Council of the European Union

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**INFORMATION NOTE**

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| From: | General Secretariat of the Council |
| To: | Permanent Representatives Committee/Council |
| 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 (recast)<br>- Outcome of the European Parliament's first reading and Corrigendum procedure<br>(Strasbourg, 14 March 2024 and Strasbourg, 17 September 2024) |

## I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint Declaration on practical arrangements for the co-decision procedure[1], a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this legislative file at first reading.

This file was expected[2] to undergo the Corrigendum procedure[3] in the European Parliament after adoption by the outgoing European Parliament of its position at first reading.

1 OJ C 145, 30.6.2007, p.5.
2 10078/24.
3 Rule 251, EP Rules of Procedure.

## II. VOTES

At its sitting of 14 March 2024, the European Parliament adopted amendment 179 (without legal linguistic revision) to the Commission proposal and amendments 180 to 182 to the legislative resolution containing statements, constituting the European Parliament's position at first reading. It reflects what had been provisionally agreed between the Institutions.

After finalisation of the adopted text by the legal linguists, the European Parliament approved on 17 September 2024 a corrigendum to the position adopted at first reading.

With this corrigendum, the Council should be able to approve the position of the European Parliament as set out in the Annex[4] hereto, thus bringing to a close the first reading for both Institutions.

The act would then be adopted in the wording which corresponds to the European Parliament's position.

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[4] The text of the corrigendum is set out in the Annex. It is presented in the form of a consolidated text, where changes to the Commission's proposal are highlighted in bold and italics. The symbol " ▌ " indicates deleted text.

**ANNEX**

**(17.9.2024)**

# P9_TA(2024)0163

## Financial rules applicable to the general budget of the Union (recast)

**European Parliament legislative resolution of 14 March 2024 on the proposal for a regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (recast) (COM(2022)0223 – C9-0179/2022 – 2022/0162(COD))**

**(Ordinary legislative procedure – recast)**

*The European Parliament*,

– having regard to the Commission proposal to Parliament and the Council (COM(2022)0223),

– having regard to Article 294(2) and Article 322(1) of the Treaty on the Functioning of the European Union and to Article 106a of the Treaty establishing the European Atomic Energy Community, pursuant to which the Commission submitted the proposal to Parliament (C9-0179/2022),

– having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

– having regard to the opinion of the Court of Auditors of 31 October 2022[5],

– having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts[6],

– having regard to the letter of 25 April 2023 sent by the Committee on Legal Affairs to the Committee on Budgets and the Committee on Budgetary Control in accordance with Rule 110(3) of its Rules of Procedure,

– having regard to the provisional agreement approved by the committees responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 20 December 2023 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,

– having regard to the joint deliberations of the Committee on Budgets and the Committee on Budgetary Control under Rule 58 of the Rules of Procedure,

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5 OJ C 446, 24.11.2022, p. 26.

6 OJ C 77, 28.3.2002, p. 1.

– having regard to Rules 110 and 59 of its Rules of Procedure,

– having regard to the opinion of the Committee on Regional Development,

– having regard to the letter from the Committee on Industry, Research and Energy,

– having regard to the report of the Committee on Budgets and the Committee on Budgetary Control (A9-0180/2023),

A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the Commission proposal does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;

1. Adopts its position at first reading hereinafter set out, taking into account the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

2. Approves the joint statement by Parliament and the Council annexed to this resolution, which will be published in the C series of the *Official Journal of the European Union*;

3. Approves the joint statement by Parliament, the Council and the Commission annexed to this resolution, which will be published in the C series of the *Official Journal of the European Union*;

4. Takes note of the statements by the Commission annexed to this resolution;

5. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

6. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**P9_TC1-COD(2022)0162**

**Position of the European Parliament adopted at first reading on 14 March 2024 with a view to the adoption of Regulation (EU, Euratom) 2024/… of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (recast)**

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 Article 322(1) thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

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 Court of Auditors[1],

▌

Acting in accordance with the ordinary legislative procedure[2],

Whereas:

[1] ***OJ C 466, 24.11.2022, p. 26.***

[2] Position of the European Parliament of 14 March 2024.

(1) A number of amendments are to be made to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[3]. In the interests of clarity ***and legal certainty***, that Regulation should be recast.

(2) This Regulation lays down the financial rules applicable to the general budget of the Union (the "budget") within the meaning of Article 322 of the Treaty on the Functioning of the European Union (TFEU) and does not regulate or affect the implementation of restrictive measures adopted on the basis of the TFEU and the Treaty on European Union (TEU), including in the framework of implementation of the budget.

(3) Taking into account the experience gained with the implementation of the financial rules applicable to the budget and following the adoption of Council Regulation (EU, Euratom) 2020/2093[4], certain targeted amendments should be made in order to align those financial rules to the new legal framework, adapt them to the needs of efficient crisis management and enhance the protection of the financial interests of the Union. Furthermore, targeted simplifications, technical updates and corrections should be made.

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[3] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 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 (***OJ L 193, 30.7.2018, p. 1***).

[4] Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (***OJ L 433 I, 22.12.2020, p. 11)***.

(4) Following the adoption of Regulation (EU, Euratom) 2020/2093, the references to basic acts should be replaced and the references to Council Decision (EU, Euratom) 2020/2053[5], to Council Regulation (EU, Euratom) 2021/768[6] and to the Interinstitutional Agreement of 16 December 2020 on budgetary discipline, on cooperation in budgetary matters and on sound financial management, as well as on new own resources, including a roadmap towards the introduction of new own resources[7] should be added to the references used throughout this Regulation.

(5) In the interest of clarity, all references to repealed Regulation (EC) No 45/2001 of the European Parliament and of the Council[8] ***should*** be replaced by references to Regulation (EU) 2018/1725 of the European Parliament and of the Council[9].

(6) In the interest of legal certainty, a number of cross-references should be corrected.

(7) It is necessary to better reflect the specific nature and functioning of the provisioning of financial liabilities and of the budgetary guarantees. Certain definitions and rules on budgetary guarantees, budgetary commitments, legal commitments, payment appropriations, recipients and publication of information on recipients should therefore be adjusted. A definition of the constitution phase of the provisioning of financial liabilities should be added. Additionally, definitions should be updated to reflect in particular amendments to procurement rules and the introduction of rules on non-financial donations.

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5 Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L 424, 15.12.2020, p. 1).

6 Council Regulation (EU, Euratom) 2021/768 of 30 April 2021 laying down implementing measures for the system of own resources of the European Union and repealing Regulation (EU, Euratom) No 608/2014 (OJ L 165, 11.5.2021, p. 1.).

7 OJ L 433 I, 22.12.2020, p. 28.

8 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).

9 ***Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC*** (***OJ L 295, 21.11.2018, p. 39).***

(8) In order to enhance transparency on recipients of Union funds which are non-governmental organisations, a definition of non-governmental organisations should be introduced, providing for criteria to identify them. In addition, grant applicants should declare their legal status, including whether they are non-governmental organisations.

(9) A reference to the general regime of conditionality for the protection of the budget laid down in Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council[10] should be inserted in this Regulation. Regulation (EU, Euratom) 2020/2092 is a cornerstone of the legal framework for the implementation of the budget.

***(10) It is essential that in the implementation of the budget, Member States and the Commission ensure compliance with the Charter of Fundamental Rights of the European Union, and respect the Union values enshrined in Article 2 TEU.***

***(11) This Regulation should enable authorising officers, where relevant in accordance with sector-specific rules, to adopt appropriate measures and take action to protect the budget, for example through suspension of payments, in cases where the implementation by a Member State of an action financed from Union funds is affected by that Member State's non-respect of relevant Union values and fundamental rights.***

(12) The fundamental budgetary principles should be maintained. Existing derogations from those 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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**10** Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ L 433 I, 22.12.2020, p. 1).

(13) Rules on the carry-over of appropriations should be presented more clearly and a distinction should be made between automatic and non-automatic carry-overs. The Union institutions concerned should provide information to the European Parliament and to the Council on both automatic and non-automatic carry-overs.

(14) The carrying-over and use of external assigned revenue 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 only to the following financial year, except where this Regulation provides otherwise.

(15) Following the adoption of Regulation (EU, Euratom) 2020/2093 and the basic acts related thereto, certain rules related to budgetary principles, in particular as regards cancellation and carry-over, decommitments and making appropriations corresponding to decommitments available again, laid down in Regulations (EU) 2021/1060[11] and (EU) 2021/2116[12] of the European Parliament and of the Council ▌, should be incorporated into this Regulation.

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11 Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

12 Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (OJ L 435, 6.12.2021, p. 187).

(16) With regard to internal assigned revenue, the financing of new building projects with the revenue from lettings and the sale of buildings should be allowed. To that end, such revenue should be considered as internal assigned revenue which can be carried over until it is fully used.

(17) In the interest of simplification and in order to align better the timing of contributions from Member States with the corresponding payment needs, all additional financial contributions from Member States to Union's actions and programmes, including voluntary contributions, should be subject to the same treatment and be considered as external assigned revenue.

(18) In order to increase transparency ***and visibility*** in the presentation of assigned revenue ***while maintaining the substance of the information previously provided***, detailed information on the estimated amount of the ***internal and*** external assigned revenue to be received, and the foreseen allocation to the relevant budget lines, should be provided in an annex, which forms an integral part of the budget. ***In addition, it is appropriate to clarify the reporting requirements regarding the implementation of the internal and external assigned revenue in the preceding year. This will ensure that all information on the implementation of assigned revenue and forecast of assigned revenue to be received is presented in a clear and accessible manner.***

(19) The rules on transfers that are subject to special provisions should be updated to take into account the Solidarity and Emergency Aid Reserve established pursuant to Regulation (EU, Euratom) 2020/2093. In addition, adjustments should be made in order to reflect that draft amending budgets are no longer required for the mobilisation of the Solidarity and Emergency Aid Reserve.

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

(21) In order to allow a rapid reaction in exceptional circumstances, the Commission should be able to accept in-kind donations, irrespective of their value, where such donations are made for the purposes of humanitarian aid, emergency support, civil protection or crisis management aid. In order to ensure appropriate safeguards, the Commission should only accept such donations where acceptance is in accordance with the principles of sound financial management and transparency, does not give rise to conflicts of interest, does not harm the image of the Union ***and does not harm or risk harming the security or public order of the Union or Member States***. The donor should not be, at the moment of acceptance, in one of the exclusion situations under the early detection and exclusion system and should not be registered as excluded in the corresponding database. ***Where the Commission accepts a donation, the authorising officer responsible should provide information thereon in his or her annual activity report.***

(22) A provision should be introduced to allow for in-kind sponsorship by a legal person of an event or activity for promotional or corporate social responsibility purposes.

(23) The concept of performance as regards the budget should be clarified. Performance should be linked to the direct application of the principle of sound financial management. The principle of sound financial management should also be defined, and a link should be established 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, in particular output and results, should be defined.

***(24) In light of the horizontal gender mainstreaming goal, targets for monitoring climate spending and performance and expenditure contributing to halting and reversing the decline of biodiversity, specific performance indicators for the budget should be introduced to track the spending on gender equality, as well as on climate change mitigation and adaptation and the protection of biodiversity. Such indicators should be concise and proportionate, avoid overlapping, be limited in number and not result in excessive administrative burden. They should be based on an effective, transparent and comprehensive methodology and, where appropriate, widely recognised scientific evidence. Where appropriate, the data collected in relation to such indicators should be broken down by gender and should be collected in a way that allows for the aggregation of such data across all relevant programmes.***

(25) Considering the importance of addressing climate and environmental challenges and in order to ensure that budget implementation contributes to the achievement of the European Green Deal as referred to in the communication of the Commission of 11 December 2019 on the European Green Deal, ***of the Union's climate and energy targets and of climate neutrality by 2050***, the concept of performance as regards the budget should be extended to include the implementation of programmes and activities in a sustainable way, which would not hinder the achievement of the environmental objectives of climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems.

***(26) It is important to promote social rights and fair working and labour conditions, in line with the European Pillar of Social Rights and Article 9 TFEU. Where feasible and appropriate, the Commission and Member States should respect relevant applicable national law, Union law, conventions of the International Labour Organization (ILO) and collective agreements when implementing programmes and activities funded by the budget.***

(27) In accordance with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[13], Union legislation should be of high quality and should focus on areas where it has the greatest added value for citizens and is as efficient and effective as possible in delivering the common policy objectives of the Union. Making existing and new spending programmes and activities entailing significant spending subject to evaluation can help achieve those objectives.

(28) In order to implement the Commission's commitment to be digital by default and to foster more efficient and qualitative controls and audits by increasing the level of assurance while decreasing the cost, it is appropriate to introduce an explicit reference to the use of digital tools and emerging technologies such as machine learning, robotic process automation, data-mining and artificial intelligence.

[13] OJ L 123, 12.5.2016, p. 1.

(29) In order to enhance the protection of the budget against ***irregularities including*** fraud, corruption, conflicts of interest ***and*** double funding ▌, standardised measures to collect, compare and aggregate information on recipients of Union funds should be introduced. In particular, in order to effectively prevent, detect, investigate and correct frauds or remedy irregularities, it is necessary to be able to identify the natural persons that ultimately benefit, directly or indirectly, from Union funding or the misuse of that funding. The electronic recording and storage of data on recipients of Union funds, including their beneficial owners as defined in Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council[14], and the regular making of those data available in a single integrated and interoperable information and monitoring system, including a single data-mining and risk-scoring tool (single integrated IT system) provided by the Commission should facilitate risk assessment for the purposes of selection, award, financial management, monitoring, investigation, control and audit and contribute to effective prevention, detection, correction and follow-up of ***irregularities including*** fraud, corruption, conflicts of interest ***and*** double funding ▌. The rules related to the recording, storage, transfer and processing of data should comply with applicable data protection rules. ***The single integrated IT system should be developed with a view to avoiding double reporting and reducing administrative burden for Member States and other implementing entities.*** The Commission should ***act as the controller and*** be responsible for the development, management and supervision of the single integrated IT system. ▌Member States, ***Union investigative, control and audit bodies including*** the European Anti-Fraud Office (OLAF), ***the Court of Auditors*** and ***the European Public Prosecutor's Office (the 'EPPO')*** should have ▌access to those data within the exercise of their respective competences. ***Such access should respect the principles of necessity and proportionality. Data available through the single integrated IT system should be made available to the European Parliament and the Council on a case-by-case basis to the extent necessary and proportionate to the exercise of their respective competences, in the context of the discharge procedure for the Commission.***

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**14** 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 (OJ L 141, 5.6.2015, p. 73).

***(30) The single integrated IT system should be based on interoperability, whereby up-to-date information and data on recipients of Union funds should be retrieved from and transferred into that system, in an automatic way, in real time where feasible, using inter alia relevant national databases, internal systems of relevant national bodies and authorities, management and paying authorities, national public procurement and tender databases, publicly available data, and data from other Commission databases, thereby ensuring the comprehensiveness and completeness of the information and data.***

***(31) The single integrated IT system should be designed and put in place in a way that would allow the aggregation of relevant information in connection with the same recipients across different Union funding programmes. It should only use risk indicators that are objective, proportionate, necessary for risk assessment, as well as based on reliable sources of up-to-date information and data, in real time where feasible. The single integrated IT system should be designed for its use in line with general data protection principles, including data minimisation and storage limitation, applicable to the processing of personal data.***

***(32) For the purpose of ensuring that the functions of the single integrated IT system remain of a high standard, certain actions and measures should be implemented where feasible, including alignment of data fields with the relevant national and Commission IT systems and databases, with necessary additions for the purpose of the data-mining and risk-scoring tool, including reference to the unique identifier of the operations; integration of the relevant national IT systems and databases with the single integrated IT system for an automatic exchange of information; providing users with the possibility to tailor and group risk indicators and their weights to the needs and specificities of a Union fund, programme or country; use of artificial intelligence for analysing and interpreting data; providing users with multiple possibilities for using search options and filtering capabilities; providing users with guidance on the interpretation and use of data and results; and training on how to navigate the single integrated IT system, assess risks and take them into account in verifications and audits.***

(33) In accordance with the principle of transparency enshrined in Article 15 TFEU, Union institutions are to conduct their work as openly as possible. With regard to budget implementation, the application of that principle implies that citizens should 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 should aim to increase the visibility of the Union contribution for citizens. Such objectives should be achieved by the publication, preferably using modern communication tools, of relevant information concerning all recipients of funds financed from the budget which takes into account those 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.

(34) Without prejudice to the rules on the protection of personal data, the utmost transparency regarding information on recipients should be sought. The information on recipients of Union funds should be published on a ***centralised and*** dedicated website of Union institutions, such as the Financial Transparency System***, and should be easily available via suitable and secure technical solutions***. Publication requirements should cover all methods of budget implementation, including by other Union institutions and bodies. ▌

(35) It should be possible for the Commission to implement the budget indirectly through Member State organisations. For reasons of legal certainty, it is therefore appropriate to define a Member State organisation as 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 by that Member State. Financial backing provided to such private-law bodies by a Member State in accordance with existing requirements set out in Union law, in a form decided by that Member State and not necessarily requiring a bank guarantee, should be considered as adequate financial guarantees.

(36) Personal data referring to natural persons should not be publicly available for longer than the period during which the funds are being used by the recipient and should therefore be removed after two years.

(37) In most of the cases covered by this Regulation, the publication concerns legal persons. Where natural persons are concerned, the publication of personal data should respect the principle of proportionality between the importance of the amount granted and the need to control the best use of the funds. In such cases, the publication of the region on level 2 of the common classification of territorial units for statistics (NUTS) is consistent with the objective of publication of information on recipients and 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.

(38) For reasons of legal certainty and in accordance with the principle of proportionality, the situations in which publication should not take place should be specified. For example, information should not be published with regard to scholarships or other forms of direct support paid to natural persons most in need, to certain contracts with a very low value or to financial support below a certain threshold provided through financial instruments or budgetary guarantees, or in cases where disclosure risks threatening the rights and freedoms of the individuals concerned as protected by the Charter of Fundamental Rights of the European Union or causing harm to the commercial interests of the recipients. For grants, however, there should be no special exemption from the obligation to publish information on the basis of a specific threshold, in order to maintain the current practice and to allow for transparency.

(39) Where personal data of recipients is published for the purposes of transparency in relation to the use of Union funds and the control of award procedures, those recipients should be informed of such publication, as well as of their rights and the procedures applicable for exercising those rights, in accordance with Regulations (EU) 2018/1725 and (EU) 2016/679[15] of the European Parliament and of the Council.

(40) In order to ensure that the principle of equal treatment is respected for all recipients, the information related to natural persons should also be published, in line with the obligation for Member States to establish a large degree of transparency for contracts above the thresholds laid down in Directive 2014/24/EU of the European Parliament and of the Council[16].

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**15** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

**16** 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).

(41) In the case of indirect and shared management, the persons, entities or designated bodies implementing Union funds should make available information on recipients and final recipients. In the case of shared management, the information should be published in accordance with sector-specific rules. Member States that receive and implement Union funds under direct management should make available information on their recipients in accordance with this Regulation. The Commission should make available information about a single website, including a reference to its address, where the information on recipients and final recipients can be found.

(42) 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 into one single working document to be attached to the draft budget.

(43) In order to ensure transparency, avoid ***certain duplications*** and align the timing of reporting with the availability of the relevant data, ***while ensuring no information is lost,*** the information on budgetary guarantees, the common provisioning fund and contingent liabilities ***covered under the own resources ceiling*** should be regrouped under those three categories and presented in a comprehensive way in the respective reports.

(44) In order to increase transparency and accuracy in reporting, the information on financial instruments presented in the working document attached to the draft budget should include information on realised losses from assets.

(45) In order to ensure synchronisation with the timeline for the adoption of the statement of estimates, the working document on the building policy of the Commission should be attached to the draft budget.

(46) In order to promote best practices in the implementation of the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund, the European Agricultural Fund for Rural Development (EAFRD), and the European Maritime, Fisheries and Aquaculture Fund (EMFAF), as well as the European Agricultural Guarantee Fund (EAGF), the Commission should, for information purposes, be able to make available to bodies responsible for management and control activities a non-binding methodological guide setting out its own control strategy and approach, including checklists, and examples of best practice. That guide should be updated whenever necessary.

***(47)*** ***Case law[17] obliging the Commission to pay interest or other charge due on the amounts of fines cancelled or reduced by the Court of Justice of the European Union generated a new, unforeseeable situation.*** It is ***therefore*** necessary to allow the deduction from the revenue of the budget of any interest or other charge due on the amounts of cancelled or reduced fines, other penalties or sanctions, including any negative return related to those amounts. ***This exception to the prohibition on negative revenue should be limited to that specific situation.*** In order to comply with the general principle of restoration to the prior state (*restitutio in integrum*) applicable to fines, other penalties or sanctions imposed by Union institutions that are later cancelled or reduced by the Court of Justice of the European Union, it is necessary to provide that any negative return on the provisionally collected amount of such fines, other penalties or sanctions imposed by Union institutions not be deducted from the amount to be repaid. To compensate for the loss of enjoyment of monies from the date the concerned third parties provisionally paid the fine to the Commission until the date of repayment, the amount to be repaid should be increased by interest at the rate applied by the European Central Bank to its principal refinancing operations increased by one and a half percentage points as an adequate compensation for such third parties in such situations, which excludes the need to apply any other interest rate on that amount. Furthermore, that rate corresponds to the interest rate applicable in relation to the debtor when the debtor chooses to defer the payment of a fine, other penalty or sanction, and provides a financial guarantee instead of payment. ***Such interest and charges should only be deducted as negative revenue until 31 December 2027, pending a definitive solution for the multiannual financial framework after 2027 relative to the rate of interest and other charges that should be paid as adequate compensation for the reimbursement of cancelled or reduced fines, other penalties or sanctions. This definitive solution should take stock of past experience and expected future developments and should be in line with the application of the budgetary principles laid down in this Regulation.***

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**17** Judgment of the Court of Justice of 11 June 2024, *European Commission v Deutsche Telekom AG*, C- 221/22 P, ECLI:EU:C:2024:488.

In order to secure sufficient cash flow to compensate the concerned third parties for the loss of enjoyment of monies where a fine, other penalty or sanction has been cancelled or their amount has been reduced, it ***could be*** necessary to allow for the amounts received by way of fines, other penalties or sanctions and any accrued interest or other income generated by them to be entered in the budget by the end of the following financial year. ***In order to ensure full transparency of this mechanism, the Commission should provide all information available in the framework of the annual budgetary procedure to the European Parliament and to the Council.***

(48) In view of the increased volume of borrowing and lending operations carried out by the Commission on behalf of the Union to finance the recovery from the COVID-19 pandemic, transparency regarding those operations should be further enhanced. To address the increased complexity of those operations and in order to ensure better visibility of their content, a comprehensive overview of borrowing and lending operations carried out by the Commission should be added to the document annexed to the section of the budget relating to the Commission. ***That overview should include inter alia, detailed information on maturities, schedule of payments, interest due on aggregate level, the investor base on the primary market, and, where applicable the dimension and costs of the common liquidity pool underpinning the diversified funding strategy, as well as the borrowing plan. In addition, that overview should lay out the underlying data and the methodology used by the Commission to calculate the interest incurred and estimate the interest due, without including any market-sensitive information.***

(49) It is appropriate to provide for the possibility for Union institutions to conclude service-level agreements with each other in order to facilitate the implementation of their appropriations and also for the possibility to conclude such agreements between departments of Union institutions, Union bodies, European offices, bodies or persons entrusted with implementation of specific actions in the common foreign and security policy (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 or execution of works or of building contracts.

(50) For reasons of legal certainty, it is necessary to clarify that the applicable law, under which any appropriate actions are to be taken with regard to conflicts of interest, includes Union and national law relating to conflicts of interest.

(51) In order to increase inclusiveness, private or Union law bodies established in a Member State and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, should be added to the list of entities to which budget implementation tasks can be entrusted insofar as they are controlled by public law bodies or private law bodies with public service mission eligible under indirect management, and are provided with adequate financial guarantees. Where such private or Union law bodies do not benefit from financial backing provided by a Member State, adequate financial guarantees should take the form of joint and several liability by the controlling bodies or equivalent financial guarantees.

(52) It is appropriate to lay down the procedure for setting up new European offices and to distinguish between obligatory and non-obligatory tasks of such offices. A possibility for Union institutions, Union bodies and other European offices to delegate the powers of the authorising officer to the director of a 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 or execution of works or of building contracts. It is appropriate to set out specific rules for the drawing-up of accounting records, provisions authorising the accounting officer of the Commission to delegate some of his or her tasks to staff in those offices and operating procedures for bank accounts which the Commission should be able to open in the name of a European office.

(53) In order to improve the cost-effectiveness of executive agencies and in light of the practical experience gained with other Union bodies, it should be possible to entrust the accounting officer of the Commission with all or part of the tasks of the accounting officer of the executive agency concerned.

(54) For reasons of legal certainty, it is necessary to clarify that directors of executive agencies act as authorising officers by delegation when managing operational appropriations of programmes delegated to their agencies. 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 expenditure should be explicitly provided for.

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

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

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

(58) The tasks, responsibilities and principles of the procedures to be observed by the authorising officers should also be laid down. Authorising officers by delegation should ensure that the authorising officers by subdelegation and their staff receive information and training concerning the control standards and the respective methods and techniques and that measures are taken in order to ensure the functioning of the control system. The authorising officer by delegation should report to his or her Union institution on the performance of the duties in the form of an annual report. That report should include the required financial and management information to support that officer'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 for at least five years. The various forms of negotiated procedure for the award of public contracts should be the subject of a special report from the authorising officer by delegation to the Union institution concerned and of a report from that Union institution to the European Parliament and to the Council, since those procedures represent derogations from the usual award procedures.

(59) The double role of Heads of Union delegations, and of their deputies in their absence, as authorising officers by subdelegation for the European External Action Service (EEAS) and, as regards operational appropriations, for the Commission should be taken into account.

(60) The delegation of powers of budget implementation by the Commission concerning the operational appropriations of its own section of the budget to the deputy Heads of Union delegations should be restricted to situations where the performance of those tasks by the deputy Heads of Union delegations is strictly necessary in order to ensure business continuity during the absence of Heads of Union delegations. The deputy Heads of Union delegations should not be allowed to exercise those powers on a systematic basis or for reasons of internal work division.

(61) The accounting officer should be responsible for the proper implementation of payments, the collection of revenue and the recovery of amounts receivable. The accounting officer should manage the treasury, bank accounts and third-party files, keep the accounts and be responsible for drawing up the financial statements of Union institutions. The accounting officer of the Commission should be the only person who is entitled to lay down the accounting rules and the harmonised charts of accounts, while the accounting officers of all other Union institutions should lay down accounting procedures applicable in their institutions.

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

(63) 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.

(64) It is appropriate to align the means of payment authorised for treasury management with modern payment methods, including credit cards and electronic wallets.

(65) Considering that payments by Union delegations through the standard rules for budgetary, treasury and accounting operations (budgetary procedures) are increasingly executed through the central treasury and, as a consequence, the number of transactions and the amounts paid through imprest accounts decrease, it is appropriate to simplify the rules on the creation, administration and control of imprest accounts.

(66) 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 be laid down, and the tasks and responsibilities of the imprest administrators, as well as those of the authorising officer and the accounting officer in connection with the control of imprest accounts, should be set out. For reasons of efficiency, imprest accounts should be set up in Union delegations for appropriations from both the sections of the budget relating to the Commission and to the EEAS. 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 should be possible to select them also from personnel employed by the Commission in the field of crisis-management aid and humanitarian aid operations whenever there is no available Commission staff covered by the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68[18] (Staff Regulations).

(67) In order to take into account the situation in the field of crisis-management aid and humanitarian aid operations whenever there are no Commission staff covered by the Staff Regulations 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 enter into legal commitments of a very low value up to EUR 2 500 which are linked to the payments executed from imprest accounts, and for Heads of Union delegations or their deputies to enter into legal commitments on the instruction of the authorising officer responsible of the Commission.

**18** OJ L 56, 4.3.1968, p. 1.

(68) Once the tasks and responsibilities of financial actors have been defined, it is only possible to hold them liable under the conditions laid down in the Staff Regulations. Specialised financial irregularities panels have been set up in Union institutions pursuant to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[19]. However, due to the limited number of cases submitted to them and for reasons of efficiency, it is appropriate to transfer their functions to an interinstitutional panel established pursuant to this Regulation (the 'panel'). The panel should be set up to assess requests and issue recommendations on the need to take decisions on exclusion and imposition of financial penalties 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. That transfer also aims to avoid duplication and to mitigate the risks of contradictory recommendations or opinions, in cases where both an economic operator and a member of staff of a Union institution or body are involved. It is necessary to maintain the procedure by which it is possible for an authorising officer to 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 the panel should be modified when it fulfils this role. The panel should have no investigative powers.

[19] 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).

(69) As regards revenue, it is necessary to address negative adjustments of own resources covered by Council Regulations (EU, Euratom) No 609/2014[20] and (EU, Euratom) 2021/770[21]. Except in the case of own resources, it is necessary to maintain the existing 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, issuing of recovery orders, 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.

(70) 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 proceedings as defined in Regulation (EU) 2015/848 of the European Parliament and of the Council[22], in particular in cases of judicial arrangements, compositions and analogous proceedings.

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**20** 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).

**21** Council Regulation (EU, Euratom) 2021/770 of 30 April 2021 on the calculation of the own resource based on plastic packaging waste that is not recycled, on the methods and procedure for making available that own resource, on the measures to meet cash requirements, and on certain aspects of the own resource based on gross national income (OJ L 165, 11.5.2021, p. 15).

**22** Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (OJ L 141, 5.6.2015, p. 19).

(71) Specific provisions on procedures for the adjustment or the reduction to zero of an estimate of the amount receivable should be laid down.

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

(73) Due to the recent developments on the financial markets and the interest rate applied by the European Central Bank to its principal refinancing operations, it is necessary to review the provisions concerning the interest rate for fines or other penalties.

(74) To reflect the specific nature of amounts receivable consisting in fines or other penalties imposed by Union institutions under the TFEU or the Treaty establishing the European Atomic Energy Community (Euratom Treaty), it is necessary to introduce specific provisions on the interest rates applicable to amounts due but not yet paid, in the event that such amounts are increased by the Court of Justice of the European Union.

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

(76) In order to guarantee legal certainty and transparency, rules regarding the deadlines within which a debit note is to be sent should be laid down.

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(77) In order to secure the management of assets whilst prioritising the aim of security and liquidity of the monies, the amounts relating to fines, other penalties or sanctions imposed under the TFEU or the Euratom Treaty, such as competition fines which are being contested, should be collected on a provisional basis. It should also be possible for the Commission to invest those amounts 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, other penalties or sanctions, it is necessary to lay down provisions concerning such fines, other penalties or sanctions imposed by other Union institutions and to lay down rules for their recovery which should be equivalent to those applicable to the Commission.

(78) In order to ensure that the Commission has all the necessary information for the adoption of financing decisions, it is necessary to lay down the minimum requirements for the contents of financing decisions on grants, procurement, Union trust funds for external actions (Union trust funds), prizes, financial instruments, blending facilities or platforms and budgetary guarantees. At the same time, in order to give a longer-term perspective to the potential recipients, it is necessary to allow for financing decisions to be adopted for more than one financial year while specifying that the implementation is subject to the availability of budget appropriations for the respective financial years. Furthermore, it is necessary to reduce the number of the elements required for the financing decision. In line with the aim of simplification, the financing decision should at the same time constitute an annual or multiannual work programme. Since contributions to the Union bodies referred to in Articles 70 and 71 are already established in the budget, there should be no requirement to adopt a specific financing decision in that respect.

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

(80) In order to take into account in particular the number of legal commitments entered into by Union delegations and Union representations and the exchange-rate fluctuations experienced by them, provisional budgetary commitments should be possible also in cases where the final payee and the amount are known.

(81) In order to align the EAGF with the general accounting and budgetary procedures as soon as it is technically possible, it should be allowed to proceed with individual budgetary commitments to make the payments, without the need to first make a global provisional commitment to make the payments followed by individual commitments within a period of up to two months, or, under certain conditions, a longer period. Furthermore, to be able to proceed with individual budgetary commitments and payments for the first month of the financial year in December, routine management expenditure for the EAGF should be added to the types of expenditure for which payments made in advance are authorised.

(82) As regards the typology of payments which it is possible for authorising officers to make, clarification of the various types of payments should be provided, in accordance with the principle of sound financial management. The rules for clearing of pre-financing payments should further be clarified, in particular for situations where no interim clearing is possible. To that effect, appropriate provisions should be included in legal commitments entered into.

(83) This Regulation should stipulate that payments are to be made within specified time limits and that, in the event of failure to respect such time limits, creditors will be entitled to default interests to be charged to the budget, except in the case of Member States, the European Investment Bank (EIB) and the European Investment Fund (EIF).

(84) The core elements of electronic invoices in public procurement should be based on the rules set out in Directive 2014/55/EU of the European Parliament and of the Council[23].

(85) For the sake of clarity, the definition of unsuitable tenders in public procurement should be revised to include tenders where the economic operator does not have access to procurement.

(86) It is necessary to clarify that specific contracts under framework contracts concluded with a single economic operator can be awarded and modified within the limits of the terms foreseen in the framework contract.

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(87) Considering that the *ex ante* publicity measures are the same for open, restricted and competitive procedures with negotiation, the use of a negotiated procedure without prior publication of a contract notice following an unsuccessful competitive procedure with negotiation should be allowed under certain conditions.

[23] Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement (OJ L 133, 6.5.2014, p. 1).

(88) It is necessary to exclude from the scope of the procurement rules of this Regulation the document certification and authentication services provided by notaries, in cases where the procedures governing such services in the Member State concerned are not open to competition.

(89) It is appropriate to provide for the possibility of having negotiated procedures without prior publication for services provided by Member State organisations which cannot participate in competitive procedures.

(90) In order to ensure compliance with the case law of the Court of Justice of the European Union[24], the authorising officer should request the evidence for exclusion and selection criteria to be submitted before the award decision.

(91) It is appropriate to integrate the provisions concerning validation and authorisation of expenditure in one article and to introduce a definition of 'decommitments'. Since the transactions are carried out in computerised systems, the signing of a 'passed for payment' voucher in order to express the validation decision should be replaced by an 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, including, as is the case for the clearing of pre-financing, costs which are not associated with a payment request.

**24** Judgment of the General Court of 8 July 2020, *Securitec v Commission*, T-661/18, ECLI:EU:T:2020:319.

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

(93) Each Union institution should 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. The composition of that internal audit progress committee should be decided by each Union institution, taking into account its organisational autonomy and the importance of independent expert advice.

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

***(95) When the Union contribution takes the form of financing not linked to costs and where reimbursement is based on results, the achievement of those results should be measured by either pre-defined milestones or targets, and the achievement of such milestones or targets should be verified before the contribution is paid. Records and supporting documents linked to the achievement of the targets or milestones should be retained for the purposes of ex post checks or audits, including by the Court of Auditors.***

(96) Where the Commission carries out assessments of the operational and financial capacity of recipients of Union 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 organisations, in order to avoid duplicating assessments of the same recipients. The possibility for cross-reliance on assessments conducted by other entities should be used where such assessments were made in compliance with 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.

(97) It is also important to avoid situations in which recipients of Union funds are audited several times by different entities on the use of those funds. It should therefore be possible to rely on audits already carried out by independent auditors provided that there is sufficient evidence of their competence and independence and provided that the audit work is based on internationally accepted audit 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 Union funds. To that end, it is important to ensure that the report of the independent auditor and the related audit documentation is made available on request to the European Parliament, the Commission, the Court of Auditors and the audit authorities of Member States.

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

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

(100) The conditions and procedures for suspending, terminating or reducing a Union contribution should be harmonised across the different budget implementation instruments such as grants, procurement, indirect management, prizes, etc. The grounds for such suspension, termination or reduction should be defined. ***Where irregularities or fraud are subsequently discovered to have taken place during an award procedure, the authorising officer responsible should take certain corrective measures unless it is justified not to do so, for example where implementation of the legal commitment is in the interests of the institution or body concerned, or where there is a need to guarantee continuity of service.***

(101) 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 Court of Auditors and OLAF with sufficient time to obtain access to such data and documents and perform the *ex post* checks and audits. In addition, any person or entity receiving Union funds should be obliged to cooperate in the protection of the financial interests of the Union.

(102) In order to provide adequate information to participants and recipients and to ensure that they have the possibility to exercise their right of defence, participants and recipients should be allowed to submit their observations before adoption of any measure adversely affecting their rights and they should be informed of the means of redress available to them for challenging such a measure.

(103) In the context of an award procedure, it is not necessary for the authorising officer responsible to provide an opportunity to a participant to submit observations where that participant has been rejected from an award procedure. In order to ensure legal certainty, this should also be specified in the provision on adversarial procedures and means of redress.

(104) Considering the increasingly challenging geopolitical environment with rapidly evolving hybrid and cyber threats, as well as the need for a digital transformation with its inherent exposure to technical vulnerabilities, the Union needs to ensure the protection of the security and the public order of the Union or its Member States, as reflected in public policy and law. This concerns the preservation of fundamental interests of society such as ensuring the security of energy supply, combating organised crime and fraud. Whilst respecting any international agreements of the Union, the award of Union funds in relation to strategic assets and interests, such as digital or space infrastructure, communication and information systems and services, can require the application of specific conditions to ensure such protection including for the integrity of communication and information systems, and of related supply chains. The types of conditions and requirements for applying them should be clarified. ***Nonetheless, specific conditions laid down in this Regulation are not exhaustive, and it is possible for a basic act to include specific conditions provided that it does not modify or derogate from requirements and procedures laid down in this Regulation in respect of the protection of security and public order.***

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

(106) The early detection and exclusion system should apply to participants, recipients, entities on whose capacity the candidate or tenderer intends to rely, subcontractors of a contractor, beneficial owners and affiliated entities of an excluded entity, natural persons, guarantors, as well as 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 implemented under direct management, participants or recipients on which entities implementing the budget under shared management have provided information, and sponsors.

