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To:	Permanent Representatives Committee
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 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 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council and repealing Regulation (EU, Euratom) No 966/2012 **(first reading)** – *Confirmation of the final compromise text with a view to agreement*

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REGULATION (EU) …/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 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 ▌of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council *and repealing Regulation (EU, Euratom) No 966/2012*

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 Articles 42, 43(2), 46(d), 149, 153(2)(a), 164, 168(4)(b), 172, 175, 177, 178, 189(2), ▌212(2), 322(***1***) and 349 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Articles 106a thereof,

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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 European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Having regard to the opinion of the Court of Auditors[3]**,**

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Since following three years of implementation further amendments are to be made to the financial rules applicable to the general budget of the Union 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[4] of the European Parliament and of the Council should be repealed and replaced by this Regulation.

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1 OJ C ***[…]***, ***[…]***, p. ***[…]***.
2 OJ C ***[…]***, ***[…]***, p. ***[…]***.
3 OJ C ***91, 23.3.2017,*** p. ***1.***
4 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).

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(2) In order to reduce the complexity of financial rules applicable to the general budget of the Union ('the budget') and to include the relevant rules in one single regulation ▌, Commission Delegated Regulation (EU) No 1268/2012[1] should be repealed. In the interest of clarity, main rules from Regulation (EU) No 1268/2012 should be included in this Regulation, others should be included in guidance for services.

(3) The fundamental budgetary principles should be maintained. Derogations from those fundamental 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.

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(4) Carry-over rules should be presented more clearly, making a distinction between the automatic and non-automatic carry-overs.

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

(6) The carrying over and use of external assigned revenues 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 for one year only, except where this Regulation provides otherwise.

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[1] Commission Delegated Regulation (EU) No 1268/2012 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, 31.12.2102, p. 111).

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(7) Concerning internal assigned revenue, ***the financing of new building projects with the appropriations received from buildings sold should be allowed. To this end, such revenue should be considered as internal assigned revenue which may be carried over until it is fully used.***

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

(9) An enabling clause should be introduced to allow for in-kind sponsoring by a legal person of an EU event or activity for promotional or corporate social responsibility purposes.

(10) The concept of performance as regards the EU budget should be clarified. Performance should be described as a direct application of the principle of sound financial management. ***The principle of sound financial management should also be defined and there*** should be a link 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***, particularly output and results,*** should be ***defined***.

(11) Union legislation should be of high quality, focus on areas where it produces greatest added value for European citizens and is as effective and efficient as possible in delivering the common policy objectives of the Union[1]. Subjecting existing and new spending programmes and activities entailing significant spending to evaluation can help achieve these objectives.

[1] OJ L 123, 12.5.2016, p. 1. – Interinstitutional agreement on Better Law-Making.

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(12) The principle of transparency ***is*** enshrined in Article 15 TFEU***; this*** requires the ***Union*** institutions to work as openly as possible ***and***, in the area of the implementation of the budget, ***implies*** that citizens are able to 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 aiming at increasing visibility for citizens***. Such objectives should be achieved by the publication, preferably using modern communication tools, of relevant information concerning all recipients of Union funds which takes into account ***those same*** 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.

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(13) ***In any case, the utmost transparency regarding data on beneficiaries should be sought, without prejudice to the rules on the protection of personal data.*** The information on the use of Union funds implemented under direct ***management*** should be published ***in the Financial Transparency System or*** on an internet website of the ***Union*** institutions and should include at least the name, the locality, the amount and the purpose of the funds. That information should take into account relevant criteria such as the periodicity, the type and the importance of the measure.

(14) The Commission should be able to implement the budget indirectly through Member State organisations. It is therefore appropriate to define Member State organisations, which is either an entity established in a Member State as a public law body or a body governed by private law and entrusted by that Member State with a public service mission and provided with adequate financial guarantees. Financial backing provided in line with existing Union law requirements by a Member State to such private law bodies in a form to be decided by that Member State and which does not necessarily require a bank guarantee, should be considered as adequate financial guarantees.

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(15) ***For*** prizes, grants and contracts awarded following the opening-up of a public procedure to competition, ***and*** in particular for contests, ***for a*** call for proposals and***/or a*** call for tenders, ***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 public selection procedures by the ***unsuccessful*** applicants ***in*** the competition.

(16) The publication of personal data referring to natural persons should not exceed the duration 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 for whom the official title identifies one or more natural persons.

(17) In most of the cases covered by this Regulation, the publication concerns legal persons.

(18) When natural persons are concerned, such publication should only be envisaged respecting the principle of proportionality between the importance of the amount granted and the need to control the best use of the funds. Where natural persons are concerned, the publication of the region on NUTS 2 level is consistent with the objective of publication of recipients, 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.

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(19) ***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. Therefore, information on scholarships, and other direct support paid to natural persons in most need, specific contracts with a very low value, financial instruments lower than a certain threshold and in cases where disclosure risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or causing harm to the commercial interests of the recipients should not be published. However, for grants there should be no special exemption from the obligation to publish information based on a specific threshold in order to maintain the current practice and to allow for transparency.***

(20) ***Where personal data of recipients is published for the purposes of transparency in relation to the use of Union funds and control of public selection procedure, those recipients should be informed in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001 of such publication as well as their rights and the procedures applicable for exercising those rights.***

(21) In order to ensure the respect of the principle of equal treatment between recipients, the publication of information related to natural persons should also be ensured in line with the obligation for the Member States to establish a large transparency of the contracts above the amount laid down in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

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(22) In the case of indirect and shared ***management***, it should be for the persons, entities or designated bodies implementing Union funds to make available information on recipients and final recipients. Where applicable, the level of detail and criteria should be defined in the relevant sector specific rules and may be further defined in the financial framework partnership agreements. The Commission should make available a reference of the website where the information on recipients and final recipients can be found.

(23) 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 in one single working document attached to the draft budget.

(24) In order to promote best practices in the implementation of the Structural Funds, namely 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, as well as the EAGF the Commission may, for information purposes, make available a non-binding methodological guide setting out its own control strategy and approach, including checklists, and best practice examples to bodies responsible for management and control activities. That guide should be updated whenever necessary.

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(25) It is appropriate to provide for a possibility for ***Union institutions*** to conclude service-level agreements with ***each*** other ▌ in order to facilitate the implementation of administrative appropriations and also for an explicit possibility to conclude such agreements between departments of the ***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 for the provision of services, supply of products, execution of works or the implementation of building contracts.

(26) It is appropriate to define the ***procedure to set up new*** European offices and to distinguish between obligatory and non-obligatory tasks of such offices. A possibility for the Union institutions, Union bodies and other European offices to delegate authorising officer powers to the director of the 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, for execution of works or for implementation of building contracts. It is appropriate to set out specific rules for the provision of accounting records, provisions authorising the Commission's accounting officer to delegate some of his tasks to staff in those offices and operating procedures for the bank accounts which the European offices may be authorised to open in the Commission's name.

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(27) In order to ▌ improve the cost-efficiency of executive agencies and in the light of the practical experience gained with other Union bodies, the accounting officer of the Commission should be allowed to be entrusted with all or part of the tasks of the accounting officer of the executive agency.

(28) For reasons of legal certainty, it is necessary to clarify that the directors of executive agencies act as authorising officers by delegation when managing operational appropriations of programmes delegated to their agency. 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 expenditures should be explicitly mentioned.

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

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

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

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(32) Consequently, the tasks, responsibilities and principles of the procedures to be observed should also be laid down. It is also necessary to provide that the authorising officers by delegation shall ensure that the authorising officers by sub-delegation and their staff receive information concerning the control standards and respective methods and techniques and that measures are taken in order to ensure the functioning of the control system which should replace the obligation to establish specific code of professional standards applicable to financial verifications only. The responsibilities assumed are accounted for in an annual report to the institution and the report shall include the required financial and management information to support the authorising officer by delegation'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. Finally, all the various forms of negotiated procedure for the award of public contracts should, since those contracts represent derogations from the usual award procedures, be the subject of a special report to the institution and of a communication to the European Parliament and Council.

(33) The double role of the Head of Union delegation, and of their deputies in their absence, as authorising officer by sub-delegation for the European External Action Service (hereinafter ″EEAS″) and, as regards operational appropriations, for the Commission should be taken into account.

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(34) The delegation of powers of budget implementation by the Commission concerning the operational appropriations of its own section to the deputy Heads of Delegations is restricted to situations where the performance of these tasks by the deputy Heads of Delegations is strictly necessary in order to ensure business continuity during the absence of the Heads of Delegations. The deputy Heads of Delegations cannot exercise these powers on a systematic basis or for reasons of internal work division.

(35) The accounting officer continues to be responsible for the proper execution of payments, the collection of revenue and the recovery of amounts receivable. He/She manages the treasury, bank accounts and third party files, keeps the accounts and is responsible for drawing up the institution's financial statements. The accounting officer of the Commission is the only person who is entitled to define the accounting rules and harmonised charts of accounts, while accounting officers of all other Union institutions define accounting procedures applicable in their institutions.

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

(37) It is appropriate that 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.

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(38) 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 also be laid down, and the tasks and responsibilities of the imprest administrators, as well as those of the authorising officer and 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 imprest administrators***. For reasons of efficiency, imprest accounts should be set up in Union delegations, for appropriations from both the Commission and EEAS sections of the budget. 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 has proven necessary to choose them also from personnel employed by the Commission in the field of crisis management aid and humanitarian aid operations whenever there is no Commission statutory staff available.

(39) In order to take into account the situation in the field of humanitarian aid operations whenever there is no respective Commission statutory staff 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 sign legal commitments of a very low value up to EUR 2500 which are linked to the payments executed from the imprest accounts, and for the Heads of Union delegations or their deputies to sign legal commitments on the instruction of the authorising officer responsible.

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(40) Once the tasks and responsibilities of each financial actor have been defined, they may be held liable only under the conditions laid down in the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union. The specialised financial irregularities panels have been set up in the Union institutions, however due to limited number of cases submitted to them and for reasons of efficiency, it is appropriate to transfer their functions to the newly established inter-institutional panel which has been set up to assess requests and issue recommendations on the imposition on administrative sanctions (exclusion and financial penalty) 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***. This transfer also aims at avoiding duplication and mitigating the risks of contradictory recommendations or opinions, in cases where both an economic operator and an EU staff member are involved. The procedure should be maintained by which an authorising officer may 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 this panel should be modified when it fulfils this role. ***The panel should have no investigative powers.***

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(41) As regards revenue, it is necessary to address negative adjustments of own resources covered by Council Regulation on the system of the European Union's own resources. Except for the special case of own resources, it is necessary to keep the 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, recovery order, 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.

(42) 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 proceeding as defined by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings, in particular in cases of judicial arrangements, compositions and analogous proceedings.

(43) Specific provisions on procedures of adjustment or cancellation of an estimate of amount receivable should be applied.

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

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(45) Due to the recent developments on the financial markets and the ECB rate applied to its principal refinancing operations, it is necessary to review the provisions concerning interest rate for fines or other penalties and to provide for rules in cases of negative interest rate.

(46) To reflect the specific nature of receivables consisting in fines or other penalties imposed by the ***Union institutions*** under the TFEU or Euratom Treaty, it is necessary to introduce specific provisions on the interest rates applicable on amounts due but not yet paid, in the case such amounts are increased by the Court of Justice of the European Union.

(47) The rules on recovery should be both clarified and strengthened. In particular, it should be specified that the accounting officer shall recover amounts by offsetting them also against amounts owed to the debtor by an executive agency when it implements the Union budget.

(48) ***In order to guarantee*** legal security ***and transparency***, the rules regarding the delays when a debit note is to be sent should be defined.

(49) In order to secure the management of assets whilst also ***aiming at*** yielding ***positive return***, it is necessary to have the amounts provisionally cashed, such as competitions fines which are being contested, 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 or other penalties, it is necessary to set provisions concerning such fines or other penalties imposed by other ***Union*** institutions and to set rules for their recovery which should be equivalent to those for the fines or penalties imposed by the Commission.

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(50) In order to ensure that the Commission has all the necessary information for the adoption of the financing decisions, it is necessary to lay down the minimum requirements for the contents of financing decisions on grants, procurement, trust funds, prizes, financial instruments, blending facilities and budgetary guarantees. At the same time, in order to give a longer-term perspective to the potential recipients, it is necessary to allow that the financing decisions are adopted for more than one year but the implementation being subject to the availability of budget appropriations for the respective year. In order to enable such longer-term perspective it is necessary to reduce the number of the elements required for the financing decision. With the aim of simplification, the financing decision should at the same time constitute an annual or multi-annual programme. Since the contribution to the bodies referred to in Articles 69 and 70 is already established in the annual budget, it should not be required to adopt a specific financing decision in this respect.

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

(52) In order to take into account in particular the number of legal commitments concluded in the Union delegations and representations and the exchange rate fluctuations experienced by them, the provisional commitments should be possible also in cases where the final recipients and the amounts are known.

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(53) As regards the typology of payments which may be made by authorising officers, clarification of the various types of payments should, in accordance with the principle of sound financial management, be provided. The rules for clearing of pre-financing payments should further be clarified in particular for situations where no interim clearing is possible. To this effect, appropriate provisions should be included in legal commitments signed.

(54) This Regulation should stipulate that the payments must be made within a specified time limit and that in the event of failure to respect this time limit creditors will be entitled to default interests to be charged to the budget, with the exception of Member States and as newly introduced, also the European Investment Bank and the European Investment Fund.

(55) It is considered appropriate to integrate the provisions concerning validation and authorisation of expenditure in one article and to introduce a definition of de-commitments. Since the transactions are carried out in computerised systems, the concept of "signing a 'passed for payment' voucher" has been replaced by "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, i.e. also such which are not associated with a request for payment, this being the case for the clearing of pre-financing.

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(56) In order to reduce complexity, streamline existing rules and improve the readability of this Regulation rules common to more than one budget implementation instruments 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.

(57) It is important to foresee an obligation for each Union Institution to establish an internal audit progress committee tasked with ensuring the independence of the internal auditor, monitoring the quality of 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 this internal audit progress committee should be decided by each Union Institution taking into account its organisational autonomy and the importance of independent expert advice.

(58) More emphasis should be put on performance and results ***of projects financed from the Union 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). This form of financing should be either based on the fulfilment of certain conditions ex ante or the achievement of results measured by reference to the previously set milestones or through performance indicators.

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(59) Where the Commission carries out assessments of the operational and financial capacity of recipients of EU 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 organizations, in order to avoid duplicating assessments of the same recipients. The possibility to cross-rely on assessments conducted by other entities should be used where these assessments were made with regard to 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.

(60) It is also important to avoid that recipients of EU funds are audited several times by different entities on the use of these funds. It is therefore necessary to foresee the possibility to rely on audits already carried out by independent auditors provided that ***there is evidence of their competence and independence and provided that the audit work is*** based on internationally accepted 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 EU funds. ***To this end it is important to ensure that the Commission, the European Parliament, the Court of Auditors or the Member State audit authorities receive any relevant audit documentation at their request.***

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

(62) In order to provide for a long term cooperation mechanism with recipients of Union funding, 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 entities implementing Union funds. For this purpose the minimum content of such ***contribution*** agreements should be specified. Financial framework partnerships should not unduly restrict access to Union funding.

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

(64) 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 European Anti-fraud office and the Court of Auditors with sufficient time to obtain access to such data and documents and perform the ex post checks and audits. In addition, participants and recipients should be obliged to cooperate in the protection of the Union's financial interest.

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(65) In order to provide adequate information to participants and recipients and to ensure that they have the possibility to exercise their right of defence this Regulation should allow participants and recipients to submit their observations before adoption of any measure adversely affecting their rights and to be informed on the means of redress they dispose of for challenging such a measure.

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

(67) The early detection and exclusion system should apply to participants, recipients, entities on whose capacity the candidate or tenderer intends to rely or to 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 directly implemented ▌**,** participants or recipients of entities implementing the budget under shared ***management, and sponsors***.

(68) 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 the exclusion situations of a natural or legal person who is a member of the administrative, management or supervisory body of that person or entity, or who has powers of representation, decision or control with regard to that person or entity or a natural or legal person that assumes unlimited liability for the debts of that person or entity or a natural person who is essential for the award or for the implementation of the legal commitment, the information registered in the database shall include the information concerning these persons.

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(69) The decision to exclude a person or entity from participation in award procedures or the imposition of a financial penalty and the decision to publish the related information should be taken by the authorising officer 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 having regard to the recommendation of the panel on the basis of a preliminary classification in law. 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.

(70) 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, representatives of the Commission and a representative of the authorising officer responsible.

(71) 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.

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(72) A person or entity should be excluded by the authorising officer responsible when a final judgment or a final administrative decision has been taken in the case of grave professional misconduct, non-compliance, whether intentional or not, with the obligations related to the payment of social security contributions or the payment of taxes, ***in the case of creation of an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office and in the case of*** fraud affecting the budget, corruption, participation in a criminal organisation, money laundering, terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or irregularity. It should also be excluded in the case of a serious breach of a legal commitment or bankruptcy.

(73) When deciding on the exclusion ***of a person or entity,*** or the imposition of a financial penalty ***on a person or entity,*** and on the publication thereof ▌, the authorising officer responsible should ensure compliance with the principle of proportionality by taking into particular account the seriousness of the situation, its budgetary impact, the time which has elapsed since the relevant conduct, its duration and its recurrence, the intention or degree of negligence and the degree of collaboration of the person or entity with the relevant competent authority and its contribution to the investigation.

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(74) 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 that 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 impact the financial situation of the economic operator.

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

(76) In light of the principle of proportionality, cases where a financial penalty may be imposed as an alternative to the exclusion 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 should be distinguished. The minimum and maximum financial penalty which can be imposed by the contracting authority should also be defined.

(77) 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.

(78) The possibility to ***impose*** administrative ***sanctions*** is independent from the possibility to apply contractual penalties, such as liquidated damages ▌.

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(79) The duration of exclusion should be limited in time, as is the case in Directive 2014/24/EU[1] and in accordance with the principle of proportionality.

(80) It is necessary to determine the commencement date and the duration of the limitation period for imposing administrative sanctions.

(81) 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, with full respect for the data protection requirements set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council[2] and in Directive 95/46/EC of the European Parliament and of the Council[3]. This 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 cases justified by the seriousness of the conduct or its impact on the Union's financial interests.

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1 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).

2 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).

3 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).

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(82) The information related to an exclusion or a financial penalty should only be published in the case of grave professional misconduct, fraud, a significant deficiency in complying with the main obligations of a contract financed by the budget***, irregularity and in the case of creation of an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office***.

(83) The criteria for exclusion should be clearly separated from the criteria leading to a possible rejection from a given procedure.

(84) The information on the early detection of risks and on the imposition of administrative sanctions on a person of 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 full compliance with the right to privacy and the protection of personal data.

(85) 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 entities implementing the budget 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 Union's financial interests which are not yet subject to a final judgment, the authorising officer responsible and the panel should be given the possibility to defer the opportunity given to 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.

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(86) The Court of Justice of the European Union should be given unlimited jurisdiction with regard to penalties imposed pursuant to this Regulation, in accordance with Article 261 of the Treaty on the Functioning of the European Union (TFEU).

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

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

(89) Progress towards the electronic exchange of information and 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 offices as provided for in this Regulation.

(90) Rules on the composition and tasks of the committee in charge of assessing application documents in procurement, grant award procedures and in contests for prizes should be laid down. The committee may be composed of external experts if provided so in the basic act.

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(91) 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 may 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.

(92) 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 during the course of implementation the authorising officer discovers that a guarantor 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.

(93) The different sets of rules for direct and indirect ***management***, in particular the definition of budget implementation tasks, have created confusion and entailed risk in errors of qualification both for the Commission and for the partners and should thus be simplified and harmonised.

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(94) The provisions on the ex-ante pillar assessment should be revised to enable the Commission to rely as much as possible on the systems and procedures of the partners 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 where the procedures in place are not sufficient to protect the financial interests of the Union, the Commission may sign contribution agreements while imposing additional supervisory measures. It is also important to clarify where the Commission does not require a pillar assessment in order to sign contribution agreements.

(95) It is appropriate to indicate that the remuneration of ***entities*** implementing the EU budget should, where relevant and possible, have a performance based nature.

(96) The Commission enters into partnerships with third countries by means of financing agreements. It is important to clarify the content of the financing agreement particularly for those parts that are implemented by the third country in indirect ***management.***

(97) It is important to recognise the specific nature of blending facilities where the Commission blends its contribution with that of Financial Institutions and to clarify the application of Title X on Financial Instruments.

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(98) Procurement rules and principles applicable to public contracts awarded by the Union institutions on their own account should be based on the rules contained in the Directive 2014/23/EU of the European Parliament and of the Council[1] and Directive 2014/24/EU.

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

(100) The ex ante and ex post publicity measures necessary to launch a procurement procedure should be clarified in the case of contracts above and below the thresholds set out in Directive 2014/24/EU and for those falling outside the scope of that Directive.

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

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

(103) 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 the innovation partnership is used only when the desired ***works, supplies and services do*** not exist on the market, an obligation to carry out such preliminary market consultation before using an innovation partnership should be laid down in this Regulation.

[1] 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)**.**

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(104) The contribution of contracting authorities the protection of the environment and the promotion of sustainable development, while ensuring that they can 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.

(105) 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 applicable 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.

(106) It is appropriate that different cases usually referred to as situations of conflict of interest be identified and treated distinctly. The notion of a ***"***conflict of interest***"*** should be solely used for cases where an entity or person 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 a procedure or obtain confidential information ▌ should be treated as grave professional misconduct ***which can lead to the rejection from the procedure and/or exclusion from Union funds***. In addition, economic operators may 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.

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(107) 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 on exclusion or selection criteria of the corresponding tenderer.

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

(109) 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 particular, the qualifications and experience of staff assigned to perform the contract should only be used as a selection criterion and not as award criterion, as this would introduce a risk of overlap and double evaluation of the same element. Furthermore, 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.

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

(111) 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.

(112) 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.

(113) Given that criteria are applied in no particular order, rejected tenderers who submitted compliant tenders should receive the characteristics and relative advantages of the successful tender if they so request.

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(114) For framework contracts with reopening of competition, the obligation to provide the characteristics and relative advantages of the successful tender to an unsuccessful contractor should be waived 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.

(115) 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 may be held liable for damages in accordance with the general principles of Union law.

(116) As is the case in Directive 2014/24/EU, it is necessary to clarify the conditions under which a contract may be modified during its performance without a new procurement procedure. In particular, cases such as administrative changes, universal succession and application of clear and unequivocal revision clauses or options 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 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 they been part of the initial procedure.

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(117) It is necessary to provide for the option of 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 a retention money guarantee to cover the contract liability period, in line with customary practice in these sectors.

(118) In order to determine the applicable thresholds and procedures, it is necessary to clarify whether Union institutions, executive agencies and 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 cannot conclude contracts but only service-level agreements between their departments.

(119) 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, 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 Union institutions' contracting needs. The revision of those thresholds as provided for in Directive 2014/24/EU should therefore be directly applicable to procurement by Union institutions.

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(120) For harmonisation and simplification purposes, the standard procedures applicable for public procurement should also be applied to purchases provided for under the light regime in Directive 2014/24/EU. Therefore, the threshold for light regime purchases should be aligned with the threshold for service contracts.

(121) It is necessary to clarify the conditions of application of the standstill period.

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

(123) 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 external actions and to remove unnecessary repetitions and cross referencing.

(124) It is necessary to clarify which economic operators have access to procurement by Union institutions depending on their place of establishment and to provide explicitly for the possibility of such access also to international organisations.

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(125) 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 these rules on the other hand, the technical rules on procurement should be aggregated in the 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 this Annex.

(126) 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 may be used to cover grants. In particular, grant decisions should be phased out due to their limited use and progressive introduction of e-grants. The structure should be simplified by moving the provisions on instruments which are not grants to other parts of the Regulation. The nature of bodies which may receive operating grants should be clarified since the notion of bodies pursuing an aim of general Union interest is covered by the notion of bodies having an objective forming part of and supporting a Union policy. ▌

(127) 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.

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(128) 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.

(129) Experience gained in the use of lump sums, unit costs or flat-rate financing has shown that, such forms of financing significantly simplified administrative procedures and reduced the risk of error substantially. Lump sums, flat rates and unit costs are a suitable form of financing independently of the area of Union intervention and in particular for standardised and recurrent actions, ***such as*** mobility, ▌ training activities, etc. ***Moreover, as 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.

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(130) 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 officer. Where appropriate, this authorisation may 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.

(131) 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.

(132) While the potential of larger use of simplified forms of financing should be unlocked, it needs to be ensured that the principle of sound financial management, and in particular the principles of economy, efficiency and no double funding are complied with. For that purpose simplified forms of financing should ensure that the resources employed are adequate to the objectives to be achieved, that same costs are not financed more than once from the EU 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 assessment should continue to apply.

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(133) The scope of checks and controls as opposed to the periodic assessment 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. 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 decided ex ante by the authorising officer responsible or the Commission they should not be challenged by ex–post controls***. This does not prevent the reduction of the grant in case of poor, partial or late implementation or in case of irregularity, fraud or breach of obligations. In particular, the grant should be reduced where the conditions triggering the payment of lump sums***, unit costs or flat rates ***have not been fulfilled***. The periodic assessment of lump sums, unit costs or flat rates may require access to the accounts of the beneficiary for statistical and methodological purposes. ***The frequency and scope of periodic assessments should depend on the evolution and nature of the costs, in particular taking into account substantial changes in market prices and other relevant circumstances.*** The periodic assessment may lead to updates 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. Access to the beneficiary's accounts is also necessary for fraud-prevention and detection purposes.

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(134) In order to facilitate the participation of small organisations in the implementation of the EU 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 may rely to a greater extent on volunteers' work for sake of providing co-financing to the action. Without prejudice to the maximum co-financing rate specified in the basic act, in such cases, the Union grant needs to 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 contributions in kind and any other co-financing.***

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

(136) 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 on the basis of 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 this function by law or by a public authority.

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(137) In the framework of moving towards e-grant 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 grants and procurement procedures.

(138) 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.

(139) In order to allow for the more flexible implementation of prizes, the obligation to announce prizes of value of EUR 1 000 000 or more in the statements accompanying the draft budget should be replaced by prior information of the European Parliament and ***the Council and*** an explicit announcement of such prizes in the financing decision.

(140) Prizes should be subject to the principles of transparency and equal treatment. In that context, the minimum characteristics of contests should be laid down, notably the conditions for paying the prize to the winners in case of award, and the appropriate publication means. It is also necessary to establish a clearly defined award procedure, from submission of the entries to information of applicants and notification to the winning applicant, which mirrors the procedure for award of grants.

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(141) This Regulation should lay down the principles and conditions for 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.

(142) In recent years the Union has increasingly used financial instruments that allow a higher leverage of the EU budget to be achieved but, at the same time, they generate a financial risk for that budget. Among those financial instruments are not only the financial instruments already covered by the Financial Regulation, 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, 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.

(143) 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 market distortion or inconsistency with state aid rules.

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(144) Within the framework of the annual appropriations authorised by the European Parliament and 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 Union's policy objectives.

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

(146) 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.

(147) Any ***repayment*** from a financial instrument ***or budgetary guarantee*** should be used for the instrument which produced them with a view to enhance the efficiency of the instrument ▌, unless specified otherwise in the basic act ***and should be taken into account when proposing fresh appropriations to that same instrument***.

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(148) It is appropriate to recognise the alignment of interests in pursuing Union policy objectives and, in particular, that the European Investment Bank and the European Investment Fund ***(EIF)*** have the specific expertise to implement financial instruments ***and budgetary guarantees***.

(149) The European Investment Bank and the European Investment Fund, acting as a group, should have the possibility to transfer part of the implementation to each other, where it may benefit the implementation of a given action and as further defined in the relevant agreement with the Commission.

(150) It should be clarified that, where financial instruments are combined with ***ancillary*** forms of support from the Union budget, the rules on financial instruments should apply. Such rules should be complemented, where applicable, by specific requirements stemming from the sector specific legislation.

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(151) The implementation of financial instruments and budgetary guarantees financed by the Union 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 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 Annexes thereto.

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

(153) 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 of a liquidity cushion that allows the budget to respond in an orderly manner to the payment obligations that may 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.

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(154) The contingent liabilities arising from budgetary guarantees may cover a wide range of financing and investment operations. The possibility of the 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 the full respect, at any moment, of the annual ceiling for payments established in the ***Council*** Decision ***2014/335/EU***, Euratom ▌ .

(155) That framework should also provide for management and control, including reporting regularly 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 stemming from the related instrument. The sustainability of the contingent liabilities should be assessed annually in the context of the annual budgetary procedure. An early warning mechanism should be established to avoid a shortage of provisions to cover financial liabilities.

(156) 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 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.

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(157) 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 general budget of the Union. The evaluation should be accompanied, where appropriate, by a legislative proposal.

(158) The rules applicable to provisioning and to the common provisioning fund should provide a solid internal control framework. The guidelines for the asset management of the provisions should be established at the level of the Commission after having consulted the accounting officer. The authorising officers should actively monitor the financial liabilities under their responsibility and the authorising officer for 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.

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(159) In order to set out detailed conditions for the effective provisioning rate and to amend the minimum ratio, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of conditions and methodology for the calculation of the effective provisioning rate and of an amendment to the defined minimum ratio of the effective provisioning rate, which may, however, 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 on Better Law-Making of 13 April 2016. 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.

(160) Budgetary guarantees and financial assistance should follow the same set of principles already established for financial instruments. Budgetary guarantees, in particular, should comply with the following principles: they should be irrevocable, unconditional and on demand; they should be indirectly implemented or, only in exceptional cases, directly; they may only cover financing and investment operations and their counterparts should contribute with their own resources to the operations covered.

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(161) 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. The resources to be provided are borrowed by the Commission that should be empowered to that end, 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 any other market risk.

(162) 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 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 the Title X and, on the one hand, the proposal for the multiannual financial framework after 2020 and, on the other hand, the specific programmes related to the latter.

(163) On 22 October 2014**,** the European Parliament and the Council adopted Regulation (EU, Euratom) No 1141/2014 (5) repealing Regulation (EC) No 2004/2003 and laying down new 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 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 the Member States, and transparency. ▌

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(164) Rules should be included on contributions from the general budget of the Union to European political parties as envisaged by Regulation (EU, Euratom) No 1141/2014.

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

(166) 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 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.

(167) Union funding awarded to finance the operating costs of the 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 other entities such as national political parties. The 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.

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

(169) The contributions from the general budget of the Union should be suspended, reduced or terminated if the European political parties infringe the obligations laid down in Regulation (EU, Euratom) No 1141/2014.

(170) Penalties that are based both on the Financial 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 the Financial 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.

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

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(172) ***In order to reinforce the role of the European Parliament and the Council, the procedure for establishing a Union trust fund for external action should be clarified. It is also*** necessary to specify the principles applicable to the contributions to Union Trust Funds ***for external actions notably the importance of securing contributions with other donors which justify its creation with regard to added value. It is also necessary***, to clarify the responsibilities of the financial actors and of the Board of the Trust Fund ***and*** to define rules ensuring a fair representation of the participating donors in the Board of the Trust Fund and a mandatory positive vote of the Commission for the use of the funds. ***It is also important to describe in more detail the reporting expected for EU Trust Funds.***

(173) In line with the streamlining of the existing rules and in order to avoid undue repetition, the Part two of the Financial Regulation, dedicated to special provisions applicable to the European Agricultural Guarantee Fund, to Research, external action and to specific EU funds, should be removed. The provisions of this Part two should be either introduced in the relevant parts of the Financial Regulation, or, in case the provisions are not used or no longer relevant, simply deleted.

(174) The provisions on the presentation of accounts and accounting should be simplified and clarified. It is therefore relevant to gather all provisions on annual accounts and other financial reporting under a specific Title.

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

(176) In order to adapt technical elements and detailed rules on procurement and on the rules applicable to certain Union bodies, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the Annex to this Regulation, the Framework Financial Regulation for bodies set up under the TFEU and the Euratom Treaty and the Model Financial Regulation for public-private partnership bodies. It is of particular importance that the Commission carries 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 on Better Law-Making of 13 April 2016. 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.

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(177) In order to ensure that the European Union Programme for Employment and Social Innovation (EaSI) provides swiftly adequate resources to support changing political priorities, the indicative shares for each of the three axis and the minimum percentages for each of the thematic priorities within the individual axis should allow for a greater flexibility***, while maintaining an ambitious deployment rate for EURES cross-border partnerships***. This should improve the management of the Programme and allow focussing budgetary resources on actions producing better employment and social results.

(178) In order to facilitate investments in cultural and sustainable tourism infrastructure, without prejudice to the full application of EU environmental legislation, in particular the Directives on Strategic Environmental Assessment and Environmental Impact Assessment as appropriate, certain restrictions as regards the scope of support for these investments should be ***clarified. It is therefore necessary to introduce clear restrictions as regards limiting the scale of contribution of the ERDF to such investments from … [OJ to include date of entry into force of this Regulation]***.

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(179) ***In order*** to ***respond*** to the challenges posed by increasing flows of migrants and refugees, the objectives to which the ERDF may 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 asylum applicants and beneficiaries of international protection***.

(180) As the amendment of provisions of Regulation (EU) No 1303/2013 of the European Parliament and of the Council[1] provides more favourable conditions for certain revenue generating operations for which amounts or rates of support are defined in ▌ the EMFF Regulation it is necessary to establish a different date of entry into force for these provisions to ensure equal treatment of operations supported on the basis of Regulation (EU) No 1303/2013.

(181) With a view to facilitating the implementation of operations the scope of potential beneficiaries should be enlarged. Therefore, natural persons should be eligible for cohesion policy support ***and more flexibility should be foreseen for defining the beneficiary in the context of state aid schemes***.

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[1] 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).

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(182) 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, these conclusions may be endorsed by the European Council, as appropriate, taking into account the powers of this institution laid down in Article 15 TEU.

(183) With a view to ensure sound financial management in ESI Funds which are ***implemented*** under shared ***management***, and clarify Member States obligations, the general principles should explicitly refer to the principles of internal control of budget implementation and of avoidance of conflict of interests established in the Financial Regulation.

(184) In view of 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 Fund for these areas. ***Where appropriate, coordination with the Asylum, Migration and Integration Fund should be ensured.***

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

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(186) 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.

(187) In order to facilitate the implementation of community-led local development and integrated territorial investments, the roles and responsibilities of local action groups in the case of community-led local development strategies and local authorities, regional development bodies or non-governmental organisations in the case of ITIs in relation to other programme bodies should be clarified. Designation as intermediate body should only be required in cases where the relevant bodies carry out tasks which go beyond those described in the relevant Article or where it is required by the Fund specific rules.

(188) It is necessary to clarify that 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 (IFIs).

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(189) Many Member States have established publicly-owned banks or ▌ institutions that operate under a public policy mandate to promote economic development ***activities***. Such 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 role of such banks ***or institutions*** is notably to mitigate market failures, where in certain regions or for certain policy areas or sectors financial services are underprovided by commercial banks. These 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 for delivering ESI funds in order to maximise the impact of these funds in the real economy. Such an outcome would be in line with the Commission policy to facilitate the role of such banks or institutions as fund managers both in the implementation of ESI funds as well as in the combination of 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*** managing authorities ***can*** award contracts directly to such ***publicly-owned*** banks or ▌ institutions. Nevertheless, in order to ensure that this 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 for this provision to be applicable. ***These conditions include that there should be no direct private capital participation, with the exception of non-controlling and non-blocking forms of private capital participation in line with requirements in Directive 2014/24/EU. Moreover, and strictly limited to the scope of application of this Regulation, a publicly-owned bank or institution should also be allowed to implement financial instruments if private capital participation confer no influence on decisions regarding the day-to-day management of the financial instrument supported by the ESI Funds.***

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(190) In order to maintain the ***possibility to*** contribute ***ERDF and EAFRD*** to joint uncapped guarantee and securitisation financial instruments, it is necessary to provide that Member States can ***contribute to these instruments*** during the entire programming period and to update relevant provisions relating to this option, such as those on ex-ante assessments and evaluations ***or to introduce for ERDF the possibility of programming at priority axis level***.

(191) In adopting 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 – the European Fund for Strategic Investments (EFSI) – it was ***intended*** to enable Member States to use ESI Funds to contribute to the financing of eligible projects ▌ supported ***under*** EFSI. A specific provision should be introduced to set out the terms and conditions to allow for better interaction and complementarity that will facilitate the possibility to combine ESI funds with EIB financial products under the EFSI's ***EU*** Guarantee.

(192) In carrying out their operations, the bodies implementing financial instruments should, in accordance with the Union legislation and taking utmost account of relevant principles and guidelines laid down in Council conclusions (notably those of 8 November 2016 - as published in OJ C 461, 10.12.2016, p. 2-5 -, in particular in their Annex), not make use of or engage in tax avoidance structures, in particular aggressive tax planning schemes.

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(193) In order to simplify and harmonise the control and audit requirements and to improve the accountability of the financial instruments implemented by EIB and other International Financial Institutions, it is necessary to amend the provisions on management and control for financial instruments to facilitate the assurance process. ***This amendment is without prejudice to the applicable rules, as laid down in Article 40 of the Common Provisions Regulation for financial instruments under Article 38(1)(a) and 39 of the Common Provisions Regulation and established by a funding agreement signed before the entry into force of this Regulation.***

(194) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission in respect of the model of the control reports and the annual audit reports as defined in Article 40(1) of this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[1].

(195) 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 an individual irregularity to be replaced by 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.

[1] 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).

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(196) In order to provide more time for the signature of funding agreements allowing for use of escrow accounts for disbursements 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.

(197) 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 that ESI Funds can take a subordinated position to ***an*** investor ***operating under the market economy principle*** and 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 ESI funds should be laid down.

(198) Given the protracted low interest environment and in order not to unduly penalise bodies implementing financial instruments, it is necessary, subject to active and diligent treasury management, to enable financing of negative interest generated as a result of investments of ESI Funds pursuant to Article 43 of the Common Provisions Regulation from resources paid back into the financial instrument.

(199) In order to align reporting requirements with the new Article 43(a) on differentiated treatment of investors and to avoid a duplication between the ″value of investments″ in Article 46(2)(h) and ″equity investments″ in Article 46(2)(i), it is necessary to update Article 46 of the Common Provisions Regulation.

