



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from :	General Secretariat of the Council
to :	Permanent Representatives Committee
No. prev. doc.:	11338/12 FIN 431 CODEC 1661 + 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 14 June 2012, after an exchange of views based on drafting suggestions for a global compromise put forward by the Commission, the Permanent Representatives Committee agreed to review the Presidency's room for manoeuvre in the negotiations with the European Parliament.
2. On this basis, the Presidency held one more round of informal talks and took note of the points on which the European Parliament continues to insist, as presented also in the Annex:
 - a) shortening the joint statement on "MFF related issues and on the judgement of the Court of Justice on the adoption and the publication of budgets", by deleting the reference to the positions that the institutions intend to pursue in the context of the adoption of the 2014-2020 MFF, as well as the unilateral reference made by the Council to the outcome of the Court of Justice's case C-77/11;

- b) clarifying in Article 56(5)(b) the annual basis for the summaries of the final audit reports and of controls carried out;
 - c) rewording in Article 56(5) the sentence on the exceptional extension of the deadline;
 - d) including in Article 56(5) a reference to voluntary "national declarations signed at the appropriate level", to be further specified in a Recital, and deleting the joint statement on "the voluntary national declarations on the expenditure made under the method of shared management";
 - e) expanding the last sub-paragraph of Article 77(4b) on the methodology for applying extrapolated or flat-rate corrections.
3. This note is submitted to the Permanent Representatives Committee for consideration of the possible next steps.
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**European Parliament's proposed outline for a compromise
on the outstanding issues of the Financial Regulation**

1. Point 1 (Articles 156, 157, 158: Discharge (including discharge on agencies), in connection with Article 93(4) audit reports

Current text of the Financial Regulation is maintained.

2. Point 2 (Articles 30(2) and 37(1))

Current text of the Financial Regulation is maintained, ~~to be read in connection with the joint statement under point 3 below.~~

3. Point 3 (MFF- and EDF- related issues)

Text of Presidency updated mandate (doc. 10803/12) is maintained for all relevant articles¹, accompanied by the following joint statement:

Joint statement on MFF related issues ~~and on the judgement of the Court of Justice on the adoption and the publication of budgets~~

"The European Parliament, the Council and the Commission agree 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, including on the following issues:

- *the carry-over rules for the Emergency Aid Reserve and for projects financed under the Connecting Europe Facility;*
- *the carry-over of unused appropriations and of the budgetary balance, as well as the related proposal to enter these in a reserve for payments and commitments;*
- *the possible inclusion of the European Development Fund in the EU budget;*
- *the treatment of funds resulting from the agreements on the fight against the illegal traffic in tobacco products.*

¹ The Commission statement on "the enhancing of efforts to combat the illegal traffic in tobacco products", related to AM 44 in Article 18(3) is withdrawn.

~~The agreed text of the Financial Regulation is without prejudice to the positions of the European Parliament, the Council and the Commission intend to pursue in the context of the adoption on the multiannual financial framework for the years 2014-2020.~~

~~The European Parliament recalls that its position is as expressed in amendments Nos 28, 95, 287, 36, 39, 41, 42, 96, and 44 to the Financial Regulation, as voted on 26 October 2010.~~

~~The Council recalls that the agreed text of the Financial Regulation shall be without prejudice to the issues raised in case C-77/11 on the adoption and publication of budgets; such agreed text shall be revised, should it prove necessary, to align it to the judgement of the Court of Justice in that case."~~

4. **Point 4 (Article 131(2), (5), (5a), (6) and (6a), Article 18(3)(h): Financial instruments - reflows + non parking clause and termination clauses)**

a) **Article 131(5)** is reworded as follows:

"5. 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 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 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 constitute internal assigned revenue in accordance with Article 18 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."

- b) **Article 131(6)** is rephrased as follows. The same wording shall 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) revenues and repayments under Article 131(5)."

- c) **Article 131(6a)** is rephrased as follows:

"6.a 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 event of the winding down of the instrument, any new repayments of such financial instrument pursuant to the third subparagraph of paragraph 5 shall be considered as general revenue."

- d) **Article 18(3)(h)** is rephrased as follows:

"3. The following shall constitute internal assigned revenue:

...

(h) repayments to financial instruments pursuant to Article 131(5)."

- e) **Article 131(2)(g)** is 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) is 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."