(107) In order to enhance the protection of Union financial interests, the early detection and exclusion system should be reinforced. It is important to avoid that a person or entity in an exclusion situation is able to apply for or to be selected for implementing Union funds, or to receive such funds under a programme in shared management. Where there is a final judgment or a final administrative decision, the authorising officer responsible should be able to exclude a person or entity, provided that the latter is in an exclusion situation and deemed not reliable due to having engaged in certain types of serious misconduct. ***Without prejudice to information obligations set out in other basic acts, persons and entities implementing the budget under shared management should convey to the Commission, through any official channel, such as the automated information system established by the Commission currently in use for reporting of fraud and irregularities (the 'Irregularity Management System'), information pertaining to established facts and findings, in the context of such final judgments or final administrative decisions only with reference to the grounds set out under Article 138(1), points (c)(iv) and (d), when they become aware of such information.*** In the absence of a final judgment or a final administrative decision, the authorising officer responsible should be able to exclude, on the basis of a preliminary classification in law made by the panel, having regard to facts and findings established in the context of audits or investigations carried out by OLAF, the EPPO or the Court of Auditors or any other check, audit or control performed under the responsibility of the authorising officer. Such exclusion should be registered in the early detection and exclusion system database.

Persons and entities implementing the budget under shared management should consult the early detection and exclusion system database prior to awarding Union funds or selecting participants and beneficiaries. This consultation should concern the person or entity applying for or selected to implement Union funds. To ensure the effective implementation of the early detection and exclusion system, the competent authorities of the Member States should enforce the exclusions recorded in the database with regard to such persons or entities applying for or selected to implement Union funds for the entire duration of the exclusion. That exclusion should uphold the integrity of the procurement or selection process and safeguard it against the participation of individuals or entities involved in a serious misconduct. Payment applications from Member States under shared management, including expenditure related to a person or entity that has been excluded, should not be reimbursed. Where funds are disbursed to Member States under performance-based frameworks, specific rules should apply, as set out in sector-specific rules.

(108) It is important to underline that early detection and exclusion system should only apply in respect of Union funds disbursed to the Member States under direct management, ▌ where Member States have the responsibility to take all the appropriate measures to protect the financial interests of the Union, to the extent that the Commission has relevant responsibilities under the respective legal framework ▌. Therefore, the responsibilities of the Commission should be limited to the obligation to refer a case to the panel for the purpose of excluding a person or entity if the authorising officer becomes aware of serious misconduct following final judgments, final administrative decisions, or facts and findings established in the context of audits or investigations carried out concerning those funds by OLAF, the EPPO or the Court of Auditors or any other check, audit, or control performed under the responsibility of the authorising officer. Without prejudice to these responsibilities of the Commission, the Member States remain responsible to verify the information on decisions of exclusion registered in the early detection and exclusion system database, to enforce such decisions and to ensure that no payment application is submitted in respect of a person or entity that is in such an exclusion situation. ***Without prejudice to sector-specific rules and voluntary application, the early detection and exclusion system should not apply to Regulation (EU) 2021/241 of the European Parliament and of the Council[25].***

[25] ***Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).***

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

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

(111) The role of the panel should be to ensure the coherent operation of the early detection and exclusion system. The panel should be composed of a standing chair, a standing vice-chair who should deputise for the chair, two representatives of the Commission and a representative of the requesting authorising officer.

(112) In order to align the early detection and exclusion system to public procurement rules and to enhance its effectiveness, attempting to influence the award of Union funds or unduly obtaining Union funds including in relation to conflicts of interest should be explicitly included as a specific situation of exclusion under the ground of grave professional misconduct.

(113) Having due regard to the principle of proportionality, the authorising officer responsible should exclude a person or entity when it has shown lack of integrity by having engaged in any wrongful conduct that is incompatible with the values enshrined in Article 2 TEU and the Charter of Fundamental Rights of the European Union, such as incitement to discrimination, hatred or violence against a group of persons or a member of a group, where the conduct may negatively affect the performance of the contract.

(114) An autonomous ground for exclusion should be added in the case of ***intentional and*** unjustified lack of cooperation in the context of investigations, checks or audits carried out by an authorising officer, OLAF, the EPPO or the Court of Auditors as this can have severe implications on the protection of the financial interests of the Union.

(115) 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.

(116) A person or entity should be excluded by the authorising officer responsible where it has been established by a final judgment or a final administrative decision that the person or entity is guilty of grave professional misconduct, of non-compliance, whether intentional or not, with the obligations relating to the payment of social security contributions or taxes, of the creation of an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations, of fraud affecting the budget, of corruption, of conduct related to a criminal organisation, of money laundering or terrorist financing, of terrorist offences or offences related to terrorist activities, of child labour or other offences concerning trafficking in human beings or of the commitment of an irregularity. A person or entity should also be excluded in the event of a serious breach of a legal commitment***, including breach of the requirement to perform any contract to the highest professional standard,*** or of bankruptcy or in cases of refusal to co-operate in investigations, checks or audits. In assessing these grounds for exclusion, unreasonably injurious acts condemned in international trade law could be considered a relevant factor, where they involve grave professional misconduct.

***(117) In accordance with the judgment of the General Court of 15 February 2023[26], when taking a decision on the exclusion of a person or entity on the ground of grave professional misconduct, the authorising officer should rely on evidence that is sufficiently specific, convincing and concrete and is, therefore, capable of establishing clearly and unequivocally that the applicant engaged in wrongful conduct having an impact on its professional credibility which, moreover, would denote wrongful intent or gross negligence within the meaning of this Regulation.***

(118) When taking a decision on the exclusion of a person or entity, or the imposition of a financial penalty on a person or entity, and on the publication of the related information, the authorising officer responsible should ensure compliance with the principle of proportionality, in particular by taking into account the seriousness of the situation, its budgetary impact, the time which has elapsed since the relevant conduct, the duration of the conduct and its recurrence, whether the conduct was intentional or the degree of negligence shown and the degree of collaboration of the person or entity with the relevant competent authority and the contribution of that person or entity to the investigation.

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[26] ***Judgment of the General Court of 15 February 2023, RH v Commission, T-175/21T, ECLI:EU:T:2023:77, paragraph 62.***

(119) 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 the 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 have an impact on the financial situation of that economic operator.

(120) In order to further enhance the protection of the financial interests of the Union, it should be possible for the authorising officer to exclude or impose a financial penalty on beneficial owners and affiliated entities of the excluded entity that were involved in the misconduct of the excluded entity. The possibility to exclude beneficial owners and affiliated entities is intended to prevent that a person or entity that has been excluded from being selected to implement Union funds could continue to participate in procurement and award procedures, through a new company or existing affiliated entities.

(121) In order to increase its effectiveness, the early detection and exclusion system should also apply to natural persons who are deemed responsible for the misconduct of an entity, so that they are unable to participate in award procedures or be selected to implement Union funds either in a personal capacity or through a new corporate identity, without prejudice to the right to be heard.

(122) At the request of the authorising officer, the panel of the early detection and exclusion system should have the ability to issue its recommendations by means of an expedited procedure, without prejudice to the right to be heard. Such procedure should be used when the circumstances or the nature of the case requires so, for instance where a final judgment or a final administrative decision has been issued by a Member State's authority but the duration of the exclusion is not set; or a final judgment or a final administrative decision has been issued by a third country; or a sanction equivalent to an exclusion has been already imposed on the person or entity by virtue of a decision of international organisations.

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

(124) In light of the principle of proportionality, a distinction should be made between cases where it is possible to impose a financial penalty as an alternative to exclusion, on the one hand, 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, on the other. The maximum amount of the financial penalty which can be imposed by the contracting authority should also be defined.

(125) 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.

(126) The possibility to take decisions on exclusion or to impose financial penalties is independent from the possibility to apply contractual penalties, such as liquidated damages.

(127) The duration of an exclusion should be limited in time, as is the case under Directive 2014/24/EU, and should be in accordance with the principle of proportionality.

(128) It is necessary to determine the commencement date and the duration of the limitation period for taking decisions on exclusion or imposing financial penalties.

(129) 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 in a manner that satisfies the data-protection requirements set out in Regulations (EU) 2018/1725 and (EU) 2016/679. Such publication 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 circumstances justified by the seriousness of the conduct or its impact on the financial interests of the Union.

(130) Information related to an exclusion or to a financial penalty should only be published in certain cases such as grave professional misconduct, fraud, a significant deficiency in complying with the main obligations of a legal commitment financed by the budget, or an irregularity, or where an entity is created in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations.

(131) The criteria for exclusion should be clearly separated from the criteria leading to a possible rejection from an award procedure.

(132) The information on the early detection of risks and on decisions on exclusion and the imposition of financial penalties on a person or 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 compliance with the right to privacy and the protection of personal data.

(133) 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 persons and entities implementing Union funds 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 financial interests of the Union which are not yet subject to a final judgment, it should be possible for the authorising officer responsible to defer the notification of the person or entity and for the panel to defer the right of 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 or of national judicial proceedings.

(134) The Court of Justice of the European Union should be given unlimited jurisdiction with regard to decisions on exclusion and financial penalties imposed pursuant to this Regulation, in accordance with Article 261 TFEU.

(135) In order to address attempts by entities to avoid possible adverse consequences of their misconduct, rules of notification should be established under precise conditions in the context of early detection and exclusion procedures. Furthermore, the use of electronic exchange system should apply to such procedures.

(136) In order to facilitate the protection of the financial interests of the Union across all methods of budget implementation, it should be possible for the persons and entities involved in budget implementation ***to get access to the early detection and exclusion database and verify the*** exclusions decided upon by the authorising officers at Union level. ***The early detection and exclusion database should be consulted prior to awarding or selecting a person or entity for implementing and receiving Union funds. This is without prejudice to the possibility of consulting the database at other stages of the implementation of the legal commitment.***

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

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

(139) In order to improve governance and quality of interoperable digital public services**,** ***Member States***, Union institutions, executive agencies and Union bodies should apply to the greatest possible extent the European Interoperability Framework.

(140) Rules on the composition and tasks of the committee in charge of evaluating application documents in procurement procedures, grant award procedures and in contests for prizes should be laid down. It should be possible for the committee to include external experts where that possibility is provided for in the basic act.

(141) 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 should have the possibility to 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.

(142) 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, in the course of implementation, the authorising officer discovers that a guarantor is not or 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.

(143) The different sets of rules for direct and indirect management, in particular as regards the concept of ‘budget implementation tasks’, have created confusion and entailed risks of errors of qualification both for the Commission and for its partners and should thus be simplified and harmonised.

(144) The provisions on the *ex ante* pillar assessment of persons and entities implementing Union funds under indirect management should be revised to enable the Commission to rely as much as possible on the systems, rules and procedures, including due diligence, of those persons and entities 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 in which the procedures in place are not sufficient to protect the financial interests of the Union, the Commission should be able to sign contribution agreements while taking appropriate supervisory measures. It is also important to clarify in which cases it is possible for the Commission to decide not to require an *ex ante* pillar assessment in order to sign contribution agreements.

(145) In order to ensure efficient implementation of the budget, it is appropriate to further clarify the application of the principle of proportionality to indirect management. While the principle of proportionality cannot affect the nature of the obligations imposed by the relevant applicable legal framework, it should be systematically used in the cooperation with Union implementing partners, in order to strike the right balance between protection of the financial interests of the Union and preserving the Union's ability to implement its policies. Certain adjustments and restructuring of the relevant provisions should be made. This should not be interpreted as limiting in practice the necessary rights and access required for the authorising officer responsible, for the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Council Regulation (EU) 2017/1939[27], for OLAF, for the Court of Auditors, and, where appropriate, for the relevant national authorities, to comprehensively exert their respective competences.

(146) In line with the principle of proportionality, it is necessary to provide for an application of the obligations provided for by this Regulation to the final recipients receiving support from the budget under financial instruments or budgetary guarantees. This application should take into due consideration and be commensurate to the nature of the final recipients and of the action, and the financial risks involved. Unnecessary administrative burden should be avoided in particular where final recipients are micro enterprises and small and medium-sized enterprises (SMEs) and comparable economic operators with equivalent turnover or balance sheet total.

[27] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

***(147) The financial rules laid down in this Regulation should be kept simple and clear in order to avoid gold-plating and additional administrative burdens for the recipients of Union funds, Member States, Union institutions or other persons and entities implementing the budget.***

(148) The proportionality principle also needs to be applied to the assessment of rules, systems and procedures of entities that have already been successfully assessed, such as entities using rules established by the Commission, which should be exempted from *ex ante* assessment. It should also be possible to exempt from *ex ante* assessment Member States' organisations entrusted with the implementation of Union funds under shared management.

(149) It is necessary to clarify that when entities are selected to work under indirect management as a result of a call for expression of interest, the principles of equal treatment and non-discrimination apply.

(150) Remuneration of persons and entities implementing the budget should, where relevant and possible, be performance-based.

(151) To ensure the integrity of the budget when implemented under indirect management, it is appropriate to request from implementing partners that they inform the Commission of suspected cases of fraud, corruption or any other illegal activity and to include such obligation in agreements that they conclude with third parties under indirect management.

(152) The Commission enters into partnerships with third countries by means of financing agreements. It is important to clarify the content of such financing agreements, in particular for those parts of an action that are implemented by the third country under indirect management.

(153) It is important to recognise the specific nature of blending facilities or platforms where the Commission blends its contribution with that of finance institutions and to clarify the application of the provisions on financial instruments and budgetary guarantees.

(154) Procurement rules and principles applicable to public contracts awarded by Union institutions on their own account should be based on the rules set out in Directive 2014/23/EU of the European Parliament and of the Council[28] and Directive 2014/24/EU.

(155) Experience has shown that the application of the rules on procurement under this Regulation is not appropriate for the award of public contracts for financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2014/65/EU of the European Parliament and of the Council[29], used by the Commission in the context of its borrowing and lending, asset management and treasury operations. This includes services provided by central banks, the European Stability Mechanism, EIB and other international financial institutions, and national entities entrusted with the issuance and management of sovereign debt. For that reason and in accordance with Article 10 of Directive 2014/24/EU the rules on procurement laid down in this Regulation should not apply to those services.

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**28** 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).

**29** Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(156) In light of the COVID-19 pandemic, it is appropriate to modify the definition of crisis, which applies in particular to the common provisions and to procurement in the field of external actions and ***should*** cover public and animal health, food ***security and food*** safety emergencies and global health threats. In order to allow the flexibility needed to ensure a rapid response to unforeseen circumstances of extreme urgency resulting from a crisis, the contracting authority should be allowed to apply simplified procurement rules, such as use of negotiated procedure without prior publication of a contract notice applicable to crisis situations and acceptance of evidence on exclusion and selection criteria from the presumed successful tenderer after the award decision but in any case before the signature of the contract. The contracting authority should also have flexibility to exceptionally modify a contract or a framework contract, beyond the applicable thresholds, without a procurement procedure in order to respond to a crisis. ***Moreover, in a situation of crisis it should be possible, exceptionally, to add new contracting authorities after the launch of a procurement procedure and before the contract signature or following a modification of a contract without restricting competition.*** A declaration of crisis should be required in line with the relevant internal rules prior to having recourse to such simplified rules, except for procurement in the field of external action where such declaration is not required. In addition, the authorising officers responsible should justify case-by-case the extreme urgency resulting from the declared crisis.

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

(158) The *ex ante* and *ex post* publicity measures necessary to launch a procurement procedure should be clarified for contracts equal to or greater than the thresholds set out in Directive 2014/24/EU, for contracts below those thresholds and for contracts falling outside the scope of that Directive.

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

(160) In the interests of administrative simplification and in order to encourage the participation of SMEs, negotiated procedures for middle-value contracts should be provided for.

(161) Where necessary, it should be possible to carry out a joint procurement between, on the one hand, one or more contracting authorities from Member States and, on the other hand, Union institutions, Union bodies or executive agencies, without those institutions, bodies or agencies being bound to acquire works, supplies or services. In order to allow contracting authorities to fully benefit from the potential of the internal market in terms of economies of scale and risk- benefit sharing, the possibilities for Union institutions, Union bodies or executive agencies to purchase supplies or services on behalf of ***two or more*** Member States should be extended. A Union institution, Union body or an executive agency should be able to conduct the relevant procurement procedure on behalf or in the name of Member States based on an agreement between the parties, or act as a wholesaler, by buying, stocking and reselling or donating supplies and services, including rentals, to Member States or partner organisations it has selected. ***In accordance with rules on compliance of the secondary legislation with this Regulation, other Union legislative acts can contain more specific rules on joint procurement or procurement on behalf or in the name of Member States. When doing so, such acts should clearly indicate such derogations and state the specific reasons justifying them.***

(162) 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 an innovation partnership is used only when the desired works, supplies and services do not exist on the market or as a near-to-market development activity, an obligation to carry out such preliminary market consultation before using an innovation partnership should be laid down in this Regulation.

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

(164) In line with the objectives of the European Green Deal, progress towards implementation of greening aspects should be ensured by including, when relevant, for the calls for tenders, green selection or award criteria, which will incentivise the economic operators to offer more sustainable options.

(165) 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 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.

(166) It is appropriate that different cases usually referred to as situations of a conflict of interests be identified and treated distinctly. The notion of a ‘conflict of interests’ should be solely used for cases where a person or entity with responsibilities for budget ***programming,*** 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 an award procedure or obtain confidential information should be treated as grave professional misconduct which can lead to the rejection from the award procedure and/or exclusion from Union funds. In addition, economic operators might 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. ***The assessment of conflicts of interest, and the obligation to set up systems to detect and prevent such conflicts, should respect the principle of proportionality. Appropriate guidance on the assessment of conflicts of interest should provide additional clarification to those assessing such situations at Union and national level, with a view to contributing to legal certainty.***

(167) In order to ensure the absence of professional conflicting interests that can affect or risk affecting the capacity to perform the contract in an independent, impartial and objective manner, it is necessary to clarify the obligations of the contracting authority and of the candidates or tenderers. On the one hand, the candidates, tenderers, and, where appropriate, entities on whose capacity they rely as well as envisaged subcontractors should declare the absence of such conflicting interests, and ▌ provide related information where requested. On the other hand, the contracting authority should assess the existence of such professional conflicting interests when declared or on the basis of additional information. Where such professional conflicting interests are established, this should lead to rejection from the award.

***(168) A competitive and open internal market should ensure a level playing field and enable both European and foreign economic operators to compete on the merits. Foreign subsidies can distort the internal market and undermine the level playing field in procurement procedures where, for instance, the awarded economic operators have benefitted from foreign subsidies. To remedy this risk, Regulation (EU) 2022/2560 of the European Parliament and of the Council[30] established rules and procedures to investigate foreign subsidies that actually or potentially distort the internal market and, where relevant, to ensure that those distortions be redressed. In order to ensure consistency between the rules applicable to Member States and the procurement procedures under this Regulation, Union institutions, Union bodies and executive agencies should apply mutatis mutandis the same rules and procedures on foreign subsidies laid down in Regulation (EU) 2022/2560.***

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*30* ***Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market (OJ L 330, 23.12.2022, p. 1).***

***(169) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission relating to the procedural details and related items regarding the preliminary review and the in-depth investigation of any foreign financial contributions obtained in a procurement procedure. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[31].***

(170) 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 of the corresponding tenderer with regard to exclusion or selection criteria.

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

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**31** ***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 the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: http://data.europa.eu/eli/reg/2011/182/oj).***

(172) 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 order to align Union procurement rules with Directive 2014/24/EU, contracting authorities should also be allowed to use as an award criterion the organisation, qualification and experience of the staff assigned to perform the contract, where they can significantly affect the quality of contract performance and, as a result, the economic value of the tender. Contracting authorities which make use of any of those award criteria should ensure, by appropriate contractual means, that the staff assigned to contract performance effectively fulfil the specified quality standards. The contracting authorities should give their consent to any replacement of such staff and should verify whether replacing staff affords an equivalent level of quality as the replaced staff. Furthermore, it should be ensured that there is no overlap and double evaluation of the same element under the selection and award criteria.

(173) ***In order to reduce time-consuming procedures and*** to enable contracting authorities to take full advantage of the possibilities afforded by dynamic purchasing systems, it is necessary to simplify the rules governing those systems. In particular, those systems should be operated in the form of a restricted procedure, thus allowing for any economic operator that submits a request to participate and meets the exclusion and selection criteria to take part in procurement procedures carried out through the dynamic purchasing system over its period of validity, which should not be limited to four years. Tenders can also be presented in the form of an electronic catalogue particularly for off-the-shelf products or services generally available on the market. Moreover, in order to reduce the administrative burden, the requirement to appoint an opening and evaluation committee should be waived for specific procurements under a dynamic purchasing system.

(174) Considering the progress in digitalisation of procurement procedures, it should be clarified that public openings for open procedures can be organised remotely via video conferences.

(175) In order to simplify and align with the rules applicable to procurement by Union institutions on their own account, the obligation to publish the list of selected candidates to be invited to submit a tender on the Commission's website should be removed in the field of external actions.

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

(177) In e-procurement, the electronic exchange of information with participants should rely to the largest extent possible on existing standards, such as the European Single Procurement Document and e-Invoicing standards mandated respectively by Commission Implementing Regulation (EU) 2016/7[32] and by Directive 2014/55/EU.

(178) 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.

(179) 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.

(180) It is appropriate to specify that, upon request, unsuccessful tenderers which submitted compliant tenders should receive information on the characteristics and the relative advantages of the successful tender. Unsuccessful tenderers should, upon request, receive additional information even where the compliance of their tender has not been checked due to the selected order of criteria. It should also be clarified that rejected tenderers should not have access to such information.

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**32** Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document (OJ L 3, 6.1.2016, p. 16).

(181) For framework contracts with reopening of competition, there should be no obligation to provide information on the characteristics and the relative advantages of the successful tender to an unsuccessful contractor, 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.

(182) A contracting authority should be able to cancel a procurement procedure, or partially cancel in the case of procedures awarded in lots or through multiple sourcing, 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 is possible to hold it liable for damages in accordance with the general principles of Union law.

(183) The award of contracts following multiple sourcing procurement should be allowed in duly justified cases, in particular in order to avoid the over-reliance on a single provider for critical equipment and services, taking into account the objectives of technological independence and continuity of services.

(184) As is the case in Directive 2014/24/EU, it is necessary to clarify the conditions under which it is possible to modify a contract during its performance without a new procurement procedure. In particular, a new procurement procedure should not be required in the event of administrative changes, universal succession and application of clear and unequivocal revision clauses or options that 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 as regards 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 the modified terms or conditions been part of the initial procedure.

(185) Experience gained has shown that it is necessary to clarify in which cases a modification is considered altering the subject matter of the contract.

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

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

(188) It is appropriate to include a reference in this Regulation to the thresholds set out in Directive 2014/24/EU applicable to works and to supplies and services and in Directive 2014/23/EU for concessions. The revision of those thresholds as provided for in Directives 2014/24/EU and 2014/23/EU should therefore be directly applicable to procurement and concessions under this Regulation respectively.

(189) The award of concession contracts should be simplified by applying the thresholds laid down in Directive 2014/23/EU to concessions.

(190) For harmonisation and simplification purposes, the standard procedures applicable to procurement should also be applied to purchases provided for under the light regime for contracts for social and other specific services referred to in Article 74 of Directive 2014/24/EU. Therefore, the threshold for light regime purchases should be aligned with the threshold for service contracts.

(191) In order to better adapt ***procurement*** procedures to market conditions outside the Union, this Regulation should include specific provisions under which Union delegations award contracts on their own account in third countries. Therefore, it is appropriate to revise the thresholds for awarding contracts applied by the Union delegations in third countries and align them to those applied for awarding contracts in the field of external actions.

(192) It is necessary to clarify the conditions of application of the standstill period to be observed before signing a contract or framework contract.

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

(194) The rules on access to procurement, applicable both at the time of tender submission and during contract implementation, should include the conditions laid down in implementing acts (International Procurement Instrument measures) adopted under Regulation ***(EU) 2022/1031 of the European Parliament and of the Council***[33] as well as the respective obligations of the successful tenderers set out in that Regulation.

(195) 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 the field of external actions and to remove unnecessary repetitions and cross-referencing.

(196) It is necessary to clarify which economic operators have access to procurement under this Regulation depending on their place of establishment and to provide explicitly for the possibility of such access also for international organisations.

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[33] ***Regulation (EU) 2022/1031 of the European Parliament and of the Council of 23 June 2022 on the access of third-country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI) (OJ L 173, 30.6.2022, p. 1).***

(197) In duly justified cases, where the contract is to be awarded ***by a Union delegation in a third country or exclusively in the interest of a Union delegation*** in a third country, the authorising officer responsible should be allowed to open access to the procurement procedure to natural or legal persons established in a third country that does not have a special agreement with the Union in the field of procurement. That flexibility should be provided in particular where there are no natural or legal persons established in countries that have access to the procurement under a special agreement with the Union in the field of procurement who can provide the required work, supplies or services.

(198) 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 those rules on the other, the technical rules on procurement should be set out in an 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 that Annex.

(199) 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 can be used to cover grants. In particular, grant decisions should be phased out due to their limited use and the progressive introduction of e-grants. The structure should be simplified by moving the provisions on instruments which are not grants to other parts of this Regulation. The nature of bodies which can receive operating grants should be clarified by no longer referring to bodies pursuing an aim of general Union interest since those bodies are covered by the notion of bodies having an objective forming part of and supporting a Union policy.

(200) 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.

(201) 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.

***(202) A new category of a very low value grant of an amount of up to EUR 15 000 should be introduced with a view to simplifying administrative requirements for applicants for Union funding. Given the very low value of such grants, the requirements for presenting a declaration on honour and for assessing the financial capacity should be waived.***

***(203) In order to further simplify grant applications in line with sound financial management, it should be possible for the authorising officer to decide, based on a risk assessment, that financial capacity checks are focused only on the lead applicant.***

(204) Experience gained in the use of lump sums, unit costs or flat-rate financing has shown that such forms of financing significantly simplify administrative procedures and substantially reduce the risk of error. Regardless of the field of Union intervention, lump sums, unit costs and flat rates are suitable forms of financing, in particular for standardised and recurrent actions, such as mobility or training activities. Moreover, as institutional cooperation between public administrations of Member States and of beneficiary or partner countries (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.

(205) In order to ensure legal certainty, it is necessary to clarify that, where a grant takes the form of financing not linked to costs, the provisions on an estimated budget, co-financing and no double funding do not apply since they cannot be applied in a case where the amount to be reimbursed is linked to defined conditions or results and is decoupled from the underlying costs.

(206) 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 officers responsible. Where appropriate, such authorisation can 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.

(207) 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.

(208) While the potential of more frequent use of simplified forms of financing should be realised, compliance with the principle of sound financial management, and in particular the principles of economy, efficiency and no double funding, should be ensured. For that purpose, simplified forms of financing should ensure that the resources employed are adequate to the objectives to be achieved, that the same costs are not financed more than once from the 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 assessments should continue to apply.

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

(210) Where a grant takes the form of flat-rates, unit costs or lump sums and there is thus no *ex post* verification of the underlying costs, it is not possible to check that the eligible costs were incurred during the lifetime of the action. In order to ensure legal certainty, it should be clarified that *ex post* checks and controls on beneficiaries will verify that the fulfilment of the conditions triggering the payment of flat rates, unit costs or lump sums was achieved during the implementation period.

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

(212) To ensure legal certainty, it should be clarified that, where in-kind contributions from third parties in the form of volunteers' work are presented as eligible costs in the estimated budget, the co-financing to which the 50 % limit is applied should include all the sources of financing, that is the Union grant, in-kind contributions and other sources of financing.

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

(214) To ensure legal certainty when calculating the Union contribution in the case of a profit in a grant funded by the budget, it should be clarified that the recovery of the percentage of the profit corresponding to the Union contribution to the eligible costs should not differentiate between actually incurred costs and simplified costs.

(215) 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 to bodies with 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 such a monopoly by law or by a public authority.

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

(217) A beneficiary of a grant can provide financial support to a third party based on the fulfilment of certain conditions, and the amount paid to any third party should not exceed EUR 60 000. ***It should be possible to exceed that*** amount ▌ where achieving the objectives of the action would otherwise be impossible or overly difficult. In order to allow more flexibility for implementing the budget in crisis and emergency situations, it should also be possible to exceed that amount without case-by-case justification in the cases of humanitarian aid, emergency support operations, civil protection operations or crisis management aid. ***The authorising officer should report on such cases.***

(218) Where the implementation of an action or a work programme requires a beneficiary to carry out procurement, it should be clarified that any beneficiary can use its own purchasing practices provided they ensure best value for money, or as appropriate, lowest price, irrespective of whether the beneficiary awards a public contract and is a contracting authority within the meaning of this Regulation. The definition of contract should be amended accordingly.

(219) 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.

(220) In order to allow for the more flexible implementation of prizes, the obligation under Regulation (EU, Euratom) No 966/2012 to publish contests for prizes with a unit value of EUR 1 000 000 or more in the statements accompanying the draft budget should be replaced by an obligation to submit prior information to the European Parliament and to the Council and to explicitly mention such prizes in the financing decision.

(221) Prizes should be awarded in accordance with the principles of transparency and equal treatment. In that context, the minimum characteristics of contests should be laid down, in particular the arrangements for paying the prize to the winners after its award, and the appropriate means of publication It is also necessary to establish a clearly defined award procedure, from submission of the applications to the provision of information to applicants and notification of the winning applicant, which mirrors the grant award procedure.

(222) This Regulation should lay down the principles and conditions applicable to 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.

(223) In recent years the Union has increasingly used financial instruments that allow a higher leverage of the budget to be achieved but, at the same time, they generate a financial risk for the budget. Those financial instruments include not only the financial instruments covered by Regulation (EU, Euratom) No 966/2012, 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 in this Regulation, 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.

(224) 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 distortion of competition in the internal market or inconsistency with State aid rules.

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

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

(227) 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.

(228) Any repayment from a financial instrument or budgetary guarantee should be used for the instrument or guarantee which produced the repayment with a view to enhancing the efficiency of that instrument or guarantee, unless otherwise specified in the basic act, and should be taken into account when proposing future appropriations to that instrument or guarantee.

***(229) This Regulation provides that the Commission is empowered, in the relevant basic act, to borrow on behalf of the Union or Euratom for the purpose of on-lending the corresponding amounts to beneficiary Member States or third countries under the conditions applicable to the borrowings. In that regard, the cash flows between the borrowed funds and the loans are matched one-to-one. This means that the Union should carry out market operations based on disbursement needs for each specific case of lending, which limits the possibility to coherently plan various borrowing operations and to structure maturities to achieve the best costs.***

***(230) Financing individual programmes of financial assistance through separate funding methods creates cost and complexity as different programmes of financial assistance compete for a limited number of funding opportunities. It fragments the supply of Union debt securities and reduces liquidity and investor interest in the separate programmes, even though all Union debt securities have the same high credit quality. Financial assistance should therefore be organised under a single funding method that enhances the liquidity of Union bonds and the attractiveness and cost-effectiveness of Union issuance.***

***(231) Recent experience with the funding needs for Ukraine has highlighted the disadvantages of a fragmented approach to the organisation of Union debt. In order to strengthen the Union's position as an issuer of euro-denominated debt, it is essential that all new issuances be organised through a single funding method, except in duly justified cases, such as Euratom issuance, small issuance and the funding of programmes of financial assistance for which the basic acts entered into force before 9 November 2022.***

***(232) The model for a single funding method, and most elements of the infrastructure needed for its implementation, have already been established in the form of a diversified funding strategy under Decision (EU, Euratom) 2020/2053. That strategy has allowed the successful mobilisation of funds for grants and loans under Regulation (EU) 2021/241 and for a range of other Union programmes referred to in Council Regulation (EU) 2020/2094[34]. In view of the expected complexity of operations needed to satisfy the urgent financing needs of Ukraine, and to anticipate possible future borrowing and lending operations, it is appropriate to establish a diversified funding strategy as the single funding method for implementation of borrowing operations.***

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*[34]* ***Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433 I, 22.12.2020, p. 23).***

*(233) The use of a diversified funding strategy should allow the flexible implementation of the funding programme, while fully respecting the principles of budgetary neutrality and budgetary balance as set out in Article 310(1) TFEU. The costs of the funding programme should be fully borne by the beneficiaries based on a single cost allocation methodology that ensures the transparent and proportional allocation of costs. Repayment obligations should remain with the beneficiaries of the financial assistance, in compliance with this Regulation.*

*(234) The implementation of a diversified funding strategy would require a single set of rules to be followed in respect of all borrowing and lending programmes relying on it.*

*(235) A diversified funding strategy should provide the Commission with more flexibility concerning the timing and the maturity of single funding transactions and allow regular and steady disbursements to different beneficiary countries. Such a strategy should be based on the pooling of funding instruments. This would give the Commission flexibility to organise payments to the beneficiaries independently of market conditions at the time of disbursement, while also reducing the risk that the Commission would have to raise fixed amounts in volatile or adverse conditions.*

***(236) Giving the Commission that flexibility would require putting into place a common liquidity pool. Such a centralised liquidity function would render the Union's funding capacity more resilient and able to withstand temporary mismatches between all inflows and outflows, based on a robust liquidity forecasting capacity.***

***(237) The Commission should implement all necessary transactions aiming at a regular capital market presence, at achieving the best possible funding costs and at facilitating transactions in debt securities of the Union and Euratom.***

***(238) In extending the diversified funding strategy to a wider range of programmes, it is therefore appropriate for the Commission to establish the necessary arrangements for its implementation. Those arrangements should comprise a governance framework, risk management procedures, and a cost allocation methodology, which should respect Article 223(4), point (e), of this Regulation. To ensure transparency, the Commission should regularly and comprehensively inform the European Parliament and the Council about all aspects of its borrowing and debt management strategy.***

***(239) In the interest of legal certainty and clarity in respect of already granted financial assistance and in respect of macro-financial assistance under Regulation (EU) 2022/2463 of the European Parliament and of the Council[35], the rules in this Regulation concerning diversified funding strategy should only apply to programmes of financial assistance for which the basic acts enter into force on or after 9 November 2022.***

(240) It is important that the audited financial statements for financial instruments and budgetary guarantees implemented under indirect management be provided in time for the Court of Auditors to take them into account when making its observations on the provisional accounts.

(241) It is appropriate to recognise the alignment of interests in pursuing policy objectives of the Union and, in particular, that the EIB and the EIF have the specific expertise to implement financial instruments and budgetary guarantees.

(242) The EIB and the EIF, acting as a group, should have the possibility to transfer part of the implementation to each other, where such transfer might benefit the implementation of a given action and as further defined in the relevant agreement with the Commission.

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[35] ***Regulation (EU) 2022/2463 of the European Parliament and of the Council of 14 December 2022 establishing an instrument for providing support to Ukraine for 2023 (macro-financial assistance +) (OJ L 322, 16.12.2022, p. 1).***

(243) For consistency and in order to take into account the Multiannual Financial Framework for 2021 to 2027, for financial instruments and budgetary guarantees, it is necessary to clarify certain provisions on reporting by persons or entities implementing Union funds under indirect management, on the application of Title X in case of combination thereof with ancillary support from the budget, including grants, and in combination with Union funds implemented under shared management.

(244) It should be clarified that, where financial instruments or budgetary guarantees are combined with ancillary forms of support from the budget, the rules on financial instruments and budgetary guarantees should apply to the whole measure. Such rules should be complemented, where applicable, by specific requirements set out in sector-specific rules.

(245) The implementation of financial instruments and budgetary guarantees financed by the 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 in Council conclusions, in particular the Council conclusions of 8 November 2016 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes[36] and the Annex thereto, as well as the Council conclusions of 5 December 2017 on the EU list of non-cooperative jurisdictions for tax purposes[37] and the Annexes thereto.

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

(247) The Union 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 a liquidity cushion that allows the budget to respond in an orderly manner to the payment obligations that might 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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**36** OJ C 461, 10.12.2016, p. 2.
**37** OJ C 438, 19.12.2017, p. 5.

(248) The contingent liabilities arising from budgetary guarantees can cover a wide range of financing and investment operations. The possibility of a 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 full respect, at any moment, for the ceiling for annual payment appropriations set out in Decision (EU, Euratom) 2020/2053.

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

(250) 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.

(251) The rules applicable to provisioning and to the common provisioning fund should provide a solid internal control framework. The guidelines applicable to the management of the resources in the common provisioning fund should be established by the Commission after having consulted the accounting officer of the Commission. The authorising officers of the financial instruments, budgetary guarantees or financial assistance should actively monitor the financial liabilities under their responsibility and the financial manager of the resources of 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 of the Commission.

(252) Budgetary guarantees and financial assistance should follow the same set of principles established for financial instruments. Budgetary guarantees, in particular, should be irrevocable, unconditional and on demand. They should be implemented under indirect management or, only in exceptional cases, under direct management. They should only cover financing and investment operations and their counterparts should contribute their own resources to the operations covered.

(253) 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. To that end, the Commission should be empowered in the relevant basic act to borrow the necessary funds 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 to any other commercial risk.

(254) 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 to 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 Title X and, on the one hand, the proposal for the post-2020 multiannual financial framework and, on the other hand, the specific programmes related to that framework.

(255) Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council[38] lays down 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 certain 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 Member States, and transparency.

(256) Rules should be included in this Regulation on contributions from the budget to European political parties as envisaged by Regulation (EU, Euratom) No 1141/2014.

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

(258) 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.

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**38** 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).

(259) Union funding awarded to finance the operating costs of 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 third parties such as national political parties. 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.