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(200) In order to facilitate the implementation of the ESI funds, it is necessary to grant Member States the possibility of direct award for technical assistance actions implemented by EIB/EIF, other IFIs and publicly-owned banks or financial institutions.

(201) In order to further harmonise the conditions for operations generating net revenue after completion, the provisions in this Regulation should apply to already selected but still ongoing operations and to operations which are still to be selected under this programming period.

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

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

(204) Due to the late adoption of the Regulation (EU) No 508/2014 of the European Parliament and of the Council and the fact that aid intensity levels have been established by that Regulation, it is necessary to set out certain exemptions for the EMFF as regards revenue generating operations.

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(205) To reduce administrative burden for beneficiaries the threshold which exempts certain operations from calculating and taking into account revenue generated during their implementation should be raised.

(206) In order to facilitate synergies between ESI Funds and other Union instruments, expenditure incurred may be reimbursed from different ESI Funds and Union instruments based on a proportion agreed in advance.

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

(208) In view of the aim to reduce the administrative burden of the implementation of projects by beneficiaries a new form of simplified costs option for financing based on conditions others than costs of operations should be introduced.

(209) In order to make the associated administration less burdensome and to simplify the rules governing the use of funds, Member States should increasingly make use of simplified cost options.

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(210) 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 last payment to the beneficiary, and that, when the investment consists in the lease purchase of a new machinery and equipment, the last payment occurs at the end of the contract period, this obligation should not apply to this type of investment.

(211) 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 below a certain threshold for the ERDF and ESF***, subject to the relevant transitional provisions as set out in this Regulation. The Managing Authority should be given the possibility to extend the transitional period for a period it considers appropriate if it considers that this obligation creates a disproportionate administrative burden. This obligation should not apply for operations receiving support within the framework of a State aid scheme that does not constitute de minimis aid in respect of which 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***.

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(212) In order to facilitate earlier and more targeted application of simplified cost options, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of ***supplementing*** the ***provisions on*** the standard scales of unit costs or the flat rate financing, the fair, equitable and verifiable method on which they may 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 on Better Law-Making of 13 April 2016. 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.

(213) 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.

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(214) With a view to improving the effectiveness and impact of operations implementation of nation-wide operations or operations covering different programme areas should be facilitated and possibilities for expenditure outside the Union for certain investments should be increased.

(215) In order to encourage Member States to make use of major projects appraisal 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.

(216) 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 ESI Funds***.

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

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(218) With a view to reducing the administrative burden and ensuring the effective use of technical assistance across Funds and categories of regions flexibility for the calculation and monitoring of the respective limits applicable to technical assistance of Member States should be increased.

(219) 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.

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

(221) 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.

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

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

(224) 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 of the European Parliament and of the Council[1].

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[1] 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).

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(225) With a view to facilitating certain target groups' access to the ESF, the collection of data for certain indicators should not be required.

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

(227) In order to expedite implementation of financial instruments combining ESIF support with EIB financial products under the EFSI 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 that some of the amendments to this Regulation should apply with effect from 1 January 2018. By providing for a retroactive application of these amendments, the advanced facilitation of the financing of projects through combined ESIF – EFSI support is ensured and a legal gap between the expiry date of certain provisions in Regulation (EU) No 1303/2013 and the entry into force date of their extension by virtue of this Regulation is avoided.

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(228) The simplifications and changes contained in sectorial legislation should apply as soon as possible in order to facilitate an acceleration of implementation during the current programming period and therefore should apply from … [OJ to include same date as in Article 280(2)].

(229) The 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 continuously allow for a assistance to NEETs, the amendment to Regulation (EU) No 1309/2013 ensuring such continued assistance should apply with effect from 1 January 2018.***

(230) ***Blending*** facilities may be established under the Connecting Europe Facility (CEF). Such blending facilities ***could*** finance blending operations which are actions combining non-reimbursable forms of support***, such as Member States' budget, CEF grants and the European Structural and Investment Funds,*** and/or financial instruments from the Union budget, including ***combinations*** of CEF equity and CEF debt financial instruments ▌ and financing from ***the*** EIB Group (including EIB financing under EFSI)***, national promotional banks*** development or other finance institutions as well as investors ***and/or private financial support, including both direct and indirect financial contributions, including through Public Private Partnerships***.

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(231) The design and set up of blending facilities should be based on an ex-ante assessment in accordance with the Financial Regulation and should reflect the results of lessons learned from the implementation of the CEF "Blending Call" referred to in the CEF Multi Annual Work Programme 2017 published on 20 January 2017. 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 the Council on the implementation of any blending facility.

(232) The objective of CEF Blending Facilities is to facilitate and streamline one application for all forms of support, including Union grants from CEF and private sector finance. Those 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.

(233) 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 and therefore mitigate risks with the projects.

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(234) CEF Blending Facilities should bring enhanced coordination, exchange of information and cooperation between Member States, the Commission, EIB, national promotional banks and private investors with the aim of generating and supporting a healthy pipeline of projects pursuing CEF policy objectives.

(235) 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's objectives on meeting the targets set at the Paris Climate Conference (COP 21), job creation and cross-border connectivity. It is important that when CEF and EFSI are both used for financing actions, the Court of Auditors examines whether the financial management has been sound in line with its tasks set out in Article 287 TFEU and in accordance with Article 24(2) of Regulation (EU) No 1316/2013.***

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

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(237) 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 Union budget such as Blending Facilities can be appropriate to that end.

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

(239) The experience gained in blending should be taken into consideration in the evaluations of the CEF Regulation.

(240) The introduction of the blending facility by this Regulation should not be understood to prejudge the negotiation of the post 2020 multiannual financial framework.

(241) ***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 of Regulation (EU) No 1316/2013,*** it is necessary to ***exceptionally*** allow ***for additional*** flexibility in the use of the multiannual work programme allowing to reach up to 95 % of the financial budgetary resources indicated in Regulation (EU) No 1316/2013. ***It is, however, important that further support is provided in the remaining CEF implementing period to priorities covered by annual work programmes.***

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(242) Due to the different nature of the CEF Telecom sector as compared to CEF Transport and CEF Energy sectors (smaller average size of grants, type of costs and type of projects), unnecessary burden on beneficiaries and Member States participating in related actions should be avoided through a lighter cost of certification obligation, without weakening the principle of sound financial management.

(243) Only grants and procurement may currently be used to support actions in the area of Digital Service Infrastructures. In order to ensure ***that the*** Digital Service Infrastructures ***function as efficiently*** as possible, ***other*** financial instruments ***which are currently used under CEF, including innovative financial instruments,*** should also be made available to support these actions.

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(244) 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.

(245) With a view to further simplify 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.

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(246) 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.

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(247) In order to simplify the implementation of the ESI Funds and the FEAD and avoid legal uncertainty, certain responsibilities of Member States on management and control should be clarified.

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(248) Considering the need for a coherent application of the relevant financial rules within the financial year, it is in principle advisable that amendments to the Financial Regulation start 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 sectorial regulations, benefit the recipients of Union funds as early as possible, it is appropriate to provide, exceptionally, for an 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, it is appropriate to provide that Union institutions continue applying Regulation 966/2012 until the end of the financial year 2018 with regard to the implementation of their respective administrative appropriations.

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(249) 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 programs to the new rules.

(250) The information about the number of full time equivalents and on the estimated amount of assigned revenue carried over from previous 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,

HAVE ADOPTED THIS REGULATION:

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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*** and the presentation and auditing of the 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 a legal personality who has submitted an application in a grant award procedure or in a contest for prizes;

2. ″application documents″ means a tender, a request to participate, a grant application or an application in a contest for prizes;

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3. ***"***award procedure***"*** means a procurement procedure, a grant award procedure, a contest for prizes, or a procedure for the selection of experts or entities implementing Union funds pursuant to point (c) of Article 62(1);

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), 31(2), 33, 42(4) and 43(***2***)TEU.

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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***"*** 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 from the EU budget and financial instruments from development or other public finance institutions,*** as well as from commercial finance institutions and investors. ***Blending*** operations ***shall be managed either by the Commission or by entities eligible in accordance with Article 62(1)(c)***;

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*** appropriations in the budget ***necessary to cover*** subsequent payments ***to honour legal commitments;***

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9. ***"***budgetary guarantee***"*** means a legal commitment of the Union to support a programme of actions by taking on the ***general*** budget of the Union a 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 engagements made under the supported programme***;

10. ***"***building contracts***"*** 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;

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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 174 and 178, in order to entrust the execution of works or the provision and management of services to an economic operator (the ″concession″). The remuneration shall consist either solely in the right to exploit the works or services or in that right together with payment. The award of a concession contract shall involve 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 at stake;

15. ″contingent liability″ ***means*** a potential financial obligation that may be incurred depending on the outcome of a future event;

16. ″contract″ means a public contract or a concession contract;

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17. ″contractor″ means an economic operator with whom a procurement contract has been signed;

18. ″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;

19. ″contribution agreement″ means an agreement concluded with entities ***or*** persons pursuant to points (ii) to (viii) of Article 62(1)(c);

20. ″counterpart″ ***means*** the ▌ party that is granted a budgetary guarantee of the Union;

21. ***"crisis" means:***

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

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(b) ▌situations caused by natural disasters, manmade crisis such as wars and other conflicts or extraordinary circumstances having comparable effects related inter alia to climate change, environmental degradation, privation of access to energy and natural resources or extreme poverty***;***

22. "de-commitment" means an operation whereby the responsible authorising officer cancels wholly or partly the reservation of appropriations previously made by means of a budgetary commitment;

23. ***"***dynamic purchasing system***"*** means a completely electronic process for making commonly used purchases ***of items generally available on the market***;

24. ***"***economic operator***"*** means any natural or legal person, including a public entity, or a group of such persons, which offers to supply products, execute works or provide services or immovable property;

25. ***"***equity investment***"*** means the provision of capital to a firm, invested directly or indirectly in return for total or partial ownership of that firm and where the equity investor may assume some management control of the firm and may share the firm***'***s profits;

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26. "European Offices" means administrative structures set up by the Commission or by the Commission with one or more Union institutions to perform specific cross-cutting tasks;

27. ***"***final administrative decision***"*** means a decision of an administrative authority having final and binding effect in accordance with the applicable law;

28. ***"***financial asset***" means*** any asset that is cash, an equity instrument of another ***publicly or privately held*** entity or a contractual right to receive cash or another financial asset from another ***publicly or privately held*** entity;

29. ***"***financial instruments***"*** means Union measures of financial support provided from the budget ▌ to address one or more specific policy objectives of the Union. Such instruments may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and 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)***;

30. ***"***financial liability***" means*** a contractual obligation to deliver cash or another financial asset to another entity;

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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;

32. "global provisioning" means the total amount of resources deemed necessary over the entire lifetime of a budgetary guarantee as a result of applying the provisioning rate defined in Article 211(1) to the amount of the budgetary guarantee authorised by the basic act referred to in point (b) of Article 210(1);

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;

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;

35. ″guarantee on demand″ means a guarantee that must be honoured by the guarantor upon counterpart's demand, notwithstanding any deficiencies in the enforceability of the underlying obligation;

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36. "in-kind contributions" means non-financial resources made available free of charge by third parties to a beneficiary;

37. ***"***legal commitment***"*** means the act whereby the authorising officer responsible enters into or establishes an obligation which results in subsequent payment or payments and the recognition of expenditure ▌ charged to the budget***, which includes specific agreements and contracts concluded under*** financial framework partnership agreements and framework contracts;

38. ***"***leverage effect***"*** means the amount of ***reimbursable financing provided*** to eligible final recipients divided by the amount of the Union contribution;

39. "liquidity risk" means the risk that a financial asset held in the common provisioning fund may not be sold during a certain period of time without incurring a significant loss;

40. ***"***loan***"*** means an agreement which obliges the lender to make available to the borrower an agreed sum of money for an agreed period of time and under which the borrower is obliged to repay that amount within the agreed time;

41. ***"***low value grant***"*** means a grant lower than or equal to EUR 60 000;

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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;***

43. ***"***method of implementation***"*** means the methods of budget implementation described in ***Article*** 62, ▌ i.e. direct ***management***, indirect and shared ***management***;

44. ***"***multi-donor action***"*** means any action where Union funds are pooled with at least one other donor;

45. ***"***multiplier effect***"*** means the investment by eligible final recipients divided by the amount of the Union contribution***;***

46. ***"output" means the deliverables generated by the action determined in accordance with sector-specific rules***.

47. ***"***pari passu***"*** means an equal claim on ***a*** right;

48. ***"***participant***"*** means a candidate or tenderer in a procurement procedure, an applicant in a grant award procedure, an expert in a procedure for selection of experts, an applicant in a contest for prizes or an entity or person participating in a procedure for implementing Union funds pursuant to point (c) of Article 62(1);

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49. ***"***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 163;

(b) the invitation to tender;

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

(d) the draft contract;

50. ***"***public ***contracts"*** means ***contracts*** for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities within the meaning of Articles 174 and 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;

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(c) works contracts;

(d) service contracts**.**

▌

51. ***"***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***;

52. ***"***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;

53. ***"***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 that*** can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or ***into*** preferred equity;

54. ***"***recipient***"*** means a beneficiary, a contractor, a remunerated external expert, any person or entity receiving prizes or funds under a financial instrument or implementing Union funds pursuant to point (c) of Article 62(1);

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55. ″repurchase agreement″ means the sale of securities for cash with an agreement to repurchase them on a specified future date, or on demand;

56. ″research and technological development appropriations″ means the appropriations entered either in one of the titles of the budget relating to the policy areas linked to "Indirect research" and "Direct research" or in a chapter relating to research activities in another title;

57. "result" means effects of the implementation of an action determined in accordance with sector-specific rules;

58. ″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;

59. ″service contracts″ means a contract covering all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts;

60. "Sound financial management" means implementation of the Union budget in accordance with the principles of effectiveness, efficiency and economy,

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61. ***"***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 Council Regulation (EEC, Euratom, ECSC) No 259/68[1];

62. ***"***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 the grant***;***

63. ***"***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;

64. ***"***supply contracts***"*** means a contract covering the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A supply contract may include, as an incidental matter, siting and installation operations***;***

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

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65. ″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***;***

66. ″tenderer″ means an economic operator that has submitted a tender;

67. ″Union″ means the European Union, the European Atomic Energy Community, or both, as the context may require***;***

68. ″Union institution″ means the European Parliament, the European Council, the Council, the European 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 and the European External Action Service (the ″EEAS″); the European Central Bank shall not be considered as ***a Union*** institution ▌ ;

69. ″vendor″ means an economic operator registered in a list of vendors to be invited to submit requests to participate ***in*** or submit tenders;

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70. ***"volunteer" means a person working on a non-compulsory basis for an organisation without being paid.***

71. ***"***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;

72. ***"***works contracts***"*** means a contract covering either the execution, or both the execution and design, of work(s) related to one of the activities referred to in Annex II to Directive 2014/24/EU of the European Parliament and of the Council on public procurement[1] or 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***.***

[1] OJ L 94, 28.3.2014, p. 65.

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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 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.

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Article 4

Periods, dates and time limits

Unless otherwise provided, Council Regulation (EEC, Euratom) No 1182/71[1] shall apply to deadlines set by this Regulation.

Article 5

Protection of personal data

This Regulation ***is without prejudice to the requirements of*** Directive 95/46/EC[2] and ***of*** Regulation (EC) No 45/2001[3] ▌ .

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1 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).

2 OJ L 281, 23.11.1995, p. 31.

3 ***OJ L 8, 12.1.2001, p. 1.***

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TITLE II

BUDGET AND BUDGETARY PRINCIPLES

Article 6

Respect for budgetary principles

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 ▌ .

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, and ▌ operational expenditure occasioned by implementation of those provisions where it is charged to the budget;

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(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;

(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 114(2).

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4. Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years.

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 112(1) and ***in Article*** 112(2).

Article 8

Specific rules on the principles of unity and budgetary accuracy

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

2. No expenditure may be committed or authorised in excess of the authorised appropriations***, without prejudice to authorised expenditure arising from contingent liabilities provided for in Article 210(2).***

3. An appropriation may 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 for in the contribution agreements or financing agreements.

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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 the financial year on the basis of the amounts collected during that financial year. However, the own resources for the month of January of the following financial year may be made available in advance pursuant to Council Regulation (EU, Euratom) No 609/2014[1].

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

[1] 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).

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3. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December. By way of exception, the global budgetary commitments referred to in Article 112(4) shall be entered in the accounts on the basis of the budgetary commitments up to 31 December.

4. 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.

5. By way of derogation from paragraphs 3 and 4:

(a) the expenditure of the European Agricultural Guarantee Fund (EAGF) shall be ***entered into*** the accounts for a financial year on the basis of the repayments made by the Commission to the Member States by 31 December of that financial 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 booked to the accounts for a financial year on the basis of reimbursements made by the Commission to the Member States by 31 December of that financial year, including the expenditure charged by 31 January of the following financial year as laid ***down in*** Articles 30 and 31.

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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 this expenditure has been approved in the last budget duly adopted, and only up to a maximum of*** one quarter of the appropriations decided upon by the European Parliament and the Council on the corresponding budget line for the current financial year ▌ ;

(b) ***routine management expenditure for the EAGF, provided that the principle of this 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 the Council for the current financial year ▌ .

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

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(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 this purpose by 31 December. 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 not sufficient to cover requirements;

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.

(d) non-committed appropriations relating to the actions referred to in Article 4(1) of Regulation (EU) No 1306/2013 ▌ .

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

▌

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

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

(a) ▌commitment▌ appropriations for the 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 committed up to 31 December***;

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(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, with the exception of the internal assigned revenue from lettings and the sale of buildings and land referred to in point (e) of Article 21(3) which may be carried over until it is fully used. Commitment appropriations, referred to in Regulation (EU) No 1303/2013 and in Regulation (EU) No 514/2014[1], available on 31 December arising from repayments of pre **-**financing payments***, which*** 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***;***

[1] 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.

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(d) payment appropriations related to the EAGF resulting from suspensions in accordance with Article 41 of Regulation (EU) No 1306/2013.

5. The treatment of external assigned revenue ***as referred to in point (c) of paragraph 4*** resulting from the participation from European Free Trade Association (EFTA) States in certain Union programmes as referred to in point (e) of Article 21(2) shall be in line with Protocol 32 annexed to the Agreement on the European Economic Area (EEA Agreement).

6. Together with the information to the European Parliament and the Council provided for in paragraph 3, the Union institution concerned shall submit information on the appropriations that were automatically carried over. Such information shall include the amounts involved as well as the provision of this Article, according to 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.

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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 the remuneration and allowances for members and staff of the ***Union*** institutions ***who are*** subject to the Staff Regulations.

Article 13

Detailed provisions on cancellation and carryover of appropriations

1. The commitment appropriations and the non-differentiated appropriations referred to in point (a) 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 no later than 31 March of the following year, or 31 December of the following year in relation to building projects.

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2. The preparatory stages referred to in point (a) of Article 12(2), which should be completed by 31 December of the financial year in order to allow a carryover to the following year, are in particular:

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

(b) for individual budgetary commitments within the meaning of point (a) of Article 112(1), the completion of the selection of potential contractors, beneficiaries, prize winners or delegates.

3. Appropriations carried over in accordance with point (a) of Article 12(2) which have not been committed by 31 March of the following financial year or up to 31 December of the following 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 this way within one month following the cancellation in accordance with the first subparagraph.

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Article 14

De-commitments

1. Where ***budgetary commitments*** are decommitted in any financial year after the year in which ***that commitment was 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 for in ***the Regulations referred to in paragraphs*** 2 ***and 3 and without prejudice to*** Article 15.

▌

2. ***Commitment appropriations*** referred to in Regulation (EU) No 1303/2013 shall be ***de-committed*** automatically in accordance with that Regulation.

3. ***Commitment appropriations*** referred to in Regulation (EU) No 514/2014 shall be ***de-committed*** automatically in accordance with that Regulation.

4. ***This*** Article shall not apply to external assigned revenue referred to in Article 21(2).

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Article 15

Making ▌ appropriations ***corresponding to de-commitments*** available again

1. The ▌ appropriations ***corresponding to de-commitments*** referred to in Regulation (EU) No 1303/2013**,** Regulation (EU) No 223/2014 ***of the European Parliament and of the Council[1] and Regulation (EU) No 14/2014*** may be made available again in the event of a manifest error attributable solely to the Commission.

   To that end, the Commission shall examine ***de-commitments*** made during the preceding financial year and 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, the*** appropriations ***corresponding to de-commitments*** shall be made available again in the event of:

   (a) the d***e-commitment*** from a programme under the arrangements for the implementation of the performance reserve established in Article 20 of Regulation (EU) No 1303/2013;

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1 Regulation (EU) N° 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)**.**

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(b) the ***de-commitment*** from a programme dedicated to a specific financial instrument in favour of 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 annual budgetary procedure.

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.

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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 specified 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.

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4. If the continuity of action by the Union ***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 forward ***its*** decision on authorisation without delay to the European Parliament.

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

(a) acting by a majority of its component Members, decides to reduce that expenditure within that time limit, in which case the Commission shall submit a new proposal;

(b) informs the Council and the Commission that it does not wish to reduce that 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.

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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 action by the Union 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, may 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 may not raise loans within the framework of the budget.

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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 case of a surplus or as a payment appropriation in the case of a deficit.

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

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 the Council within 15 days of submission of the provisional accounts.

[1] 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).

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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 regulations, or ***in*** specific procurement contracts, grant agreements, contribution agreements and financing agreements, conversion by the responsible authorising officer 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.

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If no such daily rate is published, the responsible authorising officer 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 rate of the euro. That accounting exchange rate shall be established by the Commission**'**s accounting officer 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 Union 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.

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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 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 ***to the following types of projects and*** programmes ▌ ***:***

      (i) ***certain*** supplementary research and technological development programmes,

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(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 the TFEU.

(c) interest on deposits and the fines provided for in Council Regulation (EC) No 1467/97[1];

(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 not ***set up under the TFEU and the Euratom Treaty***;

[1] 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)**.**

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(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;

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(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 for other departments within an ***Union*** institution, ***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;

▌

(f) ***repayments to financial instruments or budgetary guarantees pursuant to Article 209(3)***;

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

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

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

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

Article 22

Structure to accommodate assigned revenue and provision of corresponding appropriations

1. Without prejudice to point (c) 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 budget remarks, including general remarks, showing which lines may receive the appropriations corresponding to the assigned revenue which are made available.

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.

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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 by the Member State of the contribution agreement***;***

(b) in the case provided for in ***point (b) of*** Article 21(2) ▌ and 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 those 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.

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Article 23

Contributions from Member States to research programmes

1. The Member States' contributions to the financing of certain supplementary research programmes, provided for in Article 5 of Council 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 no later than 31 January of the current financial year;

(b) the remaining five twelfths shall be paid by no later than 15 July of the current financial year.

2. Where the budget has not been finally 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 previous financial year.

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

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4. Payments made shall be entered in the account provided for in Council 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 the EFTA States*** shall be as follows:

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

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

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2. Under Article 82 of the EEA Agreement the amounts of the annual participation of the EFTA States, as confirmed to the Commission by the Joint Committee of the European Economic Area in accordance with Article 1(5) of Protocol 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 the 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.

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2. Acceptance of a donation of a value of EUR 50 000 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. In light of such an authorisation, the European Parliament and the Council, shall act on the matter within two months of receiving the request 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 explain ***in their request to the European Parliament and the Council*** the financial charges entailed by the acceptance of donations made to the Union.

Article 26

Corporate sponsoring

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

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

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

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

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

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

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

(f) the sponsors are, at the time of the award procedure, not in one of the situations referred to in Articles 136(1) and 141 and are not registered as excluded in the early detection and exclusion database referred to in Article 142.

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3. Where the value of the support exceeds EUR 5 000, the sponsor shall be listed in a public register, displaying the kind of activity related to the sponsoring.

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 procurement 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.

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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 the Member States pursuant to ▌ Protocol ***(No 7)*** on the ***privileges*** and ***immunities*** of the European Union, 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 such a case, subsequently reimbursed taxes shall be treated as internal assigned revenue.

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

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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.

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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 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*** the ***other Union*** institution concerned without a decision of the European Parliament and Council shall not be taken into consideration.

Proposals for transfers and all information for the European Parliament and 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 lines to which the appropriations are to be transferred and for those from which they are to be taken.

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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 year shown on the line from which the transfer is made;

   (b) from one chapter to another without limit.

2. ***Subject to paragraph 4, 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 reasons 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 the Council, within its own section of the budget, transfers from one title to another exceeding the limit of 10 % of the appropriations for the year shown on the line from which the transfer is to be made ***as referred to in point (a) of paragraph 1.*** Those transfers shall be subject to the procedure laid down in Article 31.

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4. Any 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 year shown on the line from which the transfer is made, and up to a maximum of 30 % of the appropriations for the year shown on the 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 year shown on the line from which the transfer is made;

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(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, make transfers between chapters of up to 15 % of the ***appropriations*** in the line from which the transfer is made;

(e) with regard to ***research and technological development, transfers of 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 are 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***, subject to the subsequent restoring of the amount transferred in accordance with the procedure foreseen in Article 212(4)***.

▌

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The expenditure referred to in point (b) of the first subparagraph of this Article 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 Article, the Commission shall inform the European Parliament and the Council of its intention to do so. In the event that duly justified reasons are raised within that period by the European Parliament or 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 staff 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.

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2. The Commission may, within its own section of the budget, decide on the following transfer 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 unused appropriations for that financial year still available in the budget titles falling under heading 4 of the multiannual financial framework to the budget titles concerning crisis management aid and humanitarian aid operations.

▌

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Article 31

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

1. Each ***Union*** institution shall submit its transfer proposals simultaneously to the European Parliament and 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 the Council by 10 January of the following financial year. The transfer of the payment appropriations may be made from any item of the budget. ***In the cases referred to in this subparagraph, 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 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 as provided for in paragraphs 4 to 8.

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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 cases the European Parliament and the Council shall deliberate within 3 weeks***.

5. Where the Commission ***intends to transfer*** EAGF appropriations in accordance with this Article***,*** it shall submit transfer proposals to the European Parliament and the Council by 10 January of the following financial year. ***In the cases referred to in this paragraph, 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 ▌ take a decision to amend or refuse the transfer proposal.

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

(a) the transfer represents less than 10 % of the appropriations of the line from which the transfer is made ***and*** does not exceed EUR 5 000 000;

(b) the transfer concerns only payment appropriations and the overall amount of the transfer does not exceed EUR 100 000 000.

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.

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2. Decisions on transfers to allow the use of the emergency aid reserve ▌ shall be taken by the European Parliament and the Council on a proposal from the Commission.

For the purposes of this paragraph, the procedure provided for in paragraphs 3 and 4 of Article 31 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 this reserve, they shall refrain from acting on the Commission's transfer proposal.

Proposals for transfers from the emergency aid reserve ▌ 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 line to which the transfer is to be made;

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

▌

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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 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 resources employed***, the activities undertaken*** and ***the*** achievement of objectives***;***

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

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2. In line with the principle of sound financial management, the use of appropriations shall focus on performance and for this 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*** achievements ***of those objectives*** shall be reported to the European Parliament and the Council in accordance with point (h) of Article 41(3) and with point (ii) of Article 247(1)(b).

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

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Article 34

Evaluations

1. Programmes and activities which entail significant spending shall be subject to ex-ante and retrospective evaluation ("evaluation"), 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 could take the form of an impact assessment and analyse the various options of methods for implementation in addition to the requirements set out above.

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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.*** They shall be undertaken ***at least once 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 payment and commitment appropriations, by an assessment of the different available financing options,*** and by an ex**-**ante evaluation ***or impact assessment*** as provided for in Article 34.

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Any amendment to a proposal or initiative submitted to the legislative authority which may have appreciable implications for 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 ***regard*** 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 staff, 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.

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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 system and an assessment of the expected level of risk of error, as well as 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 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 effective and efficient internal control as appropriate in each method of budget implementation, and in accordance with the relevant sector-specific rules.

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2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of management and 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 and irregularities;

(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;

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(b) an appropriate risk management and control strategy ***that includes*** control at recipient level;

(c) avoidance of conflict of interest;

(d) adequate audit trails and data integrity in data systems;

(e) procedures for monitoring effectiveness and efficiency***;***

(f) ***procedures*** for follow-up of identified internal control weaknesses and exceptions;

(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 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;

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(c) reliance, where appropriate, on management declarations of implementation partners and 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***, including basic acts on the elements governing internal controls***;

(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.

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CHAPTER 8

Principle of transparency

Article 37

Publication of accounts, 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 Internet site of the ***Union*** institutions, on the Commission's initiative, as soon as possible and no later than four weeks after the final adoption of the budget.

The consolidated annual accounts shall be published in the *Official Journal of the European Union****, as well as on the Internet site of the Union institutions***.

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Article 38

Publication of information on recipients and other information

1. The Commission shall make available, in an appropriate and timely manner, information on recipients, ***of funds*** financed from the ***Union*** budget, where the ***funds are*** implemented directly ***by it*** in accordance with point (a) of Article 62(1).

The obligation set out in the first subparagraph shall also apply to other institutions when they implement the Union budget ***pursuant to Article 59(1)***.

▌

2. ***Save in the cases laid down in paragraphs 3 and 4, the following*** information ▌ shall be ***published*** having due regard for the requirements of confidentiality and security, in particular the protection of personal data ▌ :

(a) the name of the recipient;

(b) the locality of the recipient***, namely***:

(i) the address ***of the recipient when the latter is a legal person;***

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(ii) the Region on NUTS 2 level when the recipient is a natural person.

(c) the amount legally committed;

(d) the nature and purpose of the measure.

The information ***referred to in the first subparagraph*** shall only be published for prizes, grants and contracts which have been awarded as a result of contests or grant award procedures or public procurement procedures, and for experts which have been selected pursuant to Article 237(2).

3. The information ***referred to in paragraph 2*** shall not be published 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 191(4);

(b) very low value contracts awarded to experts selected pursuant to Article 237(2) as well as very low value contracts below the amount referred to in point 14.4 of Annex ***1.***

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(c) financial support from the Union budget through financial instruments for an amount lower than EUR 500 000. In such cases 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;

(d) cases where disclosure risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of the recipients;

Where natural persons are concerned, the disclosure of ***the information referred to in paragraph 2*** shall be based on relevant criteria such as the ***frequency,*** or the type of the measure ***and the amounts involved.***

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4. Persons or entities implementing Union funds ***under indirect management*** pursuant to point (c) of Article 62(1) ***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 pursuant to point (e) of Article 154(4), and provided that any publication of personal data is subject to safeguards equivalent to those set out in this Article.***

Bodies designated pursuant to paragraph 3 of Article 63 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, notably for the publication of personal data, where justified on the basis of the criteria referred to in the second subparagraph of paragraph 3, and taking into account the specificities of the sector concerned.

5. The information on ▌ recipients of ***Union*** funds ***referred to in the first and second subparagraph of paragraph 1 shall be published on an internet site of the Union institutions, no later than 30 June of the year following the financial year in which the funds were legally committed.***

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The internet site of the Union institutions shall contain at least a reference to the address of the website where the information referred to in the first and second subparagraph of paragraph 1 can be found if it is not published directly on a dedicated internet site of the Union institutions.

▌

The Commission shall make ***available, in an appropriate and timely manner, information about the single website, where the information as provided by the persons, entities or bodies referred to in paragraph 4, can be found.***

6. ***Where personal data are published, the information shall be removed two years after the end of the financial year in which the amount was legally committed.*** This ***shall*** also ***apply to personal data referring to legal persons for whom the official title identifies one or more natural persons.***

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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 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 and international cooperation, humanitarian aid and crisis response, regarding their respective responsibilities**.**

3. The Commission shall draw up its own estimates, which it shall also send, directly after their adoption, to the European Parliament and the Council. In preparing its estimates, the Commission shall use the information referred to in Article 40.

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Article 40

Estimated budget of the bodies referred to in Article 70

By 31 January each year, each 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 human and financial resources planning***.

Article 41

Draft budget

1. The Commission shall submit a proposal containing the draft budget to the European Parliament and 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 the ***Union*** institutions.

   The draft budget shall follow the structure and presentation set out in Articles 47 to 52.

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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 30 of the Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management[1] ("IIA"). Summary data shall be provided for the categories of expenditure not covered by Point 30 of the IIA.***

[1] ***Interinstitutional Agreement of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management, (OJ C 373, 20.12.2013, p. 1).***

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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***:***

(a) ***a comparative table including the Commission's draft budget for the other institutions and the other institutions' original estimates 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 the ***Union*** institutions ▌ , showing the latest authorised establishment plan ***and presenting***:

(i) all staff employed by the Union, displayed by type of contract;

(ii) a statement of the policy on posts and external personnel and on gender balance;

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(iii) the number of posts actually filled at the ***last day*** of ***the year preceding*** the year in which the draft budget is presented ***and the number of full time equivalents actually filled in annual average for the same 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 staff, 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 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 points (i) to (v) of subparagraph (b).

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(d) a working document on the planned implementation of appropriations for 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;

(f) a working document on pilot projects and preparatory actions which shall also contain an assessment of the results and 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 was 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 shall contribute to;

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(ii) a clear rationale for intervention at Union level in accordance, inter alia, with the principle of subsidiarity;

(iii) updates 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 ***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.

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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 155(2);

(c) ***the*** contribution ***of the financial instrument*** to the achievement of the objectives of the programme concerned as measured by the established indicators 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;

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(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 ***this*** duration exceeds three years ▌;

(g) revenues and repayments under Article 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) 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, the working document shall also indicate the amount of private capital mobilised***;

(l) the provisioned resources in the common ***provisioning*** fund and, when applicable, the balance on the fiduciary account.

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This working document 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.

This working document shall summarise in a clear and concise table information per financial instrument.

5. Where the ***Union*** has given 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 guarantee, its impact on the financial liabilities of the budget***, its duration*** and the added value of the Union support;

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(b) the counterparts for the guarantee, including any issues relating to the application of Article 155(2);

(c) ***the budgetary guarantee's*** contribution to the achievement of the objectives of the budgetary guarantee as measured by the established indicators, including, where applicable, the geographical diversification and the mobilisation of private sector resources;

(d) information on operations covered by the guarantee on an aggregated basis by sectors, countries and instrument, including, where applicable, portfolios and combined support with other Union actions;

(e) the financial amount transferred to beneficiaries as well as an assessment of the leverage effect achieved by the projects supported under the guarantee;

(f) information aggregated on the same basis ***as referred to*** in point (d) on calls on the guarantee, losses, returns, amounts recovered and any other payments received;

(g) information about the financial management, the performance and the risk of the common ***provisioning*** fund at the end of the ***preceding*** calendar year;

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(h) the effective provisioning rate of the common ***provisioning*** fund and, where applicable, the subsequent ***operations in accordance with*** Article 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 ***general*** budget of the Union arising from financial operations.

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***, including on the monitoring arrangements with the entities implementing funds;***

(b) their management costs;

(c) the contributions other than those from the Union;

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(d) a preliminary assessment on their performance ***based on the conditions of Article 234(3),***

(e) a description on how the activities of the trust funds 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 line receiving internal or external assigned revenue:

(i) the estimated amount of such revenue to be received;

(ii) the estimated amount of such revenue carried over from previous years.

9. The Commission shall also attach to the draft budget any further working document it considers useful ***for the European Parliament and the Council to assess the*** budget requests.

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10. In accordance with Article 8(5) of Council Decision 2010/427/EU[1] ▌, the Commission shall transmit to the European Parliament and 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 common foreign and security policy (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 EEAS′ central administration; together with operational expenditure, broken down by geographic area (regions, countries), thematic areas, Union ***delegations*** and ***missions***.

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;

[1] ▌OJ L 201, 3.8.2010, p. 30.

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(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, the number of posts authorised for the preceding year, as well as the number of posts occupied by diplomats seconded from the Member States, and by officials of the Union;

(d) provide a detailed picture of all staff 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 establishment plan posts, contract agents, local agents and seconded national experts and appropriations requested in the draft budget for such other types of personnel with corresponding estimates of the equivalent full-time staff that may be employed within the limits of the appropriations requested.

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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 one of the other ***Union*** institutions in respect of its respective section, submit simultaneously to the European Parliament and the Council letters of amendment to the draft budget before the Conciliation Committee referred to in Article 314 TFEU is convened. The letters may include a letter of amendment updating, in particular, expenditure estimates for agriculture.

Article 43

Obligations of the 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.

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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 this occurs after 1 January, be bound to make the payments due to the Union, as specified in Regulation (EU, Euratom) No 609/2014.

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.

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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 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 the Council by ***1 September*** at the latest of each financial year. It may attach an opinion to the requests for amending budgets from the other ***Union*** institutions.

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4. Draft amending budgets shall be accompanied by statements of ***reasons*** and the information on the implementation of the budget 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.

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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 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 the Council according to their type or the use to which they are assigned under titles, chapters, articles and items.

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2. The statement of expenditure for the Commission section shall be set out on the basis of a nomenclature adopted by the European Parliament and 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. A token entry pro memoria shall be added on an entry without appropriations authorised through a specific request for such an entry from the Commission. The rules for approval of the request of the Commission shall be the ones laid down in Article 31.

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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.

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Article 48

Negative revenue

1. The budget shall not contain negative revenue, except where it results from negative remuneration of deposits ***in total***.

2. The own resources paid under ▌ Council Decision ***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 lines concerned.

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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(1) 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 propose, in the course of a financial year, 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 Commission section of the budget 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 transfer in accordance with the procedure laid down in Articles 30 and 31.

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Article 51

Emergency Aid Reserve ▌

1. The Commission section of the budget 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 transfer 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 financial year concerned (″year n″);

(ii) the estimated revenue for the preceding financial year and the revenue for year n-2;

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(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). The budget remarks shall include 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;

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(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 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;

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(ii) in the Commission section:

– the budget lines containing the Union′s 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 given by the Union in respect of such operations;

(iii) in a document annexed to the Commission section, as an indication, also of the corresponding risks:

– ongoing capital operations and debt management;

– the capital operations and debt management for year n;

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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;

(e) with regard to the funding implemented by entities ***under indirect management*** pursuant to ***point (c) 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;

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(f) the total amount of CFSP expenditure entered in a chapter, entitled ***"***CFSP***"***, with specific articles***, covering*** CFSP expenditure and ***containing*** specific 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 may be made in excess of the limit set.

