Regulations, the internal auditor may bring an action directly before the Court of Justice of the European Union in respect of any act relating to the performance of his or her duties as internal auditor. He or she shall lodge such an action within three months running from the calendar day on which the act in question came to his or her knowledge

Such actions shall be investigated and heard in accordance with Article 91(5) of the Staff Regulations.

Article 124~~123~~

Internal audit progress committees

1. Each Union institution shall establish an internal audit progress committee tasked with ensuring the independence of the internal auditor, monitoring the quality of the internal audit work and ensuring that internal and external audit recommendations are properly taken into account and followed up by its services.

2. The composition of the internal audit progress committee shall be decided by each Union institution taking into account its organisational autonomy and the importance of independent expert advice.

TITLE V

COMMON RULES

CHAPTER 1

RULES APPLICABLE TO DIRECT, INDIRECT AND SHARED MANAGEMENT

Article 125~~124~~

Scope

With the exception of Article 141~~138~~, references in this Title to legal commitments shall be construed as references to legal commitments, framework contracts and financial framework partnership agreements.

Article 126~~125~~

Forms of Union contribution

1. Union contributions under direct, shared and indirect management shall help achieve a Union policy objective and the results specified and may take any of the following forms:

(a) financing not linked to the costs of the relevant operations based on:

(i) the fulfilment of conditions set out in sector-specific rules or Commission decisions; or

(ii) the achievement of results measured by reference to previously set milestones or through performance indicators;

(b) reimbursement of eligible costs actually incurred;

(c) unit costs, which cover all or certain specific categories of eligible costs which are clearly identified in advance by reference to an amount per unit;

(d) lump sums, which cover in global terms all or certain specific categories of eligible costs which are clearly identified in advance;

(e) flat-rate financing, which covers specific categories of eligible costs, which are clearly identified in advance, by applying a percentage;

(f) a combination of the forms referred to in points (a) to (e).

Union contributions under point (a) of the first subparagraph of this paragraph shall, in direct and indirect management, be established in accordance with Article 185~~181~~, sector-specific rules or a Commission decision and, in shared management, in accordance with sector-specific rules. Union contributions under points (c), (d) and (e) of the first subparagraph of this paragraph shall, in direct and indirect management, be established in accordance with Article 185~~181~~ or sector-specific rules and, in shared management, in accordance with sector-specific rules.

2. When determining the appropriate form of a contribution, the potential recipients' interests and accounting methods shall be taken into account to the greatest extent possible.

3. The authorising officer responsible shall report on financing not linked to costs pursuant to points (a) and (f) of the first subparagraph of paragraph 1 of this Article in the annual activity report referred to in Article 74(9).

Article 127~~126~~

Cross-reliance on assessments

The Commission may rely in full or in part on assessments made by itself or other entities, including donors, insofar as such assessments were made on the compliance with conditions equivalent to those set out in this Regulation for the applicable method of implementation. To that end, the Commission shall promote the recognition of internationally accepted standards or international best practices.

Article 128~~127~~

Cross-reliance on audits

Without prejudice to existing possibilities for carrying out further audits, where an audit based on internationally accepted audit standards providing reasonable assurance has been conducted by an independent auditor on the financial statements and reports setting out the use of a Union contribution, that audit shall form the basis of the overall assurance, as further specified, where appropriate, in sector-specific rules, provided that there is sufficient evidence of the independence and competence of the auditor. To that end, the report of the independent auditor and the related audit documentation shall be made available on request to the European Parliament, the Commission, the Court of Auditors and the audit authorities of Member States.

Article 129~~128~~

Use of already available information

In order to avoid asking persons and entities receiving Union funds for the same information more than once, information already available at Union institutions, managing authorities or other bodies and entities implementing the budget shall be used to the extent possible.

Article 130~~129~~

Cooperation for protection of the financial interests of the Union

1. Any person or entity receiving Union funds shall fully cooperate in the protection of the financial interests of the Union and shall, as a condition for receiving the funds, grant the necessary rights and access required for the authorising officer responsible, for EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation

(EU) 2017/1939, for OLAF, for the Court of Auditors, and, where appropriate, for the relevant national authorities, to comprehensively exert their respective competences. In the case of OLAF, such rights shall include the right to carry out investigations, including on-the-spot checks and inspections, in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[76].

2. Any person or entity receiving Union funds under direct and indirect management shall agree in writing to grant the necessary rights as referred to in paragraph 1 and shall ensure that any third parties involved in the implementation of Union funds grant equivalent rights.

⇩ new

Article 131

Partial applicability of the exclusion system to shared management

The exclusion system shall be applicable in the context of Union funds disbursed pursuant to Article 62(1)(b), with regards to any person or entity applying for or receiving these Union funds, under the conditions set out in Article 139(2) of Section 2 of Chapter 2 of Title V.

🡻 2018/1046 (adapted)
⇨ new

CHAPTER 2

RULES APPLICABLE TO DIRECT AND INDIRECT MANAGEMENT

SECTION 1

RULES ON PROCEDURES AND MANAGEMENT

Article 132~~130~~

Financial framework partnerships

1. The Commission may establish financial framework partnership agreements for a long-term cooperation with persons and entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or with beneficiaries. Without prejudice to point (c) of paragraph 4 of this Article, financial framework partnership agreements shall be reviewed at least once during the term of every multiannual financial framework. Contribution agreements or grant agreements may be signed under such agreements.

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[76] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

2. The purpose of a financial framework partnership agreement shall be to facilitate the achievement of policy objectives of the Union by stabilising the contractual terms of the cooperation. The financial framework partnership agreement shall specify the forms of financial cooperation and shall include an obligation to set out, in the specific agreements signed under the financial framework partnership agreement, arrangements for monitoring the achievement of specific objectives. Those agreements shall also, on the basis of the results of an *ex ante* assessment, indicate whether the Commission may rely on the systems and the procedures of the persons or entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or of beneficiaries, including audit procedures.

3. With a view to optimising costs and benefits of audits and facilitate coordination, audit or verification agreements may be concluded with persons and entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or with beneficiaries. Such agreements shall be without prejudice to Articles 128~~127~~ and 130~~129~~.

4. In the case of financial framework partnerships implemented through specific grants:

(a) the financial framework partnership agreement shall, in addition to paragraph 2, specify:

(i) the nature of the actions or work programmes foreseen;

(ii) the procedure for awarding specific grants, in compliance with the principles and procedural rules in Title VIII;

(b) the financial framework partnership agreement and the specific grant agreement taken as a whole shall comply with the requirements of Article 205~~201~~;

(c) the duration of the financial framework partnership shall not exceed four years save in duly justified cases which are clearly indicated in the annual activity report referred to in Article 74(9);

(d) the financial framework partnership shall be implemented in compliance with the principles of transparency and equal treatment of applicants;

(e) the financial framework partnership shall be treated as a grant with regard to programming, *ex ante* publication and award;

(f) specific grants based on the financial framework partnership shall be subject to the *ex post* publication procedures set out in Article 38.

5. A financial framework partnership agreement implemented through specific grants may provide for the reliance on the systems and the procedures of the beneficiary in accordance with paragraph 2 of this Article, where those systems and procedures have been assessed in accordance with Article 158~~154~~(2), (3) and (4). In such a case, ~~point (d) of~~ Article 200~~196~~(1), point (d), shall not apply. Where the procedures of the beneficiary for providing financing to third parties referred to in ~~point (d) of the first subparagraph of~~ Article 158(4)~~154(4)~~, first subparagraph, point (d), were positively assessed by the Commission, Articles 208~~204~~ and 209~~205~~ shall not apply.

6. In the case of financial framework partnership agreement implemented through specific grants the verification of the financial and operational capacity referred to in Article ~~198~~ 202 shall be performed before signature of the financial framework partnership agreement. The Commission may rely on an equivalent verification of the financial and operational capacity carried out by other donors.

7. In the case of financial framework partnerships implemented through contribution agreements, the financial framework partnership agreement and the contribution agreement taken as a whole shall comply with Article 130~~129~~ and Article 159(8)~~155(6)~~.

Article 133~~131~~

Suspension, termination and reduction

1. Where an award procedure has been subject to irregularities or fraud, the authorising officer responsible shall suspend the procedure and may take any necessary measures, including the cancellation of the procedure. The authorising officer responsible shall inform OLAF immediately of suspected cases of ⇨ irregularities or ⇦ fraud.

2. Where, after the award, the award procedure proves to have been subject to irregularities or fraud, the authorising officer responsible may:

(a) refuse to enter into the legal commitment or cancel the award of a prize;

(b) suspend payments ⇨ , or delivery ⇦ ;

(c) suspend the implementation of the legal commitment;

(d) where appropriate, terminate the legal commitment in whole or with regard to one or more recipients.

3. The authorising officer responsible may suspend payments or ⇨ delivery or ⇦ the implementation of the legal commitment where:

(a) the implementation of the legal commitment proves to have been subject to irregularities, fraud or breach of obligations;

(b) it is necessary to verify whether presumed irregularities, fraud or breach of obligations have actually occurred;

(c) irregularities, fraud or breach of obligations call into question the reliability or effectiveness of the internal control systems of a person or entity implementing Union funds pursuant to ~~point (c) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c), or the legality and regularity of the underlying transactions.

Where the presumed irregularities, fraud or breach of obligations referred to in point (b) of the first subparagraph are not confirmed, the implementation or payments ⇨ or delivery ⇦ shall resume as soon as possible.

The authorising officer responsible may terminate the legal commitment in whole or with regard to one or more recipients in the cases referred to in points (a) and (c) of the first subparagraph.

4. In addition to measures referred to in paragraph 2 or 3, the authorising officer responsible may reduce the grant, the prize, the contribution under the contribution agreement ⇨ , the non-financial donation ⇦ or the price due under a contract in proportion to the seriousness of the irregularities, fraud or of the breach of obligations, including where the activities concerned were not implemented or were implemented poorly, partially or late.

In the case of financing referred to in ~~point (a) of the first subparagraph of~~ Article 126~~125~~(1), first subparagraph, point (a), the authorising officer responsible may reduce the contribution proportionally if the results have been achieved poorly, partially or late or the conditions have not been fulfilled.

5. Points (b), (c) and (d) of paragraph 2 and paragraph 3 shall not apply to applicants in a contest for prizes.

Article 134~~132~~

Record-keeping ⌦ and updating of postal and electronic addresses by recipients ⌫

1. Recipients shall keep records and supporting documents, including statistical records and other records pertaining to the funding, as well as records and documents in an electronic format, for five years following the payment of the balance or, in the absence of such payment, the transaction. This period shall be three years where the funding is of an amount lower than or equal to EUR 60000.

2. Records and documents pertaining to audits, appeals, litigation, the pursuit of claims relating to legal commitments or pertaining to OLAF investigations shall be retained until such audits, appeals, litigation, pursuit of claims or investigations have been closed. For records and documents pertaining to OLAF investigations, the obligation to retain shall apply once those investigations have been notified to the recipient.

3. Records and documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only. Where electronic versions exist, no originals shall be required where such documents meet the applicable legal requirements in order to be considered as equivalent to originals and to be relied on for audit purposes.

⇩ new

4. Recipients shall inform the Authorising Officer of any change in their postal and electronic addresses. This obligation shall continue to apply in the period of five years following the payment of the balance or, in the absence of such payment, the transaction. This period shall be three years where the funding is of an amount lower than or equal to EUR 60 000.

🡻 2018/1046

Article 135~~133~~

Adversarial procedure and means of redress

1. Before adopting any measure adversely affecting the rights of a participant or a recipient the authorising officer responsible shall ensure that the participant or the recipient has been given the opportunity to submit observations.

⇩ new

The first subparagraph shall not apply to award procedures, unless the participant was rejected based on points (b) or (c) of the first subparagraph of Article 144(1).

🡻 2018/1046

2. Where a measure of an authorising officer adversely affects the rights of a participant or a recipient, the act establishing that measure shall contain an indication of the available means of administrative and/or judicial redress for challenging it.

Article 136~~134~~

Interest rate rebates and guarantee fee subsidies

1. Interest rate rebates and guarantee fee subsidies shall be provided in accordance with Title X where they are combined in a single measure with financial instruments.

2. Where interest rate rebates and guarantee fee subsidies are not combined in a single measure with financial instruments they may be provided in accordance with Title VI or VIII.

⇩ new

Article 137

Protection of security and public order

1. Conditions for participation in Union award procedures shall comply with any international obligations or market access commitments of the Union in international agreements and shall not unduly restrict competition.

2. Where necessary and duly justified, the Commission shall indicate, in the financing decision referred to in Article 111, that specific award procedures affect security or public order, in particular concerning strategic assets and interests of the Union and/or its Member States, including the protection of the integrity of digital infrastructure, communication and information systems, and related supply chains. Where no financing decision is required in accordance with the second subparagraph of Article 111(1), this shall be set out by the authorising officer responsible in the documents related to the award procedure.

3. For the protection of security or public order, the authorising officer responsible may set specific conditions applicable to the award procedures and the legal commitments as referred to in Article 125. Any conditions shall be subject to paragraphs 1 and 2, and shall be strictly limited to what is necessary to protect security or public order of the Union and/or its Member States.

The specific conditions may apply to participation in award procedures and to the full life cycle of the resulting legal commitment and may concern:

(a) the entity, in particular the criteria for access to the procedure or eligibility based on the country of establishment of the participants, including the contractor or beneficiary and the affiliated entities and any subcontractors, as well as with respect to direct or indirect control of any of those participants by public or private entities of a third country;

(b) the activity, in particular with respect to the country of origin of the equipment, goods, supplies or services, as well as with respect to the place of performance, which may be limited to Member States;

(c) additional security requirements for the entities and activities, in particular conditions based on a security risk assessment of the equipment, goods, supplies or services, manufacturer, contractor, beneficiary, the affiliated entities or any subcontractors.

Any conditions provided for in a basic act may complement these specific conditions.

🡻 2018/1046
⇨ new

SECTION 2

EARLY-DETECTION AND EXCLUSION SYSTEM

Article 138~~135~~

Protection of the financial interests of the Union by means of detection of risks, exclusion and imposition of financial penalties

1. In order to protect the financial interests of the Union, the Commission shall set up and operate an early-detection and exclusion system.

The purpose of such a system shall be to facilitate:

(a) the early detection of persons or entities referred to in paragraph 2, which pose a risk to the financial interests of the Union;

(b) the exclusion of persons or entities referred to in paragraph 2, which are in one of the exclusion situations referred to in Article 139~~136~~(1);

(c) the imposition of a financial penalty on a recipient pursuant to Article 141~~138~~.

2. ⇨ In direct and indirect management, ⇦ t~~T~~he early-detection and exclusion system shall apply to:

(a) participants and recipients;

(b) entities on whose capacity the candidate or tenderer intends to rely or subcontractors of a contractor;

(c) any person or entity receiving Union funds where the budget is implemented pursuant to ~~point (c) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c), and to Article 158~~154~~(4) on the basis of information notified in accordance with Article 159(8)~~155(6)~~;

⇩ new

(d) guarantors;

🡻 2018/1046

~~(d) any person or entity receiving Union funds under financial instruments exceptionally implemented in accordance with point (a) of the first subparagraph of Article 62(1);~~

(e) participants or recipients on which entities implementing the budget in accordance with Article 63 have provided information, as transmitted by Member States in accordance with sector-specific rules, in accordance with ~~point (d) of~~ Article 145~~142~~(2), point (d);

(f) sponsors as referred to in Article 26;~~.~~

⇩ new

(g) beneficial owners and any affiliate of the person or entity excluded as referred to in Article 139(6);

(h) natural persons as referred to in Article 139(5), points (a) to (c);

(i) any person or entity receiving funds through any forms, including non-repayable financial support or loans or both, where the budget is implemented pursuant to Article 62(1), first subparagraph, point (a), with Member States. In such case, Article 139(2) shall apply.

For the purpose of the first subparagraph, point (i), persons or entities receiving funds shall include final recipients of funds, contractors, sub-contractors and the beneficial owners.

This is without prejudice of Article 158(7) and the rules laid down in contribution agreements, financing agreements and guarantee agreements, in the case of persons or entities receiving Union funds where the budget is implemented pursuant to Article 62(1), first subparagraph, point (c).

In shared management, the exclusion system shall apply to:

(j) any person or entity applying for funding under a programme in shared management, selected for such funding, or receiving such funding;

(k) entities on whose capacity the person or entity referred to in point (j) intends to rely, or subcontractors of such person or entity;

(l) beneficial owners and affiliated entities of the person or entity referred to in point (j).

🡻 2018/1046
⇨ new

3. The decision to register information concerning an early detection of the risks referred to in point (a) of the second subparagraph of paragraph 1 of this Article, to exclude persons or entities referred to in paragraph 2 and/or to impose a financial penalty on a recipient shall be taken by the authorising officer responsible. Information related to such decisions shall be registered in the database referred to in Article 145~~142~~(1). Where such decisions are taken on the basis of Article 139(5)~~136(4)~~, the information registered in the database shall include the information concerning the persons referred to in that paragraph.

4. The decision to exclude persons or entities referred to in paragraph 2 of this Article or to impose financial penalties on a recipient shall be based on a final judgment or, in the exclusion situations referred to in Article 139~~136~~(1), on a final administrative decision, or on a preliminary classification in law by the panel referred to in Article 146~~143~~ in the situations referred to in Article 139(3)~~136(2)~~ in order to ensure a centralised assessment of those

situations. In the cases referred to in Article 144~~141~~(1), the authorising officer responsible shall reject a participant from a given award procedure.

Without prejudice to Article 139(7) and (8)~~136(5)~~, the authorising officer responsible may take a decision to exclude a participant or recipient and/or to impose a financial penalty on a recipient and a decision to publish the related information, on the basis of a preliminary classification as referred to in Article 139(3)~~136(2)~~, only after having obtained a recommendation of the panel referred to in Article 146~~143~~.

Article 139~~136~~

Exclusion criteria and decisions on exclusions

1. The authorising officer responsible shall exclude a person or entity referred to in Article 138~~135~~(2) from participating in award procedures governed by this Regulation or from ~~being selected for~~ implementing Union funds where that person or entity is in one or more of the following exclusion situations:

(a) the person or entity is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended, or it is in any analogous situation arising from a similar procedure provided for under Union or national law;

(b) it has been established by a final judgment or a final administrative decision that the person or entity is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;

(c) it has been established by a final judgment or a final administrative decision that the person or entity is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person or entity belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:

(i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the legal commitment;

(ii) entering into agreement with other persons or entities with the aim of distorting competition;

(iii) violating intellectual property rights;

(iv) ⇨ unduly influence or ⇦ attempting to ⇨ unduly ⇦ influence the decision-making ~~of the authorising officer responsible during the award procedure~~ ⇨ process to obtain Union funds by taking advantage, through misrepresentation, of a conflict of interest involving any financial actors or other persons referred to in paragraph 1 of Article 61 ⇦;

(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;

⇩ new

(vi) incitement to discrimination, hatred or violence against a group of persons or a member of a group where such misconduct has an impact on the person or entity's integrity which negatively affects or concretely risks affecting the performance of the legal commitment;

🡻 2018/1046 (adapted)

(d) it has been established by a final judgment that the person or entity is guilty of any of the following:

(i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council[77] and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995[78];

(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997[79], or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA[80], or corruption as defined in other applicable laws;

(iii) conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA[81];

(iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council[82];

(v) terrorist offences or offences ~~linked~~ ⌦ related ⌫ to terrorist activities, as defined in Articles 3~~1~~ and 12~~3~~ of Directive 2017/541 of the European Parliament and of the Council[83] ~~Council Framework Decision~~

77 Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

78 OJ C 316, 27.11.1995, p. 48.

79 OJ C 195, 25.6.1997, p. 1.

80 Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

81 Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

82 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

83 Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

~~2002/475/JHA~~ [84], respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;

(vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council[85];

(e) the person or entity has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment financed by the budget which has:

(i) led to the early termination of a legal commitment;

(ii) led to the application of liquidated damages or other contractual penalties; or

(iii) been discovered by an authorising officer, OLAF or the Court of Auditors following checks, audits or investigations;

(f) it has been established by a final judgment or final administrative decision that the person or entity has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95[86];

(g) it has been established by a final judgment or final administrative decision that the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business;

(h) it has been established by a final judgment or final administrative decision that an entity has been created with the intent referred to in point (g);~~.~~

⇩ new

(i) the entity or person has resisted an investigation, check or audit carried out by an authorising officer or its representative or auditor, OLAF, EPPO, or the Court of Auditors. It shall be considered that the person or entity resists an investigation, check or audit when it carries out actions with the goal or effect of preventing, hindering or delaying the conduct of any of the activities needed to perform the investigation, check or audit. Such actions shall include, in particular, intentionally and without proper justification refusing to grant the necessary access to its premises or any other areas used for business purposes, concealing or refusing to disclose information or providing false information.

2. The authorising officer responsible shall exclude a person or entity referred to in Article 138(2)(i), (j), (k) and (l) where that person or entity is in one or more of the exclusion situations referred to in point (iv) of Article 139(1)(c) or points (d) of Article 139(1). In the

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84 ~~Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6–21)~~

85 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

86 Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).

absence of a final judgment or a final administrative decision, the decision shall be taken on the basis of a preliminary classification in law of a conduct as referred to in those points, having regard to the established facts and findings under Article 139, paragraph 3, fourth subparagraph, points (a) and (d), contained in the recommendation of the panel referred to in Article 146.

Before making the preliminary classification in law, the panel referred to in Article 146 shall give the Member State the opportunity to submit observations.

Without prejudice to Article 63(2), the Member State shall ensure that payments applications related to a person or entity that is in an exclusion situation, established in accordance with Article 139(1), point (a), are not submitted to the Commission for reimbursement.

🡻 2018/1046 (adapted)
⇨ new

3~~2~~. In the absence of a final judgment or, where applicable, a final administrative decision in the cases referred to in points (c), (d), (f), (g) and (h) of paragraph 1 of this Article, or in the case referred to in points (e) ⇨ and (i) ⇦ of paragraph 1 of this Article, the authorising officer responsible shall exclude a person or entity referred to in Article 138~~135~~(2) on the basis of a preliminary classification in law of a conduct as referred to in those points, having regard to established facts or other findings contained in the recommendation of the panel referred to in Article 146~~143~~.

The preliminary classification referred to in the first subparagraph of this paragraph does not prejudge the assessment of the conduct of the person or entity referred to in Article 138~~135~~(2) concerned by the competent authorities of Member States under national law. The authorising officer responsible shall review his or her decision to exclude the person or entity referred to in Article 138~~135~~(2) and/or to impose a financial penalty on a recipient without delay following the notification of a final judgment or a final administrative decision. In cases where the final judgment or the final administrative decision does not set the duration of the exclusion, the authorising officer responsible shall set that duration on the basis of established facts and findings and having regard to the recommendation of the panel referred to in Article 146~~143~~.

Where such final judgment or final administrative decision holds that the person or entity referred to in Article 138~~135~~(2) is not guilty of the conduct subject to a preliminary classification in law, on the basis of which that person or entity has been excluded, the authorising officer responsible shall, without delay, bring an end to that exclusion and/or reimburse, as appropriate, any financial penalty imposed.

The facts and findings referred to in the first subparagraph shall include, in particular:

(a) facts established in the context of audits or investigations carried out by EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the Court of Auditors, OLAF or the internal auditor, or any other check, audit or control performed under the responsibility of the authorising officer;

(b) non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;

(c) facts referred to in decisions of persons and entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1);

(d) information transmitted in accordance with ~~point (d) of~~ Article 145~~142~~(2), point (d) ⇨ , as well as facts and findings established in the context of administrative or judicial proceedings at national level as to the presence of the exclusion situations referred to in point (iv) of Article 139(1), point (c), or Article 139(1), points (d), ⇦ by entities implementing Union funds pursuant to ~~point (b) of the first subparagraph of~~ Article 62(1), first subparagraph, point (b);

(e) decisions of the Commission relating to the infringement of Union competition law or of a national competent authority relating to the infringement of Union or national competition law.

4~~3~~. Any decision of the authorising officer responsible taken under Articles 138~~135~~ to 145~~142~~ or, where applicable, any recommendation of the panel referred to in Article 146~~143~~, shall be made in compliance with the principle of proportionality, in particular taking into account:

(a) the seriousness of the situation, including the impact on the financial interests and image of the Union;

(b) the time which has elapsed since the relevant conduct;

(c) the duration of the conduct and its recurrence;

(d) whether the conduct was intentional or the degree of negligence shown;

(e) in the cases referred to in point (b) of paragraph 1, whether a limited amount is at stake;

(f) any other mitigating circumstances, such as:

(i) the degree of collaboration of the person or entity referred to in Article 138~~135~~(2) concerned with the relevant competent authority and the contribution of that person or entity to the investigation as recognised by the authorising officer responsible; or

(ii) the disclosure of the exclusion situation by means of a declaration as referred to in Article 140~~137~~(1);~~,~~ ⌧ or ⌫

⇩ new

(iii) the measures taken by the Member State against the person or entity pursuant to Article 63(2).

🡻 2018/1046 (adapted)
⇨ new

5~~4~~. The authorising officer responsible shall exclude a person or entity referred to in Article 138~~135~~(2) where:

(a) a natural or legal person who is a member of the administrative, management or supervisory body of the person or entity referred to in Article 138~~135~~(2), or who has powers of representation, decision or control with regard to that person or entity,

is in one or more of the situations referred to in points (c) to (~~h~~ ⇨ i ⇦) of paragraph 1 of this Article;

(b) a natural or legal person that assumes unlimited liability for the debts of the person or entity referred to in Article 138~~135~~(2) is in one or more of the situations referred to in point (a) or (b) of paragraph 1 of this Article;

(c) a natural person who is essential for the award or for the implementation of the legal commitment is in one or more of the situations referred to in points (c) to (~~h~~ ⇨ i ⇦) of paragraph 1 ⌦ of this Article ⌫ .

⇩ new

The authorising officer responsible shall ensure that the natural person that is in one or more of the situations referred to in the first subparagraph, is excluded.

6. When a person or entity referred to in Article 138(2), points (a) to (f) and (h) to (k), is excluded, the authorising officer responsible may also exclude or impose a financial penalty on the beneficial owner or any affiliate of the excluded entity. Any decision of the authorising officer responsible or, where applicable, any recommendation of the panel referred to in Article 146, shall take into consideration whether (i) the excluded entity has a functional independence from its affiliate and from the beneficial owner; (ii) the misconduct of the excluded entity is not due to a failure to supervise or to maintain adequate controls; (iii) the excluded entity has taken a commercial decision without the influence of any affiliate or of the beneficial owner.

🡻 2018/1046

7~~5~~. In the cases referred to in paragraph 3~~2~~ of this Article, the authorising officer responsible may exclude a person or entity referred to in Article 138~~135~~(2) provisionally without the prior recommendation of the panel referred to in Article 146~~143~~, where their participation in an award procedure or their selection for implementing Union funds would constitute a serious and imminent threat to the financial interests of the Union. In such cases, the authorising officer responsible shall immediately refer the case to the panel referred to in Article 146~~143~~ and shall take a final decision no later than 14 days after having received the recommendation of the panel.

⇩ new

8. At the request of the authorising officer, and where the nature or the circumstances of the case requires it, a referral for a recommendation of the panel referred in Article 146 may be treated by means of expedited procedure, without prejudice to the right to be heard of the person or entity concerned.

🡻 2018/1046

9~~6~~. The authorising officer responsible, having regard, where applicable, to the recommendation of the panel referred to in Article 146~~143~~, shall not exclude a person or

entity referred to in Article 138~~135~~(2) from participating in an award procedure or from being selected for implementing Union funds where:

(a) the person or entity has taken remedial measures as specified in paragraph 7 of this Article, to an extent that is sufficient to demonstrate its reliability. This point shall not apply in the case referred to in point (d) of paragraph 1 of this Article;

(b) it is indispensable to ensure the continuity of service, for a limited duration and pending the adoption of remedial measures specified in paragraph 7 of this Article;

(c) such an exclusion would be disproportionate on the basis of the criteria referred to in paragraph 3 of this Article.

In addition, point (a) of paragraph 1 of this Article shall not apply in the case of the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities or the liquidators in an insolvency procedure, an arrangement with creditors, or a similar procedure under Union or national law.

In the cases of non-exclusion referred to in the first and second subparagraphs of this paragraph, the authorising officer responsible shall specify the reasons for not excluding the person or entity referred to in Article 138~~135~~(2) and inform the panel referred to in Article 146~~143~~ of those reasons.

10~~7~~. The remedial measures referred to in point (a) of the first subparagraph of paragraph 6 shall include, in particular:

(a) measures to identify the origin of the situations giving rise to exclusion and concrete technical, organisational and personnel measures within the relevant business or activity area of the person or entity referred to in Article 138~~135~~(2), appropriate to correct the conduct and prevent its further occurrence;

(b) proof that the person or entity referred to in Article 138~~135~~(2) has undertaken measures to compensate or redress the damage or harm caused to the financial interests of the Union by the underlying facts giving rise to the exclusion situation;

(c) proof that the person or entity referred to in Article 138~~135~~(2) has paid or secured the payment of any fine imposed by the competent authority or of any taxes or social security contributions referred to in point (b) of paragraph 1 of this Article.

⇩ new

In order to comply with the requirements of paragraph 6 of this Article, the person or entity shall submit remedial measures that have been assessed by an external independent auditor or be considered sufficient by a decision of a national or Union authority. This is without prejudice to the assessment of the panel referred to in Article 146.

🡻 2018/1046
⇨ new

11~~8~~. The authorising officer responsible, having regard, where applicable, to the revised recommendation of the panel referred to in Article 146~~143~~, shall, without delay, revise its decision to exclude a person or entity referred to in Article 138~~135~~(2) *ex officio* or on request from that person or entity, where the latter has taken remedial measures sufficient to

demonstrate its reliability or has provided new elements demonstrating that the exclusion situation referred to in paragraph 1 of this Article no longer exists.

129. In the case referred to in point (b) of Article 138135(2), the authorising officer responsible shall require that the candidate or tenderer replaces an entity or a subcontractor on whose capacity it intends to rely, which is in an exclusion situation referred to in paragraph 1 of this Article.

Article 140137

Declaration and evidence of absence of an exclusion situation

1. A participant shall declare whether it is in one of the situations referred to in Articles 139136(1) and 144141(1), and, where applicable, whether it has taken any remedial measures referred to in point (a) of the first subparagraph of Article 139(9)136(6).

A participant shall also declare whether the following persons or entities are in one of the exclusion situations referred to in points (c) to (h) of Article 139136(1):

(a) natural or legal persons that are members of the administrative, management or supervisory body of the participant or that have powers of representation, decision or control with regard to that participant;

(b) beneficial owners, as defined in point (6) of Article 3 of Directive (EU) 2015/849, of the participant.

The participant or the recipient shall without delay inform the authorising officer responsible of any changes in the situations as declared.

Where appropriate, the candidate or tenderer shall provide the same declarations referred to in the first and second subparagraphs signed by a subcontractor or by any other entity on whose capacity it intends to rely, as the case may be.

The authorising officer responsible shall not request the declarations referred to in the first and second subparagraph when such declarations have already been submitted for the purposes of another award procedure, provided that the situation has not changed, and that the time that has elapsed since the issuing date of the declarations does not exceed one year.

The authorising officer responsible may waive the requirements under the first and second subparagraphs for very low value contracts the value of which does not exceed the amount referred to in point 14.4 of Annex I.

2. Whenever requested by the authorising officer responsible and where this is necessary to ensure the proper conduct of the procedure, the participant, the subcontractor or the entity on whose capacity a candidate or tenderer intends to rely shall provide:

(a) appropriate evidence that it is not in one of the exclusion situations referred to in Article 139136(1);

(b) information on natural or legal persons that are members of the administrative, management or supervisory body of the participant or that have powers of representation, decision or control with regard to that participant, including persons and entities within the ownership and control structure and beneficial owners, and appropriate evidence that none of those persons are in one of the exclusion situations referred to in points (c) to (f) of Article 139136(1).

(c) appropriate evidence that natural or legal persons that assume unlimited liability for the debts of that participant are not in an exclusion situation referred to in point (a) or (b) of Article 139~~136~~(1).

3. Where applicable and in accordance with national law, the authorising officer responsible may accept as appropriate evidence that a participant or an entity referred to in paragraph 2 is not in one of the exclusion situations referred to in points (a), (c), (d), (f), (g) and (h) of Article 139~~136~~(1), a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in its country of establishment showing that those requirements are satisfied.

The authorising officer responsible may accept as appropriate evidence that a participant or an entity referred to in paragraph 2 is not in one of the exclusion situations referred to in points (a) and (b) of Article 139~~136~~(1), a recent certificate issued by the competent authority of the country of establishment. Where such types of certificates are not issued in the country of establishment, the participant may provide a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

4. The authorising officer responsible shall waive the obligation of a participant or an entity referred to in paragraph 2 to submit the documentary evidence referred to in paragraphs 2 and 3:

(a) if he or she can access such evidence on a national database free of charge;

(b) if such evidence has already been submitted for the purposes of another procedure and provided that any submitted documents are still valid and that the time that has elapsed since the issuing date of the documents does not exceed one year;

(c) if he or she recognises that there is a material impossibility to provide such evidence.

5. Paragraphs 1 to 4 of this Article shall not apply to persons and entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or to Union bodies referred to in Articles 70 and 71.

For financial instruments and ⇨ budgetary guarantees ⇦ and in the absence of rules and procedures fully equivalent to those referred to in ~~point (d) of the first subparagraph of~~ Article 158~~154~~(4), first subparagraph, point (d), final recipients and intermediaries shall provide the person or entity implementing Union funds pursuant to ~~point (c) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c), with a signed declaration on honour confirming that they are not in one of the situations referred to in ~~points (a) to (d), (g) and (h) of~~ Article 139~~136~~(1), points (a) to (d), (g) and (h), or ~~points (b) and (c) of the first subparagraph of~~ Article 144~~141~~(1), first subparagraph, points (b) and (c), or in a situation deemed equivalent following the assessment carried out in accordance with Article 158~~154(4)~~.

Where, exceptionally, financial instruments are implemented pursuant to point (a) of the first subparagraph of Article 62(1), final recipients shall provide financial intermediaries with a signed declaration on honour confirming that they are not in one of the situations referred to in points (a) to (d), (g) and (h) of Article 139~~136~~(1) or points (b) and (c) of the first subparagraph of Article 144~~141~~(1).

Article 141~~138~~

Financial penalties

1. In order to ensure a deterrent effect, the authorising officer responsible may, having regard, where applicable, to the recommendation of the panel referred to in Article 146~~143~~, impose a financial penalty on a recipient with whom a legal commitment has been entered into and who is in an exclusion situation referred to in point (c), (d), (e) or (f) of Article 139~~136~~(1).

Regarding the exclusion situations referred to in points (c) to (f) of Article 139~~136~~(1), the financial penalty may be imposed as an alternative to a decision to exclude a recipient, where such an exclusion would be disproportionate on the basis of the criteria referred to in Article 139(4)~~136(3)~~.

Regarding the exclusion situations referred to in points (c), (d) and (e) of Article 139~~136~~(1), the financial penalty may be imposed in addition to an exclusion where this is necessary to protect the financial interests of the Union, due to the systemic and recurrent conduct engaged in by the recipient with the intention to unduly obtain Union funds.

Notwithstanding the first, second and third subparagraphs of this paragraph, a financial penalty shall not be imposed on a recipient who in accordance with Article 140~~137~~ has disclosed that it is in an exclusion situation.

2. The amount of the financial penalty shall not exceed 10 % of the total value of the legal commitment. In the event of a grant agreement signed with a number of beneficiaries the financial penalty shall not exceed 10 % of the grant amount the beneficiary concerned is entitled to in accordance with the grant agreement.

Article 142~~139~~

Duration of exclusion and limitation period

1. The duration of exclusion shall not exceed any of the following:

(a) the duration, if any, set by the final judgement or the final administrative decision of a Member State;

(b) in the absence of a final judgment or a final administrative decision:

(i) five years for the cases referred to in ~~point (d) of~~ Article 139~~136~~(1), points (d) ⇨ and (i) ⇦;

(ii) three years for the cases referred to in points (c) and (e) to (h) of Article 139~~136~~(1).

A person or entity referred to in Article 138~~135~~(2) shall be excluded as long as it is in one of the exclusion situations referred to in points (a) and (b) of Article 139~~136~~(1).

2. The limitation period for excluding and/or imposing financial penalties on a person or entity referred to Article 138~~135~~(2) shall be five years calculated from any of the following:

(a) the date of the conduct giving rise to exclusion or, in the case of continued or repeated acts, the date on which the conduct ceases, in the cases referred to in points (b) to (e) and (g) and (h) of Article 139~~136~~(1);

(b) the date of the final judgment of a national jurisdiction or of the final administrative decision in the cases referred to in points (b), (c), (d), (g) and (h) of Article 139~~136~~(1).

The limitation period shall be interrupted by an act of a national authority, of the Commission, of OLAF, of EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, of the panel referred to in Article

146~~143~~ of this Regulation or of any entity involved in budget implementation, if such an act is notified to the person or entity referred to in Article 138~~135~~(2) of this Regulation and is relating to investigations or judicial proceedings. A new limitation period shall begin to run on the day following the interruption.

For the purpose of point (f) of Article 139~~136~~(1) of this Regulation, the limitation period to exclude a person or entity referred to in Article 138~~135~~(2) of this Regulation and/or impose financial penalties on a recipient provided for in Article 3 of Regulation (EC, Euratom) No 2988/95 shall apply.

Where the conduct of a person or entity referred to in Article 138~~135~~(2) of this Regulation concerned qualifies under several of the grounds listed in Article 139~~136~~(1) of this Regulation, the limitation period applicable to the most serious of those grounds shall apply.

Article 143~~140~~

Publication of exclusion and financial penalties

1. In order to, where necessary, reinforce the deterrent effect of the exclusion and/or financial penalty, the Commission shall, subject to a decision of the authorising officer responsible, publish on its website the following information related to the exclusion and, where applicable, the financial penalty in the cases referred to in points (c) to (h) of Article 139~~136~~(1):

(a) the name of the person or entity referred to in Article 138~~135~~(2) concerned;

(b) the exclusion situation;

(c) the duration of the exclusion and/or the amount of the financial penalty.