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

(261) The contributions from the budget should be suspended, reduced or terminated if European political parties infringe Regulation (EU, Euratom) No 1141/2014.

(262) Penalties that are based both on this 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 this 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.

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

(264) In order to reinforce the role of the European Parliament and of the Council, the procedure for establishing Union trust funds should be clarified. It is also necessary to specify the principles applicable to the contributions to Union trust funds, in particular the importance of securing contributions from other donors which justify their establishment with regard to added value. It is also necessary to clarify the responsibilities of the financial actors and of the board of the Union trust fund and to define rules ensuring a fair representation of the participating donors on the board of the Union trust fund and a mandatory vote in favour by the Commission for the use of the funds. It is also important to set out in more detail the reporting requirements applicable to Union trust funds.

(265) The Union should be able to participate in global initiatives, when such participation contributes to the achievement of Union policy objectives. In order to provide a suitable legal framework for Union participation in global initiatives, Union contribution to such initiatives should be included as a new budget implementation instrument. The use of this new financial vehicle would be subject to conditions***, the fulfilment of which would ensure a level of protection comparable to other budget implementation instruments. Such conditions should include the existence of appropriate internal and external systems to combat fraud and irregularities, whereby the systems operated by implementing entities of the global initiative should be considered as external systems. The use of the provisions related to global initiatives should be*** limited to cases where other ***budget implementation*** instruments do not enable the achievement of the respective Union policy objectives with the same scale and impact. ***Where possible and appropriate, the Commission should join any governance board or equivalent steering committee of a global initiative in order to ensure effective representation of the Union interest. In the interests of transparency and effective decision-making, the Commission should, as early as possible, provide detailed information to the European Parliament and the Council on any intended contribution to a global initiative, so as to enable them to give that information due consideration.***

(266) In order to adapt to the progress on digitalisation, the lists of external experts drawn up following a call for expression of interest should be valid longer than the duration of the multiannual programme provided a rotation of the experts is ensured and new experts are able to express their interest. In addition, it is necessary to allow Union institutions to attract highly skilled external experts in order to ensure the evaluation process and the specific opinions and advice provided by the experts is of high quality. In order to successfully compete with other actors on the market, the Union institutions should be allowed to offer more competitive remuneration in exceptional and duly justified cases. Finally, in the interest of legal certainty, the rules applicable to remunerated external experts should be clarified to mirror the different steps of the award procedure.

(267) In order to provide a clear legal framework for Union institutions to donate services, supplies or works, non-financial donations should be included as a new budget implementation instrument. This instrument should not be confused with the general framework of support provided by the Union to third countries which is of a broader nature but can include non-financial donations. In light of the COVID-19 pandemic ***and the impact of Russia's war of aggression against Ukraine***, such an instrument should provide a stable legal basis in particular for future crisis and emergency situations and ensure that the Union institutions have the appropriate budget support tools to help Member States, other persons and entities when support is most needed. That instrument should be implemented under direct management or under indirect management by a Union body. Related provisions, such as definitions, suspension, termination and reduction, and evaluation committee should be adjusted accordingly. ***In the interest of sound financial management, non-perishable supplies financed from administrative appropriations should not be donated before they have partially depreciated in value.***

(268) Similar to the introduction of non-financial donations, Union institutions should be able to award prizes which are not financial. This is also important in order to allow contests among young people who do not have a bank account in their Member State, but who can easily receive their reward in a practical form. For this purpose, the definition of and the provisions on ‘prizes’ should be adjusted accordingly.

(269) In line with the streamlining of the existing rules and in order to avoid undue repetition, the special provisions set out in Part Two of Regulation (EU, Euratom) No 966/2012, applicable to the EAGF, to research, to external actions and to specific Union funds, should only be introduced in the relevant parts of this Regulation, provided that the provisions are still used and relevant.

(270) The provisions on the presentation of accounts and accounting should be simplified and clarified. It is therefore appropriate to group together all provisions on annual accounts and other financial reporting.

(271) The deadlines for the observations by the Court of Auditors on the provisional accounts and for the submission of the final accounts should be adjusted to take into account the timetable of the discharge procedure.

***(272) The accounts of all the Union's revenue and expenditure, including assigned revenue and the related specific items of expenditure, the resulting balance and the assets and liabilities of the Union shown in the balance sheet, including those arising from borrowing and lending operations, should be covered in the discharge decision. Likewise, the examination by the Court of Auditors of all revenue should include assigned revenue and the related items of expenditure.***

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

(274) In its Communication on the European Green Deal, the Commission encourages the renovation of buildings in order to reduce their emissions and make them more energy efficient. Taking into account the rapid evolution of the market for energy efficient buildings, there is an acute need for Union institutions to incorporate the European Green Deal commitments in their own building policy and to renovate their buildings***, prioritising the most energy-efficient investments***. In addition, the recent development of working methods accelerated by the COVID-19 pandemic requires adapting the Union institutions' office stock in order to develop a dynamic office policy. As a consequence, financing of structural renovations by loans should be allowed***, provided that it leads to savings, in accordance with the principle of sound financial management. The European Parliament and the Council should receive sufficient information for the purposes of their prior approval, including on the added value of the envisaged structural renovation and its contribution to the green transition***. The interpretation of the concept of new building projects should be broadened and, in particular, include ***projects*** concerning structural renovation.

(275) In order to adapt the rules applicable to certain Union bodies, the detailed rules on procurement and the detailed conditions and the minimum ratio for the effective provisioning rate, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the framework financial regulation for bodies set up under the TFEU and the Euratom Treaty, the model financial regulation for public-private partnership bodies, amendments to Annex I to this Regulation, the detailed conditions and methodology for the calculation of the effective provisioning rate and the amendment of the defined minimum ratio of the effective provisioning rate, which should 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 of 13 April 2016 on Better Law-Making. 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.

(276) Some modifications regarding the ***provision of access by*** the Commission ***to*** data on recipients for the purposes of publication, and regarding the electronic recording and storage of data on recipients ***and their beneficial owners*** and ***access by*** the single integrated IT system for data-mining and risk-scoring to ▌ analyse those data should apply only to programmes adopted under and financed ***as*** from the post-2027 multiannual financial framework in order to ensure a smooth transition by allowing sufficient time for the necessary adaptation of electronic data systems and of relevant agreements, as well as the provision of guidance and training.

***(277) The Commission should present by the end of 2027 an assessment of the readiness of the single integrated IT system. That assessment should evaluate whether interoperability is ensured with relevant IT systems and databases, including those of Member States, allowing for an automatic transfer of the relevant information in real time where feasible, and avoiding duplication of reporting; whether the risk indicators used by the single integrated IT system are sufficiently uniform, objective, proportionate, and necessary for risk assessment, and are based on reliable sources of information; whether the single integrated IT system permits using artificial intelligence for analysing and interpreting data; and whether the single integrated IT complies with general data protection principles.***

(278) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on ***7 July 2022***.

(279) This Regulation should enter into force on the third day following that of its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS 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 (the 'budget') and the presentation and auditing of their 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 legal personality who has submitted an application in a grant award procedure, in a non-financial donation award procedure or in a contest for prizes;

(2) 'application document' means a tender, a request to participate, an application further to a call for expression of interest, a grant application, an application for a non-financial donation or an application in a contest for prizes;

(3) 'award procedure' means a procurement procedure, a grant award procedure, a contest for prizes, an award procedure for a non-financial donation or a procedure for the selection of experts or persons or entities implementing the budget pursuant to Article 62(1), first subparagraph, point (c);

(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 (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) and 31(2), Article 33, and Articles 42(4) and 43(2) TEU;

(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 or platform' 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 and/or budgetary guarantees from the budget and repayable forms of support from development or other public finance institutions, as well as from private-sector finance institutions and private-sector investors;

(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 budget appropriations necessary to cover subsequent payments to honour legal commitments;

(9) ‘budgetary guarantee’ means an instrument through which the Union supports a programme of actions by taking on the budget an irrevocable and unconditional 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 commitments made under the supported programme;

(10) ‘building contract’ 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;

(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 177 and 181, in order to entrust the execution of works or the provision and management of services to an economic operator (the ‘concession’), and where:

(a) the remuneration consists either solely in the right to exploit the works or services or in that right together with payment;

(b) the award of the concession contract involves 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 concerned;

(15) ‘constitution phase’ means the period during which the global provisioning is paid into the common provisioning fund;

(16) ‘contingent liability’ means a potential financial obligation that could be incurred depending on the outcome of a future event;

(17) ‘contract’ means a public contract or a concession contract or, for Title VIII, a subcontract or purchase contract concluded by a beneficiary;

(18) ‘contractor’ means an economic operator with whom a public contract has been signed;

(19) ‘contribution agreement’ means an agreement concluded with persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, points (c)(ii) to (viii);

(20) ‘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;

(21) ‘counterpart’ means the party that is granted a budgetary guarantee;

(22) ‘crisis’ means:

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

(b) a situation caused by natural disasters, man-made crisis such as wars and other conflicts or extraordinary circumstances having comparable effects related, inter alia, to climate change, public and animal health, food ***security and food*** safety emergencies and global health threats, such as ***epidemics and*** pandemics, environmental degradation, privation of access to energy and natural resources or extreme poverty;

(23) ‘decommitment’ means an operation whereby the authorising officer responsible cancels wholly or partly the reservation of appropriations previously made by means of a budgetary commitment;

(24) ‘dynamic purchasing system’ means a completely electronic process for making commonly used purchases of items generally available on the market;

(25) ‘economic operator’ means any natural or legal person, including a public entity, or a group of such persons, who offers to supply products, execute works or provide services or supply immovable property;

(26) ‘equity investment’ means the provision of capital to a company, invested directly or indirectly in return for total or partial ownership of that company and where the equity investor may assume some management control of the company and may share the company’s profits;

(27) ‘European office’ means an administrative structure set up by the Commission, or by the Commission with one or more other Union institutions, to perform specific cross-cutting tasks;

(28) ‘final administrative decision’ means a decision of an administrative authority having final and binding effect in accordance with the applicable law;

(29) ‘financial asset’ means any asset in the form of cash, an equity instrument of a publicly or privately held entity or a contractual right to receive cash or another financial asset from such entity;

(30) ‘financial instrument’ means a Union measure of financial support provided from the budget to address one or more specific policy objectives of the Union which may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and which 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);

(31) ‘financial liability’ means a contractual obligation to deliver cash or another financial asset to another entity;

***(32) ‘foreign subsidy’ means a financial contribution within the meaning of Article 3(2) of Regulation (EU) 2022/2560 provided by a third country that falls within the description provided in Article 3(1) of that Regulation;***

(33) ‘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;

(34) ‘global provisioning’ means the total amount of resources deemed necessary over the entire lifetime of a budgetary guarantee or financial assistance to a third country as a result of applying the provisioning rate referred to in Article 214(1) to the amount of the budgetary guarantee or financial assistance to a third country authorised by the basic act referred to in Article 213(1), points (b) and (c);

(35) ‘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;

(36) ‘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;

(37) ‘guarantee on demand’ means a guarantee that must be honoured by the guarantor upon the counterpart’s demand, notwithstanding any deficiencies in the enforceability of the underlying obligation;

(38) ‘in-kind contribution’ means non-financial resources made available free of charge by third parties to a beneficiary;

(39) ‘legal commitment’ means an act whereby the authorising officer responsible enters into or establishes an obligation which results in a subsequent payment and the recognition of expenditure covered by a budgetary commitment, or in an obligation to provide a non-financial donation, and which includes specific agreements and contracts concluded under financial framework partnership agreements and framework contracts;

(40) ‘leverage effect’ means the amount of reimbursable financing provided to eligible final recipients divided by the amount of the Union contribution;

(41) ‘liquidity risk’ means the risk that a financial asset held in the common provisioning fund might not be sold during a certain period of time without incurring a significant loss;

(42) ‘loan’ means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period and under which the borrower is obliged to repay that amount within the agreed period;

(43) ‘low value grant’ means a grant lower than or equal to EUR 60 000;

(44) ‘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;

(45) ‘method of implementation’ means any of the methods of budget implementation referred to in Article 62, that is direct management, indirect management and shared management;

(46) ‘multi-donor action’ means any action where Union funds are pooled with at least one other donor;

(47) ‘multiple sourcing procurement’ means procurement where it is intended to award multiple contracts concluded in writing in parallel between multiple economic operators and one or more contracting authorities within the meaning of Article 177(1), in order to entrust the execution of identical or quasi-identical services, supplies or works to be performed in parallel by different contractors;

(48) ‘multiplier effect’ means the investment by eligible final recipients divided by the amount of the Union contribution;

(49) ‘non-governmental organisation’ means a voluntary, independent from government, non-profit organisation, which is not a political party or a trade union;

(50) ‘output’ means the deliverables generated by the action determined in accordance with sector-specific rules;

(51) ‘participant’ means a candidate or tenderer in a procurement procedure, an applicant in a grant award procedure or in a non-financial donation award procedure, an expert in a procedure for selection of experts, an applicant in a contest for prizes or a person or entity participating in a procedure for implementing Union funds pursuant to ▌ Article 62(1), ***first subparagraph***, point (c);

(52) ‘presumed successful tenderer’ means any tenderer in a procurement procedure that is ranked first, subject to further checks and provision of supporting documents on exclusion and/or selection criteria in order to be proposed by the evaluation committee as a successful tenderer. Where the award procedure foresees to award the contract to several tenderers, then the presumed successful tenderer shall be deemed to refer to the best ranked tenderers equal to the number of contracts to be awarded.

(53) ‘prize’ means a contribution given as a reward following a contest. Where such a contribution is provided under direct management, it shall be governed by Title IX;

(54) ‘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;

(55) ‘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 166;

(b) the invitation to tender;

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

(d) the draft contract;

(56) ‘professional conflicting interests’ means a situation in which the previous or ongoing professional activities of an economic operator affect or risk affecting its capacity to perform a contract in an independent, impartial and objective manner;

(57) ‘public 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 177 and 181, 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;

(c) works contracts;

(d) service contracts;

(58) ‘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 which can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or into preferred equity;

(59) ‘recipient’ means a beneficiary, a contractor, a remunerated external expert or a person or entity receiving prizes, non-financial donations or support from the budget under a financial instrument or a budgetary guarantee, or implementing Union funds pursuant to Article 62(1), first subparagraph, point (c);

(60) ‘repurchase agreement’ means the sale of securities for cash with an agreement to repurchase them on a specified future date, or on demand;

(61) ‘research and technological development appropriation’ means an appropriation entered either in one of the titles of the budget relating to the policy areas linked to ‘Indirect research’ or ‘Direct research’ or in a chapter relating to research activities in another title;

(62) ‘result’ means the effects of the implementation of an action determined in accordance with sector-specific rules;

(63) ‘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;

(64) ‘service contract’ means a contract covering all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts;

(65) ‘sound financial management’ means implementation of the budget in accordance with the principles of economy, efficiency and effectiveness;

(66) ‘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 Regulation (EEC, Euratom, ECSC) No 259/68;

(67) ‘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 a grant;

(68) ‘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;

(69) ‘supply contract’ means a contract covering the purchase, leasing, rental or hire purchase, with or without option to buy, of products, and which may include, as an incidental matter, siting and installation operations;

(70) ‘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;

(71) ‘tenderer’ means an economic operator that has submitted a tender;

(72) ‘Union’ means the European Union, the European Atomic Energy Community, or both, as the context may require;

(73) ‘Union institution’ means the European Parliament, the European Council, the Council, the 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 or the European External Action Service (the ‘EEAS’); the European Central Bank shall not be considered to be a Union institution;

(74) ‘vendor’ means an economic operator registered in a list of vendors to be invited to submit requests to participate in or submit tenders;

***(75) ‘very low value grant’ means a grant lower than or equal to EUR 15 000;***

(76) ‘volunteer’ means a person working on a non-compulsory basis for an organisation without being paid;

(77) ‘a 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;

(78) ‘works contract’ means a contract covering either:

(a) the execution or both the execution and design of a work; or

(b) the execution or both the execution and design of works related to one of the activities referred to in Annex II to Directive 2014/24/EU; or

(c) 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.

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 set out 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 or amendments.

Article 4

Periods, dates and time limits

Unless otherwise provided in this Regulation, Council Regulation (EEC, Euratom) No 1182/71[39] shall apply to the deadlines set out in this Regulation.

Article 5

Protection of personal data

This Regulation is without prejudice to Regulations (EU) 2016/679 and (EU) 2018/1725.

[39] 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).

TITLE II

PRINCIPLES

Article 6

Respect for budgetary principles and general regime of conditionality for the protection of the Union budget

1. 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.

2. The establishment and implementation of the budget shall also comply with the provisions of Regulation (EU, Euratom) 2020/2092.

***3. In the implementation of the budget, Member States and the Commission shall ensure compliance with the Charter of Fundamental Rights of the European Union, in accordance with Article 51 of the Charter, and shall respect the Union values enshrined in Article 2 TEU relevant in the implementation of the budget.***

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

(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 from preceding financial years;

(c) appropriations made available again in accordance with Article 15;

(d) appropriations arising from pre-financing payments which have been repaid in accordance with Article 12(4), point (b);

(e) appropriations provided following the receipt of ▌ assigned ***revenue*** 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).

4. Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years. They shall also cover the provisioning of financial liabilities referred to in Article 214.

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 Article 112(1), first subparagraph, point (b), 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 budget line.

2. Without prejudice to authorised expenditure arising from contingent liabilities as provided for in Article 213(2), no expenditure may be committed or authorised in excess of the authorised appropriations.

3. An appropriation shall 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 in the contribution agreements or the financing agreements concerned.

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

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

3. The entries in respect of the own resources referred to in Article 2(1), point (c), of Decision (EU, Euratom) 2020/2053 may be adjusted in accordance with Regulation (EU, Euratom) 2021/770.

4. Commitments shall be entered in the accounts for a financial year on the basis of the legal commitments entered into and of the provisioning of financial liabilities referred to in Article 214 made up to 31 December of that year. However, the global budgetary commitments referred to in Article 112(4) shall be entered in the accounts for a financial year on the basis of the budgetary commitments up to 31 December of that year.

5. 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.

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

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

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

   (b) routine management expenditure for the EAGF, provided that the basis for such 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 by the Council for the current financial year.

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

(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 that purpose by 31 December of that year. 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 insufficient;

(d) non-committed appropriations relating to the actions referred to in Article 5(2) of Regulation (EU) 2021/2116.

By way of derogation from the first subparagraph, point (d), of this paragraph, non-committed appropriations of the agricultural reserve referred to in Article 16 of Regulation (EU) 2021/2116 shall be carried over to finance the agricultural reserve in the following financial years ***for the period referred to in Article 16(2), third subparagraph, of that Regulation and for any period beyond 2027 provided for in the applicable sector-specific rules***.

With regard to the first subparagraph, point (c), of this paragraph, 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.

Carry-overs of non-committed appropriations as referred to in the first subparagraph, point (d), of this paragraph shall not exceed, within a limit of 2 % of the initial appropriations voted by the European Parliament and by the Council, the amount of the adjustment of direct payments applied in accordance with Article 17 of Regulation (EU) 2021/2116 during the preceding financial year. Appropriations which are carried over shall be returned to the budget lines which cover the actions referred to in Article 5(2), point ***(d)***, of Regulation (EU) 2021/2116.

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

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

(a) appropriations for the Solidarity and 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 used up to 31 December of that year ▌;

(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 of that year, with the exception of the internal assigned revenue from lettings and the sale of buildings and land which may be carried over until it is fully used. Commitment appropriations, as referred to in Regulation (EU) No 1303/2013 of the European Parliament and of the Council[40] Regulation (EU) No 514/2014 of the European Parliament and of the Council[41] and Regulation (EU) 2021/1060, which are available on 31 December arising from repayments of pre-financing payments may be carried over until the closure of the programme and used when necessary, provided that other commitment appropriations are no longer available;

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40 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).

41 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 (OJ L 150, 20.5.2014, p. 112).

(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 Article 21(2), point (g)(iii), for which appropriations not committed within five years shall be cancelled;

(d) payment appropriations ***related to the EAGF*** resulting from ▌ suspensions ***in accordance with Articles 40, 41 and 42 of Regulation (EU) 2021/2116.***

5. The treatment of external assigned revenue as referred to in paragraph 4, point (c), of this Article resulting from the participation of European Free Trade Association (EFTA) States in certain Union programmes in accordance with Article 21(2), point (e), shall be in line with Protocol No 32 annexed to the Agreement on the European Economic Area (EEA Agreement).

6. In addition to the information provided for in paragraph 3, the Union institution concerned shall submit to the European Parliament and to the Council information on appropriations which were automatically carried over, including the amounts involved and the provision of this Article under 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.

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

Article 13

Detailed provisions on cancellation and carry-over of appropriations

1. The commitment appropriations and the non-differentiated appropriations referred to in Article 12(2), first subparagraph, point (a), 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 31 March of the following financial year, or, in relation to building projects, by 31 December of the following financial year.

2. The preparatory stages referred to in Article 12(2), first subparagraph, point (a), which shall be completed by 31 December of the financial year in order to allow a carry-over to the following financial year, are in particular:

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

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

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

Article 14

Decommitments

1. Where budgetary commitments are decommitted in any financial year after the year in which they were 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 in Regulation (EU) No 1303/2013, Regulation (EU) No 223/2014 of the European Parliament and of the Council[42] and Regulations (EU) No 514/2014, (EU) 2021/1060 and (EU) 2021/2116 and notwithstanding Article 15 of this Regulation.

2. Commitment appropriations referred to in Regulations (EU) No 1303/2013, (EU) No 223/2014, (EU) No 514/2014, (EU) 2021/1060 and (EU) 2021/2116 shall be decommitted automatically in accordance with those Regulations.

3. This Article does not apply to external assigned revenue referred to in Article 21(2).

[42] 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 (OJ L 72, 12.3.2014, p. 1).

Article 15

Making appropriations corresponding to decommitments available again

1. The appropriations corresponding to decommitments referred to in Regulations (EU) No 1303/2013, (EU) No 223/2014, (EU) No 514/2014, (EU) 2021/1060 and (EU) 2021/2116 may be made available again in the event of a manifest error attributable solely to the Commission.

   To that end, the Commission shall examine decommitments made during the preceding financial year and shall 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 to the case referred to in paragraph 1 of this Article, the appropriations corresponding to decommitments shall be made available again in the event of a decommitment of resources transferred back to the fund from which they have been initially transferred in line with Article 26 of Regulation (EU) 2021/1060.

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 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.

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 referred to 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.

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

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

(a) acting by a majority of its component members, decides to reduce the expenditure before the expiry of the 30 days, in which case the Commission shall submit a new proposal;

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

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

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

2. The estimates of the revenue or payment appropriations referred to in paragraph 1 of this Article shall be entered in the budget during the budgetary procedure and in a letter of amendment submitted pursuant to Article 42 of this Regulation. The estimates shall be drawn up in accordance with Article 1 of Regulation (EU, Euratom) 2021/768.

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

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

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

## 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 the budget 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 including voluntary contributions to Union programmes, instruments and activities;

(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 to the TFEU.

(c) the interest on deposits and the fines provided for in Council Regulation (EC) No 1467/97[43];

(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 other than those set up under the TFEU or the Euratom Treaty;

[43] 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).

(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;

(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 to other departments within an Union institution, or to other 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 212(3), second subparagraph;

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

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

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

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

Article 22

Structure to accommodate assigned revenue and provision of corresponding appropriations

1. Without prejudice to paragraph 2, first subparagraph, point (c), 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 remarks, including general remarks, showing which budget lines may receive the appropriations corresponding to the assigned revenue which are made available;

(c) ***in the statement of expenditure,*** an ▌ annex, forming an integral part of the budget, setting out all the budget lines for which ***internal or*** external assigned revenue is foreseen and providing information on the estimated amount of such revenue to be received ***and the estimated amount of such revenue to be carried over from preceding years for each budget line***.

In the case referred to in the first subparagraph, point (a), a token entry *pro memoria* shall be made and the estimated revenue shall be shown for information in the remarks.

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 Article 21(2), point (a), for financial contributions from Member States and where the contribution agreement is expressed in euro, commitment appropriations may be made available upon signature of the contribution agreement by the Member State;

   (b) in the cases provided for in Article 21(2), point (b), and in Article 21(2), point (g)(i) and (iii), the commitment appropriations shall be made available as soon as the amount receivable has been estimated;

   (c) in the case provided for in Article 21(2), point (c), the entry of the 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 the first subparagraph, point (c), of this paragraph shall be implemented in accordance with Article 20.

3. The estimates of amounts receivable referred to in Article 21(2), points (b) and (g), shall be sent to the accounting officer for registration.

Article 23

Contributions from Member States to research programmes

1. The contributions from Member States to the financing of certain supplementary research programmes, referred to in Article 5 of 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 31 January of the current financial year;

   (b) the remaining five twelfths shall be paid by 15 July of the current financial year.

2. Where the budget has not been definitively 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 preceding financial year.

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

4. Payments made shall be entered in the account provided for in 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 EFTA States in certain Union programmes shall be as follows:

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

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

2. Under Article 82 of the EEA Agreement, the amounts of the annual participation of EFTA States, as confirmed to the Commission by the Joint Committee of the European Economic Area in accordance with Article 1(5) of Protocol No 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 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.

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. The European Parliament and the Council shall act on the matter within two months of receiving a request for such an authorisation 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 in their request to the European Parliament and to the Council explain the financial charges entailed by the acceptance of donations made to the Union.

3. Notwithstanding paragraph 2, in exceptional circumstances, the Commission may accept any in-kind donation made to the Union, irrespective of its value, where such a donation is made for the purposes of humanitarian aid, emergency support, civil protection or crisis management aid.

The Commission may accept such a donation provided that:

(a) the acceptance is in accordance with the principles of sound financial management and transparency;

(b) it does not give rise to a conflict of interests;

(c) it does not harm the image of the Union;

***(d) it does not harm or risk harming the security or public order of the Union or Member States;***

(e) the donor is not, at the time of the acceptance, in one of the situations referred to in Articles 138(1) and 143(1) and is not registered as excluded in the database referred to in Article 144(1). The donor shall submit the declaration referred to in Article 139.

***The authorising officer responsible shall provide information in the annual activity report referred to in Article 74(9) on all cases where the Commission accepted a donation pursuant to the first subparagraph of this paragraph.***

Article 26

Corporate sponsorship

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

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

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

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

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

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

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

(f) the sponsor is not, at the time of the sponsorship procedure, in one of the situations referred to in Articles 138(1) and 143(1) and is not registered as excluded in the database referred to in Article 144(1).

3. Where the value of the corporate sponsorship exceeds EUR 5 000, the sponsor shall be listed in a public register that includes information on the type of event or activity being sponsored.

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 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 the first subparagraph, point (d), 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.

Union accounting rules shall apply to the deductions referred to in the first subparagraph, points (c) and (d).

2. The cost of products or services, provided to the Union, incorporating taxes refunded by Member States pursuant to Protocol No 7 on the privileges and immunities of the European Union, annexed to the TEU and to the TFEU, 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 the case referred to in the first subparagraph, point (b), subsequently reimbursed taxes shall be treated as internal assigned revenue.

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

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.

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

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

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

   (b) from one chapter to another without limit.

2. Without prejudice to paragraph 4 of this Article, 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 objections 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 to the Council, within its own section of the budget, transfers from one title to another exceeding the limit referred to in paragraph 1, point (a), of this Article. Those transfers shall be subject to the procedure laid down in Article 31.

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

(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, transfer appropriations between chapters of up to a maximum of 15 % of the appropriations on the budget line from which the transfer is made;

(e) with regard to research and technological development, transfer 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 constitute 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 and subject to the subsequent restoring of the amount transferred in accordance with the procedure set out in Article 215(4).

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

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

Article 31

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

1. Each Union institution shall submit its transfer proposals simultaneously to the European Parliament and to 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 to the Council by 10 January of the following financial year. The transfer of the payment appropriations may be made from any budgetary item. In such cases, 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 by the Council, the corresponding part of the expenditure referred to in Article ***10(7)***, point (b), 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 in accordance with paragraphs 4 to 8.

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 circumstances, the European Parliament and the Council shall deliberate within three weeks of receipt of the proposal.

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

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

   (a) the transfer represents less than 10 % of the appropriations of the budget 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.

2. Decisions on transfers to allow the use of the Solidarity and Emergency Aid Reserve under Article 9(1), point (b), of Regulation (EU, Euratom) 2020/2093 shall be taken by the European Parliament and by the Council on a proposal from the Commission.

For the purposes of this paragraph, the procedure set out in Article 31(3) and (4) shall apply. If the European Parliament and the Council do not agree to the Commission proposal and cannot reach a common position, they shall refrain from acting on that proposal.

Proposals for transfers from the Solidarity and Emergency Aid Reserve for assistance under Article 9(1), point (b), of Regulation (EU, Euratom) 2020/2093 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 budget line to which the transfer is to be made;

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

## 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 concerned 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 the resources employed, the activities undertaken and the achievement of objectives;

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

2. In line with the principle of sound financial management, the use of appropriations shall focus on performance and for that purpose:

(a) objectives for programmes and activities shall be established *ex ante*;

(b) progress in the achievement of objectives***, including mainstreamed ones, where relevant,*** shall be monitored with performance indicators;

(c) progress in, and problems with, the achievement of objectives shall be reported to the European Parliament and to the Council in accordance with Article 41(3), first subparagraph, point (h), and with Article 253(1), point (e);

(d) programmes and activities ***shall, where feasible and appropriate in accordance with the relevant sector-specific rules,*** be implemented to achieve their set objectives without doing significant harm to the environmental objectives of climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems, as set out in Article 9 of Regulation (EU) 2020/852 of the European Parliament and of the Council[44]***;***

[44] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

***(e) programmes and activities shall, where feasible and appropriate in accordance with the relevant sector-specific rules, be implemented to achieve their set objectives respecting working and employment conditions under applicable national law, Union law, ILO conventions and collective agreements;***

***(f) programmes and activities shall, where feasible and appropriate in accordance with the relevant sector-specific rules, be implemented taking into account the principle of gender equality and in accordance with an appropriate gender mainstreaming methodology.***

3. Specific, measurable, attainable, relevant and time-bound objectives as referred to in paragraphs 1 and 2 and ***indicators that are*** relevant, accepted, credible, easy***,*** robust ***and based on widely recognised scientific evidence and an effective, transparent and comprehensive methodology*** shall be defined where relevant. ***Where appropriate, the data collected in relation to such indicators shall be broken down by gender and shall be collected in a way allowing for aggregation of such data across all relevant programmes.***

Article 34

Evaluations

1. Programmes and activities which entail significant spending shall be subject to *ex ante* and retrospective evaluations, 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 may take the form of an impact assessment that, in addition to meeting the requirements set out in the first subparagraph, analyses the various options concerning the methods of implementation.

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

   Any amendment to a proposal or initiative submitted to the legislative authority which may have an appreciable impact on 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 regards 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 personnel, 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.

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

2. For the purposes of budget implementation, internal control shall be applied at all levels of management and shall be 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 ***irregularities including*** fraud, corruption, conflicts of interest ***and*** double funding ▌, also through the ***voluntary use of a single integrated and interoperable information and monitoring system, including a single data-mining and risk-scoring tool, provided by the Commission, and allowing for the access to and the*** electronic ***automatic retrieval,*** recording, storage and analysis of data on the recipients of Union funds including their beneficial owners, as defined in Article 3, point (6), of Directive (EU) 2015/849***, in accordance with sector-specific rules***;

(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;

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

(c) adequate audit trails and data integrity in data systems, including electronic ones;

(d) procedures for monitoring effectiveness and efficiency;

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

(f) 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;

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

(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.

6. For the purposes of paragraph 2, point (d), of this Article, ***and without prejudice to the second subparagraph of this paragraph, Union institutions and bodies and persons or entities implementing the budget pursuant to Article 62(1) shall make*** the following information ***available to the Commission*** electronically***,*** in an ▌ interoperable and machine-readable format ▌ :

(a) ***on the recipient: all the information listed in Article 38(2), points (a), (b) and (c), and Article 38(6), second subparagraph, and,*** in the case of ▌ a natural person, also the date of birth;

(b) ***on the operation: all the information listed in Article 38(2), points (d) and (e), as well as the unique identifier of the operation;***

***(c)*** on the beneficial owner(s) of the recipient, where the recipient is not a natural person: the first name(s), last name(s), date of birth, and VAT identification number(s) or tax identification number(s) where available or another unique identifier at country level.

***For the purpose of this Article, where the Member States receive and implement the budget pursuant to Article 62(1), they shall provide the Commission with access to the information set out in the first subparagraph only where they have an obligation to record and store such information in accordance with sector-specific rules. In the absence of such an obligation under sector-specific rules, Member States may provide the Commission with access to the information in their possession as referred to in the first subparagraph, on a voluntary basis.***

***The Commission shall present by the end of 2027 an assessment of the readiness of the system referred to in paragraph 2, point (d), of this Article, with respect to the following criteria:***

***(a) interoperability is ensured with relevant IT systems and databases, including those of Member States, allowing for an automatic transfer of the relevant information in real time where feasible, and avoiding duplication of reporting;***

***(b) the risk indicators used by the system referred to in paragraph 2, point (d), of this Article are sufficiently uniform, objective, proportionate, and necessary for risk assessment, and are based on reliable sources of information;***

***(c) the system referred to in paragraph 2, point (d), of this Article permits using artificial intelligence for analysing and interpreting data;***

***(d) the system referred to in paragraph 2, point (d), of this Article complies with general data protection principles.***

***For the purposes of this Article, 'interoperability' means the minimum necessary collection of data from and communication between various sources in order to have the data assessed and potential risks evaluated effectively.***

***Union institutions and bodies, Member States and persons or entities implementing the budget pursuant to Article 62(1) may use the system referred to in paragraph 2, point (d), of this Article on a voluntary basis.***

7. The system referred to in paragraph 2, point (d), of this Article shall be designed to facilitate risk assessment for the purposes of selection, award, financial management, monitoring, investigation, control and audit and contribute to effective prevention, detection, correction and follow-up of ***irregularities, including*** fraud, corruption, conflicts of interest ***and*** double funding and ***shall:***

***(a) only use risk indicators that are objective, proportionate, necessary for risk assessment, as well as based on reliable sources of data and information;***

***(b) be designed for its use in line with general data protection principles, including data minimisation and storage limitation, applicable to the processing of personal data.***

***Access*** to the data processed by the system referred to in paragraph 2, point (d), of this Article shall comply with applicable data protection rules***, respect the principles of necessity and proportionality*** and shall be limited to the ***Union institutions and bodies implementing the budget***, the Member States implementing the budget pursuant to Article 62(1), first subparagraph, point (b), the Member States that receive and implement Union funds under Article 62(1), first subparagraph, point (a), persons or entities implementing the budget pursuant to Article 62(1), first subparagraph, point (c), Union investigative***,*** control ***and audit*** bodies ***including OLAF, the Court of Auditors, and the EPPO,*** within the exercise of their respective competences. ***Data available through the system referred to in paragraph 2, point (d), of this Article shall be made available to the European Parliament and the Council on a case-by-case basis to the extent necessary and proportionate within the exercise of their respective competences, in the context of the discharge procedure for the Commission.***

The Commission shall be the controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725 and shall be responsible for the development, management and supervision of the system referred to in paragraph 2, point (d), of this Article, for ensuring the security, integrity and confidentiality of data, the authentication of the users and for protecting the IT system against mismanagement and misuse.

***Data shall be stored for the period necessary and proportionate to fulfil the purpose determined in paragraph 2, point (d). The maximum possible storage period shall not exceed 10 years from the last payment claim for the period submitted to the Commission.***

***8. For the purposes of paragraph 2, point (d), of this Article, Article 144(2) and Article 147, and in addition to any applicable sector-specific rule, persons and entities implementing the budget under Article 62(1), first subparagraph, point (b), and persons and entities implementing funds, where the budget is implemented under Article 62(1), first subparagraph, point (a), with Member States, shall transmit to the Commission through any official channel, such as the automated information system established by the Commission currently in use for reporting of fraud and irregularities (the 'Irregularity Management System'), information on facts and findings established only in the context of final judgments or final administrative decisions with reference to the grounds set out in Article 138(1), point (c)(iv) and point (d), when they become aware of such information. For the same purposes, Member States shall transmit other necessary information requested by the Commission, in particular information related to the administrative follow-up.***

9. Member States that receive and implement Union funds under Article 62(1), first subparagraph, point (a), shall apply paragraphs 1 to 7 of this Article.

10. For the purposes of the application of the requirements of paragraphs 2, 3 and 6 of this Article by Member States implementing the budget under Article 62(1), first subparagraph, point (b), references to recipients shall be understood as ***referred to in Article 38(1), second subparagraph***.

11. As part of its control strategy, the Commission shall, where appropriate, design and perform controls and audits that use automated IT tools and emerging technologies.

## CHAPTER 8

## PRINCIPLE OF TRANSPARENCY

### Article 37

### Publication of accounts and 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 website of Union institutions, on the Commission's initiative, as soon as possible and no later than four weeks after the definitive adoption of the budget.

The consolidated annual accounts shall be published in the *Official Journal of the European Union* and on the website of Union institutions.

Article 38

Publication of information on recipients and other information

1. The Commission shall make available on ***a centralised*** website information on recipients of funds financed from the budget no later than 30 June of the year following the financial year in which the funds were legally committed, where the budget is implemented by it in accordance with Article 62(1), first subparagraph, point (a), by Union institutions in accordance with Article 59(1), and by the Union bodies referred to in Articles 70 and 71.

