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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council (Omnibus proposal) (first reading) – <i>Analysis of the final compromise text with a view to agreement</i>

1. On 14 September 2016, the Commission submitted to the European Parliament and the Council a proposal to adopt a new Regulation on the financial rules applicable to the general budget of the Union, which would repeal and replace Regulation (EU, Euratom) No 966/2012. That proposal also included amendments to 15 sectoral acts as regards financial provisions. It was presented together with a package of proposals in relation to the mid-term review/revision of the MFF 2014-2020.
2. This proposal aimed, *inter alia*, at providing additional flexibility in budget management and simplification of budget implementation, rendering it more efficient.
3. The proposal is based on Articles 42, 43(2), 46(d), 149, 153(2)(a), 164, 168(4)(b), 172, 175, 177, 178, 189(2), 212(2), 322(1) and 349 TFEU (ordinary legislative procedure).
4. The Court of Auditors delivered its opinion No 1/2017 on 26 January 2017.¹
5. On 8 June 2017, the European Parliament adopted a draft legislative resolution for a position at first reading.² That draft resolution is based on the joint report of the Committee on Budgets and the Committee on Budgetary Control, as well as on the opinions of the Committee on Employment and Social Affairs (EMPL), the Committee on Industry, Research and Energy (ITRE), the Committee on Transport and Tourism (TRAN), the Committee on Regional Development (REGI), the Committee on Agriculture and Rural Development, the Committee on Foreign Affairs, the Committee on Development, the Committee on Fisheries and the Committee on Civil Liberties, Justice and Home Affairs.

¹ OJ C 91, 23.3.2017, p. 1.

² A8-9999/2017.

Handling within the Council

6. A Friends of the Presidency Group was convened to handle the work on the package of proposals presented by the Commission on 14 September 2016. In a modification of the terms of reference of the Friends of the Presidency Group, it was specified, that the work on the proposal related to the financial rules was split between several Council preparatory bodies and that the Friends of the Presidency Group would ensure the coherence of the final outcome of the proceedings in those different bodies.¹
7. The Budget Committee examined Part 1 of the Omnibus proposal related to the Financial Regulation of the Commission proposal. Part 2 of the Omnibus proposal was examined by the Working Party on Structural Measures (Article 262 related to the EU Solidarity Fund, as well as Articles 264 to 266 related to the ESI Funds), the Working Party on Social Questions (Articles 263, 271 and 273 of the proposal related to funds in the social field, such as the European Union Programme for Employment and Social Innovation (EaSI), the European Globalisation Adjustment Fund (EGF) and the Fund for European Aid to the most Deprived (FEAD)), the Special Committee on Agriculture (Articles 267 to 270 and 275 in relation to agricultural funds) and the Working Party on Land Transport (Intermodal Questions) (which coordinated the examination of Articles 272 in relation to the Connecting Europe Facility (CEF), Article 274 (TEN-T) and Article 276 (Space Surveillance and Tracking Support)).
8. After review by the Friends of the Presidency Group, the Permanent Representatives Committee mandated the Presidency on 28 June 2017 to start negotiations with the European Parliament on the basis of the outcome of discussions within the Council².

¹ Doc. 15776/2016.

² Doc. 10553/17 + ADD 1 and ADD 2.

Negotiations with the European Parliament

9. Pursuant to having received the mandate, the different preparatory bodies began negotiations with the respective Committees of the European Parliament each at their own pace. Given the larger size of Part 1 on the Financial Regulation than of Part 2 on the different sectorial acts, an agreement was found sooner for the sectorial parts.
10. On 15 November 2017, the Permanent Representatives Committee agreed the separation of the agricultural provisions from the remainder of the Omnibus proposal in order to allow their entry into force in a stand alone Regulation on 1 January 2018.¹ Contrary to the other sectoral provisions, the agricultural ones were separable from the rest of the act and an early entry into force was important to allow beneficiaries to benefit from the agreed simplification measures in 2018. The European Parliament has also agreed to split off the agricultural provisions and the separate act has been adopted by the co-legislators on 12. December.²