5. **Point 5 (Article 56: Shared management with MS (Art. 57 and 77 connected))**

Date: see text below.

Annuality: see text below.

a) **Article 56(5)**

"5. *Bodies designated pursuant to paragraph 3 shall provide the Commission by 15 February of the following financial year with:*

(a) *their accounts on the expenditure made, during the relevant reference period as defined in the sector-specific rules, in the execution of their tasks and presented to the Commission for reimbursement. These accounts shall include pre-financing and sums for which recovery procedures are underway 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:*

- *the information is properly presented, complete and accurate;*
- *the expenditure has been used for its intended purpose, as defined in the sector-specific rules;*
- *the control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions;*

(b) *an **annual**¹ summary of the final audit reports and of controls carried out, including an analysis of the nature and extent of errors and of weaknesses in systems identified, as well as corrective actions taken or planned.*

The accounts referred to in point (a) and the summaries referred to in point (b) shall be accompanied by an opinion of an independent audit body, drawn up in accordance with internationally accepted audit standards. Such 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 examination puts in doubt the assertions made in the management declaration.

¹ As foreseen in Article 53b(3) of the current Financial Regulation (Explanatory comment by the European Parliament, not meant to be included in the legislative text).

*The deadline of 15 February may be exceptionally extended by the Commission to 1 March¹ at the latest upon ~~notification~~ **communication** by the Member State concerned.*

Member States may, at the appropriate level, publish this information.

In addition, Member States may provide national declarations signed at the appropriate level based on the information set out in paragraph 5.²

National declarations: paragraph 6b is deleted.

The following joint statement is proposed:

Joint statement of the European Parliament, the Council and the Commission on the voluntary national declarations on the expenditure made under the method of shared management

~~*"Member States, who so wish, may provide national declarations on the expenditure made under the method of shared management, signed at the appropriate level and based on the information to be provided under Article 56(5) of the Financial Regulation. Where a Member State decides to provide such a national declaration it may:*~~

~~*(a) — cover all funds managed under shared management;*~~

~~*(b) — cover at least the reliability of the accounts, the effective functioning of the control systems in place and the legality and regularity of the underlying transactions;*~~

¹ If this proposal is retained, the following statement by the Commission on "the deadline for the submission of the required information by the Member States under Article 56(5)" should accompany Article 56(5):

"The submission of the annual information after 15 February implies the corresponding postponement of the deadline for the signature of the annual activity reports of the Directorates-General implementing Union funds under shared management and for their transmission to the Court of Auditors in the context of its annual report. Consequently, it jeopardizes the timely submission of the summary of annual reports to the European Parliament and the Council by 15 June as provided in Article 63, paragraph 9 and of the observations by the Court of Auditors, according to Article 153, paragraph 1"

² **Addition in Recital (25): "Within the context of the single audit approach and with the objective of reducing additional administrative burden stemming from multiple controls, Member States may provide to the Commission national declarations, signed at the appropriate level in accordance with their respective constitutional requirements, thereby providing the latter with additional assurance for the discharge of its responsibilities".**

- ~~(c) be provided by 1 March of the year following the financial year concerned;
and~~
- ~~(d) be subject to an opinion from an independent audit body."~~

b) **Article 77(4)**

Article 77(4) is reworded as follows:

"4a. The Commission shall make financial corrections on Member States in order to exclude from Union financing expenditure which is in breach of applicable law. The Commission shall base its financial corrections on the identification of amounts unduly spent, and the financial implications for the Union budget. Where these cannot be identified precisely, the Commission may apply extrapolated or flat-rate corrections according to the sector-specific rules.

The Commission shall, when deciding the amount of a correction, take account of the nature and gravity of the breach of applicable law and the financial implications for the Union budget, including in case of deficiencies in management and control systems.

The criteria for establishing financial corrections and the procedure to be applied may be laid down in the sector-specific rules.

*4b. The methodology for applying extrapolated or flat-rate corrections shall be laid down in accordance with the sector-specific rules **with a view to enabling the Commission to protect the financial interests of the Union.**"*

6. **Point 6 (Articles 199, 202, 203, 204: Delegated act)**

Text of Presidency updated mandate (doc. 10803/12) is maintained for all relevant articles.

7. **Point 7 (Articles on provisional twelfths, transfers, trust funds, VAT eligibility, expenditure on buildings)**

Text of Presidency updated mandate (doc. 10803/12) is maintained for all relevant articles.
