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NOTE

from :	General Secretariat of the Council
to :	Permanent Representatives Committee
No. prev. doc.:	10803/12 FIN 400 CODEC 1535 + COR 1
No. Cion prop.:	5129/11 FIN 5 CODEC 21 - COM(2010) 815 final
Subject :	Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the annual budget of the Union (first reading)

1. On the basis of the updated mandate recorded in document 10803/12 + COR 1, obtained by the Permanent Representatives Committee on 6 June 2012, the Presidency held, on 12 June, a third political trilogue on the revision of the Financial Regulation.
2. The items on the agenda of this trilogue were the following:
 - (1) Articles 156, 157 and 158 (*Discharge*) (including discharge on agencies), in connection with Article 93(4) (*Powers and duties of the internal auditor - transmission of audit reports*);
 - (2) Articles 30(2) (*Publication of budgets, accounts and reports*) and 37(1) (*Obligations of the Member States stemming from the adoption of the budget*);

- (3) MFF related issues and EDF-related issues: Articles 4(2)(b) and 46, Articles 9 (*Cancellation and carry over of appropriations*) and 9a (*Carry-over of unused appropriations*), Articles 15 (*Balance from financial year*) and 15a (*Reserve for payments and commitments*), Article 49 (*Compliance of Union acts with the budget*) and Article 18(2)(ea) (*Assigned revenue - treatment of other fines and out of court settlement, tobacco*);
- (4) Articles 131(5), in connection with Article 18(3)(h) (*Financial Instruments - reflows*);
- (5) Article 56 (*Shared management with Member States*), and connected Articles 57 (*Indirect management*) and 77 (*Recoveries*);
- (6) Articles 199, 202, 203 and 204 (*Delegated act*);
- (7) Article 13 (*Rules applicable in case of late adoption of the budget*), Article 23(3) (*Transfers*), Article 117a(3)(c) (*Eligible costs - VAT*), Article 178 (*EU multi-donor trust funds for external actions*) and Articles 195, 18(3)(f) and 14 (*Buildings - loans and assigned revenue*).

3. As a result of the trilogue discussions, a provisional agreement was achieved on the following issues, in a "package deal" approach, subject to the principle that nothing is agreed until everything is agreed:

- on the discharge procedure and the transmission of audit reports (point 1 in the above-mentioned agenda): the text of the relevant articles will be maintained as in the Commission proposal;
- on the MFF- and EDF-related issues (point 3 in the above-mentioned agenda): a joint statement will indicate that the Financial Regulation would be revised in order to include amendments made necessary by the outcome of the negotiations on the multiannual financial framework for the years 2014-2020;

- on the delegated act (point 6 in the above-mentioned agenda): the text of the relevant articles will be maintained as in the Presidency proposal recorded in document 10803/12;
 - on all the issues under point 7 in the above-mentioned agenda: the text of the relevant articles will be maintained as in the Presidency proposal recorded in document 10803/12, which might still be subject to some adjustments at technical level.
4. As for the publication and the adoption of budgets (point 2 in the above-mentioned agenda), the European Parliament could not accept the statement indicating that the Financial Regulation would be without prejudice to the issues raised in the European Court of Justice's case C-77/11 and that it would be revised, should it prove necessary, to align it with the judgement. The indicative outcome was to maintain the current text with a reworded statement, which is expected to be uncontroversial and to be dealt with at technical level.
5. As for the earmarking of financial instruments' reflows (point 4 in the above-mentioned agenda), at the trilogue the Commission tabled a compromise text (recorded in the Annex), which the Presidency considered as an interesting proposal, while indicating that its current mandate did not allow for any commitment in this respect at that moment. The European Parliament could not take a definitive stance on the text either.
6. As for the provisions on shared management and connected provisions on indirect management and recoveries (point 5 in the above-mentioned agenda), the European Parliament insisted on the following issues:
- maintaining in Article 56(5) the deadlines as proposed by the Commission, as well as the "*yearly basis*" for the accounts;
 - maintaining Article 56(6b) as proposed by the Commission in its compromise proposal (and included in the Presidency proposal recorded in document 10256/12);

- introducing some modifications in Article 57, particularly by reinstating some elements of the Commission compromise text in paragraphs 2, 5 and 7. This issue is expected to be handled at technical level following a possible agreement on Article 56;
- rejecting the new paragraph 5 in Article 77 as proposed by the Presidency in document 10803/12 and including the reference to the methodology for the application of extrapolated and flat-rate corrections in the delegated act or in the Financial Regulation itself. As a compromise, the European Parliament could accept the rewording of the last sub-paragraph of Article 77(5) as proposed by the Commission at the Coreper meeting on 6 June, which is the following:

~~"The Commission shall submit draft regulations concerning the methodology for applying extrapolated or flat rate corrections to the competent committee provided for in the relevant basic acts in accordance with the procedure laid down in the same basic act. The methodology for applying extrapolated or flat-rate corrections shall be laid down by the Commission in accordance with the sector-specific rules."~~

The Presidency took note of the European Parliament's position, indicating that its current mandate did not allow for a compromise on Articles 56 and 77 at this stage.