Where the decision on the exclusion and/or financial penalty has been taken on the basis of a preliminary classification as referred to in Article 139(3)~~136(2)~~, the publication shall indicate that there is no final judgment or, where applicable, final administrative decision. In such cases, information about any appeals, their status and their outcome, as well as any revised decision of the authorising officer responsible shall be published without delay. Where a financial penalty has been imposed, the publication shall also indicate whether that penalty has been paid.

The decision to publish the information shall be taken by the authorising officer responsible either following the relevant final judgment or, where applicable, final administrative decision, or following the recommendation of the panel referred to in Article 146~~143~~, as the case may be. That decision shall take effect three months after its notification to the person or entity concerned, as referred to in Article 138~~135~~(2).

The information published shall be removed as soon as the exclusion has come to an end. In the case of a financial penalty, the publication shall be removed six months after payment of that penalty.

Where personal data are concerned, the authorising officer responsible shall in accordance with Regulation (EU) 2018/1725~~(EC) No 45/2001~~ inform the person or entity concerned, as referred to in Article 138~~135~~(2) of this Regulation, of their rights under the applicable data protection rules and of the procedures available for exercising those rights.

2. The information referred to in paragraph 1 of this Article shall not be published in any of the following circumstances:

(a) where it is necessary to preserve the confidentiality of an investigation or of national judicial proceedings;

(b) where publication would cause disproportionate damage to the person or entity referred to in Article 138~~135~~(2) concerned or would otherwise be disproportionate on the basis of the proportionality criteria set out in Article 139(4)~~136(3)~~ and having regard to the amount of the financial penalty;

(c) where a natural person is concerned, unless the publication of personal data is justified by exceptional circumstances, inter alia, by the seriousness of the conduct or its impact on the financial interests of the Union. In such cases, the decision to publish the information shall duly take into consideration the right to privacy and other rights provided for in Regulation (EU) 2018/1725~~(EC) No 45/2001~~.

Article 144~~141~~

Rejection from an award procedure

1. The authorising officer responsible shall reject from an award procedure a participant who:

(a) is in an exclusion situation established in accordance with Article 139~~136~~;

(b) has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information;

(c) was previously involved in the preparation of documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition, that cannot be remedied otherwise;~~.~~

⇩ new

(d) has conflicting interests which may negatively affect the performance of the contract in accordance with point 20.6 of Annex I.

🡻 2018/1046
⇨ new

The authorising officer responsible shall communicate to the other participants in the award procedure the relevant information exchanged in the context of or resulting from the involvement of the participant in the preparation of the award procedure as referred to in point (c) of the first subparagraph. Prior to any such rejection the participant shall be given the opportunity to prove that its involvement in preparing the award procedure does not breach the principle of equality of treatment.

2. Article 135~~133~~(1) shall apply unless the rejection has been justified in accordance with point (a) of the first subparagraph of paragraph 1 of this Article by a decision concerning exclusion taken with regard to the participant, following an examination of its observations.

Article 145~~142~~

The early-detection and exclusion system

1. Information exchanged within the early-detection and exclusion system referred to in Article 138~~135~~ shall be centralised in a database set up by the Commission ('the database')

and shall be managed in accordance with the right to privacy and other rights provided for in Regulation (EU) 2018/1725~~(EC) No 45/2001~~.

Information on cases of early detection, exclusion and/or financial penalties shall be entered in the database by the authorising officer responsible after notifying the person or entity concerned, as referred to in Article 138~~135~~(2). Such notification may be deferred in exceptional circumstances, where there are compelling legitimate grounds to preserve the confidentiality of an investigation or of national judicial proceedings, until such compelling legitimate grounds to preserve the confidentiality cease to exist.

In accordance with Regulation (EU) 2018/1725~~(EC) No 45/2001~~, the Commission shall upon request inform the person or entity subject to the early-detection and exclusion system, as referred to in Article 138~~135~~(2), of the data stored in the database relating to that person or entity.

The information contained in the database shall be updated, where appropriate, following a rectification, an erasure or any modification of data. It shall only be published in accordance with Article 143~~140~~.

2. The early-detection and exclusion system shall be based on facts and findings as referred to in the fourth subparagraph of Article 139(3)~~136(2)~~ and on the transmission of information to the Commission, in particular, by:

(a) EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, or OLAF in accordance with Regulation (EU, Euratom) No 883/2013 where an investigation completed or in progress shows that it might be appropriate to take precautionary measures or actions to protect the financial interests of the Union, with due regard to the respect for procedural and fundamental rights, and to the protection of whistle-blowers;

(b) an authorising officer of the Commission, of a European office set up by the Commission or of an executive agency;

(c) a Union institution, a European office, an agency other than those referred to in point (b) of this paragraph, or a body or a person entrusted with implementation of CFSP actions;

(d) entities implementing the budget in accordance with Article 63, in cases of detected fraud and/or irregularity and their follow up, where the transmission of information is required by sector-specific rules;

(e) persons or entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1), in cases of detected fraud and/or irregularity and their follow up.

3. Except where information is to be submitted in accordance with sector-specific rules, the information to be transmitted pursuant to paragraph 2 of this Article shall include:

(a) the identification of the entity or person concerned;

(b) a summary of the risks detected or the facts in question;

(c) information that could assist the authorising officer in carrying out the verification referred to in paragraph 4 of this Article or in taking a decision on exclusion as referred to in Article 139~~136~~(1) or (3~~2~~), or a decision to impose a financial penalty as referred to in Article 141~~138~~;

(d) where applicable, information on any special measures necessary to ensure the confidentiality of the information transmitted, including measures for the safeguarding of evidence to protect the investigation or the national judicial proceedings.

4. The Commission shall without delay transmit the information referred to in paragraph 3 to its authorising officers and those of its executive agencies, all other Union institutions, Union bodies, European offices and agencies through the database referred to in paragraph 1 in order to allow them to carry out the necessary verification in respect of their ongoing award procedures and existing legal commitments.

In carrying out that verification, the authorising officer responsible shall exercise his or her powers as set out in Article 74 and shall not go beyond what is foreseen in the terms and conditions of the award procedure and legal commitments.

The retention period for the information related to the early detection transmitted in accordance with paragraph 3 of this Article shall not exceed one year. If, during that period, the authorising officer responsible requests the panel to issue a recommendation in a case concerning exclusion or financial penalties, the retention period may be extended until such time as the authorising officer responsible has taken a decision.

5. All persons and entities involved in budget implementation in accordance with Article 62 shall be granted access by the Commission to the information on decisions on exclusion pursuant to Article 139~~136~~ ~~to enable them to verify whether there is an exclusion in the system with a view to taking this information into account, as appropriate and on their own responsibility, when awarding contracts in budget implementation~~.

⇩ new

Except where the budget is entrusted to persons or entities in Article 62, paragraph 1, point (c), according to the modalities referred to in Article 158(4), all persons and entities involved in budget implementation shall enforce such decisions with regards to the person or entity applying for, selected or receiving Union funds.

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6. As part of the annual report of the Commission to the European Parliament and to the Council pursuant to Article 325(5) TFEU, the Commission shall provide aggregate information on the decisions taken by the authorising officers under Articles 138~~135~~ to 145~~142~~ of this Regulation. That report shall also provide further information on any decisions taken by the authorising officers pursuant to point (b) of the first subparagraph of Article 139(9)~~136(6)~~ of this Regulation and Article 143~~140~~(2) of this Regulation and on any decisions by the authorising officers to deviate from the recommendation of the panel pursuant to the third subparagraph of Article 146~~143~~(6) of this Regulation.

The information referred to in the first subparagraph of this paragraph shall be provided with due regard to confidentiality requirements and shall, in particular, not allow for the identification of the person or entity concerned, as referred to in Article 138~~135~~(2).

Article 146~~143~~

Panel

1. A panel shall be convened at the request of an authorising officer of any Union institution, Union body, European office or body or person entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU.

2. The panel shall be composed of:

(a) a standing high-level independent chair appointed by the Commission;

⇩ new

(b) a standing high-level independent vice-chair appointed by the Commission, who shall deputise for the chair;

🡻 2018/1046

(c~~b~~) two permanent representatives of the Commission as the owner of the early-detection and exclusion system, who shall express a joint position; and

(d~~c~~) one representative of the requesting authorising officer.

The composition of the panel shall ensure the appropriate legal and technical expertise. The panel shall be assisted by a permanent secretariat, provided by the Commission, which shall ensure the continuous administration of the panel.

3. The Chair shall be chosen from among former members of the Court of Justice of the European Union, the Court of Auditors or former officials who have had at least the rank of Director-General in a Union institution other than the Commission. He or she shall be selected on the basis of his or her personal and professional qualities, extensive experience in legal and financial matters and proven competence, independence and integrity. The term of office shall be five years and shall not be renewable. The Chair shall be appointed as special adviser within the meaning of Article 5 of the Conditions of Employment of Other Servants of the European Union. The Chair shall preside all sessions of the panel. He or she shall be independent in the performance of his or her duties. He or she shall not have a conflict of interests between his or her duties as Chair and any other official duties.

4. The rules of procedure of the panel shall be adopted by the Commission.

5. The panel shall uphold the right of the person or entity concerned, as referred to in Article 138~~135~~(2), to submit observations on the facts or findings referred to in Article 139(3)~~136(2)~~ and on the preliminary classification in law before adopting its recommendations. The right to submit observations may be deferred in exceptional circumstances where there are compelling legitimate grounds to preserve the confidentiality of an investigation or of national judicial proceedings, until such legitimate grounds cease to exist.

6. The recommendation of the panel to exclude and/or impose a financial penalty shall, where applicable, contain the following elements:

(a) the facts or findings referred to in Article 139(3)~~136(2)~~ and their preliminary classification in law;

(b) an assessment of the need to impose a financial penalty and its amount;

(c) an assessment of the need to exclude the person or entity referred to in Article 138~~135~~(2) and, in that case, the suggested duration of such an exclusion;

(d) an assessment of the need to publish the information related to the person or entity referred to in Article 138~~135~~(2) who is excluded and/or subject to a financial penalty;

(e) an assessment of remedial measures taken by the person or entity referred to Article 138~~135~~(2), if any.

Where the authorising officer responsible envisages taking a more severe decision than what has been recommended by the panel, he or she shall ensure that such a decision is taken with due respect for the right to be heard and for the rules of personal data protection.

Where the authorising officer responsible decides to deviate from the recommendation of the panel, he or she shall justify such decision to the panel.

7. The panel shall revise its recommendation during the exclusion period on request from the authorising officer responsible in the cases referred to in Article 139(11)~~136(8)~~ or following the notification of a final judgment or a final administrative decision establishing the grounds for exclusion where such a judgment or decision does not set the duration of the exclusion, as referred to in the second subparagraph of Article 139(3)~~136(2)~~.

8. The panel shall notify the requesting authorising officer without delay of its revised recommendation, following which the authorising officer shall review his or her decision.

9. The Court of Justice of the European Union shall have unlimited jurisdiction to review a decision whereby the authorising officer excludes a person or entity referred to in Article 138~~135~~(2) and/or imposes a financial penalty on a recipient, including annulling the exclusion, reducing or increasing its duration and/or annulling, reducing or increasing the financial penalty imposed. Article 22(1) of Regulation (EC) No 58/2003 shall not apply when the decision of the authorising officer to exclude or impose a financial penalty is taken on the basis of a recommendation of the panel.

⇩ new

Article 147

Communication in the context of early detection and exclusion procedures

1. All communication, in particular notification of decisions, letters, documents or information related to early detection or exclusion procedures shall be made in writing in paper or electronic format.

2. Notifications for communications which create legal effects or trigger time limits shall be made on paper by registered post with acknowledgement of receipt or by courier service with proof of delivery, through a secure electronic exchange system pursuant to Article 152, or by email or other electronic means.

3. Communications shall:

a) When made on paper, be considered notified when they have been delivered to the latest available postal address indicated by the recipient party. Notifications by registered post with acknowledgement of receipt or by courier service with proof of

delivery shall be considered to have been received either on the delivery date registered by the postal service or by courier service or after the time limit for collection at the post office, or, in the absence of such time limit, three weeks after the attempted delivery, provided that the notification has been sent a second time and announced electronically to the latest available e-mail address indicated by the recipient party.

b) When made through a secure electronic exchange system referred to in Article 152, be considered to have been notified on the date and time they are accessed, as indicated by the time logs in the system. Notifications that have not been accessed within 10 days after sending, shall be presumed to have been accessed.

c) When made by email or other electronic means, be deemed to be notified on the day of dispatch of the e-mail, provided that it is sent to the latest available e-mail address indicated by the recipient party and the sending party does not receive a non-delivery report.

Where the addressee can demonstrate that he or she has been prevented by circumstances outside his or her control from accessing a communication, the legal effects of the communication shall start running from the moment on which the addressee can demonstrate that he or she has gained access to its content.

↓ 2018/1046
⇨ new

Article 148~~144~~

Functioning of the database for the early-detection and exclusion system

1. Information requested from the entities referred to in point (d) of Article 145~~142~~(2) shall be transmitted only through the automated information system established by the Commission currently in use for reporting of fraud and irregularities ('the Irregularity Management System'), in accordance with sector-specific rules.

2. The use of the data received through the Irregularity Management System shall take into consideration the status of the national procedure that existed at the time when the information was submitted. Such use shall be preceded by a consultation of the Member State that has submitted the relevant data through the Irregularity Management System.

Article 149~~145~~

Exception applicable to the Joint Research Centre

Articles 138~~135~~ to 148~~144~~ shall not apply to the JRC.

SECTION 3

IT SYSTEMS AND E-GOVERNMENT

Article 150~~146~~

Electronic management of operations

1. Where revenue and expenditure operations or document exchanges are managed by means of computer systems, documents may be signed by a computerised or electronic

procedure providing authentication of the signatory. Such computer systems shall include a full and up-to-date description of the system defining the content of all data fields, describing how each individual operation is treated and explaining in detail how the computer system guarantees the existence of a complete audit trail for each operation. ⇨ Electronic information may be subject to digital controls and audits as referred to in Article 36(9). ⇦

2. Subject to the prior agreement of the Union institutions and Member States concerned, any transmission of documents between them may be done by electronic means.

Article 151~~147~~

e-Government

1. Union institutions, the executive agencies and the Union bodies referred to in Articles 70 and 71 shall establish and apply uniform standards for the electronic exchange of information with participants. In particular, they shall, to the greatest possible extent, design and implement solutions for the submission, storage and processing of data submitted in award procedures, and to that end, put in place a single 'electronic data interchange area' for participants. The Commission shall report regularly to the European Parliament and to the Council on the progress made in that regard.

2. Under shared management, all official exchanges of information between Member States and the Commission shall be carried out by means indicated in sector-specific rules. Those rules shall provide for interoperability of data gathered or received, and transmitted in the management of the budget.

Article 152~~148~~

Electronic exchange systems

1. All exchanges with recipients ⇨ and participants ⇦ , including the entering into legal commitments and any amendments thereto, may be done through electronic exchange systems.

2. Electronic exchange systems shall satisfy the following conditions:

(a) only authorised persons may have access to the system and to documents transmitted through it;

(b) only authorised persons may electronically sign or transmit a document through the system;

(c) authorised persons are identified through the system by established means;

(d) the time and date of the electronic transaction are determined precisely;

(e) the integrity of documents is preserved;

(f) the availability of documents is preserved;

(g) where appropriate, the confidentiality of documents is preserved;

(h) the protection of personal data in accordance with Regulation (EU) 2018/1725~~(EC) No 45/2001~~ is ensured.

⇩ new

3. The electronic exchange system may also be used by the authorising officer responsible to communicate with participants, recipients or other persons or entities set out in Article 138(2):

(a) of their inclusion in the early-detection and exclusion system database in the cases referred to in Article 138(1), point (a);

(b) the content of adversarial letters and other information or requests issued by the panel referred to in Article 146, in order to safeguard the rights referred to in Article 146(5), and in the exercise of the competences under this Regulation;

(c) the content of decisions and other information or requests by the authorising officer responsible, in the exercise of the competencies under Articles 138 to 148 of this Regulation.

🡻 2018/1046 (adapted)

4~~3~~. Data sent or received through such a system shall enjoy legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed original and shall enjoy legal presumption of its authenticity and integrity, provided that the document does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of paragraph 2 shall have a legal effect equivalent to handwritten signatures.

Article 153~~149~~

Submission of application documents

1. The arrangements for the submission of application documents shall be determined by the authorising officer responsible who may choose an exclusive method of submission.

The means of communication chosen shall be such as to ensure that there is genuine competition and that the following conditions are satisfied:

(a) each submission contains all the information required for its evaluation;

(b) the integrity of data is preserved;

(c) the confidentiality of application documents is preserved;

(d) the protection of personal data in accordance with Regulation (EU) 2018/1725~~(EC) No 45/2001~~ is ensured.

2. The Commission shall ensure by appropriate means and in accordance with Article 151~~147~~(1) that participants may submit the application documents and any supporting evidence in an electronic format. Any electronic communication system used to support communications and information exchanges shall be non-discriminatory, generally available and interoperable with information and communication technology products in general use and shall not restrict participants' access to the award procedure.

The Commission shall report regularly to the European Parliament and to the Council on the progress of the application of this paragraph.

3. Devices for the electronic receipt of application documents shall guarantee, through technical means and appropriate procedures, that:

(a) the participant can be authenticated with certainty;

(b) the exact time and date of the receipt of application documents can be determined precisely;

(c) only authorised persons have access to the data transmitted and may set or change the dates for opening the application documents;

(d) during the different stages of the award procedure only authorised persons have access to all data submitted and may give access to the data as needed for the procedure;

(e) it is reasonably ensured that any attempt to infringe any of the conditions set out in points (a) to (d) can be detected.

The first subparagraph shall not apply to contracts below the thresholds referred to in Article 179~~175~~(1).

4. Where the authorising officer responsible authorises submission of application documents by electronic means, the electronic documents submitted by means of such systems shall be deemed to be the originals.

5. Where submission is by letter, participants may choose to submit application documents:

(a) either by post or by courier service, in which case the evidence ⌦ of submission ⌫ shall be constituted by the postmark or the date of the deposit slip;

(b) by hand-delivery to the premises of the authorising officer responsible by the participant in person or by an agent, in which case the evidence ⌦ of submission ⌫ shall be constituted by the acknowledgement of receipt.

⇩ new

For contracts awarded by the Union delegations or awarded exclusively in the interest of Union delegations in third countries, the contracting authority may restrict the submission by letter to only one of the means indicated above.

🡻 2018/1046

6. By submitting application documents, participants accept to receive notification of the outcome of the procedure by electronic means.

⇩ new

7. Participants or recipients or any other persons or entities included in Article 138(2), accept to receive notifications in the terms of the specific legal commitment or concession contract, including any notification concerning the application of any of the measures referred

to in Article 138(1). Where persons of entities referred to in Article 138(2), point (b), are concerned, the applicant shall be responsible for communicating to the contracting authority the address of the entity concerned.

Unless exchanges are made through the electronic exchange system referred to in Article 152, where the person or entity has been notified by electronic means to the address indicated in the application, and failing the express acknowledgement of receipt of the electronic notification, it shall be presumed that the person of entity has been put in a position to take cognisance of the content of the exchange and therefore it shall be considered as notified.

🡻 2018/1046
⇨ new

8~~7~~. Paragraphs 1 to ~~6~~ ⇨ 7 ⇦ of this Article shall not apply to the selection of persons or entities implementing Union funds pursuant to ~~point (c) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c).

CHAPTER 3

RULES APPLICABLE TO DIRECT MANAGEMENT

Article 154~~150~~

Evaluation committee

1. Application documents shall be evaluated by an evaluation committee.

2. The evaluation committee shall be appointed by the authorising officer responsible.

The evaluation committee shall be made up of at least three persons.

3. The members of the evaluation committee evaluating grant applications ⇨, applications for non-financial donations ⇦ or tenders shall represent at least two organisational entities of Union institutions or Union bodies referred to in Articles 68, ⇨ 69, ⇦ 70 and 71 with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. Where representations and local units outside the Union, such as a Union delegation, office or branch office in a third country, and Union bodies referred to in Articles 68, ⇨ 69, ⇦ 70 and 71 have no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

External experts may assist the evaluation committee pursuant to a decision of the authorising officer responsible.

Members of the evaluation committee may be external experts where that possibility is provided for in the basic act.

4. The members of the evaluation committee evaluating applications in a contest for prizes may be persons referred to in the first subparagraph of paragraph 3 or external experts.

5. The members of the evaluation committee and the external experts shall comply with Article 61.

Article 155~~151~~

Clarification and correction of application documents

The authorising officer responsible may correct obvious clerical errors in application documents after confirmation of the intended correction by the participant.

Where a participant fails to submit evidence or to make statements, the evaluation committee or, where appropriate, the authorising officer responsible shall, except in duly justified cases, ask the participant to provide the missing information or to clarify supporting documents.

Such information, clarification or confirmation shall not substantially change application documents.

Article 156~~152~~

Guarantees

1. With the exception of contracts and grants the value of which does not exceed EUR 60000, the authorising officer responsible may, if proportionate and subject to the authorising officer's risk analysis, require a guarantee to be lodged:

(a) by contractors or beneficiaries in order to limit the financial risks connected with a payment of pre-financing ('guarantee on pre-financing');

(b) by contractors to ensure compliance with substantial contractual obligations in the case of works, supplies or complex services ('performance guarantee');

(c) by contractors to ensure full performance of the contract during the contract liability period ('retention money guarantee').

The JRC shall be exempted from lodging guarantees.

As an alternative to requesting a guarantee on pre-financing, for grants, the authorising officer responsible may decide to split the payment into several instalments.

2. The authorising officer responsible shall decide whether the guarantee is to be denominated in euro or in the currency of the contract or of the grant agreement.

3. The guarantee shall be issued by a bank or by an authorised financial institution accepted by the authorising officer responsible.

At the request of the contractor or the beneficiary and provided it is accepted by the authorising officer responsible:

(a) the guarantees referred to points (a), (b) and (c) of the first subparagraph of paragraph 1 may be replaced by a joint and several guarantee of the contractor or the beneficiary and a third party;

(b) the guarantee referred to in point (a) of the first subparagraph of paragraph 1 may be replaced by an irrevocable and unconditional joint guarantee of the beneficiaries who are parties to the same grant agreement.

4. The guarantee shall have the effect of making the bank or financial institution or the third party provide irrevocable collateral security, or stand as first-call guarantor of the contractor's or beneficiary's obligations.

5. Where, in the course of implementation of the contract or the grant agreement, the authorising officer responsible discovers that a guarantor is not or is no longer authorised to issue guarantees in accordance with the applicable national law, he or she shall require that the contractor or the beneficiary replaces the guarantee issued by such a guarantor.

Article 157~~153~~

Guarantee on pre-financing

1. A guarantee on pre-financing shall be for an amount not exceeding the amount of the pre-financing and shall be valid for a period sufficiently long to allow it to be activated.

2. The guarantee on pre-financing shall be released as and when the pre-financing is deducted from interim payments or payments of the balance to the contractor or the beneficiary in accordance with the terms of the contract or the conditions of the grant agreement.

TITLE VI

INDIRECT MANAGEMENT

Article 158~~154~~

Indirect management

1. The selection of the persons and entities to be entrusted with the implementation of Union funds or budgetary guarantees pursuant to point (c) of the first subparagraph of Article 62(1) shall be transparent, justified by the nature of the action and shall not give rise to a conflict of interests. For entities referred to in points (c)(ii), (v), (vi) and (vii) of the first subparagraph of Article 62(1) the selection shall also take due account of their financial and operational capacity.

Where the person or entity is identified in a basic act, the financial statement provided for in Article 35 shall include a justification for the choice of that particular person or entity.

In cases of implementation by a network, requiring the designation of at least one body or entity per Member State or per country concerned, the body or entity shall be designated by the Member State or the country concerned in accordance with the basic act. In all other cases, the Commission shall designate such bodies or entities in agreement with Member States or countries concerned.

⇩ new

Where the selection is made further to a call for expression of interest, it shall be undertaken in compliance with the principles of equal treatment and non-discrimination, without prejudice to the requirements laid down in this paragraph.

🡻 2018/1046 (adapted)
⇨ new

2. Persons and entities entrusted with the implementation of Union funds or budgetary guarantees pursuant to point (c) of the first subparagraph of Article 62(1) shall respect the principles of sound financial management, transparency, non-discrimination and visibility of Union action. Where the Commission establishes financial framework partnership agreements in accordance with Article 130 those principles shall be further described in such agreements.

3. Prior to signing contribution agreements, financing agreements or guarantee agreements, the Commission shall ensure a level of protection of the financial interests of the

Union equivalent to the one that is provided for when the Commission implements the budget in accordance with point (a) of the first subparagraph of Article 62(1). The Commission shall do so by carrying out an assessment of the systems, rules and procedures of the persons or entities implementing Union funds, if it intends to rely on such systems, rules and procedures for the implementation of the action, or by taking appropriate supervisory measures in accordance with paragraph 5 of this Article.

4. The Commission shall, in accordance with the principle of proportionality~~ and with due consideration for the nature of the action and the financial risks involved,~~ assess that persons and entities implementing Union funds pursuant to ~~point (c) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c):

(a) set up and ensure the functioning of an effective and efficient internal control system based on international best practices ⇨ including adequate management of the risks ⇦ and allowing in particular to prevent, detect and correct irregularities and fraud; ⇨ the internal control system set up may, where appropriate, rely on digital controls; ⇦

(b) use an accounting system that provides accurate, complete and reliable information in a timely manner;

(c) are subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit service functionally independent of the person or entity concerned;

(d) apply appropriate rules and procedures for providing financing to third parties, including transparent, non-discriminatory, efficient and effective review procedures, rules for recovering funds unduly paid and rules for excluding from access to funding;

(e) make public adequate information on their recipients equivalent to that provided for under Article 38;

(f) ensure protection of personal data equivalent to that referred to in Article 5.

In addition, in agreement with the persons or entities concerned, the Commission may assess other rules and procedures such as ~~the costs of administrating~~ the ⌦ administrative cost ⌫ accounting practices of the persons or entities. On the basis on the results of that assessment, the Commission may decide to rely on those rules and procedures.

Persons or entities which have been assessed in accordance with the first and second subparagraphs shall inform the Commission without undue delay if any substantive changes are made to their systems, rules or procedures which may impact the reliability of the Commission's assessment.

5. Where the persons or entities concerned comply only in part with paragraph 4, the Commission shall take appropriate supervisory measures ensuring the protection of the financial interests of the Union. Those measures shall be specified in the relevant agreements. Information about any such measures shall be made available to the European Parliament and to the Council at their request.

⇩ new

6. In multi-donor actions, where the Union contribution reimburses expenditure, the procedure set out in paragraph 4 shall consist in verifying that an amount corresponding to

that paid by the Commission for the action concerned has been used by the person or entity in accordance with the conditions laid down in the relevant grant, contribution or financing agreement.

↓ 2018/1046 (adapted)
⇨ new

7~~6~~. The Commission ~~may decide~~ ⇨ shall ⇦ not ~~to~~ require an *ex ante* assessment as referred to in paragraphs 3 and 4:

(a) for Union bodies referred to in Articles 70 and 71 and for bodies or persons referred to in ~~point (c)(viii) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c)(viii), which have adopted financial rules with prior consent of the Commission;

(b~~c~~) for those procedures specifically required by the Commission, including its own and those specified in basic acts ⇨ or where rules and procedures are aligned on those required by the Commission ⇦;~~.~~

⌦ The Commission may decide not to require an ex ante assessment as referred to in paragraphs 3 and 4: ⌫

(c~~b~~) for third countries or the bodies they designate, in so far as the Commission retains financial management responsibilities that guarantee a sufficient protection of the financial interests of the Union; ~~or~~

⇩ new

(d) for Member States organisations entrusted with the implementation of Union funds in accordance with Article 62(1), point (b), for which the Commission has confirmed that the programme's management and control system is functioning.

↓ 2018/1046 (adapted)
⇨ new

8~~7~~. Where the systems, rules or procedures of the persons or entities referred to in ~~point (c) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c), are assessed as appropriate, Union contributions to those persons or entities may be implemented in accordance with this Title. Where such persons or entities participate in a call for proposals they shall comply with the rules of the call for proposals contained in Title VIII. In such a case, the authorising officer may decide to sign a contribution agreement or a financing agreement instead of a grant agreement.

Article 159~~155~~

Implementation of Union funds and budgetary guarantees

1. Persons and entities implementing Union funds or budgetary guarantees shall provide the Commission with:

(a) a report on the implementation of Union funds or budgetary guarantees, including the fulfilment of the conditions or the achievement of results referred to in point (a) of the first subparagraph of Article 126~~125~~(1);

(b) where the contribution reimburses expenditure, their accounts drawn up for the expenditure incurred;

(c) a management declaration covering the information referred to in point (a) and, where appropriate, point (b) confirming that:

(i) the information is properly presented, complete and accurate;

(ii) the Union funds were used for their intended purpose, as defined in the contribution agreements, financing agreements or guarantee agreements, or where applicable, in the relevant sector-specific rules;

(iii) the control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions;

(d) a summary of the final audit reports and of controls carried out, including an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned.

Where cross-reliance on audits as referred to in Article 128~~127~~ takes place, the summary referred to in point (d) of the first subparagraph of this paragraph shall include all relevant audit documentation to be relied upon.

For actions terminating before the end of the financial year concerned, the final report may replace the management declaration referred to in point (c) of the first subparagraph, provided it is submitted before 15 February of the following financial year.

The documents referred to in the first subparagraph shall be accompanied by an opinion of an independent audit body, drawn up in accordance with internationally accepted audit standards. That opinion shall establish whether the control systems put in place function properly and are cost-effective, and whether the underlying transactions are legal and regular. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration referred to in point (c) of the first subparagraph. Where such an opinion is absent, the authorising officer may seek an equivalent level of assurance through other independent means.

The documents referred to in the first subparagraph shall be provided to the Commission no later than 15 February of the following financial year. The opinion referred to in the third subparagraph shall be provided to the Commission no later than 15 March of that year.

The obligations set out in this paragraph shall be without prejudice to agreements concluded with the EIB, the EIF, Member State organisations, international organisations and third countries. With regard to the management declaration, such agreements shall include at least the obligation of those entities to provide the Commission annually with a statement that, during the financial year concerned, the Union funds were used and accounted for in compliance with Article 158~~154~~(3) and (4) and with the obligations laid down in such agreements. Such statement may be incorporated in the final report if the action implemented is limited to 18 months.

2. When implementing Union funds, ⇨ a person or entity referred to in Article 62(1), first subparagraph, point (c) ⇦ ~~persons and entities~~ shall:

(a) ~~comply with applicable Union law and agreed international and Union standards and, therefore,~~ not support actions that contribute to money laundering,

terrorism financing, tax avoidance, tax fraud or tax evasion ⌦ according to applicable Union law, and international and Union standards ⌫ ;

(b) when implementing financial instruments and budgetary guarantees in accordance with Title X, not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant Union policy on non-cooperative jurisdictions or that are identified as high-risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849~~, or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information~~.

Entities may derogate from point (b) of the first subparagraph only if the action is physically implemented in one of those jurisdictions, and does not present any indication that the relevant operation falls under any of the categories listed in point (a) of the first subparagraph.

~~When concluding agreements with financial intermediaries,~~ E~~e~~ntities implementing financial instruments and budgetary guarantees in accordance with Title X shall ~~transpose the requirements referred to in this paragraph into the relevant agreements and shall request the financial intermediaries to report on their observance.~~ ⇨ ensure that: ⇦

⇩ new

(a) third parties to which they directly provide support from the budget comply with points (a) and (b) of the first subparagraph;

(b) for other third parties, rules, procedures and remedial measures assessed as appropriate in line with Article 158(4) and in particular subparagraph (a) thereof, are in place in order to ensure that those third parties benefit from support from the budget subject to respecting Union or equivalent international standards on money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.

⇩ new

When concluding agreements with financial intermediaries, entities implementing financial instruments and budgetary guarantees in accordance with Title X shall request the financial intermediaries to report on the observance of the requirements laid down in this paragraph.

🡻 2018/1046

3. When implementing financial instruments and budgetary guarantees in accordance with Title X, persons and entities shall apply the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, in particular Regulation (EU) 2015/847 of the European Parliament and of the Council[87] and Directive (EU) 2015/849. They shall make funding under this Regulation contingent upon the disclosure of beneficial ownership information in accordance with

[87] Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

Directive (EU) 2015/849 and publish country-by-country reporting data within the meaning of Article 89(1) of Directive 2013/36/EU of the European Parliament and of the Council[88].

4. The Commission shall verify that the Union funds or budgetary guarantees have been used in accordance with the conditions laid down in the relevant agreements. Where the costs of the person or entity are reimbursed based on a simplified cost option in accordance with points (c), (d) and (e) of the first subparagraph of Article 126~~125~~(1), Article 185~~181~~(1) to (5) and Articles 186~~182~~ to 189~~185~~ shall apply *mutatis mutandis*. Where Union funds or budgetary guarantees have been used in breach of the obligations laid down in the relevant agreements, Article 133~~131~~ shall apply.

⇩ new

5. Article 36(6), points (a) and (b), shall apply to persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c) with regard to their direct recipients and in respect of the beneficial owners of these recipients to the extent that data on beneficial owners is collected in accordance with their rules and procedures.

6. The requirements of paragraph 6 of Article 38 shall apply to persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point c), where the financial support directly provided by persons or entities to third parties is of an amount higher than EUR 500 000.

🡻 2018/1046
⇨ new

7~~5~~. In multi-donor actions, where the Union contribution reimburses expenditure, the procedure set out in paragraph 4 shall consist in verifying that an amount corresponding to that paid by the Commission for the action concerned has been used by the person or entity in accordance with the conditions laid down in the relevant grant, contribution or financing agreement.

8~~6~~. Contribution agreements, financing agreements and guarantee agreements shall clearly define the responsibilities and obligations of the person or entity implementing Union funds, including the obligations set out in Article 130~~129~~ and the conditions for payment of the contribution. Such agreements shall also, where applicable, define the mutually agreed remuneration which shall be commensurate with the conditions under which the actions are implemented, taking due account of situations of crisis and fragility, and, where appropriate, be performance-based. Those agreements shall also include rules on reporting to the Commission on how the tasks are performed, the results expected, including indicators on measuring performance, and the obligation for persons or entities implementing Union funds ⇨ or budgetary guarantees ⇦ to notify the Commission without delay of cases of ~~detected~~ ⇨ established ⇦ fraud and irregularities and their follow-up ⇨ as well as any information relating to suspected cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union ⇦ .

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88 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 27.6.2013, p. 338).

9~~7~~. All contribution agreements, financing agreements and guarantee agreements shall be made available to the European Parliament and to the Council at their request.

10~~8~~. This Article shall not apply to the Union contribution to Union bodies which are subject to a separate discharge procedure under Articles 70 and 71, with the exception of possible ad-hoc contribution agreements.

Article 160~~156~~

Indirect management with international organisations

1. The Commission may, in accordance with ~~point (c)(ii) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c)(ii), implement the budget indirectly with international public-sector organisations set up by international agreements ('international organisations') and with specialised agencies set up by such organisations. Those agreements shall be transmitted to the Commission as part of the assessment carried out by the Commission in accordance with Article 158~~154~~(3).

2. The following organisations shall be assimilated to international organisations:

(a) the International Committee of the Red Cross;

(b) the International Federation of National Red Cross and Red Crescent Societies.

3. The Commission may adopt a duly justified decision assimilating a non-profit organisation to an international organisation provided that it satisfies the following conditions:

(a) it has legal personality and autonomous governance bodies;

(b) it has been established to perform specific tasks of general international interest;

(c) at least six Member States are members of the non-profit organisation;

~~(d) it is provided with adequate financial guarantees;~~

(d~~e~~) it operates on the basis of a permanent structure and in accordance with systems, rules and procedures which can be assessed in accordance with Article 158~~154~~(3).

⇩ new

The entity shall be provided with adequate financial guarantees taking due account of the Union contribution it is entrusted with.

🡻 2018/1046 (adapted)
⇨ new

4. Where international organisations implement funds under indirect management, verification agreements concluded with them shall apply.

Article 161~~157~~

Indirect management with Member State organisations

1. The Commission may in accordance with points (c)(v) and (vi) of the first subparagraph of Article 62(1) implement the budget indirectly with Member State organisations.

2. Where the Commission implements the budget indirectly with Member States organisations, it shall rely on the systems, rules and procedures of those organisations which have been assessed in accordance with Article 158~~154~~ ⇨ (2), ⇦ (3) and (4).

3. Financial framework partnership agreements concluded with Member State organisations in accordance with Article 132~~130~~ shall further specify the extent and the modalities of the cross-reliance on systems, rules and procedures of Member State organisations and may include specific provisions on the cross-reliance on assessments and audits as referred to in Articles 127~~126~~ and 128~~127~~.

Article 162~~158~~

Indirect management with third countries

1. The Commission may implement the budget indirectly with a third country or the bodies designated by that country, as referred to point (c)(i) of the first subparagraph of Article 62(1) by concluding a financing agreement describing the Union's intervention in the third country and laying down the method of implementation for each part of the action.

2. For the part of the action implemented indirectly with the third country or the bodies it has designated, the financing agreement shall, in addition to the elements referred to in Article 159(8)~~155(5)~~, clearly define the roles and responsibilities of the third country and of the Commission in the implementation of the funds. The financing agreement shall also determine the rules and procedures to be applied by the third country when implementing Union funds.

Article 163~~159~~

Blending operations

1. Blending operations shall be managed either by the Commission or by persons or entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1).

2. Where financial instruments and budgetary guarantees are implemented within a blending facility or platform Title X applies.

3. For financial instruments and budgetary guarantees implemented within blending facilities or platforms, point (h) of the first subparagraph of Article 213~~209~~(2) shall be deemed to be complied with if an *ex ante* evaluation is carried out prior to the establishment of the relevant blending facility or platform.

4. Annual reports pursuant to ~~Article 249~~ ⇨ Articles 41(4) and 41(5) ⇦ shall be drawn up at the level of the blending facility or platform taking into account all financial instruments and budgetary guarantees grouped under the facility or platform and clearly identifying the different types of financial support within it.

TITLE VII

PROCUREMENT AND CONCESSIONS

CHAPTER 1

COMMON PROVISIONS

Article 164~~160~~

Principles applicable to contracts and scope

1. All contracts financed in whole or in part by the budget shall respect the principles of transparency, proportionality, equal treatment and non-discrimination.

2. All contracts shall be put out to competition on the broadest possible basis, except when use is made of the procedure referred to in point (d) of Article 168~~164~~(1).

