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+ ADD 1 + ADD 2

Subject: Proposal for a Regulation of the European Parliament and of the Council on
establishing the Creative Europe Programme

Delegations will find attached a Presidency compromise text in preparation for the Audiovisual Working Party scheduled for 15 October 2012.

This document contains 3 parts :

1. Annex I: the text of the partial general approach (doc. 9097/12) with modified provisions on the Guarantee Facility. The provisions related to the Cultural and Creative Sectors Guarantee Facility, agreed in previous meetings on 10 and 26 September, as well as on 5 October, are indicated in **bold** for the new text and in [...] for the deleted text.
2. Annex II (for information): Title VIII of the Financial Regulation (doc. 12250/12 ADD 1).
3. Annex III (for information): Article 55 of the Financial Regulation (doc. 12250/12 ADD 1).

The changes to the previous text on the Guarantee Facility (doc. 14320/12) are indicated in **bold** **underlined** for the new text and in **[...]** for the deleted text.

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL [...]
establishing the CREATIVE EUROPE PROGRAMME (2014 to 2020) and repealing
Decisions Nos 1718/2006/EC, 1855/2006/EC and 1041/2009/EC

(Text with EEA relevance)

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CHAPTER I
General provisions

Article 1

Establishment and duration

1. This Regulation establishes the Creative Europe Programme for support to the European cultural and creative sectors ('the Programme').
2. The Programme shall be implemented for the period from 1 January 2014 to 31 December 2020.

¹ The recitals will be examined at a later stage.

Article 2
Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (1) 'cultural and creative sectors' means all sectors whose activities are based on cultural values and/or artistic and other creative expressions, whether these activities are market or non-market oriented and whatever the type of structure that carries them out and irrespective of how it is financed. These activities include the development, the creation, the production, the dissemination and the preservation of goods and services which embody cultural, artistic or other creative expressions, as well as related functions such as education, management or regulation. The cultural and creative sectors include inter alia architecture, archives and libraries, museums, artistic crafts, audiovisual (including film, television, video games and multimedia), cultural heritage, design, festivals, music, performing arts, publishing, literature, radio and visual arts;
- (2) [...]
- (3) **'participating financial intermediaries'** means financial institutions **selected under the Cultural and Creative Sectors Guarantee Facility (“Guarantee Facility”) in accordance with Regulation (EU) No xxx/2012 of the European Parliament and of the Council of... on the financial rules applicable to the annual budget of the Union ("Financial Regulation")**, in particular the second subparagraph of Article 130(3) and Article 131(4) thereof, and with Annex I to this Regulation, providing or planning to provide
 - i.** loans [...] [...] **to SMEs and micro and medium-sized organisations in the cultural and creative sectors (guarantees from the EIF); or**

ii. loan guarantees to other financial intermediaries providing loans to SMEs and micro, small and medium-sized organisations in the cultural and creative sectors² (counter guarantees from the EIF);

- (3a) (new) ‘capacity building providers’ means entities capable of providing expertise according to Annex I in order to enable participating financial intermediaries to assess effectively the specificities and risks associated with [...] SMEs and micro, small and medium-sized organisations³ in cultural and creative sectors and [...] with their projects;
- (4) 'SMEs' means micro, small and medium-sized enterprises as defined in [...] Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁴.

² A proposed modification to recital 15: “There is a need to bring together the current individual Union programmes for the cultural and creative sectors within a single comprehensive framework programme in order to more effectively support **SMEs and micro, small and medium-sized organisations** [...] **in the cultural and creative [...] sectors** to take advantage of the opportunities the digital shift and globalisation offer and help them to address issues currently leading to market fragmentation. To be effective, the Programme should take account of the specific nature of the **different [...] sectors**, their different target groups and their particular needs through tailor-made approaches within independent strands. **To this end, the Programme should establish a coherent support structure for the different cultural and creative sectors consisting of a grants system complemented by a financial instrument.**”

³ Proposed modification of recital 13: “One of the greatest challenges of the cultural and creative sectors, especially for SMEs and micro, small and medium sized organisations, including non-profit organisations, is their difficulty accessing the funds they need to finance their activities, grow, maintain their competitiveness or internationalise. While this is a common challenge for SMEs in general, the situation is significantly more difficult in the cultural and creative sectors due to the intangible nature of many of their assets, the prototype profile of their activities, the lack of investment-readiness of the operators in the sectors as well as the insufficient investor-readiness of financial institutions.”