Where the budget is implemented in accordance with Article 62(1), first subparagraph, points (b) and (c), and with Member States in accordance to Article 62(1), first subparagraph, point (a), the Commission shall make available on its ***centralised*** website***, as referred to in the first subparagraph of this paragraph,*** information on recipients no later than 30 June of the year following the financial year in which the contract or agreement setting out the conditions of support was established. Where the budget is implemented in accordance with Article 62(1), first subparagraph, point (b), references in this Article to recipients shall be understood as references to ***recipients, contractors, subcontractors and*** beneficiaries as ***referred to*** in sector-specific rules. ***Information listed under paragraph 2 of this Article for such recipients shall be published provided sector-specific rules require their collection and storage.***

2. Save in the cases referred to in paragraph 3, the following information shall be published in an open, interoperable and machine-readable format, which allows data to be sorted, searched, extracted, compared and reused, having due regard for the requirements of confidentiality and security, in particular the protection of personal data:

(a) whether the recipient is a natural or a legal person;

(b) the recipient's full legal name in the case of a legal person and their VAT identification number or tax identification number where available or another unique identifier established at country level, the first and last name of the recipient in the case of a natural person;

(c) the locality of the recipient, namely:

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

(ii) the region on NUTS 2 level when the recipient is a natural person and is domiciled in the Union or the country when the recipient is a natural person and is not domiciled in the Union;

(d) the amount committed and, in case of a commitment with multiple recipients, the breakdown of this amount per recipient where available;

(e) the nature and purpose of the measure.

3. The information referred to in paragraph 2 of this Article shall not be published and shall not be submitted for publication in accordance with paragraph 6 of this Article for:

(a) education supports paid to natural persons and other direct support paid to natural persons most in need as referred to in Article 194(4), point (b);

(b) very low value contracts awarded to experts selected pursuant to Article 242(2) as well as very low value contracts below the amount referred to in point 14.4 of Annex I;

(c) financial support provided through financial instruments or budgetary guarantees for an amount lower than EUR 500 000;

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

(e) where it is not required for publication in sector-specific rules where the budget is implemented in accordance with Article 62(1), first subparagraph, point (b).

In the cases referred to in the first subparagraph, point (c), 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.

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.

4. Persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c), shall publish information on recipients in accordance with rules and procedures of those persons or entities, to the extent that those rules are deemed equivalent following the assessment carried out by the Commission pursuant to Article 157(3) and (4), first subparagraph, point (e), and provided that any publication of personal data is subject to safeguards equivalent to those set out in this Article.

Bodies designated pursuant to Article 63(3) 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 of this Article and taking into account the specificities of the sector concerned.

Member States that receive and implement Union funds under Article 62(1), first subparagraph, point (a), shall ensure *ex post* publication of information on their recipients, on a ***centralised*** website ***referred to in paragraph 1 of this Article***, in accordance with paragraphs 2 and 3 of this Article.

5. The websites of Union institutions shall contain a reference to the ***centralised*** website ***referred to in paragraph 1*** where the information referred to in that paragraph can be found ▌.

The Commission shall make available, in an appropriate and timely manner, information about ***the centralised*** website ***referred to in paragraph 1***, including a reference to its address, where the information as provided by the Member States, persons, entities or bodies referred to in paragraph 4 can be found.

6. For the purposes of the first and second subparagraphs of paragraph 1 of this Article and without prejudice to ***paragraphs 3 and 4 of this Article*** and to sector-specific rules, ***the Commission shall use the relevant data stored in the system referred to in Article 36(2), point (d), to feed the centralised website referred to in paragraph 1 of this Article with the information*** referred to in paragraph 2 of this Article.

In addition, the data ▌ shall also include the VAT identification number or tax identification number of natural persons where available or another unique identifier established at country level with a view to improve the quality of the data transmitted without it being used for publication.

7. Where personal data are published, the information shall be removed two years after the end of the financial year in which the funds were legally committed.

Where the budget is implemented in accordance with Article 62(1), first subparagraph, points (b) and (c), the personal data shall be removed two years after the end of the financial year in which the contract or agreement setting out the conditions of support was established.

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

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

Article 40

Estimated budget of the Union bodies referred to in Article 70

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

Article 41

Draft budget

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

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

   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 26 of the Interinstitutional Agreement of 16 December 2020. Summary data shall be provided for the categories of expenditure not covered by point 26 of that Interinstitutional Agreement.

   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 draft budget for other Union institutions and the original estimates of other Union institutions 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 Union institutions, showing the latest authorised establishment plan and presenting:

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

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

(iii) the number of posts actually filled on the last day of the year preceding the year in which the draft budget is presented and the annual average of full-time equivalents actually in place for that 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 personnel, 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 Union 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 point (b) of this subparagraph;

(d) a working document on the planned implementation of appropriations for the financial year, information on the implementation of the assigned revenue in the preceding year, including information on the amounts carried over to 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 and a working document on the Commission's building policy as referred to in Article 272(1);

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

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

(iii) progress 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 financial 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.

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 158(2);

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

(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 that duration exceeds three years;

(g) revenue and repayments under Article 212(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) realised losses from 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, and also the amount of private capital mobilised;

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

The working document referred to in the first subparagraph 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 the first subparagraph, point (f), and shall, where appropriate, provide an action plan for the reduction of the duration in the framework of the annual discharge procedure.

The working document referred to in the first subparagraph shall summarise in a clear and concise table information per financial instrument.

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

(b) the counterparts for the budgetary guarantee, including any issues relating to the application of Article 158(2);

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

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

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

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

(g) amount of provisioning for liabilities arising from each budgetary guarantee, ***and*** an assessment of the adequacy of its provisioning rate and of the need for its replenishment;

(h) the effective provisioning rate of the common provisioning fund and, where applicable, the subsequent operations in accordance with Article 216(4).

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, containing, inter alia, information on the monitoring arrangements with the entities implementing the trust funds;

(b) their management costs;

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

(d) a preliminary assessment of their performance based on the conditions set out in Article 238(3);

(e) a description on how their activities 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. ***The Commission shall also attach to the draft budget a list of its decisions and the amounts that have been entered or may be entered as negative revenue to the budget pursuant to Article 48(2), point (b).***

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

9. In accordance with Article 8(5) of Council Decision 2010/427/EU[45], the Commission shall transmit to the European Parliament and to 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 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 central administration of the EEAS, together with operational expenditure, broken down by geographic area (regions, countries), thematic areas, Union delegations and missions.

[45] Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (OJ L 201, 3.8.2010, p. 30).

10. The working document referred to in paragraph ***9*** 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;

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

(d) provide a detailed picture of all personnel 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 between establishment plan posts, contract agents, local agents and seconded national experts, and of appropriations requested in the draft budget for such types of personnel with corresponding estimates of the number of full-time equivalents on the basis of the appropriations requested.

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

Article 43

Obligations of 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.

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 that occurs after 1 January, be bound to make the payments due to the Union, as specified in Regulations (EU, Euratom) No 609/2014 and (EU, Euratom) 2021/770.

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.

If there are unavoidable, exceptional and unforeseen circumstances, 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 concerned 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, submit its draft amending budgets simultaneously to the European Parliament and to the Council by 1 September of each financial year. It may attach an opinion to the requests for amending budgets from other Union institutions.

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

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

2. The statement of expenditure for the section of the budget relating to the Commission shall be set out on the basis of a nomenclature adopted by the European Parliament and by 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. The Commission may request the addition of a token entry *pro memoria* on an entry without authorised appropriations. Such a request shall be approved in accordance with the procedure laid down in Article 31.

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 Article 30(1), first subparagraph, point (b), 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.

Article 48

Negative revenue

1. The budget shall not contain negative revenue.

2. By way of derogation from paragraph 1 of this Article, the following shall be deducted from the revenue of the budget:

(a) negative remuneration of deposits in total;

(b) where the amounts of the fines, other penalties or sanctions under the TFEU or the Euratom Treaty referred to in Article 108(1) are cancelled or reduced by the Court of Justice of the European Union, any interest or other charge due to the parties concerned, including any negative return related to those amounts.

***With regard to the first subparagraph, point (b), the interest or other charge shall be reflected in the draft budget within a specific budget line, and the Commission shall update the information referred to in the second sentence of Article 41(7) together with the amending budget referred to in Article 18(3).***

3. The own resources paid under Decision (EU, Euratom) 2020/2053 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 budget lines concerned.

   The appropriations in that title may be used only after transfers in accordance with the procedure laid down in Article 30(2), point (a), 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, in the course of a financial year, propose 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 section of the budget relating to the Commission 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 transfers in accordance with the procedure laid down in Articles 30 and 31.

Article 51

Emergency Aid Reserve

1. The section of the budget relating to the Commission 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 transfers 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 current financial year concerned (year n);

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

(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), including 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;

(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 Union 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;

(ii) in the section of the budget relating to the Commission:

– the budget lines containing the budgetary 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 provided by the Union in respect of such operations;

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

– ongoing capital operations and debt management;

– the capital operations and debt management for year n;

– a comprehensive overview of borrowing and lending operations; ***that overview shall provide inter alia detailed information on maturities, schedule of payments, interest due on aggregate level, the investor base on the primary market, and, where applicable, the dimension and costs of the common liquidity pool underpinning the diversified funding strategy, as well as the borrowing plan;***

(e) 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;

(f) with regard to the funds implemented by persons or entities pursuant to Article 62(1), first subparagraph, point (c):

(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;

(g) the total amount of CFSP expenditure entered in a chapter, entitled 'CFSP', with specific articles covering CFSP expenditure and containing specific budget 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 Article 52(1), point (c), shall constitute an absolute limit for each Union institution or body. No appointment shall be made in excess of the limit set.

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

   (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 as initiated by the Commission's staff screening exercise.

At least three weeks before making a modification as referred to in the second subparagraph, the Union institution concerned shall inform the European Parliament and the Council of its intention to do so. In the event that duly justified objections are raised within this period by the European Parliament or the Council, the Union institution shall refrain from making the modifications and the procedure laid down 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.

## CHAPTER 3

## BUDGETARY DISCIPLINE

### Article 54

### Compliance with the Multiannual Financial Framework and the decision on the system of own resources of the European Union

The budget shall comply with the Multiannual Financial Framework and Decision (EU, Euratom) 2020/2053.

### 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 shall not be implemented in financial terms until the budget has been amended accordingly.

TITLE IV

BUDGET IMPLEMENTATION

CHAPTER 1

GENERAL PROVISIONS

Article 56

Budget implementation in accordance with the principle of sound financial management

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.

Article 57

Information on transfers of personal data for audit purposes

In award procedures, including in any call made in the context of grants, non-financial donations, procurement or prizes implemented under direct management, potential beneficiaries, candidates, tenderers and participants shall, in accordance with Regulation (EU) 2018/1725 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 Court of Auditors, to the EPPO or to OLAF and between authorising officers of the Commission, and the executive agencies referred to in Article 69 of this Regulation and the Union bodies referred to in Articles 70 and 71 of this Regulation.

Article 58

Basic act and exceptions

1. Appropriations entered in the budget for any Union action shall only be used if a basic act has been adopted.

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;

(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 to the Euratom Treaty, other than its right of legislative initiative to submit proposals as referred to in point (b) of this paragraph, and under specific powers directly conferred on it by Articles 154, 156, 159 and 160 TFEU, Articles 168(2), 171(2) and 173(2) TFEU, the second paragraph of Article 175 TFEU, Article 181(2) TFEU, Article 190 TFEU and Articles 210(2) and 214(6) TFEU and Articles 70 and 77 to 85 of the Euratom Treaty;

(e) appropriations for the operation of each Union institution under its administrative autonomy.

3. With regard to appropriations referred to in paragraph 2, point (a), the relevant commitment appropriations may be entered in the budget for not more than two consecutive financial years. The total amount of appropriations for pilot projects shall not exceed EUR 40 000 000 in any financial year.

4. With regard to appropriations referred to in paragraph 2, point (b), 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. As a result, the amount of the appropriations committed shall not correspond to the amount of those envisaged for financing the definitive action itself.

The total amount of appropriations for new preparatory actions referred to in paragraph 2, point (b), 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.

5. With regard to the appropriations referred to in paragraph 2, point (c), 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.

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

Article 59

Budget implementation 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, Union institutions may conclude service-level agreements with each other laying down the conditions governing the provision of services, supply of products, execution of works or of building contracts.

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

3. Service-level agreements referred to in paragraph 2 may also be agreed upon between departments of 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 other Union institutions shall report regularly to the European Parliament and to the Council on the service-level agreements they conclude with other Union institutions.

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

2. In addition to paragraph 1, the Commission may delegate its powers of budget implementation concerning the operational appropriations of its own section of the budget to Heads of Union delegations and, in order to ensure business continuity during their absence, to deputy Heads of Union delegations. Such delegation shall be without prejudice to the responsibility of Heads of Union delegations for budget implementation. Where the absence of a Head of Union delegation 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 authorising officers by subdelegation of the Commission, they shall apply the Commission rules for budget implementation and shall be subject to the same duties, obligations and accountability as any other authorising officer by subdelegation of the Commission.

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

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

Article 61

Conflict of interests

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

2. Where there is a risk of a conflict of interests involving a member of staff of a national authority, the person in question shall refer the matter to his or her hierarchical superior. Where such a risk exists for staff covered by the Staff Regulations, the person in question 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 interests is found to exist. Where a conflict of interests is found to exist, the appointing authority or the relevant national authority shall ensure that the person in question ceases all activity in the matter. The relevant authorising officer by delegation or the relevant national authority shall ensure that any further appropriate action is taken in accordance with the applicable law, including, in the cases involving a member of staff of a national authority, with the national law relating to conflict of interests.

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

CHAPTER 2

METHODS OF IMPLEMENTATION

Article 62

Methods of budget implementation

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

(a) directly (direct management) as set out in Articles 125 to 156, 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;

(c) indirectly (indirect management) as set out in Articles 125 to 152 and 157 to 162, where this is provided for in the basic act or in the cases referred to ***in Article 58(2)***, points (a) to (d), by entrusting budget implementation tasks to:

(i) third countries or the bodies they have designated, as referred to in Article 161;

(ii) international organisations or their agencies, within the meaning of Article 159;

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

(iv) Union 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 are provided with adequate financial guarantees;

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

(ix) bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by bodies as set out in point (v) or (vi) and are provided with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support.

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

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 shall be the ones provided for in sector-specific rules.

   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 concerned.

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

Article 63

Shared management with Member States

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

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

   (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 Court of Auditors and, for those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, with the EPPO.

In order to protect the financial interests of the Union, 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.

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

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, which, where appropriate, may rely on digital controls as referred to in Article ***36(11)***;

(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 (7).

Any processing of personal data shall comply with Regulation (EU) 2016/679.

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

(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 paragraph 5, point (a), shall include pre-financing and sums for which recovery procedures are ongoing 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 sector-specific rules;

   (c) the control systems put in place ensure the legality and regularity of the underlying transactions.

7. The accounts referred to in paragraph 5, point (a), and the summary referred to in point (b) of that paragraph 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 paragraph 6.

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, to the Council and to the Commission declarations signed at the appropriate level based on the information referred to in paragraphs 5 and 6 and in this paragraph.

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 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.

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 sector-specific rules.

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.

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

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;

(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 OLAF, with the exception of paragraph 4 of this Article, Article 66 and Article 67(1), (2) and (3).

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

Article 65

Appropriations regarding 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.

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 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. The establishment plan of each European office shall be annexed to that of the Commission.

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 Article 64(2), point (b), 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 powers of the authorising officer concerning appropriations entered in the section of the budget relating to 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.

2. In the cases referred to in paragraph 1, point (a), 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 paragraph 1, point (b), 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.

Article 67

Accounting records of European offices

1. Each European office shall draw up accounting records of its expenditure, enabling the proportion of its services supplied to each of 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 the powers of authorising officer have been delegated in accordance with Article 66(1), point (a), 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.

3. Each European office to which authorising officer powers have been delegated in accordance with Article 66(1), point (a), 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 247.

5. The accounting officer of the Commission, 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.

SECTION 2

AGENCIES AND UNION BODIES

Article 68

Applicability to the Euratom Supply Agency

This 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 expenditure, on its behalf and under its responsibility, in accordance with Council Regulation (EC) No 58/2003[46]. Executive agencies shall be created by means of a Commission decision and shall have legal personality under Union law. They shall receive an annual contribution.

2. The directors of 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.

[46] 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).

3. The steering committee of an executive agency may agree with the Commission that the accounting officer of the Commission shall also act as the 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 interests 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 275 of this Regulation 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.

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

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 referred to in paragraph 6, including the reported findings, shall remain under the full responsibility of the Court of Auditors.

Article 71

Public-private partnership bodies

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.

The Commission is empowered to adopt delegated acts in accordance with Article 275 to supplement this Regulation with a model financial regulation for public-private partnership bodies laying down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 157.

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 subject to the Commission's prior consent.

Article 70(4) to (7) 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.

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, ‘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 subdelegate them.

4. The powers of authorising officer shall be delegated or subdelegated only to staff.

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

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

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.

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.

4. To implement revenue, the authorising officer responsible shall draw up estimates of amounts receivable, establish entitlements to be recovered and issue 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. As referred to in Article ***36(11)***, *ex ante* controls shall use, where appropriate, automated IT tools and emerging technologies.

   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 the authorising officer's 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.

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. As referred to in Article ***36(11)***, *ex post* controls shall use, where appropriate, automated IT tools and emerging technologies.

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

(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, the member of staff shall inform the relevant panel referred to in Article 145.

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 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 interests of the Union. 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;

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

The annual activity reports for the financial year of the authorising officers and, where applicable, authorising officers by delegation of Union institutions, Union bodies, European offices and agencies shall be published by 1 July of the following financial year on the website of the respective Union institution, Union body, European office or agency in an easily accessible way, subject to duly justified confidentiality and security considerations.

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

Article 75

Keeping of supporting documents by authorising officers

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

Without prejudice to the first paragraph, documents relating to operations shall in any case be kept until the end of the year following that in which those operations are definitively 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 4 of Regulation (EU) 2018/1725 shall apply to the conservation of traffic data.

Article 76

Powers and duties of Heads of Union Delegations

1. Where Heads of Union delegations act as authorising officers by subdelegation 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 subdelegation 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 subdelegated to them. They may be assisted in their duties by Commission staff of Union delegations.

   To this effect, Heads of Union delegations shall take the measures necessary to prevent any situation likely to put at risk the Commission's capacity to fulfil its responsibility for budget implementation subdelegated to them, as well as any conflict of priorities which is likely to have an impact on the implementation of the financial management tasks subdelegated to them.

Where a situation or conflict referred to in the second subparagraph arises, Heads of Union delegations shall without delay inform the Directors-General responsible of the Commission and of the EEAS thereof. 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 145. 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 subdelegation 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 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 subdelegated to them, and provide the assurance referred to in Article 92(5), third subparagraph. 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 to the Council having due regard, where appropriate, to their confidentiality.

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 subdelegation in accordance with Article 60(2) shall reply to any request by the authorising officer by delegation of the Commission 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 subdelegating of powers to Heads of Union delegations is not detrimental to the discharge procedure under Article 319 TFEU.

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

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 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;

   (f) treasury management.

   With respect to the tasks referred to in the first subparagraph, point (e), 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 section of the budget relating to the EEAS as implemented by the EEAS. The accounting officer of the Commission shall remain responsible for the entire section of the budget relating to the Commission, including accounting operations relating to appropriations subdelegated 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 section of the budget relating to the EEAS.

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.

The accounting officer shall be chosen by the Union institution on the grounds of his or her 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 interests.

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

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

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

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 Union institutions, European offices and the agencies and 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 deviate from the standards referred to in paragraph 1 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 that fact and the reasons for it.

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 implementation reports referred to in Article 247 shall respect the budgetary principles laid down in this Regulation. They shall provide a detailed record of budget implementation. They shall record all 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 or body shall draw up and keep updated documents describing the organisation of the accounts and the accounting procedures of his or her Union institution or body.

2. 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.

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 Union institutions, by European offices and by the agencies and 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 financial situation of Union institutions and of budget implementation. The authorising officers shall guarantee the reliability of that information.

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

   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 Article 77(1), first subparagraph, point (d), and that all revenue and expenditure is entered in the accounts.

4. The authorising officer by delegation shall, in accordance with the rules adopted by the accounting officer, send 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 sent to the accounting officer.

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

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

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 247 shall be kept for at least five years from the date on which the European Parliament gives 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 4 of Regulation (EU) 2018/1725 shall apply to the conservation of traffic data.

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

Article 83

Content and keeping of budget accounts

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

(a) in the case of expenditure:

(i) the appropriations authorised in the budget, including 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 available;

(ii) the commitment appropriations and payment appropriations in respect of the financial year;

(b) in the case of revenue:

(i) the estimates entered in the budget, including the estimates entered in amending budgets, assigned revenue and the total amount of estimated revenue;

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

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

The commitment appropriations and payment appropriations referred to in the first subparagraph, point (a), 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 financial year;

(b) the clearance of outstanding commitments.

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

Article 84

General accounts

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

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, in the name of his or her Union institution, open accounts with financial institutions or national central banks or request for 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, depending on internal control requirements, provide 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.

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 Article 62(1), first subparagraph, point (c)(ii), (iii), (v) or (vi).

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

3. Payments shall be made by bank credit transfer, by cheque, or if specifically authorised by the accounting officer, by credit card, debit card, electronic wallets, 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 the payee and enter them in the common file by the Union institution for which the accounting officer is responsible.

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 Union institution for which the accounting officer is responsible.

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

Article 87

The inventory of assets

1. Union institutions and agencies or Union bodies referred to in Section 2 of Chapter 3 of this Title shall keep inventories showing the quantity and value of all their tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

   They shall also check that entries in their respective inventories 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. Union institutions and agencies or Union bodies referred to in Section 2 of Chapter 3 of this Title shall adopt provisions on safeguarding the assets included in their respective inventories and decide which administrative departments are responsible for the inventory system.

SECTION 4

IMPREST ADMINISTRATOR

Article 88

Creation 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 specifying the operating terms and the conditions for use of the imprest account.

2. 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 in line with general rules for expenditure operations. The maximum amount which may be paid by the imprest administrator in such cases shall be established by the accounting officer for each type of expenditure in the decision referred to in paragraph 1. Imprest accounts may also be set up for the collection of revenue.

   In the field of crisis management aid and humanitarian aid operations, imprest accounts may be used without any limitation on the amount ***for a set timeframe after being duly justified***, while respecting the level of payment appropriations decided by the European Parliament and by the Council on the corresponding budget line for the current financial year and in accordance with the internal rules of the Commission.

In Union delegations, imprest accounts may also be used to execute payments in line with general rules for expenditure operations of amounts limited to EUR 60 000 for each item of expenditure, if such use is efficient and effective due to local requirements. Where they are needed for the payment of expenditure from both the sections of the budget relating to the Commission and to the EEAS, they shall be set up as separate imprest accounts.

Article 89

Administration of imprest accounts

1. 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 internal rules of the Commission 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 staff pursuant to Article 95.

2. Imprest accounts shall be endowed under supervision of the accounting officer of the Union institution concerned and shall be placed under the responsibility of imprest administrators.

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

The imprest transactions carried out outside general rules for expenditure operations shall be settled by the authorising officer by the end of the following month, so that the accounting balance and the bank balance can be reconciled.

4. The accounting officer shall supervise the existence of the funds allocated to the imprest administrators and the bookkeeping and check that imprest transactions are settled within the time limit set.

## CHAPTER 5

## LIABILITY OF FINANCIAL ACTORS

### SECTION 1

### GENERAL RULES

#### Article 90

#### Withdrawal of delegation of powers to and suspension of duties of financial actors

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

2. Accounting officers 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.

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 financial interests of the Union 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 in accordance with the conditions laid down in the Staff Regulations or, in the case of personnel employed by the Commission in the field of crisis management aid and humanitarian aid operations as referred to in Article 89(1) of this Regulation, in accordance with the conditions laid down 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 referred to the authorities and bodies designated by the applicable legislation, in particular to OLAF.

SECTION2

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.

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

Any instructions confirmed in the circumstances referred to in this paragraph shall be recorded by the authorising officer by delegation responsible and mentioned in his or her annual activity report.

4. In the event of subdelegation 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 subdelegation.

5. In the event of subdelegation to 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. 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 budget implementation.

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

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

Article 93

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

1. Without prejudice to the powers of OLAF and to the administrative autonomy of Union institutions, Union bodies, European offices or bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU 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 for an opinion to the panel referred to in Article 145, by any of the following:

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

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

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

2. A request for an opinion of the panel pursuant to the paragraph 1, first subparagraph, 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 anonymised form.

Before submitting a request or any additional information to the panel, the appointing authority or the authorising officer, as appropriate, 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 that notification does not seriously undermine the pursuit of further investigations.

3. In the cases referred in paragraph 1 of this Article, the panel referred to in Article 145 shall be competent to assess whether, on the basis of the elements submitted to it pursuant to paragraph 2 of this Article and any additional information received, a financial irregularity has occurred. On the basis of the opinion of the panel, the Union institution, Union body, European office or body or person 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 145(2), first subparagraph, points (a) and (b) as well as the following 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, Union body, European office or body or person concerned when the case ***is*** referred in accordance with paragraph 1, first subparagraph, point (a), or a representative of the authorising officer responsible when the case is referred in accordance with paragraph 1, first subparagraph, point (b);

   (b) a member appointed by the staff committee of the Union institution, Union body, European office or body or person concerned;

   (c) a member of the legal service of the Union institution employing the member of staff concerned.

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

5. The panel shall have no investigative powers. The Union institution, Union body, European office or body or person concerned shall cooperate with the panel with a view to ensuring that it has all the information necessary for giving its opinion.

6. Where the panel considers that the case is a matter for OLAF, it shall in accordance with paragraph 1 transmit the file to the relevant appointing authority without delay and inform OLAF immediately.

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

## 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.

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.

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 Decision (EU, Euratom) 2020/2053 shall be entered in the budget in euro. The corresponding own resources shall be made available in accordance with Regulations (EU, Euratom) No 609/2014 and (EU, Euratom) 2021/770.

2. The authorising officer shall draw up a schedule indicating when the own resources defined in Decision (EU, Euratom) 2020/2053 will be made available to the Commission.

   Own resources shall be established and recovered in accordance with the rules adopted pursuant to that Decision.

   For accounting purposes, the authorising officer shall issue a recovery order for credits and debits to the account for own resources referred to in Regulations (EU, Euratom) No 609/2014 and (EU, Euratom) 2021/770.

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.

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 Decision (EU, Euratom) 2020/2053, which are paid at fixed intervals by 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.

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 paragraph 4, second subparagraph. Both the recovery order and the debit note shall be 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 time when 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.

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

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

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

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

(d) the particulars of the debtor are correct;

(e) the amount is booked to the correct budgetary 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 Article 101(2), first subparagraph, point (a) or (b).

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

(a) the Union has established the amount receivable;

(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 within the deadline referred to in point (b) of this subparagraph 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 will 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 financial interests of the Union when he or she 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;

(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 will 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 the cases referred to in Article 101(2), first subparagraph, point (a) or (b), 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 directly waive recovery in accordance with 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 the dispatch of the debit note through the financial information system.

5. Amounts wrongly paid shall be recovered.

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 Article 98(4), first subparagraph, point (b), 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 Article 98(4), first subparagraph, point (b), 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 supply contract or a service contract;

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

3. Interest shall be calculated from the calendar day following the deadline referred to in Article 98(4), first subparagraph, point (b), 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 that interest is actually received.

4. In the case of fines, other penalties or sanctions, the interest rate for amounts receivable not paid or covered by a financial guarantee acceptable to the accounting officer of the Commission within the deadline set in the decision of the Union institution imposing a fine, other penalty or sanction 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, other penalty or sanction has been adopted, increased by three and a half percentage points.

   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 shall be set at zero percent.

SECTION 4

AUTHORISATION OF RECOVERY

Article 100

Authorisation of recovery

1. The authorising officer responsible shall, by issuing a recovery order, instruct the accounting officer to recover an amount receivable which that authorising officer responsible has established (the ‘authorisation of recovery’).

2. A 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.

If the efficient and timely protection of the financial interests of the Union so requires, other Union institutions may, in exceptional circumstances, request the Commission to adopt such an enforceable decision for their benefit with respect to claims arising in relation to staff or in relation to members or former members of a Union institution, provided that those institutions have agreed with the Commission on the practical modalities for the application of this Article.

Such exceptional circumstances shall be deemed to exist when there is no prospect of recovery of the debt by the Union institution concerned by means of a voluntary payment or by means of offsetting as provided for in Article 101(1) and the conditions for waiving the recovery 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 relating to the Union institution concerned, which shall act as authorising officer. The revenue shall be entered as general revenue except if it constitutes assigned revenue as provided for in Article 21(3).

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 the event of an 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 who is 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 budget by offsetting them in accordance with Article 102.

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

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

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 decision to waive recovery shall be substantiated. The authorising officer may delegate the power to take that decision.

3. In the case referred to in paragraph 2, first subparagraph, point (c), the authorising officer responsible shall act in accordance with predetermined procedures established within his or her 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 shall, where appropriate, 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.

5. Each Union institution shall send to the European Parliament and to the Council each year a report on the waivers granted by it pursuant to paragraphs 2, 3 and 4 of this Article. Information on waivers below EUR 60 000 shall be provided as a total 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 in its internal rules lay down the conditions and procedure for delegating the power to cancel an established amount receivable.

7. Member States shall have primary responsibility for carrying out controls and audits and for recovering amounts unduly spent, as provided for in 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.

8. The Commission shall make financial corrections on Member States in order to exclude expenditure incurred in breach of applicable law from Union financing. 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 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 deficiencies in management and control systems.

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

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

Article 102

Recovery by offsetting

1. Where the debtor has a claim on the Union, or on an executive agency when it implements the budget, that is certain within the meaning of Article 98(3), point (a), of a fixed amount and due relating to a sum established by a payment order, the accounting officer shall, after expiry of the deadline referred to in Article 98(4), first subparagraph, point (b), 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 expiry of the deadline referred to in Article 98(4), first subparagraph, point (b).

   The accounting officer may also recover by offsetting before the expiry of the deadline referred to in Article 98(4), first subparagraph, point (b), when the debtor agrees.

2. Before proceeding with any recovery in accordance with paragraph 1 of this Article, the accounting officer shall consult the authorising officer responsible and inform the debtors concerned, including of the means of redress in accordance with Article 134.

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

4. The opening of insolvency proceedings shall not affect the right of the accounting officer to proceed with a recovery by offsetting as referred to in paragraph 1.

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 Article 98(4), first subparagraph, point (b), 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.

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

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Article 104

Additional time for payment

The accounting officer may, in collaboration with the authorising officer responsible, allow additional time for payment only at the written request of the debtor, with due indication of the reasons, and provided that the following 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 Article 98(4), first subparagraph, point (b);

(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 accounting officer of the Union institution.

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

In exceptional circumstances, following a request by the debtor, the accounting officer may waive the requirement of a guarantee referred to in the first paragraph, point (b), when, on the basis of his or her 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 Decision (EU, Euratom) 2020/2053, 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 referred to in Article 98(4), first subparagraph, point (b).

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 a 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. A new limitation period of five years shall not begin to run 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.

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. A 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 provided for in paragraphs 2 to 6.

Article 106

National treatment for entitlements of the Union

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

Article 107

Fines, other penalties, sanctions and accrued interest imposed by Union institutions

1. Amounts received by way of fines, other penalties and sanctions, and any accrued interest or other income generated by them, shall not be entered in the budget as long as the decisions imposing them are or could still become subject to an appeal before the Court of Justice of the European Union.

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

   For the purposes of applying Article 48(2), point (b), the necessary amounts referred to in paragraph 1 of this Article may be entered in the budget by the end of 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 in the budget.

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

Article 108

Recovery of fines, other penalties or sanctions imposed by 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 the 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 lodge a financial guarantee acceptable to the accounting officer of the Commission. The guarantee shall be independent of the obligation to pay a fine, other penalty or sanction and shall be enforceable on demand. It shall cover the claim as to principal and interest that the debtor shall pay in the case referred to in paragraph 3, point (b), at 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, other penalty or sanction has been adopted, increased by one and a half percentage points, as from the deadline set in the decision of the Union institution imposing a fine, other penalty or sanction.

2. The Commission may invest the provisionally collected amounts in financial assets, prioritising the aim of security and liquidity of the monies in accordance with the principle of sound financial management.

3. After the exhaustion of all legal remedies and where the fine, other penalty or sanction has been confirmed by the Court of Justice of the European Union, or where the decision imposing such a fine, other penalty or sanction may no longer become subject to an appeal before the Court of Justice of the European Union, one of the following measures shall be taken:

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

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

   Where the amount of the fine, other penalty or sanction has been increased by the Court of Justice of the European Union, the first subparagraph, points (a) and (b), of this paragraph shall apply up to the amounts of the original decision of the Union institution or, if applicable, to the amount laid down 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 in the budget.

4. ***Where*** the fine, other penalty or sanction has been cancelled or its amount has been reduced, one of the following measures shall be taken:

   (a) the provisionally collected amounts or, in the event of a reduction, the relevant part thereof shall be repaid to the third party concerned;

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

The amount or the relevant part thereof referred to in the first subparagraph, point (a), shall be increased by interest at 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, other penalty or sanction was adopted, increased by one and a half percentage points.

***Repayments under the first subparagraph, point (a), of this paragraph shall be made within 60 days of the cancellation or reduction of the fine, other penalty or sanction, except where the necessary supporting documents have not been timely produced to identify the third party concerned or its bank account. Upon the expiry of that time limit, the creditor shall be entitled to interest in accordance with the conditions laid down in Article 116(5).***

Article 109

Compensatory interests

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

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 by the authority 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 Article 58(2), point (e), of administrative support expenditure and of contributions to the Union bodies referred to in Articles 70 and 71.

2. The financing decision shall at the same time constitute 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 part of the financing decision constituting the work programme, in compliance with the requirements of that basic act. The part which constitutes the work programme shall be published on the website 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 budget 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.

3. In addition to the elements referred to in paragraph 2, the financing decision shall set out the following:

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

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

(c) for contributions to Union trust funds referred to in Article 238: the appropriations reserved for the trust fund for the year together with the amounts planned over its duration, from the 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 a 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 event of indirect management: the person or entity implementing Union funds pursuant to Article 62(1), first subparagraph, point (c), or the criteria to be used to select the person or entity;

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

(h) for budgetary guarantees: the amount of annual provisioning and, where 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 website 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 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.

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 shall be made and legal commitments entered into 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 entered into by Heads of Union delegations, or in their absence by their deputies, on the instruction of the authorising officer responsible of the Commission 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 payments executed from imprest accounts of a value not exceeding EUR 2 500.

The authorising officer responsible shall make a budgetary commitment before entering into a legal commitment with third parties, provisioning of financial liabilities referred to in Article 214, or transferring funds to a Union trust fund referred to in Article 238.

The second subparagraph of this paragraph shall not apply:

(a) to 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 if prior booking of the individual budgetary commitment is not possible;

(c) to non-financial donations.

In the cases referred to in the third subparagraph, point (b), the budgetary commitment shall be booked without delay after entering into a legal commitment with third parties.

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 that 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 payment request in which case the impact on the accounting system is limited to the general accounts.

4. The validation decision shall be expressed through electronically secured signature in accordance with Article 149 by the authorising officer, or by a 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.

   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:

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

   (b) for interim and balance payments in contracts: that 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: that 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.

In the case referred to in the second subparagraph, point (c), cost estimates shall not be deemed to comply with the eligibility conditions set out in Article 189(3). The same principle shall also apply to interim and final reports not associated to a payment request.

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 the amount of expenditure which was previously validated.

Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, the authorising officer may, subject to that officer's risk analysis, order the application of a direct debit system from an imprest account. The application of such a system may also be ordered if it is 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 or the budgetary commitment is made for provisioning of financial liabilities referred to in Article 214;

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

(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.

Notwithstanding the first subparagraph, point (c), routine administrative expenditure relating to Union delegations and Union representations may be covered by provisional budgetary 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.

4. A global budgetary commitment shall be implemented by the conclusion of a financing agreement providing for the subsequent entering into one or more legal commitments, by entering into one or more legal commitments, or by provisioning of financial liabilities referred to in Article 214.

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 entering into other legal commitments.

Where the global budgetary commitment is implemented by the conclusion of a financing agreement, paragraph 3, second subparagraph, shall not apply.

5. Each individual legal commitment entered into 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 entering into one or more legal commitments giving rise to an entitlement to subsequent payments. However, in cases relating to expenditure on staff management, expenditure on members or former members of a Union institution or expenditure on communication engaged in by Union institutions for the coverage of Union events, or in the cases referred to in point 14.5 of Annex I, they may be implemented directly by payments without entering into prior legal commitments.

Article 113

Commitments for EAGF appropriations

1. For each financial year, the EAGF appropriations shall include non-differentiated appropriations for expenditure related to measures referred to in Article 5(2) of Regulation (EU) 2021/2116. Expenditure related to the measures referred to in Article 5(3) and Article 7 of that Regulation, 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 may constitute global provisional budgetary commitments, which shall not exceed the total appropriations entered in the budget for the EAGF.

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

4. Where a global provisional budgetary commitment referred to in paragraph 2 is constituted, 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 by Member States, be the subject of a commitment by chapter, article and item. Such commitments may be made after the expiry 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 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 subparagraph of this paragraph shall be deducted from the global provisional budgetary commitment referred to in paragraph 2.

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

Article 114

Time limits for commitments

1. Without prejudice to Articles 111(2) and 270(3), legal commitments relating to individual or provisional budgetary commitments shall be entered into by 31 December of year n, year n being the one in which the budgetary commitment was made.

2. Global budgetary commitments shall cover the total cost of the corresponding legal commitments entered into, or the amounts of the provisioning of financial liabilities referred to in Article 214 made, 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 210(4) shall be entered into 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 agreement shall be concluded by 31 December of year n+1. In that case, the global budgetary commitment shall cover the total costs of legal commitments implementing the financing agreement entered into within a period of three years following the date of conclusion of the financing agreement.