However, save in the case of grades AD 16, AD 15 and AD 14, 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;

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(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 of the Union 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 reasons 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 referred to 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.

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CHAPTER 3

Budgetary discipline

Article 54

Compliance with the multiannual financial framework ***and Decision 2014/335/EU, Euratom***

The budget shall comply with the multiannual financial framework ***and Decision 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 may be implemented in financial terms only after the budget has been amended accordingly.

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TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1

General provisions

Article 56

Budget implementation in accordance with the principle of sound financial management and citizens' opinion

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.

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Article 57

Information on transfers of personal data for audit purposes

In any call made in the context of grants, procurement or prizes implemented in direct implementation, potential beneficiaries, candidates, tenderers and participants shall, in accordance with Regulation (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 European Court of Auditors or to the European Anti-Fraud Office and between authorising officers of the Commission, and the executive agencies and the Union bodies referred to in Article 71.

Article 58

Basic act and exceptions

1. A basic act shall first be adopted before the appropriations entered in the budget for any action by the Union may be used.

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 ▌;

   ▌

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(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 the Euratom Treaty, other than its right of legislative initiative referred to in point (b), and under specific powers directly conferred on it by those Treaties ▌;

(e) appropriations for the operation of each ***Union in***stitution under its administrative autonomy.

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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 the pilot projects shall not exceed EUR 40 000 000 in any financial year.***

4. ***With regard to appropriations referred to in point (b) of paragraph 2, the 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. Consequently, the means implemented shall not correspond in volume to 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 50 000 000 in any financial year, and the total amount of appropriations actually committed for preparatory actions shall not exceed EUR 100 000 000.***

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5. ***With regard to the a**ppropriations referred to in point (c) of paragraph 2, the 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.

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The financing of measures agreed by the Council for the preparation of Union crisis management operations under Title V of the Treaty on European Union shall cover incremental costs directly arising from a specific field deployment of a mission or team involving inter alia personnel from the Union institutions, including high risk insurance, travel and accommodation costs and per diem payments.

6. With regard to point (d) of paragraph 2, the relevant Articles of the TFEU, which directly confer specific powers on the Commission are the following:

(a) Article 154 (social dialogue);

(b) Article 156 (studies, opinions and consultations on social matters);

(c) Articles 159 and 160 (special reports on social matters);

(d) Article 168(2) (initiatives to promote coordination on health protection matters);

(e) ***Article 171(2) (initiatives to promote coordination on trans-European networks);***

(f) Article 173(2) (initiatives to promote coordination on matters relating to industry);

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(g) Article 175, second subparagraph (report on progress made towards achieving economic, social and territorial cohesion);

(h) Article 181(2) (initiatives to promote coordination on research and technological development);

(i) Article 190 (report on research and technological development);

(j) Article 210(2) (initiatives to promote coordination of development cooperation policies);

(k) Article 214(6) (initiatives to promote coordination on humanitarian aid measures).

7. With regard to point (d) of paragraph 2, the relevant Articles of the Euratom Treaty, which directly confer specific powers on the Commission are the following:

(a) Article 70 (financial support, within the limits set by the budget, for prospecting programmes in the territories of Member States);

(b) Articles 77 to 85.

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Article 59

Implementation of the budget 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, ***the Union institutions may conclude agreements with each other laying down the conditions*** governing the provision of services, supply of products, execution of works or ▌ building contracts.

Those agreements shall enable the transfer of appropriations or the recovery of costs, which result from their implementation.

3. Such service-level agreements may also be agreed upon between departments of the 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 the other institutions shall report regularly to the European Parliament and to the Council on the service-level agreements they conclude with other institutions***.

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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 by their internal rules and within the limits which they lay down in the instrument of delegation. Those so empowered shall act within the limits of the powers expressly conferred upon them.

2. ***In addition***, the Commission may delegate its powers of budget implementation concerning the operational appropriations of its own section to the Heads of Union delegations and, in order to ensure business continuity during their absence, to the deputy Heads of Delegations. ***This delegation shall be without prejudice to the responsibility of the Heads of Union delegations for the budget implementation. Where the absence of the Heads of Union delegations 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 subdelegated authorising officers of the Commission ▌, they shall apply the Commission rules for the implementation of the budget and shall be subject to the same duties, obligations and accountability as any other subdelegated authorising officer of the Commission.

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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 to Commission staff of the delegation where this is necessary in order to ensure the continuity in the administration of Delegations in the absence of the EEAS competent authorising officer ***from the country where his/her Delegation is based***. In the exceptional cases where Commission staff of Union Delegations act as sub-delegated authorising officers of the EEAS, they shall apply the EEAS internal rules for the implementation of the budget and shall be subject to the same duties, obligations and accountability as any other sub-delegated authorising officer of the EEAS.

The EEAS may withdraw the delegation ***of powers referred to in the first subparagraph*** in accordance with its own rules.

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Article 61

Conflict of interest

1. Financial actors ***within the meaning of*** Chapter 4 of ***this*** Title ▌ and other persons***,*** ***including national authorities at any level,*** involved 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 interest from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interest.

2. Where there is a risk of a conflict of interest, the member of national staff in question shall refer the matter to his or her hierarchical superior. In the case of staff covered by the Staff Regulations, he or she 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 interest is found to exist. In that case, the Appointing Authority or the relevant national authority shall ensure that the official concerned ceases all activity in this matter. The relevant authorising officer by delegation or national authority concerned shall ensure that any further appropriate action is taken in accordance with the applicable law.

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3. For the purposes of paragraph 1, a conflict of interest 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.

I

CHAPTER 2

Methods of implementation

Article 62

Methods of implementation of the budget

1. The Commission shall implement the budget in any of the following ways:

(a) directly (***"***direct ***management") as set out in Articles 125 to 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 125 to 129***;

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(c) indirectly (***"***indirect ***management") as set out in Articles 125 to 149 and 154 to 159,*** where this is provided for in the basic act or in the cases referred to in points (a) to (d) of ▌ Article 58(2), ***by entrusting budget implementation tasks to***:

(i) third countries or the bodies they have designated;

(ii) international organisations or their agencies, ***within the meaning of*** Article 156;

(iii) the European Investment Bank or the European Investment Fund ***or both of them acting as a group (***"the EIB group***")***;

(iv) 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 provide adequate financial guarantees;

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(vii) bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide 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.

With regard to point (vi) of the first subparagraph, the amount of the financial guarantees may be set out in the relevant basic act and may be limited to the maximum amount of the Union contribution to the body or organisation concerned. In 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 or organisation.

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 are provided for in sector-specific legislation.

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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.

3. The Commission is responsible for the implementation of the budget in accordance with Article 317 TFEU and shall not delegate implementation of the budget 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, outsource tasks involving the exercise of public authority and discretionary powers of judgement.

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Article 63

Shared ***management*** with Member States

1. Where the ***Commission implements the*** budget ▌ under shared ***management,*** implementation ***tasks shall be delegated to Member States. The*** Commission and the 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 this end, the Commission and the 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 the implementation of the budget,*** Member States shall take all the necessary measures, including legislative, regulatory and administrative measures, to protect the Union's financial interests, namely by:

   (a) ensuring that actions financed from the budget are implemented correctly and effectively and in accordance with the applicable sector-specific rules ▌ ;

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(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 European Court of Auditors (ECA) and for those participating Member States also the European Public Prosecutor's Office (EPPO) after its establishment.

In order to protect the Union's financial interests, 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.***

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As part of its risk assessment and in accordance with sector- specific rules, the Commission shall monitor the management and control systems established in the 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 the 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 the 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 the sector-specific rules.

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The 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;

(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 (8)***.

Any processing of personal data shall comply with national provisions implementing Directive 95/46/EC.

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 the sector-specific rules, in the execution of their tasks and that was presented to the Commission for reimbursement ***;***

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(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 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:

(***a***) ***the information is properly presented, complete and accurate;***

(***b***) ***the expenditure was used for its intended purpose, as defined in the sector-specific rules;***

(***c***) the ***control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.***

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7. The accounts referred to in point (a) of ***paragraph 5*** and the summary referred to in point (b) of 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 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 point (a) of ***paragraph 5.***

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, the Council and the Commission*** declarations signed at the appropriate level based on the information referred to in this paragraph.

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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 the 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.***

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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 the sector-specific regulations.

▌

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.***

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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 inform the European Parliament and the Council of the results of the cost-benefit study and the*** assessment of the associated risks ***and propose to enter the necessary appropriations in an annex to the Commission section of the budget***.

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 ▌;

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(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 ***the*** European Anti-Fraud Office, with the exception of paragraph 4 of this Article, Article 66 and paragraphs 1, 2 and 3 of Article 67.

4. The internal auditor of the Commission shall exercise all responsibilities laid down in Chapter 8 of this Title.

Article 65

Appropriations regarding the 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.

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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 the 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. Each European office's establishment plan shall be annexed to that of the Commission.

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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 authorising officer powers concerning appropriations entered in the section of the budget of 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***.

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2. In the case referred to in point (a) of paragraph 1, the 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.

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Article 67

Accounting records of the European offices

1. Each European office shall draw up accounting records of its expenditure, enabling the proportion of its services supplied to each of the ***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 authorising officer powers 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.

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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 241.

5. The Commission accounting officer, 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.

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SECTION 2

UNION BODIES

Article 68

Applicability to the Euratom Supply Agency

▌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 expenditures, on its behalf and under its responsibility, in accordance with Council Regulation (EC) No 58/2003[1]. The executive agencies shall be created by means of a Commission Decision and shall be legal persons under Union law. They shall receive an annual contribution.

[1] 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).

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2. The directors of the 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 the executive agencies may agree with the Commission that the accounting officer of the Commission shall also act as 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 interest ***shall be made***.

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 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.

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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 Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as those exercised in respect of the Commission.

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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, including the auditor's reported findings, shall remain under the full responsibility of the Court of Auditors.

Article 71

Public-private partnership bodies

The 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.

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The Commission is empowered to adopt delegated acts in accordance with Article 269 to supplement ***this*** Regulation with a model financial regulation laying down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 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 with the Commission's prior consent.

Paragraphs ▌ 4 ***to 7*** of Article 70 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.

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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, the term ***"***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 ***sub-delegate*** them.

4. The powers of authorising officer shall be delegated or ***sub-delegated*** only to staff.

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5. ***The authorising officer*** responsible shall act within the limits set by the instrument of delegation or ***sub-delegation***. 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 the implementation of the budget and the production of the financial and management information.

6. Each ***Union*** institution or each body referred to in Article 70 shall inform the Court of Auditors, the European Parliament, the Council and the accounting officer of the Commission within two weeks of the appointment and release 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 the appointment of imprest administrators and of delegation decisions under ***Articles*** 79 and Article 88.

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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 of a programme.

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.

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4. ***To implement*** revenue***, the authorising officer responsible*** shall ***draw*** up estimates of amounts receivable, ***establish*** entitlements to be recovered and ***issu*** 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. ▌

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 his/her 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.

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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.

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 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 sub-delegation and their staff receive regularly updated and appropriate information ***and training*** concerning the control standards and the methods and techniques available for that purpose;

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(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 at most, the member of staff shall inform the relevant panel referred to in Article 143.

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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 the 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 Union's interests. 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;

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(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. This includes 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 EU strategic objectives and generates EU added value. The Commission shall prepare a summary of the annual activity reports for the preceding year.

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The annual activity reports of the authorising officers and, where applicable, authorising officers by delegation of the Union institutions, Union offices, Union bodies and agencies shall be published on the website of the respective Union institution, Union office, Union body or agency in an easily accessible way no later than 1 July each year for the preceding year, subject to duly justified confidentiality and security considerations.

10. The authorising officer by delegation shall record, for each financial year, contracts concluded by the negotiated procedures referred to in points (a) to (f) of point 11.1 and point 39 of ▌ Annex ***1.*** If the proportion of negotiated procedures in relation to the number of contracts 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 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.

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Article 75

Keeping of supporting documents by ***authorizing*** officers

The authorising officer shall set up paper-based or electronic systems for the keeping of original supporting documents relating to and subsequent to budget implementation and budget implementation measures. Such documents shall be kept for at least five years from the date on which the European Parliament grants discharge for the ***financial*** year to which the documents relate.

Documents relating to operations not definitively closed shall be kept ***for longer than provided for in the first subparagraph, namely*** until the end of the year following that in which the operations are 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 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

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Article 76

Powers and duties of Heads of Union Delegations

1. Where Heads of Union delegations act as authorising officers by ***sub-delegation*** 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 ***sub-delegation*** 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 ***sub-delegated*** to them. They may be assisted in their duties by staff of the Commission.

To this effect, they shall take the measures necessary to prevent any situation susceptible to put at stake the responsibility of the Commission for the implementation of the budget ***sub-delegated*** to them, as well as any conflict of priorities which is likely to have an impact on the implementation of the financial management tasks ***sub-delegated*** to them.

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Where a situation or conflict referred to in the second subparagraph arises, the Heads of Union delegations shall inform the Directors-General responsible of the Commission and of the EEAS thereof without delay. 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 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 ***sub-delegation*** 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 the 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 ***sub-delegated*** 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 the Council having due regard, where appropriate, to their confidentiality.

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The 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 ***sub-delegation*** in accordance with Article 60***(2)*** shall reply to any request by the Commission's authorising officer by delegation 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 sub-delegating of*** powers ***to Heads of Union delegations*** are not detrimental to the discharge procedure under Article 319 TFEU.

4. Paragraphs 1, 2 and 3 shall also apply to the deputy Heads of Union delegations when they act as authorising officers by ***sub-delegation*** in the absence of the Heads of Union delegations.

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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 Union*** 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 ;

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(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 EEAS section of the budget as implemented by the EEAS. The accounting officer of the Commission shall remain responsible for the entire Commission section of the budget, including accounting operations relating to appropriations ***sub-delegated*** 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 EEAS section of the budget.

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 ▌

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The accounting officer shall be chosen by the ***Union*** institution on the grounds of his 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 interest.

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 by the accounting officer who is terminating his duties or, if it is not possible, by an official in his department to the new accounting officer.

The new accounting officer shall sign the trial balance in acceptance within one month from the date of transmission and he may make reservations.

The hand-over report shall also contain the result of the trial balance and any reservations made.

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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 all the Union institutions, the European offices referred to in Section 1 of Chapter 3 of this Title and the 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 diverge from those standards 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 this fact and the reasons for it.

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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 accounts referred to in Article 241 shall respect the budgetary principles laid down in this Regulation. They shall provide a detailed record of the implementation of the budget. They shall record all budgetary 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 and body shall draw up and keep updated documents describing the organisation of the accounts and accounting procedures of his Union institution and body.

2. Budget 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.

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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 all the Union institutions, the European offices referred to in Section 1 of Chapter 3 of this Title and the 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 ***Union*** institutions' financial situation and of budgetary implementation. The authorising officers shall guarantee the reliability of that information.

3. Before the adoption of the accounts by the ***Union*** institution, or 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 body referred to in Article 70.

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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 send ***to*** the accounting officer, in accordance with the rules adopted by 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 forwarded to the accounting officer.

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5. The responsible authorising officer 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 responsible authorising officer establishes an action plan in order to correct, in due time, possible weaknesses.

The ▌ authorising officer shall be responsible for the completeness of information transmitted 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 make reservations, if necessary, explaining exactly the nature and scope of such reservations.

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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 241 shall be kept for at least five years from the date on which the European Parliament grants 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 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

Each institution shall decide in which department the supporting documents are to be kept.

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Article 83

Content and keeping of budget accounts

1. The budget accounts shall show, for each subdivision of the budget:

(a) in the case of expenditure:

(i) the appropriations authorised in the initial budget, 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 thus available;

(ii) the commitments and payments in respect of the financial year;

(b) in the case of revenue:

(i) the estimates entered in the initial budget, the estimates entered in amending budgets, assigned revenue and the total amount of estimates thus determined;

(ii) the entitlements established and the amounts recovered in respect of the financial year in question;

(c) the commitments still to be paid and revenue still to be recovered carried forward from previous financial years.

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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 year;

(b) the clearance of outstanding commitments.

On the revenue side, amounts still to be recovered from previous financial years shall be shown separately.

Article 84

General accounts

1. The general accounts shall record, in chronological order using the double-entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the ***Union*** institutions and of the 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.

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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 open accounts in the name of the ***Union*** institution with financial institutions or national central banks or cause 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 provide, depending on internal control requirements, 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 in person.

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 points (ii), (iii), (v) or (vi) of Article 62(1)(c).

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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 for 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 ***Union*** institution has at its disposal sufficient funds to cover the cash requirements arising from budgetary implementation within the provisions of the applicable regulatory framework and shall set up procedures to ensure that none of the accounts opened in accordance with Article 85(1) and Article 89(3) is in debit.

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3. Payments shall be made by bank credit transfer, by cheque or, from imprest accounts, or if specifically authorised by the Accounting Officer, by debit card, 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 payees and enter them in the common file by 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 institution for which he/she is responsible.

Authorising officers shall inform the accounting officer of any change in the legal and payment details communicated to them by the payee and shall check that these details are valid before they authorise any payment.

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Article 87

The inventory of assets

1. Each Union institution and body referred to in ***Section 2 of Chapter 3 of this Title*** shall keep inventories showing the quantity and value of all the Union's tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

   Each Union institution and body referred to in ***Section 2 of Chapter 3 of this Title*** shall check that entries in the inventory 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. Each of the Union institutions and bodies referred to in ***Section 2 of Chapter 3 of this Title*** shall adopt provisions on safeguarding the assets included in their respective balance sheets and decide which administrative departments are responsible for the inventory system.

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SECTION 4

IMPREST ADMINISTRATOR

Article 88

Imprest accounts

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. ***Imprest accounts may also be set up for the collection of revenue other than own resources.***

In Union delegations, imprest accounts may also be used to execute payments, of limited amounts, by budgetary procedures, if such use is efficient and effective due to local requirements.

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 60 000 for each item of expenditure.

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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 the Council on the corresponding budget line for the current financial year and in accordance with the Commission's internal rules.

▌

2. In Union delegations, imprest accounts shall be set up for the payment of expenditure from both the Commission section of the budget and the EEAS section of the budget, ensuring full traceability of expenditure.

Article 89

Creation and administration 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 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.

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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 Commission's internal rules 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 the 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 setting up imprest accounts, 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 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.

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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.

4. Imprest accounts shall be endowed by the ***Union*** institution***'***s accounting officer and shall be placed under the responsibility of imprest administrators.

5. Payments made shall be followed by formal final validation decisions or payment orders signed by the authorising officer responsible.

   The imprest transactions shall be settled by the authorising officer by no later than the end of the following month, so that the accounting balance and the bank balance can be reconciled.

6. The accounting officer shall carry out ***checks***, or have ***them*** carried out by a staff member in his own department or in the authorising department ***specifically*** empowered for that purpose***.*** ***Those*** checks ▌ which ***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.

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CHAPTER 5

Liability of financial actors

SECTION 1

GENERAL RULES

Article 90

Withdrawal of delegation and suspension of duties given to financial actors

1. Authorising officers responsible may at any time have their delegation or ***sub-delegation*** withdrawn temporarily or definitively by the authority which appointed them.

2. The accounting officer 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.

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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 Union′s financial interests 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 referred to in Article 89 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 submitted to the authorities and bodies designated by the applicable legislation, in particular to the European Anti-Fraud Office.

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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.

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3. An authorising officer by delegation or ***sub-delegation who receives a binding instruction which he 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, shall so inform the authority from which he received the delegation or sub-delegation 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 sub-delegation has challenged, the authorising officer by delegation or sub-delegation shall not be held liable. He 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 may give rise to such a situation.***

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Any instructions confirmed in the circumstances described in this paragraph shall be recorded by the authorising officer by delegation ***responsible and mentioned in his annual activity report***.

4. In the event of ***sub-delegation*** 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 ***sub-delegation***.

5. In the event of ***sub-delegation*** to the 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. The 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 the implementation of the budget.

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Heads of Union delegations shall report on their responsibilities pursuant to the first subparagraph of this paragraph in accordance with Article 76(3).

Each year, Heads of Union delegations shall provide to the Commission′s authorising officer by delegation assurance on the internal management and control systems put in place in their delegation, as well as on the management of operations ***sub-delegated*** 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 the deputy Heads of Union delegations when they act as authorising officers by ***sub-delegation*** in the absence of the Heads of Union delegations.

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Article 93

Treatment of financial irregularities on the part of a member of staff

1. Without prejudice to the powers of the European Anti-Fraud Office ***and to the administrative autonomy of the Union institutions and bodies 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 to the panel referred to in Article 143 of this Regulation for an opinion***,*** by any of the following:

(a) the appointing authority in charge of disciplinary matters;

▌

(b) the responsible authorising officer, including Heads of Union delegations and their deputies in their absence acting as authorising officers by ***sub-delegation*** in accordance with Article 60(2) of this Regulation.

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Where the panel is directly informed of a matter by a member of staff, it shall transmit the file to the appointing authority or the Union institution or body concerned and shall inform the member of staff accordingly. The appointing authority may request the panel's opinion on the case.

2. The 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 an anonymised form.

Before submitting a request to the panel, the appointing authority or the authorising officer, as the case may be, 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 this notification does not seriously undermine the pursuit of further investigations. This shall also apply before any additional information is submitted to the panel.

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3. In the cases referred in paragraph ***1 of this Article,*** the panel referred to in Article 143 of this Regulation shall be competent to ***assess whether, on the basis of the elements submitted to it pursuant to paragraph 1a and any additional elements received,*** a financial irregularity has occurred. On the basis of the opinion of the panel***, the Union*** institution ***or body*** 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 143(2) ***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 or body concerned ▌***;***

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(b) another member appointed by the staff committee of the ***Union*** institution or body concerned ▌***;***

(c) a member of the Legal Service of the Union institution to whom the staff member concerned belongs.

▌Where the panel gives the opinion referred to in ***paragraph*** 1, it shall be addressed to the ***appointing authority of the Union*** institution or body ***concerned***.

5. The panel shall have no investigative powers. The Union institutions and bodies shall cooperate with the panel with a view to ensuring that it has all the information necessary for giving its opinion.

6. As referred to in paragraph 1, where the panel's analysis suggests that the case referred to is a matter for OLAF, it shall transmit the file to the relevant appointing authority without delay and shall inform OLAF at once.

7. The Member States shall fully support the Union in the enforcement of any liability, under Article 22 of the Staff Regulations of Officials of the European Union, of temporary staff to whom point (e) of Article 2 of the Conditions of Employment of Other Servants of the European Union applies.

▌

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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.

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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.

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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 ▌ Council Decision ***2014/335/EU, Euratom*** shall be entered in the budget in euros. ***The corresponding own resources*** shall be made available in accordance with Regulation (EC, Euratom) No 609/2014.

2. The authorising officer shall draw up a schedule indicating when the own resources defined in ▌ 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 the Decision referred to in the first paragraph.

   For accounting purposes, the authorizing 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.

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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.

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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 ▌ Council Decision ***2014/335/EU, Euratom***, which are paid at fixed intervals by the 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.

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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.*** The recovery order and the debit note shall be both 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 point at which 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 ▌.

▌

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3. To establish an amount receivable the authorising officer responsible shall ensure that:

(a) the receivable is certain, meaning that it is not subject to any condition;

(b) the receivable is of fixed amount, expressed precisely in cash terms;

(c) the receivable is due and is not subject to any payment time;

(d) the particulars of the debtor are correct;

(e) the amount to be recovered is booked to the correct budget 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 second subparagraph of Article 101(2).

4. The debit note shall be to inform the debtor that*:*

(a) the Union has established the amount receivable;

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(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*** by the deadline referred to in point (b) 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 shall 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 Union′s financial interests when he 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;

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(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 shall 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 cases referred to in points (a) or (b) of the second 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 proceed directly to the waiver according to the provisions laid down in 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 that dispatch through the financial information system.

5. Amounts wrongly paid shall be recovered.

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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 public supply ***contract or a public*** service contract ***as defined*** in ***Article 2***;

   (b) three and a half percentage points in all other cases.

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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) and specified in the debit note 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 this interest is actually received.

4. In the case of fines or other penalties, the interest rate for amounts receivable not paid by 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 decision imposing a fine or other penalty 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.

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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 will be set at zero percentage points.

SECTION 4

AUTHORISATION OF RECOVERY

Article 100

Authorisation of recovery

1. The authorisation of recovery is the act by which the authorising officer responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which that authorising officer responsible has established.

2. The ***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.

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If the efficient and timely protection of the Union′s financial interests so requires, the ***other Union institutions*** may ***request***, in exceptional circumstances, ***the Commission to*** adopt such an enforceable decision for ***their*** benefit ▌ with respect to claims arising in relation to staff to whom the Staff Regulations apply or in relation to Members or former Members of an Union institution***, provided that these institutions have agreed with the Commission on the practical modalities for the application of this Article***.

The exceptional circumstances ***shall be deemed to exist*** when the possibility to have a voluntary payment and to recover the debt by offsetting as provided for in Article 101(1) of this Regulation ***provided no prospect of recovery*** by the ***Union*** institution concerned and the ***conditions for waiving the debt 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 corresponding to the ***Union*** institution concerned, which shall act as authorising officer. The revenue shall be entered as general revenue except if it ***constitutes*** assigned revenues as provided for in Article 21(3).

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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 case of 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 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 Union budget by offsetting them ***in accordance with Article 102.***

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2. 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 waiver decision shall be substantiated. The authorising officer may delegate the waiver decision.

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, delay in the dispatch of the debit note in the terms defined in Article 98(2), or the insolvency of the debtor, or as a result of any other insolvency proceedings;

(c) where recovery is inconsistent with the principle of proportionality.

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3. In the case referred to in point (c) of paragraph 2, the authorising officer responsible shall act in accordance with predetermined procedures established within each ***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 may also have to 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.

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5. Each ***Union*** institution shall send to the European Parliament and ***the*** Council each year a report on the waivers ***granted by the Union institution concerned pursuant to paragraphs 2 to 4 of this Article. The information on the waivers below EUR 60 000 shall be provided as a global 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 lay down in its internal rules the conditions and procedure for delegating the power to cancel an established amount receivable.

7. The Member States shall in the first instance be responsible for carrying out controls and audits and for recovering amounts unduly spent, as provided for in the 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.

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8. The Commission shall make financial corrections on Member States in order to exclude from Union financing expenditure incurred 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 budget. Where such amounts cannot be identified precisely, the Commission may apply extrapolated or flat-rate corrections in accordance with the 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 the 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.

9. 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.

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Article 102

Recovery by offsetting

1. Where the debtor has a claim on the Union or on the executive agency when it implements the Union budget that is certain as defined in 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, following the deadline referred to in point (b) of 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 deadline referred to in point (b) of the first subparagraph of Article 98(4).

The accounting officer ***may*** also recover by offsetting before 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, the accounting officer shall consult the authorising officer responsible and inform the debtors concerned, including the means of redress in accordance with Article 133.

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Where the debtor is a national authority or one of its administrative entities, the accounting officer shall also inform the Member State concerned at least 10 working days in advance of his intention to resort to recovery by offsetting. However, in agreement with the Member State or administrative entity concerned, the accounting officer may proceed with the recovery by offsetting before the 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.

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) and specified in the debit note, 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.

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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 the letter of formal notice sent by the accounting officer, the accounting officer shall enforce a recovery decision secured either in accordance with Article 100(2) or by legal action.

Article 104

Additional time for payment

The accounting officer, in collaboration with the authorising officer responsible, may allow additional time for payment only at the written request of the debtor, with due indication of the reasons, and provided that the following two 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 ***Union*** institution**'**s accounting officer.

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The guarantee referred to in point (b) of the first subparagraph may be replaced by a joint and several guarantee by a third party approved by the ***Union*** institution**'**s accounting officer.

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 subparagraph when, on the basis of his 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 105

Limitation period

1. Without prejudice to the provisions of specific regulations and the application of Council 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 communicated to the debtor in the debit note as specified in point (b) of the first subparagraph of Article 98(4).

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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 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. The new limitation period of five years shall not begin 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.

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6. Where the accounting officer allows the debtor additional time for payment in accordance with Article 104, this shall be considered as an interruption of the limitation period. The 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 established in paragraphs 2 to 6.

Article 106

National treatment for Union entitlements

In the event of insolvency proceedings, Union entitlements shall be given the same preferential treatment as entitlements of the same nature due to public bodies in the Member States where the recovery proceedings are being conducted.

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Article 107

Fines, penalties, sanctions and accrued interest imposed by the ***Union*** institutions

1. Amounts received by way of fines, penalties and sanctions, and any accrued interest or other income generated by them shall not be ***entered into the budget*** as long as the decisions imposing them may be overruled by the Court of Justice of the European Union.

2. The amounts referred to in paragraph 1 shall be ***entered into 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 into the budget in the following financial year.***

   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 into the budget***.

3. Paragraph 1 shall not apply to decisions on clearance of accounts or financial corrections.

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Article 108

Recovery of fines, other penalties or sanctions imposed by the ***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 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 provide a financial guarantee acceptable to the accounting officer of the Commission. The guarantee shall be independent of the obligation to pay the fine***, other*** penalty ***or sanction*** and shall be enforceable upon ▌ demand. It shall cover the claim as to principal and the interest due as specified in Article 99(4).

2. The Commission shall secure the provisionally cashed amounts by having them invested in financial assets thus ensuring the security and liquidity of the monies whilst also aiming at yielding a positive return.

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3. After the exhaustion of all legal remedies and where the fine ▌ **,** penalty ***or sanction*** has been confirmed ***by the Court of Justice of the European Union or where the decision imposing such a fine, penalty or sanction may no longer be overruled by the Court,*** any of the following measures shall be taken:

(a) the provisionally collected amounts and the return on them shall be entered into the budget in accordance with Article 107***(2)*** ▌ ;

(b) where a financial guarantee has been lodged, the latter shall be enforced and the corresponding amounts entered in the budget.

Where the amount of the fine ▌ **,** 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 defined 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 into the budget.

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4. After all legal remedies have been exhausted and where the fine ▌**,** penalty ***or sanction*** has been cancelled or ***their amount has been*** reduced**,** any of the following measures shall be taken:

(a) the amounts provisionally cashed ▌ or ***in case of a reduction, the relevant*** part thereof, ***including*** any return shall be repaid to the third party concerned;

(b) where a financial guarantee has been lodged, it shall be released accordingly.

In the case of point (a) of the first subparagraph, where the overall return on the provisionally cashed amount has been negative, the loss incurred shall be deducted from the amount to be repaid.

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Article 109

Compensatory interests

Without prejudice to ***Articles*** 99(2) and ***116(5) and*** for cases other than ***fines, penalties and sanctions as*** referred to in ***Articles 107 and 108,*** when an amount has to be reimbursed following a Court of Justice of the European Union judgment 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*, in force on the first calendar day of ***each*** month, ***but 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 will be set at zero ***percent***.

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CHAPTER 7

Expenditure operations

Article 110

Financing decisions

1. ***A*** budgetary commitment shall be preceded by a financing decision adopted by the ***Union*** institution or the authorities 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 the first subparagraph of Article 58(2), of administrative support expenditure and of contributions to the bodies referred to in Articles 70 and 71. ▌

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2. The financing decision shall ▌ constitute at the same time 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 respective part or parts of the financing decision constituting the work programme, in full compliance with the requirements of the basic act in question.*** The part which contains the work programme shall be published on the internet site 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 budgetary 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.

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3. In addition, ***the financing decision*** shall set out the following:

(a) for grants: type of applicants targeted by the call for proposals or direct award; global budgetary envelope reserved for grants;

(b) for procurement: the global budgetary envelope reserved for the procurements;

(c) for contributions to trust funds referred to in Article 234 the appropriations reserved for the trust fund for the year together with the amounts planned over its duration ***from the Union 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 specific reference to prizes with a unit value of EUR 1 000 000 or more;

(e) for financial instruments: the amount allocated to the financial instrument;

(f) in the case of indirect implementation: the entity or person pursuant to point (c) of Article 62(1) or, the criteria to be used to select the entity or person;

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(g) for contributions to blending facilities: the amount allocated to the blending facility and the list of entities participating in the blending facility;

(h) for budgetary guarantees: the amount of annual provisioning and, when 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 internet site 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 annual 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.

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Article 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 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 and legal commitments shall be adopted 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 signed by the Heads of Union delegations, or in their absence by their deputies, on the instruction of the Commission's authorising officer responsible 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 the payment executed from the imprest accounts of a value not exceeding EUR 2 500.

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The authorising officer responsible shall make a budgetary commitment before entering into a legal commitment with third parties or transferring funds to a trust fund referred to in Article 234.

This obligation shall not be applicable to:

(a) 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 prior booking of the individual budgetary commitment is not possible. The booking of the budgetary commitment shall be done without delay after entering into a legal commitment with third parties.

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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 this 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 request for payment in which case the impact on the accounting system will be limited to the general accounts.

4. The validation decision shall be expressed through electronically secured signature ▌ in ***accordance with*** Article 146 by the authorising officer or by 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.

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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 that:

(a) for the pre-financing the conditions required in the legal commitment for the payment of the pre-financing are met;

(b) for interim and balance payments in contracts 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 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. ***Cost estimates shall not be deemed to comply with the eligibility conditions foreseen in Article 186(3).*** The same principle is valid also for interim and final reports not associated to a payment request.

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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 an amount of expenditure which has been previously validated.

Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, and subject to the authorising officer's risk analysis, the authorising officer may order the application of a direct debit system from an imprest account, or if specifically authorised by the accounting officer in accordance with Article 86(3).

▌

Article 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;

(b) global: when at least one of the elements necessary to identify the individual commitment is still not known;

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(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.

Routine administrative expenditure relating to Union delegations and Union Representations may however be covered by provisional 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.

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4. The global budgetary commitment shall be implemented either by the conclusion of a financing agreement, itself providing for the subsequent conclusion of one or more legal commitments, or by the conclusion of one or more legal commitments.

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 the conclusion of 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 adopted 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 the conclusion of one or more legal commitments giving rise to an entitlement to subsequent payments. However, in cases relating to expenditure on staff management***, Members or former Members of a Union institution*** or relating to communication expenditures engaged in by the institutions for the coverage of Union events or in cases referred to in point 14.5 of the Annex to this Regulation, they may be implemented directly by payments.

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Article 113

Commitments for EAGF appropriations

1. For each financial year, the EAGF appropriations shall include non-differentiated appropriations ***for measures according to Article 4(1) of Regulation (EU) No 1306/2013. Expenditure*** related to the measures referred to in Article 4(2) and Article 6 of Regulation (***EU***) No 1306/2013, 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*** shall constitute global provisional commitments, which ***shall*** not exceed the total appropriations entered for the EAGF.

3. Global provisional commitments for the EAGF which have been made for a financial year and which have not given rise to a commitment on specific lines in the budget nomenclature by 1 February of the following financial year shall be cancelled in respect of the financial year concerned.

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4. Expenditure 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 in by Member States, be the subject of a commitment by chapter, article and item. Such ▌ commitments may be made after the lapse 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 the 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 sub-subparagraph shall be deducted from the global provisional commitment referred to ***in*** paragraph 1.

5. Paragraphs 2 and 3 shall apply subject to the examination and acceptance of accounts.

Article 114

Time limits for commitments

1. Subject to Articles 111(2) and 264(3), legal commitments relating to individual or provisional budgetary commitments shall be concluded by 31 December of year n***, year n being the one in which the budgetary commitment was made***.

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2. Global budgetary commitments shall cover the total cost of the corresponding legal commitments concluded 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 207(4) shall be concluded 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 agreements shall be concluded by 31 December of year n+1 ▌. In this case, the global budgetary commitment shall cover the ***total*** costs of legal commitments implementing the financing agreement concluded ***within a period no longer than three years following the date of conclusion of the financing agreement, or*** until the end of the period of implementation of the financing agreement ***in the following cases:***

(a) for multi-donor actions;

(b) for blending operations;

(c) for legal commitments relating to audit and evaluation;

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(d) in the following exceptional circumstances:

(i) modifications made to the legal commitments which have already been concluded;

(ii) legal commitments are to be concluded after early termination of an existing legal commitment;

(iii) changes of the implementing entity.

3. The third subparagraph of paragraph 2 shall not apply to the multiannual programmes that are implemented through split commitments in the following cases:

(a) the instrument for Pre-Accession Assistance;

(b) the European Neighbourhood and Partnership Instrument.

In those cases, the appropriations shall be automatically decommitted by the Commission in accordance with the 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.

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5. Any parts of budgetary commitments which have not been executed by payments six months after the final date for implementation shall be decommitted ▌.

6. The amount of a budgetary commitment for which no payment within the meaning of Article 115 has been made within two years of the signing of 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 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 basic act or the contract and*** shall cover one or more of the following operations:

(a) payment of the entire amount due;

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(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 sound financial management***; such pre-financing 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 performance of the contract. It may clear pre-financing in whole or in part, without prejudice to the provisions of the basic act;

(iii) payment of the balance of the amounts due where the action or contract is completely executed.

(c) payment of a provision into the common provisioning fund established pursuant to Article 212.

The payment of the balance may not be repeated and shall clear all preceding expenditure, a recovery order shall be issued to recover unused amounts.

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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 and at the latest at the end of the project. The clearing will be performed on the basis of information on costs incurred or confirmation of the conditions for payment being achieved in accordance with Article 125 as validated by the authorising officer in accordance with Article 111(3).

For grant agreements, contracts or contribution agreements above EUR 5 000 000, 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 the obligations set out in Article 82(2).

For the purposes of the second subparagraph, appropriate provisions shall be included in the legal commitments signed.

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Article 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.

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A payment request shall include the following essential elements:

(a) the creditor's identification;

(b) the amount;

(c) the currency;

(d) the date.

Where at least one essential element is missing, the payment request shall be rejected.

The creditor shall be informed in writing of the 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.

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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 indeed eligible. The remaining time allowed for payment shall begin to run again 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 that suspension.

5. Except in the case of Member States, the European Investment Bank and the European Investment Fund, 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.