The estimated value of a contract shall not be determined with a view to circumventing the applicable rules, nor shall a contract be split up for that purpose.

The contracting authority shall divide a contract into lots, whenever appropriate, with due regard to broad competition.

3. Contracting authorities shall not use framework contracts improperly or in such a way that their purpose or effect is to prevent, restrict or distort competition.

4. The JRC may receive funding charged to appropriations other than research and technological development appropriations in respect of its participation in procurement procedures financed in whole or in part from the budget.

5. The rules on procurement laid down in this Regulation ⌦ , with the exception of the principles of transparency and equal treatment, ⌫ shall not apply to:

(a) the activities of the JRC on behalf of third parties;~~,~~ ~~with the exception of the principles of transparency and equal treatment.~~

⇩ new

(b) financial services directly related to the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2014/65/EU of the European Parliament and of the Council, used by the Commission in the context of its borrowing and lending, asset management and treasury operations, including services provided by central banks, the European Stability Mechanism, the European Investment Bank and other international financial institutions, and national entities entrusted with the issuance and management of sovereign debt.

(c) services of document certification and authentication services which must be provided by notaries, where such services are not open to competition on the basis of the applicable national rules;

6. With the exception of procurement in the field of external actions, prior to any procedure carried out in response to a crisis, a declaration of crisis shall be made in line with the relevant internal rules. The authorising officer responsible may only rely on a crisis

declaration to launch a procurement procedure if the procedure is justified by a situation of extreme urgency that is resulting from the crisis.

↓ 2018/1046 (adapted)
⇨ new

Article 165~~161~~

Annex on procurement and delegation of powers

Detailed rules on procurement are laid down in Annex I to this Regulation. To ensure that Union institutions, when awarding contracts on their own account, apply the same standards as those imposed on contracting authorities covered by Directives 2014/23/EU and 2014/24/EU, the Commission is empowered to adopt delegated acts in accordance with Article 274~~269~~ of this Regulation to amend Annex I to this Regulation, in order to align that Annex to amendments to those Directives and to introduce related technical adjustments.

Article 166~~162~~

Mixed contracts and common procurement vocabulary

1. A mixed contract covering two or more types of procurement (works, supplies or services) or concessions (works or services) or both, shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject matter of the contract in question.

2. In the case of mixed contracts consisting of supplies and services, the main subject matter shall be determined by a comparison of the values of the respective supplies or services.

A contract covering one type of procurement (works, supplies or services) and concessions (works or services) shall be awarded in accordance with the provisions applicable to the public contract concerned.

3. This Title shall not apply to contracts for technical assistance concluded with the EIB or the EIF.

4. Any references to nomenclatures in the context of procurement shall be made using the Common Procurement Vocabulary (CPV) as set out in Regulation (EC) No 2195/2002 of the European Parliament and of the Council[89].

Article 167~~163~~

Publicity measures

1. For procedures with a value equal to or greater than the thresholds referred to in Article 179~~175~~(1) or Article 182~~178~~, the contracting authority shall publish in the *Official Journal of the European Union*:

(a) a contract notice to launch a procedure, except in the case of the procedure referred to in point (d) of Article 168~~164~~(1);

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[89] Regulation (EC) No 2195/2002 of the European Parliament and of the Council of 5 November 2002 on the Common Procurement Vocabulary (CPV) (OJ L 340, 16.12.2002, p. 1).

(b) a contract award notice on the results of the procedure.

2. Procedures with a value below the thresholds referred to in Article 179~~175~~(1) or Article 182~~178~~ shall be advertised by appropriate means.

3. Publication of certain information on a contract award may be withheld where its release would impede law enforcement, or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators or might prejudice fair competition between them.

Article 168~~164~~

Procurement procedures

1. Procurement procedures for awarding concession contracts or public contracts, including framework contracts shall take one of the following forms:

(a) open procedure;

(b) restricted procedure, including through a dynamic purchasing system;

(c) design contest;

(d) negotiated procedure, including without prior publication;

(e) competitive dialogue;

(f) competitive procedure with negotiation;

(g) innovation partnership;

(h) procedures involving a call for expression of interest.

2. In open procedures any interested economic operator may submit a tender.

3. In restricted procedures, competitive dialogues, competitive procedures with negotiation and innovation partnerships, any economic operator may submit a request to participate by providing the information that is requested by the contracting authority. The contracting authority shall invite all candidates, that satisfy the selection criteria and that are not in any of the situations referred to in Articles 139~~136~~(1) and 144~~141~~(1), to submit a tender.

Notwithstanding the first subparagraph, the contracting authority may limit the number of candidates to be invited to ⇨ submit a tender ⇦ ~~participate~~ in the procedure on the basis of objective and non-discriminatory selection criteria, which shall be indicated in the contract notice or the call for expression of interest. The number of candidates invited shall be sufficient to ensure genuine competition.

4. In all procedures involving negotiation, the contracting authority shall negotiate with tenderers the initial and any subsequent tenders or parts thereof, except their final tenders, in order to improve their content. The minimum requirements and the criteria specified in the procurement documents shall not be subject to negotiation.

A contracting authority may award a contract on the basis of the initial tender without negotiation where it has indicated in the procurement documents that it reserves the possibility to do so.

5. The contracting authority may use:

(a) the open or restricted procedure for any purchase;

(b) the procedures involving a call for expression of interest for contracts with a value below the thresholds referred to in Article 179~~175~~(1), to preselect candidates to be invited to submit tenders in response to future restricted invitations to tender, or to collect a list of vendors to be invited to submit requests to participate or submit tenders;

(c) the design contest to acquire a plan or design selected by a jury after being put out to competition;

(d) the innovation partnership to develop an innovative product, service or innovative works and for the subsequent purchase of the resulting supply, services or works;

(e) the competitive procedure with negotiation or the competitive dialogue for concession contracts, for the service contracts referred to in Annex XIV to Directive 2014/24/EU, in cases where only irregular or unacceptable tenders were submitted in response to an open or restricted procedure after the initial procedure has been completed, and for cases where this is justified by the specific circumstances linked, inter alia, to the nature or the complexity of the subject matter of the contract or to the specific type of contract, as further detailed in Annex I to this Regulation;

(f) the negotiated procedure for contracts with a value below the thresholds referred to in Article 179~~175~~(1), or the negotiated procedure without prior publication for specific types of purchases falling outside the scope of Directive 2014/24/EU or in the clearly defined exceptional circumstances set out in Annex I to this Regulation.

6. A dynamic purchasing system shall be open throughout its duration to any economic operator who satisfies the selection criteria.

The contracting authority shall follow the rules of the restricted procedure for procurement through a dynamic purchasing system.

Article 169~~165~~

Interinstitutional procurement, ~~and~~ joint procurement ⌦ , and procurement on behalf of Member States ⌫

1. Where a contract or a framework contract is of interest to two or more Union institutions, executive agencies or Union bodies referred to in Articles 70 and 71, and whenever there is a possibility for realising efficiency gains, the contracting authorities concerned may carry out the procedure and the management of the subsequent contract or framework contract on an interinstitutional basis under the lead of one of the contracting authorities.

The bodies and persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU as well as the Office of the Secretary of the Board of Governors of the European Schools may also participate in interinstitutional procedures.

The terms of a framework contract shall only apply between those contracting authorities that are identified for that purpose in the procurement documents and those economic operators that are party to the framework contract.

⇩ new

By way of derogation from the third subparagraph, in a situation of extreme urgency resulting from a crisis, new contracting authorities might be added by the contracting authority after the launch of the procurement procedure and before contract signature, subject to the conditions set out in Article 164(6) and provided that the modification does not alter the subject matter of the contract or the framework contract.

🡻 2018/1046
⇨ new

2. Where a contract or framework contract is necessary for the implementation of a joint action between a Union institution ⇨ , a Union body referred to in Articles 70 and 71 or an executive agency referred to in Article 69 ⇦ and one or more contracting authorities from Member States, the procurement procedure may be carried out jointly by the Union institution and the contracting authorities. ⇨ Where it is necessary to carry out a joint procurement between a Union institution, a Union body referred to in Articles 70 and 71 or an executive agency referred to in Article 69 and one or more contracting authorities from Member States, Member States may acquire, rent or lease fully the capacities jointly procured. ⇦

Joint procurement may be conducted with EFTA States and Union candidate countries if that possibility has been specifically provided for in a bilateral or multilateral treaty ⇨ , or with other third countries if such possibility is specifically provided for in the applicable basic act ⇦ .

The procedural provisions applicable to Union institutions shall apply to the joint procurement.

Where the share pertaining to or managed by the contracting authority of a Member State in the total estimated value of the contract is equal to or above 50 %, or in other duly justified cases, the Union institution may decide that the procedural rules applicable to the contracting authority of a Member State shall apply to the joint procurement, provided that those rules may be considered as equivalent to those of the Union institution.

The Union institution and the contracting authority from a Member State, an EFTA State or a Union candidate country concerned by the joint procurement shall agree in particular upon the detailed practical arrangements for the evaluation of the requests for participation or of the tenders, the award of the contract, the law applicable to the contract and the competent court for hearing disputes.

⇩ new

In a situation of extreme urgency resulting from a crisis, new contracting authorities may be added after the launch of the procurement procedure and before contract signature, subject to the conditions set out in Article 164(6).

3. A Union institution, Union body referred to in Articles 70 and 71 or an executive agency referred to in Article 69 may procure on behalf of or in the name of one or several Member States on the basis of a mandate, or act as a wholesaler, by buying, stocking and reselling or donating supplies and services, including rentals, to Member States or partner

organisations selected by the Union institution, Union body referred to in Articles 70 and 71 or by an executive agency referred to in Article 69.

In this case, the mandated Union institution, Union body referred to in Articles 70 and 71 or executive agency referred to in Article 69 shall conduct the procurement procedure following its own procurement rules.

↓ 2018/1046 (adapted)
⇨ new

Article 170~~166~~

Preparation of a procurement procedure

1. Before launching a procurement procedure, the contracting authority may conduct a preliminary market consultation with a view to preparing the procedure.

2. In the procurement documents, the contracting authority shall identify the subject matter of the procurement by providing a description of its needs and the characteristics required of the works, supplies or services to be bought, and shall specify the applicable exclusion, selection and award criteria. The contracting authority shall also indicate which elements define the minimum requirements to be met by all tenders. Minimum requirements shall include compliance with applicable environmental, social and labour law obligations established by Union law, national law, collective agreements or the applicable international social and environmental conventions listed in Annex X to Directive 2014/24/EU.

Article 171~~167~~

Award of contracts

1. Contracts shall be awarded on the basis of award criteria provided that the contracting authority has verified the following:

(a) the tender complies with the minimum requirements specified in the procurement documents;

(b) the candidate or tenderer is not excluded under Article 139~~136~~ or rejected under Article 144~~141~~;

(c) the candidate or tenderer ⇨ has access to procurement, and ⇦ meets the selection criteria specified in the procurement documents ⇨ , including the absence of professional conflicting interests ⇦ ~~and is not subject to conflicts of interest which may negatively affect the performance of the contract~~.

2. The contracting authority shall apply the selection criteria to evaluate the capacity of the candidate or tenderer. Selection criteria shall only relate to the legal and regulatory capacity to pursue the professional activity, the economic and financial capacity, and the technical and professional capacity. The JRC shall be presumed to meet the requirements relating to financial capacity.

3. The contracting authority shall apply the award criteria to evaluate the tender.

4. The contracting authority shall base the award of contracts on the most economically advantageous tender, which shall consist in one of three award methods: lowest price, lowest cost or best price-quality ratio.

For the lowest cost method, the contracting authority shall use a cost-effectiveness approach including life-cycle costing.

For the best price-quality ratio, the contracting authority shall take into account the price or cost and other quality criteria linked to the subject matter of the contract.

Article 172~~168~~

Submission, electronic communication and evaluation

1. The contracting authority shall lay down time limits for the receipt of tenders and requests to participate in accordance with point 24 of Annex I and taking into account the complexity of the purchase, leaving an adequate period for economic operators to prepare their tenders.

2. If deemed appropriate and proportionate, the contracting authority may require tenderers to lodge a guarantee to make sure that the tenders submitted are not withdrawn before contract signature. The required guarantee shall represent 1 to 2 % of the total estimated value of the contract.

The contracting authority shall release the guarantees:

(a) in respect of tenderers or tenders rejected as referred to in point 30.2(b) or (c) of Annex I, after having provided the information on the outcome of the procedure;

(b) in respect of tenderers ranked as referred to in point 30.2(e) of Annex I, after the contract is signed.

3. The contracting authority shall open all requests to participate and tenders. However, it shall reject:

(a) requests to participate and tenders which do not comply with the time limit for receipt, without opening them;

(b) tenders already open when they are received, without examining their content.

4. The contracting authority shall evaluate all requests to participate or tenders not rejected during the opening phase as laid down in paragraph 3 on the basis of the criteria specified in the procurement documents with a view to awarding the contract or to proceeding with an electronic auction.

5. The authorising officer may waive the appointment of an evaluation committee as provided for in Article 154~~150~~(2) in the following cases:

(a) the value of the contract is below the thresholds referred to in Article 179~~175~~(1);

(b) on the basis of a risk analysis for the cases referred to in points (c), (e), (f)(i), (f)(iii), ~~and~~ (h) ⇨ and (m) ⇦ of the second subparagraph of point 11.1 of Annex I;

(c) on the basis of a risk analysis when reopening competition within a framework contract;

(d) for procedures in the field of external actions having a value of less than or equal to EUR 20 000;~~.~~

⇩ new

(e) on the basis of a risk analysis for specific procurements under a dynamic purchasing system.

🡻 2018/1046

6. Requests to participate and tenders which do not comply with all the minimum requirements set out in the procurement documents shall be rejected.

Article 173~~169~~

Contacts during the procurement procedure

1. Before the time limit for receipt of requests to participate or tenders, the contracting authority may communicate additional information about the procurement documents if it discovers an error or omission in the text or upon request from candidates or tenderers. Information provided shall be disclosed to all candidates or tenderers.

⇩ new

By way of derogation from the first subparagraph, in a situation of extreme urgency resulting from a crisis, the contracting authority may contact in writing all invited candidates before the time limit for receipt of requests to participate or tenders, with the sole purpose of clarifying their intention to submit a request to participate or a tender, subject to the conditions set out in Article 164(6).

🡻 2018/1046 (adapted)
⇨ new

2. After the time limit for receipt of requests to participate or tenders, in every case where contact has been made, and in the duly justified cases where contact has not been made as provided for in Article 155~~151~~, a record shall be kept in the procurement file.

Article 174~~170~~

Award decision and information to candidates or tenderers

1. The authorising officer responsible shall decide to whom the contract is to be awarded, in compliance with the selection and award criteria specified in the procurement documents.

2. The contracting authority shall notify all candidates or tenderers, whose request~~s~~ to participate or tender~~s~~ ~~are~~ ⌦ is ⌫ rejected, of the grounds on which the decision was taken.~~,~~ ⇨ In addition, successful and unsuccessful tenderers shall be notified of ⇦ ~~as well as~~ the duration of the standstill period~~s~~ referred to in Articles 179~~175~~(2) and 182~~178~~(1) ⌦ , when such standstill period is applicable ⌫ .

For the award of specific contracts under a framework contract with reopening of competition, the contracting authority shall inform the tenderers of the result of the evaluation.

3. The contracting authority shall inform each tenderer ~~who is not in an exclusion situation referred to in Article 136(1),~~ who is not rejected under Article 144~~141~~ ⇨ or under other grounds of rejection ⇦ , ~~whose tender is compliant with the procurement documents~~ and who makes a request in writing, of any of the following:

(a) the name of the tenderer, or tenderers in the case of a framework contract, to whom the contract is awarded and, except in the case of a specific contract under a framework contract with reopening of competition, the characteristics and relative advantages of the successful tender~~, the price paid or contract value, whichever is appropriate~~ ⇨ and its total financial offer amount ⇦ ;

(b) the progress of negotiation and dialogue with tenderers.

However, the contracting authority may decide to withhold certain information where its release would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of economic operators or might distort fair competition between them.

Article 175~~171~~

Cancellation of the procurement procedure

The contracting authority may, before the contract is signed, cancel the procurement procedure ⇨ totally. In the case of procedures awarded in lots or multiple sourcing procurement the cancellation may be done partially. ⇦ ~~without~~ T~~t~~he candidates or tenderers ~~being~~ ⌦ shall not be ⌫ entitled to claim any compensation.

The decision shall be justified and brought to the attention of the candidates or tenderers as soon as possible.

Article 176~~172~~

Performance and modifications of the contract

1. Performance of the contract shall not start before it is signed.

2. The contracting authority may modify a contract or framework contract without a procurement procedure only in the cases provided for in paragraph 3 and provided the modification does not alter the subject matter of the contract or framework contract ⇨ , within the meaning of paragraph 4 ⇦ .

3. A contract, a framework contract or a specific contract under a framework contract may be modified without a new procurement procedure in any of the following cases:

(a) for additional works, supplies or services by the original contractor that have become necessary and that were not included in the initial procurement, where the following conditions are fulfilled:

(i) a change of contractor cannot be made for technical reasons linked to interchangeability or interoperability requirements with existing equipment, services or installations;

(ii) a change of contractor would cause substantial duplication of costs for the contracting authority;

(iii) any increase in price, including the net cumulative value of successive modifications, does not exceed 50 % of the initial contract value;

(b) where all of the following conditions are fulfilled:

(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;

(ii) any increase in price does not exceed 50 % of the initial contract value;

(c) where the value of the modification is below the following thresholds:

(i) the thresholds referred to in Article 179~~175~~(1), and in point 38 of Annex I in the field of external actions, applicable at the time of the modification; and

(ii) 10 % of the initial contract value for public service and supply contracts and works or services concession contracts and 15 % of the initial contract value for public works contracts;

(d) where both of the following conditions are fulfilled:

(i) the minimum requirements of the initial procurement procedure are not altered;

(ii) any ensuing modification of value complies with the conditions set out in point (c) of this subparagraph, unless such modification of value results from the strict application of the procurement documents or contractual provisions.

The initial contract value shall not take into account price revisions.

The net cumulative value of several successive modifications under point (c) of the first subparagraph shall not exceed any threshold referred to therein.

The contracting authority shall apply the *ex post* publicity measures set out in Article 167~~163~~.

⇩ new

4. A modification shall be considered to be altering the subject matter of the contract or framework contract, where it renders the contract or framework contract materially different in substance from the one initially concluded. In any event, a modification shall be considered to be altering the subject matter of the contract or framework contract where one or more of the following conditions are met:

(a) the modification introduces or supresses significant conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of a tender other than that originally accepted, or would have attracted additional participants in the procurement procedure, or would not have led to the selection of the winning tenderer;

(b) the modification significantly changes the economic balance of the contract or the framework contract in favour of the contractor in a manner which was not provided for in the initial contract or framework contract;

(c) the modification significantly extends the scope of the contract or framework contract.

5. By way of derogation from paragraph 2, in a situation of extreme urgency resulting from a crisis, the contracting authority may, in agreement with the contractor, modify a contract or a framework contract beyond the threshold referred to in paragraph 3(b)(ii),

provided that it does not exceed 100% of the initial contract value, and that it is justified as strictly necessary to respond to the evolution of the crisis, subject to the conditions set out in Article 164(6).

By way of derogation from paragraph 2, in a situation of extreme urgency resulting from a crisis, the terms of a framework contract may be modified by common agreement to apply to those new contracting authorities added following a modification of the framework contract, including in the case of inter-institutional or joint procurements, subject to the conditions set out in Article 164(6).

↓ 2018/1046
⇨ new

Article 177~~173~~

Performance guarantees and retention money guarantees

1. A performance guarantee shall amount to a maximum of 10 % of the total value of the contract.

It shall be fully released after final acceptance of the works, supplies or complex services, within a period subject to the time limits set out in Article 117~~116~~(1) and to be specified in the contract. It may be released partially or fully upon provisional acceptance of the works, supplies or complex services.

2. A retention money guarantee amounting to a maximum of 10 % of the total value of the contract may be constituted by deductions from interim payments as and when they are made or by deduction from the final payment.

The contracting authority shall determine the amount of the retention money guarantee which shall be proportionate to the risks identified in relation to the performance of the contract, taking into account its subject matter and the usual commercial terms applicable in the sector concerned.

A retention money guarantee shall not be used in a contract where a performance guarantee has been requested and not released.

3. Subject to approval by the contracting authority, the contractor may request to replace the retention money guarantee by another type of guarantee referred to in Article 156~~152~~.

4. The contracting authority shall release the retention money guarantee after the expiry of the contractual liability period, within a period subject to the time limits set out in Article 117~~116~~(1) and to be specified in the contract.

CHAPTER 2

PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY UNION INSTITUTIONS ON THEIR OWN ACCOUNT

Article 178~~174~~

The contracting authority

1. Union institutions, executive agencies and Union bodies referred to in Articles 70 and 71 shall be deemed to be contracting authorities in respect of contracts awarded on their own account, except where they purchase from a central purchasing body. Departments of Union institutions shall not be deemed to be contracting authorities where they conclude service-level agreements amongst themselves.

Union institutions deemed to be contracting authorities in accordance with the first subparagraph shall, in accordance with Article 60, delegate the necessary powers for the exercise of the function of the contracting authority.

2. Each authorising officer by delegation or subdelegation within each Union institution shall assess whether the thresholds referred to in Article 179~~175~~(1) have been reached.

Article 179~~175~~

Thresholds applicable and standstill period

1. To award public and concession contracts, the contracting authority shall respect the thresholds laid down in ~~points (a) and (b) of~~ Article 4, points (a) and (b), of Directive 2014/24/EU when selecting a procedure referred to in Article 168~~164~~(1) of this Regulation ⇨ , and respectively the threshold laid down in Article 8(1) Directive 2014/23/EU for concessions ⇦ . ~~Those thresholds shall determine the publicity measures set out in Article 163(1) and (2) of this Regulation.~~

⇩ new

By way of derogation from the first subparagraph, for contracts awarded by Union delegations or awarded exclusively in the interest of Union delegations in third countries, the applicable threshold for public supply and service contracts shall be EUR 300 000, instead of the threshold for public supply and service contracts laid down in point (b) of Article 4 of Directive 2014/24/EU.

🡻 2018/1046

2. Subject to the exceptions and conditions specified in Annex I to this Regulation, in the case of contracts the value of which exceeds the thresholds referred to in paragraph 1, the contracting authority shall not sign the contract or framework contract with the successful tenderer until a standstill period has elapsed.

3. The standstill period shall have a duration of 10 days when using electronic means of communication and 15 days when using other means.

Article 180~~176~~

Rules on access to procurement

1. Participation in procurement procedures shall be open on equal terms to all natural and legal persons within the scope of the Treaties and to all natural and legal persons established in a third country which has a special agreement with the Union in the field of procurement under the conditions laid down in such an agreement. It shall also be open to international organisations.

2. For the purpose of Article 164(4), the JRC shall be considered as a legal person established in a Member State.

⇩ new

3. For contracts awarded by Union delegations or awarded exclusively in the interest of Union Delegations in third countries, participation in procurement procedures shall be open on equal terms to all natural and legal persons established in the third country where the Delegation concerned is established. In addition, it may be decided under exceptional circumstances duly justified by the authorising officer responsible, to allow third-country nationals or entities, to tender for contracts.

4. Participation in procurement procedures and performance of the contracts awarded shall be subject to conditions laid down in Regulation 20xx/xxx (IPI Regulation) and in implementing acts (IPI measures) adopted under that Regulation.

🡻 2018/1046 (adapted)
⇨ new

Article 181~~177~~

Procurement rules of the World Trade Organisation

Where the plurilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the procurement procedure shall also be open to economic operators established in the states which have ratified that agreement, under the conditions laid down therein.

CHAPTER 3

PROVISIONS APPLICABLE FOR PROCUREMENT IN THE FIELD OF EXTERNAL ACTIONS

Article 182~~178~~

External action procurement

1. The general provisions on procurement set out in Chapter 1 of this Title shall apply to contracts covered by this Chapter subject to the special provisions relating to the arrangements for awarding external contracts laid down in Chapter 3 of Annex I. Articles 178~~174~~ to 181~~177~~ shall not apply to the procurement covered by this Chapter.

Subject to the exceptions and conditions specified in Annex I, the contracting authority shall not sign the contract or framework contract with the successful tenderer until a standstill period has elapsed. The standstill period shall have a duration of 10 days when using electronic means of communication and 15 days when using other means.

Article 167~~163~~, points (a) and (b) of Article 168~~164~~(1) and the second subparagraph of this paragraph shall only apply as from:

(a) EUR 300000 for service and supply contracts;

(b) EUR 5000000 for works contracts.

2. This Chapter shall apply to:

(a) procurement where the Commission does not award contracts on its own account;

(b) procurement by persons or entities implementing Union funds pursuant to ~~point (c) of the first subparagraph of~~ Article 62(1), first subparagraph, point (c), where provided for in the contribution ⌦ agreements ⌫ or financing agreements referred to in Article 158~~154~~.

3. The procurement procedures shall be laid down in the financing agreements provided for in Article 162~~158~~.

4. This Chapter shall not apply to actions under sector-specific basic acts relating to humanitarian crisis management aid, civil protection operations and humanitarian aid operations.

Article 183~~179~~

Rules on access to procurement in the field of external actions

1. Participation in procurement procedures shall be open on equal terms to all persons within the scope of the Treaties and to any other natural or legal person in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned. It shall also be open to international organisations.

2. It may be decided, under exceptional circumstances duly justified by the authorising officer responsible, to allow third-country nationals, other than those referred to in paragraph 1 of this Article, to tender for contracts.

3. Where an agreement on widening the market for procurement of goods or services to which the Union is party applies, the procurement procedures for contracts financed by the budget shall also be open to natural and legal persons established in a third country other than those referred to in paragraphs 1 and 2, under the conditions laid down in that agreement.

TITLE VIII

GRANTS

CHAPTER 1

SCOPE AND FORM OF GRANTS

Article 184~~180~~

Scope and form of grants

1. This Title applies to grants awarded under direct management.

2. Grants may be awarded in order to finance any of the following:

(a) an action intended to help achieve a Union policy objective (‘action grants’);

(b) the functioning of a body which has an objective forming part of, and supporting, a Union policy (‘operating grants’).

Operating grants shall take the form of a financial contribution to the work programme of the body referred to in point (b) of the first subparagraph.

3. Grants may take any of the forms provided for in Article 126~~125~~(1).

Where the grant takes the form of financing not linked to costs pursuant to point (a) of the first subparagraph of Article 126~~125~~(1):

(a) the provisions related to eligibility and verification of costs laid down in this Title, in particular Articles 186~~182~~, 188~~184~~ and 189~~185~~, Article 190~~186~~(2), (3) and (4), Article 194~~190~~, Articles 195~~191~~(3) ⇨ , the provision relating to an estimated budget or estimated eligible costs in Article 200(1)(e), ⇦ and 207~~203~~(4), shall not apply;

(b) as regards Article 185~~181~~, only the procedure and the requirements referred to in paragraphs 2 and 3 ~~of that Article~~, ~~points (a) and (d) of the and the second subparagraph of~~ paragraph 4, first subparagraph, points (a) and (d), and second subparagraph, ⇨ point (a), ⇦ and paragraph 5~~.~~ of that Article shall apply.

4. Each Union institution may award public contracts or grants for communication activities. Grants may be awarded where the use of procurement is not appropriate due to the nature of activities.

5. The JRC may receive funding charged to appropriations other than research and technological development appropriations in respect of its participation in grant award procedures financed in whole or in part from the budget. In such cases, Article 202~~198~~(4), as far as financial capacity is concerned, and points (a) to (d) of Article 200~~196~~(1) shall not apply.

Article 185~~181~~

Lump sums, unit costs and flat-rate financing

1. Where the grant takes the form of lump sums, unit costs or flat-rate financing as referred to in point (c), (d) or (e) of the first subparagraph of Article 126~~125~~(1), this Title shall apply, with the exception of the provisions or parts of the provisions related to the verification of eligible costs actually incurred.

2. Where possible and appropriate, lump sums, unit costs or flat rates shall be determined in such a way as to allow their payment upon achievement of concrete outputs and/or results.

3. Unless otherwise provided in the basic act, the use of lump sums, unit costs or flat-rate financing shall be authorised by a decision of the authorising officer responsible, who shall act in accordance with the internal rules of the Union institution concerned.

4. The authorisation decision shall contain at least the following:

(a) justification concerning the appropriateness of such forms of financing with regard to the nature of the supported actions or work programmes, as well as to the risks of irregularities and fraud and costs of control;

(b) identification of the costs or categories of costs covered by lump sums, unit costs or flat-rate financing, which shall be considered eligible in accordance with points (c), (e) and (f) of Article 190~~186~~(3) and Article 190~~186~~(4), and which shall exclude ineligible costs under the applicable Union rules;

(c) description of the methods for determining lump sums, unit costs or flat-rate financing. Those methods shall be based on one of the following:

(i) statistical data, similar objective means or an expert judgement provided by internally available experts or procured in accordance with the applicable rules; or

(ii) beneficiary-by-beneficiary approach, by reference to certified or auditable historical data of the beneficiary or to its usual cost accounting practices;

(d) where possible, the essential conditions triggering the payment, including, where applicable, the achievement of outputs and/or results;

(e) where lump sums, unit costs and flat rates are not output based and/or result based, a justification on why an output based and/or result based approach is not possible or appropriate.

The methods referred to in point (c) of the first subparagraph shall ensure:

(a) the respect for the principle of sound financial management, in particular the appropriateness of the respective amounts with regard to the required outputs and/or results taking into account foreseeable revenue to be generated by the actions or work programmes;

(b) reasonable compliance with the principles of co-financing and no double funding.

5. The authorisation decision shall apply for the duration of the programme or programmes unless otherwise provided in that decision.

The authorisation decision may cover the use of lump sums, unit costs or flat rates applicable to more than one specific funding programme where the nature of the activities or of the expenditure allow for a common approach. In such cases, the authorising decision may be adopted by the following:

(a) the authorising officers responsible where all activities concerned fall under their responsibility;

(b) the Commission where this is appropriate in view of the nature of the activities or of the expenditure or in view of the number of authorising officers concerned.

6. The authorising officer responsible may authorise or impose, in the form of flat-rates, funding of the beneficiary's indirect costs up to a maximum of 7 % of total eligible direct costs for the action. A higher flat rate may be authorised by a reasoned Commission decision. The authorising officer responsible shall report in the annual activity report referred to in Article 74(9) on any such decision taken, the flat rate authorised and the reasons leading to that decision.

7. SME owners and other natural persons who do not receive a salary may declare eligible personnel costs for the work carried out by themselves under an action or work programme, on the basis of unit costs authorised in accordance with paragraphs 1 to 6.

8. Beneficiaries may declare personnel costs for the work carried out by volunteers under an action or work programme, on the basis of unit costs authorised in accordance with paragraphs 1 to 6.

Article 186~~182~~

Single lump sums

1. A lump sum as referred to in point (d) of the first subparagraph of Article 126~~125~~(1) may cover the entire eligible costs of an action or a work programme ('single lump sum').

2. In accordance with Article 185~~181~~(4), single lump sums may be determined on the basis of the estimated budget of the action or work programme. Such estimated budget shall comply with the principles of economy, efficiency and effectiveness. The compliance with those principles shall be verified *ex ante* at the time of evaluation of the grant application.

3. When authorising single lump sums the authorising officer responsible shall comply with Article 185~~181~~.

Article 187~~183~~

Checks and controls on beneficiaries related to lump sums, unit costs and flat rates

1. The authorising officer responsible shall check, at the latest before the payment of the balance~~,~~:

(i) the fulfilment of the conditions triggering the payment of lump sums, unit costs or flat-rates, including, where required, the achievement of outputs and/or results;

⇩ new

(ii) that the lump sums, unit costs or flat rates were indicated in the estimated overall budget of the action or work programme,

(iii) that the above mentioned condition was achieved during the duration of the action or the work programme.

🡻 2018/1046 (adapted)
⇨ new

In addition, the fulfilment of those conditions may be subject to *ex post* controls.

The amounts of lump sums, unit costs or flat-rate financing determined *ex ante* by application of the method authorised by the authorising officer responsible or the Commission in accordance with Article 185~~181~~ shall not be challenged by *ex post* controls. This is without prejudice to the right of the authorising officer responsible to check that the conditions triggering the payment as referred to in the first subparagraph of this paragraph are fulfilled, and to reduce the grant in accordance with Article 133~~131~~(4) where those conditions are not fulfilled or in the event of irregularity, fraud or a breach of other obligations. Where lump sums, unit costs or flat rates are established on the basis of the usual cost accounting practices of the beneficiary Article 189~~185~~(2) shall apply.

2. The frequency and scope of checks and controls may depend, inter alia, upon the nature of the action or the beneficiary, including past irregularities or fraud attributable to that beneficiary.

3. The conditions triggering the payment of lump sums, unit costs or flat-rates shall not require reporting on the costs actually incurred by the beneficiary.

4. Payment of the grant on the basis of lump sums, unit costs or flat-rate financing shall not affect the right of access to the statutory records of the beneficiaries for the purposes referred to in Articles 130~~129~~ and 188~~184~~.

~~5. For the purposes of the checks and controls referred to in paragraph 1 of this Article, points (a) and (b) of Article 186(3) shall apply.~~

Article 188~~184~~

Periodic assessment of lump sums, unit costs or flat-rates

The method for determining lump sums, unit costs or flat rates, the underlying data and the resulting amounts, as well as the adequateness of those amounts with regard to the output and/or results delivered, shall be assessed periodically and, where appropriate, adjusted in accordance with Article 185~~181~~. The frequency and scope of assessments shall depend on the evolution and the nature of the costs, in particular taking into account substantial changes in market prices and other relevant circumstances.

Article 189~~185~~

Usual cost accounting practices of the beneficiary

1. Where recourse to the usual cost accounting practices of the beneficiary is authorised, the authorising officer responsible may assess compliance of those practices with the conditions set out in Article 185~~181~~(4). That assessment may be carried out *ex ante* or by using an appropriate strategy for *ex post* controls.

2. If the compliance of the beneficiary's usual cost accounting practices with the conditions set out in Article 185~~181~~(4) has been established *ex ante*, the amounts of lump sums, unit costs or flat-rate financing determined by application of those practices shall not be challenged by *ex post* controls. This shall not affect the right of the authorising officer responsible to reduce the grant in accordance with Article 133~~131~~(4).

3. The authorising officer responsible may consider that the usual cost accounting practices of the beneficiary comply with the conditions set out in Article 185~~181~~(4) if they are accepted by national authorities under comparable funding schemes.

Article 190~~186~~

Eligible costs

1. Grants shall not exceed an overall ceiling expressed in terms of an absolute value ('maximum grant amount') which shall be established on the basis of:

(a) the overall amount of financing not linked to costs in the case referred to in point (a) of the first subparagraph of Article 126~~125~~(1);

(b) estimated eligible costs, where possible, in the case referred to in point (b) of the first subparagraph of Article 126~~125~~(1);

(c) the overall amount of the estimated eligible costs clearly defined in advance in the form of lump sums, unit costs or flat rates as referred to in points (c), (d) and (e) of the first subparagraph of Article 126~~125~~(1).

Without prejudice to the basic act, grants may in addition be expressed as a percentage of the estimated eligible costs, where the grant takes the form specified in point (b) of the first subparagraph, or as a percentage of the lump sums, unit costs or flat rate financing referred to in point (c) of the first subparagraph.

Where the grant takes the form specified in point (b) of the first subparagraph of this paragraph and where, due to specificities of an action, the grant can only be expressed in

terms of an absolute value, the verification of the eligible costs shall be done in accordance with Article 159~~155~~(4) and, where applicable, Article 159(7)~~155(5)~~.

2. Without prejudice to the maximum co-financing rate specified in the basic act:

(a) the grant shall not exceed the eligible costs;

(b) where the grant takes the form specified in point (b) of the first subparagraph of paragraph 1 and where the estimated eligible costs include costs for volunteers' work referred to in Article 185~~181~~(8), the grant shall not exceed the estimated eligible costs other than the costs for volunteers' work.

3. Eligible costs actually incurred by the beneficiary, as referred to in point (b) of the first subparagraph of Article 126~~125~~(1), shall meet all of the following criteria:

(a) they are incurred during the duration of the action or of the work programme, with the exception of costs relating to final reports and audit certificates;

(b) they are indicated in the estimated overall budget of the action or work programme;

(c) they are necessary for the implementation of the action or of the work programme which is the subject of the grant;

(d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost accounting practices of the beneficiary;

(e) they comply with the requirements of applicable tax and social legislation;

(f) they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency.

4. Calls for proposals shall specify the categories of costs considered as eligible for Union funding.

Unless provided otherwise in the basic act and in addition to paragraph 3 of this Article, the following categories of costs shall be eligible where the authorising officer responsible has declared them as such under the call for proposals:

(a) costs relating to a pre-financing guarantee lodged by the beneficiary, where that guarantee is required by the authorising officer responsible pursuant to Article 156~~152~~(1);

(b) costs relating to certificates on the financial statements and operational verification reports, where such certificates or reports are required by the authorising officer responsible;

(c) VAT, where it is not recoverable under the applicable national VAT legislation and is paid by a beneficiary other than a non-taxable person within the meaning of the first subparagraph of Article 13(1) of Council Directive 2006/112/EC[90];

(d) depreciation costs, provided they are actually incurred by the beneficiary;

[90] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

(e) salary costs of the personnel of national administrations to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken.

For the purposes of point (c) of the second subparagraph:

(a) VAT shall be considered as not recoverable if according to national law it is attributable to any of the following activities:

(i) exempt activities without right of deduction;

(ii) activities which fall outside the scope of VAT;

(iii) activities, as referred to in point (i) or (ii), in respect of which VAT is not deductible but refunded by means of specific refund schemes or compensation funds not referred to in Directive 2006/112/EC, even if that scheme or fund is established by national VAT legislation;

(b) VAT relating to the activities listed in Article 13(2) of Directive 2006/112/EC shall be regarded as paid by a beneficiary other than a non-taxable person within the meaning of the first subparagraph of Article 13(1) of that Directive, regardless of whether those activities are regarded by the Member State concerned as activities engaged in by bodies governed by public law acting as public authorities.