Part 1 - Financial Regulation

11. An agreement in principle has been found in thirteen trilogue meetings between 29 August and 11 December. Only minor technical questions, as well as the Recitals still need to be agreed, which will be handled by the incoming Bulgarian Presidency.
12. On 13 December 2017, the Budget Committee was consulted on the provisional outcome and has given its tentative consent to the overall agreement, subject to verification of the final outcome, including the minor technical adjustments and Recitals.
13. In substance, the outcome can be summarised as follows:
 - most simplification proposals were accepted, in particular the increased use of simplified cost options (SCOs), cross-reliance on external audits and on the assessment of entities indirectly implementing Union funds;

¹ Doc 14222/17.

² Doc 15577/17.

- most flexibility proposals were rejected, in particular the European Crisis Reserve (a reserve funded from de-committed, i.e. unused appropriations), the Flexibility Cushion (maintaining 10 % of the major programmes for external policies unallocated to use them for other purposes) and the possibility to establish Trust Funds for internal policies (they are maintained only for external policies);
- the structural overhaul of the act was accepted, which includes integrating the most important provisions of the implementing act (so-called Rules of Application or RAP) into the Financial Regulation;
- additional reporting requirements were agreed to, including on performance aspects.

Part 2 - Amendments to sectoral legislative acts

Working Party on Structural Measures (Articles 262, 264, 265 and 266)

14. Between September and December 2017, nine trilogues were held between the Council and the European Parliament's REGI Committee to discuss the provisions concerning Article 262 (EU Solidarity Fund), Article 264 (ERDF) and Article 265 (Common Provisions Regulation). In addition, three trilogues were held between September and November 2017 with the European Parliament's EMPL Committee on Article 266 (ESF).
15. The Structural Measures Working Party was regularly informed and consulted through the negotiations.
16. A political agreement was reached with the European Parliament on 6 November (on Article 266) and on 12 December 2017 (on Articles 262, 265 and 266). The agreement allows for increasing the use of simplified cost-options, minimising the number of necessary audits and delivers more simplification for beneficiaries that can be taken up quickly without major reconfiguration of implementation systems. In addition, it will allow for an easier combination of the European Fund for Strategic Investment with the ESI Funds.

Working Party on Social Questions (Articles 263, 271 and 273)

17. The Articles related to social questions were discussed in three trilogues with the European Parliament's EMPL Committee. The Social Questions Working Party was regularly consulted throughout the negotiations and informed on the results of the trilogues.
18. On all three funds concerned (Fund for Employment and Social Innovation (EaSi), European Globalisation Fund (EGF) and the Fund for Most Deprived (FEAD)), a political agreement was reached with the European Parliament on 6 November 2017. The main aspects of the agreement can be summarised as follows:
 - between the three axes of *the EaSI programme* and within each axis, flexibility is increased. However, while the Commission had proposed almost full flexibility for the last years of the programme, the co-legislators decided on a more limited flexibility;
 - *the EGF's* utilisation criteria are modified (in Article 4, on groups of SMEs in different economic sectors, and, in Article 6, on the level of youth unemployment);
 - in *the FEAD*, a number of administrative simplifications and clarifications are made.

Working Party on Land Transport (Intermodal Questions) (Articles 272, 274 and 276)

19. The negotiations on Article 272 and related recitals were conducted with the TRAN and ITRE Committees of the European Parliament as one joint process, covering topics related to transport, energy, telecommunications and space policies. The ITRE Committee also wished to cover certain changes to Articles 274 and 276 in this process.
20. A provisional agreement was found in the trilogue on 6 September 2017. This entails mainly the creation of blending facilities in the Connecting Europe Facility and thus an easier combination of grants and loans in this instrument.