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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 upon a demand 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 the time-limits and on 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 117
Appointment of the internal auditor

1. Each ***Union*** institution shall establish an internal auditing function which shall be performed in compliance with the relevant international standards. The internal auditor appointed by the ***Union*** institution shall be accountable to the latter for verifying the proper operation of budgetary implementation systems and procedures. The internal auditor may be neither authorising officer nor accounting officer.

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2. For the purposes of the internal auditing of the EEAS, Heads of Union delegations, acting as authorising officers by ***sub-delegation*** in accordance with Article 60(2), shall be subject to the verifying powers of the internal auditor of the Commission for the financial management ***sub-delegated*** 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 EEAS section of the budget.

3. Each ***Union*** institution shall appoint its internal auditor in accordance with arrangements adapted to its specific features and requirements. The ***Union*** institution shall inform the European Parliament and Council of the appointment of the internal auditor.

4. Each ***Union*** institution shall determine, in accordance with its specific features and its requirements, the scope of the mission of the 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. The ***Union*** institution may appoint as internal auditor, by virtue of their particular competence, an official or other servant covered by the Staff Regulations chosen from nationals of the Member States.

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6. If two or more ***Union*** institutions appoint the same internal auditor they shall make the necessary arrangements for him to be declared liable for his actions as laid down in Article 121.

7. The ***Union*** institution shall inform the European Parliament and Council when the duties of the internal auditor are terminated.

Article 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 be responsible, in particular, 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;

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(b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each budgetary implementation operation.

2. The internal auditor shall perform his or her duties in relation to all the ***Union*** institution's activities and departments. He or she shall enjoy full and unlimited access to all information required to perform his or her duties, if necessary on the spot access, including in the 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 on his or her findings and recommendations. The ***Union*** institution 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 the other ***Union*** institutions.

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4. The internal auditor shall also submit to the ***Union*** institution 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 report shall also mention any systemic problems detected by the panel set up pursuant to Article 143 where it gives the opinion referred to under Article 93.

5. The internal auditor shall, during the elaboration of his 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 within the meaning of paragraph 3 of this Article with due regard to confidentiality requirements.

7. The ***Union*** institution shall make available the contact details of the internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.

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8. Each year the ***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 the Council as provided for in Article 247.

9. The reports and findings of the internal auditor, as well as the report of the ***Union*** institution, shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.

10. The ***Union*** institution shall provide the internal auditor with the resources required for the proper performance of his audit function and a mission charter detailing his tasks, duties and obligations.

Article 119

Work programme of the internal auditor

1. The internal auditor shall adopt his work programme and shall submit it to the ***Union*** institution.

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2. The ***Union*** institution may ask the internal auditor to carry out audits not included in the work programme referred to in paragraph 1.

Article 120

Independence of the internal auditor

1. The internal auditor shall enjoy complete independence in the conduct of his audits. Special rules applicable to the internal auditor shall be laid down by the ***Union*** institution 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. He may not be given any instructions nor be restricted in any way as regards the performance of the functions which, by virtue of his appointment, are assigned to him under the Financial Regulation.

3. If the internal auditor is a member of staff, he or she shall exercise exclusive audit functions in full independence and assume responsibility as laid down in the Staff Regulations ▌ .

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Article 121

Liability of the internal auditor

The ***Union*** institution alone, proceeding in accordance with this Article, may act to have the internal auditor, as an official or other servant subject to the Staff Regulations, declared liable for his actions.

The ***Union*** institution shall take a reasoned decision to open an investigation. That decision shall be communicated to the interested party. The ***Union*** institution 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 on the subject of that report.

On the basis of the report and the hearing, the ***Union*** institution shall adopt either a reasoned decision terminating the proceedings or a reasoned decision in accordance with Articles 22, 86 and Annex IX of the Staff Regulations. Decisions imposing disciplinary measures or financial penalties shall be notified to the interested party and communicated, for information purposes, to the other ***Union*** institutions and the Court of Auditors.

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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 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 duties as internal auditor. Such an action must be lodged within three months running from the calendar day on which the act in question is notified.

Such actions shall be investigated and heard as provided for in Article 91(5) of the Staff Regulations of Officials of the European Union.

Article 123

Internal audit progress committees

1. Each 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.

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2. The composition of the internal audit progress committee shall be decided by each Union institution taking into account each Union institution's organisational autonomy and the importance of independent expert advice.

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TITLE V

COMMON RULES

CHAPTER 1

Rules applicable to direct, indirect and shared ***management***

Article 124

Scope

With the exception of Article 138, references in this Title to legal commitments shall be construed as references to legal commitments, framework contracts and financial framework partnership agreements.

Article 125

Forms of Union contribution

1. Union contributions ***under*** direct, shared and indirect ***management*** shall help achieve a Union policy objective and results specified and may take any of the following forms:

(a) financing not linked to costs of the relevant operations based on:

(i) either the fulfilment of conditions set out in sector specific legislation or Commission Decisions; or

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(ii) the achievement of results measured by reference to the 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).

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Union contributions under points (c), (d) and (e) shall be established in accordance with Article 181 or sector **-**specific legislation ***in direct and indirect management and in accordance with sector-specific legislation in shared management***. Union contributions under point (a) shall be established in accordance with Article 181, sector**-**specific legislation or a Commission decision ***in direct and indirect management and in accordance with sector-specific legislation in shared management***.

2. When determining the appropriate form of a contribution, the potential recipients' interests and accounting methods shall be taken into account to the greatest possible extent.

3. The responsible authorising officer shall report on financing not linked to costs pursuant to point (a) and (f) of paragraph 1 of this Article in the annual activity report referred to in Article 74(9).

Article 126

Cross-reliance on assessment

The Commission may rely in full or in part on assessments made by itself or other entities, including donors, insofar as these assessments were made with regard to conditions equivalent to those set out in this Regulation for the applicable method of budget implementation. To this end, the Commission shall promote the recognition of internationally accepted standards or international best practices.

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Article 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 the 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 evidence of the independence and competence of the auditor. To this end, the report of the independent auditor and the related audit documentation shall be made available to the Court of Auditors, the Commission, the European Parliament and the audit authorities of Member States at their request.***

Article 128

Use of already available information

Information already available at Union institutions, the management authorities and other bodies and entities implementing the Union budget, shall be used to the extent possible to avoid asking persons and entities receiving Union funds for the same information more than once.

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Article 129

Cooperation for protection of Union's financial interests

1. Any person or entity receiving Union funds shall fully cooperate in the protection of the Union's financial interests and ***shall,*** as a condition for receiving the funds***, grant*** the necessary rights and access required for the authorizing officer responsible, ***for those participating Member States, also the European Public Prosecutor's Office (EPPO) after its establishment,*** the European Anti-Fraud Office (OLAF), ▌ the European Court of Auditors ▌ , and***,*** where appropriate***,*** 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 concerning investigations conducted by the European Anti-Fraud Office (OLAF)***[1].

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 ensure that*** any third parties involved in the implementation of Union funds ***grant*** equivalent rights.

▌

1 ***OJ L 248, 18.9.2013, p. 1.***

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CHAPTER 2

Rules applicable to direct and indirect ***management***

SECTION 1

RULES ON PROCEDURES AND ***MANAGEMENT***

Article 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 Article 62(1) or beneficiaries. Financial framework partnership agreements shall be reviewed at least once every multiannual financial framework without prejudice to point (c) of paragraph 4. Contribution agreements or grant agreements may be signed under such agreements.

2. The ***purpose of the financial framework partnership agreement is to facilitate the achievement of the Union objectives by stabilising the contractual terms of the cooperation. As such the*** financial framework partnership agreement shall specify the forms of financial cooperation ***and include an obligation to set out, in the specific agreements signed, arrangements for monitoring the achievement of specific objectives*** These agreements shall also***, on the basis of the results of the 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 Article 62(1) or beneficiaries, including audit procedures.

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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 funds pursuant to point (c) of Article 62(1) or beneficiaries of grants. ***Such agreements shall be without prejudice to Articles 127 and 129.***

4. In case of financial framework partnerships implemented through specific grants:

(a) the 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 provisions of the financial framework partnership agreement and the specific grant agreement ***as a whole*** shall ▌ comply with the requirements of Article 201;

(c) the duration of the partnership may not exceed four years save in duly justified cases ***which shall be clearly indicated in the annual activity report referred to in Article 74(9)***;

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(d) the financial framework partnership shall be used 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 such a partnership shall be subject to the ex-post publication procedures referred to in ▌ Article ***38.***

5. The 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, where those systems and procedures have been assessed in accordance with paragraphs 2, 3 and 4 of Article 154. In such a case point (d) of Article 196(1) shall not apply. Where the procedures of the beneficiary for providing financing to third parties referred to in point (d) of Article 154(4) were positively assessed ***by the Commission***, Article 204 and Article 205 shall not apply.

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6. In the case of financial framework partnership agreement implemented through specific grants the verification of the operational and financial capacity referred to in Article 198 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 case of financial framework partnerships implemented through contribution agreements the provisions of the financial framework partnership agreement and the contribution agreement ***as a whole*** shall ▌ comply with the requirements of Article 155(6) and Article 129.

▌

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Article 131

Suspension, termination and reduction

1. Where the award procedure has been subject to irregularities or fraud, the authorising officer responsible shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure. The authorising officer responsible shall inform European Anti-Fraud Office immediately of suspected cases of 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 sign the legal commitment or cancel the award of a prize;

   (b) suspend payments;

   (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***.

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3. The authorising officer responsible may also suspend payments 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 an entity or person implementing Union funds pursuant to point (c) of Article 62(1) 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 shall resume as soon as possible.

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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 ***paragraphs*** 2 or 3, the authorising officer responsible may reduce the grant, the prize, the contribution under the contribution agreement or the price 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 case of financing referred to in point (e) of Article 125(1) 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.

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Article 132

Record-keeping

1. Recipients shall keep records, supporting documents, statistical records and other records pertaining to the funding, including 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 ***60 000.***

2. Records and documents pertaining to audits, appeals, litigation, the pursuit of claims relating to the legal commitment or to European Anti-Fraud Office investigations ▌ shall be retained until such audits, appeals, litigation, ***pursuit of*** claims or investigations have been closed***. In the case of records and documents pertaining to European Anti-Fraud Office investigations, the obligation to retain records and documents shall apply once these 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 these documents meet the applicable legal requirements in order to be considered conform to originals and to be relied on for audit purposes.

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Article 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.

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 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 Title VIII.

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SECTION 2

EARLY DETECTION AND EXCLUSION SYSTEM

Article 135

Protection of the Union's financial interests by means of detection of risks and imposition of administrative sanctions

1. In order to protect the Union's financial interests, 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 listed under paragraph 2,*** which pose a risk to the Union's financial interests;

(b) the exclusion of ***persons or entities listed under paragraph 2, which*** are in one of the exclusion situations listed in Article 136(1);

(c) the imposition of a financial penalty on a recipient pursuant to Article 138.

2. The early detection and exclusion ***system*** shall ▌apply to:

(a) participants and recipients as defined in Article 2;

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(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 Article 62(1) ***and to Article 154(4***) on the basis of information notified in accordance with paragraph ***6*** of Article 155 ▌;

(d) any person or entity receiving Union funds under financial instruments exceptionally implemented in accordance with point (a) of Article 62(1) ▌;

(e) participants or recipients on which entities implementing the budget in accordance with Article 63 have provided information ***as reported by Member States in accordance with sector-specific rules*** in accordance with point (d) of Article 142(2)***;***

(f) sponsors as referred to in Article 26.

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3. The decision to register an early detection information ***on risks referred to in point (a) of paragraph 1,*** to exclude ***persons or entities listed under 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 paragraph 1 of Article 142. Where such a decision is taken on the basis of paragraph 4 of Article 136, the information registered in the database shall include the information concerning the persons referred to in paragraph 4 of Article 136.

4. The decision to exclude ***persons or entities listed under paragraph 2 or to*** impose financial penalties ***on a recipient, shall*** be based on a final judgment or ▌***,*** in the situations referred to in Article 136(1)***, on a final administrative decision,*** or on a preliminary classification in law by the panel referred to in Article 143 in the situations referred to in Article 136(2) in order to ensure a centralised assessment of those situations. In the cases referred to in Article 141, the authorising officer responsible shall reject a participant from a given ***award*** procedure.

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Without prejudice to Article 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 referred to in Article 136(2), only after having obtained a recommendation of the panel referred to in Article 143.

Article 136

Exclusion criteria and administrative sanctions

1. The authorising officer responsible shall exclude a person or entity referred to in Article 135(***2***) from participating in award procedures governed by this Regulation or from being selected for implementing Union funds where:

(a) the person or entity is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or where it is in any analogous situation arising from a similar procedure provided for under EU or national laws or regulations;

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(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 performance 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) attempting to influence the decision-making of the authorising officer responsible during the award procedure;

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(v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;

(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 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[1];

(ii) corruption, as defined in Article ***4(2) of Directive (EU) 2017/1371 and 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[2], and ***conduct referred to*** in Article 2(1) of Council Framework Decision 2003/568/JHA[3], as well as corruption as defined in the applicable law;

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1 OJ C 316, 2711.1995, p. 48.
2 OJ C 195, 25.6.1997, p. 1.
3 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).

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(iii) ***conduct related to*** a criminal organisation, as ***referred to*** in Article 2 of Council Framework Decision 2008/841/JHA[1];

(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[2];

(v) terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA[3], 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[4];

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1 Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

2 Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

3 ***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***).

4 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).

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(e) the person or entity has shown significant deficiencies in complying with main obligations in the performance of a legal commitment financed by the budget***, which has led to the early termination of a legal commitment or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks and audits or investigations by an authorising officer, OLAF or the Court of Auditors***;

(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[1]***;***

(g) it has been established by a final judgment or final administrative decision that the person or entity has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations of mandatory application 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 provided for in point (g).

[1] 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).

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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, or in the case referred to in point (***c***) of paragraph 1, the authorising officer responsible shall exclude a person or entity referred to in Article 135(***2***) on the basis of a preliminary classification in law of a conduct referred to in those points, having regard to established facts or other findings contained in the recommendation of the panel referred to in Article 143.

The preliminary classification referred to in the first subparagraph does not prejudge the assessment of the conduct of the person or entity referred to in Article 135(***2***) concerned by the competent authorities of the Member States under national law. The authorising officer responsible shall review its decision to exclude the person or entity referred to in Article 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 this duration on the basis of established facts and findings and having regard to the recommendation of the panel referred to in Article 143.

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Where such final judgment or final administrative decision holds that the person or entity referred to in Article 135(***2***) is not guilty of the conduct subject to a preliminary classification in law, on the basis of which it 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 the ***EPPO, after its establishment and for participating Member States, the*** Court of Auditors, European Anti-Fraud Office 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 entities and persons implementing Union funds pursuant to point (c) of Article 62(1) ▌;

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(d) information transmitted by entities implementing Union funds pursuant to point (b) of Article ***62(1) as set out in point (d) of Article 142(2)***;

(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.

3. Any decision of the authorising officer responsible taken under Articles 135 to 142 or, where applicable, any recommendation of the panel referred to in Article 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 Union's financial interests and image;

(b) the time which has elapsed since the relevant conduct;

(c) ***the*** duration ***of the conduct*** and its recurrence;

(d) the ***intentionality*** or degree of negligence;

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(e) ***in the cases referred to in*** point (b) of paragraph 1 of this Article***, 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 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 the declaration referred to in Article 137(1).

4. The authorising officer responsible shall exclude the person or entity referred to in Article 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 135(***2***), or who has powers of representation, decision or control with regard to these persons or entities is in one or more of the situations referred to in points (c) to (***h***) of paragraph 1;

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(b) a natural or legal person that assumes unlimited liability for the debts of that person or entity referred to in Article 135(***2***) is in one or more of the situations referred to in point (a) or (b) of paragraph 1;

(c) a natural person who is essential for the award or for the implementation of the legal commitment and is in one or more of the situations referred to in point (c) to (***h***) of paragraph 1.

5. In the cases referred to in paragraph 2 of this Article, the authorising officer responsible may exclude a person or entity referred to in Article 135(***2***) provisionally without the prior recommendation of the panel referred to in Article 143, where their participation in an award procedure or their selection for implementing Union ***funds would*** constitute a serious and imminent threat to the Union's financial interests. In such cases, the authorising officer responsible shall immediately refer the case to the panel ***referred to in Article 143*** and shall take a final decision no later than 14 days after having received the recommendation of the panel.

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6. The authorising officer responsible, having regard, where applicable, to the recommendation of the panel referred to in Article 143, shall not exclude a person or entity referred to in Article 135(***2***) from participating in an award procedure and from being ***selected to implement Union*** funds where:

(a) the person or entity has taken remedial measures specified in paragraph 7, 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;

(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 EU or national laws or regulations.

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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 135(***2***) and inform the panel referred to in Article 143 of those reasons.

7. The measures referred to in paragraph 6, which remedy the exclusion situation may 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 135(***2***), appropriate to correct the conduct and prevent its further occurrence;

(b) proof that the person or entity referred to in Article 135(***2***) has undertaken measures to compensate or redress the damage or harm caused to the Union's financial interests by the underlying facts giving rise to the exclusion situation;

(c) proof that the person or entity referred to in Article 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.

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8. The authorising officer responsible, having regard, where applicable, to the revised recommendation of the panel referred to in Article 143, shall, without delay, revise its decision to exclude a person or entity referred to in Article 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.

9. In the case referred to in point (a) of Article 135(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.

Article 137

Declaration and evidence of absence of situation of exclusion

1. A participant shall declare whether it is in one of the situations referred to Article 136(1) or Article 141(1), and, where applicable, whether it has taken any remedial measures referred to in point (a) of Article 136(6).

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A participant shall also declare whether the following persons or entities are in one of the situations referred to in points (c) to (h) of Article 136(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 of the participant as referred to in point 6 of Article 3 of Directive (EU) No. 2015/849.

The participant or the recipient shall inform the authorising officer responsible without delay of any changes in the situations as declared.

Where appropriate, the candidate or tenderer shall provide the same declaration 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 this declaration has 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 declaration does not exceed one year.

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The authorising officer responsible may waive the requirements under the first and second subparagraphs for very low value contracts ***below the amount referred*** to ▌ in ***point 14.4 of*** Annex ***1.***

2. Whenever requested by the authorising officer responsible and where this is necessary to ensure the proper conduct of the procedure, the participant, the entity on whose capacity a candidate or tenderer intends to rely or a subcontractor of such a candidate or tenderer shall provide:

(a) appropriate evidence that it is not in one of the exclusion situations referred to in Article 136(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 one or several of those persons are not in one of the exclusion situations referred to in points (c) to (f) of Article 136(1).

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(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 136(1).

3. ***Where applicable and in accordance with national legislation, the*** authorising officer responsible ***may*** accept as satisfactory evidence that a participant or an entity referred to in paragraph 2 is not in one of the situations described in points (a), (c), (d)***, (f), (g)*** or (***h***) of Article 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 satisfactory evidence that a participant or an entity referred to in paragraph 2 is not in the situation described in point (a) or (b) of Article 136(1), a recent certificate issued by the competent authority of the State concerned. 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.

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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 it can access ***such evidence*** on a national database free of charge;

(b) if such evidence has already been submitted to it 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 ***it recognises that*** there is a material impossibility to provide such evidence ▌.

5. Paragraphs 1 to 4 shall not apply to persons and entities implementing Union funds pursuant to point (c) of Article 62(1) or to bodies within the meaning of Articles 70 and 71.

For financial instruments and in the absence of rules and procedures fully equivalent to those referred to in point (d) of Article 154(4), final recipients and intermediaries shall provide the person or entity implementing Union funds pursuant to point (c) Article 62(1) with a signed declaration on honour confirming that they are not in one of the situations referred to in points (a), (b), (c) and (d) of Article 136(1) or points (b) and (c) of Article 141(1) or in a situation deemed equivalent following the assessment carried out in accordance with Article 154(4).

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Where financial instruments are exceptionally implemented in accordance with point (a) 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), (b), (c) and (d) of Article 136(1) or points (b) and (c) of Article 141(1).

Article 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 143, impose a financial penalty on a recipient with whom a legal commitment has been concluded and who is in a situation referred to in points (c), (d), (e) or (f) of Article 136(1).

   Regarding the situations referred to in points (c), (d), (e) and (f) of Article 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 136(3).

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Regarding the situations referred to in points (c), (d) ***and*** (e) ▌ of Article 136(1), the financial penalty may be imposed in addition to an exclusion ***where this*** is necessary to protect the Union's financial interests, ***due to*** the ▌ systemic and recurrent conduct ***adopted by the recipient*** with the intention to unduly obtain Union funds.

Notwithstanding the first, second and third subparagraphs, a financial penalty shall not be imposed on a recipient who has disclosed, in accordance with Article 137, 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 case 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.

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Article 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 of a final administrative decision:***

(i) five years for the cases referred to in point (d) of ▌ Article 136(1);

(***ii***) three years for the cases referred to in points (c), (e)***, (f), (g)*** and (***h***) of Article 136(1).

A person or entity referred to in Article 135(***2***) shall be excluded as long as it is in one of the situations referred to in points (a) and (b) of Article 136(1).

2. The limitation period to exclude and/or impose financial penalties on a person or entity referred to Article 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), (c), (d)***, (e), (g)*** and (***h***) of Article 136(1);

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(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 136(1).

The limitation period shall be interrupted by an act of a national authority, of the Commission, ***of the*** European Anti-Fraud Office, ***for those Member States participating, of the EPPO, after its establishment, of*** the panel referred to in Article 143 or of any entity involved in the implementation of the budget, if such an act is notified to the person or entity referred to in Article 135(***2***) 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 136(1), the limitation period to exclude person or entity referred to in Article 135(***2***) 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 the person or entity referred to in Article 135(***2***) concerned qualifies under several of the grounds listed in Article 136(1), the limitation period of the most serious of those grounds shall apply.

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Article 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 internet site the following information related to the exclusion and, where applicable, the financial penalty in the cases referred to in points (c), (d), (e)***, (f), (g)*** and (***h***) of Article 136(1):

(a) the name of the person or entity referred to in Article 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 136(2) the publication shall indicate that there is no final judgment or, where applicable, final administrative decision. In those 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.

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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 143, as the case may be. That decision shall take effect three months after its notification to the person or entity referred to in Article 135(***2***) concerned.

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.

In accordance with Regulation (EC) No 45/2001, where personal data is concerned, the authorising officer responsible shall inform the person or entity referred to in Article 135(***2***) concerned of its 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;

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(b) where publication would cause disproportionate damage to the person or entity referred to in Article 135(***2***) concerned or would otherwise be disproportionate on the basis of the proportionality criteria set out in Article 136(3) and to the amount of the financial penalty;

(c) where a natural person is concerned, unless the publication of personal data is exceptionally justified, inter alia, by the seriousness of the conduct or its impact on the Union's financial interests. 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 (EC) No 45/2001.

Article 141

Rejection from a given award procedure

1. The authorising officer responsible shall reject from a given award procedure a participant who:

(a) is in an exclusion situation established in accordance with Article 136;

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(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.

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). ▌ 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 133(1) shall apply unless the rejection has been justified in accordance with point (a) of paragraph 1 by an exclusion decision taken with regard to the participant, following an examination of its observations.

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Article 142

The early detection and exclusion system

1. Information exchanged within the early detection and exclusion system referred to in Article 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 (EC) No 45/2001.

Information on early detection, exclusion and/or financial penalty cases shall be entered in the database by the authorising officer responsible after notifying the person or entity referred to in Article 135(***2***) concerned. Such notification may be exceptionally deferred, 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 (EC) No 45/2001, any person or entity referred to in Article 135(***2***) subject to the early detection and exclusion system shall have the right to be informed of the data stored in the database upon its request to the Commission.

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The information contained in the database shall be updated, where appropriate, following a rectification or an erasure or any modification of data. It shall only be published in accordance with Article 140.

2. The early detection and exclusion system, as referred to ***in*** Article 135(1) of this Regulation, shall be based on ***facts and findings*** as referred to in the fourth subparagraph of Article 136(2) and on the transmission of information to the Commission, in particular, by:

(a) the ***EPPO, after its establishment for those Member States participating or by the*** European Anti-Fraud Office in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council ▌ where an ▌ investigation completed or in progress shows that it might be appropriate to take precautionary measures or actions to protect the Union's financial interests, 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;

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(c) ***a Union*** institution, a European office or an agency other than those referred to in point (b) of this paragraph, 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) entities or persons implementing Union funds pursuant to point (c) 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 136(1) or (2), or a decision to impose a financial penalty as referred to in Article 138;

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(d) where applicable, 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 transmit the information referred to in paragraph 3 of this Article without delay 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 this verification, the authorising officer responsible shall exercise his or her powers as foreseen under Article 74 and shall not go beyond what is foreseen in the terms and conditions of the award procedure and contractual provisions.

The retention period for the information related to the early detection transmitted in accordance with paragraph 3 shall not exceed one year. If, during this period, the authorising officer responsible requests the panel to issue a recommendation in an exclusion or financial penalty case, the retention period may be extended until such time as the authorising officer responsible has taken a decision.

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5. All entities participating in the implementation of the budget in accordance with Article 62 shall be granted access by the Commission to the information on exclusion decisions pursuant to Article 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 the implementation of the budget.

6. As part of the annual report of the Commission to the European Parliament and to the Council, as referred to in Article 325(5) TFEU, the Commission shall provide aggregate information on the decisions taken by the authorising officers under Articles 135 to 142. That report shall also provide further information on any decisions taken by the authorising officers pursuant to point (b) of Article 136(6) and Article 140(2) and on any decisions by the authorising officers to deviate from the recommendation of the panel pursuant to the last subparagraph of Article 143(6).

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 referred to in Article 135(***2***) concerned.

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Article 143

Panel

1. A panel shall be convened at the request of an authorising officer of any ***Union*** institution , Union bodies, European Offices and bodies and persons 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;

   (b) two permanent representatives of the Commission as the owner of the system, who shall express a joint position; and

   (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.

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3. The Chair shall be chosen from among former members of the Court of Auditors, the Court of Justice 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/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 of the panel shall preside at all sessions of the panel. He/she shall be independent in the performance of his or her duties. He/she shall not have a conflict of interests between his or her duties as Chair of the panel 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 referred to in Article 135(***2***) concerned to submit observations on the facts or findings referred to in Article 136(2), on the preliminary classification in law and before adopting its recommendations. The opportunity to submit observations may exceptionally be deferred 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.

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6. The recommendation of the panel to exclude and/or impose a financial penalty shall contain, where applicable, the following elements:

(a) the facts or findings referred to in Article 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 135(***2***) concerned 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 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 135(***2***), if any.

Where the authorising officer responsible envisages taking a more severe decision than what has been recommended by the panel, it 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.

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Where the authorising officer responsible decides to deviate from the recommendation of the panel, it 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 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 136(2).

8. The panel shall notify the requesting authorising officer without delay of its revised recommendation, following which the authorising officer shall review its 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 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 Council 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.

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Article 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 142(2) shall be transmitted only through the Irregularity Management System which is the automated information system established by the Commission currently in use for reporting of fraud and irregularities, in accordance with the 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. The use of the data shall be preceded by a consultation of the Member State that has submitted the relevant data through the Irregularity Management System.***

Article 145

Exceptions applicable to the Joint ***R***esearch ***C***entre

Articles 135 to ***144*** shall not apply to the Joint Research Centre.

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SECTION 3

IT SYSTEMS AND E-GOVERNMENT

Article 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.

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.

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Article 147

e-Government

1. The ***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 this end, shall 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 the Member States and the Commission shall be carried out by means indicated in the sector-specific rules. Those rules shall provide for interoperability of data gathered or received, and transmitted in the management of the budget.

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Article 148

Electronic exchange systems

1. All exchanges with recipients, including the conclusion of legal commitments and any amendments thereto, may be done through electronic exchange systems.

2. The electronic exchange systems shall meet the following requirements:

(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 must be identified through the system by established means;

(d) the time and date of the electronic transaction must be determined precisely;

(e) the integrity of documents must be preserved;

(f) the availability of documents must be preserved;

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(g) where appropriate, the confidentiality of documents must be preserved;

(h) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 must be ensured.

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 the equivalent legal effect of handwritten signatures.

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Article 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 the requirements of Regulation (EC) No 45/2001 is ensured.

2. The Commission shall ensure by appropriate means and in accordance with paragraph 1 of Article 147 that participants may enter 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 (ICT) products in general use and shall not restrict participants' access to the award procedure.

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The Commission shall report regularly to the European Parliament and to the Council on the progress of the implementation 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 may have access to all data submitted and may give access to these data as needed for the procedure;

(e) it may be reasonably ensured that any attempt to infringe any of the conditions set out in points (a) to (***d***) can be detected.

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The first subparagraph shall not apply to contracts below the thresholds laid down in paragraph 1 of Article 175.

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 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 shall be constituted by the acknowledgement of receipt.

6. By submitting application documents, participants accept to receive notification of the outcome of the procedure by electronic means.

7. Paragraphs 1 to 6 shall not apply to the selection of persons or entities implementing Union funds pursuant to point (c) of Article 62(1).

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CHAPTER 3

RULES APPLICABLE TO DIRECT IMPLEMENTATION

Article 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 committee shall be made up of at least three persons.

3. The members of the committee evaluating grant applications or tenders shall represent at least two organisational entities of the ***Union*** institutions or bodies referred to in Articles 68, 70 and 71 with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. In the representations and local units outside the Union and in the bodies referred to in Articles 68, 70 and 71, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply. A local unit shall be, for instance, a Union delegation, office or branch office in a third country.

   External experts may assist the committee by decision of the authorising officer responsible.

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Members of the committee may be external experts where that possibility is provided for in the basic act.

4. The members of the 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 the obligations laid down in Article 61.

Article 151

Clarification and correction of application documents

The authorising officer responsible may correct obvious clerical errors in the 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 clarify supporting documents.

Such information, clarification or confirmation shall not substantially change the application documents.

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Article 152

Guarantees

1. Except for ▌ contracts and ▌ grants ***lower than or equal to 60 000 EUR***, the authorising officer responsible may, if proportionate and subject to ***his/her*** risk ***analysis***, require a guarantee to be submitted:

(a) by contractors or beneficiaries in order to limit the financial risks connected with 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 shall be denominated in euro or in the currency of the contract or of the grant agreement.

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3. The guarantee shall be supplied 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 guarantee referred to points (a), (b) and (c) 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 paragraph 1 may be replaced by the 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 stand as irrevocable collateral security, or 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 no longer authorised to issue guarantees in accordance with the applicable national law, he shall require that the contractor or the beneficiary replaces the guarantee supplied by such a guarantor.

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Article 153

Guarantee on pre-financing

1. The guarantee shall be for an amount not exceeding the amount of the pre-financing.

The guarantee shall be valid for a period sufficiently long to allow it to be activated.

2. The guarantee 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.

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TITLE VI

INDIRECT ***MANAGEMENT***

Article 154

Indirect ***management***

1. The selection of the entities and persons ***entrusted with the implementation of*** Union funds or budgetary guarantees pursuant to point (c) 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 mentioned in points (ii), (v), (vi) and (vii) of Article 62(1)(c) the selection shall also take due account of their operational and financial capacity.

   Where the entity or person is identified in a basic act, the financial statement provided for in Article 35 shall include a reasoned justification for the choice of that particular entity or person.

   In cases of implementation by a network, requiring the designation of at least one body or entity by Member State or by 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 the Member States or countries concerned.

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2. Entities and persons ***entrusted with the implementation of*** Union funds or budgetary guarantees pursuant to point (c) 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 funds in accordance with point (a) of Article 62(1). ***The Commission*** shall do so by carrying out an assessment of the systems and procedures of the entities or persons implementing the Union funds if it intends to rely on ***such systems and procedures*** for the implementation of the action or by applying appropriate supervisory measures ***in accordance with paragraph 5.***

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4. The Commission shall assess in accordance with the principle of proportionality and with due consideration for the nature of the action and the financial risks involved, that the entities and persons implementing EU funds pursuant to point (c) of Article 62(1):

(a) set up and ensure the functioning of an effective and efficient internal control system based on international best practices and allowing in particular to prevent, detect and correct irregularities and fraud;

(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 entity or person 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;

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(e) make public adequate information on their recipients ***equivalent to that provided for under Article 38***;

(f) ensure equivalent protection of personal data to that referred to under Article 5.

In addition, in agreement with the entities or persons, the Commission may assess other rules and procedures such as the administration cost accounting practices of the entities. On the basis on the results of this assessment the Commission may decide to rely on those rules and procedures.

Entities or persons 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*** rules, systems or ▌ procedures ▌ which may impact the reliability of the Commission's assessment.

5. Where these entities or persons comply only in part with the requirements referred to in paragraph 4, the Commission shall take appropriate supervisory measures ensuring the protection of the Union's financial interests. These measures shall be specified in the relevant agreements***. Information about any such measures shall be made available to the European Parliament and the Council at their request***.

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6. ***The Commission may decide, not to require an*** ex-ante assessment ▌:

(a) for the bodies referred to in Articles 70 and 71 and for ***the bodies or*** persons referred to in point (viii) of Article 62(1)(c) which have adopted financial rules with prior consent of the Commission;

(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

(c) for those procedures specifically required by the Commission, including its own or those specified in basic acts.

7. Where the systems or procedures of the entities or persons referred to in point (c) of Article 62(1) are assessed as appropriate, Union contributions to these entities or persons may be implemented in accordance with this Title. Where such entities or persons participate in a call for proposals they shall abide by the rules of the call for proposals in accordance with 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.

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Article 155

Implementation

1. Entities and persons implementing EU funds or budgetary ***guarantees*** shall provide the Commission with:

(a) a report on the implementation of the Union funds or the budgetary guarantee, including the fulfilment of the conditions or ***the achievement of*** results referred to in point (a) of Article 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;

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(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 127 takes place, the summary shall include all relevant audit documentation to be relied upon***.

In case of actions terminating before the end of the financial year concerned, the final report for such action may replace the management declaration referred to in point (c) ***of the first subparagraph***, provided it is submitted before 15 February of the year following the financial year concerned.

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 under 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.

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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.

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 the requirements set out in paragraphs 3 and 4 of Article 154 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***, entities and persons*** shall:

(a) comply with ***applicable Union legislation and agreed international and Union standards and, therefore, not support actions that contribute to*** money laundering, terrorism ***financing, tax avoidance***, tax fraud and tax evasion;

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(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) No. 2015/849, or that do not effectively comply with*** Union ***or*** internationally agreed tax standards on transparency and exchange of information. ***They may derogate from this principle 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 this paragraph.***

When concluding agreements with financial intermediaries, entities and persons implementing financial instruments and budgetary guarantees in accordance with Title X shall transpose the requirements referred to in this Article into the relevant agreements and shall request the financial intermediaries to report on their observance.

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3. When implementing financial instruments and budgetary guarantees in accordance with Title X, entities and persons 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 and in particular Regulation (EU) 2015/847 of the European Parliament and of the Council and Directive (EU) 2015/849. They shall make funding under this Regulation contingent upon the disclosure of beneficial ownership information in accordance with Directive (EU) 2015/849 and publish country-by-country reporting data in accordance with Article 89(1) of Directive 2013/36/EU of the European Parliament and of the Council.

4. The Commission shall verify that the Union funds or budgetary guarantee has been used in accordance with the conditions laid down in the relevant agreements. Where the costs of the entity or person are reimbursed based on a simplified cost option in accordance with points (c) to (e) of Article 125(1) the provisions of points (1) to (4) of Article 181 and Articles 182 to 184 shall apply mutatis mutandis. Where the Union funds or budgetary guarantee has been used in breach of the obligations laid down in the relevant agreements, Article 131 shall apply.

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5. In multi-donor actions, where the Union contribution reimburses expenditure, the procedure referred to 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 entity in accordance with the conditions laid down in the relevant grant, contribution ▌ or financing agreement.

6. Contribution agreements, financing agreements or guarantee agreements shall clearly define the responsibilities and obligations of the entity implementing EU funds, including the obligations referred to in Article ***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 for implementing the actions 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 entities implementing EU funds to notify the Commission without delay of cases of detected fraud and irregularities and their follow-up.

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7. All contribution agreements, financing agreements and guarantee agreements shall be made available to the European Parliament and the Council at their request.

8. Article 155 shall not apply to the contribution of the Union to ***bodies*** which are subject to a separate discharge procedure under Articles 70 and 71, with the exception of possible ad hoc contribution agreements.

Article 156

Indirect ***management*** with International Organisations

1. ***The Commission may, in accordance with point (ii) of Article 62(1)(c), implement the budget indirectly through*** international public-sector organisations set up by international agreements ***("international organisations") and through*** 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 referred to in Article 154(3).

2. The following organisations shall be assimilated to international organisations:

   (a) the International Committee of the Red Cross;

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(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 providing that it satisfies the following conditions:

(a) it has its own legal personality and autonomous governance bodies;

(b) it has been established to perform specific tasks of general international interest;

(c) at least six Member State are members of the non-profit organisation;

(d) it provides adequate financial guarantees;

(e) it operates on the basis of a permanent structure and in accordance with systems, rules and procedures which may be assessed in accordance with Article 154(3).

4. Where international organisations implement funds under indirect ***management***, verification agreements concluded with them shall apply.

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Article 157

Indirect management with Member State Organisations

1. The Commission may, in accordance with points (v) and (vi) of Article 62(1)(c) implement the budget indirectly through Member State organisations.

2. Where the Commission implements the budget indirectly with Member States organisations, it shall rely on the systems and procedures of those organisations, that have been assessed in accordance with Article 154(3) and (4).

3. Financial Framework Partnership Agreements concluded with Member State organisations in accordance with Article 130 shall further specify the extent and modalities of cross-reliance on systems and procedures of Member State organisations and may include specific provisions on the application of cross-reliance on assessments and audits as referred to in Articles 126 and 127.

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Article 158

Indirect ***management*** with third countries

1. The Commission may implement the budget ***indirectly*** with a third country ***or the bodies it has designated*** as referred to point (i) of Article 62(1)(c) through the signature of a financing agreement describing the Union's intervention in the third country and laying down the implementation method 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 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 applied by the third country when implementing EU funds.

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Article 159

Blending operations

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1. Where financial instruments ***and budgetary guarantees*** are implemented within a blending facility ***or platform*** Title X applies.