Article 191~~187~~

Affiliated entities and sole beneficiary

1. For the purpose of this Title, the following entities shall be considered as entities affiliated to the beneficiary:

(a) entities forming the sole beneficiary in accordance with paragraph 2;

(b) entities that satisfy the eligibility criteria and that do not fall within one of the situations referred to in Articles 139~~136~~(1) and 144~~141~~(1) and that have a link with the beneficiary, in particular a legal or capital link, which is neither limited to the action nor established for the sole purpose of its implementation.

Section 2 of Chapter 2 of Title V shall apply also to affiliated entities.

2. Where several entities satisfy the criteria for being awarded a grant and together form one entity, that entity may be treated as the sole beneficiary, including where the entity is specifically established for the purpose of implementing the action to be financed by the grant.

3. Unless otherwise provided in the call for proposals, entities affiliated to a beneficiary may participate in the implementation of the action, provided that both of the following conditions are fulfilled:

(a) the entities concerned are identified in the grant agreement;

(b) the entities concerned abide by the rules applicable to the beneficiary under the grant agreement with regard to:

(i) eligibility of costs or conditions triggering the payment;

(ii) rights of checks and audits by the Commission, OLAF and the Court of Auditors.

Costs incurred by such entities may be accepted as eligible costs actually incurred or may be covered by lump sums, unit costs and flat-rate financing.

CHAPTER 2

PRINCIPLES

Article 192~~188~~

General principles applicable to grants

Grants shall be subject to the principles of:

(a) equal treatment;

(b) transparency;

(c) co-financing;

(d) non-cumulative award and no double financing;

(e) non-retroactivity;

(f) no-profit.

Article 193~~189~~

Transparency

1. Grants shall be awarded following a publication of calls for proposals, except in the cases referred to in Article 199~~195~~.

2. All grants awarded in the course of a financial year shall be published in accordance with Article 38(1) to (4).

3. Following the publication referred to in paragraphs 1 and 2, when requested by the European Parliament and by the Council, the Commission shall forward a report to them on:

(a) the number of applicants in the preceding financial year;

(b) the number and percentage of successful applications per call for proposals;

(c) the average duration of the procedure from the date of closure of the call for proposals to the award of a grant;

(d) the number and amount of grants for which an *ex post* publication did not take place in the preceding financial year in accordance with Article 38(4).

(e) any grant awarded to financial institutions, including the EIB or the EIF in accordance with point (g) of the first paragraph of Article 199~~195~~.

Article 194~~190~~

Co-financing

1. Grants shall involve co-financing. As a result, the resources necessary to carry out the action or the work programme shall not be provided entirely by the grant.

Co-financing may be provided in the form of the beneficiary's own resources, income generated by the action or work programme or financial or in-kind contributions from third parties.

2. In-kind contributions from third parties in the form of volunteers' work valued in accordance with Article 185~~181~~(8) shall be presented as eligible costs in the estimated budget. They shall be presented separately from other eligible costs. Volunteers' work may comprise up to 50 % of the ⇨ overall ⇦ co-financing. For the purposes of calculating that percentage, in-kind contributions and other co-financing shall be based on the estimates provided by the applicant.

Other in-kind contributions from third parties shall be presented separately from the contributions to the eligible costs in the estimated budget. Their approximate value shall be indicated in the estimated budget and shall not be subject to subsequent changes.

3. By way of derogation from paragraph 1, an external action may be financed in full by the grant where this is essential for it to be carried out. In such a case, justification shall be provided in the award decision.

4. This Article shall not apply to interest rate rebates and guarantee fee subsidies.

Article 195~~191~~

Principle of non-cumulative award and prohibition of double funding

1. Each action may give rise to the award of only one grant from the budget to any one beneficiary, except where otherwise authorised in the relevant basic acts.

A beneficiary may be awarded only one operating grant from the budget per financial year.

An action may be financed jointly from separate budget lines by different authorising officers responsible.

2. The applicant shall immediately inform the authorising officers of any multiple applications and multiple grants relating to the same action or to the same work programme.

3. In no circumstances shall the same costs be financed twice by the budget.

4. In relation to the following types of support, paragraphs 1 and 2 shall not apply and, where appropriate, the Commission may decide not to verify whether the same cost was financed twice:

(a) study, research, training or education support paid to natural persons;

(b) direct support paid to natural persons most in need, such as unemployed persons and refugees.

Article 196~~192~~

No-profit principle

1. Grants shall not have the purpose or effect of producing a profit within the framework of the action or the work programme of the beneficiary ('no-profit principle').

2. For the purposes of paragraph 1, a profit shall be defined as a surplus, calculated at the payment of the balance, of receipts over the eligible costs of the action or work programme, where receipts are limited to the Union grant and the revenue generated by that action or work programme.

In the case of an operating grant, amounts dedicated to the building up of reserves shall not be taken into account for verifying compliance with the no-profit principle.

3. Paragraph 1 shall not apply to:

(a) actions the objective of which is the reinforcement of the financial capacity of a beneficiary, or actions which generate income to ensure their continuity after the period of Union financing provided for in the grant agreement;

(b) study, research, training or education support paid to natural persons or other direct support paid to natural persons most in need, such as unemployed persons and refugees;

(c) actions implemented by non-profit organisations;

(d) grants in the form referred to in point (a) of the first subparagraph of Article 126~~125~~(1);

(e) low value grants.

4. Where a profit is made, the Commission shall be entitled to recover the percentage of the profit corresponding to the Union contribution to the eligible costs ~~actually~~ incurred by the beneficiary in carrying out the action or work programme.

Article 197~~193~~

Principle of non-retroactivity

1. Unless otherwise provided in this Article grants shall not be awarded retroactively.

2. A grant may be awarded for an action which has already begun provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement.

In such cases, costs incurred prior to the date of submission of the grant application shall not be eligible, except:

(a) in duly justified exceptional cases as provided for in the basic act; or

(b) in the event of extreme urgency for measures referred to in point (a) or (b) of the first paragraph of Article 199~~195~~ whereby an early intervention by the Union would be of major importance.

In the case referred to in point (b) of the second subparagraph, the costs incurred by a beneficiary before the date of submission of the application shall be eligible for Union financing under the following conditions:

(a) the reasons for such derogation have been properly substantiated by the authorising officer responsible;

(b) the grant agreement explicitly sets the eligibility date earlier than the date for submission of applications.

The authorising officer by delegation shall report on each of the cases referred to in this paragraph under the heading 'Derogations from the principle of non-retroactivity pursuant to Article 197~~193~~ of the Financial Regulation' in the annual activity report referred to in Article 74(9).

3. Grants shall not be awarded retroactively for actions already completed.

4. In the case of operating grants, the grant agreement shall be signed within four months of the start of the beneficiary's financial year. Costs incurred before the grant application was submitted or before the start of the beneficiary's financial year shall not be eligible for financing. The first instalment shall be paid to the beneficiary within 30 calendar days of the signature of the grant agreement.

CHAPTER 3

GRANT AWARD PROCEDURE AND GRANT AGREEMENT

Article 198~~194~~

Content and publication of calls for proposals

1. Calls for proposals shall specify:

(a) the objectives pursued;

(b) the eligibility, exclusion, selection and award criteria and the relevant supporting documents;

(c) the arrangements for Union financing, specifying all types of Union contributions, in particular the forms of grant;

(d) the arrangements and final date for the submission of proposals;

(e) the planned date by which all applicants are to be informed of the outcome of the evaluation of their application and the indicative date for the signature of grant agreements.

2. The dates referred to in point (e) of paragraph 1 shall be fixed on the basis of the following periods:

(a) for informing all applicants of the outcome of the evaluation of their application, a maximum of six months from the final date for submission of complete proposals;

(b) for signing grant agreements with applicants, a maximum of three months from the date of informing applicants that they have been successful.

Those periods may be adjusted in order to take into account any time needed to comply with specific procedures that may be required by the basic act in accordance with Regulation (EU) No 182/2011 and may be exceeded in exceptional, duly justified cases, in particular for complex actions, where there is a large number of proposals or delays attributable to the applicants.

The authorising officer by delegation shall report in his or her annual activity report on the average time taken to inform applicants and to sign grant agreements. In the event of the periods referred to in the first subparagraph being exceeded, the authorising officer by delegation shall give reasons and, where not duly justified in accordance with the second subparagraph, shall propose remedial action.

3. Calls for proposals shall be published on the website of Union institutions and by any other appropriate means, including the *Official Journal of the European Union*, where it is necessary to provide additional publicity among potential beneficiaries. Calls for proposals may be published subject to the adoption of the financing decision referred to in Article 111~~110~~, including during the year preceding budget implementation. Any modification of the content of the calls for proposals shall be published under the same conditions.

Article 199~~195~~

Exceptions to calls for proposals

Grants may be awarded without a call for proposals only in the following cases:

(a) for the purposes of humanitarian aid, emergency support operations, civil protection operations or crisis management aid;

(b) in other exceptional and duly substantiated emergencies;

(c) to bodies with a de jure or de facto monopoly or to bodies designated by Member States, under their responsibility, where those Member States are in a de jure or de facto monopoly situation;

(d) to bodies identified by a basic act, within the meaning of Article 58, as beneficiaries or to bodies designated by Member States, under their responsibility, where those Member States are identified by a basic act as beneficiaries;

(e) in the case of research and technological development, to bodies identified in the work programme referred to in Article 111~~110~~, where the basic act expressly provides for that possibility, and on condition that the project does not fall under the scope of a call for proposals;

(f) for activities with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative powers, on condition that the activities concerned do not fall within the scope of a call for proposals;

(g) to the EIB or the EIF for actions of technical assistance. In such cases, points (a) to (d) of Article 200~~196~~(1) shall not apply.

Where the particular type of body referred to in point (f) of the first paragraph is a Member State, the grant may also be awarded without a call for proposals to the body designated by the Member State, under its responsibility, for the purpose of implementing the action.

The cases referred to in points (c) and (f) of the first paragraph shall be duly substantiated in the award decision.

Article 200~~196~~

Content of grant applications

1. The grant application shall contain the following:

(a) information on the legal status of the applicant ⇨ , including whether it is a non-governmental organisation ⇦ ;

(b) a declaration on the applicant's honour in accordance with Article 140~~137~~(1) and on compliance with the eligibility and selection criteria;

(c) information necessary to demonstrate the applicant's financial and operational capacity to carry out the proposed action or work programme and, if decided by the authorising officer responsible on the basis of a risk assessment, supporting documents confirming that information, such as the profit and loss account and the balance sheet for up to the three last financial years for which the accounts were closed;

Such information and supporting documents shall not be requested from applicants to which the verification of the financial or operational capacity does not apply in accordance with Article 202~~198~~(5) or (6). In addition, supporting documents shall not be requested for low value grants;

(d) where the application concerns a grant for an action for which the amount exceeds EUR 750000 or an operating grant which exceeds EUR 100000, an audit

report produced by an approved external auditor, where it is available, and always in cases where a statutory audit is required by Union or national law, certifying the accounts for up to the last three available financial years. In all other cases, the applicant shall provide a self-declaration signed by its authorised representative certifying the validity of its accounts for up to the last three available financial years;

The first subparagraph shall apply only to the first application made by a beneficiary to an authorising officer responsible in any one financial year.

In the case of agreements between the Commission and a number of beneficiaries, the thresholds set in the first subparagraph shall apply to each beneficiary.

In the case of partnerships referred to in Article 132~~130~~(4), the audit report referred to in the first subparagraph of this point, covering the last two financial years available, must be produced before signature of the financial framework partnership agreement.

The authorising officer responsible may, depending on a risk assessment, waive the obligation referred to in the first subparagraph for education and training establishments and, in the case of agreements with a number of beneficiaries, beneficiaries who have accepted joint and several liabilities or who do not bear any financial responsibility.

The first subparagraph shall not apply to persons and entities eligible under indirect management to the extent that they comply with the conditions specified in ~~point (c) of the first subparagraph of~~ Article 62(1), first subparagraph, point (b), and in Article 158~~154~~;

(e) a description of the action or work programme and an estimated budget, which:

(i) shall have revenue and expenditure in balance; and

(ii) shall indicate the estimated eligible costs of the action or work programme.

Points (i) and (ii) shall not apply to multi-donor actions.

By way of derogation from point (i), in duly justified cases, the estimated budget may include provisions for contingencies or possible variations in exchange rates;

(f) indication of the sources and amounts of Union funding received or applied for in respect of the same action or part of the action or for the functioning of the applicant during the same financial year as well as any other funding received or applied for the same action.

2. The application may be divided in several parts that may be submitted at different stages in accordance with Article 204~~200~~(2).

Article 201~~197~~

Eligibility criteria

1. The eligibility criteria shall determine the conditions for participating in a call for proposals.

2. Any of the following applicants shall be eligible for participating in a call for proposals:

(a) legal persons;

(b) natural persons, in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant;

(c) entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on behalf of the entities and that the entities offer guarantees for the protection of the financial interests of the Union equivalent to those offered by legal persons. In particular the applicant shall have a financial and operational capacity equivalent to that of a legal person. The representatives of the applicant shall prove that those conditions are satisfied.

3. The call for proposals may lay down additional eligibility criteria which shall be established with due regard for the objectives of the action and shall comply with the principles of transparency and non-discrimination.

4. For the purposes of Article 184~~180~~(5) and of this Article, the JRC shall be considered as a legal person established in a Member State.

Article 202~~198~~

Selection criteria

1. The selection criteria shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.

2. The applicant shall have stable and sufficient sources of funding to maintain his or her activity throughout the period for which the grant is awarded and to participate in its funding ('financial capacity').

3. The applicant shall have the professional competencies and qualifications required to complete the proposed action or work programme unless specifically provided otherwise in the basic act ('operational capacity').

4. Financial and operational capacity shall be verified in particular on the basis of an analysis of any information or supporting documents referred to in Article 200~~196~~.

If no supporting documents were requested in the call for proposals and if the authorising officer responsible has reasonable grounds to question the financial or operational capacity of an applicant, he or she shall request the applicant to provide any appropriate documents.

In the case of partnerships the verification shall be performed in accordance with Article 132~~130~~(6).

5. The verification of financial capacity shall not apply to:

(a) natural persons in receipt of education support;

(b) natural persons most in need, such as unemployed persons and refugees, and in receipt of direct support;

(c) public bodies, including Member State organisations;

(d) international organisations;

(e) persons or entities applying for interest rate rebates and guarantee fee subsidies where the objective of those rebates and subsidies is to reinforce the financial capacity of a beneficiary or to generate an income.

6. The authorising officer responsible may, depending on a risk assessment, waive the obligation to verify the operational capacity of public bodies, Member State organisations or international organisations.

Article 203~~199~~

Award criteria

The award criteria shall be such as to make it possible to:

(a) assess the quality of the proposals submitted in the light of the objectives and priorities set and of the expected results;

(b) award grants to the actions or to the work programmes which maximise the overall effectiveness of the Union funding;

(c) evaluate the grant applications.

Article 204~~200~~

Evaluation procedure

1. Proposals shall be evaluated, on the basis of the pre-announced selection and award criteria, with a view to determining which proposals may be financed.

2. The authorising officer responsible shall, where appropriate, divide the process into several procedural stages. The rules governing the process shall be announced in the call for proposals.

The applicants whose proposals are rejected at any stage shall be informed in accordance with paragraph 7.

The same documents and information shall not be required more than once during the same procedure.

3. The evaluation committee referred to in Article 154~~150~~ or, where appropriate, the authorising officer responsible may ask an applicant to provide additional information or to clarify the supporting documents submitted in accordance with Article 155~~151~~. The authorising officer shall keep appropriate records of contacts with applicants during the procedure.

4. Upon completion of its work, the members of the evaluation committee shall sign a record of all the proposals examined, containing an assessment of their quality and identifying those which may receive funding.

Where necessary that record shall rank the proposals examined, provide recommendations on the maximum amount to award and possible non-substantial adjustments to the grant application.

The record shall be kept for future reference.

5. The authorising officer responsible may invite an applicant to adjust its proposal in the light of the recommendations of the evaluation committee. The authorising officer responsible shall keep appropriate records of contacts with applicants during the procedure.

6. The authorising officer responsible shall, on the basis of the evaluation, take his or her decision giving at least:

(a) the subject and the overall amount of the decision;

(b) the names of the successful applicants, the title of the actions, the amounts accepted and the reasons for that choice, including where it is inconsistent with the opinion of the evaluation committee;

(c) the names of any applicants rejected and the reasons for that rejection.

7. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the Union institution concerned shall give the reasons for the rejection of the application. Rejected applicants shall be informed as soon as possible of the outcome of the evaluation of their application and in any case within 15 calendar days after information has been sent to the successful applicants.

8. For grants awarded pursuant to Article 199~~195~~, the authorising officer responsible may:

(a) decide not to apply paragraphs 2 and 4 of this Article and Article 154~~150~~;

(b) merge the content of the evaluation report and the award decision into a single document and sign it.

Article 205~~201~~

Grant agreement

1. Grants shall be covered by a written agreement.

2. The grant agreement shall at least include the following:

(a) the subject;

(b) the beneficiary;

(c) the duration, namely:

(i) the date of its entry into force;

(ii) the starting date and the duration of the action or the financial year of the funding;

(d) a description of the action or, for an operating grant, of the work programme together with a description of the results expected;

(e) the maximum amount of Union funding expressed in euro, the estimated budget of the action or work programme and the form of the grant;

(f) the rules regarding reporting and payments and the procurement rules provided for in Article 209~~205~~;

(g) the acceptance by the beneficiary of the obligations referred to in Article 130~~129~~;

(h) provisions governing the visibility of the Union financial support, except in duly justified cases where public display is not possible or appropriate;

(i) the applicable law which shall be Union law, complemented, where necessary, by national law as specified in the grant agreement. Derogation may be made in the grant agreements concluded with international organisations;

(j) the competent court or arbitration tribunal to hear disputes.

3. Pecuniary obligations of entities or persons other than States arising from the implementation of a grant agreement shall be enforceable in accordance with Article 100(2).

4. Amendments to grant agreements shall not have the purpose or the effect of making such changes that would call into question the grant award decision or be contrary to the principle of equal treatment of applicants.

CHAPTER 4

IMPLEMENTATION OF GRANTS

Article 206~~202~~

Amount of the grant and extension of audit findings

1. The amount of the grant shall not become final until after the authorising officer responsible has approved the final reports and, where applicable, the accounts, without prejudice to subsequent audits, checks and investigations by the Union institution concerned, OLAF or the Court of Auditors. Article 133~~131~~(4) shall apply also after the amount of the grant has become final.

2. Where controls or audits demonstrate systemic or recurrent irregularities, fraud or a breach of obligations attributable to the beneficiary and having a material impact on a number of grants awarded to that beneficiary under similar conditions, the authorising officer responsible may suspend the implementation of the grant agreement or payments under all the grants concerned or, where appropriate, terminate the grant agreements concerned with that beneficiary, having regard to the seriousness of the findings.

The authorising officer responsible may, in addition, reduce the grants, reject ineligible costs and recover amounts unduly paid in respect of all the grants affected by the systemic or recurrent irregularities, fraud or breach of obligations referred to in the first subparagraph that may be subject to audits, checks and investigations in accordance with the grant agreements affected.

3. The authorising officer responsible shall determine the amounts to be reduced or recovered, wherever possible and practicable, on the basis of costs unduly declared as eligible for each grant concerned, following acceptance of the revised reports and financial statements submitted by the beneficiary.

4. Where it is not possible or practicable to quantify precisely the amount of ineligible costs for each grant concerned, the amounts to be reduced or recovered may be determined by extrapolating the reduction or recovery rate applied to the grants for which the systemic or recurrent irregularities, fraud or breach of obligations have been demonstrated, or, where ineligible costs cannot serve as a basis for determining the amounts to be reduced or recovered, by applying a flat rate, having regard to the principle of proportionality. The beneficiary shall be given the opportunity to propose a duly substantiated alternative method or rate before the reduction or recovery is made.

Article 207~~203~~

Supporting documents for payment requests

1. The authorising officer responsible shall specify the supporting documents required to accompany payment requests.

2. For each grant, pre-financing may be split into several instalments in accordance with sound financial management. The request for a further pre-financing instalment shall be accompanied by a beneficiary's statement on the consumption of previous pre-financing. The

instalment shall be paid in full if at least 70 % of the total amount of any earlier pre-financing has been consumed. Otherwise, the instalment shall be reduced by the amounts still to be consumed until that threshold is reached.

3. The beneficiary shall, without prejudice to the obligation to provide supporting documents, certify on its honour that information contained in payment requests is full, reliable and true. The beneficiary shall also certify that the costs incurred are eligible in accordance with the grant agreement and that payment requests are substantiated by adequate supporting documents that may be checked.

4. A certificate on the financial statements of the action or the work programme and underlying accounts may be demanded by the authorising officer responsible in support of interim payments or payments of balances of any amount. Such a certificate shall be requested on the basis of a risk assessment taking into account, in particular, the amount of the grant, the amount of the payment, the nature of the beneficiary and the nature of the supported activities.

The certificate shall be produced by an approved external auditor or, in the case of public bodies, by a competent and independent public officer.

The certificate shall certify, in accordance with a methodology approved by the authorising officer responsible and on the basis of agreed-upon procedures compliant with international standards, that the costs declared by the beneficiary in the financial statements on which the payment request is based are real, accurately recorded and eligible in accordance with the grant agreement. In specific and duly justified cases, the authorising officer responsible may request the certificate in the form of an opinion or other format in accordance with international standards.

5. An operational verification report, produced by an independent third party approved by the authorising officer responsible, may be requested by the authorising officer responsible in support of any payment, on the basis of a risk assessment. The operational verification report shall state that the operational verification was done in accordance with a methodology approved by the authorising officer responsible and whether the action or work programme was actually implemented in accordance with the conditions set out in the grant agreement.

Article 208~~204~~

Financial support to third parties

Where implementation of an action or a work programme requires the provision of financial support to third parties, the beneficiary may provide such financial support if the conditions for such provision are defined in the grant agreement between the beneficiary and the Commission, with no margin for discretion by the beneficiary.

No margin for discretion shall be considered to exist if the grant agreement specifies the following:

(a) the maximum amount of financial support that can be paid to a third party which shall not exceed EUR 60000 and the criteria for determining the exact amount;

(b) the different types of activities that may receive such financial support, on the basis of a fixed list;

(c) the definition of the persons or categories of persons which may receive such financial support and the criteria for providing it.

The threshold referred to in point (a) of the second paragraph may be exceeded ⇨ in the case of humanitarian aid, emergency support operations, civil protection operations or crisis management aid or ⇦ where achieving the objectives of the actions would otherwise be impossible or overly difficult.

Article 209~~205~~

Implementation contracts

1. Without prejudice to Directive 2014/24/EU and Directive 2014/25/EU of the European Parliament and of the Council[91], where the implementation of the action or work programme requires the award of a ~~public~~ contract, the beneficiary may award the ~~public~~ contract in accordance with its usual purchasing practices provided that the ~~public~~ contract is awarded to the tender offering best value for money or, as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests.

2. Where implementation of the action or work programme requires the award of a ~~public~~ contract with a value of more than EUR 60000, the authorising officer responsible may, if duly justified, require the beneficiary to abide by special rules in addition to those referred to in paragraph 1.

Those special rules shall be based on rules contained in this Regulation and shall be proportionate to the value of the ~~public~~ ~~contracts~~ ⌦ contracts ⌫ concerned, the relative size of the Union contribution in relation to the total cost of the action and the risk. Such special rules shall be included in the grant agreement.

TITLE IX

PRIZES

Article 210~~206~~

General rules

1. Prizes shall be awarded in accordance with the principles of transparency and equal treatment and shall promote the achievement of policy objectives of the Union.

2. Prizes shall not be awarded directly without a contest.

Contests for prizes with a unit value of EUR 1000000 or more may only be published where those prizes are mentioned in the financing decision referred to in Article 111~~110~~ and after information on such prizes has been submitted to the European Parliament and to the Council.

3. The amount of the prize shall not be linked to costs incurred by the winner.

4. Where implementation of an action or work programme requires prizes to be awarded to third parties by a beneficiary, that beneficiary may award such prizes provided that the eligibility and award criteria, the amount ⇨ or type ⇦ of the prizes and the payment ⇨ or delivery ⇦ arrangements are defined in the grant agreement between the beneficiary and the Commission, with no margin for discretion.

[91] Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

Article 211~~207~~

Rules of contest, award and publication

1. Rules of contests shall:

(a) specify the eligibility criteria;

(b) specify the arrangements and the final date for the registration of applicants, if required, and for the submission of applications;

(c) specify the exclusion criteria as set out in Article~~s~~ 139~~136~~ and the grounds for rejection set out in Article 144~~141~~;

(d) provide for the sole liability of the applicant in the event of a claim relating to the activities carried out in the framework of the contest;

(e) provide for acceptance by the winners of the obligations referred to in Article 130~~129~~ and of the publicity obligations as specified in the rules of the contest;

(f) specify the award criteria, which shall be such as to make possible to assess the quality of the applications with regard to the objectives pursued and the expected results and to determine objectively whether applications are successful;

(g) specify the amount ⇨ or type ⇦ of the prize or prizes;

(h) specify the arrangements for the payment ⇨ or delivery ⇦ of prizes to the winners after their award.

For the purposes of point (a) of the first subparagraph, beneficiaries shall be eligible, unless stated otherwise in the rules of contest.

Article 198~~194~~(3) shall apply *mutatis mutandis* to the publication of contests.

2. Rules of contests may set the conditions for cancelling the contest, in particular where its objectives cannot be fulfilled.

3. Prizes shall be awarded by the authorising officer responsible following an evaluation by the evaluation committee referred to in Article 154~~150~~.

Article 204~~200~~(4) and (6) shall apply *mutatis mutandis* to the award decision.

4. Applicants shall be informed as soon as possible of the outcome of the evaluation of their application and in any case within 15 calendar days after the award decision has been taken by the authorising officer.

The decision to award the prize shall be notified to the winning applicant and shall serve as the legal commitment.

5. All prizes awarded in the course of a financial year shall be published in accordance with Article 38(1) to (4).

When requested by the European Parliament and by the Council following the publication, the Commission shall forward them a report on:

(a) the number of applicants in the past year;

(b) the number of applicants and the percentage of successful applications per contest;

(c) a list of the experts having taken part in evaluation committees in the past year, together with a reference to the procedure for their selection.

TITLE X

FINANCIAL INSTRUMENTS, BUDGETARY GUARANTEES AND FINANCIAL ASSISTANCE

CHAPTER 1

COMMON PROVISIONS

Article 212~~208~~

Scope and implementation

1. Where it proves to be the most appropriate way to achieve policy objectives of the Union, the Union may establish financial instruments or provide budgetary guarantees or financial assistance backed by the budget by means of a basic act defining their scope and period of implementation.

2. Member States may contribute to the Union's financial instruments, budgetary guarantees or financial assistance. If authorised by the basic act, third parties may also contribute.

⇩ new

3. Where financial instruments or budgetary guarantees are implemented under direct management, the Commission shall ensure compliance *mutatis mutandis* with Article 159(2) with respect to financial intermediaries and final recipients.

🡻 2018/1046
⇨ new

4~~3~~. Where financial instruments are implemented under shared management with Member States, sector-specific rules shall apply.

5~~4~~. Where financial instruments or budgetary guarantees are implemented under indirect management, the Commission shall conclude agreements with entities pursuant to points (c)(ii), (iii), (v) and (vi) of the first subparagraph of Article 62(1). Where the systems, rules and procedures of those entities have been assessed pursuant to Article 158 ⇨ (3) and ⇦ ~~154~~(4), they may fully rely on those systems, rules and procedures. Those entities may, when implementing financial instruments and budgetary guarantees under indirect management, conclude agreements with financial intermediaries which shall be selected in accordance with procedures equivalent to those applied by the Commission. Those entities shall transpose the requirements pursuant to Article 159~~155~~(2) in those agreements.

The Commission shall remain responsible for ensuring that the implementation framework for financial instruments ⇨ and budgetary guarantees ⇦ complies with the principle of sound financial management and supports the attainment of defined and time-bound policy objectives, measurable in terms of outputs and/or results. The Commission shall be accountable for the implementation of financial instruments ⇨ and budgetary guarantees ⇦

without prejudice to the entrusted entities' legal and contractual responsibility in accordance with the applicable law and Article 130~~129~~.

Where third countries contribute to financial instruments or budgetary guarantees pursuant to paragraph 2, the basic act may allow for the designation of eligible implementing entities or counterparts from the countries concerned.

6~~5~~. The Court of Auditors shall have full access to any information related to the financial instruments, budgetary guarantees and financial assistance, including by means of on-the-spot checks.

The Court of Auditors shall be the external auditor responsible for the projects and programmes supported by a financial instrument, a budgetary guarantee or a financial assistance.

Article 213~~209~~

Principles and conditions applicable to financial instruments and budgetary guarantees

1. Financial instruments and budgetary guarantees shall be used in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination, equal treatment and subsidiarity, and in accordance with their objectives.

2. Financial instruments and budgetary guarantees shall:

(a) address market failures or sub-optimal investment situations and provide support, in a proportionate manner, only to final recipients that are deemed economically viable according to internationally accepted standards at the time of the Union financial support;

(b) achieve additionality by preventing the replacement of potential support and investment from other public or private sources;

(c) not distort competition in the internal market and be consistent with State aid rules;

(d) achieve a leverage and a multiplier effect, with a target range of values based on an *ex ante* evaluation for the corresponding financial instrument or budgetary guarantee, by mobilising a global investment exceeding the size of the Union contribution or guarantee, including, where appropriate, the maximisation of private investment;

(e) be implemented in a way to ensure that there is a common interest of the implementing entities or counterparts involved in the implementation in achieving the policy objectives defined in the relevant basic act, with provisions on for example co-investment, risk sharing requirements or financial incentives, while preventing a conflict of interests with other activities of the entities or counterparts;

(f) provide for remuneration of the Union that is consistent with the sharing of risk among financial participants and the policy objectives of the financial instrument or budgetary guarantee;

(g) where remuneration of the implementing entities or the counterparts involved in the implementation is due, provide that such remuneration is performance-based and comprises:

(i) administrative fees to remunerate the entity or counterpart for the work carried out in the implementation of a financial instrument or budgetary

guarantee, which shall, to the extent possible, be based on the operations carried out or the amounts disbursed; and

(ii) where appropriate, policy related incentives to promote the achievement of the policy objectives or incentivise the financial performance of the financial instrument or budgetary guarantee.

Exceptional expenses may be reimbursed in duly justified cases;

(h) be based on *ex ante* evaluations, individually or as part of a programme, in line with Article 34, containing explanations concerning the choice of the type of financial operation taking into account the policy objectives pursued and the associated financial risks and savings for the budget.

The evaluations referred to in point (h) of the first subparagraph shall be reviewed and updated to take into account the effect of major socioeconomic changes on the rationale of the financial instrument or budgetary guarantee.

3. Without prejudice to sector-specific rules for shared management, revenue, including dividends, capital gains, guarantee fees and interest on loans and on amounts on fiduciary accounts paid back to the Commission or on fiduciary accounts opened for financial instruments or budgetary guarantees and attributable to the support from the budget under a financial instrument or a budgetary guarantee, shall be entered in the budget after deduction of management costs and fees.

Annual repayments, including capital repayments, guarantees released, and repayments of the principal of loans, paid back to the Commission or to fiduciary accounts opened for financial instruments or budgetary guarantees and attributable to the support from the budget under a financial instrument or a budgetary guarantee, shall constitute internal assigned revenue in accordance with point (f) of Article 21(3) and shall be used for the same financial instrument or budgetary guarantee, without prejudice to Article 219~~215~~(5), for a period not exceeding the period for the budgetary commitment plus two years, unless otherwise specified in a basic act.

The Commission shall take into account such internal assigned revenue when proposing the amount for future allocations for financial instruments or budgetary guarantees.

Notwithstanding the second subparagraph, the outstanding amount of assigned revenue authorised under a basic act that is to be repealed or terminates may also be assigned to another financial instrument pursuing similar objectives, where this is provided in the basic act establishing that financial instrument.

4. The authorising officer responsible for a financial instrument, a budgetary guarantee or a financial assistance shall produce a financial statement covering the period 1 January to 31 December, in accordance with Article 249~~243~~ and in compliance with the accounting rules referred to in Article 80 and the International Public Sector Accounting Standards (IPSAS).

For financial instruments and budgetary guarantees implemented under indirect management, the authorising officer responsible shall ensure that unaudited financial statements covering the period 1 January to 31 December prepared in compliance with the accounting rules referred to in Article 80 and with IPSAS, as well as any information necessary to produce financial statements in accordance with Article 82(2), be provided by the entities pursuant to points (c)(ii), (iii), (v) and (vi) of the first subparagraph of Article 62(1) by 15 February of the following financial year and that audited financial statements be provided by those entities by 15 ~~May~~ ⇨ April ⇦ of the following financial year.

⇩ new

5. Where financial instruments or budgetary guarantees are combined within a single agreement with ancillary support from the budget, including grants, this Title shall apply to the whole measure. The reporting shall be carried out in accordance with Article 41(4) and (5) and shall clearly identify which parts of the measure are financial instruments or budgetary guarantees.

🡻 2018/1046
⇨ new

Article 214~~210~~

Financial liability of the Union

1. The financial liability and aggregate net payments from the budget shall not exceed at any time:

(a) for financial instruments: the amount of the relevant budgetary commitment made for it;

(b) for budgetary guarantees: the amount of the budgetary guarantee authorised by the basic act;

(c) for financial assistance: the maximum amount of funds that the Commission is empowered to borrow for funding the financial assistance as authorised by the basic act, and the relevant interest.

2. Budgetary guarantees and financial assistance may generate a contingent liability for the Union which shall only exceed the financial assets provided to cover the financial liability of the Union if provided for in a basic act establishing a budgetary guarantee or financial assistance and under the conditions set out therein.

3. For the purposes of the annual assessment provided for in Article ~~point (j) of Article 41(5)~~ ⇨ 253(1), point (g) ⇦ , the contingent liabilities arising from budgetary guarantees or financial assistance borne by the budget shall be deemed sustainable, if their forecast multiannual evolution is compatible with the limits set by the regulation laying down the multiannual financial framework provided for in Article 312(2) TFEU and the ceiling on annual payment appropriations set out in Article 3(1) of Decision (EU, Euratom) 2020/2053~~Decision 2014/335/EU, Euratom~~.

Article 215~~211~~

Provisioning of financial liabilities

1. For budgetary guarantees and financial assistance to third countries, a basic act shall set out a provisioning rate as a percentage of the amount of the financial liability authorised. That amount shall exclude the contributions referred to in Article 212~~208~~(2).

The basic act shall provide for the review of the provisioning rate at least every three years.

2. The setting of a provisioning rate shall be guided by a qualitative and quantitative assessment by the Commission of the financial risks arising from a budgetary guarantee or a

financial assistance to a third country in accordance with the principle of prudence, whereby assets and profits shall not be overestimated and liabilities and losses shall not be underestimated.

Unless otherwise specified in the basic act establishing the budgetary guarantee or financial assistance to a third country, the provisioning rate shall be based on the global provisioning needed in advance to cover the net expected losses and, in addition, an adequate safety buffer. Without prejudice to the powers of the European Parliament and of the Council, the global provisioning shall be constituted over the period of time foreseen in the relevant financial statement as referred to in Article 35.

3. For a financial instrument provision shall be made, where appropriate, to respond to future payments related to a budgetary commitment of that financial instrument.

4. The following resources shall contribute to the provisioning:

(a) contributions from the budget, while fully respecting the regulation laying down the multiannual financial framework and after examination of the possibilities for redeployments;

(b) returns on investments of the resources held in the common provisioning fund;

(c) amounts recovered from defaulting debtors in accordance with the recovery procedure laid down in the guarantee or the loan agreement;

(d) revenue and any other payments received by the Union in accordance with the guarantee or the loan agreement;

(e) where applicable, contributions in cash by Member States and third parties pursuant to Article 212~~208~~(2).

Only the resources referred to in points (a) to (d) of the first subparagraph of this paragraph shall be taken into account for calculating the provisioning resulting from the provisioning rate referred to in paragraph 1.

5. Provisions shall be used for the payment of:

(a) calls on the budgetary guarantee;

(b) payment obligations related to a budgetary commitment for a financial instrument;

(c) financial obligations arising from the borrowing of funds pursuant to Article 224~~220~~(1);

(d) where applicable, other expenses associated to the implementation of financial instruments, budgetary guarantees and financial assistance to third countries.

6. Where the provisions for a budgetary guarantee exceed the amount of provisioning resulting from the provisioning rate referred to in paragraph 1 of this Article, resources referred to in points (b), (c) and (d) of the first subparagraph of paragraph 4 of this Article related to that guarantee shall be used within the limits of the eligible period provided for in the basic act, however, not beyond the constitution phase of the provisioning, and without prejudice to Article 217~~213~~(4), to restore the budgetary guarantee up to its initial amount.

7. The Commission shall immediately inform the European Parliament and the Council and may propose adequate replenishment measures or an increase of the provisioning rate where:

(a) as a result of calls on a budgetary guarantee, the level of provisions for that budgetary guarantee falls below 50 % of the provisioning rate referred to in paragraph 1, and again where it falls below 30 % of that provisioning rate, or where it could fall below any of those percentages within a year according to a risk assessment by the Commission;

(b) a country benefitting from financial assistance by the Union fails to pay on a maturity.

Article 216~~212~~

Common provisioning fund

1. The provisions made to cover the financial liabilities arising from financial instruments, budgetary guarantees or financial assistance shall be held in a common provisioning fund.

By 30 June 2019, the Commission shall submit to the European Parliament and to the Council an independent external evaluation of the advantages and disadvantages of entrusting the financial management of the assets of the common provisioning fund to the Commission, to the EIB, or to a combination of the two, taking into account the relevant technical and institutional criteria used in comparing asset management services, including the technical infrastructure, a comparison of costs for the services provided, the institutional set-up, reporting, performance, accountability and expertise of the Commission and the EIB and the other asset management mandates for the budget. The evaluation shall, where appropriate, be accompanied by a legislative proposal.

2. Global profits or losses from the investment of the resources held in the common provisioning fund shall be allocated proportionately among the respective financial instruments, budgetary guarantees or financial assistance.

The financial manager of the resources of the common provisioning fund shall keep a minimum amount of resources of the fund in cash or cash equivalents in accordance with prudential rules and the forecasts for payments provided by the authorising officers of the financial instruments, budgetary guarantees or financial assistance.