21. The Presidency wishes to conclude on the full agreement found on Part 2 of the Omnibus proposal (the amendments to sectoral legislation)¹ and on the agreement in principle found on Part 1 of the Omnibus proposal (the Financial Regulation), except the Recitals^{2,3}. On 18 December 2018, the Friends of Presidency Group supported the approach proposed by the Presidency, subject to the finalisation of Recitals and minor technical adjustments in the Financial Regulation. Steps remain to be taken in order to complete the legal text with the Recitals and to consolidate the different elements into a single legal text, ensuring coherence between the different parts. A fully finalised and consolidated text will be submitted to the Permanent Representatives Committee for endorsement and subsequent adoption in the first months of 2018. In the meantime, the Permanent Representatives Committee is invited to:
- endorse in principle the provisional agreement found with the European Parliament on Part 1 of the Omnibus proposal (Financial Regulation), as recorded in Addendum 1 to this note, and
 - endorse the provisional political agreement found with the European Parliament on Part 2 of the Omnibus proposal (sectoral legislation), as recorded in Addendum 2 to this note.
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¹ As recorded in doc. 15783/17 ADD 2.

² As recorded in doc. 15783/17 ADD 1.

³ A summary of the outcome is contained in the ANNEX.

			Provisional agreement
Reactive EU Budget	Flexibility cushion for external actions	+	Council position: the Flexibility Cushion has been rejected.
	Crisis reserve / reuse of decommitments		Council position: The Crisis Reserve has been rejected.
	Trust Funds for internal action		Alignment between co-legislators: Trust Funds for internal policies have been rejected.
	Trust Funds - role of Council and EP in creation		Council position, except participation on the boards, where Commission original approach is maintained as a compromise.
Flexibility in the budgetary process	Assigned revenues - external		Council position: status quo as in the current Financial Regulation.
	Assigned revenues - internal		Compromise: it has been provisionally agreed to delete three categories of internal assigned revenue (IAR) compared to status quo. In addition, it was provisionally agreed to accept IAR from the sale of buildings as in the initial Commission proposal (see in this context also the unilateral statement by the Commission recorded in Annex 1)
	Simplification of process for EU Solidarity Fund and EU Globalisation Fund		Alignment between co-legislators for EUSF and compromise for EGF (status quo as in the current Financial Regulation).
	Draft amending budget for revenue+expenditure		Council position: status quo as in the current Financial Regulation.
	Provisional 12ths & EP budgetary remarks		Compromise for provisional 12ths and Council position for budgetary remarks (status quo as in the current Financial Regulation).
	Transfers (COM/other institutions)		Compromise: status quo as in the current Financial Regulation.
Financial Instruments and	Integration of reflows from financial instruments		Council position: status quo as in the current Financial Regulation.

		Provisional agreement
Budgetary Guarantees	Common provisioning fund management	Compromise: agreement to decide the asset manager based on independent evaluation submitted by the Commission in 2019.
	Asset management guidelines by delegated act	Council position, except for a reduction of the prudency ratio for the second delegated act for the Common Provisioning Fund of 85% (instead of 87,5%).
	Combination of financial instruments with grants	Compromise between co-legislators: solved at technical level with drafting (grants are always ancillary to financial instruments).
PP/PAs	Ceiling for Preparatory actions and Pilot projects	Council position: status quo as in the current Financial Regulation.
Accountability and reporting	Annual activity report requirements	Compromise between co-legislators: some additional reporting requirements for the Commission.
	Detailing performance related concepts (output/results/evaluations)	Compromise between co-legislators.
	Discharge and reporting calendar	Agreement to generally maintain status quo (Council position), plus as a compromise a joint statement (see Annex 2) to set out a pragmatic calendar for the discharge procedure and where the Commission commits to strive to speed up the adoption of consolidated accounts.
	National declarations	Compromise between co-legislators: main element of the Council position maintained (statements stay optional), but as a compromise some limited rewording has been agreed.
	Transparency on shared management recipients	Compromise between co-legislators.

Unilateral statement by the Commission
in relation to Article 258 - *Specific provisions regarding building projects*

"The Commission and the EEAS will inform the European Parliament and the Council, in the context of the working document referred to in Article 258, on any sale and acquisition of building, including those below the threshold set in that Article."

Joint statement on the discharge procedure / Date of adoption of the final EU accounts

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

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

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