2. For financial instruments ***and budgetary guarantees*** within blending facilities ***or platforms***, point (h) of Article 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***;

3. Annual reports pursuant to Article 249 shall be established at the level of the blending facility ***or platform*** taking into account all financial instruments ***and budgetary guarantees*** grouped under it ***and clearly identifying the different types of financial support within the facility/platform***.

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TITLE VII

PUBLIC PROCUREMENT AND CONCESSIONS

CHAPTER 1

Common provisions

Article 160

Principles applicable to public 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 164(1).

The estimated value of a contract may not be determined with a view to circumventing the applicable rules, nor may 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.

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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 as laid down in this Regulation shall not apply to the activities of the JRC on behalf of third parties, with the exception of the principles of transparency and equal treatment.

Article 161

Annex on procurement and exercise of the delegation

Details on procurement ***are*** provided in Annex ***1*** 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 Directive 2014/23/EU and Directive 2014/24/EU, the*** Commission shall be empowered to adopt delegated acts to amend ▌ Annex ***1 to this Regulation*** in accordance with Article ***269, to align it to amendments to the aforementioned Directives and to introduce related technical adjustments.***

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Article 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 ***characterizes*** 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.

3. This Title shall not apply to contracts for technical assistance concluded with the EIB or the European Investment Fund.

4. Any references to nomenclatures in the context of public procurement shall be made using the ″Common Procurement Vocabulary″ as set out in Regulation (EC) No 2195/2002 of the European Parliament and of the Council[1].

[1] 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).

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Article 163

Publicity measures

1. For procedures with a value equal to or greater than the thresholds referred to in Article 175(1) or Article 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 164(1);

   (b) a contract award notice on the results of the procedure.

2. Procedures with a value below the thresholds referred to in Article 175(1) or Article 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.

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Article 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.

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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 set out in Articles 136 and 141, to submit a tender.

Notwithstanding the first subparagraph, the contracting authority may limit the number of candidates to be invited to 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.

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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 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;

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(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 ***1*** to this Regulation;

(f) the negotiated procedure for contracts with a value below the thresholds referred to in Article 175(1) or the negotiated procedure without prior publication, only for specific types of purchases falling outside the scope of Directive 2014/24/EU or under clearly defined exceptional circumstances as set out in ▌ Annex ***1*** to this Regulation.

6. The 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.

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Article 165

Interinstitutional procurement and joint procurement

1. Where a contract or a framework contract is of interest to two or more ***Union*** institutions, executive agencies or 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 may 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.

2. Where a contract or framework contract is necessary for the implementation of a joint action between ***a Union*** institution 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.

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Joint procurement may be conducted with EFTA states and Union candidate countries if this possibility has been specifically provided for in a bilateral or multilateral treaty.

In the case of a joint procurement procedure, the procedural provisions applicable to the ***Union*** institutions shall apply.

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 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.

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Article 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 legislation, collective agreements or the applicable international social and environmental conventions listed in Annex X to Directive 2014/24/EU.

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Article 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 136 or rejected under Article 141,

   (c) the candidate or tenderer meets the selection criteria specified in the procurement documents and is not subject to conflicting interests 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 may 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.

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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 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 ***1*** and taking into account the complexity of the purchase, leaving an adequate period for economic operators to prepare their tenders.

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2. If deemed appropriate and proportionate, the contracting authority may require tenderers to submit 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 tender guarantees:

(a) for tenderers rejected as referred to in point 30.2(b) of Annex 1 and tenders rejected as referred to in point 30.2(c) of that Annex, after information on the outcome of the procedure;

(b) for tenders ranked as referred to in point 30.2(e) of Annex 1, when 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 received already open, without examining their content.

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4. The contracting authority shall evaluate all requests to participate or tenders not rejected during the opening phase 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 150(2) in the following cases:

(a) the value of the contract is below the thresholds referred to in Article 175(1);

(b) on the basis of a risk analysis for the cases set out in points (c), (e), (f) (i), (f) (iii) and (h) of point 11.1 of ▌ Annex ***1***;

(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.

6. Requests to participate and tenders which do not comply with all the minimum requirements set out in the procurement documents shall be rejected.

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Article 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.

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 151, a record shall be kept in the procurement file.

Article 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.

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2. The contracting authority shall notify all candidates or tenderers, whose requests to participate or tenders are rejected, of the grounds on which the decision was taken, as well as the duration of the standstill period referred to in Article 175(2***) and 178(1***).

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, who is not rejected under Article 141, 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;

(b) the progress of negotiation and dialogue with tenderers.

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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 171

Cancellation of the procurement procedure

The contracting authority may, before the contract is signed, cancel the procurement procedure without the candidates or tenderers being 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 172

Performance and modifications of the contract

1. Performance of the contract shall not start before the contract is signed.

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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.

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;

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(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 175(1) and in point 38 of Annex ***1 to*** this Regulation in the field of external actions applicable at the time of the modification;

(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 the minimum requirements of the initial procurement procedure are not altered. In that case any ensuing modification of value shall comply with the conditions set under point (c) of this subparagraph, unless such modification of value results from the strict application of the procurement documents or contractual provisions.

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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 of this paragraph shall not exceed any threshold referred to therein.

The contracting authority shall apply the ex-post publicity measures set out in Article 163.

Article 173

Performance guarantees and retention money guarantees

1. The 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 Article 116(1) 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.

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The contracting authority shall determine the amount 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 to the sector.

The 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 a guarantee referred to in Article 152.

4. The contracting authority shall release the retention money guarantee after the expiry of the contractual liability period, within a period subject to Article 116(1) to be specified in the contract.

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CHAPTER 2

Provisions applicable to contracts awarded by the ***Union*** institutions on their own account

Article 174

The contracting authority

1. The Union institutions, executive agencies and bodies within the meaning of Articles 70 and 71 shall be deemed to be contracting authorities in the case of contracts awarded on their own account, except where they purchase from a central purchasing body. Departments of those ***Union*** institutions shall not be deemed to be contracting authorities where they conclude service-level agreements amongst themselves.

   Those ***Union*** institutions shall delegate, in accordance with Article 60, the necessary powers for the exercise of the function of contracting authority.

2. Each authorising officer by delegation or ***sub-delegation*** within each ***Union*** institution shall assess whether the thresholds laid down in Article 175(1) have been reached.

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Article 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 of Directive 2014/24/EU when selecting a procedure set out in Article 164(1) of this Regulation. Those thresholds shall determine the publicity measures set out in Article 163(1) and (2) of this Regulation.

2. Subject to exceptions and conditions to be specified in ▌ Annex ***1*** 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.

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Article 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 public procurement under the conditions laid down in that agreement. It shall also be open to international organisations.

2. For the purpose of Article 160(4), the JRC shall be considered as a legal person established in a Member State.

Article 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.

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CHAPTER 3

Provisions applicable for procurement in the field of external actions

Article 178

External action procurement

1. The provisions of Chapter 1 of Title VII relating to the general provisions on procurement shall be applicable to contracts covered by this Chapter subject to the special provisions relating to the arrangements for awarding external contracts laid down in ▌ Annex 1**.** Articles 174 to 177 shall not be applicable to the procurement set out in this Chapter.

Subject to exceptions and conditions to be specified in Annex 1 to this Regulation, 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 ***163,*** points (a) and (b) of Article 164(1) ***and the second subparagraph of paragraph 1*** shall only apply as from:

(a) EUR 300 000 for service and supply contracts;

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(b) EUR 5 000 000 for works contracts.

2. This Chapter shall apply to:

(a) procurement where the Commission does not award contracts for its own account;

(b) procurement by entities or persons pursuant to point (c) of Article 62(1) where provided for in the contribution or financing agreements referred to in Article 154.

3. The procurement procedures shall be laid down in the financing agreements provided for in Article 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.

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Article 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.

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TITLE VIII

GRANTS

CHAPTER 1

Scope and form of grants

Article 180

Scope and form of grants

1. This Title applies to grants awarded under direct ***management***.

2. Grants are ***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*"*).

In the case of an operating grant, the grant shall take the form of a financial contribution to the work programme of the body.

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3. Grants may take any of the forms provided for in paragraph 1 of Article 125. Where the grant ***is not linked to costs pursuant to*** point (a) of Article 125(1)**,** ▌ the provisions related to eligibility and verification of costs laid down in this Title shall not apply. ***In particular, Articles 182, 184 and 185, Article 186(2) to (4), Article 190, Article 191(3) and Article 203(4) shall not apply. However, as regards Article 181, only the procedure and requirements referred to in paragraphs 2 and 3, points (a), (c), (d) and the second subparagraph of paragraph 4 and paragraph 5 of that Article shall apply.***

4. Each ***Union*** institution may award ***procurement contracts or*** grants for communication activities***. Grants may be awarded*** where ***the use of public procurement is not appropriate due to*** the nature of ▌ activities.

5. The Joint Research Centre (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 paragraph 4 of Article 198, as far as financial capacity is concerned, and points (a) to (d) of Article 196(1) shall not apply.

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Article 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 points (c), (d) or (e) of Article 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***.

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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 for*** 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 each Union*** institution.

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 Article 186(4) and points (c), (e) and (f) of Article 186(3) and*** which shall exclude ineligible costs under the applicable Union rules;

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(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, ***similarly*** 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.

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The methods referred to in point (c) shall ensure:

(a) the respect of 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 revenues 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 the authorising 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 concerned activities 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.

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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 his/her 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.

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Article 182

Single lump sums

1. A lump sum ***as referred to in point (d) of Article 125(1)*** may cover the entire eligible costs of an action or a work programme (***"***single lump sum***"***).

2. ***In compliance with paragraph 4 of Article 181, single*** lump sums may be determined on the basis of the estimated budget. The 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 181.

Article 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, 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***. In addition, the fulfilment of those conditions may be subject to ex**-**post controls.

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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 181 shall not be challenged by ex-post controls***.*** ***This is*** without prejudice to the right of the authorising officer responsible to ***check the conditions triggering the payment, referred to in the first subparagraph, and to*** reduce the grant in accordance with paragraph 4 of Article ***131 in case those conditions are not fulfilled or in case of irregularity, fraud or 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 paragraph 2 of Article 185 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 184 and 129.

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5. For the purposes of the checks and controls referred to in paragraph 1, points (a) and (b) of Article 186(3) shall apply.

Article 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 181. ***The frequency and scope of assessments shall depend on the evolution and nature of the costs, in particular, taking into account substantial changes in market prices and other relevant circumstances.***

Article 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 ex-ante with the conditions set out in paragraph 4 of Article 181 or through an appropriate strategy for ex-post controls.

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2. If the compliance of the beneficiary's usual cost accounting practices with the conditions referred to in paragraph 4 of Article 181 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 paragraph 4 of Article 131.

3. The authorising officer responsible may consider that the usual cost accounting practices of the beneficiary are compliant with the conditions referred to in paragraph 4 of Article 181 if they are accepted by national authorities under comparable funding schemes.

Article 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) estimated eligible costs, ***where possible, in the case referred to in point (b) of Article 125(1);***

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(b) the overall amount of estimated eligible costs clearly defined in advance in the form of lump sums, unit costs or flat rates referred to in points (c), (d) and (e) of Article 125(1);

(c) the overall amount of financing not linked to costs in the case referred to in point (a) of Article 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 (a) of the first subparagraph or as a percentage of the lump sums, unit costs or flat rate financing referred to in point (b) of the first subparagraph***.

Where ***the grant takes the form specified in point (a) of the first subparagraph 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 ***paragraphs 4 and, where applicable, 5*** of Article 155.

2. Without prejudice to the maximum co-financing rate specified in the basic act:

(a) the grant shall not exceed the eligible costs;

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(b) ***where the grant takes the form specified in point (a) of the first paragraph and*** where the estimated eligible costs include costs for volunteers' work referred to in paragraph 8 of Article 181, the grant shall not exceed the estimated eligible costs other than the costs for volunteers' work.

3. Eligible ▌ costs actually incurred by the beneficiary of a grant***, as referred to in point (b) of Article 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;

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(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, 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 of the grant, where that guarantee is required by the authorising officer responsible pursuant to paragraph 1 of Article 152;

(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;

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(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 as defined in the first subparagraph of Article 13(1) of Council Directive 2006/112/EC[1];

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 points (i) or (ii), in respect of which VAT is not deductible but refunded by means of specific refund schemes or compensation funds not foreseen by Directive 2006/112/EC, even if that scheme or fund is established by national VAT legislation.

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 as defined in 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.

[1] 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).

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(d) depreciation costs, provided they are actually incurred by the beneficiary;

(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.

Article 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 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 paragraph 1 of Article 136 and in paragraph 1 of Article 141 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.

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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 provided otherwise in the call for proposals, entities affiliated to a beneficiary may participate in the implementation of the action.

The following conditions shall apply cumulatively:

(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, European Anti-Fraud Office 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.

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CHAPTER 2

Principles

Article 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.

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Article 189

Transparency

1. Grants shall be awarded following a publication of calls for proposals, except in the cases referred to in Article 195.

2. All grants awarded in the course of a financial year shall be published in accordance with paragraphs 1 to 4 of Article 38.

3. Following the publication referred to in paragraphs 1 and 2, when requested by the European Parliament and the Council, the Commission shall forward a report to them on:

   (a) the number of applicants in the past year;

   (b) the number and percentage of successful applications per call for proposals;

   (c) the average duration of the procedure from date of closure of the call for proposals to the award of a grant;

   (d) the number and amount of grants where ***an*** ex-post publication ***did not take place*** in the past year in accordance with paragraph 4 of Article 38.

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(e) any grant awarded to financial institutions, including the EIB or the European Investment Fund in accordance with point (g) of Article 195.

Article 190

Co-financing

1. Grants shall involve co-financing. This means that the resources necessary to carry out the action or the work programme shall not be provided entirely by the grant.

   Co-financing may take 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. Contributions in kind from third parties in the form of volunteers' work***, valued in accordance with*** Article 181***(8)*** shall be presented as eligible costs in the estimated budget. They shall be presented separately from the other eligible costs***. Volunteers' work may comprise up to 50 % of the co-financing. For the purposes of calculating this percentage, contributions in kind and other co-financing shall be based on estimates provided by the applicant***.

   Other contributions in kind 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.

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3. As an exception to 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 grounds shall be provided in the award decision.

4. ***This Article*** shall not apply to interest rate rebates and guarantee fee subsidies.

Article 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.

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4. ***In relation to the following 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 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. 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 EU 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.

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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 an 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 Article 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.

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Article 193

Principle of non-retroactivity

1. Unless provided otherwise 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 points (a) or (b) of Article 195 whereby an early engagement by the Union would be of major importance. In these cases the costs incurred by a beneficiary before the date of submission of the application shall be eligible for Union financing under the following conditions:

(i) the reasons for such derogation have been properly substantiated by the authorising officer responsible;

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(ii) the grant agreement sets explicitly the eligibility date earlier than the date for submission of applications.

The authorising officer by delegation shall report on each of those cases under the heading "Derogations from the principle of non-retroactivity pursuant to Article 193 of the Financial Regulation" in the annual activity report referred to in Article 74(9).

3. No grant may 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 eligible for financing may neither have been incurred before the grant application was submitted nor before the start of the beneficiary's financial year. ***The first instalment shall be paid to the beneficiary within 30 calendar days of the signature of the grant agreement.***

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CHAPTER 3

Grant award procedure and grant agreement

Article 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.

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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 of the European Parliament and of the Council[1] 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.

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3. Calls for proposals shall be published on the internet site of the Union institutions and in addition to publication on the internet site by any other appropriate means, including the *Official Journal of the European Union*, where it is necessary to provide additional publicity among potential beneficiaries. They may be published subject to the adoption of the financing decision referred to in Article 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 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 for crisis management aid;

(b) in other exceptional and duly substantiated emergencies;

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(c) to bodies with a de jure or de facto monopoly or to bodies designated by the 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 of a grant or to bodies designated by the Member States, under their responsibility, where those Member States are identified by a basic act as beneficiaries of a grant;

(e) in the case of research and technological development, to bodies identified in the work programme referred to in Article 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 power, on condition that the activities concerned do not fall within the scope of a call for proposals. Where this particular type of body 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.

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(g) to the EIB or the European Investment Fund for actions of technical assistance. In such cases points (a) to (d) of Article 196(1) shall not apply.

The cases referred to in points (c) and (f) of the first subparagraph shall be duly substantiated in the award decision.

Article 196

Content of grant applications

1. The grant application shall contain the following:

(a) information on the legal status of the applicant;

(b) a declaration on the applicant's honour in accordance with paragraph 1 of Article 137 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 this information, such as the profit and loss account and the balance sheet for ***up to*** the ***3*** last financial ***years*** for which the accounts were closed.

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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 paragraph 5 of Article 198. 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 750 000 or an operating grant which exceeds EUR 100 000, an audit report produced by an approved external auditor shall be submitted where it is available, and always in cases where a statutory audit is required by EU or national law. That report shall certify the accounts for ***up to*** the last ***3*** financial ***years*** available. 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 ***3*** financial ***years*** available.

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.

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In case of partnerships referred to in paragraph 4 of Article 130, the audit report referred to in the first subparagraph, 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 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 bodies eligible under indirect management to the extent that they comply with the conditions specified in point (c) of Article 62 and Article 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.

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As an exception to 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 its functioning 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 paragraph 2 of Article 200.

Article 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 proposal:

(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;

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(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 entity and offer guarantees for the protection of the Union's financial interests 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 paragraph 4 of Article 180 and this Article, the JRC shall be considered as a legal person established in a Member State.

Article 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.

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2. The applicant must have stable and sufficient sources of funding to maintain his activity throughout the period for which the grant is awarded and to participate in its funding (″financial capacity″).

3. The applicant must 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 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 shall request ***the applicant*** to provide any appropriate documents.

In case of partnerships the verification shall be performed in accordance with paragraph 6 of Article 130.

5. The verification of financial capacity shall not apply to:

(a) natural persons in receipt of education support;

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(b) natural persons most in need 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 199

Award criteria

The award criteria shall be such as to make it possible:

(a) to assess the quality of the proposals submitted in the light of the objectives and priorities set ***and of expected results***;

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(b) to award grants to the actions or to the work programmes which maximise the overall effectiveness of the Union funding.

(c) to enable an evaluation of those grant applications".

Article 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.

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3. The evaluation committee referred to in Article 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 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.

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6. The authorising officer responsible shall, on the basis of the evaluation, take his decision giving at least:

(a) the subject and the overall amount of the decision;

(b) the name 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 pursuant to Article 195 the following shall apply:

(a) paragraphs 2 and 4 of this Article and Article 150 are not compulsory***;***

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(b) the authorising officer responsible may merge the content of the evaluation report and award decision into a single document and sign it.

Article 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 financial year being funded;

(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;

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(f) the rules regarding reporting and payments and the procurement rules provided for in Article 205;

(g) the acceptance by the beneficiary of the obligations referred to in Article 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 the Union law, complemented, where necessary, by national law as specified in the grant agreement. Derogation may be made in the 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 paragraph 2 of Article 100.

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 equal treatment of applicants.

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CHAPTER 4

Implementation of the grants

Article 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, European Anti-Fraud Office or the European Court of Auditors. Paragraph 4 of Article 131 shall apply even after the amount of the grant has become final.

2. Where controls or audits demonstrate systemic or recurrent irregularities, fraud or 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 concerned grant agreements with that beneficiary, in proportion to the seriousness of the findings.

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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.

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Article 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.

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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 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.

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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 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 204

Financial support to third parties

Where implementation of an action or a work programme requires financial support to be given to third parties, the beneficiary may give such financial support provided that the conditions for the giving of such support are strictly defined in the grant agreement between the beneficiary and the Commission, in order to avoid the exercise of discretion by the beneficiary.

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The discretion is considered exhausted 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 60 000 and the criteria for determining the exact amount. This threshold ***may*** be exceeded where achieving the objectives of the actions would otherwise be impossible or overly difficult;

(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 to give it.

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Article 205

Implementation contracts

1. Without prejudice to the application of the Directives 2014/24/EU and 2014/25/EU[1], where ***the*** implementation of the action or work programme requires the award of a procurement contract, the beneficiary may award the contract in accordance with its usual purchasing practices provided that the 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 procurement contract with a value of more than EUR 60 000, 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 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.

[1] 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 reapealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

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TITLE IX

PRIZES

Article 206

General rules

1. Prizes shall respect the principles of transparency and equal treatment and shall promote the achievement of policy objectives of the Union.

2. Prizes may not be awarded directly without a contest.

   Contests for prizes with a unit value of EUR 1 000 000 or more may only be published where those prizes are mentioned in the financing decision referred to in Article 110 and after information on such prizes has been submitted to the European Parliament ***and 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 given to third parties by a beneficiary of a Union grant, that beneficiary may give such prizes provided that the eligibility and award criteria, the amount of the prizes and the payment arrangements are defined in the grant agreement between the beneficiary and the Commission, with no margin for discretion.

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Article 207

Rules of contest, award and publication

1. Rules of contests shall:

(a) specify the eligibility criteria;

(b) specify the arrangements and final date for the registration of applicants, if required, and for the submission of applications;

(c) specify the exclusion criteria ***as set out in Articles 136 and 141***;

(d) provide for the sole liability of applicant in case of claim relating to the activities carried out in the framework of the contest;

(e) provide for acceptance by the winners of obligations referred to in Article 129 and of the publicity obligations as specified in the rules of the contest;

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(f) 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 qualify as the winners;

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(g) the amount of the prize or prizes;

(h) the arrangements for the payment of prizes to the winners after their award.

For the purposes of point (a) of the first subparagraph, beneficiaries of Union grants shall be eligible, unless stated otherwise in the rules of contest.

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Paragraph 3 of Article 194 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 150.

Paragraphs 4 and 6 of Article 200 shall apply mutatis mutandis to the award decision.

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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 a course of a financial year shall be published in accordance with ***paragraphs*** 1 to 4 of Article 38.

Following the publication when requested by the European Parliament and the Council, 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.

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TITLE X

FINANCIAL INSTRUMENTS, BUDGETARY GUARANTEES AND FINANCIAL ASSISTANCE

CHAPTER 1

Common provisions

Article 208

Scope and implementation

1. ***Where these prove to be the most appropriate way to achieve the Union objectives, the*** Union may establish financial instruments or provide budgetary guarantees or financial assistance backed by the general budget by means of a basic act***, which shall define their scope and period of implementation***.

2. Member States may contribute to the Union's financial instruments, budgetary guarantees or financial assistance. If authorized by the basic act, other third parties may also contribute.

3. Where financial instruments are implemented under shared ***management*** with Member States, sector **-**specific rules ***shall*** apply ▌ .

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4. Where financial instruments or budgetary guarantees are ▌ implemented ***under indirect management***, the Commission shall conclude agreements with entities pursuant to points (ii), (iii), (v) and (vi) of Article 62(1)(c). ***Where the systems and procedures of these entities have been assessed pursuant to Article 154(4), they may fully rely on these systems and procedures. These entities may, when implementing financial instruments and budgetary guarantees under indirect management***, conclude agreements with financial intermediaries ***which shall be*** selected ***ensuing*** procedures equivalent to those ***applied by*** the Commission. ***These entities*** shall transpose the requirements pursuant to Article 155(2) in those agreements.

The Commission shall remain responsible for ensuring that the implementation framework for financial instruments complies with the principle of sound financial management and supports the attainment of defined and timed policy objectives, measurable in terms of outputs and/or results. The Commission shall be accountable for the implementation of financial instruments without prejudice to the entrusted entities' legal and contractual responsibility in accordance with the applicable law and Article 129.

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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.

5. The Court of Auditors shall have full access to any information related to the financial instruments, budgetary guarantees and financial assistance including by on-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 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.

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2. Financial instruments or 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 market sources;

(c) ▌ not ***distort*** competition in the internal market and ***be consistent*** with State aid rules;

(d) achieve a leverage ***and*** a multiplier effect, by mobilising a global investment exceeding the size of the Union contribution or guarantee***, including, where appropriate, the maximisation of private investment***. The target range of values for the leverage and multiplier effect shall be based on an ex-ante evaluation for the corresponding financial instrument or budgetary guarantee;

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(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 such as co investment, risk sharing requirements or financial incentives, while preventing a conflict of interests with other activities of the entities or counterparts;

(f) ***foresee a*** 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 counterparts involved in the implementation ***is due, provide that such remuneration is*** performance based.

Performance based fees shall comprise***:***

(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 amounts disbursed*** and,

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(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. The ex-ante ***evaluations*** shall contain 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 of the Union. ***These evaluations shall be reviewed and updated to take into account the effect of major socioeconomic changes on the rationale of the instrument or guarantee.***

3. ***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 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.***

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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 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 Article 21 and shall be used for the same financial instrument or budgetary guarantee, without prejudice to Article 215(5), for a period not exceeding the period for the commitment of appropriations plus two years, unless specified otherwise 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 foreseen in the basic act establishing the latter***.

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4. The authorising officer responsible for a financial instrument, a budgetary guarantee or a financial assistance shall establish a financial statement covering the period 1 January to 31 December, in accordance with Article ***243*** and in compliance with the accounting rules referred to in Title XIII 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 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 (ii), (iii), (v) and (vi) of Article 62(1)(c) by 15 February of the following year and audited financial statements by 15 May of the following year.

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Article 210

Financial liability of the Union

1. The financial liability ***and aggregate net payments from the general budget*** of the Union 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 borrowing and the relevant interest that the Commission is empowered to conclude for funding the loan authorised by the basic act.

2. Budgetary guarantees and financial assistance may generate a contingent liability for the Union ***which may only exceed*** the financial assets provided to cover the financial liability of the Union ***if provided for in a basic act establishing a guarantee and under the conditions set out therein***.

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3. ***For the purpose of the*** annual assessment provided for by point (j) of Article 41(5)**,** ▌ the contingent liabilities arising from budgetary guarantees or financial assistance borne by the budget of the Union shall be ***deemed sustainable, if their forecasted multiannual evolution is compatible with*** the limits set by the multiannual financial framework regulation provided for by Article 312(2) TFEU and the ceiling on annual payments appropriations defined in Article 3(1) of ▌ Council Decision ***2014/335/EU, Euratom***.

Article 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**.** ***This amount shall exclude contributions referred to in Article 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 stemming 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.

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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 upfront to cover the net expected losses and in addition an adequate safety buffer. The global provisioning shall be constituted over the period of time foreseen in the relevant financial statement as referred to in Article 35, without prejudice to the powers of the European Parliament and the Council.

3. For financial instruments 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 general budget of the Union ***in full respect of Council Regulation (EU, Euratom) No 1311/2013 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;

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(d) revenues 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 208(2).

Only the provisions referred to in points (a) to (d) of the first subparagraph 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 220(1);

(d) where applicable, other expenses associated to the implementation of financial instruments, budgetary guarantees and financial assistance to third countries.

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6. Where the provisions for a budgetary guarantee exceed the amount of provisioning ***resulting from the rate*** referred to in paragraph 1, resources referred to in points (b), (c) and (d) of paragraph ***4*** 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 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 provided for in paragraph 1, ***and again where it falls below 30 %, or where*** it may fall below ***any of these rates*** 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.

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Article 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, 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 general budget of the Union. The evaluation shall be accompanied, where appropriate, 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.

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The ***financial manager of the resources of the common provisioning fund as referred to in paragraph 1*** 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 as referred to in paragraph 1*** 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 of the Union 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 paragraph ***of Article*** 77 and paragraphs 1 and 2 of Article 86, 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,*** the assets and liabilities related to the common provisioning fund.

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4. In the exceptional cases where the Commission has made a transfer as referred to in point (g) 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, in full respect of the ceilings provided for in Council Regulation (EU, Euratom) No 1311/2013.

Article 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. This 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.

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2. The effective provisioning rate applicable shall be a percentage of each initial provisioning rate foreseen by the second subparagraph of Article 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. The 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 a provision pursuant to the second subparagraph of Article 211(2);

(b) the risk correlation among the budgetary guarantees and financial assistance to third countries;

(c) the market conditions.

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The Commission shall adopt delegated acts in accordance with Article 269 to supplement this Regulation with detailed conditions for the calculation of the effective provisioning rate, including a methodology for that calculation.

The Commission shall be empowered to adopt delegated acts in accordance with Article 269 to amend the minimum ratio referred to in the first subparagraph in the light of experience with the operation of the common provisioning fund and maintaining a prudent approach in line with sound financial management. The ratio may not be set at a lower level than 85 %.

3. The effective provisioning rate shall be calculated annually by the ***financial manager of the resources of the common provisioning fund as referred to in paragraph 1 of Article 211 and*** shall be the reference for the ***Commission's*** calculation of the contributions from the general budget of the Union pursuant to point (a) of Article 211(4) ***and following point (b) of paragraph 4 of this Article***.

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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 annual 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 general budget of the Union;

(b) any replenishment of the fund shall be carried out in annual tranches during a maximum period of three years, without prejudice to Article 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 the Council***.

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Article 214

Annual reporting

1. The Commission shall report annually on financial instruments, ***including on the financial instruments governed by Article 217,*** budgetary guarantees, financial assistance, contingent liabilities and the common provisioning fund in accordance with Article 250.

2. ***The financial manager of the resources of the common provisioning fund as referred to in paragraph 1 of Article 211 shall report annually on the common provisioning fund, in accordance with Article 250(2).***

CHAPTER 2

Specific provisions

SECTION 1

FINANCIAL INSTRUMENTS

Article 215

Rules and implementation

1. Notwithstanding Article 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 Article ***41***(***4***).

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2. Where financial instruments ***or budgetary guarantees*** are combined within a single agreement with ***ancillary*** support from the Union 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 support are financial instruments or budgetary guarantees.***

▌

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.

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. Notwithstanding the foregoing, the Commission shall ensure compliance with Article ***129, Article 155, Article 209(2) and (4), Article 250 and with the rules of Section 2 of Chapter 2 of Title V insofar as the exclusion situations referred to in point (d) of Article 136(1) are concerned.***

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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 209(3) shall be considered as general revenue and recovered to the budget.

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.

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.

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Article 216

Financial instruments directly implemented by the Commission

1. Financial instruments may be ▌ directly implemented pursuant to Article 62(1)(a) 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 pursuant to point (a) ***of paragraph 1*** shall be established pursuant to the laws of a Member State. In the area of external action, 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 contract to act with the diligence of a professional manager and in good faith.

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3. The managers of the dedicated investment vehicles referred to in paragraph 2 and financial intermediaries or final recipients of the financial instruments shall be selected with due account of the nature of the financial instrument to be implemented, the experience and the operational and financial capacity of the entities concerned, and the economic viability of projects of final recipients. The choice shall be transparent, justified on objective grounds and shall not give rise to a conflict of interests.

Article 217

Treatment of contributions under shared ***management***

1. Separate records shall be kept for contributions to financial instruments established under this Section from funds under shared ***management***.

2. Contributions from funds 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 are made.

3. As regards contributions from funds under shared ***management*** to financial instruments established under this Section, the sector **-**specific rules shall apply. Notwithstanding the foregoing, Managing Authorities may rely on an existing ex-ante evaluation, carried out in accordance with point (h) of Article 209(2), prior to contributing to an existing financial instrument.

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SECTION 2

BUDGETARY GUARANTEES

Article 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 208(2);

(b) the types of operations covered by the budgetary guarantee.

2. Contributions from Member States to budgetary guarantees pursuant to Article 208(2) may be provided in the form of guarantees or cash.

Contributions from third countries to budgetary guarantees pursuant to Article 208(2) may be provided in the form of cash.

The Union 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.

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Article 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 Article 62(1)(c) or, in exceptional cases, pursuant to point (a) of Article 62(1).

3. A budgetary guarantee ***shall*** only cover financing and investment operations which comply with the conditions set out in points (a) to (d) of Article 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) the risk assessment and grading information concerning the operations covered by the budgetary guarantee as well as expected defaults;

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(b) 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 in compliance with the internationally accepted standards for the public sector;

(c) the total profits or losses deriving from the operations covered by the budgetary guarantee.

SECTION 3

FINANCIAL ASSISTANCE

Article 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 this 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.

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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 predefined conditions***, takes appropriate measures to prevent irregularities and fraud, and, if necessary, takes legal action to recover any funds provided under the Union financial assistance that have been misappropriated;

(b) ensuring the protection of the Union's financial interests;

(c) expressly authorising the Commission, the OLAF and the Court of Auditors, to exert their rights as foreseen by Article 129;

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(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 Union's 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 met, 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 paragraphs 1 and 2 of Article 86, the accounting officer shall set up the procedures for the safekeeping of the funds.

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TITLE XI

CONTRIBUTIONS TO EUROPEAN POLITICAL PARTIES

Article 221

General provisions

1. For the purposes of this Regulation, European political parties shall mean the entities registered as such in accordance with Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council[1].

2. Direct financial contributions from the budget may be awarded to 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 Regulation (EU, Euratom) No 1141/2014.

[1] 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).

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Article 222

Principles

1. Contributions shall only be used to reimburse 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) 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 interest 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 they are part of their administrative organisation as set out in their statutes.*** Contributions shall not be used for any of the purposes excluded by Article 22 of Regulation (EU, Euratom) No 1141/2014.

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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 may the same expenditure be financed twice by the budget.

The contributions of the Union to political parties are without prejudice to the ability of the parties to build up reserves with the amount of their own resources in accordance with Regulation (EU) No 1141/2014.

7. If a European political foundation within the meaning 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.

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Article 223

Budgetary aspects

Contributions shall be paid from the European Parliament section of the budget. The appropriations set aside for independent external audit bodies or experts referred to in Article 23 of Regulation (EU, Euratom) No 1141/2014 shall be charged directly to the budget of the European Parliament.

Article 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 the rules laid down in Regulation (EU, Euratom) No 1141/2014, as well as exclusion criteria.

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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 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 are, at the time of the award procedure, in one of the situations referred to in Articles 136(1) and 141 and those who are registered as excluded in the early detection and exclusion database referred to in Article 142.

3. Applicants shall be required to certify that they are not in one of the situations referred to in paragraph 2.

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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.

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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 1 and Article 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 by Article 133(2) of this Regulation.

8. Contributions shall be covered by a written agreement.

Article 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;

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(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 225(8) shall include provisions that allow verifying that the conditions for the award of lump sums, flat-rate financing, unit costs, or financing not linked to costs have been complied with.

4. The contributions shall be paid out in full through one single prefinancing payment, unless, in duly justified cases, the authorising officer responsible decides otherwise.

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Article 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 risk analysis, require the European political party to lodge a guarantee in advance in order to limit the financial risks connected with the prefinancing payment only when, in the light of the risk analysis, the European political party is at imminent risk of being in one of the situations described in points (a) and (d) of Article 136(1) of this Regulation or when a decision of the Authority for European political parties and foundations established under Article 6 of Regulation (EU, Euratom) No 1141/2014 (″the Authority″) has been communicated to the European Parliament and the Council in accordance with Article 10(4) of that Regulation.

Article 153 shall apply mutatis mutandis to guarantees which may be required in the cases foreseen in the first paragraph of this Article to prefinancing payments made to European political parties.

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Article 228

Use of contributions

1. Contributions shall be spent in accordance with Article 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 ***preceding*** year**'**s contributions may not be used to finance the part which European political parties must 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.

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5. Any interest yielded by the prefinancing payments shall be considered as part of the contribution.

Article 229

Report on the use of the contributions

1. The 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) of this Regulation 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.

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Article 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 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 prefinancing 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.

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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 225(8), 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.

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Article 231

Control and penalties

1. Each agreement referred to in Article ***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 European Anti-Fraud Office and the Court of Auditors to exercise their respective competences and powers, referred to in Article 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 136 and 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.

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Article 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 European Anti-Fraud Office investigations if notified to the recipient shall be retained until the end of such audits, appeals, litigation, settlement of claims or investigations.

Article 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 public 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.

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TITLE XII

OTHER BUDGET IMPLEMENTATION INSTRUMENTS

Article 234

Trust Funds ***for external actions***

1. For emergency ***and*** post-emergency ***actions necessary to react to a crisis as defined in Article 2, or for*** thematic actions, the Commission may ***establish, Union*** trust funds ***for external actions*** under an agreement concluded with other donors. ▌

Trust Funds shall only be established where agreements with other donors have secured contributions from other sources than the Union budget.

The Commission shall consult the European Parliament and the Council on its intention to establish a Union trust fund for external actions for emergency and post emergency actions.

The establishment of a Union trust fund for external actions for thematic actions shall be subject to the approval of the European Parliament and the Council.

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For the purposes of the second and third subparagraphs, the Commission shall make available to the European Parliament and the Council, its draft decision concerning the establishment of the Union trust fund. That draft decision shall include a description of the ***trust*** fund's objectives, the justification for its ***establishment*** in accordance with paragraph 3, an indication of its duration and the preliminary agreements ***with other donors. The draft decision 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 the Council for consultation or for approval under the second,third and fourth subparagraphs of paragraph 1 respectively.***

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3. Union trust funds shall comply with the following conditions:

(a) there is added value ***of*** the Union intervention: trust funds shall only be ***established*** and implemented at Union level where their objectives, in particular by reason of their scale or potential effects, may be better achieved at Union level than at national level ***and where intervening with the existing financing instruments would not be sufficient to achieve the Union objectives***;

(b) Union trust funds shall bring clear Union political visibility and managerial advantages as well as better ▌ control ***by the Union*** of risks and disbursements of the Union and other donors' contributions. They ***shall*** not be ***established*** if they ▌ duplicate other existing funding channels or similar instruments without providing any additionality***;***

(c) the objectives of Union trust funds for external action shall be aligned with the objectives of the Union instrument or budgetary item from which they are funded.

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4. A board chaired by the Commission shall be established for each Union trust fund to ensure the fair representation of the donors, and of ***each*** non-contributing Member ***State*** as ***observer***, and to decide upon the use of the funds. The rules for ***the*** composition of the board and its internal rules shall be laid down in the constitutive ***agreement*** of the trust fund ▌. Those rules shall include the requirement to have the positive vote of the Commission for the final decision on the use of the funds.

5. Union trust funds shall be ***established*** for a limited duration determined in their constitutive ***agreement***. This 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 this extension, confirming in particular, that the conditions of paragraph (3) are complied with***.