The financial manager of the resources of the common provisioning fund may enter into repurchase agreements, with the resources of the common provisioning fund as collateral, to make payments out of the fund where this procedure is reasonably expected to be more beneficial for the budget than the divestment of resources within the timeframe of the payment request. The duration or roll-over period of repurchase agreements related to a payment shall be limited to the minimum necessary to minimise a loss for the budget.

3. Pursuant to point (d) of the first subparagraph of Article 77(1) and Article 86(1) and (2), the accounting officer shall set up the procedures to be applied to the revenue and expenditure operations and, in agreement with the financial manager of the resources of the common provisioning fund, to the assets and liabilities related to the common provisioning fund.

4. In the exceptional cases where the Commission has made a transfer as referred to in point (g) of the first subparagraph of Article 30(1), the Commission shall immediately inform the European Parliament and the Council thereof, and shall urgently propose the measures necessary to restore the budgetary item of the guarantee from which the transfer was made, while fully respecting the ceilings provided for in the regulation laying down the multiannual financial framework.

Article 217~~213~~

Effective provisioning rate

1. The provisioning of budgetary guarantees and financial assistance to third countries in the common provisioning fund shall be based on an effective provisioning rate. That rate shall provide a level of protection against the financial liabilities of the Union equivalent to the level that would be provided by the respective provisioning rates if the resources where held and managed separately.

2. The effective provisioning rate applicable shall be a percentage of each initial provisioning rate determined in accordance with the second subparagraph of Article 215~~211~~(2). It shall apply only to the amount of resources in the common provisioning fund foreseen for the payment of guarantee calls over a one year period. It shall provide for a ratio, in the form of a percentage, between the amount of cash and cash equivalents in the common provisioning fund required to honour guarantee calls and the total amount of cash and cash equivalents that would be required in each guarantee fund to honour guarantee calls, if the resources were held and managed separately, where both amounts represent an equivalent liquidity risk. That ratio shall not fall below 95 %. The calculation of the effective provisioning rate shall take into account:

(a) the forecast of inflows and outflows in the common provisioning fund, having regard to the initial phase of constitution of global provisioning in accordance with the second subparagraph of Article 215~~211~~(2);

(b) the risk correlation among the budgetary guarantees and the financial assistance to third countries;

(c) the market conditions.

The Commission shall by 1 July 2020 adopt delegated acts in accordance with Article 274~~269~~ to supplement this Regulation with detailed conditions for the calculation of the effective provisioning rate, including a methodology for that calculation.

The Commission is empowered to adopt delegated acts in accordance with Article 274~~269~~ to amend the minimum ratio referred to in the first subparagraph of this paragraph in the light of the experience gained with the operation of the common provisioning fund while maintaining a prudent approach in line with the principle of sound financial management. The minimum ratio shall not be set at a level lower than 85 %.

3. The effective provisioning rate shall be calculated annually by the financial manager of the resources of the common provisioning fund and shall be the reference for the Commission's calculation of the contributions from the budget pursuant to point (a) of Article 215~~211~~(4) and, subsequently, point (b) of paragraph 4 of this Article.

4. Following the calculation of the annual effective provisioning rate in accordance with paragraphs 1 and 2 of this Article, the following operations in the context of the budgetary procedure shall be made and presented in the working document referred to in point (h) of Article 41(5):

(a) any surplus of provisions for a budgetary guarantee or a financial assistance to a third country shall be returned to the budget;

(b) any replenishment of the fund shall be carried out in annual tranches during a maximum period of three years, without prejudice to Article 215~~211~~(6).

5. After having consulted the accounting officer, the Commission shall establish the guidelines applicable to the management of the resources in the common provisioning fund in

accordance with appropriate prudential rules and excluding derivative operations for speculative purposes. Those guidelines shall be attached to the agreement with the financial manager of the resources of the common provisioning fund.

An independent evaluation of the adequacy of the guidelines shall be carried out every three years and transmitted to the European Parliament and to the Council.

Article 218~~214~~

Annual reporting

1. In addition to the reporting obligation laid down in Article ⇨ 253(1), point (g) ⇦ ~~250~~, the Commission shall report annually to the European Parliament and to the Council on the common provisioning fund.

⇩ new

2. The report referred to in paragraph 1 shall present information about the financial management, the performance and the risk of the common provisioning fund at the end of the preceding calendar year as well as the financial flows in the common provisioning fund during the preceding calendar year, the significant transactions and any relevant information on the financial risk exposure of the Union.

🡻 2018/1046 (adapted)
⇨ new

~~2. The financial manager of the resources of the common provisioning fund shall report annually to the European Parliament and to the Council on the common provisioning fund.~~

CHAPTER 2

SPECIFIC PROVISIONS

SECTION 1

FINANCIAL INSTRUMENTS

Article 219~~215~~

Rules and implementation

1. Notwithstanding Article 212~~208~~(1), financial instruments may be established, in duly justified cases, without being authorised by means of a basic act, provided that such instruments are included in the draft budget in accordance with point (e) of the first subparagraph of Article 41(4).

~~2. Where financial instruments or budgetary guarantees are combined within a single agreement with ancillary support from the budget, including grants, this Title shall apply to the whole measure. The reporting shall be carried out in accordance with Article 250 and shall clearly identify which parts of the measure are financial instruments or budgetary guarantees.~~

2~~3~~. The Commission shall ensure a harmonised and simplified management of financial instruments, in particular in the area of accounting, reporting, monitoring and financial risk management.

3~~4~~. Where the Union participates in a financial instrument as a minority stakeholder, the Commission shall ensure compliance with this Title in accordance with the principle of proportionality, on the basis of the size and value of the participation of the Union in the instrument. However, irrespective of the size and value of the Union participation in the instrument, the Commission shall ensure compliance with Articles 130~~129~~ and 159~~155~~, Article 213~~209~~(2) and (4), ~~Article 250~~ ⇨ Article 41(4) ⇦ and, insofar as the exclusion situations referred to in ~~point (d) of~~ Article 139~~136~~(1), point (d), are concerned, Section 2 of Chapter 2 of Title V.

4~~5~~. Where the European Parliament or the Council consider that a financial instrument has not achieved its objectives effectively, they may request that the Commission submit a proposal for a revised basic act with a view to winding down the instrument. In the event of the winding down of the financial instrument, any new amount paid back to that instrument pursuant to Article 213~~209~~(3) shall be considered as general revenue and returned to the budget.

5~~6~~. The purpose of the financial instruments or a grouping of financial instruments on a facility level and, where applicable, their specific legal form and place of registration shall be published on the Commission website.

6~~7~~. Entities entrusted with the implementation of financial instruments may open fiduciary accounts within the meaning of Article 85(3) on behalf of the Union. Those entities shall send the corresponding account statements to the Commission's responsible service. Payments to fiduciary accounts shall be made by the Commission on the basis of payment requests that are duly substantiated with disbursement forecasts, taking into account the balances available on the fiduciary accounts and the need to avoid excessive balances on such accounts.

Article 220~~216~~

Financial instruments directly implemented by the Commission

1. Financial instruments may be directly implemented pursuant to point (a) of the first subparagraph of Article 62(1) through any of the following:

(a) a dedicated investment vehicle in which the Commission participates together with other public or private investors with a view to increasing the leverage effect of the Union contribution;

(b) loans, guarantees, equity participations and other risk-sharing instruments other than investments in dedicated investment vehicles, provided directly to final recipients or through financial intermediaries.

2. Dedicated investment vehicles referred to in point (a) of paragraph 1 shall be established pursuant to the laws of a Member State. In the field of external actions, they may also be established pursuant to the laws of a country other than a Member State. The managers of such vehicles shall be obliged by law or contractually to act with the diligence of a professional manager and in good faith.

3. The managers of dedicated investment vehicles referred to in point (a) of paragraph 1 and financial intermediaries or final recipients of financial instruments shall be selected with due account to the nature of the financial instrument to be implemented, the experience and the financial and operational capacity of the entities concerned, and the economic viability of

projects of final recipients. The selection shall be transparent, justified on objective grounds and shall not give rise to a conflict of interests.

Article 221~~217~~

⌦ Combination with ⌫ ~~Treatment of contributions from~~ funds implemented under shared management

1. Separate records shall be kept ⇨ in case of combination of funds implemented under shared management with support from ⇦ ~~for contributions to~~ financial instruments established under this Section ~~from funds implemented under shared management~~.

2. ~~Contributions from~~ F~~f~~unds implemented under shared management shall be placed in separate accounts and used in accordance with the objectives of the respective funds to actions and final recipients consistent with the programme or programmes from which ~~contributions~~ ⇨ combinations ⇦ are made.

3. As regards ~~contributions from~~ ⇨ combinations of ⇦ funds implemented under shared management ⇨ with support from ⇦ ~~to~~ financial instruments established under this Section, sector-specific rules shall apply. ~~Notwithstanding the first sentence, managing authorities may rely on an existing *ex ante* evaluation, carried out in accordance with point (h) of the first subparagraph and the second subparagraph of Article 209(2), prior to contributing to an existing financial instrument.~~

SECTION 2

BUDGETARY GUARANTEES

Article 222~~218~~

Rules for budgetary guarantees

1. The basic act shall define:

   (a) the amount of the budgetary guarantee that shall not be exceeded at any time, without prejudice to Article 212~~208~~(2);

   (b) the types of operations covered by the budgetary guarantee.

2. Contributions from Member States to budgetary guarantees pursuant to Article 212~~208~~(2) may be provided in the form of guarantees or cash.

Contributions from third parties to budgetary guarantees pursuant to Article 212~~208~~(2) may be provided in the form of cash.

The budgetary guarantee shall be increased by the contributions referred to in the first and second subparagraph. Payments for guarantee calls shall be made, where necessary, by the contributing Member States or third parties on a *pari passu* basis. The Commission shall sign an agreement with the contributors that shall contain, in particular, provisions concerning the payment conditions.

Article 223~~219~~

Implementation of budgetary guarantees

1. Budgetary guarantees shall be irrevocable, unconditional and on demand for the types of operations covered.

2. Budgetary guarantees shall be implemented pursuant to point (c) of the first subparagraph of Article 62(1) or, in exceptional cases, pursuant to point (a) of the first subparagraph of Article 62(1).

3. A budgetary guarantee shall only cover financing and investment operations which comply with points (a) to (d) of the first subparagraph of Article 213~~209~~(2).

4. Counterparts shall contribute with their own resources to the operations covered by the budgetary guarantee.

5. The Commission shall conclude a guarantee agreement with the counterpart. The granting of the budgetary guarantee is subject to the entry into force of the guarantee agreement.

6. Counterparts shall provide the Commission annually with:

(a) a risk assessment and grading information concerning the operations covered by the budgetary guarantee as well as expected defaults;

(b) information on the outstanding financial obligation arising for the Union from the budgetary guarantee, broken down by individual operations~~, measured in compliance with the Union accounting rules as referred to in Article 80 or with IPSAS~~;

(c) the total profits or losses deriving from the operations covered by the budgetary guarantee.

SECTION 3

FINANCIAL ASSISTANCE

Article 224~~220~~

Rules and implementation

1. Financial assistance by the Union to Member States or third countries shall be in accordance with pre-defined conditions and take the form of a loan or a credit line or any other instrument deemed appropriate to ensure the effectiveness of the support. To that end, the Commission shall be empowered, in the relevant basic act, to borrow the necessary funds on behalf of the Union on the capital markets or from financial institutions.

2. The borrowing and lending shall not involve the Union in the transformation of maturities, or expose it to any interest risk or to any other commercial risk.

3. The financial assistance shall be carried out in euro, except in duly justified cases.

4. The financial assistance shall be directly implemented by the Commission.

5. The Commission shall conclude an agreement with the beneficiary country that shall contain provisions:

(a) ensuring that the beneficiary country regularly checks that the financing provided has been properly used in accordance with the pre-defined conditions, takes appropriate measures to prevent irregularities and fraud, and, if necessary, takes legal action to recover any funds provided under the financial assistance that have been misappropriated;

(b) ensuring the protection of the financial interests of the Union;

(c) expressly authorising the Commission, OLAF and the Court of Auditors, to exert their rights as foreseen by Article 130~~129~~;

(d) ensuring that the Union is entitled to early repayment of the loan where it has been established that, in relation to the management of the financial assistance, the beneficiary country has engaged in any act of fraud or corruption or any other illegal activity detrimental to the financial interests of the Union;

(e) ensuring that all costs incurred by the Union that relate to a financial assistance shall be borne by the beneficiary country.

6. The Commission shall release the loans, where possible in instalments, subject to the fulfilment of the conditions attached to the financial assistance. Where those conditions are not fulfilled, the Commission shall temporarily suspend or cancel the disbursement of the financial assistance.

7. Funds raised but not yet disbursed cannot be used for any other goal than to provide financial assistance to the corresponding beneficiary country. Pursuant to Article 86(1) and (2), the accounting officer shall set up the procedures for the safekeeping of the funds.

TITLE XI

CONTRIBUTIONS TO EUROPEAN POLITICAL PARTIES

Article 225~~221~~

General provisions

Direct financial contributions from the budget may be awarded to European political parties as defined in point (3) of Article 2 of Regulation (EU, Euratom) No 1141/2014 ('European political parties') in view of their contribution to forming European political awareness and to expressing the political will of the citizens of the Union in accordance with that Regulation.

Article 226~~222~~

Principles

1. Contributions shall be used to reimburse only the percentage set out in Article 17(4) of Regulation (EU, Euratom) No 1141/2014 of the operating costs of European political parties directly linked to objectives of those parties, as specified in Article 17(5) of that Regulation and Article 21 of that Regulation.

2. Contributions may be used to reimburse expenditure relating to contracts concluded by European political parties, provided that there were no conflicts of interests when they were awarded.

3. Contributions shall not be used to directly or indirectly grant any personal advantage, in cash or in kind, to any individual member or member of staff of a European political party. Contributions shall not be used to directly or indirectly finance activities of third parties, in particular national political parties or political foundations at European or national level, whether in the form of grants, donations, loans or any other similar agreements. For the purposes of this paragraph, associated entities of European political parties shall not be regarded as third parties, where such entities are part of the administrative organisation of European political parties as set out in the statutes of the latter. Contributions shall not be used for any of the purposes excluded by Article 22 of Regulation (EU, Euratom) No 1141/2014.

4. Contributions shall be subject to the principles of transparency and equal treatment, in accordance with the criteria laid down in Regulation (EU, Euratom) No 1141/2014.

5. Contributions shall be awarded by the European Parliament on an annual basis and shall be published in accordance with Article 38(1) to (4) of this Regulation and with Article 32(1) of Regulation (EU, Euratom) No 1141/2014.

6. European political parties receiving a contribution shall not directly or indirectly receive other funding from the budget. In particular, donations from the budgets of political groups in the European Parliament shall be prohibited. In no circumstances shall the same expenditure be financed twice by the budget.

Contributions shall be without prejudice to the ability of the European political parties to build up reserves with amounts from their own resources in accordance with Regulation (EU, Euratom) No 1141/2014.

7. If a European political foundation as defined in point (4) of Article 2 of Regulation (EU, Euratom) No 1141/2014 realises a surplus of income over expenditure at the end of a financial year in which it received an operating grant, the part of that surplus corresponding to up to 25 % of the total income for that year may be carried over to the following year provided that it is used before the end of the first quarter of that following year.

Article 227~~223~~

Budgetary aspects

Contributions, as well as appropriations set aside for independent external audit bodies or experts referred to in Article 23 of Regulation (EU, Euratom) No 1141/2014, shall be paid from the section of the budget relating to the European Parliament.

Article 228~~224~~

Call for contributions

1. Contributions shall be awarded through a call for contributions published each year, at least on the website of the European Parliament.

2. A European political party may be awarded only one contribution per year.

3. A European political party may receive a contribution only if it applies for funding on the terms and conditions laid down in the call for contributions.

4. The call for contributions shall determine the conditions under which the applicant may receive a contribution in accordance with Regulation (EU, Euratom) No 1141/2014, as well as the exclusion criteria.

5. The call for contributions shall determine, at least, the nature of the expenditure that may be reimbursed by the contribution.

6. The call for contributions shall require an estimated budget.

Article 229~~225~~

Award procedure

1. Applications for contributions shall be duly submitted within the time limit, in writing, including, where appropriate, in a secure electronic format.

2. Contributions shall not be awarded to applicants who, at the time of the award procedure, are in one or more of the situations referred to in Articles 139~~136~~(1) and 144~~141~~(1) and those who are registered as excluded in the database referred to in Article 145~~142~~.

3. Applicants shall be required to certify that they are not in one of the situations referred to in paragraph 2.

4. The authorising officer responsible may be assisted by a committee to evaluate the applications for contributions. The authorising officer responsible shall specify the rules regarding the composition, appointment and functioning of such committee, and the rules to prevent any conflict of interests.

5. Applications that comply with the eligibility and exclusion criteria shall be selected on the basis of the award criteria set out in Article 19 of Regulation (EU, Euratom) No 1141/2014.

6. The decision of the authorising officer responsible on the applications shall state at least:

(a) the subject and the overall amount of the contributions;

(b) the name of the selected applicants and the amounts accepted for each of them;

(c) the names of any applicants rejected and the reasons for that rejection.

7. The authorising officer responsible shall inform applicants in writing of the decision on their applications. If the application for funding is rejected or the amounts requested are not awarded in part or in full, the authorising officer responsible shall give the reasons for either the rejection of the application or the non-award of the amounts requested, with reference in particular to the eligibility and award criteria referred to in paragraph 5 of this Article and Article 228~~224~~(4). If the application is rejected, the authorising officer responsible shall inform the applicant of the available means of administrative and/or judicial redress as provided for in Article 135~~133~~(2).

8. Contributions shall be covered by a written agreement.

Article 230~~226~~

Form of contributions

1. Contributions may take any of the following forms:

(a) reimbursement of a percentage of the reimbursable expenditure actually incurred;

(b) reimbursement on the basis of unit costs;

(c) lump sums;

(d) flat-rate financing;

(e) a combination of the forms referred to in points (a) to (d).

2. Only expenditure which meets the criteria established in the calls for contributions and which has not been incurred prior to the date of submission of the application may be reimbursed.

3. The agreement referred to in Article 229~~225~~(8) shall include provisions that allow verifying that the conditions for the award of lump sums, flat-rate financing or unit costs have been complied with.

4. The contributions shall be paid out in full through one single pre-financing payment, unless, in duly justified cases, the authorising officer responsible decides otherwise.

Article 231~~227~~

Guarantees

The authorising officer responsible may, if he or she deems it appropriate and proportionate, on a case-by-case basis and subject to a risk analysis, require a European political party to lodge a guarantee in advance in order to limit the financial risks connected with the pre-financing payment only when, in the light of the risk analysis, the European political party is at imminent risk of being in one of the exclusion situations referred to in points (a) and (d) of Article 139~~136~~(1) of this Regulation or when a decision of the Authority for European political parties and European political foundations established under Article 6 of Regulation (EU, Euratom) No 1141/2014 ('the Authority') has been communicated to the European Parliament and to the Council in accordance with Article 10(4) of that Regulation.

Article 157~~153~~ shall apply *mutatis mutandis* to guarantees which may be required in the cases foreseen in the first paragraph of this Article to pre-financing payments made to European political parties.

Article 232~~228~~

Use of contributions

1. Contributions shall be spent in accordance with Article 226~~222~~.

2. Any part of the contribution not used within the financial year covered by that contribution (year n) shall be spent on any reimbursable expenditure incurred by 31 December of year n+1. Any remaining part of the contribution that is not spent within that time limit shall be recovered in accordance with Chapter 6 of Title IV.

3. European political parties shall respect the maximum co-financing rate laid down in Article 17(4) of Regulation (EU, Euratom) No 1141/2014. Remaining amounts of the contributions from the previous year shall not be used to finance the part which European political parties are to provide from their own resources. Contributions by third parties to joint events shall not be considered to be part of the own resources of a European political party.

4. European political parties shall use the part of the contribution that has not been used within the financial year covered by that contribution before using contributions awarded after that year.

5. Any interest yielded by the pre-financing payments shall be considered as part of the contribution.

Article 233~~229~~

Report on the use of the contributions

1. A European political party shall, in accordance with Article 23 of Regulation (EU, Euratom) No 1141/2014, submit its annual report on the use of the contribution and its annual financial statements for approval to the authorising officer responsible.

2. The annual activity report referred to in Article 74(9) shall be drafted by the authorising officer responsible on the basis of the annual report and the annual financial statements referred to in paragraph 1 of this Article. Other supporting documents may be used for the purposes of drafting that report.

Article 234~~230~~

Amount of the contribution

1. The amount of the contribution shall not become final until the annual report and the annual financial statements referred to in Article 233~~229~~(1) have been approved by the authorising officer responsible. Approval of the annual report and the annual financial statements shall be without prejudice to subsequent checks by the Authority.

2. Any unspent amount of pre-financing shall not become final until it has been used by the European political party to pay reimbursable expenditure which meets the criteria defined in the call for contributions.

3. Where the European political party fails to comply with its obligations related to the use of contributions, the contributions shall be suspended, reduced or terminated after the European political party has been given the opportunity to present its observations.

4. The authorising officer responsible shall verify before making a payment that the European political party is still registered in the Register referred to in Article 7 of Regulation (EU, Euratom) No 1141/2014 and has not been the subject of any of the penalties provided for in Article 27 of that Regulation between the date of its application and the end of the financial year covered by the contribution.

5. Where the European political party is no longer registered in the Register referred to in Article 7 of Regulation (EU, Euratom) No 1141/2014 or has been the subject of any of the penalties provided for in Article 27 of that Regulation, the authorising officer responsible may suspend, reduce or terminate the contribution and recover amounts unduly paid under the agreement referred to in Article 229~~225~~(8) of this Regulation, in proportion to the seriousness of the errors, irregularities, fraud or other breach of obligations related to the use of contribution, after the European political party has been given the opportunity to present its observations.

Article 235~~231~~

Control and penalties

1. Each agreement referred to in Article 229~~225~~(8) shall provide expressly for the European Parliament to exercise its powers of control on documents and on the premises, as well as for OLAF and the Court of Auditors to exercise their respective competences and powers, referred to in Article 130~~129~~, over all European political parties that have received Union funding, their contractors and subcontractors.

2. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed by the authorising officer responsible, in accordance with Articles 139~~136~~ and 140~~137~~ of this Regulation and with Article 27 of Regulation (EU, Euratom) No 1141/2014.

3. Penalties referred to in paragraph 2 may also be imposed on European political parties which, at the moment of the submission of the application for contribution or after having received the contribution, made false declarations in supplying the information requested by the authorising officer responsible or failed to supply such information.

Article 236~~232~~

Record keeping

1. European political parties shall keep all records and supporting documents pertaining to the contribution for five years following the last payment related to the contribution.

2. Records related to audits, appeals, litigation, the settlement of claims arising out of the use of the contribution or to OLAF investigations, if notified to the recipient, shall be retained until the end of such audits, appeals, litigation, settlement of claims or investigations.

Article 237~~233~~

Selection of external audit bodies or experts

The independent external audit bodies or experts referred to in Article 23 of Regulation (EU, Euratom) No 1141/2014 shall be selected through a procurement procedure. The term of their contract shall be no longer than five years. After two consecutive terms, they shall be deemed to have conflicting interests which may negatively affect the performance of the audit.

TITLE XII

OTHER BUDGET IMPLEMENTATION INSTRUMENTS

Article 238~~234~~

Union trust funds for external actions

1. For emergency and post-emergency actions necessary to react to a crisis, or for thematic actions, the Commission may establish Union trust funds for external actions ('Union trust funds') under an agreement concluded with other donors.

Union trust funds shall only be established where agreements with other donors have secured contributions from other sources than the budget.

The Commission shall consult the European Parliament and the Council on its intention to establish a Union trust fund for emergency and post-emergency actions.

The establishment of a Union trust fund for thematic actions shall be subject to the approval of the European Parliament and of the Council.

For the purposes of the third and fourth subparagraphs of this paragraph, the Commission shall make available to the European Parliament and to the Council its draft decisions concerning the establishment of a Union trust fund. Such draft decisions shall include a description of the objectives of the Union trust fund, the justification for its establishment in accordance with paragraph 3, an indication of its duration and the preliminary agreements with other donors. The draft decisions shall also include a draft constitutive agreement to be concluded with other donors.

2. The Commission shall submit its draft decisions concerning the financing of a Union trust fund to the competent committee where provided for in the basic act under which the Union contribution to the Union trust fund is provided. The competent committee shall not be invited to pronounce itself on the aspects which have already been submitted to the European Parliament and to the Council for consultation or for approval under the third, fourth and fifth subparagraphs of paragraph 1 respectively.

3. Union trust funds shall only be established and implemented subject to the following conditions:

(a) there is added value of the Union intervention: the objectives of Union trust funds, in particular by reason of their scale or potential effects, may be better achieved at Union level than at national level and the use of the existing financing instruments would not be sufficient to achieve policy objectives of the Union;

(b) Union trust funds bring clear political visibility for the Union and managerial advantages as well as better control by the Union of risks and disbursements of the Union and other donors' contributions;

(c) Union trust funds do not duplicate other existing funding channels or similar instruments without providing any additionality;

(d) the objectives of Union trust funds are aligned with the objectives of the Union instrument or budgetary item from which they are funded.

4. A board chaired by the Commission shall be established for each Union trust fund to ensure a fair representation of the donors and to decide upon the use of the funds. The board shall include a representative of each non-contributing Member State as an observer. The rules for the composition of the board and its internal rules shall be laid down in the constitutive agreement of the Union trust fund. Those rules shall include the requirement that a vote in favour by the Commission is needed for the final adoption of the decision on the use of the funds.

5. Union trust funds shall be established for a limited duration as determined in their constitutive agreement. That duration may be extended by a decision of the Commission subject to the procedure set out in paragraph 1 upon request of the board of the Union trust fund concerned and upon presentation by the Commission of a report justifying the extension, confirming, in particular, that the conditions set out in paragraph 3 are complied with.

The European Parliament and/or the Council may request the Commission to discontinue appropriations for a Union trust fund or to revise the constitutive agreement with a view to the liquidation of a Union trust fund, where appropriate in particular on the basis of the information submitted in the working document referred to in Article 41(6). In such an event, any remaining funds shall be returned on a pro rata basis to the budget as general revenue and to the contributing Member States and other donors.

Article 239~~235~~

Implementation of Union trust funds for external actions

1. Union trust funds shall be implemented in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination and equal treatment, and in accordance with the specific objectives defined in each constitutive agreement and in full respect of the rights of scrutiny and control of the Union contribution of the European Parliament and of the Council.

2. Actions financed under Union trust funds may be implemented directly by the Commission pursuant to point (a) of the first subparagraph of Article 62(1) and indirectly with the entities implementing Union funds pursuant to points (c)(i), (ii), (iii), (v), and (vi) of the first subparagraph of Article 62(1).

3. Funds shall be committed and paid by financial actors of the Commission, within the meaning of Chapter 4 of Title IV. The accounting officer of the Commission shall serve as the

accounting officer of the Union trust funds. He or she shall be responsible for laying down accounting procedures and chart of accounts common to all Union trust funds. The Commission's internal auditor, OLAF and the Court of Auditors shall exercise the same powers over Union trust funds as they do in respect of other actions carried out by the Commission.

4. The contributions of the Union and of other donors shall not be integrated in the budget and shall be lodged in a specific bank account. The specific bank account of the Union trust fund shall be opened and closed by the accounting officer. All transactions made on the specific bank account during the year shall be properly accounted for in the accounts of the Union trust fund.

Union contributions shall be transferred to the specific bank account on the basis of payment requests that are duly substantiated with disbursement forecasts, taking into account the balance available on the account and the resulting need for additional payments. Disbursement forecasts shall be provided on an annual, or where appropriate on a semi-annual, basis.

The contributions of other donors shall be taken into account when cashed in the specific bank account of the Union trust fund and for the amount in euro resulting from the conversion at their reception on the specific bank account. Interests accumulated on the specific bank account of the Union trust fund shall be invested in the Union trust fund except where otherwise provided in the constitutive agreement of the Union trust fund.

5. The Commission shall be authorised to use a maximum of 5 % of the amounts pooled into the Union trust fund to cover its management costs from the years in which the contributions referred to in paragraph 4 have started to be used. Notwithstanding the first sentence and in order to avoid the double charging of costs, management costs arising from the Union contribution to the Union trust fund shall only be covered by that contribution to the extent that those costs have not already been covered by other budget lines. For the duration of the Union trust fund, such management fees shall be assimilated to assigned revenue within the meaning of point (a)(ii) of Article 21(2).

In addition to the annual report referred to in Article 257~~252~~, financial reporting on the operations carried out by each Union trust fund shall be established twice every year by the authorising officer.

The Commission shall also report monthly on the state of implementation of each Union trust fund.

The Union trust funds shall be subject to an independent external audit every year.

⇩ new

Article 240

Union contributions to global initiatives

(1) The Union may make contributions in the form of financing not linked to costs to multi-donor, pooled funded global initiatives when these support the achievement of Union policy objectives and where budget implementation instruments provided for in other Titles of this Regulation would not be sufficient to achieve such Union policy objectives.

(2) Union contributions to global initiatives shall be subject to the following conditions, taking into account the nature of the Union financing:

(i) the Union contribution is a minority contribution to the initiative, taking into account the global amount contributed to the initiative at the time of the contribution;

(ii) the Union contribution is treated on equal footing with donors of a similar magnitude and, where one or several Member States also contribute to the initiative, the Union contribution benefits from a level of protection no less favourable than the contribution(s) of that or those Member States;

(iii) there is adequate reporting on the results achieved by the initiative, including through relevant indicators;

(iv) the initiative operates under rules ensuring sound financial management, transparency, non discrimination and equal treatment in the use of Union funds in accordance with the principle of proportionality;

(v) there are appropriate systems to prevent and combat irregularities and fraud as well as to report on their functioning at regular intervals, and there are appropriate rules for recoveries of funds by the initiative, including their use for the same initiative.

In the event of suspected cases of serious irregularities such as fraud, corruption or conflict of interests, the authorising officer responsible, the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, OLAF and the Court of Auditors shall make use of the rules of the initiative to request additional information and carry out joint audit, control, or investigative missions with the relevant body under the initiative, in line with Article 129.

(3) A justification of the above conditions shall be included in the financing decision to contribute to the initiative.

(4) The procedure laid down in Article 158(6) shall apply mutatis mutandis to the Union contribution to the global initiative.

🡻 2018/1046 (adapted)
⇨ new

Article 241~~236~~

Use of budget support

1. Where provided for in the relevant basic acts, the Commission may provide budget support to a third country where the following conditions are met:

(a) the third country's management of public finances is sufficiently transparent, reliable and effective;

(b) the third country has put in place sufficiently credible and relevant sectoral or national policies;

(c) the third country has put in place stability-oriented macroeconomic policies;

(d) the third country has put in place sufficient and timely access to comprehensive and sound budgetary information.

2. The payment of the Union contribution shall be based on the fulfilment of the conditions referred to in paragraph 1, including the improvement of the management of public finances. In addition, some payments may also be conditional on the achievement of milestones, measured by objective performance indicators, reflecting results and reform progress over time in the respective sector.

3. In third countries, the Commission shall support the respect for the rule of law, the development of parliamentary control and audit and anti-corruption capacities and the increase of transparency and public access to information.

4. The corresponding financing agreements concluded with the third country shall contain:

(a) an obligation for the third country to provide the Commission with reliable and timely information which allows the Commission to evaluate the fulfilment of the conditions referred to in paragraph 2;

(b) a right for the Commission to suspend the financing agreement if the third country breaches an obligation relating to respect for human rights, democratic principles and the rule of law and in serious cases of corruption;

(c) appropriate provisions pursuant to which the third country is to commit to immediately reimburse all or part of the relevant operation funding, in the event that it is established that the payment of the relevant Union funds has been vitiated by serious irregularities attributable to that country.

In order to process the reimbursement referred to in point (c) of the first subparagraph of this paragraph, the second subparagraph of Article 101(1) may be applied.

Article 242~~237~~

Remunerated external experts

1. ~~For values below the thresholds referred to in Article 175(1) and on the basis of the procedure laid down in paragraph 3 of this Article,~~ Union institutions may select ~~remunerated~~ ⌦ and remunerate ⌫ external experts to assist them in the evaluation of grant applications, projects and tenders, and to provide opinions and advice in specific cases.

2~~3~~. A call for expression of interest shall be published on the website of the Union institution concerned. The call for expression of interest shall include a description of the tasks, their duration and the fixed conditions of remuneration.

3~~4~~. Any interested natural person may submit an application at any time during the period of validity of the call for expression of interest, with the exception of the last three months of that period.

4. A list of experts shall be drawn up following the call for expression of interest. It shall be valid for no more than ~~five~~ ⌦ 5 ⌫ years from its publication or for the duration of a multiannual programme related to the tasks. ⇨ The validity of the list may be longer than the duration of the multiannual financial programme when a rotation of the experts is ensured. ⇦

⇩ new

5. The value of the contract shall be below the thresholds referred to in Article 179(1). This value may be exceeded only exceptionally and in duly justified cases, in order to allow the Union institutions to compete on equal footing with other actors in the market.

🡻 2018/1046

6~~2~~. Remunerated external experts shall be remunerated on the basis of a fixed amount announced in advance and shall be chosen on the basis of their professional capacity. The selection shall be done on the basis of selection criteria respecting the principles of non-discrimination, equal treatment and absence of conflict of interests.

7~~5~~. ~~Experts paid from research and technological development appropriations shall be recruited in accordance with the procedures laid down by the European Parliament and by the Council when they adopt each research framework programme or in accordance with the corresponding rules for participation.~~ For the purpose of Section 2 of Chapter 2 of Title V, such experts shall be treated as recipients.

Article 243~~238~~

Non-remunerated experts

Union institutions may reimburse travel and subsistence expenses incurred by, or where appropriate pay any other indemnities to, persons invited or mandated by them.

⇩ new

Article 244

Non-financial donations

1. Union institutions and Union bodies may provide non-financial donations in the form of services, supplies or works.

2. Non-financial donations shall be awarded in accordance with the principles of transparency and equal treatment and where applicable, with the requirements set out in sector-specific rules. They shall promote the achievement of policy objectives of the Union.

🡻 2018/1046
⇨ new

Article 245~~239~~

Membership fees and other payments of subscriptions

The Union may pay contributions as subscriptions to bodies of which it is a member or an observer.

Article 246~~240~~

Expenditure on the members and staff of Union institutions

Unions institutions may pay expenditure on the members and staff of Union institutions, including contributions to associations of current and former members of the European Parliament, and contributions to the European schools.

TITLE XIII

ANNUAL ACCOUNTS AND OTHER FINANCIAL REPORTING

CHAPTER 1

ANNUAL ACCOUNTS

SECTION 1

ACCOUNTING FRAMEWORK

Article 247~~241~~

Structure of the accounts

The annual accounts of the Union shall be prepared for each financial year which shall run from 1 January to 31 December. Those accounts shall comprise the following:

(a) the consolidated financial statements, which present, in accordance with the accounting rules referred to in Article 80, the consolidation of the financial information contained in the financial statements of Union institutions, of Union bodies referred to in Article 70 and of other bodies meeting the accounting consolidation criteria;

(b) the aggregated budget implementation reports which present the information contained in the budget implementation reports of Union institutions.

Article 248~~242~~

Supporting documents

Each entry in the accounts shall be based on appropriate supporting documents in accordance with Article 75.

Article 249~~243~~

Financial statements

1. The financial statements shall be presented in millions of euro and in accordance with the accounting rules referred to in Article 80 and shall be comprised of:

(a) the balance sheet which presents all assets and liabilities and the financial situation prevailing on 31 December of the preceding financial year;

(b) the statement of financial performance, which presents the economic result for the preceding financial year;

(c) the cash-flow statement showing amounts collected and disbursed during the financial year and the final treasury position;

(d) the statement of changes in net assets presenting an overview of the movements during the financial year in reserves and accumulated results.

2. The notes to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by the accounting rules referred to in Article 80 and the internationally accepted accounting practice where such information is relevant to the activities of the Union. The notes shall contain at least the following information:

(a) accounting principles, rules and methods;

(b) explanatory notes supplying additional information not contained in the body of the financial statements, which is necessary for a fair presentation of the accounts.

3. The accounting officer shall, after the close of the financial year and up to the date of transmission of the general accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair view of those accounts.

SECTION 2

BUDGET IMPLEMENTATION REPORTS

Article 250~~244~~

Budget implementation reports

1. The budget implementation reports shall be presented in millions of euro and shall be comparable year by year. They shall consist of:

(a) reports which aggregate all budgetary operations for the financial year in terms of revenue and expenditure;

(b) the budget result, which is calculated on the basis of the annual budgetary balance referred to in Decision (EU, Euratom) 2020/2053~~Decision 2014/335/EU, Euratom~~;

(c) explanatory notes, which shall supplement and comment on the information given in the reports.

2. The structure of the budget implementation reports shall be the same as that of the budget itself.

3. The budget implementation reports shall contain:

(a) information on revenue, in particular changes in the revenue estimates, the revenue outturn and entitlements established;

(b) information showing changes in the total commitment and payment appropriations available;

(c) information showing the use made of the total commitment and payment appropriations available;

(d) information showing commitments outstanding, those carried over from the preceding financial year and those made during the financial year.

4. As regards information on revenue, a statement shall be attached to the budget implementation report showing, for each Member State, the breakdown of amounts of own resources still to be recovered at the end of the financial year and covered by a recovery order.

SECTION 3

ANNUAL ACCOUNTS TIMETABLE

Article 251~~245~~

Provisional accounts

1. The accounting officers of the Union institutions other than the Commission and the bodies referred to in Article 247~~241~~ shall, by 1 March of the following financial year, send their provisional accounts to the accounting officer of the Commission and to the Court of Auditors.

2. The accounting officers of the Union institutions other than the Commission and the bodies referred to in Article 247~~241~~ shall, by 1 March of the following financial year, send the required accounting information for consolidation purposes to the accounting officer of the Commission, in the manner and format laid down by the latter.

3. The accounting officer of the Commission shall consolidate the provisional accounts referred to in paragraph 2 with the provisional accounts of the Commission and shall, by 31 March of the following financial year, send the provisional accounts of the Commission and the consolidated provisional accounts of the Union to the Court of Auditors by electronic means.

Article 252~~246~~

Approval of the final consolidated accounts

1. The Court of Auditors shall, by 1 ⇨ May ⇦ ~~June~~, make its observations on the provisional accounts of the Union institutions other than the Commission, and of each of the bodies referred to in Article 247~~241~~, and, by 15 ⇨ May ⇦ ~~June~~, make its observations on the provisional accounts of the Commission and the consolidated provisional accounts of the Union.