However, in the following cases, the global budgetary commitment shall cover the total costs of legal commitments entered into until the end of the period of implementation of the financing agreement:

(a) multi-donor actions;

(b) blending operations;

(c) legal commitments relating to communication and visibility activities, audit and evaluation;

(d) the following exceptional circumstances:

(i) modifications made to legal commitments which have already been entered into;

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

(iii) changes of the implementing entity.

3. Paragraph 2, third subparagraph, shall not apply to multiannual programmes that are implemented through split commitments under:

(a) Regulation (EU) 2021/947;

(b) Regulation (EU) 2021/1529;

(c) Regulation (EU) 2021/1059 of the European Parliament and of the Council[47] with regard to external cooperation programmes;

(d) Decision (EU) 2021/1764;

(e) Regulation (Euratom) 2021/948.

In the cases referred to in the first subparagraph, the appropriations shall be automatically decommitted by the Commission in accordance with 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.

[47] Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (OJ L 231, 30.6.2021, p. 94).

5. Any parts of budgetary commitments which have not been implemented 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 entering into 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 contract, the agreement or the basic act and shall cover one or more of the following operations:

   (a) payment of the entire amount due;

   (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 the principle of sound financial management; such pre-financing amount 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 partial performance of the contract or agreement, which may clear pre-financing in whole or in part, without prejudice to the basic act;

(iii) one payment of the balance of the amounts due where the action is completely executed, or the contract or agreement is completely performed;

(c) payment of a provision into the common provisioning fund established pursuant to Article 215.

The payment of the balance shall clear all preceding expenditure. A recovery order shall be issued to recover unused amounts.

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 of the project and, at the latest, at the end of the project. The clearing shall be performed on the basis of information on costs incurred or confirmation of the conditions for payment being fulfilled 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 Article 82(2).

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

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.

   A payment request shall include the following essential elements:

   (a) the creditor's identification;

   (b) the amount;

   (c) the currency;

   (d) the date.

An electronic invoice in public procurement shall include the following essential elements:

(a) process and invoice identifiers;

(b) the invoice period;

(c) contractor’s information;

(d) contracting authority’s information;

(e) contractor's tax representative information;

(f) contract reference;

(g) delivery details;

(h) payment instructions;

(i) allowance or charge information;

(j) invoice line item information;

(k) invoice totals;

(l) VAT breakdown (when applicable);

(m) currency.

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

The creditor shall be informed in writing of a 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.

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 eligible. The remaining time allowed for payment shall begin to run 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 a suspension.

5. Except in the case of Member States, the EIB and the EIF, 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.

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 on a request 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 and 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 audit function which shall be performed in compliance with the relevant international standards. The internal auditor appointed by the Union institution concerned shall be accountable to the latter for verifying the proper operation of budget implementation systems and procedures. The internal auditor shall not be the authorising officer or the accounting officer.

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

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

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

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

7. Each Union institution shall inform the European Parliament and Council when the duties of its 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 in particular be responsible 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;

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

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

4. The internal auditor shall submit to the Union institution concerned 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 internal audit report shall mention any systemic problems detected by the panel set up pursuant to Article 145 where it gives the opinion referred to in Article 93.

5. The internal auditor shall, during the elaboration of the 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 with due regard to confidentiality requirements.

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

8. Each year each 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 to the Council as provided for in Article 253.

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

10. Each Union institution shall provide its internal auditor with the resources required for the proper performance of the internal audit function and a mission charter detailing the tasks, rights and obligations of its internal auditor.

Article 119

Work programme of the internal auditor

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

2. Each Union institution may ask its 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 the audits. Special rules applicable to the internal auditor shall be laid down by the Union institution concerned 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. The internal auditor shall not be given any instructions nor be restricted in any way as regards the performance of the functions which, by virtue of his or her appointment, are assigned to him or her under this Regulation.

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

Article 121

Liability of the internal auditor

Each Union institution alone, proceeding in accordance with this Article, may act to have its internal auditor, as a member of staff, declared liable for his or her actions.

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

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

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 or her duties as internal auditor. He or she shall lodge such an action within three months running from the calendar day on which the act in question came to his or her knowledge

Such actions shall be investigated and heard in accordance with Article 91(5) of the Staff Regulations.

Article 123

Internal audit progress committees

1. Each Union 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.

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

TITLE V

COMMON RULES

CHAPTER 1

RULES APPLICABLE TO DIRECT, INDIRECT AND SHARED MANAGEMENT

Article 124

Scope

With the exception of Article 140, 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 the results specified and may take any of the following forms:

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

(i) the fulfilment of conditions set out in sector-specific rules or Commission decisions; or

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

Union contributions under the first subparagraph, point (a), of this paragraph shall, in direct and indirect management, be established in accordance with Article 184, sector-specific rules or a Commission decision and, in shared management, in accordance with sector-specific rules. Union contributions under the first subparagraph, points (c), (d) and (e), of this paragraph shall, in direct and indirect management, be established in accordance with Article 184 or sector-specific rules and, in shared management, in accordance with sector-specific rules.

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

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

Article 126

Cross-reliance on assessments

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

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 a 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 sufficient evidence of the independence and competence of the auditor. To that end, the report of the independent auditor and the related audit documentation shall be made available on request to the European Parliament, the Commission, the Court of Auditors and the audit authorities of Member States.

Article 128

Use of already available information

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

Article 129

Cooperation for protection of the financial interests of the Union

1. Any person or entity receiving Union funds shall fully cooperate in the protection of the financial interests of the Union and shall, as a condition for receiving the funds, grant the necessary rights and access required for the authorising officer responsible, for the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, for OLAF, for the Court of Auditors, and, where appropriate, for 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[48].

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

[48] Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

Article 130

Partial applicability of the exclusion system to shared management

The exclusion system shall be applicable in the context of Union funds disbursed pursuant to Article 62(1), first subparagraph, point (b), with regards to any person or entity applying for or receiving these Union funds, under the conditions set out in Article 138(2) ***and Article 277***.

CHAPTER 2

RULES APPLICABLE TO DIRECT AND INDIRECT MANAGEMENT

SECTION 1

RULES ON PROCEDURES AND MANAGEMENT

Article 131

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 Article 62(1), first subparagraph, point (c), or with beneficiaries. Without prejudice to paragraph 4, point (c), of this Article, financial framework partnership agreements shall be reviewed at least once during the term of every multiannual financial framework. Contribution agreements or grant agreements may be signed under such agreements.

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

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 Union funds pursuant to Article 62(1), first subparagraph, point (c), or with beneficiaries. Such agreements shall be without prejudice to Articles 127 and 129.

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

(a) the financial framework partnership 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 financial framework partnership agreement and the specific grant agreement taken as a whole shall comply with the requirements of Article 204;

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

(d) the financial framework partnership shall be implemented 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 the financial framework partnership shall be subject to the *ex post* publication procedures set out in Article 38.

5. A 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 of this Article, where those systems and procedures have been assessed in accordance with Article 157(2), (3) and (4). In such a case, Article 199(1), first subparagraph, point (d), shall not apply. Where the procedures of the beneficiary for providing financing to third parties referred to in Article 157(4), first subparagraph, point (d), were positively assessed by the Commission, Articles 207 and 208 shall not apply.

6. In the case of financial framework partnership agreement implemented through specific grants the verification of the financial and operational capacity referred to in Article 201 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 the case of financial framework partnerships implemented through contribution agreements, the financial framework partnership agreement and the contribution agreement taken as a whole shall comply with Article 129 and Article 158(*7*).

Article 132

Suspension, termination and reduction

1. Where an award procedure has been subject to irregularities or fraud, the authorising officer responsible shall suspend the procedure and may take any necessary measures, including the cancellation of the procedure. The authorising officer responsible shall inform OLAF immediately of suspected cases of irregularities or fraud.

2. Where, after the award, the award procedure proves to have been subject to irregularities or fraud, the authorising officer responsible ***shall, except in duly justified cases, take one or more of the following actions***:

   (a) refuse to enter into the legal commitment or cancel the award of a prize;

   (b) suspend payments or delivery;

   (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.

3. The authorising officer responsible may suspend payments or delivery 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 a person or entity implementing Union funds pursuant to Article 62(1), first subparagraph, point (c), or the legality and regularity of the underlying transactions.

Where the presumed irregularities, fraud or breach of obligations referred to in the first subparagraph, point (b), are not confirmed, the implementation or payments or delivery shall resume as soon as possible.

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 the first subparagraph, points (a) and (c).

4. In addition to measures referred to in paragraph 2 or 3, the authorising officer responsible may reduce the grant, the prize, the contribution under the contribution agreement, the non-financial donation or the price due 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 the case of financing referred to in Article 125(1), first subparagraph, point (a), 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. Paragraph 2, points (b), (c) and (d), and paragraph 3 shall not apply to applicants in a contest for prizes.

Article 133

Record-keeping and updating of postal and electronic addresses by recipients

1. Recipients shall keep records and supporting documents, including statistical records and other records pertaining to the funding, as well as 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 legal commitments or pertaining to OLAF investigations shall be retained until such audits, appeals, litigation, pursuit of claims or investigations have been closed. For records and documents pertaining to OLAF investigations, the obligation to retain shall apply once those 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 such documents meet the applicable legal requirements in order to be considered as equivalent to originals and to be relied on for audit purposes.

4. Recipients shall inform the authorising officer of any change in their postal and electronic addresses. This obligation shall continue to apply in the period of 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.

Article 134

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.

   The first subparagraph of this paragraph shall not apply to award procedures, unless the participant was rejected based on Article 143(1), first subparagraph, point (b) or (c).

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 judicial redress for challenging it.

Article 135

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 VIII.

Article 136

Protection of security and public order

1. Conditions for participation in Union award procedures shall comply with any international obligations or market access commitments of the Union in international agreements and shall not unduly restrict competition.

2. Where necessary and duly justified, the Commission shall indicate, in the financing decision referred to in Article 110, that specific award procedures affect security or public order, in particular concerning strategic assets and interests of the Union or its Member States, including the protection of the integrity of digital infrastructure, communication and information systems, and related supply chains. Where no financing decision is required in accordance with Article 110(1), second subparagraph, this shall be set out by the authorising officer responsible in the documents related to the award procedure.

3. For the protection of security or public order, the authorising officer responsible may set specific conditions applicable to the award procedures and the legal commitments as referred to in Article 124. Any conditions shall be subject to paragraphs 1 and 2 of this Article, and shall be strictly limited to what is necessary to protect security or public order of the Union and/or its Member States.

   The specific conditions may apply to participation in award procedures and to the full life cycle of the resulting legal commitment and may concern:

   (a) the entity, in particular the criteria for access to the procedure or eligibility based on the country of establishment of the participants, including the contractor or beneficiary and the affiliated entities and any subcontractors, as well as with respect to direct or indirect control of any of those participants by public or private entities of a third country;

   (b) the activity, in particular with respect to the country of origin of the equipment, goods, supplies or services, as well as with respect to the place of performance, which may be limited to Member States;

(c) additional security requirements for the entities and activities, in particular conditions based on a security risk assessment of the equipment, goods, supplies or services, manufacturer, contractor, beneficiary, the affiliated entities or any subcontractors.

SECTION 2

EARLY DETECTION AND EXCLUSION SYSTEM

Article 137

Protection of the financial interests of the Union by means of detection of risks, exclusion and imposition of financial penalties

1. In order to protect the financial interests of the Union, 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 referred to in paragraph 2, which pose a risk to the financial interests of the Union;

(b) the exclusion of persons or entities referred to in paragraph 2, which are in one of the exclusion situations referred to in Article 138(1);

(c) the imposition of a financial penalty on a recipient pursuant to Article 140.

2. In direct and indirect management, the early detection and exclusion system shall apply to:

(a) participants and recipients;

(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 Article 62(1), first subparagraph, point (c), and to Article 157(4) on the basis of information notified in accordance with Article ***158(7)***;

(d) guarantors;

(e) participants or recipients on which entities implementing the budget in accordance with Article 63 have provided information, as transmitted by Member States in accordance with sector-specific rules, in accordance with Article 144(2), point (d);

(f) sponsors as referred to in Article 26;

(g) beneficial owners and any affiliate of the ▌ excluded ***entity*** as referred to in Article 138(6);

(h) natural persons as referred to in Article 138(5), first subparagraph, points (a) to (c);

(i) any person or entity receiving funds through any forms, including non-repayable financial support or loans or both, where the budget is implemented pursuant to Article 62(1), first subparagraph, point (a), with Member States, in which case Article 138(2) shall apply.

For the purpose of the first subparagraph, point (i), persons or entities receiving funds shall include final recipients of funds, contractors, sub-contractors and the beneficial owners.

This is without prejudice to Article 157(7) and the rules laid down in contribution agreements, financing agreements and guarantee agreements, in the case of persons or entities receiving Union funds where the budget is implemented pursuant to Article 62(1), first subparagraph, point (c).

In the case of shared management, the exclusion system shall apply to:

(a) any person or entity applying for funding under a programme in shared management, selected for such funding, or receiving such funding;

(b) entities on whose capacity the person or entity referred to in point (a) intends to rely, or subcontractors of such person or entity;

(c) beneficial owners and ***any affiliate*** of the ▌ entity ***excluded as*** referred to in ***Article 138(6)***.

3. The decision to register information concerning an early detection of the risks referred to in paragraph 1, second subparagraph, point (a), of this Article, to exclude persons or entities referred to in 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 Article 144(1). Where such decisions are taken on the basis of Article 138(5), the information registered in the database shall include the information concerning the persons referred to in that paragraph.

4. The decision to exclude persons or entities referred to in paragraph 2 of this Article or to impose financial penalties on a recipient shall be based on a final judgment or, in the exclusion situations referred to in Article 138(1), on a final administrative decision, or on a preliminary classification in law by the panel referred to in Article ***135*** in the situations referred to in Article 138(3) in order to ensure a centralised assessment of those situations. In the cases referred to in Article 143(1), the authorising officer responsible shall reject a participant from a given award procedure.

Without prejudice to Article 138(7), 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 as referred to in Article 138(3), only after having obtained a recommendation of the panel referred to in Article ***142***.

Article 138

Exclusion criteria and decisions on exclusions

1. The authorising officer responsible shall exclude a person or entity referred to in Article 137(2) from participating in award procedures governed by this Regulation or from implementing Union funds where that person or entity is in one or more of the following exclusion situations:

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

(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 implementation 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) unduly influencing or attempting to unduly influence the decision-making process to obtain Union funds by taking advantage, through misrepresentation, of a conflict of interests involving any financial actors or other persons referred to in Article 61(1);

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

(vi) incitement to discrimination, hatred or violence against a group of persons or a member of a group ***or similar activities that are contrary to the values on which the Union is founded enshrined in Article 2 TEU,*** where such misconduct has an impact on the person or entity's integrity which negatively affects or concretely risks affecting the performance of the legal commitment;

(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 of the European Parliament and of the Council[49] 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[50];

[49] Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

[50] OJ C 316, 27.11.1995, p. 48.

(ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of 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[51], or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA[52], or corruption as defined in other applicable laws;

(iii) conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA[53];

(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[54];

(v) terrorist offences or offences related to terrorist activities, as defined in Articles 3 ***to*** 12 of Directive (EU) 2017/541 of the European Parliament and of the Council[55], or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article ***14*** of that ***Directive***;

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**51** OJ C 195, 25.6.1997, p. 1.

**52** 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).

**53** Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

**54** 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).

**55** Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

(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[56];

(e) the person or entity has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment financed by the budget which has:

(i) led to the early termination of a legal commitment;

(ii) led to the application of liquidated damages or other contractual penalties; or

(iii) been discovered by an authorising officer, OLAF***,*** the Court of Auditors***, or the EPPO*** following checks, audits or investigations;

(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[57];

(g) it has been established by a final judgment or final administrative decision that the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations, ***including those related to working rights, employment and labour conditions,*** in the jurisdiction of its registered office, central administration or principal place of business;

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**56** 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).

**57** 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).

(h) it has been established by a final judgment or final administrative decision that an entity has been created with the intent referred to in point (g);

(i) the entity or person has ***intentionally and without proper justification*** resisted an investigation, check or audit carried out by an authorising officer or its representative or auditor, OLAF, ***the*** EPPO, or the Court of Auditors. It shall be considered that the person or entity resists an investigation, check or audit when it carries out actions with the goal or effect of preventing, hindering or delaying the conduct of any of the activities needed to perform the investigation, check or audit. Such actions shall include, in particular, ▌ refusing to grant the necessary access to its premises or any other areas used for business purposes, concealing or refusing to disclose information or providing false information.

2. The authorising officer responsible shall exclude a person or entity referred to in Article 137(2), first subparagraph, point (i), and fourth subparagraph, points (a), (b) and (c), where that person or entity is in one or more of the exclusion situations referred to in paragraph 1, points (c)(iv) or (d), of this Article. In the absence of a final judgment or a final administrative decision, the decision shall be taken on the basis of a preliminary classification in law of a conduct as referred to in those points, having regard to the established facts and findings under paragraph 3, fourth subparagraph, points (a) and (d), of this Article contained in the recommendation of the panel referred to in Article 145.

Before making the preliminary classification in law, the panel referred to in Article 145 shall give the Member State the opportunity to submit observations ***with regard to the procedure in paragraph 3 of this Article***.

Without prejudice to Article 63(2), the Member State shall ensure that payments applications related to a person or entity that is in an exclusion situation, established in accordance with paragraph 1 of this Article, are not submitted to the Commission for reimbursement.

3. In the absence of a final judgment or, where applicable, a final administrative decision in the cases referred to in paragraph 1, points (c), (d), (f), (g) and (h), of this Article, or in the case referred to in paragraph 1, points (e) and (i), of this Article, the authorising officer responsible shall exclude a person or entity referred to in Article 137(2) on the basis of a preliminary classification in law of a conduct as referred to in those points, having regard to established facts or other findings contained in the recommendation of the panel referred to in Article 145.

The preliminary classification referred to in the first subparagraph of this paragraph does not prejudge the assessment of the conduct of the person or entity referred to in Article 137(2) concerned by the competent authorities of Member States under national law. The authorising officer responsible shall review his or her decision to exclude the person or entity referred to in Article 137(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 that duration on the basis of established facts and findings and having regard to the recommendation of the panel referred to in Article 145.

Where such final judgment or final administrative decision holds that the person or entity referred to in Article 137(2) is not guilty of the conduct subject to a preliminary classification in law, on the basis of which that person or entity 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 in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the Court of Auditors, OLAF 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 persons and entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c);

(d) information transmitted in accordance with Article 144(2), point (d), ***in particular*** facts and findings established in the context of ***a final judgment or final*** administrative ***decision*** at national level as to the presence of the exclusion situations referred to in paragraph 1, point (c)(iv) or (d), of this Article, by entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (b);

(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.

4. Any decision of the authorising officer responsible taken under Articles 137 to 144 or, where applicable, any recommendation of the panel referred to in Article 145, 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 financial interests and image of the Union;

(b) the time which has elapsed since the relevant conduct;

(c) the duration of the conduct and its recurrence;

(d) whether the conduct was intentional or the degree of negligence shown;

(e) in the cases referred to in paragraph 1, point (b), 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 137(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 a declaration as referred to in Article 139(1); or

(iii) the measures taken by the Member State against the person or entity pursuant to Article 63(2).

5. The authorising officer responsible shall exclude a person or entity referred to in Article 137(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 137(2), or who has powers of representation, decision or control with regard to that person or entity, is in one or more of the situations referred to in paragraph 1, points (c) to (i), of this Article;

(b) a natural or legal person that assumes unlimited liability for the debts of the person or entity referred to in Article 137(2) is in one or more of the situations referred to in paragraph 1, point (a) or (b), of this Article;

(c) a natural person who is essential for the award or for the implementation of the legal commitment is in one or more of the situations referred to in paragraph 1, points (c) to (i), of this Article.

The authorising officer responsible shall ensure that the natural person that is in one or more of the situations referred to in the first subparagraph is excluded.

6. When a person or entity referred to in Article 137(2), first subparagraph, points (a) to (f) and (h) and (***i***), is excluded, the authorising officer responsible may also exclude or impose a financial penalty on the beneficial owner or any affiliate of the excluded entity. Any decision of the authorising officer responsible or, where applicable, any recommendation of the panel referred to in Article 145, shall take into consideration whether:

(a) the excluded entity has a functional independence from its affiliate and from the beneficial owner;

(b) the misconduct of the excluded entity is not due to a failure to supervise or to maintain adequate controls;

(c) the excluded entity has taken a commercial decision without the influence of any affiliate or of the beneficial owner.

7. In the cases referred to in paragraph 3 of this Article, the authorising officer responsible may exclude a person or entity referred to in Article 137(2) provisionally without the prior recommendation of the panel referred to in Article 145, where their participation in an award procedure or their selection for implementing Union funds would constitute a serious and imminent threat to the financial interests of the Union. In such cases, the authorising officer responsible shall immediately refer the case to the panel referred to in Article 145 and shall take a final decision no later than 14 days after having received the recommendation of the panel.

8. At the request of the authorising officer, and where the nature or the circumstances of the case so require, a referral for a recommendation of the panel referred in Article 145 may be treated by means of expedited procedure, without prejudice to the right to be heard of the person or entity concerned.

9. The authorising officer responsible, having regard, where applicable, to the recommendation of the panel referred to in Article 145, shall not exclude a person or entity referred to in Article 137(2) from participating in an award procedure or from being selected for implementing Union funds where:

   (a) the person or entity has taken remedial measures as specified in paragraph ***10*** of this Article, to an extent that is sufficient to demonstrate its reliability. This point shall not apply in the case referred to in paragraph 1, point (d), 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 of this Article;

   (c) such an exclusion would be disproportionate on the basis of the criteria referred to in paragraph 3 of this Article.

In addition, paragraph 1, point (a), 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 Union or national law.

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 137(2) and inform the panel referred to in Article 145 of those reasons.

10. The remedial measures referred to in paragraph ***9***, first subparagraph, point (a), shall 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 137(2), appropriate to correct the conduct and prevent its further occurrence;

    (b) proof that the person or entity referred to in Article 137(2) has undertaken measures to compensate or redress the damage or harm caused to the financial interests of the Union by the underlying facts giving rise to the exclusion situation;

    (c) proof that the person or entity referred to in Article 137(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 paragraph 1, point (b), of this Article.

Without prejudice to the assessment of the authorising officer responsible or of the panel referred to in Article 145, the person or entity shall submit remedial measures that have been assessed by an external independent auditor or have been considered sufficient by a decision of a national or Union authority.

11. The authorising officer responsible, having regard, where applicable, to the revised recommendation of the panel referred to in Article 145, shall, without delay, revise its decision to exclude a person or entity referred to in Article 137(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.

12. In the case referred to in Article 137(2), point (b), 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 referred to in paragraph 1 of this Article.

Article 139

Declaration and evidence of absence of an exclusion situation

1. A participant shall declare whether it is in one of the situations referred to in Articles 138(1) and 143(1), and, where applicable, whether it has taken any remedial measures referred to in Article 138(9), first subparagraph, point (a).

A participant shall also declare whether the following persons or entities are in one of the exclusion situations referred to in Article 138(1), points (c) to (h):

(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, as defined in Article 3, point (6), of Directive (EU) 2015/849, of the participant.

The participant or the recipient shall without delay inform the authorising officer responsible of any changes in the situations as declared.

Where appropriate, the candidate or tenderer shall provide the same declarations referred to in the first and second subparagraphs 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 such declarations have 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 declarations does not exceed one year.

The authorising officer responsible may waive the requirements under the first and second subparagraphs for very low value ***grants and very low value*** contracts, the value of which does not exceed the ***amounts*** referred to in ***Article 2, point (75), and*** point 14.4 of Annex I.

2. Whenever requested by the authorising officer responsible and where this is necessary to ensure the proper conduct of the procedure, the participant, the subcontractor or the entity on whose capacity a candidate or tenderer intends to rely shall provide:

(a) appropriate evidence that it is not in one of the exclusion situations referred to in Article 138(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 none of those persons are in one of the exclusion situations referred to in Article 138(1), points (c) to (f).

(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 Article 138(1), point (a) or (b).

3. Where applicable and in accordance with national law, the authorising officer responsible may accept as appropriate evidence that a participant or an entity referred to in paragraph 2 is not in one of the exclusion situations referred to in Article 138(1), points (a), (c), (d), (f), (g) and (h), 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 appropriate evidence that a participant or an entity referred to in paragraph 2 is not in one of the exclusion situations referred to in Article 138(1), points (a) and (b), a recent certificate issued by the competent authority of the country of establishment. 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.

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 he or she can access such evidence on a national database free of charge;

(b) if such evidence has already been submitted 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 he or she recognises that there is a material impossibility to provide such evidence.

5. Paragraphs 1 to 4 of this Article shall not apply to persons and entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c), or to Union bodies referred to in Articles 70 and 71.

For financial instruments and budgetary guarantees and in the absence of rules and procedures fully equivalent to those referred to in Article 157(4), first subparagraph, point (d), final recipients and intermediaries shall provide the person or entity implementing Union funds pursuant to Article 62(1), first subparagraph, point (c), with a signed declaration on honour confirming that they are not in one of the situations referred to in Article 138(1), points (a) to (d), (g) and (h), or Article 143(1), first subparagraph, points (b) and (c), or in a situation deemed equivalent following the assessment carried out in accordance with Article 157(4).

Where, exceptionally, financial instruments are implemented pursuant to Article 62(1), first subparagraph, point (a), 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 Article 138(1), points (a) to (d), (g) and (h), or Article 143(1), first subparagraph, points (b) and (c).

Article 140

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 145, impose a financial penalty on a recipient with whom a legal commitment has been entered into and who is in an exclusion situation as referred to in Article 138(1), point (c), (d), (e), (f), (g), (h) or (i).

Regarding the exclusion situations referred to in Article 138(1), points (c) to (i), 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 138(4).

Regarding the exclusion situations referred to in Article 138(1), points (c), (d) and (e), the financial penalty may be imposed in addition to an exclusion where this is necessary to protect the financial interests of the Union, due to the systemic and recurrent conduct engaged in by the recipient with the intention to unduly obtain Union funds.

Notwithstanding the first, second and third subparagraphs of this paragraph, a financial penalty shall not be imposed on a recipient who in accordance with Article 139 has disclosed 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 the event 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.

Article 141

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 judgment or the final administrative decision of a Member State;

(b) in the absence of a final judgment or a final administrative decision:

(i) five years for the cases referred to in Article 138(1), points (d) and (i);

(ii) three years for the cases referred to in Article 138(1), points (c) and (e) to (h).

A person or entity referred to in Article 137(2) shall be excluded as long as it is in one of the exclusion situations referred to in Article 138(1), points (a) and (b).

2. The limitation period for excluding and/or imposing financial penalties on a person or entity referred to Article 137(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 Article 138(1), points (b) to (e), (g), (h) and (i);

(b) the date of the final judgment of a national jurisdiction or of the final administrative decision in the cases referred to in Article 138(1), points (b), (c), (d), (g), (h) and (i).

The limitation period shall be interrupted by an act of a national authority, of the Commission, of OLAF, of the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, of the panel referred to in Article 145 of this Regulation or of any entity involved in budget implementation, if such an act is notified to the person or entity referred to in Article 137(2) of this Regulation 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 Article 138(1), point (f), of this Regulation, the limitation period to exclude a person or entity referred to in Article 137(2) of this Regulation 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 a person or entity referred to in Article 137(2) of this Regulation concerned qualifies under several of the grounds listed in Article 138(1) of this Regulation, the limitation period applicable to the most serious of those grounds shall apply.

Article 142

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 website the following information related to the exclusion and, where applicable, the financial penalty in the cases referred to in Article 138(1), points (c) to ***(i)***:

   (a) the name of the person or entity referred to in Article 137(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 ***138(2)***, the publication shall indicate that there is no final judgment or, where applicable, final administrative decision. In such 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.

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 145, as the case may be. That decision shall take effect three months after its notification to the person or entity concerned, as referred to in Article 137(2).

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.

Where personal data are concerned, the authorising officer responsible shall in accordance with Regulation (EU) 2018/1725 inform the person or entity concerned, as referred to in Article 137(2) of this Regulation, of their 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;

(b) where publication would cause disproportionate damage to the person or entity referred to in Article 137(2) concerned or would otherwise be disproportionate on the basis of the proportionality criteria set out in Article 138(4) and having regard to the amount of the financial penalty;

(c) where a natural person is concerned, unless the publication of personal data is justified by exceptional circumstances, inter alia, by the seriousness of the conduct or its impact on the financial interests of the Union. 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 (EU) 2018/1725.

Article 143

Rejection from an award procedure

1. The authorising officer responsible shall reject from an award procedure a participant who:

(a) is in an exclusion situation established in accordance with Article 138;

(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;

(d) has ***professional*** conflicting interests which may negatively affect the performance of the contract in accordance with point 20.6 of Annex I***;***

***(e) is the addressee of a decision prohibiting the award of the contract for having received foreign subsidies distorting the internal market, adopted by the Commission in accordance with paragraph 3 of this Article.***

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 the first subparagraph, 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 134(1) shall apply unless the rejection has been justified in accordance with paragraph 1, first subparagraph, point (a), of this Article by a decision concerning exclusion taken with regard to the participant, following an examination of its observations.

*3. For the purpose of paragraph 1, point (e), of this Article, Regulation (EU) 2022/2560 and in particular the provisions of its Chapters 1, 2 and 4, including Article 30 thereof, shall apply mutatis mutandis to the preliminary review by the Commission and to the in-depth investigation of any foreign financial contributions obtained in a procurement procedure under this Regulation. For the purpose of the prior notification to the contracting authority, participants in a procurement procedure under this Regulation shall notify any relevant foreign financial contribution to the authorising officer responsible, under the same conditions as set out in Articles 28 and 29 of Regulation (EU) 2022/2560 and in the provisions of the implementing acts adopted on the basis of Article 47(1) of that Regulation. In addition, relevant delegated acts adopted on the basis of Article 49 of Regulation (EU) 2022/2560 shall also be applicable to procurement procedures under this Regulation. The relevant provisions of Regulation (EU) 2022/2560, as well as those of the delegated acts adopted on the basis of Article 49 of that Regulation and of the implementing acts adopted on the basis of Article 47(1) of that Regulation shall be implemented in accordance with this Regulation.*

*In the context of the first subparagraph of this paragraph, the Commission shall be empowered to adopt implementing acts in the form of a decision:*

*(a) to make the commitments offered by a participant binding upon that participant within the meaning of Article 11(3) of Regulation (EU) 2022/2560, in the context of this Regulation;*

*(b) to raise no objection within the meaning of Article 11(4) of Regulation (EU) 2022/2560, in the context of this Regulation;*

*(c) to prohibit the award of the contract to a participant for having received foreign subsidies distorting the internal market within the meaning of Article 31(2) of Regulation (EU) 2022/2560, in the context of this Regulation.*

***Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 276(2).***

***For the purposes of the measures to be taken under this paragraph, where Regulation (EU) 2022/2560 refers to procurement procedures within the meaning of Directives 2014/23/EU, 2014/24/EU and 2014/25/EU of the European Parliament and of the Council[58], these shall be understood as procurement procedures within the meaning of this Regulation.***

***The authorising officer responsible shall notify the rejection from an award procedure by a letter addressed to the participant concerned, following the prohibition decision referred to in the second subparagraph, point (c).***

Article 144

The early detection and exclusion system

1. Information exchanged within the early detection and exclusion system referred to in Article 137 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 (EU) 2018/1725.

Information on cases of early detection, exclusion and/or financial penalties shall be entered in the database by the authorising officer responsible after notifying the person or entity concerned, as referred to in Article 137(2). Such notification may be deferred in exceptional circumstances, 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.

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58 ***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 repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).***

In accordance with Regulation (EU) 2018/1725, the Commission shall upon request inform the person or entity subject to the early detection and exclusion system, as referred to in Article 137(2), of the data stored in the database relating to that person or entity.

The information contained in the database shall be updated, where appropriate, following a rectification, an erasure or any modification of data. It shall only be published in accordance with Article 142.

2. The early detection and exclusion system shall be based on facts and findings as referred to in Article 138(3), fourth subparagraph, and on the transmission of information to the Commission, in particular, by:

(a) the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, or OLAF in accordance with Regulation (EU, Euratom) No 883/2013 where an investigation completed or in progress shows that it might be appropriate to take precautionary measures or actions to protect the financial interests of the Union, 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;

(c) a Union institution, a European office, an agency other than those referred to in point (b) of this paragraph, or a body or a person entrusted with implementation of CFSP actions;

(d) entities implementing the budget ***under Article 62(1), first subparagraph, point (b), and persons and entities implementing funds, pursuant to budget implementation under Article 62(1), first subparagraph, point (a), with Member States,*** in cases of ***facts and findings established only in the context of final judgments or final administrative decisions with reference to the grounds set out in Article 138(1), points (c)(iv) and (d), as well as*** detected fraud and/or irregularity and their follow up, where the transmission of information is required by sector-specific rules;

(e) persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c), 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 138(1) or (3), or a decision to impose a financial penalty as referred to in Article 140;

(d) where applicable, information on 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 without delay transmit the information referred to in paragraph 3 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 that verification, the authorising officer responsible shall exercise his or her powers as set out in Article 74 and shall not go beyond what is foreseen in the terms and conditions of the award procedure and legal commitments.

The retention period for the information related to the early detection transmitted in accordance with paragraph 3 of this Article shall not exceed one year. If, during that period, the authorising officer responsible requests the panel to issue a recommendation in a case concerning exclusion or financial penalties, the retention period may be extended until such time as the authorising officer responsible has taken a decision.

5. All persons and entities involved in budget implementation in accordance with Article 62 shall be granted access by the Commission to the information on decisions on exclusion pursuant to Article 138 ***to enable them to verify whether there is an exclusion in the early detection and exclusion system, when awarding contracts or selecting beneficiaries to implement Union funds***.

Except where the implementation of the budget is entrusted to persons or entities under Article 62(1), first subparagraph, point (c), according to the conditions referred to in Article 157(4), all persons and entities involved in budget implementation shall enforce such decisions with regard to the person or entity applying for ***or*** selected ***to implement*** Union funds.

6. As part of the annual report of the Commission to the European Parliament and to the Council pursuant to Article 325(5) TFEU, the Commission shall provide aggregate information on the decisions taken by the authorising officers under Articles 137 to 144 of this Regulation. That report shall also provide further information on any decisions taken by the authorising officers pursuant to Article 138(9), first subparagraph, point (b), of this Regulation and Article 142(2) of this Regulation and on any decisions by the authorising officers to deviate from the recommendation of the panel pursuant to Article 145(6), third subparagraph, of this Regulation.

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 concerned, as referred to in Article 137(2).

Article 145

Panel

1. A panel shall be convened at the request of an authorising officer of any Union institution, Union body, European office or body or person 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) a standing high-level independent vice-chair appointed by the Commission, who shall deputise for the chair;

   (c) two permanent representatives of the Commission as the owner of the early detection and exclusion system, who shall express a joint position; and

   (d) 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.

3. The Chair shall be chosen from among former members of the Court of Justice of the European Union, the Court of Auditors 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 or 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 shall preside all sessions of the panel. He or she shall be independent in the performance of his or her duties. He or she shall not have a conflict of interests between his or her duties as Chair 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 concerned, as referred to in Article 137(2), to submit observations on the facts or findings referred to in Article 138(3) and on the preliminary classification in law before adopting its recommendations. The right to submit observations may be deferred in exceptional circumstances 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.

6. The recommendation of the panel to exclude and/or impose a financial penalty shall, where applicable, contain the following elements:

(a) the facts or findings referred to in Article 138(3) 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 137(2) 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 137(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 137(2), if any.

Where the authorising officer responsible envisages taking a more severe decision than what has been recommended by the panel, he or she 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.

Where the authorising officer responsible decides to deviate from the recommendation of the panel, he or she 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 138(11) 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 Article 138(3), second subparagraph.

8. The panel shall notify the requesting authorising officer without delay of its revised recommendation, following which the authorising officer shall review his or her 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 137(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 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.

Article 146

Communication in the context of early detection and exclusion procedures

1. All communication, in particular notification of decisions, letters, documents or information related to early detection and exclusion procedures shall be made in writing on paper or in electronic format.

2. Notifications for communications which create legal effects or trigger time limits shall be made on paper by registered post with acknowledgement of receipt or by courier service with proof of delivery, through a secure electronic exchange system pursuant to Article 151, or by e-mail or other electronic means.

3. Communications shall:

(a) when made on paper, be considered to have been notified when they have been delivered to the most recent ▌ postal address provided by the recipient party. Notifications by registered post with acknowledgement of receipt or by courier service with proof of delivery shall be considered to have been received either on the delivery date registered by the postal service or by courier service or after the time limit for collection at the post office, or, in the absence of such time limit, three weeks after the attempted delivery, provided that the notification has been sent a second time and announced electronically to the most recent e-mail address provided by the recipient party***;***

(b) when made through a secure electronic exchange system referred to in Article 151, be considered to have been notified on the date and time they are accessed, as indicated by the time logs in the system or, in the case of communications that have not been accessed, 10 days after sending***;***

(c) when made by e-mail or other electronic means, be deemed to be notified on the day of dispatch of the e-mail, provided that it is sent to the most recent e-mail address provided by the recipient party and the sending party has not received a non-delivery report.

Where the addressee can demonstrate that he or she has been prevented by circumstances outside his or her control from accessing a communication, the legal effects of the communication shall start running from the moment on which the addressee can demonstrate that he or she has gained access to its content.