The European Parliament and/or the Council may request the Commission to discontinue appropriations for that trust fund or to revise the constitutive ***agreement*** with a view to the liquidation of the trust fund, where appropriate ***in particular on the basis of the information submitted in the report foreseen, 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.

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Article 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 the Council***.

2. Actions financed under Union trust funds may be implemented directly by the Commission pursuant to point (a) of Article 62(1) and in indirect ***management*** with the entities pursuant to points (i), (ii), (iii), (v), and (vi) of Article 62(1)(c).

3. Funds shall be committed and paid by financial actors of the Commission, as defined in Chapter 4 of Title IV. The accounting officer of a Union trust fund shall be the accounting officer of the Commission. 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, ***the*** European Anti-Fraud Office and ***the Court of Auditors*** shall exercise the same powers over the trust fund as they do in respect of other actions carried out by the Commission.

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4. The contributions of the Union and of the donors shall not be integrated in the budget and shall be lodged in a specific bank account. The specific bank account of the 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 trust fund.

The contributions of the Union 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 are to 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 trust fund and for the amount in euro resulting from the conversion at their reception on the specific bank account. Interests accumulated on the trust fund's specific bank account shall be invested in the trust fund except where otherwise provided for in the constitutive ***agreement*** of the trust fund.

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5. The Commission shall be authorised to use a maximum of 5 % of the amounts pooled into the 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, management costs stemming from the Union contribution to the trust fund shall only be deducted from that contribution to the extent that those costs have not already been covered by other lines in the budget so as to avoid the double charging of costs.*** For the duration of the trust fund, such management fees shall be assimilated to assigned revenue within the meaning of point (***ii***) of Article ***21***(2)***(a)***.

In addition to the annual report foreseen in Article 252, financial reporting on the operations carried out by each 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 Trust Fund.

The trust funds shall be subject to an independent external audit every year.

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Article 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 conditions referred to in paragraph 1, including the improvement of the management of public finances. In addition, some payments may also be conditional to the achievement of milestones, measured by objective performance indicators, reflecting results and reform progress over time in the respective sector.

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3. The Commission shall support in third countries the respect of the rules of law, the development of parliamentary control and audit and anti-corruption capacities and increase 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) the Commission's right to suspend the financing agreement if the partner breaches an obligation relating to respect for human rights, democratic principles and the rules 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 the that country.

In order to process the reimbursement referred to in ***point (c) of*** the first subparagraph, the second ***subparagraph*** of Article 101(1) may be applied.

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Article 237

Remunerated external experts

1. For values below the thresholds laid down in Article 175(1) remunerated external experts, for assisting the ***Union*** institutions in the evaluation of grant applications, projects and tenders, and for providing opinions and advice in specific cases, may be selected on the basis of the procedure laid down in paragraph 3.

2. Such 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.

3. A call for expressions of interest shall be published on the internet site of the ***Union*** institution concerned.

   The call for expressions of interest shall include a description of the tasks, their duration and the fixed conditions of remuneration.

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A list of experts shall be drawn up following the call for expressions of interest. It shall be valid for no more than five years from its publication or for the duration of a multiannual programme related to the tasks.

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.

5. Experts paid from research and technological development appropriations shall be recruited in accordance with the procedures laid down by the European Parliament and 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, these experts shall be treated as recipients within the meaning of Article 2.

Article 238

Non remunerated experts

The ***Union*** institutions may reimburse travel and subsistence expenses incurred by, or where appropriate pay any other indemnities to persons invited or mandated by them.

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Article 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 240

Other instruments

Other instruments may be used to pay:

(a) expenditure on the members ***and*** staff of the ***Union*** institutions, including contributions to associations of current and former members of the European Parliament, and the contributions to the European schools;

▌

(b) aid as macro-financial assistance.

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TITLE XIII

ANNUAL ACCOUNTS AND OTHER FINANCIAL REPORTING

CHAPTER 1

Annual accounts

SECTION 1

ACCOUNTING FRAMEWORK

Article 241

Structure of the accounts

The annual accounts ***of the European Union*** shall be prepared for each financial year which shall run from 1 January to 31 December. These 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*** the ***Union institutions and*** of the 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 the Union institutions.

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Article 242

Supporting documents

Each entry into the accounts shall be based on appropriate supporting documents in accordance with Article 75.

Article 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 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 year;

   (b) the statement of financial performance, which presents the economic result for the preceding year;

   (c) the cash-flow statement showing amounts collected and disbursed during the year and the final treasury position;

   (d) the statement of changes in net assets presenting an overview of the movements during the year in reserves and accumulated results.

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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. ▌

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SECTION 2

BUDGET ***IMPLEMENTATION REPORTS***

Article 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 year in terms of revenue and expenditure;

(b) the budget result, which is calculated on basis laid down ***in 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 budgetary implementation reports shall be the same as that of the budget itself.***

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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 previous year and those made during the year.

4. As regards information on revenue, a statement shall also be attached, 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.

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SECTION 3

ANNUAL ACCOUNTS TIMETABLE

Article 245

Provisional accounts

1. The accounting officers of the other ***Union*** institutions and bodies referred to in Article 241 shall send their provisional accounts to the accounting officer of the Commission and to the Court of Auditors by 1 March of the following year.

2. The accounting officers of the other ***Union*** institutions and bodies referred to in Article 241 shall also send by 1 March of the following year 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 those provisional accounts with the Commission′s provisional accounts and shall send, via electronic means, to the Court of Auditors, by 31 March of the following year, the provisional accounts of the Commission and the consolidated provisional accounts of the Union.

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Article 246

Approval of the final ***consolidated*** accounts

1. The Court of Auditors shall, by 1 June, make its observations on the provisional accounts of the ***Union*** institutions***,*** other than the Commission***,*** and each ***of the bodies*** referred to in Article 241, and, by 15 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 other ***Union*** institutions and bodies referred to in Article 241 shall send, by 15 June, 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 241, shall send their final accounts to the accounting officer of the Commission, the Court of Auditors, the European Parliament and the Council by 1 July.

3. The accounting officer of each ***Union*** institution and body referred to in Article 241 shall also 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.

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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 bodies referred to in Article 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 send them, via electronic means, both to the European Parliament, the Council and the Court of Auditors by 31 July.

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.

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6. The final consolidated accounts shall be published 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 by 15 November.

CHAPTER 2

Integrated financial and accountability reporting

Article 247

Integrated financial and accountability reporting

1. By 31 July of the following year the Commission shall communicate to the European Parliament and the Council an integrated set of financial and accountability reports which includes:

(a) the consolidated annual accounts as referred to in Article 246;

(b) the annual management and performance report providing for ***a clear and concise*** summary of the ***internal control and financial management achievements contained in*** the annual activity reports of each authorising officer by delegation ▌**.** ***This summary shall include information on key governance arrangements in the Commission as well as:***

- ***an estimation of the level of error in Union expenditure based on a consistent methodology and an estimate of future corrections;***

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- ***information*** on the preventive and corrective actions covering the ***Union*** budget, which shall present the financial impact of the actions taken to protect the ***Union*** budget from expenditure in breach of law;

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- ***information on the implementation of the Commission's anti-fraud strategy;***

(c) ***a long term forecast of future inflows and outflows covering the next 5 years. The forecasts shall be based on the applicable multiannual financial frameworks and Decision 2014/335/EU on own resources;***

▌

(d) the report on the internal audits as referred to in Article 118(***4***);

(e) ***the*** evaluation on the Union's finances based on the results achieved, as referred to in Article 318 of the TFEU ***assessing in particular the progress towards the achievement of policy objectives taking into account performance indicators referred to in Article 33.***

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(f) the report on the follow-up to the discharge as referred to in ***Article*** 261(3).

2. The integrated ▌ financial ***reporting package*** 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 Court of Auditors ***and the European Parliament and the Council by 30 June,with the exception of the consolidated final accounts***.

CHAPTER 3

Budgetary and other financial reporting

Article 248

Monthly reporting on budget implementation

In addition to the annual statements and reports provided for in Articles 243 and 244, the Commission***'***s accounting officer 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 the implementation of the budget, both for revenue and for expenditure covering all available appropriations***. Those figures shall also provide details of the utilisation of appropriations carried over***.

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The figures shall be made available within 10 working days of the end of each month via the Commission's website.

Article 249

Annual Report on budgetary and financial management

1. Each ***Union*** institution and body referred to in Article 241 shall prepare a report on budgetary and financial management for the financial year.

   They shall make the report available to the European Parliament, the Council and 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 budget items.

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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 paragraphs 4 and 5 of Article 41 and with point (d) of Article 52(1). That information shall be made available to the Court of Auditors at the same time.

Article 251

Status report on accounting issues

By 15 September of each 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, progress on accounting matters, including those raised by the Court of Auditors, and information on recoveries.

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Article 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 ***the*** Union Trust Funds ***for external actions***, on their implementation and performance, as well as on their accounts.

The Board of the trust fund shall approve the annual report of the trust fund drawn up by the authorising officer. It shall also approve the final accounts drawn up by the accounting officer. The final accounts drawn up by the accounting officer shall be presented by the Board to the European Parliament and Council within the discharge procedure of the Commission.

Article 253

Publication of information on recipients

The Commission shall publish information on recipients in accordance with Article 38.

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TITLE XIV

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

External audit

Article 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 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 acts adopted pursuant to the Treaties. This examination ***may,*** take account of the multiannual character of programmes and related supervisory and control systems.

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2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 257, all documents and information relating to the financial management of 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 the aforementioned departments or bodies. The audit in the 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 the 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 the 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 the implementation of the budget by, or on behalf of, any ***Union*** institution.

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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 the ***Union*** institutions and authorities to which this Regulation applies of the names of the members of its staff who are empowered to audit them.

Article 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.

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Article 257

Court of Auditors′ right of access

1. The Commission, the other ***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 the Court of Auditors considers necessary for the performance of its task. They shall place at the disposal of the Court of Auditors ***at its request*** 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's right of access shall include the access to the IT system used for the management of revenue or expenditure subject to its audit, where it 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.

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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 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 the ***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.

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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 utilisation, by bodies outside the ***Union*** institutions, of Union funds received by way of contributions.

5. Union financing paid to recipients outside the ***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 provide the Court of Auditors, at its request, 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 the 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***.

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Article 258

Annual report of the Court of Auditors

1. The Court of Auditors shall transmit to the Commission and the ***Union*** institutions concerned, by ***30*** June, any observations which are, in its opinion, such that they should appear in the 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 shall contain an assessment of the soundness of financial management.

3. The annual report shall contain a section for each ***Union*** institution ***and 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 the ***Union*** institutions and shall ensure publication thereof in the *Official Journal of the European Union.*

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Article 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 the institution or the body concerned, the replies may be examined by the European Parliament and the Council after publication of the report.

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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.

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CHAPTER 2

Discharge

Article 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. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Commission of the reasons for the postponement.

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.

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Article 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 granting 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.

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Article 262

Follow-up measures

1. In accordance with Article 319 TFEU and Article 106a of the Euratom Treaty, the Commission, the other ***Union*** institutions and the 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 the Council, the ***Union*** institutions and bodies referred to in paragraph 1 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 the implementation of the budget. The 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 the ***Union*** institutions shall also be transmitted to the Court of Auditors.

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Article 263

Specific provisions regarding the EEAS

The EEAS shall be subject to the procedures provided for in Article 319 TFEU and in Articles 260, 261 and 262 of this Regulation. The EEAS 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.

TITLE XV

ADMINISTRATIVE APPROPRIATIONS

Article 264

General provisions

1. Administrative appropriations shall be non-differentiated appropriations.

2. The administrative appropriations covered by this Title shall be those set out in Article 47(4) ***and those of the other institutions***.

   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).

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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 of 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 the members of the ***Union*** institutions, to staff and to the members of the ***Union*** institutions.

Article 265

Payments made in advance

Expenditure referred to in Article 11(2) which shall 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 this case, the limit referred to in Article 11(2) shall not apply.

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Article 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. It shall not include the 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 the Council under the procedure established in paragraphs 2 and 3 and not included in the preceding year's working documents.

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2. For any building project likely to have significant financial implications for the budget, the ***Union*** institution 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 provisional planning***.

3. For any building project likely to have significant financial implications for the budget, the ***Union*** institution shall present the building project, notably its detailed estimated costs and its financing including any possible use of assigned revenue referred to in point (e) of Article 21(3), as well as a list of draft contracts intended to be used, and shall request the approval of the European Parliament and the Council before contracts are concluded. At the request of the institution, 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.

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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 these elements to be implemented in the same timeframe, exceeding EUR 3 000 000;

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(c) the acquisition, structural renovation, construction of buildings or any project combining these elements to be implemented in the same timeframe, exceeding EUR 2 000 000 in the case 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 case 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),***(c), (d),*** (e) and (f) shall include the costs of fitting out of the building. For rents and usufruct contracts, those thresholds shall take into account the costs of the fitting out of the building but not the other charges.

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6. Without prejudice to Article 17, a building acquisition project may be financed through a loan, subject to prior approval by the European Parliament and the Council.

Loans shall be contracted and repaid in accordance with the principle of sound financial management and with due regard to the best financial interest of the Union.

When the ***Union*** institution proposes to finance the acquisition 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 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 267

Early information procedure and prior approval procedure

1. The early information procedure set out in Article 266(2) and the prior approval procedure set out in Article 266(3***) and (4***) shall not apply to acquisition of land free of charge or for a symbolic amount.

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2. The early information ***procedure set out in Article 266(2) and the*** prior approval procedure set out in paragraphs ***3 and 4*** of Article 266 shall ***also*** apply to residential buildings ***if the acquisition, structural renovation, construction of buildings or any project combining these elements 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 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 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 paragraphs 3 and 4 of Article 266 shall not apply to preparatory contracts or studies necessary to evaluate the detailed cost and financing of the building project.

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TITLE XVI

FINAL AND TRANSITIONAL PROVISIONS

Article 268

Information requests by the European Parliament and 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 269

Exercise of the delegation

1. The power to adopt ***the*** delegated acts referred to in Articles 161, ***70, 71*** and ***213(2)*** is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts 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 two years before 31 December 2020. 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 validity of the corresponding multiannual financial framework

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3. The delegation of power 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. 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 on Better Law-Making of 13 April 2016.

6. A delegated act 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 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 the Council.

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PART TWO

AMENDMENTS TO SECTOR SPECIFIC LEGISLATION

Article 270

Amendments to Regulation (EU) No 1296/2013

Regulation (EU) No 1296/2013 of the European Parliament and of the Council[1] 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."

[1] 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).

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2. Article 14 is amended as follows:

(a) ***Paragraph*** 1 is replaced by the following:

"1. The Progress axis shall support actions in ▌ the thematic sections listed in points (a), (b) and (c). ***Over the entire period of the Programme, the indicative breakdown of the allocation set out in point (a) of Article 5(2) between the different 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 points (a), (b), or (c), or to a combination of them."

(b) paragraph 2 is amended as follows:

"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."

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3. Article 19 is replaced by the following:

"Article 19
Thematic sections and financing

The EURES axis shall support actions in ▌ the thematic sections listed in points (a), (b) and (c)***. Over the entire period of the Programme, the indicative breakdown of the allocation set out in point (b) of Article 5(2) between the different 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 points (a), (b), or (c), or to a combination of them."

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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 listed in points (a) and (b)***. Over the entire period of the Programme, the indicative breakdown of the allocation set out in point (c) of Article 5(2) between the different 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 points (a) or (b) or to a combination of them."

5. Article 33 is deleted.

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Article 271

Amendments to Regulation (EU) 1301/2013

Regulation (EU) No 1301/2013 is amended as follows:

1. In Article 3, in paragraph 1, 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;"

2. In Article 3, in paragraph 1, the following subparagraph is added:

"Investment into cultural and sustainable tourism infrastructure referred to in point (e) of paragraph 1 shall be considered small scale and eligible for support, if the ERDF co-financing does not exceed EUR 10 000 000; that ceiling shall be raised to EUR 20 000 000 in the case of infrastructure considered to be world cultural heritage within the meaning of Article 1 of the 1972 UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage."

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3. In Article 5, in paragraph 9, the following point (e) is added:

"(e) supporting the reception and social and economic integration of migrants and refugees***;***"

4. In the table of Annex I, the text starting with "Social infrastructure" until the end of the table is replaced by the following:

"Social infrastructure

Childcare & 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

"

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Article 272

Amendments to Regulation (EU) No 1303/2013

1. 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 in the context of State aid schemes, as defined in point 13 of this Article, the body which receives the aid***, except where the aid per undertaking is less than EUR 200 000, for which the Member State may decide that the beneficiary is the body granting the aid, without prejudice to de minimis regulations***[1]; and in the context of financial instruments under Title IV of Part Two of this Regulation, it means the body that implements the financial instrument or the fund of funds as appropriate**."**

[1] ***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). Commission Regulation (EU) No 1408/2013 of 24 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). 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).***

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(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;"

[2. In Article 4, in paragraph 7, the reference to "Article 59 of the Financial Regulation" is replaced by "Article 63 of the Financial Regulation".***]***

[3. In Article 4, 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 Articles 33, 36(1) and 61 of the Financial Regulation."***]***

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4. In Article 9, the following subparagraph 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 Fund in the areas of migration and asylum***. In this context, coordination with the Asylum, Migration and Integration Fund shall be ensured, where appropriate***."

5. In Article 16, the following paragraph 4a is inserted:

"4a. Where applicable, the Member State shall submit each year by 31 January an amended Partnership Agreement following the approval of amendments of one or more programmes by the Commission in the previous calendar year ▌.

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 previous calendar year.

That decision may include the amendment of other elements of the Partnership Agreement pursuant to the proposal referred to in paragraph 4, provided that the proposal is submitted to the Commission by 31 December of the previous calendar year.";

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6. In Article 30, paragraphs 2 and 3 are replaced by the following:

"*2. The Commission shall assess the information provided in accordance with paragraph 1, taking account of the justification provided by the Member State. The Commission may make observations within one month of the submission of the revised programme and the Member State shall provide to the Commission all necessary additional information. In accordance with the Fund-specific rules, the Commission shall approve requests for amendment of a programme as soon as possible but no later than three months after their submission by the Member State provided that any observations made by the Commission have been adequately taken into account.*

Where the amendment of a programme affects the information provided in the Partnership Agreement, the procedure set out in paragraph 4a of Article 16 shall apply.

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3. By way of derogation from paragraph 2, where the request for amendment is submitted to the Commission in order to reallocate the performance reserve following the performance review, the Commission shall make observations only where it considers that the allocation proposed is not in compliance with applicable rules, is not consistent with the development needs of the Member State or the region, or entails a significant risk that the objectives and targets included in the proposal cannot be achieved. The Commission shall approve the request for amendment of a programme as soon as possible and no later than two months after the submission of the request by the Member State provided that any observations made by the Commission have been adequately taken into account."

▌

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."

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8. In Article 34, paragraph 3 is replaced by the following:

"3. The tasks of local action groups shall include the following:

(a) building the capacity of local actors ***including potential beneficiaries*** to develop and implement ***operations including*** fostering their project ***preparatory and*** management capabilities;

(b) drawing up non-discriminatory and transparent selection procedure which avoids conflict of interest, 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 a 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;

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(e) receiving and assessing applications for support;

(f) selecting operations and fixing the amount of support and***, where relevant,*** presenting the proposals to the body responsible for final verification of eligibility before approval;

(g) monitoring the implementation of the community-led local development strategy and the operations supported and carrying out specific evaluation activities linked to that strategy.

Where local action groups carry out tasks not covered by points (a) to (g) that fall under the responsibility of the managing or, the 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."

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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 ***extent*** of, differentiated treatment ***as referred to in Article 43a*** to attract counterpart resources from private investors 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) The first subparagraph of paragraph 3 is replaced by the following:

"The ex-ante assessment referred to in paragraph 2 may take into account the ex-ante evaluation carried out in accordance with point (h) 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."

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(ba) 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, 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 (c) is inserted:

"(c) financial instruments ***combining*** such contribution with EIB financial products under the European Fund for Strategic Investment ***in accordance with Article 39a***."

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(b) ***Paragraph*** 4 is amended as follows:

(i) ***The*** first subparagraph is amended as follows:

– points (b) and (c) are replaced by the following:

"(b) entrust implementation tasks, through the direct award of a contract, to:

(i) the EIB;

(ii) an international financial institution in which a Member State is a shareholder;

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(iii) a publicly-owned bank or ▌ institution, established as a legal entity carrying out financial activities on a professional basis, which fulfils all 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***;

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– 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***;

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– ***ensures that this direct award of contract does not provide any direct or indirect benefit for commercial activities by way of appropriate measures in line with applicable law; and***

– 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";

– the following point (d) is added:

"(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 as defined in point (10) of Article 2.";

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(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 shall ensure compliance with applicable law, including rules covering the ESI Funds, State aid, public procurement and relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism, tax fraud and tax evasion. Those bodies shall not make use of or engage in ▌ practices not complying with ***EU*** tax good governance ***principles, as set out in the Union legislation. In this context, the bodies implementing financial instruments shall take the utmost account of the policies of the Union***. They shall not be established and, in relation to the implementation of the financial ***instruments*** shall not maintain business relations with entities incorporated in jurisdictions that do not co-operate with the Union in relation to the application of the internationally agreed tax standards on transparency and exchange of information. Those bodies may, under their responsibility, conclude agreements with financial intermediaries for the implementation of financial ***instruments***. They shall transpose requirements referred to in this paragraph in their contracts with the financial intermediaries selected to participate in the execution of financial ***instruments*** under such agreements."***]***

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(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, 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 interest.

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 financial 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 financial 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."

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(***ca) The first subparagraph of paragraph 7 is amended as follows:***

"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:"

(d) 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."

(e) In Article 38, 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 and in Article 39a(5). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 150(3)".

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12. Article 39 is amended as follows:

(a) The introductory sentence of the first subparagraph of paragraph 2 is replaced by the following:

"Member States may use the ERDF and EAFRD during the eligibility period indicated in Article 65(2) 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 Article 62(1) and Article 208(4) of the Financial Regulation, in respect of the following activities:"

(b) ***In*** 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 is available, on ***an ex-ante assessment at Union,*** national or regional ***level***.

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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;"

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(c) ***Paragraph*** 7 is 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.";

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(d) ***Paragraph*** 8 is replaced by the following:

"8. At closure of the programme, the eligible expenditure as referred to in points (a) and (b) 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, 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 indicated in Article 65(2).";

13. The following Article 39a 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

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1. ***Managing authorities*** may use ESI Funds to provide a contribution to financial instruments referred to in point (c) of Article 38(1) to attract additional private sector investment ***and if it contributes, inter alia, to ESI Funds objectives 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 Article 120(3), the financial contribution may exceed 25 % where duly justified by the ***assessments referred to in Article 37(2) or 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 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 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.

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4. Reporting by managing authorities under Article 46 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 the EFSI Regulation, supplemented by the additional information required under Article 46(2). ***Requirements under 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 Article 38(4)(b) and (c). The body entrusted with implementation tasks*** 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 financial 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 financial 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.

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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 the EFSI Regulation, 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), the bodies referred to in paragraph ***5*** of this article shall ensure compliance with applicable law, including rules covering the ESI Funds, State aid, public procurement and relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism, tax fraud and tax evasion. Those bodies shall not make use of or engage in ▌ practices not complying with ***EU*** tax good governance ***principles, as set out in the Union legislation. In this context, the bodies implementing financial instruments shall take the utmost account of the policies of the Union***. They shall not be established and, in relation to the implementation of the financial ***instruments*** shall not maintain business relations with entities incorporated in jurisdictions that do not co-operate with the Union in relation to the application of the internationally agreed tax standards on transparency and exchange of information. Those bodies may, under their responsibility, conclude agreements with financial intermediaries for the implementation of financial ***instruments***. They shall transpose requirements referred to in this paragraph in their contracts with the financial intermediaries selected to participate in the execution of financial ***instruments*** under such agreements.***]***

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6a. By … [3 months after the entry into force of the Omnibus Regulation], 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 Article 38(1)(c).

7. 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 those 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. The financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflict of interest.

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8. ***Where, for the purpose of implementing financial instruments referred to under point (c) of Article 38(1),*** managing authorities contribute ESI Funds programme resources to an existing instrument ▌, the fund manager of which has already been selected by the EIB, international financial institutions 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 under Article 38(4)(b)(iii), they shall entrust implementation tasks to this fund manager through the award of a direct contract.

9. By way of derogation from Article 41(1) and (2), for contributions to financial instruments under paragraph 8 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 shall correspond to the payment schedule agreed for other investors in the same financial instrument.

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10. 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.

11. For contributions pursuant to paragraph 1 to investment platforms which receive contributions from instruments set up at Union level, consistency with State aid rules shall be ensured pursuant to Article 209(***2***)(c) of the Financial Regulation.

12. In 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*** ESI Funds ▌ contribute***, as appropriate, to different*** tranches of portfolios of loans covered also under the EFSI's ***EU*** guarantee.

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13. 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).

14. Notwithstanding Articles 70 and 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 for in the funding agreement.

15. Before the end of 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.";

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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 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 ▌ .

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The EIB or other international financial institutions in which a Member State is a shareholder shall provide to the designated authorities control reports with each application for payment. They shall also provide to the Commission and to the designated authorities an annual audit report drawn up by the external auditors of these bodies. ***The control reports and the annual audit report defined in this paragraph are without prejudice to the reporting obligations, including the performance of the financial instruments, as defined in Article 46(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 of the ***third*** sub**-**paragraph of this paragraph.

This implementing act shall be adopted in accordance with the advisory procedure referred to in Article 150(2).

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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 when ***the*** conditions of ***Article*** 40 (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***.***

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2a. As regards financial instruments referred to in Article 38(1)(a) and Article 39 which were established by a funding agreement signed before … [date of entry into force of the Omnibus Regulation], the rules of this Article applicable at the moment of the signature of the funding agreement shall apply, by derogation from paragraphs 1 and 2 of this Article."

(b) ***The*** following paragraph 5a is inserted:

"5a. By way of derogation from paragraph 4 of Article 143 of this Regulation and from the second subparagraph of Article 56 of Regulation (EU) No 1306/2013, in operations comprising financial instruments, the contribution cancelled in accordance with paragraph 2 of Article 143 of this Regulation or in accordance with the first subparagraph 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:

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*(*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 financial instrument is implemented through a structure without a fund of funds,*** the contribution cancelled may not be reused within the same operation.

In case a financial correction is made for a systemic irregularity, the contribution cancelled may not be reused for any operation affected by the systemic irregularity."

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(c) Paragraph 4 is replaced by the following:

"4. By … [3 months after the entry into force of the Omnibus Regulation], the Commission shall adopt delegated acts in accordance with Article 149 supplementing this Regulation by laying down additional specific rules concerning the management and control of financial instruments referred to in point (b) and (c) of Article 38(1), regarding the types of controls to be performed by managing and audit authorities, arrangements for keeping supporting documents and elements to be evidenced by supporting documents."

15. ***In*** Article 41, in paragraph 1, the introductory sentence of the first subparagraph is replaced by the following:

"1. As regards financial instruments referred to in point (a) and (c) of Article 38(1) and financial instruments referred to in point (b) of Article 38(1) implemented in accordance with points (a)***, (b)*** and (***c***) 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:"

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16. In Article 41, 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 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 Article 42(1)."

17. The first sentence of Article 42(3) 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 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."

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18. In Article 42, in paragraph 5, the first subparagraph is replaced by the following:

"***5.*** Where management cost and fees as referred to in point (d) of the first subparagraph of paragraph 1 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 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.";

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19. The following Article 43a 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 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 leverage public funding***.

1a. The assessments referred to in Article 37(2) and Article 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 mechanism which will be used to establish the need for, and extent of, such differentiated treatment.***

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2. 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,*** and the EIB when using the EU guarantee according to Regulation (EU) 2015/1017. The alignment of interest shall be ensured through an appropriate sharing of risk and profit.

3. Differentiated treatment of ▌ investors ***operating under the market economy principle,*** shall be without prejudice to the Union State aid rules."

20. 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;

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(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."

21. ***In*** Article 46, in paragraph 2 ▌:

(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;

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(h) progress in achieving the expected leverage effect of investments made by the financial instrument and participations;";

22. In Article 49, paragraph 4 is amended as follows:

"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. The monitoring committee may also make observations on the visibility of support from the ESI Funds and awareness about their results. The monitoring committee shall monitor actions taken as a result of its observations."

23. In Article 51, paragraph 1 is amended as follows:

"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."

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24. ***In*** Article 56, paragraph 5 is deleted;

25. ***In*** Article 57, paragraph 3 is ***replaced by the following:***

"3. Provisions under paragraph 1 and 2 of this Article shall also apply to the ESIF contributions to dedicated programmes referred to in point (b) of the first subparagraph of Article 39(4)";

26. ***In*** Article 58, paragraph 1 is amended as follows:

(a) The reference to "Article 60 of the Financial Regulation" is replaced by "Article 154 of the Financial Regulation".

(aa) Point (f) is amended as follows:

"(f) actions to disseminate information, support networking, carry out communication activities with particular attention to the results achieved with the support of ESI Funds and their added value, raise awareness and promote cooperation and exchange of experience, including with third countries;

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The Commission shall dedicate at least 15 % of the resources mentioned in this Article to bring about greater efficiency in communication to the public at large 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 ESI Funds to improving people's lives, and increasing the visibility of support from ESI Funds as well as 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. They 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."

(b) At the end of the first paragraph, the following subparagraph is added:

"Depending on the purpose, the measures referred to in this Article can be financed either as operational or administrative expenditure.***"***

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27. Article 59 is amended as follows:

(a) The following paragraph 1a is added:

"Each ESI Fund may support technical assistance operations eligible under any of the other ESI Funds."

(b) The following paragraph 3 is added:

"Without prejudice to the second paragraph, Member States may implement actions referred to in the first paragraph through the direct award of a contract, to:

(i) the EIB;

(ii) an international financial institution in which a Member State is a shareholder;

(iii) a publicly-owned bank or financial institution, as defined in point (b) (iii) of Article 38(4).";

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28. Article 61 is amended as follows:

(a) ***In paragraph 1, the first indent is replaced by the following:***

"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 paragraph 3, a new point (aa) is inserted after point (a):

"application of a flat rate net revenue percentage established by a Member State for a sector or sub-sector not covered under 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.";

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(*c*) ***Paragraph*** 5 is replaced by the following:

"As an alternative to the application of the methods laid down in paragraph 3, 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 operations supported ▌ could apply a uniform flat rate in accordance with point (a) of the first subparagraph of paragraph 3. 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 point (a) of the first subparagraph of paragraph 3."

(*d*) ***Point*** (h) of paragraph 7 is replaced by the following:

"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 within the meaning of Article 2(13) of this Regulation."

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29. Article 65 is amended as follows:

(a) In paragraph 8:

(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 under the EMFF Regulation; or"

(ii) ***Point*** (i) is replaced by the following:

"(i) operations for which the total eligible cost does not exceed EUR 100 000.";

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(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 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."

30. Article 67 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) ***Point*** (c) is replaced by the following:

"lump sums;"

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(ii) ***Point*** (e) is inserted:

"(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 laid out in the delegated act*** adopted in accordance with ▌ paragraph ***5a of this Article.***

In case of the financing form referred to in point (e) of the first subparagraph, audit shall exclusively aim at verifying that the conditions for reimbursement have been fulfilled."

(b) ***The*** following paragraph 2a is inserted:

"2a. For an operation or projects not falling under 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 100 000 shall take the form of standard scales of unit costs, lump sums or flat rates, except for operations receiving support within the framework of a State aid scheme that does not constitute de minimis aid."

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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 paragraph 1.

For operations supported by the EAFRD, ERDF or the ESF, where the flat rate referred to in the first paragraph of Article 68b is used, the allowances and salaries paid to participants may be reimbursed in accordance with point (a) of paragraph 1 of this Article.

This paragraph shall be subject to the transitional provisions set out in paragraph 7 of Article 152."

(ba) 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."

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(c) ***Paragraph*** 5 is amended as follows:

(i) ***Point*** (a) is replaced by the following:

"(a) a fair, equitable and verifiable calculation method based on:

(i) statistical data ▌**,** other objective information ***or an expert judgement; or***

(ii) the verified historical data of individual beneficiaries; ***or***

(iii) the application of the usual cost accounting practices of individual beneficiaries;***"*** ▌

(***ii) The following point (a)(bis) is added:***

"(a)(bis) 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 ***100 000***;";

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(***iii***) ***The*** following ***paragraph*** is added:

"***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, the related methods referred to in point (a) of ▌ paragraph ***5*** and the form of support referred to in point (e) of the first subparagraph of paragraph ***1, by specifying detailed modalities concerning the financing conditions and their application.";***

31. 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;

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(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.";

32. ***The*** following Articles 68a and 68b 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***, without there being a requirement for the Member State 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 defined in point (a) of Article 4 of Directive 2014/24/EU***.

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2. For the purposes of determining staff costs***, an*** hourly rate may be calculated by dividing the latest documented annual gross employment costs by 1 720 hours for persons working full time, or by a corresponding pro-rata of 1 720 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 persons 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.

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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 cost not included in the flat rate.***"***

2. The flat rate referred to in paragraph 1 of this Article shall not be applied ***to staff*** costs ▌ calculated on the basis of a flat rate."

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33. Article 70 is ***replaced*** as follows:

▌

"Article 70

Eligibility of operations depending on location

1. Operations supported by the ESI Funds, subject to the derogations referred to in paragraph 2, and the Fund-specific rules, 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 does not apply to the national programme referred to in Article 6(2) of regulation (EU) No 1305/2013 and to the specific programme for the establishment and the operation of the national rural network referred to in Article 54(1) of Regulation (EU) No 1305/2013.

▌

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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 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.***

▌

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Where operations financed from the Funds and the EMFF ***are*** implemented outside the programme area in accordance with paragraph 2 ***and*** have benefits both outside and within the programme area ***such*** expenditure shall be allocated to these 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) shall apply.

▌

3. For operations concerning technical assistance or ***[information,]*** communication ***[and visibility measures]*** and promotional activities, and for operations under 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 to 3 shall not apply to programmes under the European territorial cooperation goal and paragraphs 2 and 3 shall not apply to operations supported by the ESF."

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34. ***In*** Article 71, paragraph 4 is replaced by the following:

"4. Paragraphs 1, 2 and 3 shall not apply to contributions to or by financial instruments or for lease purchase under Article 45(2)(b) of Regulation (EU) No 1305/2013 nor to any operation which undergoes cessation of a productive activity due to a non-fraudulent bankruptcy.";

[35. ***In*** Article 75, 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".***]***

36. In Article 75, the following paragraph 2a is inserted:

"2a. The Commission shall provide the competent Member State authority with:

(a) the draft audit report from the on-the-spot audit or check within 3 months' time from the end date of the respective on-the-spot audit or check. The aforementioned time limit 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 the request;

(b) the final audit report within 3 months' time from the date of receiving a complete reply from the competent national authority to the draft audit report from the respective on-the-spot audit or check;

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(c) the reports mentioned under points (a) and (b) shall be made available within the aforementioned time limits in at least one of the official languages of the Union.

Paragraph 2a shall not be applicable to the European Agricultural Fund for Rural Development."

37. Article 76 is amended as follows:

(a) In the second subparagraph the reference to "Article 84***(2)*** of the Financial Regulation" is replaced by "Article 110***(1)*** of the Financial Regulation".

(b) In the fourth subparagraph the reference to "Article 16 of the Financial Regulation" is replaced by "Article 16 of the Financial Regulation".

38. ***In*** Article 79, paragraph 2, the reference to "Article 68(3) of the Financial Regulation" is replaced by "Article 82(2) of the Financial Regulation".

[39. ***In*** Article 83, paragraph 1, point (c) the reference to "Article 59(5) of the Financial Regulation" is replaced by "Article 63(5)***, (6) and (7)*** of the Financial Regulation".***]***

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40. ***In*** Article 84 the reference to "Article 59(6) of the Financial Regulation" is replaced by "Article 63(8) of the Financial Regulation".

41. Article 98, paragraph 2 is replaced by the following:

"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."

42. 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.";

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(b) ***The*** following paragraph 6a is added:

"6a. Where the major project is appraised by independent experts pursuant to paragraph 1, expenditure relating to that major project may be included in a payment application after the managing authority has informed the Commission of the submission of the information required under Article 101 to the independent experts.

An independent quality review ***shall be delivered*** within 6 ***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 3 months after the lapse of the time period referred to in the first subparagraph; or

(b) where the submission of the information is withdrawn by the Member State; or

(c) where the relevant appraisal is negative."

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43. ***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 5 000 000 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 and to the first Joint Action Plan submitted by a Member State under the Investment for Jobs and Growth Goal and the first Joint Action Plan submitted by a programme under the European territorial Cooperation goal.";

44. ***In*** Article 105, in paragraph 2,the second sentence is deleted;

45. ***In*** Article 106, the first subparagraph 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;"

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(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) ***Point 6 is 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";

(da) Point 7 is replaced by the following:

"(7) confirmation that it will contribute to the approach on sustainable development, as set out in the relevant programme or Partnership Agreement";

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(e) ***Point*** 8 is replaced by the following:

"(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**.**"

(***f***) ***In*** point ***9,*** letter (b) is deleted;

(g) In point 9, letter (a) is amended as follows:

"***(a) the costs of achieving milestones, outputs and result targets, based, in the case of standard scale 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;***"

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46. ***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.";

47. ***In*** Article 108, in paragraph 1, the first subparagraph is replaced by the following:

"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)."

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48. Article 109, paragraph 1 is replaced by the following:

"Payments to the beneficiary of a joint action plan shall be treated as lump sums or standard scales of unit costs."

49. Article 110 ***is amended as follows:***

(a) In paragraph 1, point (c) is replaced by the following:

"(c) 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 these are approved by local action groups in accordance with*** Article 34(3)(c);"

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50. 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 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 this Regulation has entered into force, the evaluation plan shall be submitted to the monitoring committee no later than one year after the date this Regulation enters into force;"

(b) ***Paragraph*** 4 is deleted.

51. The title of Chapter II is replaced by the following:

"Information, communication and visibility"

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52. ***Article 115 is amended as follows:***

(a) The title of the Article is replaced by:

"Article 115
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."