2. The accounting officers of the Union institutions other than the Commission and of the bodies referred to in Article 247~~241~~ shall, by 15 ⇨ May ⇦ ~~June~~, send the required accounting information to the accounting officer of the Commission, in the manner and format laid down by the latter, with a view to drawing up the final consolidated accounts.

The Union institutions other than the Commission, and each of the bodies referred to in Article 247~~241~~, shall, by 1 ⇨ June ⇦ ~~July~~, send their final accounts to the European Parliament, to the Council, to the Court of Auditors and to the accounting officer of the Commission.

3. The accounting officer of each Union institution and of each body referred to in Article 247~~241~~ shall send to the Court of Auditors, with a copy to the accounting officer of the Commission, at the same date as the transmission of his or her final accounts, a representation letter covering those final accounts.

The final accounts shall be accompanied by a note drawn up by the accounting officer, in which the latter declares that the final accounts were prepared in accordance with this Title and with the applicable accounting principles, rules and methods set out in the notes to the financial statements.

4. The accounting officer of the Commission shall draw up the final consolidated accounts on the basis of the information presented pursuant to paragraph 2 of this Article by the Union institutions other than the Commission, and by the bodies referred to in Article 247~~241~~.

The final consolidated accounts shall be accompanied by a note drawn up by the accounting officer of the Commission, in which the latter declares that the final consolidated accounts were prepared in accordance with this Title and with the applicable accounting principles, rules and methods set out in the notes to the financial statements.

5. After approving the final consolidated accounts and its own final accounts, the Commission shall, by ⇨ 30 June ⇦ 31 July, send them by electronic means to the European Parliament, to the Council and to the Court of Auditors.

By the same date, the accounting officer of the Commission shall transmit a representation letter covering the final consolidated accounts to the Court of Auditors.

⇩ new

The Court of Auditors shall adopt its opinion on the reliability of the annual accounts of the Union and the accounts of each of the institutions and bodies referred to in Article 247 by 31 July.

🡻 2018/1046
⇨ new

6. The final consolidated accounts shall be published by 15 November in the *Official Journal of the European Union* together with the statement of assurance given by the Court of Auditors in accordance with Article 287 TFEU and Article 106a of the Euratom Treaty.

CHAPTER 2

INTEGRATED FINANCIAL AND ACCOUNTABILITY REPORTING

Article 253~~247~~

Integrated financial and accountability reporting

1. By 31 July of the following financial year the Commission shall communicate to the European Parliament and to the Council an integrated set of financial and accountability reports which includes:

(a) the final consolidated accounts as referred to in Article 252~~246~~;

(b) the annual management and performance report providing for a clear and concise summary of the internal control and financial management achievements referred to in the annual activity reports of each authorising officer by delegation and

including information on key governance arrangements in the Commission as well as:

(i) an estimation of the level of error in Union expenditure based on a consistent methodology and an estimate of future corrections;

(ii) information on the preventive and corrective actions covering the budget, which shall present the financial impact of the actions taken to protect the budget from expenditure in breach of law;

(iii) information on the implementation of the Commission's anti-fraud strategy;

(c) a long-term forecast of future inflows and outflows covering the next five years, based on the applicable multiannual financial frameworks and Decision (EU, Euratom) 2020/2053~~Decision 2014/335/EU, Euratom~~;

(d) the annual internal audit report as referred to in Article 119(8)~~118(4)~~;

(e) the evaluation on the Union's finances based on the results achieved, as referred to in Article 318 TFEU, assessing in particular the progress towards the achievement of policy objectives taking into account the performance indicators referred to in Article 33 of this Regulation;

(f) the report on the follow-up to the discharge as referred to in Article ~~261(3)~~ ⇨ 267(2) ⇦.

⇩ new

(g) jointly to the forecast referred to in point (c) of this Article, and pursuant to Article 214(3), an assessment of the sustainability of the contingent liabilities borne by the budget arising from budgetary guarantees or financial assistance.

🡻 2018/1046 (adapted)
⇨ new

2. The integrated financial and accountability reporting referred to in paragraph 1 shall present each report in a separate and clearly identifiable manner. Each individual report shall be made available to the European Parliament, to the Council and to the Court of Auditors by 30 June, with the exception of the final consolidated accounts.

CHAPTER 3

BUDGETARY AND OTHER FINANCIAL REPORTING

Article 254~~248~~

Monthly reporting on budget implementation

In addition to the annual statements and reports provided for in Articles 249~~243~~ and 250~~244~~, the accounting officer of the Commission shall send once a month to the European Parliament and to the Council figures, aggregated at chapter level at least, as well as separately broken down by chapter, article and item, on budget implementation, both for revenue and for

expenditure covering all available appropriations. Those figures shall also provide details of the use of appropriations carried over.

The figures shall be made available within 10 working days of the end of each month via the Commission's website.

Article 255~~249~~

Annual report on budgetary and financial management

1. Each Union institution and each body referred to in Article 247~~241~~ shall prepare a report on budgetary and financial management for the financial year.

They shall make the report available to the European Parliament, to the Council and to the Court of Auditors, by 31 March of the following financial year.

2. The report referred to in paragraph 1 shall provide summary information on the transfers of appropriations among the various budgetary items.

~~*Article 250*~~

~~***Annual report on financial instruments, budgetary guarantees and financial assistance***~~

~~The Commission shall report annually to the European Parliament and to the Council on financial instruments, budgetary guarantees, financial assistance and contingent liabilities in accordance with Article 41(4) and (5) and with points (d) and (e) of Article 52(1). That information shall be made available to the Court of Auditors at the same time.~~

Article 256~~251~~

Status report on accounting issues

By 15 September of each financial year, the accounting officer of the Commission shall send to the European Parliament and to the Council a report containing information on current risks noted, general trends observed, new accounting issues encountered and progress on accounting matters, including where identified by the Court of Auditors, as well as information on recoveries.

Article 257~~252~~

Reporting on Union trust funds for external actions

In accordance with Article 41(6), the Commission shall report annually to the European Parliament and to the Council on the activities supported by Union trust funds referred to in Article 238~~234~~, on their implementation and performance, as well as on their accounts.

The Board of the Union trust fund concerned shall approve the annual report of the Union trust fund drawn up by the authorising officer. It shall also approve the final accounts drawn up by the accounting officer. The final accounts shall be presented by the Board to the European Parliament and Council in the context of the discharge procedure for the Commission.

Article 258~~253~~

Publication of information on recipients

The Commission shall publish information on recipients in accordance with Article 38.

TITLE XIV

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

EXTERNAL AUDIT

Article 259~~254~~

External audit by the Court of Auditors

The European Parliament, the Council and the Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to Articles 12, 16, 21, 29, 30, 32 and 43.

Article 260~~255~~

Rules and procedure on the audit

1. The examination by the Court of Auditors of whether all revenue has been received and all expenditure incurred in a lawful and proper manner shall have regard to the Treaties, the budget, this Regulation, the delegated acts adopted pursuant to this Regulation and all other relevant acts adopted pursuant to the Treaties. That examination may take account of the multiannual character of programmes and related supervisory and control systems.

2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 262~~257~~, all documents and information relating to the financial management by departments or bodies with regard to operations financed or co-financed by the Union. It shall have the power to hear any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to those departments or bodies. The audit in Member States shall be carried out in liaison with the national audit institutions or, where they do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit institutions of Member States shall cooperate in a spirit of trust while maintaining their independence.

In order to obtain all the necessary information for the performance of the task entrusted to it by the Treaties or by acts adopted pursuant to them, the Court of Auditors may be present, at its request, during the audit operations carried out within the framework of budget implementation by, or on behalf of, any Union institution.

At the request of the Court of Auditors, each Union institution shall authorise financial institutions holding Union deposits to enable the Court of Auditors to ensure that external data tally with the accounts.

3. In order to perform its task, the Court of Auditors shall notify Union institutions and the authorities to which this Regulation applies of the names of the members of its staff who are empowered to audit them.

Article 261~~256~~

Checks on securities and cash

The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositories or against official memoranda of cash and securities held. It may carry out such checks itself.

Article 262~~257~~

Court of Auditors' right of access

1. Union institutions, the bodies administering revenue or expenditure on the Union's behalf and recipients shall afford the Court of Auditors all the facilities and give it all the information which it considers necessary for the performance of its task. They shall, at the request of the Court of Auditors, place at its disposal all documents concerning the award and performance of contracts financed by the budget and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts of departments, which the Court of Auditors considers necessary for auditing the annual accounts and budget implementation reports on the basis of records or on-the-spot auditing and, for the same purposes, all documents and data created or stored electronically. The Court of Auditors' right of access shall include access to the IT system used for the management of revenue or expenditure subject to its audit, where such access is relevant for the audit.

The internal audit bodies and other services of the national administrations concerned shall afford the Court of Auditors all the facilities which it considers necessary for the performance of its task.

2. The officials whose operations are checked by the Court of Auditors shall:

(a) show their records of cash in hand, any other cash, securities and materials of all kinds, and also the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto;

(b) present the correspondence and any other documents required for the full implementation of the audit referred to in Article 260~~255~~.

The information supplied under point (b) of the first subparagraph may be requested only by the Court of Auditors.

3. The Court of Auditors shall be empowered to audit the documents in respect of the revenue and expenditure of the Union which are held by the departments of Union institutions and, in particular, by the departments responsible for decisions in respect of such revenue and expenditure, the bodies administering revenue or expenditure on the Union's behalf and the natural or legal persons receiving payments from the budget.

4. The task of establishing that the revenue has been received and the expenditure incurred in a lawful and proper manner and that the financial management has been sound shall extend to the use, by bodies outside Union institutions, of Union funds received by way of contributions.

5. Union financing paid to recipients outside Union institutions shall be subject to the agreement in writing by those recipients or, failing agreement on their part, by contractors or subcontractors, to an audit by the Court of Auditors into the use made of the financing granted.

6. The Commission shall, at the request of the Court of Auditors, provide it with any information on borrowing and lending operations.

7. Use of integrated computer systems shall not have the effect of reducing access by the Court of Auditors to supporting documents. Whenever technically possible, electronic access to data and documents necessary for the audit shall be given to the Court of Auditors in its own premises and in compliance with relevant security rules.

Article 263~~258~~

Annual report of the Court of Auditors

1. The Court of Auditors shall transmit to the Commission and the other Union institutions concerned, by 30 June, any observations which are, in its opinion, such that they should appear in its annual report. Those observations shall remain confidential and shall be subject to an adversarial procedure. Each Union institution shall address its reply to the Court of Auditors by 15 October. The replies of Union institutions other than the Commission shall be sent to the Commission at the same time.

2. The annual report of the Court of Auditors shall contain an assessment of the soundness of financial management.

3. The annual report of the Court of Auditors shall contain a section for each Union institution and for the common provisioning fund. The Court of Auditors may add any summary report or general observations which it sees fit to make.

4. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other Union institutions, by 15 November, its annual report accompanied by the replies of Union institutions and shall ensure publication thereof in the *Official Journal of the European Union*.

Article 264~~259~~

Special reports of the Court of Auditors

1. The Court of Auditors shall transmit to the Union institution or the body concerned any observations which are, in its opinion, such that they should appear in a special report. Those observations shall remain confidential and shall be subject to an adversarial procedure.

The Union institution or the body concerned shall inform the Court of Auditors, in general, within six weeks of transmission of those observations, of any replies it wishes to make in relation to those observations. That period shall be suspended in duly justified cases, in particular where, during the adversarial procedure, it is necessary for the Union institution or body concerned to obtain feedback from Member States in order to finalise its reply.

The replies of the Union institution or the body concerned shall directly and exclusively address the observations of the Court of Auditors.

Upon request of the Court of Auditors or of the Union institution or body concerned, the replies may be examined by the European Parliament and by the Council after publication of the report.

The Court of Auditors shall ensure that special reports are drawn up and adopted within an appropriate period of time, which shall, in general, not exceed 13 months.

The special reports, together with the replies of the Union institutions or bodies concerned, shall be transmitted without delay to the European Parliament and to the Council, each of

which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.

The Court of Auditors shall take all necessary steps to ensure that the replies to its observations from each Union institution or body concerned as well as the timeline for the drawing up of the special report are published together with the special report.

2. The opinions referred to in the second subparagraph of Article 287(4) TFEU which do not relate to proposals or drafts covered by the legislative consultation procedure may be published by the Court of Auditors in the *Official Journal of the European Union*. The Court of Auditors shall take its decision on publication after consulting the Union institution which requested the opinion or which is concerned by it. Opinions published shall be accompanied by any remarks by the Union institutions concerned.

CHAPTER 2

DISCHARGE

Article 265~~260~~

Timetable of the discharge procedure

1. The European Parliament, upon a recommendation from the Council acting by qualified majority, shall, before 15 May of year n+2, give a discharge to the Commission in respect of the implementation of the budget for year n.

2. Where the deadline provided for in paragraph 1 cannot be complied with, the European Parliament or the Council shall inform the Commission of the reasons therefor.

3. If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

Article 266~~261~~

The discharge procedure

1. The discharge decision shall cover the accounts of all the Union's revenue and expenditure, the resulting balance and the assets and liabilities of the Union shown in the balance sheet.

2. With a view to giving the discharge, the European Parliament shall, after the Council has done so, examine the accounts, financial statements and the evaluation report referred to in Article 318 TFEU. It shall also examine the annual report made by the Court of Auditors together with the replies of the Union institutions under audit, and any relevant special reports by the Court of Auditors in respect of the financial year concerned and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

3. The Commission shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year concerned, in accordance with Article 319 TFEU.

Article 267~~262~~

Follow-up measures

1. In accordance with Article 319 TFEU and Article 106a of the Euratom Treaty, Union institutions and Union bodies referred to in Articles 70 and 71 of this Regulation shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.

2. At the request of the European Parliament or of the Council, Union institutions and Union bodies referred to in Articles 70 and 71 shall report on the measures taken in the light of those observations and comments, and, in particular, on the instructions they have given to any of their departments which are responsible for budget implementation. Member States shall cooperate with the Commission by informing it of the measures they have taken to act on those observations so that the Commission may take them into account when drawing up its own report. The reports from Union institutions and Union bodies referred to in Articles 70 and 71 shall also be transmitted to the Court of Auditors.

Article 268~~263~~

Specific provisions regarding the EEAS

The EEAS shall be subject to the procedures provided for in Article 319 TFEU and in Articles 265~~260~~, 266~~261~~ and 267~~262~~ of this Regulation. The EEAS shall fully cooperate with Union institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies.

TITLE XV

ADMINISTRATIVE APPROPRIATIONS

Article 269~~264~~

General provisions

1. Administrative appropriations shall be non-differentiated appropriations.

2. This Title applies to the administrative appropriations referred to in in Article 47(4) and to those of Union institutions other than the Commission.

Budgetary commitments corresponding to administrative appropriations of a type common to several titles and which are managed globally may be recorded globally in the budgetary accounting following the summary classification by type as set out in Article 47(4).

The corresponding expenditure shall be booked to the budget lines of each title according to the same distribution as for appropriations.

3. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget for the financial year in which it is effected.

4. Advances may be paid, in accordance with the conditions laid down in the Staff Regulations and in the specific provisions concerning members of Union institutions, to staff and to members of Union institutions.

Article 270~~265~~

Payments made in advance

Expenditure referred to in ~~point (a) of~~ Article 11(2) which ~~shall~~ ⌦ is to ⌫ be paid in advance pursuant to legal or contractual provisions may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. In that case, the limit set out in Article 11(2) ⇨ (a) ⇦ shall not apply.

Article 271~~266~~

Specific provisions regarding building projects

1. Each Union institution shall provide the European Parliament and the Council, by 1 June each year, with a working document on its building policy, which shall incorporate the following information:

(a) for each building, the expenditure and surface area covered by the appropriations of the corresponding budget lines. The expenditure shall include the costs of the fitting-out of buildings but not the other charges;

(b) the expected evolution of the global programming of surface area and locations for the coming years with a description of the building projects in planning phase which are already identified;

(c) the final terms and costs, as well as relevant information regarding project implementation of new building projects previously submitted to the European Parliament and to the Council under the procedure set out in paragraphs 2 and 3 and not included in the preceding year's working documents.

⇩ new

The Commission shall provide this information as part of the working documents attached to the draft budget, as set out in Article 41(3).

🡻 2018/1046 (adapted)

⇨ new

2. For any building project likely to have significant financial implications for the budget, the Union institution concerned shall inform the European Parliament and the Council as early as possible, and in any case before any prospecting of the local market takes place, in the case of building contracts, or before invitations to tender are issued, in the case of building works, about the building surface area required and the provisional planning.

3. For any building project likely to have significant financial implications for the budget, the Union institution concerned shall present the building project, in particular its detailed estimated costs and its financing including any possible use of internal assigned revenue referred to in point (e) of Article 21(3), as well as a list of draft contracts intended to be used, to the European Parliament and to the Council and shall request their approval before contracts are concluded. At the request of the Union institution concerned, documents submitted relating to the building project shall be treated confidentially.

Except in cases of force majeure as referred to in paragraph 4, the European Parliament and the Council shall deliberate upon the building project within four weeks of its receipt by both institutions.

The building project shall be deemed approved at the expiry of this four-week period, unless the European Parliament or the Council take a decision contrary to the proposal within that period of time.

If the European Parliament and/or the Council raise concerns within that four-week period, that period shall be extended once by two weeks.

If the European Parliament or the Council take a decision contrary to the building project, the Union institution concerned shall withdraw its proposal and may submit a new one.

4. In cases of force majeure, for which due reasons shall be given, the information provided for in paragraph 2 may be submitted jointly with the building project. The European Parliament and the Council shall deliberate upon the building project within two weeks of its receipt by both institutions. The building project shall be deemed to be approved at the expiry of this two-week period, unless the European Parliament and/or the Council take a decision contrary to the proposal within this period of time.

5. The following shall be considered as building projects likely to have significant financial implications for the budget:

(a) any acquisition of land;

(b) the acquisition, sale, structural renovation, construction of buildings or any project combining those elements to be implemented in the same timeframe, exceeding EUR 3 000 000;

(c) the acquisition, structural renovation, construction of buildings or any project combining those elements to be implemented in the same timeframe, exceeding EUR 2 000 000 in the event that the price represents more than 110 % of the local price of comparable properties as evaluated by an independent expert;

(d) the sale of land or buildings in the event that the price represents less than 90 % of the local price of comparable properties as evaluated by an independent expert;

(e) any new building contract, including usufructs, long-term leases and renewals of existing building contracts under less favourable conditions, not covered by point (b) with an annual charge of at least EUR 750 000;

(f) the extension or renewal of existing building contracts, including usufruct and long-term leases, under the same or more favourable conditions, with an annual charge of at least EUR 3 000 000.

This paragraph shall also apply to building projects which have an interinstitutional nature, as well as to Union delegations.

The thresholds referred to in points (b) to (f) of the first subparagraph shall include the costs of fitting-out of the building. For rental and usufruct contracts, those thresholds shall take into account the costs of the fitting-out of the building but not the other charges.

6. Without prejudice to Article 17, a building acquisition ⇨ or structural renovation ⇦ project may be financed through a loan, subject to prior approval by the European Parliament and by the Council.

Loans shall be contracted and repaid in accordance with the principle of sound financial management and with due regard to the financial interests of the Union.

When the Union institution proposes to finance the acquisition ⇨ or the structural renovation ⇦ through a loan, the financing plan to be submitted, together with the request for

prior approval by the Union institution concerned, shall specify in particular, the maximum level of financing, the financing period, the type of financing, the financing conditions and savings compared to other types of contractual arrangements.

The European Parliament and the Council shall deliberate upon the request for prior approval within four weeks, extendable once by two weeks, of its receipt by both institutions. The acquisition ⇨ or structural renovation ⇦ financed through a loan shall be deemed to be rejected if the European Parliament and the Council do not expressly approve it within the deadline.

Article 272~~267~~

Early information procedure and prior approval procedure

1. The early information procedure set out in Article 271~~266~~(2) and the prior approval procedure set out in Article 271~~266~~(3) and (4) shall not apply to acquisition of land free of charge or for a symbolic amount.

2. The early information procedure set out in Article 271~~266~~(2) and the prior approval procedure set out in Article 271~~266~~(3) and (4) shall also apply to residential buildings if the acquisition, structural renovation, construction of buildings or any project combining those elements in the same timeframe is exceeding EUR 2 000 000 and the price is above 110 % of the local price or rent index of comparable properties. The European Parliament and the Council may request from the Union institution in charge any information related to residential buildings.

3. In exceptional or urgent political circumstances the early information referred to in Article 271~~266~~(2) concerning building projects relating to Union delegations or offices in third countries may be submitted jointly with the building project pursuant to Article 271~~266~~(3). In such cases, the early information and prior approval procedures shall be conducted at the earliest possible opportunity.

For residential building projects in third countries, the early information and prior approval procedures shall be conducted jointly.

4. The prior approval procedure set out in Article 271~~266~~(3) and (4) shall not apply to preparatory contracts or studies necessary to evaluate the detailed cost and financing of the building project.

TITLE XVI

INFORMATION REQUESTS AND DELEGATED ACTS

Article 273~~268~~

Information requests by the European Parliament and by the Council

The European Parliament and the Council shall be entitled to obtain any information or explanations regarding budgetary matters within their fields of competence.

Article 274~~269~~

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 70(1), the third paragraph of Article 71, Article 165~~161~~ and the second and third subparagraphs of Article 217~~213~~(2) shall be conferred on the Commission for a period ending on 31 December 2020. The Commission shall draw up a report in respect of the delegation of power not later than 31 December 2018. The delegation of power shall be tacitly extended for the periods of duration of the subsequent multiannual financial frameworks, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period of duration of the corresponding multiannual financial framework.

3. The delegation of power referred to in Article 70(1), the third paragraph of Article 71, Article 165~~161~~ and the second and third subparagraphs of Article 217~~213~~(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 70(1), the third paragraph of Article 71, Article 165~~161~~ and the second and third subparagraphs of Article 217~~213~~(2) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

~~PART TWO~~

~~*AMENDMENTS TO SECTOR-SPECIFIC RULES*~~

~~*Article 270*~~

~~Amendments to Regulation (EU) No 1296/2013~~

~~Regulation (EU) No 1296/2013 is amended as follows:~~

~~(1) in Article 5, paragraph 2 is replaced by the following:~~

~~'2. The following indicative percentages shall apply on average over the whole period of the Programme to the axes set out in Article 3(1):~~

~~(a) at least 55 % to the Progress axis;~~

~~(b) at least 18 % to the EURES axis;~~

~~(c) at least 18 % to the Microfinance and Social Entrepreneurship axis.';~~

~~(2) Article 14 is replaced by the following:~~

~~*'Article 14*~~

~~Thematic sections and financing~~

~~1. The Progress axis shall support actions in the thematic sections referred to in points (a), (b) and (c). Over the entire period of the Programme, the indicative breakdown of the overall allocation for the Progress axis between the different thematic sections shall respect the following minimum percentages:~~

~~(a) employment, in particular to fight youth unemployment: 20 %;~~

~~(b) social protection, social inclusion and the reduction and prevention of poverty: 45 %;~~

~~(c) working conditions: 7 %.~~

~~Any remainder shall be allocated to one or more of the thematic sections referred to in point (a), (b) or (c) of the first subparagraph, or to a combination of them.~~

~~2. From the overall allocation for the Progress axis, a significant share shall be allocated to the promotion of social experimentation as a method for testing and evaluating innovative solutions with a view to upscaling them.';~~

~~(3) Article 19 is replaced by the following:~~

~~*'Article 19*~~

~~Thematic sections and financing~~

~~The EURES axis shall support actions in the thematic sections referred to in points (a), (b) and (c). Over the entire period of the Programme, the indicative breakdown of the overall allocation for the EURES axis between the different thematic sections shall respect the following minimum percentages:~~

~~(a) transparency of job vacancies, applications and any related information for applicants and employers: 15 %;~~

~~(b) development of services for the recruitment and placing of workers in employment through the clearance of job vacancies and applications at Union level, in particular targeted mobility schemes: 15 %;~~

~~(c) cross-border partnerships: 18 %.~~

~~Any remainder shall be allocated to one or more of the thematic sections referred to in point (a), (b) or (c) of the first paragraph, or to a combination of them.';~~

~~(4) Article 25 is replaced by the following:~~

~~*'Article 25*~~

~~Thematic sections and financing~~

~~The Microfinance and Social Entrepreneurship axis shall support actions in the thematic sections referred to in points (a) and (b). Over the entire period of the Programme, the indicative breakdown of the overall allocation for the Microfinance and Social Entrepreneurship axis between the different thematic sections shall respect the following minimum percentages:~~

~~(a) microfinance for vulnerable groups and micro-enterprises: 35 %;~~

~~(b) social entrepreneurship: 35 %.~~

~~Any remainder shall be allocated to the thematic sections referred to in point (a) or (b) of the first paragraph, or to a combination of them.';~~

~~(5) in Article 32, the second paragraph is replaced by the following:~~

~~'The work programmes shall, where relevant, be for a three-year rolling period and shall contain a description of the actions to be financed, the procedures for selecting actions to be supported by the Union, the geographic coverage, the target audience and an indicative implementation time frame. The work programmes shall also include an indication of the amount allocated to each specific objective. The work programmes shall reinforce the coherence of the Programme by indicating the links between the three axes.';~~

~~(6) Articles 33 and 34 are deleted.~~

~~*Article 271*~~

~~Amendments to Regulation (EU) No 1301/2013~~

~~Regulation (EU) No 1301/2013 is amended as follows:~~

~~(1) Article 3(1) is amended as follows:~~

~~(a) point (e) is replaced by the following:~~

~~'(e) investment in the development of endogenous potential through fixed investment in equipment and infrastructure, including cultural and sustainable tourism infrastructure, services to enterprises, support to research and innovation bodies and investment in technology and applied research in enterprises;';~~

~~(b) the following subparagraph is added:~~

~~'Investment in cultural and sustainable tourism infrastructure as referred to in point (e) of the first subparagraph of this paragraph shall be considered small-scale and eligible for support, if the ERDF contribution to the operation does not exceed EUR 10000000. That ceiling shall be raised to EUR 20000000 in the case of infrastructure considered to be cultural heritage within the meaning of Article 1 of the 1972 Unesco Convention Concerning the Protection of the World Cultural and Natural Heritage.';~~

~~(2) in point (9) of Article 5, the following point is added:~~

~~'(e) supporting the reception and the social and economic integration of migrants and refugees;';~~

~~(3) in Annex I, the table, the text starting with 'Social infrastructure' until the end of the table is replaced by the following:~~

~~'Social infrastructure~~		
~~Childcare and education~~	~~persons~~	~~Capacity of supported childcare or educational infrastructure~~
~~Health~~	~~persons~~	~~Population covered by improved health services~~
~~Housing~~	~~housing units~~	~~Rehabilitated housing~~

	~~housing units~~	~~Rehabilitated housing, of which for migrants and refugees (not including reception centres)~~
~~Migrants and refugees~~	~~persons~~	~~Capacity of infrastructure supporting migrants and refugees (other than housing)~~
~~Urban Development specific indicators~~		
	~~persons~~	~~Population living in areas with integrated urban development strategies~~
	~~square metres~~	~~Open space created or rehabilitated in urban areas~~
	~~square metres~~	~~Public or commercial buildings built or renovated in urban areas'~~

~~*Article 272*~~

~~Amendments to Regulation (EU) No 1303/2013~~

~~Regulation (EU) No 1303/2013 is amended as follows:~~

~~(1) in recital 10, the second sentence is replaced by the following:~~

~~'Those conditions should enable the Commission to obtain assurance that Member States are using the ESI Funds in a legal and regular manner and in accordance with the principle of sound financial management within the meaning of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[92] (the "Financial Regulation").''~~

~~(2) Article 2 is amended as follows:~~

~~(a) point (10) is replaced by the following:~~

~~'(10) "beneficiary" means a public or private body or a natural person, responsible for initiating or both initiating and implementing operations, and:~~

~~(a) in the context of State aid, the body which receives the aid, except where the aid per undertaking is less than EUR 200000, in which case the Member State concerned may decide that the beneficiary is the body granting the aid, without prejudice to~~

~~92 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).;~~

~~Commission Regulations (EU) No 1407/2013[93], (EU) No 1408/2013[94] and (EU) No 717/2014[95]; and~~

~~(b) in the context of financial instruments under Title IV of Part Two of this Regulation, the body that implements the financial instrument or the fund of funds as appropriate;'~~

~~(b) point (31) is replaced by the following:~~

~~'(31) "macroregional strategy" means an integrated framework agreed by the Council and, where appropriate, endorsed by the European Council, which may be supported by the ESI Funds among others, to address common challenges faced by a defined geographical area relating to Member States and third countries located in the same geographical area which thereby benefit from strengthened cooperation contributing to achievement of economic, social and territorial cohesion;';~~

~~(3) Article 4 is amended as follows:~~

~~(a) in paragraph 7, the reference to 'Article 59 of the Financial Regulation' is replaced by 'Article 63 of the Financial Regulation';~~

~~(b) paragraph 8 is replaced by the following:~~

~~'8. The Commission and the Member States shall respect the principle of sound financial management in accordance with Article 33, Article 36(1) and Article 61 of the Financial Regulation.';~~

~~(4) in Article 9, the following paragraph is added:~~

~~'The priorities established for each of the ESI Funds in the Fund-specific rules shall in particular cover the appropriate use of each ESI Fund in the areas of migration and asylum. In that context, coordination with the Asylum, Migration and Integration Fund established by Regulation (EU) No 516/2014 of the European Parliament and of the Council[96] shall be ensured, where appropriate.'~~

~~(5) in Article 16, the following paragraph is inserted:~~

~~'4a. Where applicable, the Member State shall submit each year by 31 January an amended Partnership Agreement following the approval of amendments to one or more programmes by the Commission in the preceding calendar year.~~

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93 ~~Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).~~

94 ~~Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agriculture sector (OJ L 352, 24.12.2013, p. 9).~~

95 ~~Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).;~~

96 ~~Regulation (EU) No 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund, amending Council Decision 2008/381/EC and repealing Decisions No 573/2007/EC and No 575/2007/EC of the European Parliament and of the Council and Council Decision 2007/435/EC (OJ L 150, 20.5.2014, p. 168).;~~

~~The Commission shall adopt each year by 31 March a decision confirming that the amendments to the Partnership Agreement reflect one or more programme amendments approved by the Commission in the preceding calendar year.~~

~~That decision may include the amendment of other elements of the Partnership Agreement pursuant to a proposal referred to in paragraph 4, provided that the proposal is submitted to the Commission by 31 December of the preceding calendar year.';~~

~~(6) Article 30 is amended as follows:~~

~~(a) in paragraph 2, the second subparagraph is replaced by the following:~~

~~'Where the amendment of a programme affects the information provided in the Partnership Agreement, the procedure set out in Article 16(4a) shall apply.';~~

~~(b) in paragraph 3, the third sentence is deleted;~~

~~(7) in Article 32, paragraph 4 is replaced by the following:~~

~~'4. Where the selection committee for the community-led local development strategies set up under Article 33(3) determines that the implementation of the community-led local development strategy selected requires support from more than one Fund, it may designate in accordance with national rules and procedures, a lead Fund to support all preparatory, running and animation costs under points (a), (d) and (e) of Article 35(1) for the community-led local development strategy.';~~

~~(8) Article 34(3) is amended as follows:~~

~~(a) points (a) to (d) are replaced by the following:~~

~~'(a) building the capacity of local actors, including potential beneficiaries, to develop and implement operations including by fostering their capacity to prepare and manage their projects;~~

~~(b) drawing up a non-discriminatory and transparent selection procedure which avoids conflicts of interests, ensures that at least 50 % of the votes in selection decisions are cast by partners which are not public authorities, and allows selection by written procedure;~~

~~(c) drawing up and approving non-discriminatory objective criteria for the selection of operations that ensure coherence with the community-led local development strategy by prioritising those operations according to their contribution to meeting that strategy's objectives and targets;~~

~~(d) preparing and publishing calls for proposals or an ongoing project submission procedure;';~~

~~(b) the following subparagraph is added:~~

~~'Where local action groups carry out tasks not covered by points (a) to (g) of the first subparagraph that fall under the responsibility of the managing or certifying authority or of the paying agency, those local action groups shall be designated as intermediate bodies in accordance with the Fund-specific rules.';~~

~~(9) in Article 36, paragraph 3 is replaced by the following:~~

~~'3. The Member State or the managing authority may delegate certain tasks in accordance with the Fund-specific rules to one or more intermediate bodies,~~

~~including local authorities, regional development bodies or non-governmental organisations, linked to the management and implementation of an ITI.';~~

~~(10) Article 37 is amended as follows:~~

~~(a) in paragraph 2, point (c) is replaced by the following:~~

~~'(c) an estimate of additional public and private resources to be potentially raised by the financial instrument down to the level of the final recipient (expected leverage effect), including as appropriate an assessment of the need for, and the extent of, differentiated treatment as referred to in Article 43a to attract counterpart resources from investors operating under the market economy principle and/or a description of the mechanisms which will be used to establish the need for, and extent of, such differentiated treatment, such as a competitive or appropriately independent assessment process;';~~

~~(b) in paragraph 3, the first subparagraph is replaced by the following:~~

~~'3. The ex-ante assessment referred to in paragraph 2 of this Article may take into account the ex-ante evaluations referred to in point (h) of the first subparagraph and the second subparagraph of Article 209(2) of the Financial Regulation and may be performed in stages. It shall, in any event, be completed before the managing authority decides to make programme contributions to a financial instrument.';~~

~~(c) paragraph 8 is replaced by the following:~~

~~'8. Final recipients supported by an ESI Fund financial instrument may also receive assistance from another ESI Funds priority or programme or from another instrument supported by the budget of the Union, including from the European Fund for Strategic Investments (EFSI) established by Regulation (EU) 2015/1017 of the European Parliament and of the Council[97], in accordance with applicable Union State aid rules, as appropriate. In that case, separate records shall be maintained for each source of assistance and the ESI Funds financial instrument support shall be part of an operation with eligible expenditure distinct from the other sources of assistance.'~~

~~(11) Article 38 is amended as follows:~~

~~(a) in paragraph 1, the following point is added:~~

~~'(e) financial instruments combining such contribution with EIB financial products under the EFSI in accordance with Article 39a.';~~

~~(b) paragraph 4 is amended as follows:~~

~~(i) points (b) and (c) of the first subparagraph are replaced by the following:~~

~~'(b) entrust implementation tasks, through the direct award of a contract, to:~~

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97 ~~Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).;~~

~~(i) the EIB;~~

~~(ii) an international financial institution in which a Member State is a shareholder;~~

~~(iii) a publicly-owned bank or institution, established as a legal entity carrying out financial activities on a professional basis, which fulfils all of the following conditions:~~

- ~~there is no direct private capital participation, with the exception of non-controlling and non-blocking forms of private capital participation required by national legislative provisions, in conformity with the Treaties, which do not exert a decisive influence on the relevant bank or institution, and with the exception of forms of private capital participation which confer no influence on decisions regarding the day-to-day management of the financial instrument supported by the ESI Funds;~~
- ~~operates under a public policy mandate given by the relevant authority of a Member State at national or regional level, which includes carrying out, as all or part of its activities, economic development activities contributing to the objectives of the ESI Funds;~~
- ~~carries out, as all or part of its activities, economic development activities contributing to the objectives of the ESI Funds in regions, policy areas or sectors for which access to funding from market sources is not generally available or sufficient;~~
- ~~operates without primarily focussing on maximising profits, but ensures a long-term financial sustainability for its activities;~~
- ~~ensures that the direct award of a contract referred to in point (b) does not provide any direct or indirect benefit for commercial activities by way of appropriate measures in accordance with applicable law;~~
- ~~is subject to the supervision of an independent authority in accordance with applicable law.~~

~~(c) entrust implementation tasks to another body governed by public or private law; or~~

~~(d) undertake implementation tasks directly, in the case of financial instruments consisting solely of loans or guarantees. In that case the managing authority shall be considered to be the beneficiary within the meaning of point (10) of Article 2.';~~

~~(ii) the second subparagraph is replaced by the following:~~

~~'When implementing the financial instrument, the bodies referred to in points (a) to (d) of the first subparagraph of this paragraph shall ensure compliance with applicable law and with the requirements laid down in Article 155(2) and (3) of the Financial Regulation.';~~

~~(c) paragraphs 5 and 6 are replaced by the following:~~

~~‘5. The bodies referred to in points (a), (b) and (c) of the first subparagraph of paragraph 4 of this Article may, when implementing funds of funds further entrust part of the implementation to financial intermediaries provided that such bodies ensure under their responsibility that the financial intermediaries satisfy the criteria laid down in Articles 33(1) and 209(2) of the Financial Regulation. Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interests.~~

~~6. The bodies referred to in points (b) and (c) of the first subparagraph of paragraph 4 to which implementation tasks have been entrusted shall open fiduciary accounts in their name and on behalf of the managing authority, or set up the financial instrument as a separate block of finance within the institution. In the case of a separate block of finance, an accounting distinction shall be made between programme resources invested in the financial instrument and the other resources available in the institution. The assets held on fiduciary accounts and such separate blocks of finance shall be managed in accordance with the principle of sound financial management following appropriate prudential rules and shall have appropriate liquidity.’;~~

~~(d) in the first subparagraph of paragraph 7, the introductory part is replaced by the following:~~

~~‘7. Where a financial instrument is implemented under points (a), (b) and (c) of the first subparagraph of paragraph 4, subject to the implementation structure of the financial instrument, the terms and conditions for contributions from programmes to financial instruments shall be set out in funding agreements in accordance with Annex IV at the following levels:’;~~

~~(e) paragraph 8 is replaced by the following:~~

~~‘8. For financial instruments implemented under point (d) of the first subparagraph of paragraph 4, the terms and conditions for contributions from programmes to financial instruments shall be set out in a strategy document in accordance with Annex IV to be examined by the monitoring committee.’;~~

~~(f) paragraph 10 is replaced by the following:~~

~~‘10. The Commission shall adopt implementing acts laying down uniform conditions regarding the detailed arrangements for the transfer and management of programme contributions managed by the bodies referred to in the first subparagraph of paragraph 4 of this Article and in Article 39a(5). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).’;~~

~~(12) Article 39 is amended as follows:~~

~~(a) in the first subparagraph of paragraph 2, the introductory part is replaced by the following:~~

