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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Draft Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 **(first reading)** - Adoption of the legislative act = Statements

Joint Statement on the discharge procedure and the date of adoption of the final EU accounts:

The European Parliament, the Council and the Commission will – in cooperation with the European Court of Auditors – set out a pragmatic calendar for the discharge procedure.

In that context, the Commission confirms that it will strive to adopt the EU consolidated annual accounts for the financial year 2017 by 30 June 2018 provided that the European Court of Auditors transmits all findings concerning the reliability of these EU accounts, and all consolidated entities' accounts, by 15 May 2018, and its draft annual report by 15 June 2018.

The Commission also confirms that it will strive to provide its replies to the European Court of Auditors' Annual report for the financial year 2017 by 15 August 2018 provided that the European Court of Auditors transmits its draft observations to the Commission by 1 June 2018.

Statements by the Commission

Statement in relation to Article 38 *Publication of information on recipients and other information:*

The Commission will support through networks with the Member States the exchange of good practices as regards the publication of information on recipients of Union funds implemented under shared management. The Commission will take into due consideration the lessons learnt in view of preparing the next Multiannual Financial Framework.

Statement of the Commission on MFF (single set of rules)

The Commission underlines the importance of making progress in the post-2020 multiannual financial framework towards a single set of rules governing the same type of operations irrespective of the way these operations are implemented.

Declaration of the Commission in relation to Article 234(1) regarding the creation of thematic Trust funds

Despite the concerns expressed by the Commission during negotiations, Article 234(1) of the Financial Regulation requires that any decision to establish thematic EU Trust-Funds be submitted to the approval of the European Parliament and the Council. The Commission considers that such a decision falls within the scope of Article 317 TFEU, since it concerns budgetary implementation. The envisaged control by the European Parliament and the Council of the exercise of the Commission's implementing powers is not provided for in Regulation (EU) 182/2011[1], and would be contrary both to Article 291 TFEU and to this regulation. The Commission therefore reserves its rights.

Statement of the Commission on Article 247 *Integrated financial and accountability reporting:*

The Commission will strive to provide the long-term forecast of future inflows and outflows covering the next five years within the budgetary procedure, together with the Amending Letter to the Draft Budget.

Statement in relation to Article 266 *Specific provisions regarding building projects*:

The Commission and the EEAS will inform the European Parliament and the Council, in the context of the working document referred to in Article 266, on any sale and acquisition of building, including those below the threshold set in that Article.

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[1] Regulation (EU) 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 of 28.2.2011, p. 13).

Statement of the Commission on future revisions of the Financial Regulation (impact assessment)

The Commission underlines that the Financial Regulation provides the general rules and the toolbox for the implementation of the spending programmes. There are therefore no direct economic, environmental or social impacts that result from revisions of the legislation and that could usefully be analysed in an impact assessment. The value added of impact assessments comes when making policy choices on specific spending programmes, which have to comply with the regulatory framework provided by the Financial Regulation. The Commission confirms that the required impact assessments will be carried out when preparing these programmes.

The Commission will also continue with its practice of targeted and public consultations of all stakeholders and the broader public. In addition to the results of these consultations, the Commission will also indicate in the explanatory memorandum of future revisions how it has taken into account relevant evaluations of programmes implementing rules or tools provided in the Financial Regulation that it proposes to modify.

Statement by the European Commission on Article 272(8)

The Commission considers that, where a local action group carries out the tasks set out in points (a) to (g) of the first subparagraph of Article 34(3) of Regulation No. 1303/2013 as amended by this Regulation, that local action group need not be designated as an intermediate body. However, in such cases, the final verification of eligibility of operations before their approval shall remain the task of the managing authority, unless that task is formally delegated to the local action group. In that case, the local action group must be designated as an intermediate body and must carry out that task under the final responsibility of the managing authority in line with Article 123(6) of Regulation No. 1303/2013 in the case of the Funds and the EMFF, or in line with Article 66(2) of Regulation No. 1305/2013 in the case of the EAFRD.

Statement by the European Commission on Article 272(14) point (a)

The Commission confirms that the rules on management and control, as set out in paragraphs 1 and 2 of Article 40 of Regulation No. 1303/2013 applicable at the moment of signature of the funding agreements, shall continue to apply to financial instruments referred to in Article 39 of Regulation No. 1303/2013 which were established by a funding agreement signed before the entry into force of this Regulation. This derogation is already enshrined in the legal framework through Article 40(2a) of Regulation No. 1303/2013 and covers the entire life span of these instruments, including any amendments to the initial funding agreement, which may include additional contributions.

Statement by the European Commission on Article 272(16) point (a)

The Commission regrets the modification of Article 42(3) of Regulation No. 1303/2013 as it will lead to increased amounts of the EU budget being paid into escrow accounts. Any eligible expenditure not used in the programming period and paid into an escrow account implies a significant exception to cohesion policy rules as it goes against the basic principle that support from cohesion policy should be implemented and accounted for at the moment of closure of programmes. In addition, this leads to practical implementation issues related in particular to reporting and audit of amounts paid into escrow accounts.

Statement by the European Commission on Article 272(26) points (a) and (e)

The Commission reiterates that, regardless of the legislative changes on provisions applicable to operations generating net revenue after their completion, the principle of sound financial management – as set out in Article 33 of this Regulation – requires that managing authorities make appropriate arrangements to avoid the over-financing of such operations, including where such operations are subject to State aid or generate operating cost-savings. This should particularly be the case for operations with a total eligible cost exceeding EUR 1.000.000, where the beneficiary is not an SME.

Statement by the European Commission on Article 273

The state aid "de minimis" rules are laid down in regulations adopted by the Commission on the basis of Article 108(4) TFEU pursuant to the powers granted to it by Council under Article 109 TFEU (through Council Regulation 2015/1588).

Measures which do not exceed the ceiling in the de minimis Regulations (in most cases EUR 200.000 per undertaking over a period of three years) are deemed not to have any effect on trade between Member States. They may therefore be put into effect without being caught by the prohibition of State aid laid down in Article 107(1) TFEU.

The de minimis rule aims at striking the right balance between simplification and avoiding competition distortions in the internal market, where the Member States have varying financial capacities to subsidize their economies. The amount of de minimis aid has been set at a level below which it can safely be assumed that the aid will have no effect on trade between Member States.

The Commission is not at present considering changes to the de minimis rules to cater for exceptionally serious economic circumstances. However, the Commission would recall that it has in the past put in place exceptional measures to allow State aid to address serious disturbances in the economy of the Member States. For instance, in response to the effects of financial crisis on the real economy, it adopted the so called "Temporary Framework", which applied from December 2009 until December 2011 and allowed, amongst other, aid up to EUR 500.000 per undertaking. The Commission retains the possibility to take such measures where necessary under Article 107(3)(b) TFEU.