Article 147

***Transmission*** of ***information*** for the ***purpose of the*** early detection and exclusion system

1. Information requested from the entities referred to in Article 144(2), point (d), shall be transmitted ***to*** the Commission ▌ in accordance with ***Article 36(8) and*** sector-specific rules.

2. ***Without prejudice to Article 138(2), second subparagraph,*** 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. Such use shall be preceded by a consultation of the Member State that has submitted the relevant data through the Irregularity Management System.

Article 148

Exception applicable to the Joint Research Centre

Articles 137 to 147 shall not apply to the JRC.

SECTION 3

IT SYSTEMS AND E-GOVERNMENT

Article 149

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. Electronic information may be subject to digital controls and audits as referred to in Article ***36(11)***.

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.

Article 150

e-Government

1. 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 that end, 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 Member States and the Commission shall be carried out by means indicated in sector-specific rules. Those rules shall provide for interoperability of data gathered or received, and transmitted in the management of the budget.

Article 151

Electronic exchange systems

1. All exchanges with recipients and participants, including the entering into legal commitments and any amendments thereto, may be done through electronic exchange systems.

2. Electronic exchange systems shall satisfy the following conditions:

(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 are identified through the system by established means;

(d) the time and date of the electronic transaction are determined precisely;

(e) the integrity of documents is preserved;

(f) the availability of documents is preserved;

(g) where appropriate, the confidentiality of documents is preserved;

(h) the protection of personal data in accordance with Regulation (EU) 2018/1725 is ensured.

3. The electronic exchange system may also be used by the authorising officer responsible, or, where applicable, by the panel referred to in Article 145, to communicate with participants, recipients or other persons or entities referred to in Article 137(2) with regard to:

(a) their inclusion in the early detection and exclusion system database in the cases referred to in Article 137(1), point (a);

(b) the content of adversarial letters and other information or requests issued by the panel referred to in Article 145, in order to safeguard the rights referred to in Article 145(5), and in the exercise of the competences under this Regulation;

(c) the content of decisions and other information or requests by the authorising officer responsible, in the exercise of the competencies under Articles 137 to 147.

4. 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 paragraph 2, point (b), shall have a legal effect equivalent to handwritten signatures.

Article 152

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 Regulation (EU) 2018/1725 is ensured.

2. The Commission shall ensure by appropriate means and in accordance with Article 150(1) that participants may submit 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 products in general use and shall not restrict participants' access to the award procedure.

The Commission shall report regularly to the European Parliament and to the Council on the progress of the application 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 have access to all data submitted and may give access to the data as needed for the procedure;

(e) it is reasonably ensured that any attempt to infringe any of the conditions set out in points (a) to (d) can be detected.

The first subparagraph shall not apply to contracts below the thresholds referred to in Article 178(1).

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 of submission 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 of submission shall be constituted by the acknowledgement of receipt.

   For contracts awarded by, or exclusively in the interest of, Union delegations in third countries, the contracting authority may restrict the submission by letter to only one of the means indicated above. ***Where the contracting authority makes use of this provision, it shall document the reasons for that restriction.***

6. By submitting application documents, participants accept to receive notification of the outcome of the procedure by electronic means.

7. Participants or recipients or any other persons or entities referred to in Article 137(2) accept to receive notifications in the terms of the specific legal commitment or concession contract, including any notification concerning the application of any of the measures referred to in Article 137(1). Where persons ***or*** entities referred to in Article 137(2), point (b), are concerned, the applicant shall be responsible for communicating to the contracting authority the address of the entity concerned.

Unless exchanges are made through the electronic exchange system referred to in Article 151, where the person or entity has been notified by electronic means to the address indicated in the application, and failing the express acknowledgement of receipt of the electronic notification, it shall be presumed that the person or entity has been put in a position to take cognizance of the content of the exchange and therefore it shall be considered as notified.

8. Paragraphs 1 to 7 of this Article shall not apply to the selection of persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c)***, unless the selection is made further to a call for expression of interest***.

CHAPTER 3

RULES APPLICABLE TO DIRECT MANAGEMENT

Article 153

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 evaluation committee shall be made up of at least three persons.

3. The members of the evaluation committee evaluating grant applications, applications for non-financial donations or tenders shall represent at least two organisational entities of Union institutions or Union bodies referred to in Articles 68, 69, 70 and 71 with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. Where representations and local units outside the Union, such as a Union delegation, office or branch office in a third country, and Union bodies referred to in Articles 68, 69, 70 and 71 have no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

External experts may assist the evaluation committee pursuant to a decision of the authorising officer responsible.

Members of the evaluation committee may be external experts where that possibility is provided for in the basic act.

4. The members of the evaluation committee evaluating applications in a contest for prizes may be persons referred to in paragraph 3, first subparagraph, or external experts.

5. The members of the evaluation committee and the external experts shall comply with Article 61.

Article 154

Clarification and correction of application documents

The authorising officer responsible may correct obvious clerical errors in 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 to clarify supporting documents.

Such information, clarification or confirmation shall not substantially change application documents.

Article 155

Guarantees

1. With the exception of contracts and grants the value of which does not exceed EUR 60 000, the authorising officer responsible may, if proportionate and subject to the authorising officer's risk analysis, require a guarantee to be lodged:

(a) by contractors or beneficiaries in order to limit the financial risks connected with a 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 is to be denominated in euro or in the currency of the contract or of the grant agreement.

3. The guarantee shall be issued 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 guarantees referred to paragraph 1, first subparagraph, points (a), (b) and (c), 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 paragraph 1, first subparagraph, point (a), may be replaced by an 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 provide irrevocable collateral security, or stand as 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 is no longer authorised to issue guarantees in accordance with the applicable national law, he or she shall require that the contractor or the beneficiary replaces the guarantee issued by such a guarantor.

Article 156

Guarantee on pre-financing

1. A guarantee on pre-financing shall be for an amount not exceeding the amount of the pre-financing and shall be valid for a period sufficiently long to allow it to be activated.

2. The guarantee on pre-financing 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.

TITLE VI

INDIRECT MANAGEMENT

Article 157

Indirect management

1. The selection of the persons and entities to be entrusted with the implementation of Union funds or budgetary guarantees pursuant to Article 62(1), first subparagraph, point (c), shall be transparent, justified by the nature of the action and shall not give rise to a conflict of interests. For entities referred to in Article 62(1), first subparagraph, points (c)(ii), (v), (vi) and (vii), the selection shall also take due account of their financial and operational capacity.

   Where the person or entity is identified in a basic act, the financial statement provided for in Article 35 shall include a justification for the choice of that particular person or entity.

   In cases of implementation by a network, requiring the designation of at least one body or entity per Member State or per 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 Member States or countries concerned.

   Where the selection is made further to a call for expression of interest, it shall be undertaken in compliance with the principles of equal treatment and non-discrimination, without prejudice to the requirements laid down in this paragraph.

2. Persons and entities entrusted with the implementation of Union funds or budgetary guarantees pursuant to Article 62(1), first subparagraph, point (c), 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 131 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 budget in accordance with Article 62(1), first subparagraph, point (a). The Commission shall do so by carrying out an assessment of the systems, rules and procedures of the persons or entities implementing Union funds, if it intends to rely on such systems, rules and procedures for the implementation of the action, or by taking appropriate supervisory measures in accordance with paragraph 5 of this Article.

4. The Commission shall, in accordance with the principle of proportionality, assess that persons and entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c):

   (a) set up and ensure the functioning of an effective and efficient internal control system based on international best practices**,** including adequate management of the risks and allowing in particular to prevent, detect and correct irregularities and fraud; the internal control system setup may, where appropriate, rely on digital controls;

   (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 person or entity 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;

(e) make public adequate information on their recipients equivalent to that provided for under Article 38;

(f) ensure protection of personal data equivalent to that referred to in Article 5.

In addition, in agreement with the persons or entities concerned, the Commission may assess other rules and procedures such as the administrative cost accounting practices of the persons or entities. On the basis on the results of that assessment, the Commission may decide to rely on those rules and procedures.

Persons or entities 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 systems, rules or procedures which may impact the reliability of the Commission's assessment.

5. Where the persons or entities concerned comply only in part with paragraph 4, the Commission shall take appropriate supervisory measures ensuring the protection of the financial interests of the Union. Those measures shall be specified in the relevant agreements. Information about any such measures shall be made available to the European Parliament and to the Council at their request.

6. In multi-donor actions, where the Union contribution reimburses expenditure, the procedure set out in ***Article 158***(4) shall consist in verifying that an amount corresponding to that paid by the Commission for the action concerned has been used by the person or entity in accordance with the conditions laid down in the relevant grant, contribution or financing agreement.

7. The Commission shall not require an *ex ante* assessment as referred to in paragraphs 3 and 4 of this Article:

   (a) for Union bodies referred to in Articles 70 and 71 and for bodies or persons referred to in Article 62(1), first subparagraph, point (c)(viii), which have adopted financial rules with prior consent of the Commission;

   (b) for those procedures specifically required by the Commission, including its own and those specified in basic acts or where rules and procedures are aligned with those required by the Commission.

   The Commission may decide not to require an *ex ante* assessment as referred to in paragraphs 3 and 4:

   ***(a)*** 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***;***

   ***(b)*** for Member States organisations entrusted with the implementation of Union funds in accordance with Article 62(1), first subparagraph, point (b), for which the Commission has confirmed that the programme's management and control system is functioning.

8. Where the systems, rules or procedures of the persons or entities referred to in Article 62(1), first subparagraph, point (c), are assessed as appropriate, Union contributions to those persons or entities may be implemented in accordance with this Title. Where such persons or entities participate in a call for proposals they shall comply with the rules of the call for proposals contained in 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.

Article 158

Implementation of Union funds and budgetary guarantees

1. Persons and entities implementing Union funds or budgetary guarantees shall provide the Commission with:

   (a) a report on the implementation of Union funds or budgetary guarantees, including the fulfilment of the conditions or the achievement of results referred to in Article 125(1), first subparagraph, point (a);

   (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;

(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 referred to in the first subparagraph, point (d), of this paragraph shall include all relevant audit documentation to be relied upon.

For actions terminating before the end of the financial year concerned, the final report may replace the management declaration referred to in the first subparagraph, point (c), provided it is submitted before 15 February of the following financial year.

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 referred to in the first subparagraph, point (c). Where such an opinion is absent, the authorising officer may seek an equivalent level of assurance through other independent means.

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 of that year.

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 Article 157(3) and (4) 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, a person or entity referred to in Article 62(1), first subparagraph, point (c) shall:

(a) not support actions that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion according to applicable Union law and international and Union standards;

(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) 2015/849.

Entities may derogate from the first subparagraph, point (b), 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 the first subparagraph, point (a).

Entities implementing financial instruments and budgetary guarantees in accordance with Title X shall ensure that:

(a) third parties to which they directly provide support from the budget comply with the first subparagraph, points (a) and (b), of this paragraph;

(b) for other third parties, rules, procedures and remedial measures assessed as appropriate in line with Article 157(4), and in particular ***the first*** subparagraph***, point*** (a)***,*** thereof, are in place in order to ensure that those third parties benefit from support from the budget subject to respecting Union or equivalent international standards on money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.

When concluding agreements with financial intermediaries, entities implementing financial instruments and budgetary guarantees in accordance with Title X shall request the financial intermediaries to report on the observance of the requirements laid down in this paragraph.

3. When implementing financial instruments and budgetary guarantees in accordance with Title X, persons and entities 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, in particular Regulation (EU) 2015/847 of the European Parliament and of the Council[59] 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 within the meaning of Article 89(1) of Directive 2013/36/EU of the European Parliament and of the Council[60].

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**59** Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

**60** Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

4. The Commission shall verify that the Union funds or budgetary guarantees have been used in accordance with the conditions laid down in the relevant agreements. Where the costs of the person or entity are reimbursed based on a simplified cost option in accordance with Article 125(1), first subparagraph, points (c), (d) and (e), Article 184(1) to (5) and Articles 185 to 188 shall apply *mutatis mutandis*. Where Union funds or budgetary guarantees have been used in breach of the obligations laid down in the relevant agreements, Article 132 shall apply.

5. Article 36(6), ***first subparagraph,*** shall apply to persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c), with regard to the direct recipients of such funds and in respect of the beneficial owners of those recipients to the extent that data on beneficial owners is collected in accordance with the rules and procedures of those persons or entities.

6. The requirements of Article 38(6) shall apply to persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c), where the financial support directly provided by persons or entities to third parties amounts to more than EUR 500 000.

***7.*** Contribution agreements, financing agreements and guarantee agreements shall clearly define the responsibilities and obligations of the person or entity implementing Union funds, including the obligations set out 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 under which the actions are implemented, 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 persons or entities implementing Union funds or budgetary guarantees to notify the Commission without delay of cases of established fraud and irregularities and their follow-up as well as any information relating to suspected cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union.

***8.*** All contribution agreements, financing agreements and guarantee agreements shall be made available to the European Parliament and to the Council at their request.

***9.*** This Article shall not apply to the Union contribution to Union bodies which are subject to a separate discharge procedure under Articles 70 and 71, with the exception of possible ad-hoc contribution agreements.

Article 159

Indirect management with international organisations

1. The Commission may, in accordance with Article 62(1), first subparagraph, point (c)(ii), implement the budget indirectly with international public-sector organisations set up by international agreements (international organisations) and with 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 in accordance with Article 157(3).

2. The following organisations shall be assimilated to international organisations:

(a) the International Committee of the Red Cross;

(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 provided that it satisfies the following conditions:

(a) it has legal personality and autonomous governance bodies;

(b) it has been established to perform specific tasks of general international interest;

(c) at least six Member States are members of that non-profit organisation;

(d) it operates on the basis of a permanent structure and in accordance with systems, rules and procedures which can be assessed in accordance with Article 157(3).

Such non-profit organisations shall be provided with adequate financial guarantees taking due account of the Union contribution they are entrusted with.

4. Where international organisations implement funds under indirect management, verification agreements concluded with them shall apply.

Article 160

Indirect management with Member State organisations

1. The Commission may, in accordance with Article 62(1), first subparagraph, points (c)(v) and (vi), implement the budget indirectly with Member State organisations.

2. Where the Commission implements the budget indirectly with Member States organisations, it shall rely on the systems, rules and procedures of those organisations which have been assessed in accordance with Article 157(2), (3) and (4).

3. Financial framework partnership agreements concluded with Member State organisations in accordance with Article 131 shall further specify the extent and the modalities of the cross-reliance on systems, rules and procedures of Member State organisations and may include specific provisions on the cross-reliance on assessments and audits as referred to in Articles 126 and 127.

Article 161

Indirect management with third countries

1. The Commission may implement the budget indirectly with a third country or the bodies designated by that country, as referred to in Article 62(1), first subparagraph, point (c)(i), by concluding a financing agreement describing the Union's intervention in the third country and laying down the method of implementation 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 ***158(7)***, 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 to be applied by the third country when implementing Union funds.

Article 162

Blending operations

1. Blending operations shall be managed either by the Commission or by persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c).

2. Where financial instruments and budgetary guarantees are implemented within a blending facility or platform Title X applies.

3. For financial instruments and budgetary guarantees implemented within blending facilities or platforms, Article 212(2), first subparagraph, point (h), 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.

4. Annual reports pursuant to Article 41(4) and (5) shall be drawn up at the level of the blending facility or platform taking into account all financial instruments and budgetary guarantees grouped under the facility or platform and clearly identifying the different types of financial support within it.

TITLE VII

PROCUREMENT AND CONCESSIONS

CHAPTER 1

COMMON PROVISIONS

Article 163

Principles applicable to 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 Article 167(1), point (d).

The estimated value of a contract shall not be determined with a view to circumventing the applicable rules, nor shall 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.

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 laid down in this Regulation, with the exception of the principles of transparency and equal treatment, shall not apply to:

(a) the activities of the JRC on behalf of third parties;

(b) financial services ***in connection with*** the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2014/65/EU, used by the Commission in the context of its borrowing and lending, asset management and treasury operations, including services provided by central banks, the European Stability Mechanism, the EIB and other international financial institutions, and national entities entrusted with the issuance and management of sovereign debt***;***

(c) ▌ document certification and authentication services which must be provided by notaries, where such services are not open to competition on the basis of the applicable national rules***.***

6. With the exception of procurement in the field of external actions, prior to any ***of the measures referred to in the second subparagraph*** carried out in response to a crisis, a declaration of crisis shall be made in line with the relevant internal rules.

The authorising officer responsible may only rely on a crisis declaration to:

(a) launch a procurement procedure;

***(b) add contracting authorities pursuant to Article 168(1), fourth subparagraph, Article 168(2), sixth subparagraph, or Article 175(5), second subparagraph;***

***(c) contact tenderers pursuant to Article 172(1), second subparagraph;***

***(d) modify a contract pursuant to Article 175(5), first subparagraph; or***

***(e) request supporting documents before the signature of the contract pursuant to the fourth subparagraph of point 18.1 and the fourth subparagraph of point 18.4 of Annex I,***

if ***this*** is justified by a situation of extreme urgency that is resulting from such crisis.

Article 164

Annex on procurement and delegation of powers

Detailed rules on procurement are laid down in Annex I 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 Directives 2014/23/EU and 2014/24/EU, the Commission is empowered to adopt delegated acts in accordance with Article 275 of this Regulation to amend Annex I to this Regulation, in order to align that Annex to amendments to those Directives and to introduce related technical adjustments.

Article 165

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 characterises 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 concerned.

3. This Title shall not apply to contracts for technical assistance concluded with the EIB or the EIF.

4. Any references to nomenclatures in the context of procurement shall be made using the Common Procurement Vocabulary (CPV) as set out in Regulation (EC) No 2195/2002 of the European Parliament and of the Council[61].

Article 166

Publicity measures

1. For procedures with a value equal to or greater than the thresholds referred to in Article 178(1) or Article 181, 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 Article 167(1), point (d);

   (b) a contract award notice on the results of the procedure.

2. Procedures with a value below the thresholds referred to in Article 178(1) or Article 181 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.

Article 167

Procurement procedures

1. Procurement procedures for awarding concession contracts or public contracts, including framework contracts shall take one of the following forms:

[61] 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).

(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.

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 referred to in Articles 138(1) and 143(1), to submit a tender.

Notwithstanding the first subparagraph, the contracting authority may limit the number of candidates to be invited to submit a tender 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.

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 178(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;

(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 I to this Regulation;

(f) the negotiated procedure for contracts with a value below the thresholds referred to in Article 178(1), or the negotiated procedure without prior publication for specific types of purchases falling outside the scope of Directive 2014/24/EU or in the clearly defined exceptional circumstances set out in Annex I to this Regulation.

6. A 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.

Article 168

Interinstitutional procurement, joint procurement and procurement on behalf of Member States

1. Where a contract or a framework contract is of interest to two or more Union institutions, executive agencies or Union 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 shall 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.

By way of derogation from the third subparagraph of this paragraph, in a situation of extreme urgency resulting from a crisis, new contracting authorities may be added by the contracting authority after the launch of the procurement procedure and before contract signature, subject to the conditions set out in Article 163(6) and provided that the modification does not alter the subject matter of the contract or the framework contract.

2. Where a contract or framework contract is necessary for the implementation of a joint action between a Union institution, a Union body referred to in Articles 70 and 71 or an executive agency referred to in Article 69 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. Where it is necessary to carry out a joint procurement between a Union institution, a Union body referred to in Articles 70 and 71 or an executive agency referred to in Article 69 and one or more contracting authorities from Member States, Member States may acquire, rent or lease fully the capacities jointly procured.

Joint procurement may be conducted with EFTA States and Union candidate countries if that possibility has been specifically provided for in a bilateral or multilateral treaty, or with other third countries if such possibility is specifically provided for in the applicable basic act.

The procedural provisions applicable to Union institutions shall apply to the joint procurement.

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 the 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.

In a situation of extreme urgency resulting from a crisis, new contracting authorities may be added after the launch of the procurement procedure and before contract signature, subject to the conditions set out in Article 163(6) ***and provided that the modification does not alter the subject matter of the contract or the framework contract***.

3. ***Where appropriate, two or more Member States may mandate a*** Union institution, a Union body as referred to in Articles 70 and 71 or an executive agency as referred to in Article 69 ***(mandated contracting authority) to act as a central purchasing body to procure on behalf of those Member States or in their name, under the following conditions:***

   ***(a) the mandated contracting authority shall assess the utility, necessity and proportionality of the request of those Member States;***

   ***(b) where the mandated contracting authority intends not to follow the request, it shall inform the Member States concerned and shall give reasons for its refusal;***

   ***(c) the mandated contracting authority shall conduct the procurement procedure following its own rules;***

   ***(d) if the mandated contracting authority decides to launch a procurement procedure on behalf of the Member States, it shall inform all Member States of its intention to carry out the procurement and invite the interested Member States to participate;***

***(e) where it agrees to procure on behalf or in the name of the Member States, the mandated contracting authority shall draw up the proposal for a mandate agreement to be signed by the participating Member States. Such agreement shall include in particular, the practical arrangements for the involvement of the participating Member States, the conditions and time frames for possible opt-in and opt-out, and, where appropriate, rules for the allocations of the quantities between the participating Member States.***

***A Union institution, a Union body as referred to in Articles 70 and 71 or an executive agency referred to in Article 69 may*** act as a wholesaler, by buying, stocking and reselling or donating supplies and services, including rentals, to Member States or partner organisations selected by the Union institution, Union body referred to in Articles 70 and 71 or by an executive agency referred to in Article 69. In this case, the ▌Union institution, Union body referred to in Articles 70 and 71 or executive agency referred to in Article 69 shall conduct the procurement procedure following its own procurement rules.

Article 169

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 law, collective agreements or the applicable international social and environmental conventions listed in Annex X to Directive 2014/24/EU.

Article 170

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 138 or rejected under Article 143;

   (c) the candidate or tenderer has access to procurement, and meets the selection criteria specified in the procurement documents, including the absence of professional conflicting interests.

2. The contracting authority shall apply the selection criteria to evaluate the capacity of the candidate or tenderer. Selection criteria shall 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.

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 171

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 I and taking into account the complexity of the purchase, leaving an adequate period for economic operators to prepare their tenders.

2. If deemed appropriate and proportionate, the contracting authority may require tenderers to lodge 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 guarantees:

(a) in respect of tenderers or tenders rejected as referred to in point 30.2(b) or (c) of Annex I, after having provided the information on the outcome of the procedure;

(b) in respect of tenderers ranked as referred to in point 30.2(e) of Annex I, after 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 already open when they are received, without examining their content.

4. The contracting authority shall evaluate all requests to participate or tenders not rejected during the opening phase as 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 153(2) in the following cases:

   (a) the value of the contract is below the thresholds referred to in Article 178(1);

   (b) on the basis of a risk analysis for the cases referred to in point 11.1, second subparagraph, points (c), (e), (f)(i), (f)(iii),(h) and (m), of Annex I;

   (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;

(e) on the basis of a risk analysis for specific procurements under a dynamic purchasing system.

6. Requests to participate and tenders which do not comply with all the minimum requirements set out in the procurement documents shall be rejected.

Article 172

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.

By way of derogation from the first subparagraph, in a situation of extreme urgency resulting from a crisis, the contracting authority may contact in writing all invited candidates before the time limit for receipt of requests to participate or tenders, with the sole purpose of clarifying their intention to submit a request to participate or a tender, subject to the conditions set out in Article 163(6).

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 154, a record shall be kept in the procurement file.

Article 173

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.

2. The contracting authority shall notify all candidates or tenderers, whose ***request*** to participate or tender is rejected, of the grounds on which the decision was taken. In addition, successful and unsuccessful tenderers shall be notified of the duration of the standstill ***period*** referred to in Articles 178(2) and 181(1), when such standstill period is applicable.

   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 rejected 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 and its total financial offer amount;

   (b) the progress of negotiation and dialogue with tenderers.

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 174

Cancellation of the procurement procedure

The contracting authority may, before the contract is signed, cancel the procurement procedure totally. In the case of procedures awarded in lots or multiple sourcing procurement the cancellation may be done partially. The candidates or tenderers shall not be 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 175

Performance and modifications of the contract

1. Performance of the contract shall not start before it is signed.

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, within the meaning of paragraph 4.

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;

(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 178(1), and in point ***39*** of Annex I in the field of external actions, applicable at the time of the modification; and

(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 both of the following conditions are fulfilled:

(i) the minimum requirements of the initial procurement procedure are not altered;

(ii) any ensuing modification of value complies with the conditions set out in this subparagraph, point (c), unless such modification of value results from the strict application of the procurement documents or contractual provisions.

The initial contract value shall not take into account price revisions.

The net cumulative value of several successive modifications under the first subparagraph, point (c), shall not exceed any threshold referred to therein.

The contracting authority shall apply the *ex post* publicity measures set out in Article 166.

4. A modification shall be considered to be altering the subject matter of the contract or framework contract, where it renders the contract or framework contract materially different in substance from the one initially concluded. In any event, a modification shall be considered to be altering the subject matter of the contract or framework contract where one or more of the following conditions are met:

   (a) the modification introduces or supresses significant conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of a tender other than that originally accepted, or would have attracted additional participants in the procurement procedure, or would not have led to the selection of the ***successful*** tenderer;

   (b) the modification significantly changes the economic balance of the contract or the framework contract in favour of the contractor in a manner which was not provided for in the initial contract or framework contract;

   (c) the modification significantly extends the scope of the contract or framework contract.

5. By way of derogation from paragraph ***3***, ***point (b)(ii),*** in a situation of extreme urgency resulting from a crisis, the contracting authority may, in agreement with the contractor, modify a contract or a framework contract beyond the threshold ***of 50 % and up*** to 100 % of the initial contract value, ***provided*** that ***this*** is justified as strictly necessary to respond to the evolution of the crisis, subject to the conditions set out in Article 163(6).

By way of derogation from paragraph ***3***, in a situation of extreme urgency resulting from a crisis, the terms of a framework contract may be modified by common agreement to apply to those new contracting authorities added following a modification of the framework contract, including in the case of inter-institutional or joint procurements, subject to the conditions set out in Article 163(6).

Article 176

Performance guarantees and retention money guarantees

1. A 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 the time limits set out in Article 116(1) and 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.

The contracting authority shall determine the amount of the retention money guarantee 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 in the sector concerned.

A 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 another type of guarantee referred to in Article 155.

4. The contracting authority shall release the retention money guarantee after the expiry of the contractual liability period, within a period subject to the time limits set out in Article 116(1) and to be specified in the contract.

## CHAPTER 2

## PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY UNION INSTITUTIONS ON THEIR OWN ACCOUNT

### Article 177

### The contracting authority

1. Union institutions, executive agencies and Union bodies referred to in Articles 70 and 71 shall be deemed to be contracting authorities in respect of contracts awarded on their own account, except where they purchase from a central purchasing body. Departments of Union institutions shall not be deemed to be contracting authorities where they conclude service-level agreements amongst themselves.

Union institutions deemed to be contracting authorities in accordance with the first subparagraph shall, in accordance with Article 60, delegate the necessary powers for the exercise of the function of the contracting authority.

2. Each authorising officer by delegation or subdelegation within each Union institution shall assess whether the thresholds referred to in Article 178(1) have been reached.

Article 178

Thresholds applicable and standstill period

1. To award public and concession contracts, the contracting authority shall respect the thresholds laid down in Article 4, points (a) and (b), of Directive 2014/24/EU when selecting a procedure referred to in Article 167(1) of this Regulation, and respectively the threshold laid down in Article 8(1) of Directive 2014/23/EU for concessions.

   By way of derogation from the first subparagraph of this Article, for contracts awarded by, or exclusively in the interest of, Union delegations in third countries, the applicable threshold for public supply and service contracts shall be EUR 300 000, instead of the threshold for public supply and service contracts laid down in Article 4, point (b), of Directive 2014/24/EU.

   ***Article 152(5), Article 178(1), Article 179(3) as well as points 11.1(m), 14 and 18.1 of Annex I, which refer to procurement by Union delegations in third countries, shall also apply to European Parliament offices in third countries.***

2. Subject to the exceptions and conditions specified in Annex I 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.

Article 179

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 procurement under the conditions laid down in such an agreement. It shall also be open to international organisations.

2. For the purpose of Article 163(4), the JRC shall be considered as a legal person established in a Member State.

3. ***Without prejudice to paragraphs 1 and 2,*** for contracts awarded by, or exclusively in the interest of, Union delegations in third countries, participation in procurement procedures shall ***also*** be open on equal terms to all natural and legal persons established in the third country where the Union delegation concerned is established. In addition, it may be decided under exceptional circumstances duly justified by the authorising officer responsible to allow third-country nationals or entities, to tender for contracts.

4. Participation in procurement procedures and performance of the contracts awarded shall be subject to conditions laid down in Regulation ***(EU) 2022/1031*** and in implementing acts (IPI measures) adopted under that Regulation.

Article 180

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.

CHAPTER 3

PROVISIONS APPLICABLE FOR PROCUREMENT IN THE FIELD OF EXTERNAL ACTIONS

Article 181

External action procurement

1. The general provisions on procurement set out in Chapter 1 of this Title shall apply to contracts covered by this Chapter subject to the special provisions relating to the arrangements for awarding external contracts laid down in Chapter 3 of Annex I. Articles 177 to 180 shall not apply to the procurement covered by this Chapter.

Subject to the exceptions and conditions specified in Annex I, 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 166, Article 167(1), points (a) and (b), and the second subparagraph of this paragraph shall only apply to procedures with a value equal to or greater than:

(a) EUR 300 000 for service and supply contracts;

(b) EUR 5 000 000 for works contracts.

2. This Chapter shall apply to:

(a) procurement where the Commission does not award contracts on its own account;

(b) procurement by persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c), where provided for in the contribution agreements or financing agreements referred to in Article 157.

3. The procurement procedures shall be laid down in the financing agreements provided for in Article 161.

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.

Article 182

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.

TITLE VIII

GRANTS

CHAPTER 1

SCOPE AND FORM OF GRANTS

Article 183

Scope and form of grants

1. This Title applies to grants awarded under direct management.

2. Grants may be 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).

Operating grants shall take the form of a financial contribution to the work programme of the body referred to in the first subparagraph, point (b).

3. Grants may take any of the forms provided for in Article 125(1).

Where the grant takes the form of financing not linked to costs pursuant to Article 125(1), first subparagraph, point (a):

(a) the provisions related to eligibility and verification of costs laid down in this Title, in particular Articles 185, 187 and 188, Article 189(2), (3) and (4), Article 193, Article 194(3), the provisions relating to an estimated budget or estimated eligible costs laid down in Article 199(1), point (e), and the provisions laid down in Article 206(4), shall not apply;

(b) as regards Article 184, only the procedure and the requirements referred to in paragraphs 2 and 3, paragraph 4, first subparagraph, points (a) and (d), and second subparagraph, point (a), and paragraph 5**,** of that Article shall apply.

4. Each Union institution may award public contracts or grants for communication activities. Grants may be awarded where the use of procurement is not appropriate due to the nature of activities.

5. The 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, Article 201(4), as far as financial capacity is concerned, and Article 199(1), points (a) to (d), shall not apply.

Article 184

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 Article 125(1), first subparagraph, point (c), (d) or (e), of this Title shall apply, with the exception of the provisions or parts of the provisions related to the verification of eligible costs actually incurred.

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 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 the Union institution concerned.

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 189(3), points (c), (e) and (f), and Article 189(4), and which shall exclude ineligible costs under the applicable Union rules;

(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, similar 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.

The methods referred to in the first subparagraph, point (c), shall ensure:

(a) the respect for 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 revenue 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 that 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 activities concerned 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.

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 the 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.

Article 185

Single lump sums

1. A lump sum as referred to in Article 125(1), first subparagraph, point (d), may cover the entire eligible costs of an action or a work programme (single lump sum).

2. In accordance with Article 184(4), single lump sums may be determined on the basis of the estimated budget of the action or work programme. Such estimated 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 184.

Article 186

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:

(a) 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;

(b) that the lump sums, unit costs or flat rates were indicated in the estimated overall budget of the action or work programme***;***

(c) that the conditions referred to in point (a) were fulfilled during the duration of the action or the work programme.

In addition, the fulfilment of those conditions may be subject to *ex post* controls.

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 184 shall not be challenged by *ex post* controls. This is without prejudice to the right of the authorising officer responsible to check that the conditions triggering the payment as referred to in the first subparagraph of this paragraph are fulfilled, and to reduce the grant in accordance with Article 132(4) where those conditions are not fulfilled or in the event of irregularity, fraud or a 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 Article 188(2) 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 129 and 187.

Article 187

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 184. The frequency and scope of assessments shall depend on the evolution and the nature of the costs, in particular taking into account substantial changes in market prices and other relevant circumstances.

Article 188

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 with the conditions set out in Article 184(4). That assessment may be carried out *ex ante* or by using an appropriate strategy for *ex post* controls.

2. If the compliance of the beneficiary's usual cost accounting practices with the conditions set out in Article 184(4) 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 Article 132(4).

3. The authorising officer responsible may consider that the usual cost accounting practices of the beneficiary comply with the conditions set out in Article 184(4) if they are accepted by national authorities under comparable funding schemes.

Article 189

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) the overall amount of financing not linked to costs in the case referred to in Article 125(1), first subparagraph, point (a);

   (b) estimated eligible costs, where possible, in the case referred to in Article 125(1), first subparagraph, point (b);

   (c) the overall amount of the estimated eligible costs clearly defined in advance in the form of lump sums, unit costs or flat rates as referred to in Article 125(1), first subparagraph, points (c), (d) and (e).

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 the first subparagraph, point (b), or as a percentage of the lump sums, unit costs or flat rate financing referred to in the first subparagraph, point (c).

Where the grant takes the form specified in the first subparagraph, point (b), of this paragraph 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 Article 158(4) and, where applicable, Article ***158(6)***.

2. Without prejudice to the maximum co-financing rate specified in the basic act:

   (a) the grant shall not exceed the eligible costs;

   (b) where the grant takes the form specified in paragraph 1, first subparagraph, point (b), and where the estimated eligible costs include costs for volunteers' work referred to in Article 184(8), the grant shall not exceed the estimated eligible costs other than the costs for volunteers' work.

3. Eligible costs actually incurred by the beneficiary, as referred to in Article 125(1), first subparagraph, point (b), 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;

   (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 of this Article, 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, where that guarantee is required by the authorising officer responsible pursuant to Article 156(1);

(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;

(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 within the meaning of Article 13(1), first subparagraph, of Council Directive 2006/112/EC[62];

(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.

[62] 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).

For the purposes of the second subparagraph, point (c):

(a) 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 point (i) or (ii), in respect of which VAT is not deductible but refunded by means of specific refund schemes or compensation funds not referred to in Directive 2006/112/EC, even if that scheme or fund is established by national VAT legislation;

(b) 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 within the meaning of Article 13(1), first subparagraph, 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.

Article 190

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 sole 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 Articles 138(1) and 143(1) 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.

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 otherwise provided in the call for proposals, entities affiliated to a beneficiary may participate in the implementation of the action, provided that both of the following conditions are fulfilled:

(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, OLAF 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.

CHAPTER 2

PRINCIPLES

Article 191

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.

Article 192

Transparency

1. Grants shall be awarded following a publication of calls for proposals, except in the cases referred to in Article 198.

2. All grants awarded in the course of a financial year shall be published in accordance with Article 38(1) to (4).

3. Following the publication referred to in paragraphs 1 and 2, when requested by the European Parliament and by the Council, the Commission shall forward a report to them on:

(a) the number of applicants in the preceding financial year;

(b) the number and percentage of successful applications per call for proposals;

(c) the average duration of the procedure from the date of closure of the call for proposals to the award of a grant;

(d) the number and amount of grants for which an *ex post* publication did not take place in the preceding financial year in accordance with Article 38(4);

(e) any grant awarded to financial institutions, including the EIB or the EIF in accordance with Article 198, first paragraph, point (g).

Article 193

Co-financing

1. Grants shall involve co-financing. As a result, the resources necessary to carry out the action or the work programme shall not be provided entirely by the grant.

Co-financing may be provided in 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. In-kind contributions from third parties in the form of volunteers' work valued in accordance with Article 184(8) shall be presented as eligible costs in the estimated budget. They shall be presented separately from other eligible costs. Volunteers' work may comprise up to 50 % of the overall co-financing. For the purposes of calculating that percentage, in-kind contributions and other co-financing shall be based on the estimates provided by the applicant.

Other in-kind contributions 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.

3. By way of derogation from 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, justification shall be provided in the award decision.

4. This Article shall not apply to interest rate rebates and guarantee fee subsidies.

Article 194

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.

4. In relation to the following types of 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 195

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. For the purposes of paragraph 1, a 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 Union 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.

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 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 Article 125(1), first subparagraph, point (a);

(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 incurred by the beneficiary in carrying out the action or work programme.

Article 196

Principle of non-retroactivity

1. Unless otherwise provided 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 Article 198, first paragraph, point (a) or (b), whereby an early intervention by the Union would be of major importance.

In the case referred to in the second subparagraph, point (b), the costs incurred by a beneficiary before the date of submission of the application shall be eligible for Union financing under the following conditions:

(a) the reasons for such derogation have been properly substantiated by the authorising officer responsible;

(b) the grant agreement explicitly sets the eligibility date earlier than the date for submission of applications.

The authorising officer by delegation shall report on each of the cases referred to in this paragraph under the heading 'Derogations from the principle of non-retroactivity pursuant to Article 196 of the Financial Regulation' in the annual activity report referred to in Article 74(9).

3. Grants shall not 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 incurred before the grant application was submitted or before the start of the beneficiary's financial year shall not be eligible for financing. The first instalment shall be paid to the beneficiary within 30 calendar days of the signature of the grant agreement.

CHAPTER 3

GRANT AWARD PROCEDURE AND GRANT AGREEMENT

Article 197

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.

2. The dates referred to in paragraph 1, point (e), 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 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.