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53. In Article 116, paragraph 3 is amended as follows:

"3. By way of derogation from the third subparagraph of paragraph 2, 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 as well as on the planned information and communication activities and measures that will enhance visibility of the Funds to be carried out in the following year. The monitoring committee shall give an opinion on the planned activities for the following year including on ways to increase the effectiveness of communication activities aimed at the general public."

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54. In Article 117, paragraph 4 is amended as follows:

"4. Union networks comprising the members designated by the 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 information and communication measures, propose recommendations to enhance the outreach and impact of communication activities and to raise awareness about their results and added value."

55. Article 119 is amended as follows:

(a) ***In*** paragraph 1, the first subparagraph is replaced by the following:

"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 jobs and growth goal*** at the time of the adoption of the operational programmes ▌***."***

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(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.";

56. In Article 122, in paragraph 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.";

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57. In Article 123, paragraph 5, the first subparagraph is replaced by the following:

"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."

58. 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, and the time-limit for execution as well as requirements regarding information, communication and visibility;"

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(b) ***Paragraph*** 4 is amended as follows:

(a) 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, 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), (c)***, (d)*** and (***e***) of the first subparagraph of Article 67(1), that the conditions for reimbursement of expenditure to the beneficiary have been met;"

[(b) in point (e), 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".***]***

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[59. In point (b) of the first subparagraph 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".***]***

[60. Article 127 is amended as follows:

(a) in paragraph 1, third subparagraph , 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 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".***]***

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61. 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 under 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 use the relevant model for payment applications set out in the implementing acts adopted in accordance with Article 132(6).

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2. Eligible expenditure included in a payment application shall be supported by receipted invoices or accounting documents of equivalent probative value, except for forms of support under points (b), (c), (d) and (e) of the first subparagraph of Article 67(1), under Article 68, Article 68a, Article 68b, Article 69(1) and Article 109 of this Regulation and under 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 aid schemes under Article 107 TFEU, 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 the second sentence of Article 2(10), paid by the beneficiary to the body receiving the aid.

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4. By way of derogation from paragraph 1, 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 the second sentence of Article 2(10), 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 be 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 the second sentence of Article 2(10), of the total amount of the aid to be granted to the body receiving the aid as part of a given operation.

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(c) those advances are covered by expenditure paid by beneficiaries or, where Member States have decided that the beneficiary is the body granting the aid pursuant to the second sentence of Article 2(10), expenditure paid by the body receiving the aid in implementing the operation and supported by receipted invoices or accounting documents of equivalent probative value at the latest within three years following the year of the payment of the advance or on 31 December 2023, whichever is earlier, failing which the next payment application shall be corrected accordingly.

5. Each payment application which includes advances of the type referred to in paragraph 4 shall separately disclose the total amount paid from the operational programme as advances, the amount which has been covered by expenditure paid by beneficiaries or, where Member States have decided that the beneficiary is the body granting the aid pursuant to the second sentence of Article 2(10), by the body receiving the aid within three years of the payment of the advance in accordance with point (c) of paragraph 4, and the amount which has not been covered by expenditure paid by beneficiaries or, where Member States have decided that the beneficiary is the body granting the aid pursuant to Article 2(10), by the body receiving the aid, and for which the three year period has not yet elapsed."

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[62. ***In*** Article 137, in paragraph 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"***.]***

63. ***In*** Article 138, the reference to "Article 59(5) of the Financial Regulation" is replaced by "Article 63(5) of the Financial Regulation".

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64. ***In*** Article 140, in paragraph 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."

[65. ***In*** Article 145, in paragraph 7, point (a), the reference to " Article 59(5) of the Financial Regulation" is replaced by "Article 63(5)***, (6) and (7)*** of the Financial Regulation"***.]***

[66. ***In*** Article 147, in paragraph 1, the reference to "Article ***78*** of the Financial Regulation" is replaced by "Article ***98*** of the Financial Regulation"***.]***

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57. In Article 148, the first paragraph is replaced by the following:

"1. Operations for which the total eligible expenditure does not exceed EUR 400 000 for the ERDF and the Cohesion Fund, EUR 300 000 for the ESF or EUR 200 000 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.

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By derogation from the first subparagraph, operations for which the total eligible expenditure is between EUR 200 000 and EUR 400 000 for the ERDF and Cohesion Fund, between EUR 150 000 and EUR 300 000 for the ESF and between EUR 100 000 and EUR 200 000 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/draw up an audit opinion on the basis of statistical or non-statistical sampling methods referred to in paragraph 1 of Article 127 without carrying out more than one audit of the respective operation."

68. In Article 149, paragraph 2 is 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 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 subparagraph of Article 68(1), 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."

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69. ***In*** Article 152, a new paragraph ***7*** is added:

"***7.*** ***The*** managing authority (or monitoring committee for the programmes under the European territorial cooperation goal) may decide not to apply the obligation set out in Article 67(2a) for a maximum ***period*** of ***12*** months starting from the date of entry into force of Regulation XXX/YYY. ▌

Where the managing authority (or monitoring committee for the programmes under the European territorial cooperation goal) considers that the obligation set out in Article 67(2a) creates a disproportionate administrative burden, it may decide to extend the transitional period referred to in the first subparagraph for a period it considers appropriate. It shall notify the Commission of such decision before the expiration of the 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 50 000."

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70. Annex IV is amended as follows:

(a) The introductory sentence of section 1 is replaced by the following:

"Where a financial instrument is implemented under Article 39a and points (a)**,** (b) ***and*** (***c***) 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:";

(b) Point (i) of section 1 is replaced by the following:

"provisions regarding the re-utilisation 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;";

(c) ***Point*** (c) of section 2 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.";

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71. Annex XII is amended as follows:

(***-a) The title of Annex XII is amended as follows:***

"INFORMATION, COMMUNICATION AND VISIBILITY OF SUPPORT FROM THE FUNDS"

(-b) The title of Section 2 is amended as follows:

"2. INFORMATION AND COMMUNICATION MEASURES AND MEASURES TO ENHANCE VISIBILITY FOR THE PUBLIC"

(-c) In subsection 2.1, 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;"

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(-d) In subsection 2.1, paragraph 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 should 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."

(-e) In subsection 2.2, the first sentence of paragraph 1 is amended as follows:

"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:"

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(a) ***In*** subsection 2.2 the following point is added:

"6. The responsibilities laid down under 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 Article 125(3)(c)."

(b) ***In*** subsection 3.1, in paragraph 2, 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 Article 125(3)(c). The managing authority may request potential beneficiaries to propose indicative communication activities ***to enhance the visibility of the Fundsproportional*** to the size of the operation, in the applications."

(c) In subsection 4, point (i) in paragraph 1 is amended as follows:

"(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."

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Article 273

Amendments to Regulation (EU) No 1304/2013

Regulation (EU) No 1304/2013 of the European Parliament and of the Council[1] is amended as follows:

1. In Article 13, the following subparagraph is inserted in paragraph 2:

"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 these programme areas on a pro rata basis based on objective criteria ▌."

2. Article 14 is amended as follows:

(-a) The following paragraph -1 is inserted:

"-1. The general rules applicable for simplified cost options under the ESF are set in Articles 67, 68, 68a, 68b and 69 of Regulation (EU) 1303/2013."

(a) Paragraph 2 is deleted.

[1] 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).

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(aa) Paragraph 3 is deleted.

(b) Paragraph 4 is deleted.

3. In Annex I, paragraph (1) is replaced by the following:

"(1) Common output indicators for participants

"Participants"[1] 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.

[1] 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 the provisions of 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).

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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*,

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- 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.

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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.

- homeless or affected by housing exclusion*,

- from rural areas*[1]

▌

The data on participants under the two ▌ above indicators will be provided in the annual implementation reports as specified in Article 50 ▌ of Regulation (EU) No 1303/2013. The data ***of the two*** indicators above 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."

▌

[1] 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).

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Article 274

Amendments to Regulation (EU) No 1309/2013

Regulation (EU) No 1309/2013 of the European Parliament and of the Council[1] is amended as follows:

1. 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 points (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, when the Member State demonstrates that the SMEs are the main or only types 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."

[1] 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. 347).

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2. 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 ***same*** NUTS 2 level regions ▌***."***[1]

[1] ***A transitional provision for the ongoing projects is needed. A separate subparagraph under Article 277 of the Omnibus regulation:***
"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."

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3. In Article 11, paragraph 3 is replaced by the following:

"The tasks set out in paragraph 1 shall be performed in accordance with the Financial Regulation."

4. 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 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 act by the European Parliament and by the Council."***

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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. Blending Facilities in accordance with Article 159 of the Financial Regulation may be established under this Regulation for one or more of the CEF sectors. ***All actions contributing to projects of common interest are eligible.***

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 envelopes of the CEF as referred to in Article 5(1).

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By way of derogation from the first sub-paragraph, in the transport sector the overall contribution from the Union budget to CEF Blending Facilities shall not exceed EUR 500 000 000.

If the 10 % of the overall financial envelopes 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 the overall financial envelopes of the CEF referred to in Article 5(1).

3a. The amount of EUR 11 305 500 000 transferred from the Cohesion Fund, referred to in Article 5(1)(a), shall not be used to commit budgetary resources to CEF Blending Facilities.

4. Support provided under the 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 accorded shall exceed the funding rates laid down in Article 10.***

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4a. The Commission shall, in cooperation with the 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.

5. The Union, any Member State 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 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 paragraph 2.

6. 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 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.

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6a. The blending facilities shall be made available and the operations shall be selected based on the selection and award criteria in accordance with the multi-annual and annual programmes which are adopted pursuant to Article 17 in accordance with the examination procedure.

7. 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, in paragraph 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 following subparagraph is inserted after the second subparagraph:

"The above-mentioned certification of the expenditure is not mandatory for grants awarded on the basis of Regulation 283/2014 on guidelines for trans-European networks in the area of telecommunications infrastructure."

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Article 276

Amendments to Regulation (EU) No 223/2014

Regulation (EU) No 223/2014[1] is amended as follows:

1. In Article 9, the following paragraph 4 is added:

"4. Paragraphs 1 to 3 do not apply for the purposes of modifying elements of an operational programme falling under the respective sub-sections 3.5 and 3.6 and section 4 of the operational programme templates set out in Annex I.

A Member State shall notify the Commission of any decision falling under 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."

[1] ***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.***

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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 does not receive 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."[1]

3. In Article 25, in paragraph 3, the following point (e) is added:

"(e) rules for the application of corresponding unit costs, lump sums and flat rates applicable in Union policies for a similar type of operation and beneficiary."

[1] ***NB: Agreement on retroactivity of the provision regulated in Article 280 of the Omnibus Regulation.***

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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); 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 3a is inserted:

"3a. Notwithstanding paragraph 2, a reduction of the eligible costs referred to in paragraph (2)(a) 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 set out in paragraph 26(2)(c) and (e)."

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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."

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7. Article 32, paragraph 4 is amended as follows:

(a) ***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 ***paragraph*** of Article 25, 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), (c) and (d) of the first ***paragraph*** of Article 25, ***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;

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(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 is 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."

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Article 277

Amendments to Regulation (EU) No 283/2014

Regulation (EU) No 283/2014 of the European Parliament and of the Council[1] is amended as follows:

1. In Article 2, ***in*** paragraph 1, point (e) is amended as follows:

"***(e)*** generic services" means gateway services linking one or more national infrastructure(s) to core service platform(s) 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. In Article 5, 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,

[1] 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).

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(b) grants, and/or

(c) financial instruments as provided for in Article 5(5)."

3. In Article 5, the following paragraph 4a is added:

"4a. The overall contribution from the Union budget to financial instruments for digital service infrastructures 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."

4. In Article 8, paragraph 1 is replaced by the following:

"1. On the basis of information received under the third subparagraph 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."

▌

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Article 278

Amendments ***to*** Decision No 541/2014/UE

1. In Decision No 541/2014/EU of the European Parliament and of the Council ▌, in Article 4, the following paragraph 3 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, 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 assess before the end of the MFF the new simplified financial rules and their contribution to the objectives of the SST support framework.***"

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PART THREE

FINAL AND TRANSITIONAL PROVISIONS

Article 279

Transitional provisions

Legal commitments for grants implementing the EU budget under the Multiannual Financial Framework 2014-2020 may continue to take the form of grant decisions. Provisions of Title VIII applicable to grant agreements shall apply mutatis mutandis to grant decisions. The Commission will review the use of grant decisions under the Multiannual Financial Framework post 2020 in particular in view of the progress made in electronic signature and electronic management of grants by that time.

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.

Provisions of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall continue to apply to legal commitments concluded until the entry into force of this Regulation. The existing pillar assessments, contribution agreement templates and framework partnership agreements may continue to apply and will be reviewed as appropriate.

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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.

▌

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Article 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 the provisions of Title VIII ***and Title X*** of Part One and the deadlines set out in Article 259.

Article 281

Repeal

1. Regulation (***EU***, Euratom) No 966/2012 ***is repealed with effect from the date of entry into force of this Regulation. It shall, however, continue to apply until 31 December 2018 for the purposes of Article 282(3)(c).***

2. ***Without prejudice to the third paragraph of Article 279, the Commission shall repeal*** Delegated Regulation (EU) No 1268/2012 ***with effect from the date of entry into force of this Regulation. That Regulation shall, however, continue to apply until 31 December 2018 for the purposes of Article 282(3)(c)***.

3. References to the repealed Regulations shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex 2.

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Article 282

Entry into force and application

1. This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from ***the date of entry into force of this Regulation***.

3. By ***way of*** derogation from the second paragraph of this Article***:***

(a) ***Article 271(1), Article 272(1), Article 272(10)(a)***, Article 272(11)(b)***(i), (c), (ca)*** and (***d***), Article 272(12)(a), (b)(i), (c) and (d), Article 272(14)(b), Article 272 ***(15), (16),*** (19), (20), (24) and (25), Article 272(28)(***d***), Article 272(29)(a)(i), Article 272–(56), Article 272(57), Article– 272(***58)(b***), Article 273(3)***, Article 276(2)*** and Article 276(4)(b) shall apply from 1 January ***2014;***

(b) ***Article 272(11)(a) and (e), Article 272(13), Article 272(14)(c), Article 272(17), (18), Article 272(21)(a) and Article 274(2) 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 as from 1 January 2019 as regards the implementation of the administrative appropriations of the Union institutions; this is without prejudice to point (h);***

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(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, point (f) of Article 21(3), Article 41(4)(l), Articles 62(2), 154(1) and (2), 155(1), (2), (3) and (4) and 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 and Articles ***30(1)(g),*** 41(5), ***110(3)(h), 115(2)(c), 212, 213, 214(2),*** 218, ***219,*** and 220 shall apply ***only as*** from the date of ***application*** of the post 2020 multiannual financial framework***;***

(h) ***the information about the number of full time equivalents referred to in point (iii) of Article 41(3)(b) and the information on the estimated amount of assigned revenue carried over from previous years, referred to in point (ii) of Article 41(8) shall be provided for the first time together with the draft budget to be presented in 2021.***

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4. The Commission shall adopt the delegated act referred to in the second subparagraph of Article 213(2) by 1 July 2020.

This Regulation shall be binding in its entirety and directly applicable in ***all*** Member States.

Done at …, …

For the European Parliament	*For the Council*
The President	*The President*
…	…

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ANNEX ***1***

CHAPTER 1

Common provisions

Section 1

Framework contracts and publicity

1. Framework contracts and specific contracts

1.1. The duration of a framework contract may not exceed four years, save in exceptional cases duly justified in particular by the subject matter of the framework contract.

Specific contracts based on framework contracts shall be awarded in accordance with the terms of the framework contract.

When awarding specific contracts, the parties may not make substantial changes to the framework contract.

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1.2. Where a framework contract is concluded with a single economic operator, the specific contracts shall be awarded within the limits of the terms laid down in the framework contract.

In duly justified circumstances, contracting authorities may consult in writing the contractor, requesting it to supplement its tender if necessary.

1.3. Where a framework contract is to be concluded with several economic operators (″multiple framework contract″), it may take the form of separate contracts signed in identical terms with each contractor.

Specific contracts based on framework contracts concluded with several economic operators shall be implemented in one of the following ways:

(a) following the terms of the framework contract: without reopening of competition, where it sets out all the terms governing the provision of the works, supplies or services concerned and the objective conditions for determining which of the contractors shall perform them;

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(b) where not all the terms governing the provision of the works, supplies or services concerned are laid down in the framework contract: through reopening of competition among the contractors, in accordance with point 1.4 and on the basis of any of the following:

(i) the same and, where necessary, more precisely formulated terms,

(ii) where appropriate, on the basis of other terms referred to in the procurement documents relating to the framework contract.

(c) partly without reopening of competition in accordance with point (a) and partly with reopening of competition amongst the contractors in accordance with point (b), where this possibility has been stipulated by the contracting authority in the procurement documents relating to the framework contract.

The procurement documents referred to in point (c) of the second subparagraph shall also specify which terms may be subject to reopening of competition.

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1.4. A multiple framework contract with reopening of competition shall be concluded with at least three economic operators, provided that there is a sufficient number of admissible tenders as referred to in point 29.3 ▌ .

When awarding a specific contract through reopening of competition among the contractors, the contracting authority shall consult them in writing and fix a time limit which is sufficiently long to allow specific tenders to be submitted. Specific tenders shall be submitted in writing. The contracting authority shall award each specific contract to the tenderer who has submitted the most economically advantageous specific tender on the basis of the award criteria set out in the procurement documents relating to the framework contract.

1.5. In sectors subject to a rapid price and technological evolution, framework contracts without reopening of competition shall contain a clause either on a mid-term review or on a benchmarking system. After the mid-term review, if the conditions initially laid down are no longer adapted to the price or technological evolution, the contracting authority shall not use the framework contract concerned and shall take appropriate measures to terminate it.

1.6. Specific contracts based on framework contracts shall be preceded by a budgetary commitment.

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2. Advertising of procedures equal to or greater than the thresholds under Article 175(1) or for contracts falling within the scope of Directive 2014/24/EU

2.1. The notices for publication in the *Official Journal of the European Union* shall include all the information set out in the relevant standard forms referred to in Directive 2014/24/EU to ensure transparency of the procedure.

2.2. The contracting authority may make known its intentions of planned procurement for the financial year through the publication of a prior information notice. It shall cover a period equal to or less than 12 months from the date on which the notice is sent to the Publications Office.

The contracting authority may publish the prior information notice either in the *Official Journal of the European Union* or on its buyer profile. In the latter case, a notice of publication on the buyer profile shall be published in the *Official Journal of the European Union*.

2.3. The contracting authority shall send to the Publications Office an award notice on the results of the procedure no later than 30 days after the signature of a contract or framework contract with a value equal to or greater than the thresholds laid down in Article 175(1).

Award notices shall not be published for specific contracts based on a framework contract.

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However, notices relating to contracts based on a dynamic purchasing system may be grouped together on a quarterly basis. In such cases, the contracting authority shall send the notice no later than 30 days after the end of each quarter.

2.4. The contracting authority shall publish an award notice:

(a) before signing a contract or a framework contract with a value equal to or greater than the thresholds laid down in Article 175(1) and awarded pursuant to the procedure under point 11.1(b);

(b) after signing a contract or a framework contract with a value equal to or greater than the thresholds laid down in Article 175(1) including awarded pursuant to the procedures under points (a) and (c) to (f) of point ***11.1.***

2.5. The contracting authority shall publish in the *Official Journal of the European Union* a notice of modification of contract during its duration in the cases set out in points (a) and (b) of Article 67(3) where the value of the modification is equal to or greater than the thresholds set in Article 175(1) or is equal to or greater than the thresholds set in Article 181(1) for procedures in the field of external actions. ▌

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2.6. In case of interinstitutional procedure, the contracting authority responsible for the procedure shall be in charge of the applicable publicity measures.

3. Advertising of procedures falling below the thresholds under Article 175(1) or falling outside the scope of Directive 2014/24/EU

3.1. Procedures with an estimated contract value below the thresholds laid down in Article 175(1) shall be advertised by appropriate means. Such advertising shall involve appropriate ex ante publicity on the internet or a contract notice or, for contracts awarded in accordance with the procedure set out in point 13, the publication of a notice for a call for expressions of interest in the *Official Journal of the European Union*. This obligation shall not apply to the procedure set out in point 11 and the negotiated procedure for very low value contracts under point 14.4.

3.2. For contracts awarded in accordance with points (g) and (i) of point 11, the contracting authority shall send a list of contracts no later than 30 June of the following financial year, to the European Parliament and Council. In the case of the Commission, it shall be annexed to the summary of the annual activity reports referred to in Article 74(9).

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3.3. Contract award information shall contain the name of the contractor, the amount legally committed and the subject matter of the contract and, in the case of direct and specific contracts, it shall comply with Article 38(3).

The contracting authority shall publish a list of contracts on its internet site no later than 30 June of the following financial year for:

(a) contracts below the thresholds laid down in Article 175(1);

(b) contracts awarded in accordance with points (h) and (j) to (m) of point 11;

(c) modifications of contracts as set out in point (c) of Article 172(3);

(d) modifications of contracts as set out in points (a) and (b) of Article 172(3) where the value of the modification is below the thresholds laid down in Article 175(1);

(e) specific contracts under a framework contract.

For the purposes of point (e) of the second subparagraph the published information may be aggregated per contractor for the same subject matter.

3.4. In case of interinstitutional framework contracts, each contracting authority shall be responsible for advertising its specific contracts and their modifications under the conditions set in point 3.3.

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4. Publication of notices

4.1. The contracting authority shall draw up and transmit the notices referred to in points 2 and 3 by electronic means to the Publications Office.

4.2. The Publications Office shall publish the notices referred to in points 2 and 3 in the *Official Journal of the European Union* no later than:

(a) seven days after their dispatch if the contracting authority uses the electronic system for filling the standard forms referred to in point 2.1 ▌ and limits free text to 500 words;

(b) 12 days after their dispatch in all other cases.

4.3. The contracting authority must be able to provide evidence of the date of dispatch.

5. Other forms of advertising

In addition to the advertising provided for in points 2 and 3 procurement procedures may be advertised in any other way, notably in electronic form. Any such advertising shall refer to the notice published in the *Official Journal of the European Union* if the notice has been published, and may not precede the publication of that notice, which alone is authentic.

Such advertising may not introduce any discrimination between candidates or tenderers nor contain details other than those contained in the contract notice, if the notice has been published.

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SECTION 2

PROCUREMENT PROCEDURES

6. Minimum number of candidates and arrangements for negotiation

6.1. In a restricted procedure and in the procedures referred to in points (a) and (b) of point 13.1 and in point 14.2, the minimum number of candidates shall be five.

6.2. In the competitive procedure with negotiation, the competitive dialogue, the innovation partnership, the prospection of the local market under point 11.1(g) and the negotiated procedure for low value contracts under point 14.3 the minimum number of candidates shall be three.

6.3. Points 6.1 and 6.2 shall not apply in the following cases:

(a) negotiated procedures for very low value contracts under point 14.4;

(b) negotiated procedures without prior publication under point 11 except for design contests under point 11.1(d) and prospection of the local market under point 11.1(g).

6.4. Where the number of candidates meeting the selection criteria is below the minimum number specified in points 6.1 and 6.2, the contracting authority may continue the procedure by inviting the candidates with the required capacities. The contracting authority may not include other economic operators that did not initially request to participate or that it did not initially invite.

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6.5. During a negotiation, the contracting authority shall ensure equal treatment for all tenderers.

▌A negotiation may take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in the procurement documents. The contracting authority shall indicate whether it will use that option in the procurement documents.

6.6. For the procedures laid down in points (d) and (g) of point 11.1 and points 14.2 and 14.3, the contracting authority shall invite at least all economic operators who have expressed interest following ex ante publicity as set out in point 3.1 or prospection of the local market or a design contest.

7. Innovation partnership

7.1. The innovation partnership shall aim at the development of an innovative product, service or innovative works and the subsequent purchase of the resulting works, supplies or services, provided that they correspond to the performance levels and maximum costs agreed between the contracting authorities and the partners.

The innovation partnership shall be structured in successive phases following the sequence of steps in the research and innovation process, which may include the completion of the works, the manufacturing of the products or the provision of the services. The innovation partnership shall set intermediate targets to be attained by the partners.

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Based on those intermediate targets, the contracting authority may decide after each phase to terminate the innovation partnership or, in the case of an innovation partnership with several partners, to reduce the number of partners by terminating individual contracts, provided that the contracting authority has indicated in the procurement documents those possibilities and the conditions for their use.

7.2. Before launching an innovation partnership, the contracting authority shall consult the market as provided for in point 15 in order to ascertain that the work, supply or service does not exist on the market or as near-to-market development activity.

The arrangements on negotiation set out in Article 164(4) and in point 6.5 shall be followed.

In the procurement documents, the contracting authority shall identify the need for innovative works, supplies or services that cannot be met by purchasing works, supplies or services already available on the market. It shall indicate which elements of this description define the minimum requirements. The information provided shall be sufficiently precise to enable economic operators to identify the nature and scope of the required solution and decide whether to request to participate in the procedure.

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The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.

The contracts shall be awarded on the sole basis of the best price-quality ratio as set out in Article 167(4).

7.3. In the procurement documents, the contracting authority shall specify the arrangements applicable to intellectual property rights.

In the framework of the innovation partnership, the contracting authority shall not reveal to the other partners solutions proposed or other confidential information communicated by a partner without its agreement.

The contracting authority shall ensure that the structure of the partnership and, in particular, the duration and value of the different phases reflect the degree of innovation of the proposed solution and the sequence of the research and innovation activities required for the development of an innovative solution not yet available on the market. The estimated value of works, supplies or services shall not be disproportionate in relation to the investment required for their development.

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8. Design contests

8.1. Design contests shall be subject to the rules on advertising set out in point 2 and may include the award of prizes.

Where design contests are restricted to a limited number of candidates, the contracting authority shall lay down clear and non-discriminatory selection criteria.

The number of candidates invited to participate must be sufficient to ensure genuine competition.

8.2. The jury shall be appointed by the authorising officer responsible. It shall be composed exclusively of natural persons who are independent of candidates in the contest. Where a particular professional qualification is required from candidates in a contest, at least one third of the members of the jury must have the same or an equivalent qualification.

The jury shall be autonomous in its opinions. Its opinions shall be adopted on the basis of projects submitted to it anonymously by the candidates and solely in the light of the criteria set out in the contest notice.

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8.3. The proposals of the jury, based on the merits of each project, and its ranking and remarks, shall be recorded in a report signed by its members.

Candidates shall remain anonymous until the jury has given its opinion.

Candidates may be asked by the jury to answer the questions recorded in the report in order to clarify a project. A full report of the resulting dialogue shall be drawn up.

8.4. The contracting authority shall then take an award decision giving the name and address of the candidate selected and the reasons for the choice by reference to the criteria announced in the contest notice, especially if it departs from the proposals made in the jury's opinion.

9. Dynamic purchasing system

9.1. The dynamic purchasing system is a completely electronic process for making commonly used purchases, which is open throughout its duration to any economic operator who satisfies the selection criteria. It may be divided into categories of works, supplies or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned. In this case, selection criteria must be defined for each category.

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9.2. The contracting authority shall indicate in the procurement documents the nature and estimated quantity of the purchases envisaged and all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

9.3. The contracting authority shall give any economic operator, throughout the period of validity of the dynamic purchasing system, the possibility of requesting to participate in the system. It shall complete its evaluation of such requests within 10 working days of receipt of that request. This deadline may be prolonged to 15 working days where justified. However, the contracting authority may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform the candidate at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.

9.4. The contracting authority shall invite all candidates admitted to the system under the relevant category to submit a tender within a reasonable time. The contracting authority shall award the contract to the tenderer who has submitted the most economically advantageous tender on the basis of the award criteria set out in the contract notice. Those criteria may, if appropriate, be formulated more precisely in the invitation to tender.

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9.5. The contracting authority shall indicate the period of validity of the dynamic purchasing system in the contract notice.

A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

The contracting authority may not resort to this system to prevent, restrict or distort competition.

10. Competitive dialogue

10.1. The contracting authority shall specify its needs and requirements, the award criteria and an indicative timeframe in the contract notice or in a descriptive document.

It shall award the contract to the tender offering the best price-quality ratio.

10.2. The contracting authority shall open a dialogue with the candidates satisfying the selection criteria in order to identify and define the means best suited to satisfying its needs. It may discuss all aspects of the procurement with the selected candidates during this dialogue but it cannot alter its needs and requirements and award criteria as provided for in point 10.1.

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During the course of dialogue, the contracting authority shall ensure equality of treatment among all tenderers and shall not reveal the solutions proposed or other confidential information communicated by a tenderer without its agreement to waive that confidentiality.

The competitive dialogue may take place in successive stages in order to reduce the number of solutions to be discussed by applying the announced award criteria if provision is made for this possibility in the contract notice or the descriptive document.

10.3. The contracting authority shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

After informing the remaining tenderers that the dialogue is concluded, the contracting authority shall ask each of them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project.

At the request of the contracting authority, these final tenders may be clarified, specified and optimised provided this does not involve substantial changes to the tender or to the procurement documents.

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The contracting authority may negotiate with the tenderer having submitted the tender offering the best price-quality ratio to confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender and does not risk distorting competition or causing discrimination.

10.4. The contracting authority may specify payments to the selected candidates taking part in the dialogue.

11. Use of a negotiated procedure without prior publication of a contract notice

11.1. When the contracting authority uses the negotiated procedure without prior publication of a contract notice, it shall follow the arrangements on negotiation set out in Article 164(4) and in point 6.5.

The contracting authority may use the negotiated procedure regardless of the estimated value of the contract, in the following cases:

(a) where no tenders, or no suitable tender, or no request to participate or no suitable request to participate as provided for in point 11.2 have been submitted in response to an open procedure or restricted procedure after this procedure has been completed, provided that the original procurement documents are not substantially altered;

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(b) where the works, supplies or services can only be provided by a single economic operator under the conditions set out in point 11.3 and for any of the following reasons:

(i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;

(ii) competition is absent for technical reasons;

(iii) the protection of exclusive rights including intellectual property rights must be ensured;

(c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events, it is impossible to comply with the time limits laid down in points 24, 26 and 41 and where the justification of such extreme urgency is not attributable to the contracting authority;

(d) where a service contract follows a design contest and is to be awarded to the winner or to one of the winners; in the latter case, all winners must be invited to participate in the negotiations;

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(e) for new services or works consisting in the repetition of similar services or works entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that these services or works are in conformity with a basic project for which the original contract was awarded after publication of a contract notice, subject to the conditions set out in point 11.4;

(f) for supply contracts:

(i) for additional deliveries which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; when the institutions award contracts on their own account, the duration of such contracts may not exceed three years;

(ii) where the products are manufactured purely for the purpose of research, experimentation, study or development; however such contracts shall not include quantity production to establish commercial viability or to recover research and development costs;

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(iii) for supplies quoted and purchased on a commodity market;

(iv) for purchases of supplies on particularly advantageous terms, from either an economic operator which is definitively winding up its business activities, or the liquidators in an insolvency procedure, an arrangement with creditors, or a similar procedure under national law;

(g) for building contracts, after prospecting the local market;

(h) for contracts for any of the following:

(i) legal representation by a lawyer within the meaning of Article 1 of Council Directive 77/249/EEC[1] in arbitration or conciliation or judicial proceedings;

(ii) legal advice given in the preparation of the proceedings referred to above or where there is tangible indication and high probability that the matter to which the advice relates will become the subject of such proceedings, provided that the advice is given by a lawyer within the meaning of Article 1 of Directive 77/249/EEC;

[1] Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ L 78, 26.3.1977, p. 17).

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(iii) for arbitration and conciliation services;

(iv) document certification and authentication services which must be provided by notaries;

(i) for contracts declared to be secret or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the Union so requires, provided the essential interests concerned cannot be guaranteed by other measures; these measures may consist of requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure;

(j) for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2004/39/EC of the European Parliament and of the Council[1], central bank services and operations conducted with the European Financial Stability Facility and the European Stability Mechanism;

[1] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

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(k) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments;

(l) for the purchase of public communication networks and electronic communications services within the meaning of Directive 2002/21/EC of the European Parliament and of the Council[1];

(m) services provided by an international organisation where it cannot participate in competitive procedures according to its statute or act of establishment.

11.2. A tender shall be considered unsuitable where it does not relate to the subject matter of the contract and a request to participate shall be considered unsuitable where the economic operator is in an exclusion situation under Article 136(1) or does not meet the selection criteria.

11.3. The exceptions set out in points (ii) and (iii) of point (b) of point 11.1 shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters when defining the procurement.

[1] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).

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11.4. In the cases referred to in point (e) of point 11.1, the basic project shall indicate the extent of possible new services or works and the conditions under which they will be awarded. As soon as the basic project is put up for tender, the possible use of the negotiated procedure shall be disclosed, and the total estimated amount for the subsequent services or works shall be taken into consideration in applying the thresholds referred to in Article 175(1) or in Articles 178(1) in the field of external actions. When the institutions award contracts on their own account, that procedure may only be used during the performance of the original contract and at the latest during the three years following its signature.

12. Use of a competitive procedure with negotiation or competitive dialogue

12.1. When the contracting authority uses the competitive procedure with negotiation or the competitive dialogue, it shall follow the arrangements on negotiation set out in Article 164(4) and in point 6.5. The contracting authority may use these procedures regardless of the estimated value of the contract, in the following cases:

(a) where only irregular or unacceptable tenders as specified in points 12.2 and 12.3 have been submitted in response to an open or restricted procedure after this procedure has been completed provided that the original procurement documents are not substantially altered; the publication of a contract notice may be waived under the conditions set out in point 12.4;

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(b) with regard to works, supplies or services fulfilling one or more of the following criteria:

(i) where the needs of the contracting authority cannot be met without the adaptation of a readily available solution;

(ii) the works, supplies or services include design or innovative solutions;

(iii) the contract cannot be awarded without prior negotiations because of specific circumstances related to the nature, complexity or the legal and financial make-up of the contract or the risks attached to the subject matter of the contract;

(iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, as set out in point 17.3;

(c) for concession contracts;

(d) for the service contracts referred to in Annex XIV to Directive 2014/24/EU;

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(e) for research and development services other than those covered by CPV codes 73000000-2 to 73120000-9, 73300000-5, 73420000-2 and 73430000-5 unless the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, or unless the service provided is wholly remunerated by the contracting authority;

(f) for service contracts for the acquisition, development, production or co-production of programme material intended for audiovisual or radio media services as defined in Directive 2010/13/EU of the European Parliament and of the Council[1] or contracts for broadcasting time or programme provision.

12.2. A tender shall be considered irregular in any of the following cases:

(a) when it does not comply with the minimum requirements specified in the procurement documents;

(b) when it does not comply with the requirements for submission set out in Article 168(3);

(c) when the tenderer is rejected under points (b) or (c) of Article 141(1);

(d) when the contracting authority has declared the tender to be abnormally low.

[1] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

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12.3. A tender shall be considered unacceptable in any of the following cases:

(a) when the price of the tender exceeds the contracting authority's maximum budget as determined and documented prior to the launching of the procurement procedure;

(b) when the tender fails to meet the minimum quality levels for award criteria.

12.4. In the cases referred to in point (a) of point 12.1, the contracting authority shall not be required to publish a contract notice if it includes in the competitive procedure with negotiation all those tenderers who satisfied exclusion and selection criteria except those who submitted a tender declared to be abnormally low.

13. Procedure involving a call for expressions of interest

13.1. For contracts with a value below the thresholds referred to in Article 175(1) or in Article 178(1) and without prejudice to points 11 and 12 the contracting authority may use a call for expressions of interest to do either of the following:

(a) to pre-select candidates to be invited to submit tenders in response to future restricted invitations to tender;

(b) to collect a list of vendors to be invited to submit requests to participate or tenders.

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13.2. The list drawn up following a call for expressions of interest shall be valid for not more than four years from the date on which the notice referred to in point 3.1 is published.

The list referred to in the first subparagraph may include sub-lists.

Any interested economic operator may express interest at any time during the period of validity of the list, with the exception of the last three months of that period.

13.3. Where a contract is to be awarded, the contracting authority shall invite all candidates or vendors entered on the relevant list or sub-list to do either of the following:

(a) to submit a tender in the case referred to in point (a) of point 13.1;

(b) to submit, in case of the list referred to in point (b) of point 13.1, either of the following:

(i) tenders including documents relating to exclusion and selection criteria;

(ii) documents relating to exclusion and selection criteria and, in a second step, tenders, for those fulfilling these criteria.

14. Middle, low and very low value contracts

14.1. Middle, low and very low value contracts may be awarded by negotiated procedure following the arrangements on negotiation set out in Article 164(4) and in point 6.5. Only candidates invited simultaneously and in writing by the contracting authority may submit an initial tender.

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14.2. A contract of a value exceeding EUR 60 000 and below the thresholds referred to in Article 175(1) shall be deemed of middle value. Point 3.1 and points 6.1 and 6.4 shall apply to such procedures.

14.3. A contract of a value not exceeding EUR 60 000 shall be deemed of low value. Points 3.1 and points 6.2 and 6.4 shall apply to such procedures.

14.4. A contract of a value not exceeding EUR 15 000 shall be deemed of very low value. Point 6.3 shall apply to such procedures.

14.5. Payments of amounts not exceeding EUR 1 000 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender.

15. Preliminary market consultation

15.1. For preliminary market consultation, the contracting authority may seek or accept advice from independent experts or authorities or from economic operators. That advice may be used in the planning and conduct of the procurement procedure, provided that such advice does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

15.2. Where an economic operator has advised the contracting authority or has otherwise been involved in the preparation of the procurement procedure, the contracting authority shall take appropriate measures as set out in Article 141 to ensure that competition is not distorted by the participation of that economic operator.

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16. Procurement documents

16.1. The procurement documents shall include the following:

(a) if applicable, the contract notice or other advertising measure as provided for in points 2 to 5;

(b) the invitation to tender;

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

(d) the draft contract based on the model contract.