7. This note is submitted to the Permanent Representatives Committee for consideration of the possible next steps.

EARMARKING OF REFLOWS**1. Introduction**

The Commission maintains its position that the issue of reflows needs to be settled at the level of the Financial Regulation, and not at the level of basic acts, in order to avoid a fragmentation of the legal framework for the next generation of financial instruments. Further, the Commission reiterates the importance of reflows for the efficient implementation of financial instruments.

However, given the budgetary constraints Member States are facing, the following compromise for Article 131(5) is proposed:

- a) better distinction of the two categories of reflows, namely
 - revenues (i.e. dividends, capital gains, guarantee fees, interest on loans and on amounts on fiduciary accounts), and
 - repayments (i.e. capital repayments in equity instruments, guarantees released, and repayments of the principal in the case of loans;
- b) revenues will arise already at an early stage of the implementation of the instrument and should be entered in the general budget after deduction of management fees;
- c) repayments normally occur at a later stage in the instrument. The Commission proposes authorising the reuse of annual repayments as assigned revenue up to a predefined ceiling. Annual repayments above the ceiling will be entered in the general budget, unless the European Parliament and the Council decide in the context of the budgetary procedure to allow the re-use of reflows above the ceiling.

2. New wording for Title VIII, based on the Presidency text (doc. 10803/12)

a) Article 131(5) would be reworded as follows:

"Amounts corresponding at least to the Union contribution, or, where applicable, multiples thereof shall be used for the attainment of the specific policy objectives targeted through the financial instrument and shall not generate undue advantages, in particular in the form of undue dividends or profits for third parties.

*Without prejudice to sector-specific rules for shared management, **revenues, including dividends, capital gains, guarantee fees and interest on loans and on amounts on fiduciary accounts** ~~interest, capital resources~~ ~~paid back to the Commission or fiduciary accounts opened for financial instruments from investments or from the release of resources committed for guarantee contracts, guarantee fees, dividends, capital gains or any other income receipts~~ **and** attributable to the support from the Union budget under a financial instrument, shall **be entered into the general 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 fiduciary accounts opened for financial instruments and attributable to the support from the Union budget under a financial instrument, shall** ~~may~~ ~~constitute internal assigned revenue in accordance with Article 18, if so specified in a basic act. In such cases, and without prejudice to paragraph 6a, they~~ and shall be used for the same financial instrument, **without prejudice to paragraph 6a,** for a period not exceeding the period for the commitment of appropriations plus two years, **unless specified otherwise in a basic act.

~~Each year, the cumulative resources paid back to a financial instrument under this paragraph, minus any amounts already returned to the Union budget as general revenue, will be compared to the cumulative EU contribution committed to the financial instrument up to the relevant year. In case the cumulative resources paid back exceed the cumulative EU contribution committed to the instrument, the difference shall be entered in the Union budget as general revenue."~~

- b) Article 131(6) should be rephrased as follows (the same wording could be used for Article 34(2c)(b)):

"6. The Commission shall report annually to the European Parliament and the Council on the activities. The report shall include, for each financial instrument supported:

...

- (g) ~~the additional resources, including interest, capital resources paid back to the financial instrument, guarantee fees, dividends, capital gains or any other income receipts attributable to the support from the Union budget~~ revenues and repayments under Article 131(5);"*

- c) Article 131(6a) would have to be rephrased as follows:

*"6a. Where the European Parliament and/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 discontinue appropriations for that financial instrument or, where appropriate, with a view to the winding down of the instrument. In ~~the such an~~ event **of the winding down of the instrument**, any new ~~revenue~~ **repayments** of such financial instrument pursuant to the **third second** subparagraph of paragraph 5 shall be considered as general revenue."*

- d) Article 18(3)(h) would have to be rephrased as follows:

"3. The following shall constitute internal assigned revenue:

...

- (h) ~~reflows from~~ **repayments to** financial instruments pursuant to Article 131(5), ~~if so specified in the relevant basic act.~~"*

- e) Article 131(2)(g) shall be reworded as follows:

*"(g) financial instruments shall be established on the basis of on an ex ante evaluation, **including an evaluation of the possible re-use of additional resources referred to in paragraph 6(g)**"*

- f) The following paragraph (ea) should be inserted in Article 131(6):

*"(ea) **an evaluation of the use of any amounts returned to the instrument as internal assigned revenue per paragraph 5.**"*