3. Calls for proposals shall be published on the website of Union institutions and by any other appropriate means, including the *Official Journal of the European Union*, where it is necessary to provide additional publicity among potential beneficiaries. Calls for proposals 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 198

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 crisis management aid;

(b) in other exceptional and duly substantiated emergencies;

(c) to bodies with a *de jure* or *de facto* monopoly or to bodies designated by 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 or to bodies designated by Member States, under their responsibility, where those Member States are identified by a basic act as beneficiaries;

(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 powers, on condition that the activities concerned do not fall within the scope of a call for proposals;

(g) to the EIB or the EIF for actions of technical assistance. In such cases, Article 199(1), points (a) to (d), shall not apply.

Where the particular type of body referred to in the first paragraph, point (f), 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.

The cases referred to in the first paragraph, points (c) and (f), shall be duly substantiated in the award decision.

Article 199

Content of grant applications

1. The grant application shall contain the following:

(a) information on the legal status of the applicant, including whether it is a non-governmental organisation;

(b) a declaration on the applicant's honour in accordance with Article 139(1) and on compliance with the eligibility and selection criteria; ***such declaration shall not be required in the case of an application for a very low value grant;***

(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 that information, such as the profit and loss account and the balance sheet for up to the three last financial years for which the accounts were closed;

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 Article 201(5) or (6). 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, where it is available, and always in cases where a statutory audit is required by Union or national law, certifying the accounts for up to the last three available financial years. 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 three available financial years;

The first subparagraph of this point 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 of this point shall apply to each beneficiary.

In the case of partnerships referred to in Article 131(4), the audit report referred to in the first subparagraph of this point, 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 of this point for education and training establishments and, in the 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 of this point shall not apply to persons and entities eligible under indirect management to the extent that they comply with the conditions specified in Article 62(1), first subparagraph, point (b), and in Article 157;

(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.

By way of derogation from 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 the functioning of the applicant 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 Article 203(2).

Article 200

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 proposals:

   (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;

   (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 entities and that the entities offer guarantees for the protection of the financial interests of the Union 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 Article 183(5) and of this Article, the JRC shall be considered as a legal person established in a Member State.

Article 201

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.

2. The applicant shall have stable and sufficient sources of funding to maintain his or her activity throughout the period for which the grant is awarded and to participate in its funding (financial capacity).

3. The applicant shall 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 199.

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 or she shall request the applicant to provide any appropriate documents.

In the case of partnerships the verification shall be performed in accordance with Article 131(6).

5. The verification of financial capacity shall not apply to:

(a) natural persons in receipt of education support;

(b) natural persons most in need, such as unemployed persons and refugees, 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***;***

***(f) persons or entities applying for very low value grants.***

***Where an application is submitted by multiple applicants, the authorising officer responsible may, following a risk assessment, decide to check the financial capacity of only the lead applicant.***

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 202

Award criteria

The award criteria shall be such as to make it possible to:

(a) assess the quality of the proposals submitted in the light of the objectives and priorities set and of the expected results;

(b) award grants to the actions or to the work programmes which maximise the overall effectiveness of the Union funding;

(c) evaluate the grant applications.

Article 203

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.

3. The evaluation committee referred to in Article 153 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 154. 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.

6. The authorising officer responsible shall, on the basis of the evaluation, take his or her decision giving at least:

(a) the subject and the overall amount of the decision;

(b) the names 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 awarded pursuant to Article 198, the authorising officer responsible may:

(a) decide not to apply paragraphs 2 and 4 of this Article and Article 153;

(b) merge the content of the evaluation report and the award decision into a single document and sign it.

Article 204

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 the financial year of the funding;

(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;

(f) the rules regarding reporting and payments and the procurement rules provided for in Article 208;

(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 Union law, complemented, where necessary, by national law as specified in the grant agreement. Derogation may be made in the grant 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 Article 100(2).

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 principle of equal treatment of applicants.

## CHAPTER 4

## IMPLEMENTATION OF GRANTS

### Article 205

### 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, OLAF or the Court of Auditors. Article 132(4) shall apply also after the amount of the grant has become final.

2. Where controls or audits demonstrate systemic or recurrent irregularities, fraud or a 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 grant agreements concerned with that beneficiary, having regard to the seriousness of the findings.

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.

Article 206

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.

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 the 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.

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 operational 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 207

Financial support to third parties

Where implementation of an action or a work programme requires the provision of financial support to third parties, the beneficiary may provide such financial support if the conditions for such provision are defined in the grant agreement between the beneficiary and the Commission, with no margin for discretion by the beneficiary.

No margin for discretion shall be considered to exist 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;

(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 for providing it.

The threshold referred to in the second paragraph, point (a), may be exceeded in the case of humanitarian aid, emergency support operations, civil protection operations, crisis management aid or where achieving the objectives of the actions would otherwise be impossible or overly difficult.

***The authorising officer responsible shall provide information on the cases referred to in the third paragraph of this Article in the annual activity report referred to in Article 74(9).***

Article 208

Implementation contracts

1. Without prejudice to Directives 2014/24/EU and 2014/25/EU, where the implementation of the action or work programme requires the award of a 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 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.

TITLE IX

PRIZES

Article 209

General rules

1. Prizes shall be awarded in accordance with the principles of transparency and equal treatment and shall promote the achievement of policy objectives of the Union.

2. Prizes shall 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 to 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 awarded to third parties by a beneficiary, that beneficiary may award such prizes provided that the eligibility and award criteria, the amount or type of the prizes and the payment or delivery arrangements are defined in the grant agreement between the beneficiary and the Commission, with no margin for discretion.

Article 210

Rules of contest, award and publication

1. Rules of contests shall:

(a) specify the eligibility criteria;

(b) specify the arrangements and the final date for the registration of applicants, if required, and for the submission of applications;

(c) specify the exclusion criteria as set out in Article 138 and the grounds for rejection set out in Article 143;

(d) provide for the sole liability of the applicant in the event of a claim relating to the activities carried out in the framework of the contest;

(e) provide for acceptance by the winners of the obligations referred to in Article ***128*** and of the publicity obligations as specified in the rules of the contest;

(f) specify 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 are successful;

(g) specify the amount or type of the prize or prizes;

(h) specify the arrangements for the payment or delivery of prizes to the winners after their award.

For the purposes of the first subparagraph, point (a), beneficiaries shall be eligible, unless stated otherwise in the rules of contest.

Article 197(3) 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 153.

Article 203(4) and (6) shall apply *mutatis mutandis* to the award decision.

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 the course of a financial year shall be published in accordance with Article 38(1) to (4).

When requested by the European Parliament and by the Council following the publication, 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.

TITLE X

FINANCIAL INSTRUMENTS, BUDGETARY GUARANTEES AND FINANCIAL ASSISTANCE

CHAPTER 1

COMMON PROVISIONS

Article 211

Scope and implementation

1. Where it proves to be the most appropriate way to achieve policy objectives of the Union, the Union may establish financial instruments or provide budgetary guarantees or financial assistance backed by the budget by means of a basic act defining their scope and period of implementation.

2. Member States may contribute to the Union's financial instruments, budgetary guarantees or financial assistance. If authorised by the basic act, third parties may also contribute.

3. Where financial instruments or budgetary guarantees are implemented under direct management, the Commission shall ensure compliance *mutatis mutandis* with Article 158(2) with respect to financial intermediaries and final recipients.

4. Where financial instruments are implemented under shared management with Member States, sector-specific rules shall apply.

5. Where financial instruments or budgetary guarantees are implemented under indirect management, the Commission shall conclude agreements with entities pursuant to Article 62(1), first subparagraph, points (c)(ii), (iii), (v) and (vi). Where the systems, rules and procedures of those entities have been assessed pursuant to Article 157(3) and (4), they may fully rely on those systems, rules and procedures. Those entities may, when implementing financial instruments and budgetary guarantees under indirect management, conclude agreements with financial intermediaries which shall be selected in accordance with procedures equivalent to those applied by the Commission. Those entities shall transpose the requirements pursuant to Article 158(2) in those agreements.

The Commission shall remain responsible for ensuring that the implementation framework for financial instruments and budgetary guarantees complies with the principle of sound financial management and supports the attainment of defined and time-bound policy objectives, measurable in terms of outputs and/or results. The Commission shall be accountable for the implementation of financial instruments and budgetary guarantees without prejudice to the entrusted entities' legal and contractual responsibility in accordance with the applicable law and Article 129.

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.

6. The Court of Auditors shall have full access to any information related to the financial instruments, budgetary guarantees and financial assistance, including by means of on-the-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 212

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.

2. Financial instruments and 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 private sources;

(c) not distort competition in the internal market and be consistent with State aid rules;

(d) achieve a leverage and a multiplier effect, with a target range of values based on an *ex ante* evaluation for the corresponding financial instrument or budgetary guarantee, by mobilising a global investment exceeding the size of the Union contribution or guarantee, including, where appropriate, the maximisation of private investment;

(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 on for example co-investment, risk sharing requirements or financial incentives, while preventing a conflict of interests with other activities of the entities or counterparts;

(f) provide for 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 the counterparts involved in the implementation is due, provide that such remuneration is performance-based and comprises:

(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 the amounts disbursed; and

(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, containing 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.

The evaluations referred to in the first subparagraph, point (h), shall be reviewed and updated to take into account the effect of major socioeconomic changes on the rationale of the financial instrument or budgetary guarantee.

3. Without prejudice to sector-specific rules for shared management, revenue, including dividends, capital gains, guarantee fees and interest on loans and on amounts on fiduciary accounts paid back to the Commission or on 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.

Annual repayments, including capital repayments, guarantees released, and repayments of the principal of loans, paid back to the Commission or to 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(3), point (f), and shall be used for the same financial instrument or budgetary guarantee, without prejudice to Article ***218(4)***, for a period not exceeding the period for the budgetary commitment plus two years, unless otherwise specified 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 provided in the basic act establishing that financial instrument.

4. The authorising officer responsible for a financial instrument, a budgetary guarantee or a financial assistance shall produce a financial statement covering the period 1 January to 31 December, in accordance with Article 249 and in compliance with the accounting rules referred to in Article 80 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 with IPSAS, as well as any information necessary to produce financial statements in accordance with Article 82(2), be provided by the entities pursuant to Article 62(1), first subparagraph, points (c)(ii), (iii), (v) and (vi), by 15 February of the following financial year and that audited financial statements be provided by those entities by 15 April of the following financial year.

5. Where financial instruments or budgetary guarantees are combined within a single agreement with ancillary support from the budget, including grants, this Title shall apply to the whole measure. The reporting shall be carried out in accordance with Article 41(4) and (5) and shall clearly identify which parts of the measure are financial instruments or budgetary guarantees.

Article 213

Financial liability of the Union

1. The financial liability and aggregate net payments from the budget 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 funds that the Commission is empowered to borrow for funding the financial assistance as authorised by the basic act, and the relevant interest.

2. Budgetary guarantees and financial assistance may generate a contingent liability for the Union which shall only exceed the financial assets provided to cover the financial liability of the Union if provided for in a basic act establishing a budgetary guarantee or financial assistance and under the conditions set out therein.

3. For the purposes of the annual assessment provided for in Article ***256***, the contingent liabilities arising from budgetary guarantees or financial assistance borne by the budget shall be deemed sustainable, if their forecast multiannual evolution is compatible with the limits set by the regulation laying down the multiannual financial framework provided for in Article 312(2) TFEU and the ceiling on annual payment appropriations set out in Article 3(1) of Decision (EU, Euratom) 2020/2053.

Article 214

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. That amount shall exclude the contributions referred to in Article 211(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 arising 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.

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 in advance to cover the net expected losses and, in addition, an adequate safety buffer. Without prejudice to the powers of the European Parliament and of the Council, the global provisioning shall be constituted over the period of time foreseen in the relevant financial statement as referred to in Article 35.

3. For a financial instrument 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 budget, while fully respecting the regulation laying down the multiannual financial framework 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;

(d) revenue 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 211(2).

Only the resources referred to in the first subparagraph, points (a) to (d), of this paragraph 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 223(1);

(d) where applicable, other expenses associated to the implementation of financial instruments, budgetary guarantees and financial assistance to third countries.

6. Where the provisions for a budgetary guarantee exceed the amount of provisioning resulting from the provisioning rate referred to in paragraph 1 of this Article, resources referred to in paragraph 4, first subparagraph, points (b), (c) and (d), of this Article 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 216(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 referred to in paragraph 1, and again where it falls below 30 % of that provisioning rate, or where it could fall below any of those percentages 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.

Article 215

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.

The financial management of the assets of the common provisioning fund shall be entrusted to the Commission

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.

The financial manager of the resources of the common provisioning fund 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 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 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 Article 77(1), first subparagraph, point (d), and Article 86(1) and (2), 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, to the assets and liabilities related to the common provisioning fund.

4. In the exceptional cases where the Commission has made a transfer as referred to in Article 30(1), first subparagraph, point (g), 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, while fully respecting the ceilings provided for in the regulation laying down the multiannual financial framework.

Article 216

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. That 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.

2. The effective provisioning rate applicable shall be a percentage of each initial provisioning rate determined in accordance with Article 214(2), second subparagraph. 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. That 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 global provisioning in accordance with Article 214(2), second subparagraph;

   (b) the risk correlation among the budgetary guarantees and the financial assistance to third countries;

   (c) the market conditions.

The Commission shall by 1 July 2020 adopt delegated acts in accordance with Article 275 to supplement this Regulation with detailed conditions for the calculation of the effective provisioning rate, including a methodology for that calculation.

The Commission is empowered to adopt delegated acts in accordance with Article 275 to amend the minimum ratio referred to in the first subparagraph of this paragraph in the light of the experience gained with the operation of the common provisioning fund while maintaining a prudent approach in line with the principle of sound financial management. The minimum ratio shall not be set at a level lower than 85 %.

3. The effective provisioning rate shall be calculated annually by the financial manager of the resources of the common provisioning fund and shall be the reference for the Commission's calculation of the contributions from the budget pursuant to Article 214(4), point (a), and, subsequently, paragraph 4, point (b), of this Article.

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 budgetary procedure shall be made and presented in the working document referred to in Article 41(5), point (h):

   (a) any surplus of provisions for a budgetary guarantee or a financial assistance to a third country shall be returned to the budget;

   (b) any replenishment of the fund shall be carried out in annual tranches during a maximum period of three years, without prejudice to Article 214(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 to the Council.

Article 217

Annual reporting

1. In addition to the reporting obligation laid down in Article ***256***, the Commission shall report annually to the European Parliament and to the Council on the common provisioning fund.

2. The report referred to in paragraph 1 shall include information about the financial management, the performance and the risk of the common provisioning fund at the end of the preceding calendar year as well as the financial flows in the common provisioning fund during the preceding calendar year, the significant transactions and any relevant information on the financial risk exposure of the Union.

CHAPTER 2

SPECIFIC PROVISIONS

SECTION 1

FINANCIAL INSTRUMENTS

Article 218

Rules and implementation

1. Notwithstanding Article 211(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 Article 41(4), first subparagraph, point (e).

2. 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.

3. 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. However, irrespective of the size and value of the Union participation in the instrument, the Commission shall ensure compliance with Articles 129 and 158, Article 212(2) and (4), Article 41(4) and, insofar as the exclusion situations referred to in Article 138(1), point (d), are concerned, Section 2 of Chapter 2 of Title V.

4. 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 212(3) shall be considered as general revenue and returned to the budget.

5. 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.

6. 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.

Article 219

Financial instruments directly implemented by the Commission

1. Financial instruments may be directly implemented pursuant to Article 62(1), first subparagraph, point (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 referred to in paragraph 1, point (a), shall be established pursuant to the laws of a Member State. In the field of external actions, 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 contractually to act with the diligence of a professional manager and in good faith.

3. The managers of dedicated investment vehicles referred to in paragraph 1, point (a), and financial intermediaries or final recipients of financial instruments shall be selected with due account to the nature of the financial instrument to be implemented, the experience and the financial and operational capacity of the entities concerned, and the economic viability of projects of final recipients. The selection shall be transparent, justified on objective grounds and shall not give rise to a conflict of interests.

Article 220

Combination with funds implemented under shared management

1. Separate records shall be kept in case of combination of funds implemented under shared management with support from financial instruments established under this Section.

2. 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 combinations are made.

3. As regards combinations of funds implemented under shared management with support from financial instruments established under this Section, sector-specific rules shall apply.

SECTION 2

BUDGETARY GUARANTEES

Article 221

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 211(2);

   (b) the types of operations covered by the budgetary guarantee.

2. Contributions from Member States to budgetary guarantees pursuant to Article 211(2) may be provided in the form of guarantees or cash.

Contributions from third parties to budgetary guarantees pursuant to Article 211(2) may be provided in the form of cash.

The budgetary 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.

Article 222

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), first subparagraph, point (c), or, in exceptional cases, pursuant to Article 62(1), first subparagraph, point (a),.

3. A budgetary guarantee shall only cover financing and investment operations which comply with Article 212(2), first subparagraph, points (a) to (d).

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) a risk assessment and grading information concerning the operations covered by the budgetary guarantee as well as expected defaults;

(b) information on the outstanding financial obligation arising for the Union from the budgetary guarantee, broken down by individual operations;

(c) the total profits or losses deriving from the operations covered by the budgetary guarantee.

SECTION 3

FINANCIAL ASSISTANCE

Article 223

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 that 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.

▌

2. The financial assistance shall be carried out in euro, except in duly justified cases.

3. The financial assistance shall be directly implemented by the Commission.

4. 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 the pre-defined conditions, takes appropriate measures to prevent irregularities and fraud, and, if necessary, takes legal action to recover any funds provided under the financial assistance that have been misappropriated;

(b) ensuring the protection of the financial interests of the Union;

(c) expressly authorising the Commission, OLAF and the Court of Auditors, to exert their rights as foreseen by Article 129;

(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 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.

5. 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 fulfilled, the Commission shall temporarily suspend or cancel the disbursement of the financial assistance.

*Article 224*

*Diversified funding strategy*

***1. The Commission shall implement a diversified funding strategy comprising borrowings authorised under Article 5(1) of Decision (EU, Euratom) 2020/2053 and, except in duly justified cases, borrowing and debt management operations to fund programmes of financial assistance. The diversified funding strategy shall be implemented through all necessary transactions aiming at a regular capital market presence, shall be based on pooling of funding instruments and shall make use of a common liquidity pool.***

***2. The Commission shall establish the necessary arrangements for the implementation of the diversified funding strategy. The Commission shall regularly and comprehensively inform the European Parliament and the Council about all aspects of its borrowing and debt management strategy.***

TITLE XI

CONTRIBUTIONS TO EUROPEAN POLITICAL PARTIES

Article 225

General provisions

Direct financial contributions from the budget may be awarded to European political parties as defined in Article 2, point (3), of Regulation (EU, Euratom) No 1141/2014 (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 that Regulation.

Article 226

Principles

1. Contributions shall be used to reimburse only 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 interests 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 such entities are part of the administrative organisation of European political parties as set out in the statutes of the latter. Contributions shall not be used for any of the purposes excluded by Article 22 of Regulation (EU, Euratom) No 1141/2014.

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 shall the same expenditure be financed twice by the budget.

   Contributions shall be without prejudice to the ability of the European political parties to build up reserves with amounts from their own resources in accordance with Regulation (EU, Euratom) No 1141/2014.

7. If a European political foundation as defined in Article 2, point (4), 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.

Article 227

Budgetary aspects

Contributions, as well as appropriations set aside for independent external audit bodies or experts referred to in Article 23 of Regulation (EU, Euratom) No 1141/2014, shall be paid from the section of the budget relating to the European Parliament.

Article 228

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 Regulation (EU, Euratom) No 1141/2014, as well as the exclusion criteria.

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 229

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, at the time of the award procedure, are in one or more of the situations referred to in Articles 138(1) and 143(1) and those who are registered as excluded in the database referred to in Article 144.

3. Applicants shall be required to certify that they are not in one of the situations referred to in paragraph 2.

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.

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 5 of this Article and Article 228(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 in Article 134(2).

8. Contributions shall be covered by a written agreement.

Article 230

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;

   (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 229(8) shall include provisions that allow verifying that the conditions for the award of lump sums, flat-rate financing or unit costs have been complied with.

4. The contributions shall be paid out in full through one single pre-financing payment, unless, in duly justified cases, the authorising officer responsible decides otherwise.

Article 231

Guarantees

The authorising officer responsible may, if he or she deems it appropriate and proportionate, on a case-by-case basis and subject to a risk analysis, require a European political party to lodge a guarantee in advance in order to limit the financial risks connected with the pre-financing payment only when, in the light of the risk analysis, the European political party is at imminent risk of being in one of the exclusion situations referred to in Article 138(1), points (a) and (d), of this Regulation or when a decision of the Authority for European political parties and European political foundations established under Article 6 of Regulation (EU, Euratom) No 1141/2014 (the 'Authority') has been communicated to the European Parliament and to the Council in accordance with Article 10(4) of that Regulation.

Article 156 shall apply *mutatis mutandis* to guarantees which may be required in the cases foreseen in the first paragraph of this Article to pre-financing payments made to European political parties.

Article 232

Use of contributions

1. Contributions shall be spent in accordance with Article 226.

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 contributions from the previous year shall not be used to finance the part which European political parties are to 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.

5. Any interest yielded by the pre-financing payments shall be considered as part of the contribution.

Article 233

Report on the use of the contributions

1. A 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) 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.

Article 234

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 233(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 pre-financing 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.

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 229(8) of this Regulation, 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.

Article 235

Control and penalties

1. Each agreement referred to in Article 229(8) shall provide expressly for the European Parliament to exercise its powers of control on documents and on the premises, as well as for OLAF 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 138 and 139 of this Regulation and with Article 27 of Regulation (EU, Euratom) No 1141/2014.

Article 236

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 OLAF investigations, if notified to the recipient, shall be retained until the end of such audits, appeals, litigation, settlement of claims or investigations.

Article 237

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 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.

TITLE XII

OTHER BUDGET IMPLEMENTATION INSTRUMENTS

Article 238

Union trust funds for external actions

1. For emergency and post-emergency actions necessary to react to a crisis, or for thematic actions, the Commission may establish Union trust funds for external actions (Union trust funds) under an agreement concluded with other donors.

Union trust funds shall only be established where agreements with other donors have secured contributions from other sources than the budget.

The Commission shall consult the European Parliament and the Council on its intention to establish a Union trust fund for emergency and post-emergency actions.

The establishment of a Union trust fund for thematic actions shall be subject to the approval of the European Parliament and of the Council.

For the purposes of the third and fourth subparagraphs of this paragraph, the Commission shall make available to the European Parliament and to the Council its draft decisions concerning the establishment of a Union trust fund. Such draft decisions shall include a description of the objectives of the Union trust fund, the justification for its establishment in accordance with paragraph 3, an indication of its duration and the preliminary agreements with other donors. The draft decisions 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 to the Council for consultation or for approval under the third, fourth and fifth subparagraphs of paragraph 1 respectively.

3. Union trust funds shall only be established and implemented subject to the following conditions:

   (a) there is added value of the Union intervention: the objectives of Union trust funds, in particular by reason of their scale or potential effects, may be better achieved at Union level than at national level and the use of the existing financing instruments would not be sufficient to achieve policy objectives of the Union;

   (b) Union trust funds bring clear political visibility for the Union and managerial advantages as well as better control by the Union of risks and disbursements of the Union and other donors' contributions;

   (c) Union trust funds do not duplicate other existing funding channels or similar instruments without providing any additionality;

   (d) the objectives of Union trust funds are aligned with the objectives of the Union instrument or budgetary item from which they are funded.

4. A board chaired by the Commission shall be established for each Union trust fund to ensure a fair representation of the donors and to decide upon the use of the funds. The board shall include a representative of each non-contributing Member State as an observer. The rules for the composition of the board and its internal rules shall be laid down in the constitutive agreement of the Union trust fund. Those rules shall include the requirement that a vote in favour by the Commission is needed for the final adoption of the decision on the use of the funds.

5. Union trust funds shall be established for a limited duration as determined in their constitutive agreement. That 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 the extension, confirming, in particular, that the conditions set out in paragraph 3 are complied with.

The European Parliament and/or the Council may request the Commission to discontinue appropriations for a Union trust fund or to revise the constitutive agreement with a view to the liquidation of a Union trust fund, where appropriate in particular on the basis of the information submitted in the working document referred to 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.

Article 239

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 of the Council.

2. Actions financed under Union trust funds may be implemented directly by the Commission pursuant to Article 62(1), first subparagraph, point (a), and indirectly with the entities implementing Union funds pursuant to Article 62(1), first subparagraph, points (c)(i), (ii), (iii), (v), and (vi).

3. Funds shall be committed and paid by financial actors of the Commission, within the meaning of Chapter 4 of Title IV. The accounting officer of the Commission shall serve as the accounting officer of the Union trust funds. 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, OLAF and the Court of Auditors shall exercise the same powers over Union trust funds as they do in respect of other actions carried out by the Commission.

4. The contributions of the Union and of other donors shall not be integrated in the budget and shall be lodged in a specific bank account. The specific bank account of the Union 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 Union trust fund.

   Union contributions 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 shall 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 Union trust fund and for the amount in euro resulting from the conversion at their reception on the specific bank account. Interests accumulated on the specific bank account of the Union trust fund shall be invested in the Union trust fund except where otherwise provided in the constitutive agreement of the Union trust fund.

5. The Commission shall be authorised to use a maximum of 5 % of the amounts pooled into the Union 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 and in order to avoid the double charging of costs, management costs arising from the Union contribution to the Union trust fund shall only be covered by that contribution to the extent that those costs have not already been covered by other budget lines. For the duration of the Union trust fund, such management fees shall be assimilated to assigned revenue within the meaning of Article 21(2), point (a)(ii).

In addition to the annual report referred to in Article 258, financial reporting on the operations carried out by each Union 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 Union trust fund.

The Union trust funds shall be subject to an independent external audit every year.

Article 240

Union contributions to global initiatives

1. ***With a view to appropriately coordinating actions with multiple partners to address global challenges,*** the Union may make contributions in the form of financing not linked to costs to multi-donor, pooled funded global initiatives when these support the achievement of Union policy objectives and where ***other*** budget implementation instruments ▌ would not be sufficient to achieve such objectives. ***Where possible and appropriate, the Commission shall join any governance board or equivalent steering committee***.

***2. Prior to any decision to contribute to a global initiative and as early as possible, the Commission shall inform the European Parliament and the Council about the amount of the contribution to the global initiative under the relevant basic act, explaining the reasons and appropriateness of the contribution, including how the contribution would provide visibility for the Union through the Union funding.***

3. Union contributions to global initiatives shall be subject to the following conditions, taking into account the nature of the Union financing:

(a) the Union contribution is a minority contribution to the initiative, taking into account the global amount contributed to the initiative at the time of the contribution;

(b) the Union contribution is treated on equal footing with donors of a similar magnitude and, where one or several Member States also contribute to the initiative, the Union contribution benefits from a level of protection no less favourable than the contribution(s) of that or those Member States;

(c) there is adequate reporting on the results achieved by the initiative, including through relevant ***output and impact*** indicators;

(d) the initiative operates under rules ensuring sound financial management, transparency, non-discrimination and equal treatment in the use of Union funds in accordance with the principle of proportionality;

(e) there are appropriate ***internal and external*** systems to prevent and combat irregularities and fraud as well as to report on their functioning at regular intervals, and there are appropriate rules for the recovery of funds by the initiative, including the use of such funds for the same initiative.

In the event of suspected cases of serious irregularities such as fraud, corruption or conflict of interests, the authorising officer responsible, the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, OLAF***, audit authorities of the Commission*** and the Court of Auditors shall, ***under*** the rules of the initiative, ***be provided with relevant*** information and carry out joint audit, control, or investigative missions with the relevant body under the initiative, in line with Article 129.

4. A justification of the conditions set out in paragraph 3, first subparagraph, shall be included in the financing decision to contribute to the initiative.

5. The procedure laid down in Article 157(6) shall apply *mutatis mutandis* to the Union contribution to the global initiative.

Article 241

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 the conditions referred to in paragraph 1, including the improvement of the management of public finances. In addition, some payments may also be conditional on the achievement of milestones, measured by objective performance indicators, reflecting results and reform progress over time in the respective sector.

3. In third countries, the Commission shall support the respect for the rule of law, the development of parliamentary control and audit and anti-corruption capacities and the increase of 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) a right for the Commission to suspend the financing agreement if the third country breaches an obligation relating to respect for human rights, democratic principles and the rule 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 that country.

In order to process the reimbursement referred to in the first subparagraph, point (c), of this paragraph, Article 101(1), second subparagraph, may be applied.

Article 242

Remunerated external experts

1. Union institutions may select and remunerate external experts to assist them in the evaluation of grant applications, projects and tenders, and to provide opinions and advice in specific cases.

2. A call for expression of interest shall be published on the website of the Union institution concerned.

The call for expression of interest shall include a description of the tasks, their duration and the fixed conditions of remuneration.

3. 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.

4. A list of experts shall be drawn up following the call for expression of interest. It shall be valid for no more than 5 years from its publication or for the duration of a multiannual programme related to the tasks. The validity of the list may be longer than the duration of the multiannual financial programme when a rotation of the experts is ensured.

5. The value of the contract shall be below the thresholds referred to in Article 178(1). This value may be exceeded only exceptionally and in duly justified cases, in order to allow Union institutions to compete on equal footing with other actors in the market.

6. Remunerated external 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.

7. For the purpose of Section 2 of Chapter 2 of Title V, such experts shall be treated as recipients.

Article 243

Non-remunerated experts

Union institutions may reimburse travel and subsistence expenses incurred by, or where appropriate pay any other indemnities to, persons invited or mandated by them.

Article 244

Non-financial donations

1. Union institutions and Union bodies may provide non-financial donations in the form of services, supplies or works.

2. Non-financial donations shall be awarded in accordance with the principles of transparency and equal treatment and where applicable, with the requirements set out in sector-specific rules. They shall promote the achievement of policy objectives of the Union.

***3. The authorising officer responsible shall provide information on non-financial donations in the annual activity report referred to in Article 74(9).***

***4. In the case of non-perishable supplies financed from administrative appropriations and in compliance with the accounting rules and standards referred to in Article 80, Union institutions and bodies may not provide non-financial donations before the supply has been partially depreciated.***

Article 245

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 246

Expenditure on the members and staff of Union institutions

Unions institutions may pay expenditure on the members and staff of Union institutions, including contributions to associations of current and former members of the European Parliament, and contributions to the European schools.

TITLE XIII

ANNUAL ACCOUNTS AND OTHER FINANCIAL REPORTING

CHAPTER 1

ANNUAL ACCOUNTS

SECTION 1

ACCOUNTING FRAMEWORK

Article 247

Structure of the accounts

The annual accounts of the Union shall be prepared for each financial year which shall run from 1 January to 31 December. Those 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 Union institutions, of Union 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 Union institutions.

Article 248

Supporting documents

Each entry in the accounts shall be based on appropriate supporting documents in accordance with Article 75.

Article 249

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 and 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 financial year;

(b) the statement of financial performance, which presents the economic result for the preceding financial year;

(c) the cash-flow statement showing amounts collected and disbursed during the financial year and the final treasury position;

(d) the statement of changes in net assets presenting an overview of the movements during the financial year in reserves and accumulated results.

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.

## SECTION 2

## BUDGET IMPLEMENTATION REPORTS

### Article 250

### 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 financial year in terms of revenue and expenditure;

(b) the budget result, which is calculated on the basis of the annual budgetary balance referred to in Decision (EU, Euratom) 2020/2053;

(c) explanatory notes, which shall supplement and comment on the information given in the reports.

2. The structure of the budget implementation reports shall be the same as that of the budget itself.

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 preceding financial year and those made during the financial year.

4. As regards information on revenue, a statement shall be attached to the budget implementation report 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.

SECTION 3

ANNUAL ACCOUNTS TIMETABLE

Article 251

Provisional accounts

1. The accounting officers of the Union institutions other than the Commission and the bodies referred to in Article 247 shall, by 1 March of the following financial year, send their provisional accounts to the accounting officer of the Commission and to the Court of Auditors.

2. The accounting officers of the Union institutions other than the Commission and the bodies referred to in Article 247 shall, by 1 March of the following financial year, send 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 the provisional accounts referred to in paragraph 2 with the provisional accounts of the Commission and shall, by 31 March of the following financial year, send the provisional accounts of the Commission and the consolidated provisional accounts of the Union to the Court of Auditors by electronic means.

Article 252

Approval of the final consolidated accounts

1. The Court of Auditors shall, by 1 May, make its observations on the provisional accounts of the Union institutions other than the Commission, and of each of the bodies referred to in Article 247, and, by 15 May, make its observations on the provisional accounts of the Commission and the consolidated provisional accounts of the Union.

2. The accounting officers of the Union institutions other than the Commission and of the bodies referred to in Article 247 shall, by 15 May, send 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 247, shall, by 1 June, send their final accounts to the European Parliament, to the Council, to the Court of Auditors and to the accounting officer of the Commission.

3. The accounting officer of each Union institution and of each body referred to in Article 247 shall 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.

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 the bodies referred to in Article 247.

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, by 30 June, send them by electronic means to the European Parliament, to the Council and to the Court of Auditors.

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.

The Court of Auditors shall adopt its opinion on the reliability of the annual accounts of the Union and the accounts of each of the institutions and bodies referred to in Article 247 by 31 July.

6. The final consolidated accounts shall be published by 15 November 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.

## CHAPTER 2

## INTEGRATED FINANCIAL AND ACCOUNTABILITY REPORTING

### Article 253

### Integrated financial and accountability reporting

1. By 31 July of the following financial year the Commission shall communicate to the European Parliament and to the Council an integrated set of financial and accountability reports which includes:

(a) the final consolidated accounts as referred to in Article 252;

(b) the annual management and performance report providing for a clear and concise summary of the internal control and financial management achievements referred to in the annual activity reports of each authorising officer by delegation and including information on key governance arrangements in the Commission as well as:

(i) an estimation of the level of error in Union expenditure based on a consistent methodology and an estimate of future corrections;

(ii) information on the preventive and corrective actions covering the budget, which shall present the financial impact of the actions taken to protect the budget from expenditure in breach of law;

(iii) information on the implementation of the Commission's anti-fraud strategy;

(c) a long-term forecast of future inflows and outflows covering the next five years, based on the applicable multiannual financial frameworks and Decision (EU, Euratom) 2020/2053;

(d) the annual internal audit report as referred to in Article 118(8);

(e) the evaluation on the Union's finances based on the results achieved, as referred to in Article 318 TFEU, assessing in particular the progress towards the achievement of policy objectives taking into account the performance indicators referred to in Article 33 of this Regulation;

(f) the report on the follow-up to the discharge as referred to in Article 268(2)**.**

**▌**

2. The integrated financial and accountability reporting 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 European Parliament, to the Council and to the Court of Auditors by 30 June, with the exception of the final consolidated accounts.

CHAPTER 3

BUDGETARY AND OTHER FINANCIAL REPORTING

Article 254

Monthly reporting on budget implementation

In addition to the annual statements and reports provided for in Articles 249 and 250, the accounting officer of the Commission 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 budget implementation, both for revenue and for expenditure covering all available appropriations. Those figures shall also provide details of the use of appropriations carried over.

The figures shall be made available within 10 working days of the end of each month via the Commission's website.

Article 255

Annual report on budgetary and financial management

1. Each Union institution and each body referred to in Article 247 shall prepare a report on budgetary and financial management for the financial year.

They shall make the report available to the European Parliament, to the Council and to 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 budgetary items.

***Article 256***

***Annual report on contingent liabilities arising from budgetary guarantees and financial assistance and the sustainability of those contingent liabilities***

***The Commission shall report annually to the European Parliament and to the Council on contingent liabilities arising from budgetary guarantees and financial assistance and, pursuant to Article 213(3), on the assessment of the sustainability of these contingent liabilities borne by the budget. That information shall be made available to the Court of Auditors at the same time.***

Article 257

Status report on accounting issues

By 15 September of each financial 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 and progress on accounting matters, including where identified by the Court of Auditors, as well as information on recoveries.

Article 258

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 Union trust funds referred to in Article 238, on their implementation and performance, as well as on their accounts.

The Board of the Union trust fund concerned shall approve the annual report of the Union trust fund drawn up by the authorising officer. It shall also approve the final accounts drawn up by the accounting officer. The final accounts shall be presented by the Board to the European Parliament and Council in the context of the discharge procedure for the Commission.

Article 259

Publication of information on recipients

The Commission shall publish information on recipients in accordance with Article 38.

TITLE XIV

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

EXTERNAL AUDIT

Article 260

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 261

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 relevant acts adopted pursuant to the Treaties. That examination may take account of the multiannual character of programmes and related supervisory and control systems.

2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 263, all documents and information relating to the financial management by 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 those departments or bodies. The audit in 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 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 by 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 budget implementation by, or on behalf of, any Union institution.

   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 Union institutions and the authorities to which this Regulation applies of the names of the members of its staff who are empowered to audit them.

Article 262

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.

Article 263

Court of Auditors' right of access

1. 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 it considers necessary for the performance of its task. They shall, at the request of the Court of Auditors, place at its disposal 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 of Auditors' right of access shall include access to the IT system used for the management of revenue or expenditure subject to its audit, where such access 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.

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 261.

The information supplied under the first subparagraph, point (b), 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 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.

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 use, by bodies outside Union institutions, of Union funds received by way of contributions.

5. Union financing paid to recipients outside 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, at the request of the Court of Auditors, provide it 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 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.

Article 264

Annual report of the Court of Auditors

1. The Court of Auditors shall transmit to the Commission and the other Union institutions concerned, by 30 June, any observations which are, in its opinion, such that they should appear in its 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 of the Court of Auditors shall contain an assessment of the soundness of financial management.

