



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 23 October 2012**

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**ADDENDUM TO THE "I/A" ITEM NOTE**

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from : General Secretariat of the Council

to : COREPER / COUNCIL

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No. Cion prop.: 5129/11 FIN 5 CODEC 21

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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**)

- Adoption of the legislative act (**LA + S**)

=Statements

**COMMON GUIDELINES**

**Consultation deadline: 24.10.2012**

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**Council Statement on Articles 34 and 40 with reference to the Court of Justice Case C-77/1**

"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 judgment of the Court of Justice in that case."

### **Commission Statement on Article 59(5) and (6)**

"The Commission confirms that

- the submission of information to the Commission on a yearly basis as provided for in Article 59(5), gives a view, inter alia, of the accounts on the expenditure incurred during the relevant reference period as defined in the sector-specific rules;
- this submission of information is distinct from the procedure of examination and acceptance of the accounts as provided for in Article 59(6).

The Financial Regulation does not prejudge the modalities for the examination and acceptance of the accounts nor the modalities for the closure of expenditure which are to be defined in the sector specific rules."

### **Commission Statement on the deadline for the submission of the required information by the Member States under Article 59(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 66(9) and of the observations by the Court of Auditors, according to Article 162(1)."

### **Commission Statement on Article 59(5), last sub-paragraph**

"The Commission recalls that as foreseen by Article 59(1) of the Financial Regulation, it shall respect the principle of non-discrimination in fulfilling its responsibilities concerning the implementation of the budget under shared management. Accordingly, the absence of a voluntary declaration by a Member State signed at the appropriate national or regional level shall not have any consequences on the Commission's examination and assessment of the documentation provided under Article 59(5)."

### **Commission Statement on the application of Article 77(3) to Structural Funds**

"Wherever a Member State detects and corrects on its own account the irregularities, it may reuse the contribution from the Funds cancelled within the operational programme concerned, except for any operation that was subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic error."

### **Commission Statement on financial corrections by Commission extrapolation with reference to Article 77(4)**

"Wherever possible, the financial corrections shall be calculated on the basis of the amounts unduly spent.

The Commission confirms that it will resort to extrapolated or flat rate corrections solely where it is not possible with proportionate effort to precisely quantify the amounts unduly spent."

### **Commission Statement on grant reduction or recovery in the case of systemic or recurrent error or irregularity by a grant beneficiary - extrapolation with reference to Article 135(6)**

"The Commission confirms that, in the case of proven systemic or recurrent errors or irregularities by a beneficiary, calculation of the amounts to be reduced or recovered by way of extrapolation shall be seen as a last resort solution.

Wherever possible, the amounts to be reduced or recovered shall be calculated on the basis of the revised financial statements submitted by the beneficiary.

Extrapolation of the reduction or recovery rate shall be used solely where it is not possible or where it could create significant administrative difficulty for the beneficiary to precisely quantify the amounts of ineligible costs.

In addition, the Commission confirms that, before any reduction or recovery is decided, any substantiated alternative method or rate proposed by the beneficiary shall be duly examined by the Commission."

**Commission Statement on eligibility of non recoverable VAT with reference to point (c) of Article 126(3)**

"The Commission confirms that, as indicated in Article 121(2)(e), provisions of Title VI - including Article 126(3)(c) on eligibility of non recoverable VAT - do not apply to expenditure implemented under shared management within the meaning of Articles 58(1)(b) and 59."

**Commission Statement on the comitology for Union trust funds with reference to Article 187(8)**

"The Commission confirms that:

- the creation of Union trust funds shall be duly justified in terms of added value of the Union intervention and additionality;
- the draft decisions to create, extend and liquidate Union trust funds will be submitted to the examination procedure in accordance with the provisions of the relevant basic acts."

**Commission Statement on loans with reference to Article 203(8)**

"The Commission underlines that using loans for the acquisition of buildings is not contrary to the principle of equilibrium according to Article 17 of the Financial Regulation.

The borrowing of the funds constitutes an off-budget operation: The amount of the loan is not recorded in the budget as revenue and the full amount of the building price is not recorded as expenditure. Only the annual instalments to be paid to the bank are included as expenditure matched by the annual administrative budget (revenue). From an accounting point of view, the loan does not finance the budget expenditures, but the acquisition of an asset. The loan (debt) is compensated by the value of the building (asset). Therefore, loans for the acquisition of buildings do not create a deficit."