Point (d) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

16.2. The invitation to tender shall contain the following:

(a) specify the rules governing the submission of tenders, including in particular the conditions to maintain them confidential until opening, the closing date and time for receipt and the address to which they must be sent or delivered or the internet address in case of electronic submission;

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(b) state that submission of a tender implies acceptance of the terms and conditions set out in the procurement documents and that this submission binds the contractor to whom the contract is awarded during performance of the contract;

(c) specify the period during which a tender will remain valid and may not be modified in any respect;

(d) forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 169, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;

(e) specify the means of proof for compliance with the time-limit for receipt of tenders;

(f) state that submission of a tender implies acceptance of receiving notification of the outcome of the procedure by electronic means.

16.3. The tender specifications shall contain the following:

(a) the exclusion and selection criteria;

(b) the award criteria and their relative weighting or, where weighting is not possible for objective reasons, their decreasing order of importance, which shall also apply to variants if they are authorised in the contract notice;

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(c) the technical specifications referred to in point 17;

(d) if variants are authorised, the minimum requirements which they must meet;

(e) information whether the Protocol on the Privileges and Immunities of the European Union or, where appropriate, the Vienna Convention on Diplomatic Relations or Vienna Convention on Consular Relations applies;

(f) the evidence of access to procurement;

(g) the requirement to indicate in which State the tenderers are established and to present the supporting evidence normally acceptable under the law of that State.

(h) in the case of a dynamic purchasing system or electronic catalogues, the electronic equipment used and the technical connection arrangements and specifications needed.

16.4. The draft contract shall contain the following:

(a) specify the liquidated damages for failure to comply with its clauses;

(b) specify the details which must be contained in invoices and in the relevant supporting documents in accordance with Article 111;

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(c) state that, when the institutions award contracts on their own account, the law which applies to the contract is Union law complemented, where necessary, by a national law or, if necessary for building contracts, exclusively national law;

(d) specify the competent court for hearing disputes;

(e) specify that the contractor shall comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X of Directive 2014/24/EU;

(f) specify whether the transfer of intellectual property rights will be required;

(g) state that the price quoted in the tender is firm and non-revisable or lay down the conditions or formulas for revision of prices during the lifetime of the contract.

For the purposes of point (g) of the first subparagraph, if a revision of prices is set out in the contract, the contracting authority shall take particular account of:

(i) the subject matter of the procurement and the economic situation in which it is taking place;

(ii) the type of contract and tasks and its duration;

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(iii) its financial interests.

Points (c) and (d) of the first subparagraph may be waived for contracts signed in accordance with point (m) of point 11.1.

17. Technical specifications

17.1. Technical specifications shall allow equal access of economic operators to the procurement procedures and not have the effect of creating unjustified obstacles to the opening up of procurement to competition.

Technical specifications shall include the characteristics required for works, supplies or services, including minimum requirements, so that they fulfil the use for which they are intended by the contracting authority.

17.2. The characteristics referred to in point 17.1 may include as appropriate:

(a) the quality levels;

(b) environmental performance and climate performance;

(c) for purchases intended for use by natural persons, the accessibility criteria for people with disabilities or the design for all users, except in duly justified cases;

(d) the levels and procedures of conformity assessment;

(e) performance or use of the supply;

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(f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production processes and methods;

(g) for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority is in a position to prescribe under general or specific regulations in relation to the finished works and to the materials or parts which they involve.

17.3. The technical specifications shall be formulated in any of the following ways:

(a) in order of preference, by reference to European standards, European technical assessments, common technical specifications, international standards, other technical reference systems established by European standardisation bodies or, failing this, their national equivalents; every reference shall be accompanied by the words ″or equivalent″;

(b) in terms of performance or of functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject matter of the contract and to allow the contracting authority to award the contract;

(c) by a combination of the two methods set out in points (a) and (b).

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17.4. Where the contracting authority uses the option of referring to the specifications provided for in point (a) of point 17.3, it shall not reject a tender on the grounds that it does not comply with those specifications once the tenderer proves, by any appropriate means, that the solution proposed satisfies in equivalent manner the requirements defined in the technical specifications.

17.5. Where the contracting authority uses the option provided for in point (b) of point 17.3, to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender which complies with a national standard transposing a European standard, a European technical approval, a common technical specifications, an international standard or technical reference systems established by a European standardisation body, if those specifications address the performance or functional requirements which it has laid down.

The tenderer shall prove by any appropriate means that the work, supply or service in compliance with the standard meets the performance or functional requirements set by the contracting authority.

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17.6. Where a contracting authority intends to purchase works, supplies or services with specific environmental, social or other characteristics, it may require a specific label or specific requirements from a label, provided that all of the following conditions are satisfied:

(a) the label requirements only concern criteria which are linked to the subject matter of the contract and are appropriate to define the characteristics of the purchase;

(b) the label requirements are based on objectively verifiable and non-discriminatory criteria;

(c) the labels are established in an open and transparent procedure in which all the relevant stakeholders may participate;

(d) the labels are accessible to all interested parties;

(e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

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The contracting authority may require that economic operators provide a test report or a certificate as means of proof of conformity with the procurement documents from a conformity assessment body accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council[1] or an equivalent conformity assessment body.

17.7. The contracting authority shall accept any other appropriate means of proof than those referred to in point 17.6, such as a technical dossier from the manufacturer, where the economic operator had no access to the certificates or test reports, or no possibility of obtaining them or obtaining a specific label within the relevant time limits, for reasons that are not attributable to that economic operator and provided that the economic operator concerned proves that the works, supplies or services to be provided fulfil the requirements of the specific label or specific requirements indicated by the contracting authority.

17.8. Unless justified by the subject matter of the contract, technical specifications shall not refer to a specific make or source, or a particular process which characterises the products or services provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain products or economic operators.

[1] Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 (OJ L 218, 13.8.2008, p. 30).

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Such reference shall be permitted on an exceptional basis where a sufficiently detailed and intelligible description of the subject matter of the contract is not possible. Such reference shall be accompanied by the words ″or equivalent″.

18. Exclusion and selection criteria

18.1. For the purpose of Article 137, the contracting authority shall accept the European Single Procurement Document (ESPD) referred to in Directive 2014/24/EU, or, failing that, a declaration on honour signed and dated.

An economic operator may reuse an ESPD which has already been used in a previous procedure, provided that the economic operator confirms that the information contained therein continues to be correct.

18.2. The contracting authority shall indicate in the procurement documents the selection criteria, the minimum levels of capacity and the evidence required to prove this capacity. All requirements shall be related and proportionate to the subject matter of the contract.

The contracting authority shall specify in the procurement documents how groups of economic operators are to meet the selection criteria taking into account point 18.6.

Where a contract is divided into lots, the contracting authority may set minimum levels of capacity for each lot. It may set additional minimum levels of capacity in case several lots are awarded to the same contractor.

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18.3. With regard to capacity to pursue the professional activity, the contracting authority may require an economic operator to fulfil at least one of the following conditions:

(a) be enrolled in a relevant professional or trade register, except for international organisations;

(b) for service contracts, hold a particular authorisation proving that it is authorised to perform the contract in its country of establishment or be a member of a specific professional organisation.

18.4. When receiving requests to participate or tenders, the contracting authority shall accept the ESPD or, failing that, a declaration on honour stating that the candidate or tenderer fulfils the selection criteria. The request for ESPD or declaration on honour may be waived for very low value contracts.

The contracting authority may ask tenderers and candidates at any moment during the procedure to submit an updated declaration or all or part of the supporting documents where this is necessary to ensure the proper conduct of the procedure.

The contracting authority shall require the candidates or successful tenderer to submit up-to-date supporting documents except where it has already received them for the purpose of another procedure and provided that the documents are still up-to-date or it can access them on a national database free of charge.

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18.5. The contracting authority may, depending on its assessment of risks, decide not to require evidence of the legal, regulatory, financial, economic, technical and professional capacity of economic operators in the following cases:

(a) procedures for contracts awarded by the institutions on their own account, with a value not exceeding the value referred to in Article 175(1);

(b) procedures for contracts awarded in the field of external actions, with a value not exceeding the thresholds referred to in Articles 178(1);

(c) procedures under points (b), (e), points (i) and (iv) of point (f), (h) and (m) of point 11.1.

Where the contracting authority decides not to require evidence of the legal, regulatory, financial, economic, technical and professional capacity of economic operators, no pre-financing shall be made except in duly justified cases

18.6. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for the performance of the contract by producing a commitment by those entities to that effect.

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With regard to technical and professional criteria, an economic operator may only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required.

Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial capacity, the contracting authority may require that the economic operator and those entities be jointly liable for the performance of the contract.

The contracting authority may request information from the tenderer on any part of the contract that the tenderer intends to subcontract and on the identity of any subcontractors.

For works or services provided at a facility directly under the oversight of the contracting authority, the contracting authority shall require the contractor to indicate the names, contacts and authorised representatives of subcontractors involved in the performance of the contract, including any changes of subcontractors.

18.7. The contracting authority shall verify whether the entities on whose capacity the economic operator intends to rely and the envisaged subcontractors, when subcontracting represents a significant part of the contract, fulfil the relevant selection criteria.

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The contracting authority shall require that the economic operator replaces an entity or subcontractor which does not meet a relevant selection criterion.

18.8. In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, the contracting authority may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators, a participant in the group.

18.9. The contracting authority shall not demand that a group of economic operators have a given legal form in order to submit a tender or request to participate, but the selected group may be required to adopt a given legal form after it has been awarded the contract if this change is necessary for proper performance of the contract.

19. Economic and financial capacity

19.1. To ensure that economic operators possess the necessary economic and financial capacity to perform the contract, the contracting authority may require in particular that:

(a) economic operators have a certain minimum yearly turnover, including a certain minimum turnover in the area covered by the contract;

(b) economic operators provide information on their annual accounts showing ratios between assets and liability;

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(c) economic operators provide an appropriate level of professional risk indemnity insurance.

For the purposes of point (a) of the first subparagraph, the minimum yearly turnover shall not exceed two times the estimated annual contract value, except in duly justified cases linked to the nature of the purchase, which the contracting authority shall explain in the procurement documents.

For the purposes of point (b) of the first subparagraph, the contracting authority shall explain the methods and criteria for such ratios in the procurement documents.

19.2. In the case of dynamic purchasing systems, the maximum yearly turnover shall be calculated on the basis of the expected maximum size of specific contracts to be awarded under that system.

19.3. The contracting authority shall define in the procurement documents the evidence to be provided by an economic operator to demonstrate its economic and financial capacity. It may request in particular one or more of the following documents:

(a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;

(b) financial statements or their extracts for a period equal to or less than the last three years for which accounts have been closed;

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(c) a statement of the economic operator's overall turnover and, where appropriate, turnover in the area covered by the contract for a maximum of the last three financial years available.

If, for any valid reason, the economic operator is unable to provide the references requested by the contracting authority, it may prove its economic and financial capacity by any other document which the contracting authority considers appropriate.

20. Technical and professional capacity

20.1. The contracting authority shall verify that candidates or tenderers fulfil the minimum selection criteria concerning technical and professional capacity in accordance with points 20.2 to 20.5.

20.2. The contracting authority shall define in the procurement documents the evidence to be provided by an economic operator to demonstrate its technical and professional capacity. It may request one or more of the following documents:

(a) for works, supplies requiring siting or installation operations or services, the educational and professional qualifications, skills, experience and expertise of the persons responsible for performance;

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(b) a list of the following:

(i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and clients, public or private accompanied upon request by statements issued by the clients;

(ii) of the works carried out in the last five years, accompanied by certificates of satisfactory execution for the most important works;

(c) a statement of the technical equipment, tools or plant available to the economic operator for performing a service or works contract;

(d) a description of the technical facilities and means available to the economic operator to for ensuring quality, and a description of available study and research facilities;

(e) a reference to the technicians or technical bodies available to the economic operator, whether or not belonging directly to it, especially those responsible for quality control;

(f) in respect of supplies: samples, descriptions or authentic photographs or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products clearly identified by references to technical specifications or standards;

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(g) for works or services, a statement of the average annual manpower and the number of managerial staff of the economic operator for the last three years;

(h) an indication of the supply chain management and tracking systems that the economic operator will be able to apply when performing the contract;

(i) an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

For the purposes of point (i) of point (b) of the first subparagraph, where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant supplies or services delivered or performed more than three years before will be taken into account.

For the purposes of point (ii) of point (b) of the first subparagraph, where necessary in order to ensure an adequate level of competition, the contracting authority may indicate that evidence of relevant works delivered or performed more than five years before will be taken into account.

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20.3. Where the supplies or services are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the economic operator is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

20.4. Where the contracting authority requires the provision of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, including on accessibility for disabled persons, it shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. The contracting authority shall also accept other evidence of equivalent quality assurance measures from an economic operator that has demonstrably no access to such certificates or has no possibility of obtaining such certificates within the relevant time limits, for reasons that are not attributable to that economic operator and provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

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20.5. Where the contracting authority requires the provision of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, it shall refer to the European Union Eco-Management and Audit Scheme or to other environmental management systems as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council[1] or other environmental management standards based on the relevant European or international standards by accredited bodies. Where an economic operator had demonstrably no access to such certificates, or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority shall also accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

20.6. A contracting authority may conclude that an economic operator does not possess the required professional capacity to perform the contract to an appropriate quality standard where the contracting authority has established that the economic operator has conflicting interests which may negatively affect its performance.

[1] Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC (OJ L 342, 22.12.2009, p. 1).

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21. Award criteria

21.1. Quality criteria may include elements such as technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics, production, provision and trading process and any other specific process at any stage of their life cycle, organisation of the staff assigned to performing the contract, after-sales service, technical assistance or delivery conditions such as delivery date, delivery process and delivery period or period of completion.

21.2. The contracting authority shall specify, in the procurement documents the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender except when using the lowest price method. Those weightings may be expressed as a range with an appropriate maximum spread.

The weighting applied to price or cost in relation to the other criteria must not result in the neutralisation of price or cost.

If weighting is not possible for objective reasons, the contracting authority shall indicate the criteria in decreasing order of importance.

21.3. The contracting authority may lay down minimum levels of quality. Tenders below those levels of quality shall be rejected.

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21.4. Life-cycle costing shall cover parts or all of the following costs, to the extent relevant, over the life cycle of works, supplies or services:

(a) costs, borne by the contracting authority or other users, such as:

(i) costs relating to acquisition;

(ii) costs of use, such as consumption of energy and other resources;

(iii) maintenance costs;

(iv) end of life costs, such as collection and recycling costs;

(b) costs attributed to environmental externalities linked to the works, supplies or services during their life cycle, provided their monetary value can be determined and verified.

21.5. Where the contracting authority assesses the costs using a life-cycle costing approach, it shall indicate in the procurement documents the data to be provided by the tenderers and the method which it will use to determine the life-cycle costs on the basis of those data.

The method used for the assessment of costs attributed to environmental externalities shall fulfil the following conditions:

(a) it is based on objectively verifiable and non-discriminatory criteria;

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(b) it is accessible to all interested parties;

(c) economic operators can provide the required data with reasonable effort.

Where applicable, the contracting authority shall use the mandatory common methods for the calculation of life-cycle costs provided for in Annex XIII of Directive 2014/24/EU.

22. Use of electronic auctions

22.1. The contracting authority may use electronic auctions, in which new prices, revised downwards or new values concerning certain elements of tenders are presented.

The contracting authority shall structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

22.2. In open, restricted or competitive procedures with negotiation, the contracting authority may decide that the award of a public contract is preceded by an electronic auction when the procurement documents can be established with precision.

An electronic auction may be held on the reopening of competition among the parties to a framework contract as referred to in point 1.3(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in point 9.

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The electronic auction shall be based on one of the award methods set out in Article 167(4).

22.3. The contracting authority which decides to hold an electronic auction shall state that fact in the contract notice.

The procurement documents shall include the following details:

(a) the values of the features which will be the subject of electronic auction, provided that those features are quantifiable and can be expressed in figures or percentages;

(b) any limits on the values which may be submitted, as they result from the specifications relating to the subject matter of the contract;

(c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;

(d) the relevant information concerning the electronic auction process including whether it includes phases and how it will be closed, as set out in point 22.7;

(e) the conditions under which the tenderers will be able to tender and, in particular, the minimum differences which will, where appropriate, be required when submitting the tender;

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(f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

22.4. All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to participate in the electronic auction using the connections in accordance with the instructions. The invitation shall specify the date and time of the start of the electronic auction.

The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

22.5. The invitation shall be accompanied by the outcome of a full evaluation of the relevant tender.

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the most economically advantageous tender, as indicated in the procurement documents. For that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

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22.6. Throughout each phase of an electronic auction the contracting authority shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. It may also, where this has been previously indicated, communicate other information concerning other prices or values submitted as well as announce the number of tenderers in any specific phase of the auction. It may not however disclose the identities of the tenderers during any phase of an electronic auction.

22.7. The contracting authority shall close an electronic auction in one or more of the following ways:

(a) at the previously indicated date and time;

(b) when it receives no more new prices or new values which meet the requirements concerning minimum differences, provided that it has previously stated the time which it will allow to elapse after receiving the last submission before it closes the electronic auction;

(c) when the previously indicated number of phases in the auction has been completed.

22.8. After closing an electronic auction, the contracting authority shall award the contract on the basis of the results of the electronic auction.

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23. Abnormally low tenders

23.1. If, for a given contract, the price or cost proposed in a tender appears to be abnormally low, the contracting authority shall request in writing details of the constituent elements of the price or cost which it considers relevant and shall give the tenderer the opportunity to present its observations.

The contracting authority may, in particular, take into consideration observations relating to:

(a) the economics of the manufacturing process, of the provision of services or of the construction method;

(b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;

(c) the originality of the tender;

(d) compliance of the tenderer with applicable obligations in the fields of environmental, social and labour law;

(e) compliance of subcontractors with applicable obligations in the fields of environmental, social and labour law;

(f) the possibility of the tenderer obtaining state aid in compliance with applicable rules.

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23.2. The contracting authority may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

The contracting authority shall reject the tender, where it has established that the tender is abnormally low because it does not comply with applicable obligations in the fields of environmental, social and labour law.

23.3. Where the contracting authority establishes that a tender is abnormally low because the tenderer has obtained state aid, it may reject the tender on that sole ground only if the tenderer is unable to prove, within a sufficient time limit fixed by the contracting authority, that the aid in question was compatible with the internal market within the meaning of Article 107 TFEU.

24. Time limits for receipt of tenders and requests to participate

24.1. The time limits shall be longer than the minimum time limits set out in this point where tenders can only be drawn after a visit to the site or after an on-the-spot consultation of the documents supporting the procurement documents.

The time limits shall be prolonged by five days in any of the following cases:

(a) the contracting authority does not offer direct access free of charge by electronic means to the procurement documents;

(b) the contract notice is published in accordance with point (b) of point 4.2.

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24.2. In open procedures, the time limit for receipt of tenders shall be no less than 37 days from the day following dispatch of the contract notice.

24.3. In restricted procedures, in competitive dialogue in competitive procedures with negotiation, in dynamic purchasing systems and in innovation partnerships, the time limit for receipt of requests to participate shall be no less than 32 days from the day following dispatch of the contract notice.

24.4. In restricted procedures and in competitive procedures with negotiation, the time limit for receipt of tenders shall be no less than 30 days from the day following dispatch of the invitation to tender.

24.5. In a dynamic purchasing system, the time limit for receipt of tenders shall be no less than 10 days from the day following dispatch of the invitation to tender.

24.6. In the procedures after a call for expressions of interest referred to in point 13.1, the time limit shall be:

(a) no less than 10 days from the day following dispatch of the invitation to tender for receipt of tenders in the case of the procedure referred to in point 13.1(a) and point 13.3(b)(i);

(b) no less than 10 days for receipt of requests to participate and no less than 10 days for receipt of tenders in the case of the two-step procedure referred to in point 13.3(b)(ii).

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24.7. The contracting authority may reduce the time limits for receipt of tenders by five days for the open or restricted procedures if it accepts that tenders may be submitted by electronic means.

25. Access to procurement documents and time limit to provide additional information

25.1. The contracting authority shall offer direct access free of charge by electronic means to the procurement documents from the date of publication of the contract notice or, for the procedures without contract notice or under point 13, from the date of dispatch of the invitation to tender.

In justified cases, the contracting authority may transmit the procurement documents by other means it specifies if direct access by electronic means is not possible for technical reasons or if the procurement documents contain information of a confidential nature. In these cases, the second subparagraph of point 24.1 shall apply except in urgent cases as provided for in point 26.1.

The contracting authority may impose on economic operators requirements aimed at protecting the confidential nature of information contained in the procurement documents. It shall announce these requirements as well as how access to the procurement documents concerned can be obtained.

25.2. The contracting authority shall provide additional information linked to the procurement documents simultaneously and in writing to all interested economic operators as soon as possible.

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The contracting authority shall not be bound to reply to requests for additional information made less than six working days before the deadline for receipt of tenders.

25.3. The contracting authority shall extend the time limit for receipt of tenders where:

(a) it did not provide additional information at the latest six days before the deadline for the receipt of tenders although the economic operator requested it in good time;

(b) it makes significant changes to the procurement documents.

26. Time limits in urgent cases

26.1. Where duly substantiated urgency renders impracticable the minimum time limits laid down in points 24.2 and 24.3 for open or restricted procedures, the contracting authority may set:

(a) a time limit for the receipt of requests to participate or tenders in open procedures which shall not be less than 15 days from the date on which the contract notice was dispatched;

(b) a time limit for the receipt of tenders for restricted procedures which shall not be less than 10 days from the date of dispatch of the invitation to tender.

26.2. In urgent cases, the time limit set out in the first subparagraph of point 25.2 and in point 25.3(a) shall be four days.

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27. Electronic catalogues

27.1. Where the use of electronic means of communication is required, the contracting authority may require tenders to be presented in the format of an electronic catalogue or to include an electronic catalogue.

27.2. Where the presentation of tenders in the form of electronic catalogues is accepted or required, the contracting authority shall:

(a) state so in the contract notice;

(b) indicate in the procurement documents all the necessary information concerning the format, the electronic equipment used and the technical connection arrangements and specifications for the catalogue.

27.3. Where a multiple framework contract has been concluded following the submission of tenders in the form of electronic catalogues, the contracting authority may provide that the reopening of competition for specific contracts takes place on the basis of updated catalogues by using one of the following methods:

(a) the contracting authority invites contractors to resubmit their electronic catalogues, adapted to the requirements of the specific contract in question;

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(b) the contracting authority notifies contractors that it intends to collect from the electronic catalogues which have already been submitted the information needed to constitute tenders adapted to the requirements of the specific contract in question, provided that the use of that method has been announced in the procurement documents for the framework contract.

27.4. When using the method under point (b) of point 27.3, the contracting authority shall notify contractors of the date and time at which they intend to collect the information needed to constitute tenders adapted to the requirements of the specific contract in question and shall give contractors the possibility to refuse such collection of information.

The contracting authority shall allow for an adequate period between the notification and the actual collection of information.

Before awarding the specific contract, the contracting authority shall present the collected information to the contractor concerned so as to give it the opportunity to contest or confirm that the tender thus constituted does not contain any material errors.

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28. Opening of tenders and requests to participate

28.1. In open procedures, authorised representatives from tenderers may attend the opening session.

28.2. Where the value of a contract is equal to or greater than the thresholds laid down in Article 175(1), the authorising officer responsible shall appoint a committee to open the tenders. The authorising officer may waive this obligation on the basis of a risk analysis when reopening competition within a framework contract and for the cases set out in point 11.1 except points (d) and (g) of that point.

The opening committee shall be made up of at least two persons representing at least two organisational entities of the institution concerned with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 61.

In the representations or local units referred to in Article 150 or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

28.3. In the case of a procurement procedure launched on an interinstitutional basis, the opening committee shall be appointed by the responsible authorising officer from the institution responsible for the procurement procedure.

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28.4. The contracting authority shall verify and ensure the integrity of the original tender including the financial offer and of the evidence of date and time of its receipt as provided for in points ***3*** and 5 of Article 149 by any appropriate method.

28.5. In open procedures, where the contract is awarded under the lowest price or lowest cost methods in accordance with Article 167(4), the prices quoted in tenders satisfying the requirements shall be read out loud.

28.6. The written record of the opening of the tenders received shall be signed by the person or persons in charge of opening or by members of the opening committee. It shall identify those tenders which comply with the requirements of Article 149 and those which do not, and shall give the grounds on which tenders were rejected as set out in Article 168(4). That record may be signed in an electronic system providing sufficient identification of the signatory.

29. Evaluation of tenders and requests to participate

29.1. The authorising officer responsible may decide that the evaluation committee is to evaluate and rank the tenders on the basis of the award criteria only and that the exclusion and selection criteria are to be evaluated by other appropriate means guaranteeing the absence of conflicts of interests.

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29.2. In the case of a procurement procedure launched on an interinstitutional basis, the evaluation committee shall be appointed by the responsible authorising officer from the institution responsible for the procurement procedure. The composition of the evaluation committee shall reflect, in so far as possible, the interinstitutional character of the procurement procedure.

29.3. Requests to participate and tenders which are suitable under point 11.2, not irregular or unacceptable under points 12.2 and 12.3 shall be considered admissible.

30. Results of the evaluation and award decision

30.1. The outcome of the evaluation shall be an evaluation report containing the proposal to award the contract. The evaluation report shall be dated and signed by the person or persons who carried out the evaluation or by the members of the evaluation committee. That report may be signed in an electronic system providing sufficient identification of the signatory.

If the evaluation committee was not given responsibility to verify the tenders against the exclusion and selection criteria, the evaluation report shall also be signed by the persons who were given that responsibility by the authorising officer responsible.

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30.2. The evaluation report shall contain the following:

(a) the name and address of the contracting authority, and the subject matter and value of the contract, or the subject matter and maximum value of the framework contract;

(b) the names of the candidates or tenderers rejected and the reasons for their rejection by reference to a situation set out in Article 141or to selection criteria;

(c) the references to the tenders rejected and the reasons for their rejection by reference to any of the following:

(i) non-compliance with minimum requirements as set out in point (a) of Article 167(1);

(ii) not meeting the minimum quality levels laid down in point 21***(3)***;

(iii) tenders found to be abnormally low as referred to in point 23;

(d) the names of the candidates or tenderers selected and the reasons for their selection;

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(e) the names of the tenderers to be ranked with the scores obtained and their justifications;

(f) the names of the proposed candidates or successful tenderer and the reasons for that choice;

(g) if known, the proportion of the contract or the framework contract which the proposed contractor intends to subcontract to third parties.

30.3. The contracting authority shall then take its decision providing any of the following:

(a) an approval of the evaluation report containing all the information listed in point 30.2 complemented by the following:

(i) the name of the successful tenderer and the reasons for that choice by reference to the pre-announced selection and award criteria, including where appropriate the reasons for not following the recommendation provided in the evaluation report;

(ii) in the case of negotiated procedure without prior publication, competitive procedure with negotiation or competitive dialogue, the circumstances referred to in points 11, 12 and 39 which justify their use;

(b) where appropriate, the reasons why the contracting authority has decided not to award a contract.

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30.4. The authorising officer may merge the content of the evaluation report and award decision into a single document and sign it in any of the following cases:

(a) for procedures below the thresholds set out in Article 175(1) where only one tender was received;

(b) when reopening competition within a framework contract where no evaluation committee was nominated;

(c) for cases under points (c), (e), (f)(i), (f)(iii) and (h) of point 11.1 where no evaluation committee was nominated.

30.5. In the case of a procurement procedure launched on an interinstitutional basis, the decision referred to in point 30.3 shall be taken by the contracting authority responsible for the procurement procedure.

31. Information for candidates and tenderers

31.1. The contracting authority shall inform all candidates or tenderers, simultaneously and individually, by electronic means of decisions reached concerning the outcome of the procedure as soon as possible after any of the following stages:

(a) the opening phase for the cases referred to in Article 168(3);

(b) a decision has been taken on the basis of exclusion and selection criteria in procurement procedures organised in two separate stages;

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(c) the award decision.

In each case, the contracting authority shall indicate the reasons why the request to participate or tender has not been accepted and the available legal remedies.

When informing the successful tenderer, the contracting authority shall specify that the decision notified does not constitute a commitment on its part.

31.2. The contracting authority shall communicate the information provided for in Article 170(3) as soon as possible and in any case within 15 days of receipt of a request in writing. When the contracting authority awards contracts for its own account, it shall use electronic means. The tenderer may also send the request by electronic means.

31.3. When the contracting authority communicates through electronic means, information shall be deemed to have been received by candidates or tenderers if the contracting authority can prove to have sent it to the electronic address referred to in the tender or in the request to participate.

In such case, information shall be deemed to have been received by the candidate or tenderer on the date of dispatch by the contracting authority.

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CHAPTER 2

Provisions applicable to contracts awarded by the Union institutions on their own account

32. Central purchasing body

32.1. A central purchasing body may act as any of the following:

(a) as wholesaler by buying, stocking and reselling supplies and services to other contracting authorities;

(b) as intermediary by awarding framework contracts or operating dynamic purchasing systems that may be used by other contracting authorities as announced in the initial notice.

32.2. The central purchasing body shall carry out all procurement procedures using electronic means of communication.

33. Lots

33.1. Whenever appropriate, technically feasible, and cost efficient, contracts shall be awarded in the form of separate lots within the same procedure.

33.2. Where the subject matter of a contract is subdivided into several lots, each one being the subject of an individual contract, the total value of all the lots shall be taken into account for the overall evaluation of the applicable threshold.

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Where the total value of all the lots is equal to or greater than the thresholds laid down in Article 175(1), Articles 163(1), 164 and 165 shall apply to each of the lots.

33.3. Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tenderer, a single contract covering those lots may be signed.

34. Arrangements for estimating the value of a contract

34.1. The contracting authority shall estimate the value of a contract based on the total amount payable including any form of options and any renewal.

This estimate shall be made at the latest when the contracting authority launches the procurement procedure.

34.2. For framework contracts and dynamic purchasing systems the value to be taken into account shall be the maximum value of all the contracts envisaged during the total duration of the framework contract or dynamic purchasing system.

For innovation partnerships, the value to be taken into account shall be the maximum estimated value of the research and development activities to take place during all stages of the envisaged partnership as well as of the works, supplies or services to be purchased at the end of the envisaged partnership.

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Where the contracting authority provides for payments to candidates or tenderers it shall take them into account when calculating the estimated value of the contract.

34.3. For service contracts, account shall be taken of the following:

(a) in the case of insurance services, the premium payable and other forms of remuneration;

(b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;

(c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.

34.4. In the case of service contracts which do not specify a total price or of supply contracts for leasing, hire, rental or hire purchase of products, the basis for calculating the estimated contract value shall be:

(a) in the case of fixed-term contracts:

(i) where their duration is 48 months or less in the case of services or 12 months or less in the case of supplies, the total contract value for their duration;

(ii) where their duration is more than 12 months in the case of supplies, the total value including the estimated residual value;

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(b) in the case of contracts without a fixed term or, in the case of services, for a duration exceeding 48 months, the monthly value multiplied by 48.

34.5. In the case of service or supply contracts which are awarded regularly or are to be renewed within a given period, the basis for calculating the estimated contract value shall be any of the following:

(a) the total actual value of successive contracts of the same type awarded during the preceding 12 months or financial year, adjusted, where possible, to take account of the changes in quantity or value which would occur in the course of the 12 months following the initial contract;

(b) the total estimated value of successive contracts of the same type to be awarded during the financial year.

34.6. In the case of works contracts, account shall be taken not only of the value of the works but also of the estimated total value of the supplies and services needed to carry out the works and made available to the contractor by the contracting authority.

34.7. In the case of concession contracts, the value shall be the estimated total turnover of the concessionaire generated over the duration of the contract.

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The value shall be calculated using an objective method specified in the procurement documents, taking into account in particular:

(a) the revenue from the payment of fees and fines by the users of the works or services other than those collected on behalf of the contracting authority;

(b) the value of grants or any other financial advantages from third parties for the performance of the concession;

(c) the revenue from sales of any assets which are part of the concession;

(d) the value of all the supplies and services that are made available to the concessionaire by the contracting authority provided that they are necessary for executing the works or services;

(e) the payments to candidates or tenderers.

35. Standstill period before signature of the contract

35.1. The standstill period shall run from either of the following dates:

(a) the day after the simultaneous dispatch of the notifications to successful and unsuccessful tenderers by electronic means;

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(b) where the contract or framework contract is awarded pursuant to point 11.1(b), the day after the contract award notice referred to in point 2.4 has been published in the *Official Journal of the European Union*.

If necessary, the contracting authority may suspend the signature of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved candidates or tenderers or by any other relevant information received during the period set in Article 175(3). In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

Where the contract or framework contract cannot be signed with the successful envisaged tenderer, the contracting authority may award it to the following best tenderer.

35.2. The period set in point 35.1 shall not apply in the following cases:

(a) any procedure where only one tender has been submitted;

(b) specific contracts based on a framework contract;

(c) dynamic purchasing systems;

(d) negotiated procedure without prior publications referred to in point 11 except the procedure under point 11.1(b).

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CHAPTER 3

Procurement in the field of external actions

36. Special provisions relating to thresholds and the arrangements for awarding external contracts

Point 2 with the exception of point 2.5, points 3, 4 and 6, points (a) and (c) to (f) of point 12.1, point 12.4, point 13.3, points 14 and 15, points 17.3 to 17.7, points 20.4, 23.3, 24, points 25.2 and 25.3, points 26, 28, and 29 with the exception of point 29.3 shall not apply to procurement contracts concluded by the contracting authorities referred to in Article 178(2) or on their behalf. ***Points 32 to 34 shall not apply to procurement in the field of external actions. Point 35 shall apply to procurement in the field of external actions. For the purpose of the second subparagraph of point 35.1, the duration of the standstill period is the one set in Article 178(1).***

Implementation of the procurement provisions under this Chapter shall be decided by the Commission, including the appropriate controls to be applied by the responsible authorising officer where the Commission is not the contracting authority.

37. Advertising

37.1. If applicable, the prior information notice for calls for tender following the restricted procedure or the open procedure as referred to, respectively, in points (a) and (b) of point 38.1, shall be sent to the Publications Office by electronic means as early as possible.

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37.2. The contract award notice shall be sent when the contract is signed except where, if still necessary, the contract was declared secret or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

38. Thresholds and procedures

38.1. The procurement procedures in the field of external actions shall be as follows:

(a) the restricted procedure as provided for in Article 164(1)(b);

(b) the open procedure as provided for in Article 164(1)(a);

(c) the local open procedure.

(d) the simplified procedure;

38.2. The use of procurement procedures according to thresholds shall be as follows:

(a) the open or restricted procedure may be used for:

(i) the service and supply contracts and the service concession contracts with a value of at least EUR 300 000;

(ii) works contracts with a value of at least EUR 5 000 000.

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(b) the local open procedure may be used for:

(i) supply contracts with a value of at least EUR 100 000 and less than EUR 300 000;

(ii) works contracts and works concessions contracts of a value of at least EUR 300 000 and less than EUR 5 000 000;

(c) the simplified procedure may be used for:

(i) service contracts, service concession contracts, works contracts and works concessions contracts with a value of less than EUR 300 000

(ii) supply contracts with a value of less than EUR 100 000

(d) contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender;

(e) payments for amounts less than or equal to EUR 2 500 in respect of item of expenditure may consist simply in payment against invoices without prior acceptance of a tender.

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38.3. In the restricted procedure referred to in point (a) of point 38.1, the contract notice shall state the number of candidates who will be invited to submit tenders. For service contracts at least four candidates shall be invited. The number of candidates allowed to submit tenders must be sufficient to ensure genuine competition.

The list of selected candidates shall be published on the Commission's internet site.

If the number of candidates satisfying the selection criteria or the minimum capacity levels is less than the minimum number, the contracting authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.

38.4. Under the local open procedure referred to in point (c) of point 38.1, the contract notice shall be published at least in the official gazette of the recipient State or in any equivalent publication for local invitations to tender.

38.5. Under the simplified procedure referred to in point (d) of point 38.1, the contracting authority shall draw up a list of at least three tenderers of its choice, without publication of a notice.

Tenderers for the simplified procedure may be chosen from a list of vendors as referred to in point 13.1(b) advertised by a call for expressions of interest.

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If following consultation of the tenderers, the contracting authority receives only one tender that is administrative and technically valid, the contract may be awarded provided that the award criteria are met.

38.6. For legal services not covered under point (h) of point 11.1, the contracting authorities may use the ***simplified*** procedure, whatever is the estimated value of the contract.

39. Use of the negotiated procedure for service, supply and works contracts

39.1. Contracting authorities may use the negotiated procedure with a single tender in the following cases:

(a) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;

(b) where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the procurement documents are not substantially altered;

(c) where a new contract has to be concluded after early termination of an existing contract.

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39.2. For the purposes of point (c) of point 11.1, operations carried out in crisis situations as ***defined*** in Article ***2(21***) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

39.3. Activities of an institutional nature referred to in point (a) of point 39.1 include services directly linked to the statutory mission of the public sector bodies.

40. Tender specifications

By derogation to point 16.3, for all procedures involving a request to participate, the tender specifications may be split according to the two stages of the procedure and the first step may contain only the information referred to in points (a) and (f) of point 16.3.

41. Time limits for procedures

41.1. For service contracts, the minimum time between the day following the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders shall be 50 days. However, in urgent cases other time limits may be authorised.

41.2. Tenderers may put questions in writing before the closing date for receipt of tenders. The contracting authority shall provide the answers to the questions before the closing date for receipt of tenders.

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41.3. In restricted procedures, the time limit for receipt of requests to participate shall be no less than 30 days from the date following that on which the contract notice is published. The period between the date following that on which the letter of invitation is sent and the final date for the receipt of tenders shall be no less than 50 days. However, in certain exceptional cases other time limits may be authorised.

41.4. In open procedures, the time limits for receipt of tenders, running from the date following that on which the contract notice is published, shall be at least:

(a) 90 days for works contracts;

(b) 60 days for supply contracts.

However, in certain exceptional cases other time limits may be authorised.

41.5. In local open procedures, the time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least:

(a) 60 days for works contracts;

(b) 30 days for supply contracts.

However, in certain exceptional cases other time limits may be authorised.

41.6. For the simplified procedures referred to in points 38.1(d), candidates shall be allowed at least 30 days from the date of dispatch of the letter of invitation to tender in which to submit their tenders.

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