3. The annual report of the Court of Auditors shall contain a section for each Union institution and for 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 Union institutions and shall ensure publication thereof in the *Official Journal of the European Union*.

Article 265

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 of the Union institution or body concerned, the replies may be examined by the European Parliament and by the Council after publication of the report.

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 Article 287(4), second subparagraph, 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.

CHAPTER 2

DISCHARGE

Article 266

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. Where the deadline provided for in paragraph 1 cannot be complied with, the European Parliament or the Council shall inform the Commission of the reasons therefor.

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.

Article 267

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 giving 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.

Article 268

Follow-up measures

1. In accordance with Article 319 TFEU and Article 106a of the Euratom Treaty, Union institutions and Union 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 of the Council, Union institutions and Union bodies referred to in Articles 70 and 71 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 budget implementation. 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 Union institutions and Union bodies referred to in Articles 70 and 71 shall also be transmitted to the Court of Auditors.

Article 269

Specific provisions regarding the EEAS

The EEAS shall be subject to the procedures provided for in Article 319 TFEU and in Articles 266, 267 and 268 of this Regulation. The EEAS shall fully cooperate with 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 270

General provisions

1. Administrative appropriations shall be non-differentiated appropriations.

2. This Title applies to the administrative appropriations referred to in in Article 47(4) and to those of Union institutions other than the Commission.

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).

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 for 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 members of Union institutions, to staff and to members of Union institutions.

Article 271

Payments made in advance

Expenditure referred to in Article 11(2) which is to 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 that case, the limit set out in Article 11(2), point (a), shall not apply.

Article 272

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 but not the other charges;

(b) the expected evolution of the global programming of surface area***, taking account of trends in teleworking,*** and locations for the coming years with a description of the building projects in planning phase which are already identified ***and an assessment of the evolution of the real estate market surrounding the location of the project that leads to additional cost***;

(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 to the Council under the procedure set out in paragraphs 2 and 3 and not included in the preceding year's working documents.

The Commission shall provide this information as part of the working documents attached to the draft budget, as set out in Article 41(3).

2. For any building project likely to have significant financial implications for the budget, the Union institution concerned 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 the reasons for which it is required,*** and the provisional planning.

3. For any building project likely to have significant financial implications for the budget, the Union institution concerned shall present the building project, in particular its detailed estimated costs***, specifying in particular those relating to any works required to improve energy efficiency,*** and its financing including any possible use of internal assigned revenue referred to in Article 21(3), point (e), as well as a list of draft contracts intended to be used, to the European Parliament and to the Council and shall request their approval before contracts are concluded. At the request of the Union institution concerned, 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.

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 those elements to be implemented in the same timeframe, exceeding EUR 3 000 000;

   (c) the acquisition, structural renovation, construction of buildings or any project combining those elements to be implemented in the same timeframe, exceeding EUR 2 000 000 in the event 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 event 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 the first subparagraph, points (b) to (f), shall include the costs of fitting-out of the building. For rental and usufruct contracts, those thresholds shall take into account the costs of the fitting-out of the building but not the other charges.

6. Without prejudice to Article 17, ***and in duly justified cases,*** a building acquisition or structural renovation project may be financed through a loan, subject to prior approval by the European Parliament and by the Council.

Loans shall be contracted and repaid in accordance with the principle of sound financial management and with due regard to the financial interests of the Union.

When the Union institution proposes to finance the acquisition or the structural renovation 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. ***Documents submitted relating to structural renovation projects shall contain elements showing estimated savings related to the energy consumption, operating costs or improved environmental performance.***

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 or structural renovation financed 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 273

Early information procedure and prior approval procedure

1. The early information procedure set out in Article 272(2) and the prior approval procedure set out in Article 272(3) and (4) shall not apply to acquisition of land free of charge or for a symbolic amount.

2. The early information procedure set out in Article 272(2) and the prior approval procedure set out in Article 272(3) and (4) shall also apply to residential buildings if the acquisition, structural renovation, construction of buildings or any project combining those elements in the same timeframe 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 272(2) concerning building projects relating to Union delegations or offices in third countries may be submitted jointly with the building project pursuant to Article 272(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 Article 272(3) and (4) shall not apply to preparatory contracts or studies necessary to evaluate the detailed cost and financing of the building project.

TITLE XVI

INFORMATION REQUESTS AND DELEGATED ACTS

Article 274

Information requests by the European Parliament and by 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 275

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 70(1), Article 71, third paragraph, Article 164 and Article 216(2), second and third subparagraphs, 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 31 December 2018. 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 duration of the corresponding multiannual financial framework.

3. The delegation of power referred to in Article 70(1), Article 71, third paragraph, Article 164 and Article 216(2), second and third subparagraphs. 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. 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 of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 70(1), Article 71, third paragraph, Article 164 and Article 216(2), second and third subparagraphs. 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 to 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 of the Council.

***Article 276***

***Committee procedure***

***1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.***

***2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.***

TITLE XVII

FINAL AND TRANSITIONAL PROVISIONS

Article 277

Transitional provisions

***1.*** ***Without prejudice to sector-specific rules and voluntary application, and subject to paragraph 2 of this Article, the obligations set out in Articles 36(8), 130, 137(2), 138(2), and 144(5) concerning the application of the early detection and exclusion system to shared management and direct management in cases where the budget is implemented pursuant to Article 62(1), first subparagraph, point (a), with Member States, shall apply only to programmes adopted or financed as from 1 January 2028.***

***2.*** ***Without prejudice to sector-specific rules and voluntary application, the early detection and exclusion system shall not apply to Regulation (EU) 2021/241.***

***3.*** Legal commitments for grants implementing the budget under the Multiannual Financial Framework 2014-2020 may continue to take the form of grant decisions. The provisions of Title VIII applicable to grant agreements shall apply *mutatis mutandis* to grant decisions.

***4.*** Regulations (EU, Euratom) No 966/2012, (EU, Euratom) 2018/1046 and Delegated Regulation (EU) No 1268/2012 shall continue to apply to legal commitments entered into before the entry into force of this Regulation. The existing pillar assessments, contribution agreement templates and financial framework partnership agreements may continue to apply and shall be reviewed as appropriate.

***5.*** ***The obligation*** set out in ▌ Article 36(2)***, point (d), and (***6***)*** concerning the ***provision of access to*** data on the recipients of funds and their beneficial owners ▌ shall apply only to programmes adopted under and financed from post-2027 multiannual financial frameworks.

6. Article 38(4), third subparagraph, and (6) shall apply only to programmes adopted under and financed from post-2027 multiannual financial frameworks.

***7.*** ***The deadlines set out in Article 252(1), (2) and (5) of this Regulation shall apply as from the accounts for the financial year 2026. The deadlines set out in Article 246 of Regulation (EU, Euratom) 2018/1046 shall continue to apply until then.***

***8.*** ***The derogations to the obligation to provide a declaration on honour in the case of applications for very low value grants, as set out in Article 139(1), sixth subparagraph, and in Article 199(1), point (b), second subparagraph, shall apply to grant award procedures financed under post-2027 multiannual financial frameworks.***

Article 278

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 Titles VIII and X and the deadlines set out in Article 265.

Article 279

Repeal

Regulation (EU, Euratom) 2018/1046 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 280

Entry into force and application

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ... [the date of entry into force of this Regulation]

***Article 48(2), point (b), shall apply until 31 December 2027.***

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* |

# ANNEX I

## CHAPTER 1

***Common provisions***

## SECTION 1

*Framework contracts and publicity*

*1. Framework contracts and specific contracts*

1.1. The duration of a framework contract shall 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 concluding specific contracts, the parties shall not substantially deviate from the framework contract.

1.2. Where a framework contract is concluded with a single economic operator, the specific contracts shall be awarded or modified within the limits of the terms laid down in the framework contract.

In such circumstances and where duly justified, contracting authorities may request the contractor in writing 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 multiple framework contracts shall be implemented in one of the following ways:

(a) in accordance with 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;

(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 terms, where necessary more precisely formulated;

(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 that possibility has been stipulated by the contracting authority in the procurement documents relating to the framework contract.

The procurement documents referred to in the second subparagraph, point (c), shall also specify which terms may be subject to reopening of competition.

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.

*2. Advertising of procedures for contracts with a value equal to or greater than the thresholds referred to in Article 178(1) of this Regulation 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 of the European Union (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 referred to in Article 178(1).

Notwithstanding the first subparagraph, award 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 award notice no later than 30 days after the end of each quarter.

Award notices shall not be published for specific contracts based on a framework contract.

2.4. The contracting authority shall publish an award notice:

(a) before concluding a contract or a framework contract with a value equal to or greater than the thresholds referred to in Article ***178(1)*** and awarded in accordance with point 11.1, second subparagraph, point (b);

(b) after concluding a contract or a framework contract with a value equal to or greater than the thresholds referred to in Article 178(1), including contracts awarded in accordance with point 11.1, second subparagraph, point (a), points (c) to (f) and point (m).

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 Article 175(3), first subparagraph, points (a) and (b), where the value of the modification is equal to or greater than the thresholds referred to in Article 178(1) or is equal to or greater than the thresholds set out in Article 181(1) for procedures in the field of external actions.

2.6. For an interinstitutional procedure, the contracting authority responsible for the procedure shall be in charge of the applicable publicity measures.

*3. Advertising of procedures for contracts with a value below the thresholds referred to in Article 178(1) of this Regulation or for contracts outside the scope of Directive 2014/24/EU*

3.1. Procedures with an estimated contract value below the thresholds referred to in Article 178(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 expression of interest in the *Official Journal of the European Union*. That obligation shall not apply to the procedure set out in point 11 and the negotiated procedure for very low value contracts set out in point 14.4.

3.2. For contracts awarded in accordance with point 11.1, second subparagraph, points (g) and (i), the contracting authority shall send a list of contracts to the European Parliament and Council no later than 30 June of the following financial year. Where the contracting authority is the Commission, that list shall be annexed to the summary of the annual activity report referred to in Article 74(9).

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 contracts and specific contracts, it shall comply with Article 38(3).

The contracting authority shall publish a list of contracts on its website no later than 30 June of the following financial year for:

(a) contracts below the thresholds referred to in Article 178(1);

(b) contracts awarded in accordance with point 11.1, second subparagraph, point (h) and points (j) to (m);

(c) modifications of contracts as set out in Article 175(3), first subparagraph, point (c);

(d) modifications of contracts as set out in Article ***171(3),*** first subparagraph, points (a) and (b), where the value of the modification is below the thresholds referred to in Article 178(1);

(e) specific contracts under a framework contract.

For the purposes of the second subparagraph, point (e), the published information may be aggregated per contractor for specific contracts under the same framework contract.

3.4. For interinstitutional framework contracts, each contracting authority shall be responsible for advertising its specific contracts and their modifications in accordance with point 3.3.

*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 out 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 shall 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, in particular 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 shall not precede the publication of that notice, which alone is authentic.

Such advertising shall 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.

***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 point 13.1, points (a) and (b), and for contracts awarded in accordance with point 14.2, the minimum number of candidates shall be five.

6.2. In a competitive procedure with negotiation, a competitive dialogue, an innovation partnership***, a prospection of the local market in accordance with point 11.1, second subparagraph, point (g),*** and a negotiated procedure for low value contracts in accordance with 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 in accordance with point 14.4;

(b) negotiated procedures without prior publication in accordance with point 11, except for design contests in accordance with point 11.1, second subparagraph, point (d), ***and prospections of the local market in accordance with point 11.1, second subparagraph, point (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 to tender the candidates with the required capacities. The contracting authority shall not include other economic operators that did not initially request to participate or that it did not initially invite.

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 contracts awarded in accordance with point 11.1, second subparagraph, ***points*** (d) ***and (g)***, 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. An 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.

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 those possibilities and the conditions for their use in the procurement documents.

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 167(4) and in point 6.5 shall be complied with.

In the procurement documents, the contracting authority shall describe 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 that 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.

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 170(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 be proportionate in relation to the investment required for their development.

*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 shall 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 shall 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.

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 take an award decision that includes 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 the choice departs from the proposals made in the jury's opinion.

*9. Dynamic purchasing system*

9.1. A dynamic purchasing system 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 in the category concerned. In that case, selection criteria shall be defined for each category.

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 their receipt but may extend the evaluation period provided that no invitation to tender is issued in the meantime. ***Contracting authorities shall indicate in the procurement documents the length of the extended period that they intend to apply.***

The contracting authority shall inform the candidate as soon as possible of whether or not it has been admitted to the dynamic purchasing system.

9.4. The contracting authority shall invite all admitted candidates to submit a tender. Where the dynamic purchasing system has been divided into categories of works, products or services, the contracting authority shall invite all participants which have been admitted to the category corresponding to the specific procurement concerned to submit a tender.

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 procurement documents.

9.5. The contracting authority shall indicate the period of validity of the dynamic purchasing system in the contract notice.

The contracting authority shall not resort to such a 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 that dialogue but it cannot alter its needs and requirements and award criteria as provided for in point 10.1.

During the course of the 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 that 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. Those tenders shall contain all the elements required and necessary for the performance of the project.

At the request of the contracting authority, those final tenders may be clarified, specified and optimised provided this does not involve substantial changes to the tender or to the procurement documents.

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 the payments to be made to the selected candidates taking part in the dialogue.

*11. Use of a negotiated procedure without prior publication of a contract notice*

11.1. Where the contracting authority uses the negotiated procedure without prior publication of a contract notice, it shall comply with the arrangements on negotiation set out in Article 167(4) and in point 6.5.

The contracting authority may use the negotiated procedure without prior publication of a contract notice, 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:

(i) an open procedure;

(ii) a restricted procedure;

(iii) a competitive procedure with negotiation where a contract notice is published***;***

after that procedure has been completed, provided that the original procurement documents are not substantially altered;

(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 an 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 42 and where the justification of such extreme urgency is not attributable to the contracting authority***;***

Following a crisis declaration referred to in Article 163(6), the authorising officer responsible may only rely on such crisis declaration if the specific procurement procedure is justified by a situation of extreme urgency that is resulting from the crisis;

(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 shall be invited to participate in the negotiations;

(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 those 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 Union institutions award contracts on their own account, the duration of such contracts shall 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;

(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;

(v) for the purchase of medicines for human use or medical countermeasures as well as for products allowing the eradication or containment of certain animal diseases, zoonoses and quarantine pests of plants, provided that one of the following conditions is fulfilled: these products are innovative, not readily available on the market or there is a need to adopt a readily available solution.

(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 [63] in arbitration or conciliation or judicial proceedings;

(ii) legal advice given in the preparation of the proceedings referred to in point (i), 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;

(iii) arbitration and conciliation services;

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**63** 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).

(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; such measures may consist of requirements to protect the confidential nature of information which the contracting authority makes available in the procurement procedure;

(j) loans, whether or not in connection with the issue, sale, purchase or transfer of securities or other financial instruments within the meaning of Directive 2014/65/EU;

(k) for the purchase of public communication networks and electronic communications services within the meaning of Directive (EU) 2018/1972 of the European Parliament and of the Council[64];

(l) services provided by an international organisation referred to in Article 159(1) or a Member State organisation, where it cannot participate in competitive procedures according to its statute or act of establishment;

(m) where it has been decided to open a new Union delegation in a third country or reopen a delegation following a temporary closure, for all contracts awarded by Union delegations or awarded exclusively in the interest of these Union delegations, during the first year following the date of such a decision.

11.2. A tender shall be considered unsuitable where it does not relate to the subject matter of the contract. A tender or a request to participate shall be considered unsuitable where the participant does not have access to procurement referred to in Articles 179, 180 and 182, is in an exclusion situation referred to in Article 138(1) or does not meet the selection criteria.

11.3. The exceptions set out in point 11.1, second subparagraph, points (b)(ii) and (iii), 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.

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64 ***Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).***

11.4. In the cases referred to in point 11.1, second subparagraph, point (e), 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 178(1), or in Article 181(1) in the field of external actions. When Union institutions award contracts on their own account, that procedure shall only be used during the performance of the original contract and at the latest during the three years following its conclusion.

*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 167(4) and in point 6.5. The contracting authority may use those 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 that procedure has been completed provided that the original procurement documents are not substantially altered;

(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 17.4;

(c) for concession contracts;

(d) for the service contracts referred to in Annex XIV to Directive 2014/24/EU;

(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 as set out in Regulation (EC) No 2195/2002 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 media services as defined in Directive 2010/13/EU of the European Parliament and of the Council[65] or radio media services 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 171(3);

(c) when the tenderer is rejected under Article 143(1), first subparagraph, point (b) or (c);

(d) when the contracting authority has declared the tender to be abnormally low.

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 12.1, point (a), 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 the exclusion and selection criteria except those who submitted a tender declared to be abnormally low.

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[65] 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).

*13. Procedure involving a call for expression of interest*

13.1. For contracts with a value below the thresholds referred to in Article 178(1) or in Article 181(1), and without prejudice to points 11 and 12, the contracting authority may use a call for expression 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.

13.2. The list drawn up following a call for expression 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 13.1, point (a);

(b) to submit, in case referred to in point 13.1, point (b), either of the following:

(i) tenders including documents relating to exclusion and selection criteria;

(ii) documents relating to exclusion and selection criteria and, as a second step, tenders, for those fulfilling those criteria.

*14. Middle, low and very low value contracts*

14.1. Middle, low and very low value contracts may be awarded by negotiated procedure in accordance with the arrangements on negotiation set out in Article 167(4) and in point 6.5. Only candidates invited simultaneously and in writing by the contracting authority shall submit an initial tender.

14.2. A contract of a value exceeding EUR 60 000 and below the thresholds referred to in Article ***178(1)*** shall be deemed of middle value. For contracts awarded by, or exclusively in the interest of, Union delegations in third countries a contract of a value exceeding EUR 100 000 and below EUR 300 000 shall be deemed of middle value. Points 3.1, 6.1 and 6.4 shall apply to such contracts.

14.3. A contract of a value not exceeding EUR 60 000, or EUR 100 000 for contracts awarded by, or exclusively in the interest of, Union delegations in third countries, but exceeding the threshold set out in point 14.4, shall be deemed of low value. Points 3.1, 6.2 and 6.4 shall apply to such contracts.

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 contracts. ***For contracts awarded by, or exclusively in the interest of, Union delegations in third countries a contract not exceeding EUR 20 000 shall be deemed of very low value.***

14.5. Payments of amounts not exceeding EUR 1 000, or EUR 20 000 for Union delegations in third countries, in respect of items of expenditure may be carried out simply as 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 143 to ensure that competition is not distorted by the participation of that economic operator in the award procedure.

*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, including the technical specifications and the relevant criteria;

(d) the draft contract based on the model contract.

The first subparagraph, point (d), 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:

(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 are to be sent or delivered or the internet address in case of electronic submission;

(b) state that submission of a tender implies acceptance of the terms and conditions set out in the procurement documents and that such 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 shall 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 172, 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;

(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 No 7 on the privileges and immunities of the European Union, annexed to the TEU and the TFEU, or, where appropriate, the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations applies;

(f) the requirement to indicate in which country the tenderers are established and to present, when requested, the supporting evidence normally acceptable under the law of that country;

(g) in the case of a dynamic purchasing system or electronic catalogues, information on the electronic equipment used and the technical connection arrangements and specifications needed;

***(h) the requirement to notify to the contracting authority the foreign financial contributions received in the last three years prior to the notification, or, in case such contributions are not notifiable pursuant to Article 29(1) of Regulation (EU) 2022/2560, a declaration listing all foreign financial contributions received and confirming that such contributions are not notifiable in accordance with the relevant implementing acts adopted on the basis of Article 47(1) of that Regulation.***

***With regard to point (h), in accordance with Article 4(3) of Regulation (EU) 2022/2560, foreign financial contributions of which the total amount per third country concerned is lower than the amount of de minimis aid as laid down in Article 3(2) of Commission Regulation (EU) 2023/2831[66] over the consecutive period of three years preceding the notification, shall not be listed in such declaration. Foreign financial contributions shall be notified, except otherwise provided, in accordance with the relevant implementing acts adopted ,on the basis of Article 47(1) of Regulation (EU) 2022/2560.***

16.4. The draft contract shall:

(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;

(c) state that, when Union 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 social and environmental conventions listed in Annex X to 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.

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**66** Commission Regulation (EU) 2023/2831 of 13 December 2023 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L, 2023/2831, 15.12.2023, *ELI: http://data.europa.eu/eli/reg/2023/2831/oj*).

For the purposes of the first subparagraph, point (g), if a revision of prices is set out in the contract, the contracting authority shall take particular account of:

(a) the subject matter of the procurement and the economic situation in which it is taking place;

(b) the type of contract and tasks and its duration;

(c) the financial interests of the contracting authority.

The first subparagraph, points (c) and (d), of this point may be waived for contracts signed in accordance with point 11.1, second subparagraph, point ***(l)***.

*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) the levels and procedures of conformity assessment;

(d) performance or use of the supply;

(e) 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;

(f) 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 to include for all purchases intended for use by natural persons, accessibility criteria for persons with disabilities or the design for all users, except in duly justified cases.

Where mandatory accessibility requirements are adopted by a legal act of the Union, technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto. In particular as regards the products and services referred to in Article 2 of Directive (EU) 2019/882 of the European Parliament and of the Council[67], the accessibility requirements set in Annex I to that Directive shall constitute mandatory accessibility requirements within the meaning of that Directive.

Any product or service, the features, elements or functions of which comply with the accessibility requirements set out in Annex I to Directive (EU) 2019/882 shall be presumed to fulfil the relevant obligations set out in this Regulation as regards accessibility, for those features, elements or functions, unless otherwise provided in this Regulation.

17.4. 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 methods set out in points (a) and (b).

17.5. Where the contracting authority uses the option of referring to the specifications provided for in point 17.4, point (a), 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 an equivalent manner, the requirements defined in the technical specifications.

[67] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

17.6. Where the contracting authority uses the option provided for in point 17.4, point (b), to formulate technical specifications in terms of performance or of 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 out by the contracting authority.

17.7. 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.

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 [68] or an equivalent conformity assessment body.

[68] 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).

17.8. The contracting authority shall accept any other appropriate means of proof than those referred to in point 17.7, 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 the specific requirements indicated by the contracting authority.

17.9. 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.

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 139, 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, or a declaration on honour signed and dated, which has already been used in a previous procedure, provided that the economic operator confirms that the information contained therein continues to be correct.

The presumed successful tenderer shall provide, within a time limit set by the contracting authority and preceding the award of the contract, the evidence that it is not in one of the exclusion situations referred to in Article 138(1), confirming the ESPD or the declaration on honour in the following cases:

(a) for contracts awarded by Union institutions, with a value equal to or greater than the thresholds referred to in Article 178(1);

(b) by way of derogation from point (a) of this subparagraph, for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in point 39.2, point (a), and for contracts awarded by, or exclusively in the interest of, Union delegations in third countries with a value equal to or greater than EUR 300 000.

By way of derogation from the third subparagraph, in a situation of extreme urgency resulting from a crisis, the contracting authority may require the presumed successful tenderer to provide, within a reasonable time limit after the contract award decision but before the contract signature, the evidence referred to in the third subparagraph, subject to the conditions set out in Article 163(6).

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 that 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 the event that several lots are awarded to the same contractor.

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 when the economic operator is an international organisation;

(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 requirement to submit an ESPD or a 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, as specified in the tender specifications, either require the candidates or tenderers to submit up-to-date supporting documents or require the presumed successful tenderer to submit up-to-date supporting documents before the award decision, 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 in a national database free of charge.

By way of derogation from the third subparagraph ***of this paragraph***, in a situation of extreme urgency resulting from a crisis, the contracting authority may require the presumed successful tenderer to provide, within a reasonable time limit after the contract award decision but before the contract signature, the evidence referred to in ***the third subparagraph of this paragraph***, subject to the conditions set out in Article 163(6).

The contracting authority shall require economic operators, and, where appropriate, entities on whose capacity the economic operator intends to rely, as well as envisaged subcontractors to sign a declaration on honour confirming the absence of professional conflicting interests and, at the request of the contracting authority, when needed to provide any relevant information.

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 Union institutions on their own account, with a value not exceeding the thresholds referred to in Article 178(1);

(b) procedures for contracts awarded in the field of external actions, with a value not exceeding the thresholds referred to in Article 181(1);

(c) procedures for contracts awarded in accordance with point 11.1, second subparagraph, points (b), (e), (f)(i) and (iv), (h) and ***(l)***.

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 shall 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.

With regard to technical and professional criteria, an economic operator shall only rely on the capacities of other entities where the latter will perform the works or services for which those 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 all 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, whether they are subcontractors or not, fulfil the relevant selection criteria.

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 such change is necessary for the 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;

(c) economic operators provide an appropriate level of professional risk indemnity insurance.

For the purposes of the first subparagraph, point (a), 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 the first subparagraph, point (b), 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 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 financial years for which accounts have been closed;

(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. The contracting authority shall also assess the existence of professional conflicting interests referred to in point 20.6 on the basis of a declaration of professional conflicting interests and, where relevant, the contracting authority's request for additional information under point 18.4.

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, in particular, one or more of the following documents:

(a) for works, supplies requiring siting or installation operations or services, information on the educational and professional qualifications, skills, experience and expertise of the persons responsible for performance;

(b) a list of the following:

(i) 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) 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 the 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 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;

(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 the first subparagraph, point (b)(i), 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 the first subparagraph, point (b)(ii), 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.

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 persons with disabilities, 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.

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[69] 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 those measures are equivalent to those required under the applicable environmental management system or standard.

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**69** 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).

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 professional conflicting interests which may negatively affect its performance.

*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 the life cycle of the works, supplies or services; organisation, qualification and experience of ***the*** staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of the performance of 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 shall 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.

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;

(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 Union legal acts listed in Annex XIII to 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, second subparagraph, point (b), and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in point 9.

The electronic auction shall be based on one of the award methods set out in Article 170(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 an 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;

(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 shall 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.

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 shall 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.

*23. Abnormally low tenders*

23.1. If, for a given contract, the price or costs 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 costs 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.

23.2. The contracting authority shall only reject the tender where the evidence supplied does not satisfactorily account for the low 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 up 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 4.2, point (b).

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. In a dynamic purchasing system, no further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent.

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 expression 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, point (a), and point 13.3, point (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, point (b)(ii).

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 referred to in 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 such cases, point 24.1, second subparagraph, 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 those 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.

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 of dispatch of the contract notice;

(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 point 25.2, second subparagraph, and in point 25.3, point (a), shall be four days.

*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;

(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 referred to in point 27.3, point (b), 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.

27.5. Contracting authorities may award contracts based on a dynamic purchasing system by requiring that offers are to be presented in the format of an electronic catalogue.

Contracting authorities may also award contracts based on a dynamic purchasing system by notifying the candidates that they intend to collect from the electronic catalogues, which have already been submitted, the information needed to constitute tenders adapted to the requirements of the specific procurement in question.

*28. Opening of tenders and requests to participate*

28.1. In open procedures, authorised representatives of tenderers may attend the opening session physically or, if foreseen in the procurement documents, remotely via videoconference.

28.2. Where the value of a contract is equal to or greater than the thresholds referred to in Article 178(1), the authorising officer responsible shall appoint a committee to open the tenders. The authorising officer may waive that obligation on the basis of a risk analysis when reopening competition within a framework contract, for specific procurements under a dynamic purchasing system and for the cases referred to in point 11.1, second subparagraph, except points (d) and (g) of that subparagraph.

The opening committee shall be made up of at least two persons representing at least two organisational entities of the Union 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 153 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. For a procurement procedure launched on an interinstitutional basis, the opening committee shall be appointed by the authorising officer responsible from the Union institution responsible for the procurement procedure.

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 Article 152(3) and (5) 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 170(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 Article 152 and those which do not, and shall give the grounds on which tenders were rejected as set out in Article 171(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.

29.2. For a procurement procedure launched on an interinstitutional basis, the evaluation committee shall be appointed by the authorising officer responsible from the Union 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 and neither irregular under point 12.2 nor unacceptable under point 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.

30.2. The evaluation report shall contain the following:

(a) the name and address of the contracting authority (in case of interinstitutional or joint procurement – the address only of the lead 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 access to procurement, a situation referred to in Article 143(1) or 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 Article 170(1), point (a);

(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;

(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 take its award 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 40 which justify their use;

(b) where appropriate, the reasons why the contracting authority has decided not to award a contract.

30.4. The authorising officer may merge the content of the evaluation report and the award decision into a single document and sign it in any of the following cases:

(a) for procedures below the thresholds referred to in Article 178(1) where only one tender was received;

(b) when reopening competition within a framework contract where no evaluation committee was nominated;

(c) for cases referred to in point 11.1, second subparagraph, points (c), (e), (f)(i), (f)(iii), (h) and (m), where no evaluation committee was nominated.

30.5. For 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 171(3);

(b) a decision has been taken on the basis of exclusion and selection criteria in procurement procedures organised in two separate stages;

(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.

In cases under the first subparagraph, point (a), only the tenderer directly concerned by the decision is notified. In cases under the first subparagraph, point (b), the notifications of the decision taken on the basis of exclusion and selection criteria in a dynamic purchasing system shall be sent individually to the candidates concerned.

31.2. The contracting authority shall communicate the information provided for in Article 173(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 on 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 by 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.

***CHAPTER 2***

***Provisions applicable to contracts awarded by 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 pursuant to the applicable threshold.

Where the total value of all the lots is equal to or greater than the thresholds referred to in Article 178(1), Article 166(1) and Articles 167 and 168 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. Multiple sourcing*

34.1. Multiple sourcing procurement may be used only where it is necessary to avoid the over-reliance on a single provider for critical supplies, works or services, or where it is necessary to have identical or quasi-identical services, supplies or works performed in parallel by different contractors.

34.2 When multiple sourcing procurement is used, contracts shall be awarded within the same procedure. The total value of all foreseen contracts with identical or quasi-identical subject matter shall be taken into account for the overall evaluation pursuant to the applicable threshold.

Where the total value of all the contracts to be awarded is equal to or greater than the thresholds referred to in Article 178(1), Article 166(1) and Articles 167 and 168 shall apply to each of the contracts.

34.3 The contracting authority shall indicate in the procurement documents the maximum number of contracts to be awarded. Contracts resulting from a multiple sourcing procurement shall be awarded by order of ranking as referred to in point 30.2, point (e), and shall also be signed in that order unless there are duly justified reasons.

*35. Arrangements for estimating the value of a contract*

35.1. The contracting authority shall estimate the value of a contract in view of determining the applicable publicity measures set out in Article 166(1) and (2) and choosing the procurement procedure, 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.

35.2. 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.

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.

35.3. 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.

35.4. 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;

(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.

35.5. 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 the preceding 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.

35.6. 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.

35.7. In the case of concession contracts, the value shall be the estimated total turnover of the concessionaire generated over the duration of the contract.

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.

*36. Standstill period before signature of the contract*

36.1. 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;

(b) where the contract or framework contract is awarded pursuant to point 11.1, second subparagraph, point (b), the day after the 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 out in Article 178(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.

36.2. The period set out in point ***36.1*** 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 for contracts awarded in accordance with point 11.1, second subparagraph, point (b).

***CHAPTER 3***

***Procurement in the field of external actions***

*37. Special provisions relating to thresholds and the arrangements for awarding contracts in the field of external actions*

Point 2, with the exception of point 2.5, points 3, 4 and 6, point 12.1, point (a) and points (c) to (f), point 12.4, point 13.3, points 14 and 15, points 17.4 to 17.8, points 20.4 and 23.3, point 24, points 25.2 and 25.3, points 26, 28, and 29, with the exception of point 29.3, shall not apply to public contracts concluded by the contracting authorities referred to in Article 181(2) or on their behalf. Points 32, 33 and 35 shall not apply to procurement in the field of external actions. Point 36 shall apply to procurement in the field of external actions. For the purposes of point 36.1, second subparagraph, the duration of the standstill period shall be the one set out in Article 181(1).

Implementation of the procurement provisions under this Chapter shall be decided by the Commission, including as regards the appropriate controls to be applied by the authorising officer responsible where the Commission is not the contracting authority.

*38. Advertising*

38.1. If applicable, the prior information notice for calls for tender following the restricted procedure or the open procedure as referred to, respectively, in point 39.1, points (a) and (b), shall be sent to the Publications Office by electronic means as early as possible.

38.2. The 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 Union or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

*39. Thresholds and procedures*

39.1. The procurement procedures in the field of external actions shall be as follows:

(a) the restricted procedure as provided for in Article 167(1), point (b);

(b) the open procedure as provided for in Article 167(1), point (a);

(c) the local open procedure;

(d) the simplified procedure;

39.2. The use of procurement procedures according to thresholds shall be as follows:

(a) the open or restricted procedure may be used for:

(i) service and supply contracts and service concession contracts with a value of at least EUR 300 000;

(ii) works contracts and works concessions contracts with a value of at least EUR 5 000 000;

(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 with 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 of amounts less than or equal to EUR 2 500 in respect of items of expenditure may be carried out simply as payment against invoices, without prior acceptance of a tender.

39.3. In the restricted procedure referred to in point ***39.1***, point (a), 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 shall be sufficient to ensure genuine competition.

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.

39.4. Under the local open procedure referred to in point 39.1, point (c), 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.

39.5. Under the simplified procedure referred to in point 39.1, point (d), 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, point (b), advertised by a call for expression of interest.

If, following consultation of the tenderers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

39.6. For legal services not covered in point 11.1, second subparagraph, point (h), the contracting authorities may use the simplified procedure, whatever is the estimated value of the contract.

*40. Use of the negotiated procedure for service, supply and works contracts*

40.1. 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 are designed to provide assistance to people 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.

40.2. For the purposes of point 11.1, second subparagraph, point (c), operations carried out in a crisis 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 or her decision regularly having regard to the principle of sound financial management.

40.3. Activities of an institutional nature referred to in point 40.1, point (a), shall include services directly linked to the statutory mission of the public sector bodies.

*41. Tender specifications*

By way of derogation from 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 stage may contain only the information referred to in point 16.3, points (a) and (f).

*42. Time limits for procedures*

42.1. 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.

42.2. 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.

42.3. 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.

42.4. 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.

42.5. 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.

42.6. For the simplified procedures referred to in point 39.1, point (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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## ANNEX II

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**Joint statement on the budgetary treatment of interest or other charges due on cancelled or reduced fines, other penalties or sanctions on the occasion of the adoption of Regulation 2024/...[+]**

"The European Parliament and the Council agreed that any interest or other charges due on cancelled or reduced fines, other penalties or sanctions will be recorded as negative revenue for the duration of the current multiannual framework. This is an exception to the prohibition on negative revenue, which is limited to this specific, unforeseeable situation.

Without prejudice to the respective prerogatives, the European Parliament, the Council and the Commission agree, taking into account past experience and expected future developments, to examine a long-term sustainable solution, in line with the application of the budgetary principles of the Financial Regulation, for the financing of such interest or other charges, to apply after 2027, including with respect to the rate of interest to pay on the amount of the fines or other penalties to be repaid as an adequate compensation for the recipient undertakings in such situations."

**Joint statement of the European Parliament, the Council and the Commission on the single data-mining and risk-scoring tool provided for in Article 36 of the Financial Regulation on the occasion of the adoption of Regulation 2024/...[+]**

"The European Parliament, the Council and the Commission ("the three Institutions") recognise the importance to enhance the protection of the Union's financial interests as acknowledged in the Inter-institutional Agreement ('IIA') of 16 December 2020 and as set out in Article 325 TFEU.

The three Institutions agree that it is necessary to further develop the tool in accordance with IT security and data protection rules. With a view to reducing the administrative burden and avoiding disproportionate IT costs for the Member States and the other users, established approved systems in Member States will be taken into account.

[+] OJ: please insert the number of the act in COD 2022/0162.

The three Institutions commit to cooperate towards further development of the tool. The Commission confirms that it will continue to develop the tool in consultation with its users and to offer the Member States support to address any technical queries. The Member States will cooperate with the Commission in order to enable synergies necessary for interoperability with relevant IT systems and databases.

Following an assessment by the Commission establishing the readiness of the tool based on the criteria referred to in Article 36(6) of the Financial Regulation, the three Institutions, without prejudice to their respective competences, commit to examine and re-discuss the compulsory use of the tool during the post-2027 multiannual financial framework."

**Unilateral statement by the Commission on decommitments on the occasion of the adoption of Regulation 2024/...[+]**

"In the context of the preparation for the post-2027 multiannual financial framework, the Commission will examine the question of widening the scope of making appropriations corresponding to decommitments available again. This is without prejudice to the future Commission's proposal on the post-2027 multiannual financial framework and to the right of legislative initiative of the Commission, as established in the Treaties."

[+] OJ: please insert the number of the act in COD 2022/0162.

**Unilateral statement by the Commission on the Early Detection and Exclusion System on the occasion of the adoption of Regulation 2024/...[+]**

"The European Commission acknowledges the importance of minimising the administrative burden upon Member States' authorities in the context of the targeted extension of the Early Detection and Exclusion System (EDES) to shared management and direct management with Member States.

The Commission is committed to developing comprehensive guidance and offering training sessions to Member States on the implementation of EDES and the use of its database.

The Commission will continue improving the EDES database, for example by enabling the searches of multiple entities and improving the layouts of the database.

The Commission will strive to ensure IT interoperability between EDES and relevant national systems to streamline the process and allow for swifter checks on the exclusion situations of relevant persons or entities.

The Commission confirms that any request for additional information for the purposes of EDES will not go beyond what is strictly necessary and proportionate, and will be treated in conformity with applicable data protection rules. It is recalled that the opinion of the European Data Protection Supervisor on the Commission proposal for a recast of the Financial Regulation did not raise any concerns in respect of EDES.

The Commission is committed to facilitate a smooth transition towards the application of EDES in full cooperation with the Member States."