~~‘2. Member States may use the ERDF and EAFRD during the eligibility period set out in Article 65(2) of this Regulation to provide a financial contribution to financial instruments referred to in point (a) of Article 38(1) of this Regulation, implemented indirectly by the Commission with the EIB pursuant to point (c)(iii) of the first subparagraph of Article 62(1) of the~~

~~Financial Regulation and Article 208(4) of the Financial Regulation, in respect of the following activities:';~~

~~(b) in the first subparagraph of paragraph 4:~~

~~(i) point (a) is replaced by the following:~~

~~'(a) by way of derogation from Article 37(2), it shall be based on an ex-ante assessment at Union level carried out by the EIB and the Commission or, where more recent data are available, on an ex-ante assessment at Union, national or regional level.~~

~~On the basis of available data sources on bank debt finance and SMEs, the ex-ante assessment shall cover, inter alia, an analysis of the SME financing needs at the relevant level, SME financing conditions and needs as well as an indication of the SME financing gap, a profile of the economic and financial situation of the SME sector at the relevant level, minimum critical mass of aggregate contributions, a range of estimated total loan volume generated by such contributions, and the added value;';~~

~~(ii) point (b) is replaced by the following:~~

~~'(b) it shall be provided by each participating Member State as part of a separate priority axis within a programme in the case of ERDF contribution, or a single dedicated national programme per financial contribution by ERDF and EAFRD, supporting the thematic objective set out in point (3) of the first paragraph of Article 9;';~~

~~(c) paragraphs 7 and 8 are replaced by the following:~~

~~'7. By way of derogation from Article 41(1) and (2) as regards the financial contributions referred to in paragraph 2 of this Article, the Member State's payment application to the Commission shall be made on the basis of 100 % of the amounts to be paid by the Member State to the EIB in accordance with the schedule defined in the funding agreement referred to in point (c) of the first subparagraph of paragraph 4 of this Article. Such payment applications shall be based on the amounts requested by the EIB deemed necessary to cover commitments under guarantee agreements or securitisation transactions to be finalised within the three following months. Payments from Member States to the EIB shall be made without delay and in any case before commitments are entered into by the EIB.~~

~~8. At closure of the programme, the eligible expenditure as referred to in points (a) and (b) of the first subparagraph of Article 42(1) shall be the total amount of programme contributions paid to the financial instrument, corresponding:~~

~~(a) for the activities referred to in point (a) of the first subparagraph of paragraph 2 of this Article, to the resources referred to in point (b) of the first subparagraph of Article 42(1);~~

~~(b) for the activities referred to in point (b) of the first subparagraph of paragraph 2 of this Article, to the aggregate amount of new debt finance resulting from the securitisation transactions, paid to or to the~~

~~benefit of eligible SMEs within the eligibility period set out in Article 65(2).';~~

~~(13) the following article is inserted:~~

~~*'Article 39a*~~

~~Contribution of ESI Funds to financial instruments combining such contribution with EIB financial products under the European Fund for Strategic Investments~~

~~1. In order to attract additional private sector investment managing authorities may use the ESI Funds to provide a contribution to financial instruments referred to in point (c) of Article 38(1) provided that it contributes, inter alia, to the achievement of the objectives of the ESI Funds and to the Union strategy for smart, sustainable and inclusive growth.~~

~~2. The contribution referred to in paragraph 1 shall not exceed 25 % of the total support provided to final recipients. In the less developed regions referred to in point (b) of the first subparagraph of Article 120(3), the financial contribution may exceed 25 % where duly justified by the assessments referred to in Article 37(2) or in paragraph 3 of this Article, but shall not exceed 40 %. The total support referred to in this paragraph shall comprise the total amount of new loans and guaranteed loans as well as equity and quasi-equity investments provided to final recipients. The guaranteed loans referred to in this paragraph shall only be taken into account to the extent that the ESI Funds resources are committed for guarantee contracts calculated on the basis of a prudent ex ante risk assessment covering a multiple amount of new loans.~~

~~3. By way of derogation from Article 37(2), contributions pursuant to paragraph 1 of this Article may be based on the preparatory assessment, including the due diligence, carried out by the EIB for the purposes of its contribution to the financial product under the EFSI.~~

~~4. Reporting by managing authorities under Article 46 of this Regulation on operations comprising financial instruments under this Article shall be based on the information kept by the EIB for the purposes of its reporting pursuant to Article 16(1) and (2) of Regulation (EU) 2015/1017, supplemented by the additional information required under Article 46(2) of this Regulation. The requirements set out in this paragraph shall allow for uniform reporting conditions in accordance with Article 46(3) of this Regulation.~~

~~5. When contributing to financial instruments referred to in point (c) of Article 38(1) the managing authority may do any of the following:~~

~~(a) invest in the capital of an existing or newly created legal entity dedicated to implement investments in final recipients consistent with the objectives of the respective ESI Funds which will undertake implementation tasks;~~

~~(b) entrust implementation tasks in accordance with points (b) and (c) of the first subparagraph of Article 38(4).~~

~~The body entrusted with implementation tasks as referred to in point (b) of the first subparagraph of this paragraph shall either open a fiduciary account in its name and on behalf of the managing authority or set up a separate block of finance within the institution for programme contribution. In the case of a separate block of finance, an~~

~~accounting distinction shall be made between programme resources invested in the financial instrument and the other resources available in the institution. The assets held on fiduciary accounts and such separate blocks of finance shall be managed in accordance with the principle of sound financial management following appropriate prudential rules and shall have appropriate liquidity.~~

~~For the purposes of this Article, a financial instrument may also take the form or be part of an investment platform in line with Article 2(4) of Regulation (EU) 2015/1017, provided that the investment platform takes the form of a special purpose vehicle or a managed account.~~

~~6. When implementing financial instruments under point (c) of Article 38(1) of this Regulation, the bodies referred to in paragraph 5 of this Article shall ensure compliance with applicable law and with the requirements laid down in Article 155(2) and (3) of the Financial Regulation.~~

~~7. By 3 November 2018, the Commission shall adopt delegated acts in accordance with Article 149 supplementing this Regulation by laying down additional specific rules on the role, liabilities and responsibility of bodies implementing financial instruments, related selection criteria and products that may be delivered through financial instruments in accordance with point (c) of Article 38(1).~~

~~8. The bodies referred to in paragraph 5 of this Article, when implementing funds of funds may further entrust part of the implementation to financial intermediaries provided that such bodies ensure under their responsibility that the financial intermediaries satisfy the criteria laid down in Articles 33(1) and 209(2) of the Financial Regulation. Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interests.~~

~~9. Where, for the purposes of implementing financial instruments referred to in point (c) of Article 38(1), managing authorities contribute the ESI Funds programme resources to an existing instrument, the fund manager of which has already been selected by the EIB, an international financial institution in which a Member State is a shareholder, or a publicly-owned bank or institution, established as a legal entity carrying out financial activities on a professional basis and fulfilling the conditions set out in point (b)(iii) of the first subparagraph of Article 38(4), they shall entrust implementation tasks to that fund manager through the award of a direct contract.~~

~~10. By way of derogation from Article 41(1) and (2), for contributions to financial instruments under paragraph 9 of this Article, applications for interim payment shall be phased in line with the payment schedule set out in the funding agreement. The payment schedule referred to in the first sentence of this paragraph shall correspond to the payment schedule agreed for other investors in the same financial instrument.~~

~~11. The terms and conditions for contributions pursuant to point (c) of Article 38(1) shall be set out in funding agreements in accordance with Annex IV at the following levels:~~

~~(a) where applicable, between the duly mandated representatives of the managing authority and the body that implements the fund of funds;~~

~~(b) between the duly mandated representatives of the managing authority, or where applicable, between the body that implements the fund of funds, and the body that implements the financial instrument.~~

~~12. For contributions pursuant to paragraph 1 of this Article to investment platforms which receive contributions from instruments set up at Union level, consistency with State aid rules shall be ensured in accordance with point (c) of the first subparagraph of Article 209(2) of the Financial Regulation.~~

~~13. In the case of financial instruments referred to in point (c) of Article 38(1) which take the form of a guarantee instrument, Member States may decide that the ESI Funds contribute, as appropriate, to different tranches of portfolios of loans covered also under the EU guarantee pursuant to Regulation (EU) 2015/1017.~~

~~14. For the ERDF, the ESF, the Cohesion Fund and the EMFF, a separate priority, and for the EAFRD, a separate type of operation, with a co-financing rate of up to 100 % may be established within a programme to support operations implemented through financial instruments referred to in point (c) of Article 38(1).~~

~~15. Notwithstanding Article 70 and Article 93(1), contributions pursuant to paragraph 1 of this Article may be used for the purpose of giving rise to new debt and equity finance in the entire territory of the Member State without regard to the categories of region, unless otherwise provided in the funding agreement.~~

~~16. By 31 December 2019, the Commission shall carry out a review of the application of this Article and shall where appropriate submit to the European Parliament and Council a legislative proposal.';~~

~~(14) Article 40 is amended as follows:~~

~~(a) paragraphs 1 and 2 are replaced by the following:~~

~~'1. The authorities designated in accordance with Article 124 of this Regulation and with Article 65 of the EAFRD Regulation shall not carry out on-the-spot verifications at the level of the EIB or other international financial institutions in which a Member State is a shareholder, for financial instruments implemented by them.~~

~~However, the designated authorities shall carry out verifications in accordance with Article 125(5) of this Regulation and checks in accordance with Article 59(1) of Regulation (EU) No 1306/2013 at the level of other bodies implementing the financial instruments in the jurisdiction of their respective Member State.~~

~~The EIB and other international financial institutions in which a Member State is a shareholder shall provide to the designated authorities a control report with each application for payment. They shall also provide to the Commission and to the designated authorities an annual audit report drawn up by their external auditors. Those reporting obligations are without prejudice to the reporting obligations, including as regards the performance of the financial instruments, as set out in Article 46(1) and (2) of this Regulation.~~

~~The Commission shall be empowered to adopt an implementing act concerning the models for the control reports and the annual audit reports referred to in the third subparagraph of this paragraph.~~

~~That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 150(2).~~

~~2. Without prejudice to Article 127 of this Regulation and Article 9 of Regulation (EU) No 1306/2013, the bodies responsible for the audit of the~~

~~programmes shall not carry out audits at the level of the EIB or other international financial institutions in which a Member State is a shareholder, for financial instruments implemented by them.~~

~~The bodies responsible for the audit of the programmes shall carry out audits of operations and of management and control systems at the level of other bodies implementing the financial instruments in their respective Member States and at the level of the final recipients provided that the conditions set out in paragraph 3 are fulfilled.~~

~~The Commission may carry out audits at the level of the bodies referred to in paragraph 1, where it concludes that this is necessary to obtain reasonable assurance given the risks identified.~~

~~2a. As regards financial instruments referred to in point (a) of Article 38(1) and Article 39 which were established by a funding agreement signed before 2 August 2018, the rules set out in this Article applicable at the moment of the signature of the funding agreement shall apply, by way of derogation from paragraphs 1 and 2 of this Article.';~~

~~(b) paragraph 4 is replaced by the following:~~

~~'4. By 3 November 2018, the Commission shall adopt delegated acts in accordance with Article 149 supplementing this Regulation by laying down additional specific rules on the management and control of financial instruments referred to in points (b) and (c) of Article 38(1), the types of controls to be performed by managing and audit authorities, the arrangements for keeping supporting documents and the elements to be evidenced by supporting documents.';~~

~~(c) the following paragraph is inserted:~~

~~'5a. By way of derogation from Article 143(4) of this Regulation and from the second paragraph of Article 56 of Regulation (EU) No 1306/2013, in operations comprising financial instruments, a contribution cancelled in accordance with Article 143(2) of this Regulation or in accordance with the first paragraph of Article 56 of Regulation (EU) No 1306/2013, as a result of an individual irregularity, may be reused within the same operation under the following conditions:~~

> ~~(a) where the irregularity that gives rise to the cancellation of the contribution is detected at the level of the final recipient, the contribution cancelled may be reused only for other final recipients within the same financial instrument;~~
>
> ~~(b) where the irregularity that gives rise to the cancellation of the contribution is detected at the level of the financial intermediary within a fund of funds, the contribution cancelled may be reused only for other financial intermediaries.~~

~~Where the irregularity that gives rise to the cancellation of the contribution is detected at the level of the body implementing funds of funds, or at the level of the body implementing financial instruments where a financial instrument is implemented through a structure without a fund of funds, the contribution cancelled may not be reused within the same operation.~~

~~Where a financial correction is made for a systemic irregularity, the contribution cancelled may not be reused for any operation affected by the systemic irregularity.';~~

~~(15) Article 41 is amended as follows:~~

~~(a) in the first subparagraph of paragraph 1, the introductory part is replaced by the following:~~

~~'1. As regards financial instruments referred to in points (a) and (c) of Article 38(1), and as regards financial instruments referred to in point (b) of Article 38(1) implemented in accordance with points (a), (b) and (c) of the first subparagraph of Article 38(4), phased applications for interim payment shall be made for programme contributions paid to the financial instrument during the eligibility period laid down in Article 65(2) (the "eligibility period") in accordance with the following conditions:';~~

~~(b) paragraph 2 is replaced by the following:~~

~~'2. As regards financial instruments referred to in point (b) of Article 38(1) implemented in accordance with point (d) of the first subparagraph of Article 38(4), the applications for interim payment and for payment of the final balance shall include the total amount of the payments effected by the managing authority for investments in final recipients as referred to in points (a) and (b) of the first subparagraph of Article 42(1).';~~

~~(16) Article 42 is amended as follows:~~

~~(a) in paragraph 3, the first subparagraph is replaced by the following:~~

~~'3. In the case of equity-based instruments targeting enterprises referred to in Article 37(4) for which the funding agreement referred to in point (b) of Article 38(7) was signed before 31 December 2018, which by the end of the eligibility period invested at least 55 % of the programme resources committed in the relevant funding agreement, a limited amount of payments for investments in final recipients to be made for a period not exceeding four years after the end of the eligibility period may be considered as eligible expenditure, when paid into an escrow account specifically set up for that purpose, provided that State aid rules are complied with and that all of the conditions set out below are fulfilled.';~~

~~(b) in paragraph 5, the first subparagraph is replaced by the following:~~

~~'5. Where management costs and fees as referred to in point (d) of the first subparagraph of paragraph 1 of this Article and in paragraph 2 of this Article are charged by the body implementing the fund of funds or bodies implementing financial instruments pursuant to point (c) of Article 38(1) and points (a), (b) and (c) of the first subparagraph of Article 38(4), they shall not exceed the thresholds defined in the delegated act referred to in paragraph 6 of this Article. Whereas management costs shall comprise direct or indirect cost items reimbursed against evidence of expenditure, management fees shall refer to an agreed price for services rendered established via a competitive market process, where applicable. Management costs and fees shall be based on a performance-based calculation methodology.';~~

~~(17) The following article is inserted:~~

~~*'Article 43a*~~

~~Differentiated treatment of investors~~

~~1. Support from the ESI Funds to financial instruments invested in final recipients and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by those investments, which are attributable to the support from the ESI Funds, may be used for differentiated treatment of investors operating under the market economy principle, as well as of the EIB when using the EU guarantee pursuant to Regulation (EU) 2015/1017. Such differentiated treatment shall be justified by the need to attract private counterpart resources and to leverage public funding.~~

~~2. The assessments referred to in Articles 37(2) and 39a(3) shall include, as appropriate, an assessment of the need for, and the extent of, differentiated treatment as referred to in paragraph 1 of this Article and/or a description of the mechanisms which will be used to establish the need for, and extent of, such differentiated treatment.~~

~~3. The differentiated treatment shall not exceed what is necessary to create the incentives for attracting private counterpart resources. It shall not over-compensate investors operating under the market economy principle, or the EIB when using the EU guarantee pursuant to Regulation (EU) 2015/1017. The alignment of interest shall be ensured through an appropriate sharing of risk and profit.~~

~~4. Differentiated treatment of investors operating under the market economy principle shall be without prejudice to the Union State aid rules.';~~

~~(18) in Article 44, paragraph 1 is replaced by the following:~~

~~'1. Without prejudice to Article 43a, resources paid back to financial instruments from investments or from the release of resources committed for guarantee contracts, including capital repayments and gains and other earnings or yields, such as interest, guarantee fees, dividends, capital gains or any other income generated by investments, which are attributable to the support from the ESI Funds, shall be re-used for the following purposes, up to the amounts necessary and in the order agreed in the relevant funding agreements:~~

~~(a) further investments through the same or other financial instruments, in accordance with the specific objectives set out under a priority;~~

~~(b) where applicable, to cover the losses in the nominal amount of the ESI Funds contribution to the financial instrument resulting from negative interest, if such losses occur despite active treasury management by the bodies implementing financial instruments;~~

~~(c) where applicable, reimbursement of management costs incurred and payment of management fees of the financial instrument.';~~

~~(19) in Article 46(2), the first subparagraph is amended as follows:~~

~~(a) point (c) is replaced by the following:~~

~~'(c) identification of the bodies implementing financial instruments, and the bodies implementing funds of funds where applicable, as referred to under points (a), (b) and (c) of Article 38(1);';~~

~~(b) points (g) and (h) are replaced by the following:~~

~~‘(g) interest and other gains generated by support from the ESI Funds to the financial instrument and programme resources paid back to financial instruments from investments as referred to in Articles 43 and 44 and amounts used for differentiated treatment as referred to in Article 43a;~~

~~(h) progress in achieving the expected leverage effect of investments made by the financial instrument;’;~~

~~(20) in Article 49, paragraph 4 is replaced by the following:~~

~~‘4. The monitoring committee may make observations to the managing authority regarding implementation and evaluation of the programme including actions related to the reduction of the administrative burden on beneficiaries. It may also make observations on the visibility of support from the ESI Funds and on raising awareness about the results of such support. It shall monitor actions taken as a result of its observations.’;~~

~~(21) in Article 51, paragraph 1 is replaced by the following:~~

~~‘1. An annual review meeting shall be organised every year from 2016 until and including 2023 between the Commission and each Member State to examine the performance of each programme, taking account of the annual implementation report and the Commission’s observations where applicable. The meeting shall also review the programme’s communication and information activities, in particular the results and effectiveness of measures taken to inform the public about the results and added value of support from the ESI Funds.’;~~

~~(22) in Article 56, paragraph 5 is deleted;~~

~~(23) in Article 57, paragraph 3 is replaced by the following:~~

~~‘3. Paragraph 1 and 2 of this Article shall also apply to the contributions from the ERDF or the EAFRD to the dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4).’;~~

~~(24) Article 58(1) is amended as follows:~~

~~(a) in the second subparagraph, the reference to ‘Article 60 of the Financial Regulation’ is replaced by ‘Article 154 of the Financial Regulation’;~~

~~(b) in the third subparagraph, point (f) is replaced by the following:~~

~~‘(f) actions to disseminate information, support networking, carry out communication activities with particular attention to the results and added value of support from the ESI Funds, raise awareness and promote cooperation and exchange of experience, including with third countries;’;~~

~~(c) the fourth subparagraph is replaced by the following:~~

~~‘The Commission shall dedicate at least 15 % of the resources referred to in this Article to bring about greater efficiency in communication to the public and stronger synergies between the communication activities undertaken at the initiative of the Commission, by extending the knowledge base on results, in particular through more effective data collection and dissemination, evaluations and reporting, and especially by highlighting the contribution of the ESI Funds to improving people’s lives, and by increasing the visibility of support from the ESI Funds as well as by raising awareness about the results~~

~~and the added value of such support. Information, communication and visibility measures on results and added value of support from the ESI Funds, with particular focus on operations, shall be continued after the closure of the programmes, where appropriate. Such measures shall also contribute to the corporate communication of the political priorities of the Union as far as they are related to the general objectives of this Regulation.';~~

~~(d) the following subparagraph is added:~~

~~'Depending on their purpose, the measures referred to in this Article can be financed either as operational or administrative expenditure.';~~

~~(25) Article 59 is amended as follows:~~

~~(a) the following paragraph is inserted:~~

~~'1a. Each ESI Fund may support technical assistance operations eligible under any of the other ESI Funds.';~~

~~(b) the following paragraph is added:~~

~~'3. Without prejudice to paragraph 2, Member States may implement actions referred to in paragraph 1 through the direct award of a contract to:~~

~~(a) the EIB;~~

~~(b) an international financial institution in which a Member State is a shareholder;~~

~~(c) a publicly-owned bank or institution, as referred to in point (b)(iii) of the first subparagraph of Article 38(4).';~~

~~(26) Article 61 is amended as follows:~~

~~(a) in paragraph 1, the first subparagraph is replaced by the following:~~

~~'1. This Article shall apply to operations which generate net revenue after their completion. For the purposes of this Article, "net revenue" means cash in-flows directly paid by users for the goods or services provided by the operation, such as charges borne directly by users for the use of infrastructure, sale or rent of land or buildings, or payments for services less any operating costs and replacement costs of short-life equipment incurred during the corresponding period. Operating cost-savings generated by the operation, with the exception of cost-savings resulting from the implementation of energy efficiency measures, shall be treated as net revenue unless they are offset by an equal reduction in operating subsidies.';~~

~~(b) in the first subparagraph of paragraph 3, the following point is inserted:~~

~~'(aa) application of a flat rate net revenue percentage established by a Member State for a sector or subsector not covered by point (a). Before the application of the flat rate the responsible audit authority shall verify that the flat rate has been established according to a fair, equitable and verifiable method based on historical data or objective criteria;';~~

~~(c) paragraph 5 is replaced by the following:~~

~~'5. As an alternative to the application of the methods laid down in paragraph 3 of this Article, the maximum co-financing rate referred to in Article 60(1) may, at the request of a Member State, be decreased for a priority~~

~~or measure under which all supported operations could apply a uniform flat rate in accordance with point (a) of the first subparagraph of paragraph 3 of this Article. The decrease shall be not less than the amount calculated by multiplying the maximum Union co-financing rate applicable under the Fund-specific rules by the relevant flat rate referred to in that point.';~~

~~(d) in the first subparagraph of paragraph 7, point (h) is replaced by the following:~~

~~'(h) operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation or in the EMFF Regulation.';~~

~~(e) paragraph 8 is replaced by the following:~~

~~'8. In addition, paragraphs 1 to 6 shall not apply to operations for which support under the programme constitutes State aid.';~~

~~(27) Article 65 is amended as follows:~~

~~(a) the third subparagraph of paragraph 8 is amended as follows:~~

~~(i) Point (h) is replaced by the following:~~

~~'(h) operations for which amounts or rates of support are defined in Annex II to the EAFRD Regulation or in the EMFF Regulation with the exception of those operations for which reference is made to this paragraph in the EMFF Regulation; or';~~

~~(ii) Point (i) is replaced by the following:~~

~~'(i) operations for which the total eligible cost does not exceed EUR 100000.';~~

~~(b) paragraph 11 is replaced by the following:~~

~~'11. An operation may receive support from one or more ESI Funds or from one or more programmes and from other Union instruments, provided that the expenditure declared in a payment application for one of the ESI Funds is not declared for support from another Fund or Union instrument, or for support from the same Fund under another programme. The amount of expenditure to be entered into a payment application of an ESI Fund may be calculated for each ESI Fund and for the programme or programmes concerned on a pro rata basis in accordance with the document setting out the conditions for support.';~~

~~(28) Article 67 is amended as follows:~~

~~(a) paragraph 1 is amended as follows:~~

~~(i) point (c) is replaced by the following:~~

~~'(c) lump sums;';~~

~~(ii) the following point is added:~~

~~'(e) financing which is not linked to costs of the relevant operations but is based on the fulfilment of conditions related to the realisation of progress in implementation or the achievement of objectives of programmes as set out in the delegated act adopted in accordance with paragraph 5a.';~~

~~(iii) the following subparagraph is added:~~

~~'For the form of financing referred to in point (c) of the first subparagraph, the audit shall exclusively aim at verifying that the conditions for reimbursement have been fulfilled.';~~

~~(b) the following paragraph is inserted:~~

~~'2a. For an operation or a project not covered by the first sentence of paragraph 4 and which receive support from the ERDF and the ESF, grants and repayable assistance for which the public support does not exceed EUR 100000 shall take the form of standard scales of unit costs, lump sums or flat rates, except for operations receiving support within the framework of State aid that does not constitute de minimis aid.~~

~~Where flat-rate financing is used, the categories of costs to which the flat rate is applied may be reimbursed in accordance with point (a) of the first subparagraph of paragraph 1.~~

~~For operations supported by the EAFRD, ERDF or the ESF, where the flat rate referred to in Article 68b(1) is used, the allowances and the salaries paid to participants may be reimbursed in accordance with point (a) of the first subparagraph of paragraph 1 of this Article.~~

~~This paragraph shall be subject to the transitional provisions set out in Article 152(7).';~~

~~(c) paragraph 4 is replaced by the following:~~

~~'4. Where an operation or a project forming a part of an operation is implemented exclusively through the public procurement of works, goods or services, only points (a) and (e) of the first subparagraph of paragraph 1 shall apply. Where the public procurement within an operation or project forming part of an operation is limited to certain categories of costs, all the options referred to in paragraph 1 may be applied for the whole operation or project forming a part of an operation.';~~

~~(d) paragraph 5 is amended as follows:~~

~~(i) point (a) is replaced by the following:~~

~~'(a) a fair, equitable and verifiable calculation method based on any of the following:~~

~~(i) statistical data, other objective information or an expert judgement;~~

~~(ii) the verified historical data of individual beneficiaries;~~

~~(iii) the application of the usual cost accounting practices of individual beneficiaries;';~~

~~(ii) the following point is inserted:~~

~~'(aa) a draft budget established on a case-by-case basis and agreed ex ante by the managing authority, or in the case of EAFRD the authority responsible for the selection of operations, where the public support does not exceed EUR 100000;';~~

~~(e) the following paragraph is inserted:~~

~~‘5a. The Commission is empowered to adopt delegated acts in accordance with Article 149 supplementing this Regulation with regard to the definition of the standard scales of unit costs or the flat-rate financing referred to in points (b) and (d) of the first subparagraph of paragraph 1 of this Article, the related methods referred to in point (a) of paragraph 5 of this Article and the form of support referred to in point (e) of the first subparagraph of paragraph 1 of this Article, by specifying detailed modalities concerning the financing conditions and their application.’;~~

~~(29) Article 68 is replaced by the following:~~

~~*‘Article 68*~~

~~Flat-rate financing for indirect costs concerning grants and repayable assistance~~

~~Where the implementation of an operation gives rise to indirect costs, they may be calculated at a flat rate in one of the following ways:~~

~~(a) a flat rate of up to 25 % of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State for a similar type of operation and beneficiary;~~

~~(b) a flat rate of up to 15 % of eligible direct staff costs without there being a requirement for the Member State to perform a calculation to determine the applicable rate;~~

~~(c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of operation and beneficiary.~~

~~The Commission is empowered to adopt delegated acts in accordance with Article 149 to supplement the provisions on the flat rate and the related methods referred to in point (c) of the first subparagraph of this paragraph.’;~~

~~(30) the following articles are inserted:~~

~~*‘Article 68a*~~

~~Staff costs concerning grants and repayable assistance~~

~~1. Direct staff costs of an operation may be calculated at a flat rate of up to 20 % of the direct costs other than the staff costs of that operation. Member States shall not be required to perform a calculation to determine the applicable rate provided that the direct costs of the operation do not include public works contracts which exceed in value the threshold set out in point (a) of Article 4 of Directive 2014/24/EU.~~

~~2. For the purposes of determining staff costs, an hourly rate may be calculated by dividing the latest documented annual gross employment costs by 1720 hours for persons working full time, or by a corresponding pro rata of 1720 hours, for persons working part-time.~~

~~3. When applying the hourly rate calculated in accordance with paragraph 2, the total number of hours declared per person for a given year shall not exceed the number of hours used for the calculations of that hourly rate.~~

~~The first subparagraph shall not apply to programmes under the European territorial cooperation goal for staff costs related to individuals who work on a part-time assignment on the operation.~~

~~4. Where annual gross employment costs are not available, they may be derived from the available documented gross employment costs or from the contract for employment, duly adjusted for a 12-month period.~~

~~5. Staff costs related to individuals who work on part-time assignment on the operation may be calculated as a fixed percentage of the gross employment costs, in line with a fixed percentage of time worked on the operation per month, with no obligation to establish a separate working time registration system. The employer shall issue a document for employees setting out that fixed percentage.~~

~~*Article 68b*~~

~~Flat-rate financing for costs other than staff costs~~

~~1. A flat rate of up to 40 % of eligible direct staff costs may be used in order to cover the remaining eligible costs of an operation without a requirement for the Member State to execute any calculation to determine the applicable rate.~~

~~For operations supported by the ESF, the ERDF or the EAFRD, salaries and allowances paid to participants shall be considered additional eligible costs not included in the flat rate.~~

~~2. The flat rate referred to in paragraph 1 shall not be applied to staff costs calculated on the basis of a flat rate.';~~

~~(31) Article 70 is replaced by the following:~~

~~'*Article 70*~~

~~Eligibility of operations depending on location~~

~~1. Subject to the derogations referred to in paragraph 2 and the Fund-specific rules, operations supported by the ESI Funds shall be located in the programme area.~~

~~Operations concerning the provision of services to citizens or businesses which cover the whole territory of a Member State shall be considered as being located in all programme areas within a Member State. In such cases, expenditure shall be allocated to the concerned programme areas on a pro-rata basis, based on objective criteria.~~

~~The second subparagraph of this paragraph does not apply to the national programme referred to in Article 6(2) of Regulation (EU) No 1305/2013 or to the specific programme for the establishment and the operation of the national rural network referred to in Article 54(1) of that Regulation.~~

~~2. The managing authority may accept that an operation is implemented outside the programme area but within the Union, provided that all the following conditions are satisfied:~~

~~(a) the operation is for the benefit of the programme area;~~

~~(b) the total amount from the ERDF, Cohesion Fund, EAFRD or EMFF allocated under the programme to operations located outside the programme area does not exceed 15 % of the support from the ERDF, Cohesion Fund,~~

~~EAFRD or EMFF at the level of the priority at the time of adoption of the programme;~~

~~(c) the monitoring committee has given its agreement to the operation or types of operations concerned;~~

~~(d) the obligations of the authorities for the programme in relation to management, control and audit concerning the operation are fulfilled by the authorities responsible for the programme under which that operation is supported or they enter into agreements with authorities in the area in which the operation is implemented.~~

~~Where operations financed from the Funds and the EMFF are implemented outside the programme area in accordance with this paragraph and have benefits both outside and within the programme area, such expenditure shall be allocated to those areas on a pro rata basis based on objective criteria.~~

~~Where operations concern the thematic objective referred to in point (1) of the first paragraph of Article 9 and are implemented outside the Member State but within the Union, only points (b) and (d) of the first subparagraph of this paragraph shall apply.~~

~~3. For operations concerning technical assistance or information, communication and visibility measures and promotional activities, and for operations concerning the thematic objective referred to in point (1) of the first paragraph of Article 9, expenditure may be incurred outside the Union provided that the expenditure is necessary for the satisfactory implementation of the operation.~~

~~4. Paragraphs 1, 2 and 3 shall not apply to programmes under the European territorial cooperation goal. Paragraphs 2 and 3 shall not apply to operations supported by the ESF.';~~

~~(32) in Article 71, paragraph 4 is replaced by the following:~~

~~'4. Paragraphs 1, 2 and 3 of this Article shall not apply to contributions to or by financial instruments or for lease purchase under point (b) of Article 45(2) of Regulation (EU) No 1305/2013 nor to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.';~~

~~(33) Article 75 is amended as follows:~~

~~(a) in paragraph 1, the reference to 'Article 59(5) of the Financial Regulation' is replaced by 'Article 63(5), (6) and (7) of the Financial Regulation';~~

~~(b) the following paragraph is inserted:~~

~~'2a. The Commission shall provide the competent national authority with:~~

~~(a) the draft audit report from the on-the-spot audit or check within three months of the end of that audit or check;~~

~~(b) the final audit report within three months of the receipt of a complete reply from the competent national authority to the draft audit report from the on-the-spot audit or check concerned.~~

~~The reports referred to in points (a) and (b) of the first subparagraph shall be made available within the time limits set out in those points in at least one of the official languages of the institutions of the Union.~~

~~The time limit set out in point (a) of the first subparagraph shall not include the period which starts on the date following the date on which the Commission sends its request for additional information to the Member State and lasts until the Member State responds to that request.~~

~~This paragraph shall not be applicable to the EAFRD.';~~

~~(34) in the second paragraph of Article 76, the reference to 'Article 84(2) of the Financial Regulation' is replaced by 'Article 110(1) of the Financial Regulation';~~

~~(35) in Article 79(2), the reference to 'Article 68(3) of the Financial Regulation' is replaced by 'Article 82(2) of the Financial Regulation';~~

~~(36) in point (c) of the first subparagraph of Article 83(1), the reference to 'Article 59(5) of the Financial Regulation' is replaced by 'Article 63(5), (6) and (7) of the Financial Regulation';~~

~~(37) in Article 84, the reference to 'Article 59(6) of the Financial Regulation' is replaced by 'Article 63(8) of the Financial Regulation';~~

~~(38) in Article 98, paragraph 2 is replaced by the following:~~

~~'2. The ERDF and the ESF may finance, in a complementary manner and subject to a limit of 10 % of Union funding for each priority axis of an operational programme, a part of an operation for which the costs are eligible for support from the other Fund on the basis of rules applied to that Fund, provided that such costs are necessary for the satisfactory implementation of the operation and are directly linked to it.';~~

~~(39) Article 102 is amended as follows:~~

~~(a) paragraph 6 is replaced by the following:~~

~~'6. Expenditure relating to a major project may be included in a payment application after the submission for approval referred to in paragraph 2. Where the Commission does not approve the major project selected by the managing authority, the declaration of expenditure following the withdrawal of the application by the Member State or the adoption of the Commission decision shall be rectified accordingly.';~~

~~(b) the following paragraph is added:~~

~~'7. Where the major project is appraised by independent experts pursuant to paragraph 1 of this Article, expenditure relating to that major project may be included in a payment application after the managing authority has informed the Commission of the submission to the independent experts of the information required under Article 101.~~

~~An independent quality review shall be delivered within six months of the submission of that information to the independent experts.~~

~~The corresponding expenditure shall be withdrawn and the declaration of expenditure shall be rectified accordingly in the following cases:~~

~~(a) where the independent quality review has not been notified to the Commission within three months of the expiry of the deadline referred to in the second subparagraph;~~

~~(b) where the submission of the information is withdrawn by the Member State; or~~

~~(c) where the relevant appraisal is negative.';~~

~~(40) in Article 104, paragraphs 2 and 3 are replaced by the following:~~

~~'2. The public expenditure allocated to a joint action plan shall be a minimum of EUR 5000000 or 5 % of the public support of the operational programme or one of the contributing programmes, whichever is lower.~~

~~3. Paragraph 2 shall not apply to operations supported under the YEI, to the first joint action plan submitted by a Member State under the Investment for growth and jobs goal or the first joint action plan submitted by a programme under the European territorial cooperation goal.';~~

~~(41) in Article 105(2), the second sentence is deleted;~~

~~(42) in Article 106, the first paragraph is amended as follows:~~

~~(a) point (1) is replaced by the following:~~

~~'(1) a description of the objectives of the joint action plan and how it contributes to the objectives of the programme or to the relevant country-specific recommendations and the broad guidelines of the economic policies of the Member States and of the Union under Article 121(2) TFEU and the relevant Council recommendations which the Member States are to take into account in their employment policies under Article 148(4) TFEU;';~~

~~(b) point (2) is deleted;~~

~~(c) point (3) is replaced by the following:~~

~~'(3) a description of the projects or types of projects envisaged, together with the milestones, where relevant, and the targets for outputs and results linked to the common indicators by priority axis, where relevant;';~~

~~(d) points (6), (7) and (8)are replaced by the following:~~

~~'(6) confirmation that it will contribute to the approach to promoting equality between men and women, as set out in the relevant programme or Partnership Agreement;~~

~~(7) confirmation that it will contribute to the approach on sustainable development, as set out in the relevant programme or Partnership Agreement;~~

~~(8) its implementing provisions, including the following:~~

~~(a) information on the selection of the joint action plan by the managing authority in accordance with Article 125(3);~~

~~(b) the arrangements for steering the joint action plan, in accordance with Article 108;~~

~~(c) the arrangements for monitoring and evaluating the joint action plan including arrangements ensuring the quality, collection and storage of data on the achievement of milestones, outputs and results;';~~

~~(e) point (9) is amended as follows:~~

~~(i) point (a) is replaced by the following:~~

~~'(a) the costs of achieving milestones, and targets for outputs and results, based, in the case of standard scales of unit costs and lump sums, on the methods set out in Article 67(5) of this Regulation and in Article 14 of the ESF Regulation;';~~

~~(ii) point (b) is deleted;~~

~~(43) in Article 107, paragraph 3 is replaced by the following:~~

~~'3. The decision referred to in paragraph 2 shall indicate the beneficiary and the objectives of the joint action plan, the milestones, where relevant, and targets for outputs and results, the costs of achieving those milestones and targets for outputs and result, and the financing plan by operational programme and priority axis, including the total eligible amount and the amount of public expenditure, the implementation period of the joint action plan and, where relevant, the geographical coverage and target groups of the joint action plan.';~~

~~(44) in Article 108(1), the first subparagraph is replaced by the following:~~

~~'1. The Member State or the managing authority shall set up a steering committee for the joint action plan, which may be distinct from the monitoring committee of the relevant operational programmes. The steering committee shall meet at least twice a year and shall report to the managing authority. Where relevant, the managing authority shall inform the relevant monitoring committee of the results of the work carried out by the steering committee and the progress of the implementation of the joint action plan in accordance with point (e) of Article 110(1) and point (a) of Article 125(2).';~~

~~(45) in Article 109(1), the second sentence is deleted;~~

~~(46) Article 110 is amended as follows:~~

~~(a) in paragraph 1, point (e) is replaced by the following:~~

~~'(e) implementation of the communication strategy, including information and communication measures, and of measures to enhance the visibility of the Funds;';~~

~~(b) in paragraph 2, point (a) is replaced by the following:~~

~~'(a) the methodology and criteria used for selection of operations, except where those criteria are approved by local action groups in accordance with point (e) of Article 34(3);';~~

~~(47) Article 114 is amended as follows:~~

~~(a) paragraph 1 is replaced by the following:~~

~~'1. An evaluation plan shall be drawn up by the managing authority or a Member State for one or more operational programmes. The evaluation plan shall be submitted to the monitoring committee no later than one year after the adoption of the operational programme. In the cases of dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4) adopted before 2 August 2018, the evaluation plan shall be submitted to the monitoring committee no later than one year after that date.';~~

~~(b) paragraph 4 is deleted;~~

~~(48) the heading of Chapter II of Title III of Part Three is replaced by the following:~~

~~'Information, communication and visibility';~~

~~(49) Article 115 is amended as follows:~~

~~(a) the heading is replaced by the following:~~

~~'Information, communication and visibility';~~

~~(b) in paragraph 1, point (d) is replaced by the following:~~

~~'(d) publicising to Union citizens the role and achievements of cohesion policy and of the Funds through measures to enhance the visibility of the results and impact of Partnership Agreements, operational programmes and operations.';~~

~~(c) paragraph 3 is replaced by the following:~~

~~'3. Detailed rules concerning information, communication and visibility for the public and information measures for potential beneficiaries and for beneficiaries are laid down in Annex XII.';~~

~~(50) in Article 116, paragraph 3 is replaced by the following:~~

~~'3. By way of derogation from the third subparagraph of paragraph 2 of this Article, the managing authority shall inform the monitoring committee or committees responsible at least once a year on the progress in the implementation of the communication strategy as referred to in point (c) of Article 110(1) and on its analysis of the results of that implementation as well as on the information and communication activities and measures to enhance visibility of the Funds that are planned for the following year. The monitoring committee shall give an opinion on the activities and measures planned for the following year, including on ways to increase the effectiveness of communication activities aimed at the public.';~~

~~(51) in Article 117, paragraph 4 is replaced by the following:~~

~~'4. Union networks comprising the members designated by Member States shall be set up by the Commission to ensure exchange of information on the results of the implementation of the communication strategies, the exchange of experience in implementing the information and communication measures, the exchange of good practices, and to enable joint planning or coordination of communication activities between the Member States and with the Commission where appropriate. The networks shall at least once a year debate and assess the effectiveness of the information and communication measures, and propose recommendations to enhance the outreach and impact of communication activities and to raise awareness about the results and added value of those activities.';~~

~~(52) Article 119 is amended as follows:~~

~~(a) in paragraph 1, the first subparagraph is replaced by the following:~~

~~'1. The amount of the Funds allocated to technical assistance in a Member State shall be limited to 4 % of the total amount of the Funds allocated to operational programmes under the Investment for growth and jobs goal.';~~

~~(b) in paragraph 2, the first sentence is deleted;~~

~~(c) paragraph 4 is replaced by the following:~~

~~‘4. In the case of the Structural Funds, where the allocations referred to in paragraph 1 are used to support technical assistance operations altogether relating to more than one category of region, the expenditure relating to the operations may be implemented under a priority axis combining different categories of region and attributed on a pro rata basis taking into account either the respective allocations to the different categories of regions of the operational programme or the allocation under each category of region as a share of the total allocation to the Member State.’;~~

~~(d) the following paragraph is inserted:~~

~~‘5a. The assessment of the respect of the percentages shall be carried out at the time of adoption of the operational programme.’;~~

~~(53) in Article 122(2), the fourth subparagraph is replaced by the following:~~

~~‘When amounts unduly paid to a beneficiary for an operation cannot be recovered and this is as a result of fault or negligence on the part of a Member State, that Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Funds to an operation in an accounting year.’;~~

~~(54) in Article 123(5), the first subparagraph is replaced by the following:~~

~~‘5. In the case of the Funds and in the case of the EMFF, provided that the principle of separation of functions is respected, the managing authority, the certifying authority, where applicable, and the audit authority may be part of the same public authority or body.’;~~

~~(55) Article 125 is amended as follows:~~

~~(a) in paragraph 3, point (c) is replaced by the following:~~

~~‘(c) ensure that the beneficiary is provided with a document setting out the conditions for support for each operation including the specific requirements concerning the products or services to be delivered under the operation, the financing plan, the time limit for execution, as well as the requirements regarding information, communication and visibility;’;~~

~~(b) the first subparagraph of paragraph 4 is amended as follows:~~

~~(i) point (a) is replaced by the following:~~

~~‘(a) verify that the co-financed products and services have been delivered, that the operation complies with applicable law, the operational programme and the conditions for support of the operation and:~~

~~(i) where costs are to be reimbursed pursuant to point (a) of the first subparagraph of Article 67(1), that the amount of expenditure declared by the beneficiaries in relation to those costs has been paid;~~

~~(ii) in the case of costs reimbursed pursuant to points (b) to (e) of the first subparagraph of Article 67(1), that the conditions for reimbursement of expenditure to the beneficiary have been met;’;~~

~~(ii) in point (c), the reference to 'points (a) and (b) of Article 59(5) of the Financial Regulation' is replaced by 'points (a) and (b) of Article 63(5) and Article 63(6) and (7) of the Financial Regulation';~~

~~(56) in point (b) of Article 126, the reference to 'point (a) of Article 59(5) of the Financial Regulation' is replaced by 'point (a) of Article 63(5) and Article 63(6) of the Financial Regulation';~~

~~(57) Article 127 is amended as follows:~~

~~(a) in the third subparagraph of paragraph 1, the reference to 'the second subparagraph of Article 59(5) of the Financial Regulation' is replaced by 'Article 63(7) of the Financial Regulation';~~

~~(b) in point (a) of the first subparagraph of paragraph 5, the reference to 'the second subparagraph of Article 59(5) of the Financial Regulation' is replaced by 'Article 63(7) of the Financial Regulation';~~

~~(58) Article 131 is replaced by the following:~~

~~*'Article 131*~~

~~Payment applications~~

~~1. Payment applications shall include, for each priority:~~

~~(a) the total amount of eligible expenditure incurred by beneficiaries and paid in implementing operations, as entered in the accounting system of the certifying authority;~~

~~(b) the total amount of public expenditure incurred in implementing operations, as entered in the accounting system of the certifying authority.~~

~~With regard to the amounts to be included in payment applications for the form of support referred to in point (e) of the first subparagraph of Article 67(1), the payment applications shall include the elements set out in the delegated acts adopted in accordance with Article 67(5a) and shall use the model for payment applications set out in the implementing acts adopted in accordance with paragraph 6 of this Article.~~

~~2. Eligible expenditure included in a payment application shall be supported by receipted invoices or accounting documents of equivalent probative value, except for the forms of support referred to in points (b) to (e) of the first subparagraph of Article 67(1) of this Regulation, Articles 68, 68a and 68b of this Regulation, Article 69(1) of this Regulation and Article 109 of this Regulation and in Article 14 of the ESF Regulation. For those forms of support, the amounts included in a payment application shall be the costs calculated on the applicable basis.~~

~~3. In the case of State aid, the public contribution corresponding to the expenditure included in a payment application shall have been paid to the beneficiaries by the body granting the aid or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, paid by the beneficiary to the body receiving the aid.~~

~~4. By way of derogation from paragraph 1 of this Article, in the case of State aid, the payment application may include advances paid to the beneficiary by the body granting the aid or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, paid by the beneficiary to the body receiving the aid, under the following cumulative conditions:~~

~~(a) those advances are subject to a guarantee provided by a bank or other financial institution established in the Member State or are covered by a facility provided as a guarantee by a public entity or by the Member State;~~

~~(b) those advances do not exceed 40 % of the total amount of the aid to be granted to a beneficiary for a given operation or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, of the total amount of the aid to be granted to the body receiving the aid as part of a given operation;~~

~~(c) those advances are covered by expenditure paid by the beneficiary or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, expenditure paid by the body receiving the aid in implementing the operation, and supported by receipted invoices or accounting documents of equivalent probative value within three years of the year of the payment of the advance or on 31 December 2023, whichever is earlier.~~

~~Where the conditions set out in point (c) of the first subparagraph are not met, the next payment application shall be corrected accordingly.~~

~~5. Each payment application which includes advances of the type referred to in paragraph 4 of this Article shall separately disclose:~~

~~(a) the total amount paid from the operational programme as advances;~~

~~(b) the amount which, within three years of the payment of the advance in accordance with point (c) of the first subparagraph of paragraph 4, has been covered by expenditure paid by the beneficiary or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, by the body receiving the aid; and~~

~~(c) the amount which has not been covered by expenditure paid by the beneficiary or, where Member States have decided that the beneficiary is the body granting the aid pursuant to point (10)(a) of Article 2, by the body receiving the aid, and for which the three year period has not yet elapsed.~~

~~6. The Commission shall, in order to ensure uniform conditions for the implementation of this Article, adopt implementing acts laying down the model for payment applications. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3).';~~

~~(59) in Article 137(1), the reference to 'point (a) of Article 59(5) of the Financial Regulation' is replaced by 'point (a) of Article 63(5) and Article 63(6) of the Financial Regulation';~~

~~(60) in Article 138, the reference to 'Article 59(5) of the Financial Regulation' is replaced by 'Article 63(5), and the second subparagraph of Article 63(7), of the Financial Regulation';~~

~~(61) in Article 140(3), the following sentence is added:~~

~~'Where documents are kept on commonly accepted data carriers in accordance with the procedure laid down in paragraph 5, no originals shall be required.';~~

~~(62) in point (a) of the second subparagraph of Article 145(7), the reference to 'Article 59(5) of the Financial Regulation' is replaced by 'Article 63(5), (6) and (7) of the Financial Regulation';~~

~~(63) in Article 147(1), the reference to 'Article 78 of the Financial Regulation' is replaced by 'Article 98 of the Financial Regulation';~~

~~(64) in Article 148, paragraph 1 is replaced by the following:~~

~~'1. Operations for which the total eligible expenditure does not exceed EUR 400000 for the ERDF and the Cohesion Fund, EUR 300000 for the ESF or EUR 200000 for the EMFF shall not be subject to more than one audit by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Other operations shall not be subject to more than one audit per accounting year by either the audit authority or the Commission prior to the submission of the accounts for the accounting year in which the operation is completed. Operations shall not be subject to an audit by the Commission or the audit authority in any year if there has already been an audit in that year by the European Court of Auditors, provided that the results of the audit work performed by the European Court of Auditors for such operations can be used by the audit authority or the Commission for the purpose of fulfilling their respective tasks.~~

~~By derogation from the first subparagraph, operations for which the total eligible expenditure is between EUR 200000 and EUR 400000 for the ERDF and the Cohesion Fund, between EUR 150000 and EUR 300000 for the ESF and between EUR 100000 and EUR 200000 for the EMFF may be subject to more than one audit, if the audit authority concludes, based on its professional judgment, that it is not possible to issue or draw up an audit opinion on the basis of statistical or non-statistical sampling methods referred to in Article 127(1) without carrying out more than one audit of the respective operation.';~~

~~(65) Article 149 is amended as follows:~~

~~(a) paragraphs 2 and 3 are replaced by the following:~~

~~'2. The power to adopt delegated acts referred to in Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Article 39a(7), Article 40(4), Article 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61(3), Articles 63(4), 64(4) and 67(5a), the second paragraph of Article 68, the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8), and Article 144(6) shall be conferred on the Commission from 21 December 2013 until 31 December 2020.~~

~~3. The delegation of power referred to in Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Article 39a(7), Article 40(4), Article 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61(3), Articles 63(4), 64(4) and 67(5a), the second paragraph of Article 68, the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8), and Article 144(6) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the~~

~~publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';~~

~~(b) the following paragraph is inserted:~~

~~'3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.';~~

~~(c) paragraphs 5 is replaced by the following:~~

~~'5. A delegated act adopted pursuant to Article 5(3), the second paragraph of Article 12, the fourth subparagraph of Article 22(7), Article 37(13), the third subparagraph of Article 38(4), Articles 39a(7), 40(4) and 41(3), the second subparagraph of Article 42(1), Article 42(6), the second, third, fourth and seventh subparagraphs of Article 61(3),Articles 63(4), 64(4) and 67(5a), the second paragraph of Article 68, the fourth paragraph of Article 101, the fifth subparagraph of Article 122(2), the first subparagraph of Article 125(8), Article 125(9), Article 127(7) and (8), and Article 144(6) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.';~~

~~(66) In Article 152, the following paragraph is added:~~

~~'7. The managing authority, or the monitoring committee for the programmes under the European territorial cooperation goal, may decide not to apply Article 67(2a) for a maximum period of 12 months starting from 2 August 2018.~~

~~Where the managing authority, or the monitoring committee for the programmes under the European territorial cooperation goal, considers that Article 67(2a) creates a disproportionate administrative burden, it may decide to extend the transitional period referred to in the first subparagraph of this paragraph for a period it considers appropriate. It shall notify the Commission of such decision before the expiration of the initial transitional period.~~

~~The first and second subparagraphs do not apply to grants and repayable assistance supported by the ESF for which the public support does not exceed EUR 50000.';~~

~~(67) Annex IV is amended as follows:~~

~~(a) Section 1 is amended as follows:~~

~~(i) the introductory part is replaced by the following:~~

~~'1. Where a financial instrument is implemented under Article 39a and points (a), (b) and (c) of the first subparagraph of Article 38(4), the funding agreement shall include the terms and conditions for making contributions from the programme to the financial instrument and shall include at least the following elements:';~~

~~(ii) point (f) is replaced by the following:~~

~~‘(f)requirements and procedures for managing the phased contribution provided by the programme in accordance with Article 41 and for the forecast of deal flows, including requirements for fiduciary/separate accounting as set out in Article 38(6) and the second subparagraph of Article 39a(5);’;~~

~~(iii) point (i) is replaced by the following:~~

~~‘(i)provisions regarding the re-use of resources attributable to the support from the ESI Funds until the end of the eligibility period in compliance with Article 44 and, where applicable, provisions regarding differentiated treatment as referred to in Article 43a;’;~~

~~(b) Section 2 is amended as follows:~~

~~(i) the introductory part is replaced by the following:~~

~~‘2. Strategy documents referred to under Article 38(8) for financial instruments implemented under point (d) of the first subparagraph of Article 38(4) shall include at least the following elements:’;~~

~~(ii) point (c) is replaced by the following:~~

~~‘(c) the use and re-use of resources attributable to the support of the ESI Funds in accordance with Articles 43, 44 and 45, and, where applicable, provisions regarding differentiated treatment as referred to in Article 43a;’;~~

~~(68) Annex XII is amended as follows:~~

~~(a) the heading of Annex XII is replaced by the following:~~

~~**‘INFORMATION, COMMUNICATION AND VISIBILITY OF SUPPORT FROM THE FUNDS’;**~~

~~(b) The heading of section 2 is replaced by the following:~~

~~**‘2. INFORMATION AND COMMUNICATION MEASURES AND MEASURES TO ENHANCE VISIBILITY FOR THE PUBLIC’;**~~

~~(c) subsection 2.1 is amended as follows:~~

~~(i) point 1 is replaced by the following:~~

~~‘1. The Member State and the managing authority shall ensure that the information and communication measures are implemented in accordance with the communication strategy, in order to improve visibility and interaction with citizens, and that those measures aim for the widest possible media coverage using various forms and methods of communication at the appropriate level and adapted, as appropriate, to technological innovation.’;~~

~~(ii) in point 2, points (e) and (f) are replaced by the following:~~

~~‘(e) giving examples of operations, in particular of operations where the added value of the intervention of the Funds is particularly visible, by operational programme, on the single website or on the operational programme’s website that is accessible through the single website portal; the examples shall be~~

~~in a widely spoken official language of the Union other than the official language or languages of the Member State concerned;~~

~~(f) updating information about the operational programme's implementation, including its main achievements and results, on the single website or on the operational programme's website that is accessible through the single website portal.';~~

~~(d) subsection 2.2 is amended as follows:~~

~~(i) in point 1, the introductory part is replaced by the following:~~

~~'1. All information and communication measures and measures to enhance visibility of the Funds provided by the beneficiary shall acknowledge support from the Funds to the operation by displaying:';~~

~~(ii) the following point is added:~~

~~'6. The responsibilities laid down in this subsection shall apply as from the time the beneficiary is provided with the document setting out the conditions for support to the operation referred to in point (c) of Article 125(3).';~~

~~(e) in point 2 of subsection 3.1, point (f) is replaced by the following:~~

~~'(f) the responsibility of beneficiaries to inform the public about the aim of the operation and the support from the Funds to the operation in accordance with subsection 2.2 as from the time the beneficiary is provided with the document setting out the conditions for support to the operation referred to in point (c) of Article 125(3). The managing authority may request that potential beneficiaries propose indicative communication activities to enhance the visibility of the Funds, proportional to the size of the operation, in the applications.';~~

~~(f) in subsection 4, point (i) is replaced by the following:~~

~~'(i) an annual update setting out the information and communication activities, including measures to enhance visibility of the Funds, to be carried out in the following year, based on, inter alia, lessons learnt on the effectiveness of such measures.'.~~

~~*Article 273*~~

~~Amendments to Regulation (EU) No 1304/2013~~

~~Regulation (EU) No 1304/2013 is amended as follows:~~

~~(1) in Article 13(2), the following subparagraph is added:~~

~~'Where operations falling under point (a) of the first subparagraph also have a benefit for the programme area in which they are implemented, expenditure shall be allocated to those programme areas on a pro rata basis based on objective criteria.';~~

~~(2) Article 14 is amended as follows:~~

~~(a) the following paragraph is inserted:~~

~~'-1. The general rules applicable to simplified cost options under the ESF are set out in Articles 67, 68, 68a and 68b of Regulation (EU) No 1303/2013.';~~

~~(b) paragraphs 2, 3 and 4 are deleted;~~

~~(3) in Annex I, point 1 is replaced by the following:~~

~~'(1) Common output indicators for participants~~

~~"Participants"[98] refers to persons benefiting directly from an ESF intervention who can be identified and asked for their characteristics, and for whom specific expenditure is earmarked. Other persons shall not be classified as participants. All data shall be broken down by gender.~~

~~The common output indicators for participants are:~~

- ~~unemployed, including long-term unemployed*,~~
- ~~long-term unemployed*,~~
- ~~inactive*,~~
- ~~inactive, not in education or training*,~~
- ~~employed, including self-employed*,~~
- ~~below 25 years of age*~~
- ~~above 54 years of age*,~~
- ~~above 54 years of age who are unemployed, including long-term unemployed, or inactive not in education or training*,~~
- ~~with primary (ISCED 1) or lower secondary education (ISCED 2)*,~~
- ~~with upper secondary (ISCED 3) or post-secondary education (ISCED 4)*,~~
- ~~with tertiary education (ISCED 5 to 8)*,~~
- ~~migrants, participants with a foreign background, minorities (including marginalised communities such as the Roma)**,~~
- ~~participants with disabilities**,~~
- ~~other disadvantaged**.~~

~~The total number of participants will be calculated automatically on the basis of the output indicators.~~

98 ~~(*) Managing authorities shall establish a system that records and stores individual participant data in computerised form as set out in Article 125(2)(d) of Regulation (EU) No 1303/2013. The data processing arrangements put in place by the Member States shall be in line with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31), in particular Articles 7 and 8 thereof.Data reported under the indicators marked with* are personal data according to Article 7 of Directive 95/46/EC. Their processing is necessary for compliance with the legal obligation to which the controller is subject (Article 7(c) of Directive 95/46/EC). For the definition of controller, see Article 2 of Directive 95/46/EC.Data reported under the indicators marked with** are a special category of data according to Article 8 of Directive 95/46/EC. Subject to the provision of suitable safeguards, Member States may, for reasons of substantial public interest, lay down exemptions in addition to those laid down in Article 8(2) of Directive 95/46/EC, either by national law or by decision of the supervisory authority (Article 8(4) of Directive 95/46/EC).~~

These data on participants entering an ESF supported operation shall be provided in the annual implementation reports as specified in Article 50(1) and (2) and Article 111(1) of Regulation (EU) No 1303/2013.

The following data on participants will be provided in the annual implementation reports as specified in Article 50 of Regulation (EU) No 1303/2013:

– homeless or affected by housing exclusion*,

– from rural areas*[99]

The data of those two indicators shall be collected based on a representative sample of participants within each investment priority. Internal validity shall be ensured in such a way that the data can be generalised at the level of the investment priority.'

Article 274

Amendments to Regulation (EU) No 1309/2013

Regulation (EU) No 1309/2013 is amended as follows:

(1) in recital 24, the first sentence is replaced by the following:

'The Member States should remain responsible for the implementation of the financial contribution and for the management and control of the actions supported by Union funding, in accordance with the relevant provisions of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[100] (the "Financial Regulation")."

(2) in Article 4, paragraph 2 is replaced by the following:

'2. In small labour markets or in exceptional circumstances, in particular with regard to collective applications involving SMEs, where duly substantiated by the applicant Member State, an application for a financial contribution under this Article may be considered admissible even if the criteria laid down in point (a) or (b) of paragraph 1 are not entirely met, when the redundancies have a serious impact on employment and the local, regional or national economy. The applicant Member State shall specify which of the intervention criteria set out in points (a) and (b) of paragraph 1 are not entirely met. For collective applications involving SMEs located in one region, where the applicant Member State demonstrates that SMEs are the main or the only type of business in that region, the application may exceptionally cover SMEs operating in different economic sectors defined at NACE Revision 2 division level. The aggregated amount of contributions in exceptional circumstances may not exceed 15 % of the annual maximum amount of the EGF.';

99 (**) The data shall be collected at the level of smaller administrative units (local administrative units 2), in accordance with Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

100 Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).;

~~(3) in Article 6, paragraph 2 is replaced by the following:~~

~~'2. By way of derogation from Article 2, applicant Member States may provide personalised services co-financed by the EGF to up to a number of NEETs under the age of 25, or where Member States so decide under the age of 30, on the date of submission of the application, equal to the number of targeted beneficiaries, as a priority to persons made redundant or whose activity has ceased, provided that at least some of the redundancies within the meaning of Article 3 occur in NUTS 2 level regions that had youth unemployment rates for young persons aged 15 to 24 of at least 20 % based on the latest annual data available. The support may be rendered to NEETs under the age of 25, or where Member States so decide under the age of 30, in those NUTS 2 level regions.';~~

~~(4) in Article 11, paragraph 3 is replaced by the following:~~

~~'3. The tasks set out in paragraph 1 shall be performed in accordance with the Financial Regulation.';~~

~~(5) in Article 15, paragraph 4 is replaced by the following:~~

~~'4. Where the Commission has concluded that the conditions for providing a financial contribution from the EGF are met, it shall submit a proposal to mobilise it. The decision to mobilise the EGF shall be taken jointly by the European Parliament and by the Council within one month of the referral to the European Parliament and to the Council. The Council shall act by a qualified majority and the European Parliament shall act by a majority of its component members and three fifths of the votes cast.~~

~~Transfers related to the EGF shall be made in accordance with Article 31 of the Financial Regulation, in principle within a period of no more than seven days from the date of adoption of the relevant decision by the European Parliament and by the Council.';~~

~~(6) in Article 16(2), the reference to 'Article 59 of the Financial Regulation' is replaced by 'Article 63 of the Financial Regulation';~~

~~(7) in Article 21(2), the reference to 'Article 59(3) of the Financial Regulation' is replaced by 'Article 63(3) of the Financial Regulation' and the reference to 'Article 59(5) of the Financial Regulation' is replaced by 'Article 63(5) of the Financial Regulation'.~~

~~*Article 275*~~

~~Amendments to Regulation (EU) No 1316/2013~~

~~Regulation (EU) No 1316/2013 is amended as follows:~~

~~(1) the following chapter is inserted:~~

~~'CHAPTER VA~~

~~BLENDING~~

~~*Article 16a*~~

~~CEF blending facilities~~

~~1. CEF blending facilities in accordance with Article 159 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[101] may be established under this Regulation for one or more of the CEF sectors. All actions contributing to projects of common interest shall be eligible to receive financial assistance through blending operations.~~

~~2. CEF blending facilities shall be implemented in accordance with Article 6(3).~~

~~3. The overall contribution from the Union budget to CEF blending facilities shall not exceed 10 % of the overall financial envelope of the CEF as referred to in Article 5(1).~~

~~In addition to the threshold set out in the first subparagraph, in the transport sector the overall contribution from the Union budget to CEF blending facilities shall not exceed EUR 500000000.~~

~~If 10 % of the overall financial envelope for the implementation of the CEF referred to in Article 5(1) is not fully used for CEF blending facilities and/or financial instruments, the remaining amount shall be made available for and redistributed to that financial envelope.~~

~~4. The amount of EUR 11305500000 transferred from the Cohesion Fund, referred to in point (a) of Article 5(1), shall not be used to commit budgetary resources to CEF blending facilities.~~

~~5. Support provided under a CEF blending facility in the form of grants and financial instruments shall comply with the eligibility and conditions for financial assistance set out in Article 7. The amount of financial assistance to be granted to the blending operations supported by means of a CEF blending facility shall be modulated on the basis of a cost-benefit analysis, the availability of Union budget resources and the need to maximise the leverage of Union funding. No grant awarded shall exceed the funding rates laid down in Article 10.~~

~~6. The Commission shall, in cooperation with the European Investment Bank (EIB), study the possibility for the EIB to systematically provide first-loss guarantees within CEF blending facilities in order to allow and facilitate additionality and the participation of private co-investors in the transport sector.~~

~~7. The Union, Member States and other investors may contribute to CEF blending facilities, provided that the Commission agrees to the specifications of the eligibility criteria of blending operations and/or the investment strategy of the CEF blending facility which may be necessary due to the additional contribution and in order to meet the requirements of this Regulation when carrying out projects of common interest. Those additional resources shall be implemented by the Commission in accordance with Article 6(3).~~

~~8. Blending operations supported by means of a CEF blending facility shall be selected on the basis of maturity and shall seek sectoral diversification in accordance~~

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101 ~~Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).;~~

~~with Articles 3 and 4 as well as geographical balance across the Member States. They shall:~~

~~(a) represent European added value;~~

~~(b) respond to the objectives of the Europe 2020 Strategy;~~

~~(c) contribute, where possible, to climate change mitigation and adaptation.~~

~~9. CEF blending facilities shall be made available and blending operations shall be selected based on the selection and award criteria established in the multiannual and the annual work programmes adopted pursuant to Article 17.~~

~~10. Blending operations in third countries may be supported by means of a CEF blending facility if those actions are necessary for the implementation of a project of common interest.'~~

~~(2) in Article 17(3), the second subparagraph is replaced by the following:~~

~~'The amount of the financial envelope shall lie within a range of 80 % to 95 % of the budgetary resources referred to in point (a) of Article 5(1).';~~

~~(3) in Article 22, the fourth paragraph is replaced by the following:~~

~~'The certification of the expenditure referred to in the second paragraph of this Article is not mandatory for grants awarded on the basis of Regulation (EU) No 283/2014.'.~~

~~*Article 276*~~

~~Amendments to Regulation (EU) No 223/2014~~

~~Regulation (EU) No 223/2014 is amended as follows:~~

~~(1) in Article 9, the following paragraph is added:~~

~~'4. Paragraphs 1, 2 and 3 do not apply for the purposes of modifying elements of an operational programme falling under sub-sections 3.5 and 3.6 and section 4, respectively, of the operational programme templates set out in Annex I.~~

~~A Member State shall notify the Commission of any decision to modify the elements referred to in the first subparagraph within one month of the date of that decision. The decision shall specify the date of its entry into force, which shall not be earlier than the date of its adoption.';~~

~~(2) in Article 23, paragraph 6 is replaced by the following:~~

~~'6. An operation may receive support from one or more operational programmes co-financed by the Fund and from other Union instruments, provided that the expenditure declared in a payment application for the Fund is not declared for support from another Union instrument, or support from the same Fund under another programme. The amount of expenditure to be entered into a payment application of the Fund may be calculated for the programme or programmes concerned on a pro rata basis in accordance with the document setting out the conditions for support.';~~

~~(3) in Article 25(3), the following point is added:~~

~~‘(e) rules for the application of corresponding unit costs, lump sums and flat rates applicable under Union policies for a similar type of operation and beneficiary.’;~~

~~(4) Article 26 is amended as follows:~~

~~(a) in paragraph 2, points (d) and (e) are replaced by the following:~~

~~‘(d) the costs of partner organisations for collection, transport, storage and distribution of food donations and directly related awareness raising activities;~~

~~(e) the costs of accompanying measures undertaken and declared by the partner organisations delivering directly or under cooperation agreements the food and/or basic material assistance to the most deprived persons at a flat rate of 5 % of the costs referred to in point (a) of this paragraph; or 5 % of the value of the food products disposed of in accordance with Article 16 of Regulation (EU) No 1308/2013.’;~~

~~(b) the following paragraph is inserted:~~

~~‘3a. Notwithstanding paragraph 2, a reduction of the eligible costs referred to in point (a) of paragraph 2 due to non-compliance with applicable law by the body responsible for the purchase of food and/or basic material assistance shall not lead to a reduction of the eligible costs of other bodies as set out in points (c) and (e) of paragraph 2.’;~~

~~(5) in Article 27, paragraph 4 is replaced by the following:~~

~~‘4. At the initiative of the Member States, and subject to a ceiling of 5 % of the Fund allocation at the time of the adoption of the operational programme, the operational programme may finance preparation, management, monitoring, administrative and technical assistance, audit, information, control and evaluation measures necessary for implementing this Regulation. It may also finance technical assistance and capacity building of partner organisations.’;~~

~~(6) in Article 30(2), the fourth subparagraph is replaced by the following:~~

~~‘When amounts unduly paid to a beneficiary for an operation cannot be recovered and this is as a result of fault or negligence on the part of a Member State, that Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Fund to an operation in an accounting year.’;~~

~~(7) in Article 32(4), point (a) is replaced by the following:~~

~~‘(a) verify that the co-financed products and services have been delivered, that the operation complies with applicable law, the operational programme and the conditions for support of the operation and,~~

~~(i) where costs are to be reimbursed pursuant to point (a) of Article 25(1), that the amount of expenditure declared by the beneficiaries in relation to those costs has been paid;~~

~~(ii) where costs are to be reimbursed pursuant to points (b), (c) and (d) of Article 25(1), that the conditions for reimbursement of expenditure to the beneficiary have been met;';~~

~~(8) in Article 42, paragraph 3 is replaced by the following:~~

~~'3. The payment deadline referred to in paragraph 2 may be suspended by the managing authority in either of the following duly justified cases:~~

~~(a) the amount of the payment claim is not due or the appropriate supporting documents, including the documents necessary for management verifications under point (a) of Article 32(4), have not been provided;~~

~~(b) an investigation has been initiated in relation to a possible irregularity affecting the expenditure concerned.~~

~~The beneficiary concerned shall be informed in writing of the suspension and the reasons for it. The remaining time allowed for payment shall begin to run again from the date on which the requested information or documents are received or the investigation has been carried out.';~~

~~(9) in Article 51, paragraph 3 is replaced by the following:~~

~~'3. The documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only. Where documents are kept on commonly accepted data carriers in accordance with the procedure laid down in paragraph 5, no originals shall be required.'.~~

~~*Article 277*~~

~~Amendments to Regulation (EU) No 283/2014~~

~~Regulation (EU) No 283/2014 is amended as follows:~~

~~(1) in Article 2(2), point (e) is replaced by the following:~~

~~'(e) "generic services" means gateway services linking one or more national infrastructures to core service platforms as well as services increasing the capacity of a digital service infrastructure by providing access to high performance computing, storage and data management facilities;';~~

~~(2) Article 5 is amended as follows:~~

~~(a) paragraph 4 is replaced by the following:~~

~~'4. Actions contributing to projects of common interest in the field of digital service infrastructures shall be supported by:~~

~~(a) procurement;~~

~~(b) grants; and/or~~

~~(c) financial instruments as provided for in paragraph 5.';~~

~~(b) the following paragraph is inserted:~~

~~'4a. The overall contribution from the Union budget to financial instruments for digital service infrastructures referred to in point (c) of paragraph 4 of this Article shall not exceed 10 % of the financial envelope for~~

~~the telecommunications sector referred to in point (b) of Article 5(1) of Regulation (EU) No 1316/2013.';~~

~~(3) in Article 8, paragraph 1 is replaced by the following:~~

~~'1. On the basis of information received under the third paragraph of Article 22 of Regulation (EU) No 1316/2013, Member States and the Commission shall exchange information and best practices about the progress made in the implementation of this Regulation, including the use of financial instruments. Where appropriate, Member States shall involve local and regional authorities in the process. The Commission shall publish a yearly overview of that information and submit it to the European Parliament and to the Council.'.~~

~~*Article 278*~~

~~Amendment to Decision No 541/2014/EU~~

~~In Article 4 of Decision No 541/2014/EU of the European Parliament and of the Council, the following paragraph is added:~~

~~'3. Funding programmes established by Regulations (EU) No 377/2014 and (EU) No 1285/2013 and by Decision 2013/743/EU may contribute to the financing of the actions referred to in paragraph 1 of this Article, within the scope of those programmes and in conformity with their aims and objectives. Such contributions shall be spent in compliance with Regulation (EU) No 377/2014. The Commission shall before the end of the Multiannual Financial Framework 2014-2020 assess the new simplified financial rules pursuant to this paragraph and their contribution to the objectives of the SST support framework.'.~~

~~PART THREE~~

TITLE XVII

FINAL AND TRANSITIONAL PROVISIONS

Article 275~~279~~

Transitional provisions

1. Legal commitments for grants implementing the budget under the Multiannual Financial Framework 2014-2020 may continue to take the form of grant decisions. The provisions of Title VIII applicable to grant agreements shall apply mutatis mutandis to grant decisions. ~~The Commission shall review the use of grant decisions under the post-2020 multiannual financial framework, in particular in view of the progress made in electronic signature and electronic management of grants by that time.~~

~~2. Upon entry into force of this Regulation Commission decisions authorising the use of lump sums, unit costs or flat rates adopted in accordance with Article 124 of Regulation (EU, Euratom) No 966/2012 shall be amended by the authorising officer responsible in accordance with Article 181 of this Regulation.~~

2~~3~~. ⇨ Regulation (EU, Euratom) 2018/1046, ⇦ Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall continue to apply to legal commitments entered into before the entry into force of this Regulation. The existing pillar assessments,

contribution agreement templates and financial framework partnership agreements may continue to apply and shall be reviewed as appropriate.

~~4. For financial contributions from the EGF including support to NEETs, for which the period specified in Article 16(4) of Regulation (EU) No 1309/2013 has not expired by 1 January 2018, the Commission shall assess whether personalised services provided to NEETs are eligible for co-financing by the EGF beyond 31 December 2017. Where the Commission concludes that this is the case, it shall amend the affected decisions on the financial contribution accordingly.~~

⇩ new

3. Without prejudice to sector-specific rules and to a voluntary application, the obligations set out in Article 36, point (d) of paragraph 2, paragraphs 6, 7 and 8, concerning the electronic recording and storage of data on the recipients of funds and their beneficial owners and the use of the single integrated IT system for data-mining and risk-scoring shall apply only to programmes adopted under and financed from the post-2027 multiannual financial framework.

4. The obligations set out in Article 38, third subparagraph of paragraph 4 and in paragraph 6, shall apply only to programmes adopted under and financed from the post-2027 multiannual financial framework.

🡻 2018/1046 (adapted)

Article 276~~280~~

Review

This Regulation shall be reviewed whenever it proves necessary to do so and in any case at the latest two years before the end of each multiannual financial framework.

Such review shall cover, inter alia, the implementation of Titles VIII and X ~~of Part One~~ and the deadlines set out in Article 264~~259~~.

Article 277~~281~~

Repeal

~~1.~~ Regulation (EU, Euratom) ~~No 966/2012~~ ⌦ 2018/1046 ⌫ is repealed ~~with effect from 2 August 2018~~. ~~It shall, however, continue to apply until 31 December 2018 for the purposes of point (c) of Article 282(3).~~

~~2. Without prejudice to Article 279(3), the Commission shall repeal Delegated Regulation (EU) No 1268/2012 with effect from 2 August 2018. That Delegated Regulation shall, however, continue to apply until 31 December 2018 for the purposes of point (c) of Article 282(3).~~

~~3.~~ References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 278~~282~~

Entry into force and application

~~1.~~ This Regulation shall enter into force on the ~~third~~ ⌦ twentieth ⌫ day following that of its publication in the *Official Journal of the European Union*.

~~2.~~ It shall apply from ⌦ […] ⌫ ~~2 August 2018~~.

~~3. By way of derogation from paragraph 2 of this Article:~~

~~(a) Article 271(1)(a), Article 272(2), Article 272(10)(a), Article 272(11)(b)(i), (c), (d) and (e), Article 272(12)(a), (b)(i) and (c), Article 272(14)(c), Article 272(15), (17), (18), (22) and (23), Article 272(26)(d), Article 272(27)(a)(i), Article 272(53), and (54), Article 272(55)(b)(i), Article 273(3), Article 276(2) and Article 276(4)(b) shall apply from 1 January 2014;~~

~~(b) Article 272(11)(a) and (f), Article 272(13), Article 272(14)(b), Article 272(16), Article 272(19)(a) and Article 274(3) shall apply from 1 January 2018;~~

~~(c) Articles 6 to 60, 63 to 68, 73 to 207, 241 to 253 and 264 to 268 shall apply from 1 January 2019 as regards the implementation of the administrative appropriations of Union institutions; this is without prejudice to point (h) of this paragraph;~~

~~(d) point (4) of Article 2, Articles 208 to 211 and Article 214(1) shall apply to budgetary guarantees and financial assistance only as from the date of application of the post-2020 multiannual financial framework;~~

~~(e) Article 250 shall apply to budgetary guarantees, financial assistance and contingent liabilities only as from the date of application of the post-2020 multiannual financial framework;~~

~~(f) point (6) of Article 2, Article 21(3)(f), Article 41(4)(l), Articles 62(2), 154(1) and (2), 155(1) to (4) and Article 159 shall apply to budgetary guarantees only as from the date of application of the post-2020 multiannual financial framework;~~

~~(g) points (9), (15), (32) and (39) of Article 2, Article 30(1)(g), Article 41(5), Articles 110(3)(h) and 115(2)(c), Articles 212 and 213, Article 214(2) and Articles 218, 219 and 220 shall apply only as from the date of application of the post-2020 multiannual financial framework;~~

~~(h) the information on the annual average of full-time equivalents referred to in Article 41(3)(b)(iii) and the information on the estimated amount of assigned revenue carried over from preceding years referred to in Article 41(8)(b) shall be provided for the first time together with the draft budget to be presented in 2021.~~

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*