⁴ OJ L 124, 20.5.2003, p. 36. [...]

Article 3

[...]

Article 4

General objectives

The general objectives of the Programme shall be: ⁵

- (a) to foster the safeguarding and promotion of European cultural and linguistic diversity⁶;
- (b) to strengthen the competitiveness of the cultural and creative sectors with a view to promoting smart, sustainable and inclusive growth.

Article 5

Specific objectives

The specific objectives of the Programme shall be:

- (a) to support the capacity of the cultural and creative sectors to operate transnationally;
- (b) to promote the transnational circulation of cultural and creative works and transnational mobility of cultural players and audiovisual professionals as well as to reach new audiences and improve access to cultural and creative works in the Union and beyond with a particular focus on children, young people and underrepresented groups;

⁵ New recital 15a: “A support programme for the cultural and creative sectors should take into account the dual nature of culture and cultural activities recognising on the one hand, culture’s intrinsic and artistic value and, on the other, the cultural sector’s economic value, including its broader societal contribution to creativity, innovation and social inclusion.”

⁶ New recital 10a: “Given that the European cultural and creative sectors are characterized by linguistic diversity which leads in some sectors to fragmentation along linguistic lines, subtitling, dubbing and audio description are essential to the circulation of cultural and audiovisual works. ”

- (c) to strengthen the financial capacity of **SMEs and micro, small and medium-sized organisations in the Union's** cultural and creative sectors [...] **in a sustainable way, while endeavouring to ensure a balanced geographical coverage and [...] sector representation;**
- (d) to foster policy development, innovation, creativity, audience development and new business and management models through support for transnational policy cooperation.

Article 5a

European added value

1. Recognising the intrinsic and economic value of culture⁷, the Programme shall support actions and activities presenting a potential European added value in the field of culture⁸ and the cultural and creative sectors. It shall contribute to the achievement of the objectives of the Europe 2020 strategy and its flagship initiatives.
2. European added value shall be ensured in particular through:
 - (a) the transnational character of actions and activities and their impact in particular in the field of culture and in the cultural and creative sectors which will complement national, international and other Union programmes and policies;

⁷ New wording of recital 5: “The UNESCO Convention on the Protection and the Promotion of the Diversity of Cultural Expressions which entered into force on 18 March 2007, and to which the Union is a party, underlines that cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value. The convention aims at strengthening international cooperation, including international co-production and co-distribution agreements, and solidarity so as to favour the cultural expression of all countries. A support programme for the cultural and creative sectors should foster cultural diversity at international level in line with the convention.”

⁸ New recital 20a: “In order to contribute to the enhancement of a shared cultural area it is important to promote the transnational mobility of cultural players and the transnational circulation of cultural and audiovisual works and products and thereby promoting cultural exchanges and intercultural dialogue.”

- (aa) the transnational cooperation between cultural players, audiovisual professionals, cultural organisations and audiovisual operators stimulating more comprehensive, rapid and effective responses to global challenges and creating long-term systemic effects on the sectors;
- (b) the economies of scale and critical mass which Union support fosters creating a leverage effect for additional funds;
- (c) [...]
- (d) ensuring a more level playing field in the European cultural and creative sectors by taking account of low production capacity countries and/or countries or regions with a restricted geographical and linguistic area;
- (e) [...]

Article 6

Structure of the Programme

The Programme shall consist of the following strands:

- (a) [...] Cross-sectoral Strand;
- (b) [...] Culture Strand;
- (c) [...] MEDIA Strand.

*Article 6a*⁹

Access to the Programme

[...]

1. **The Programme shall be open to the participation of the Member States**¹⁰.

2. **With the exception of the Guarantee Facility**, the Programme shall **also** be open to the participation of the following countries provided that the conditions are met, including, for the MEDIA strand, those contained within 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)¹¹, and additional appropriations are paid by these countries:
 - (a) acceding countries, candidate countries and potential candidates benefiting from a pre-accession strategy, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective Framework Agreements, Association Council Decisions or similar agreements;
 - (b) European Free Trade Association countries which are members of the European Economic Area (EEA), in accordance with the EEA Agreement;
 - (c) the Swiss Confederation, on the basis of a bilateral agreement to be concluded with that country;

⁹ **Former Article 16.**

¹⁰ **Proposed modification of recital 17: "All Member States will participate in the Programme. With the exception of the Guarantee Facility, participation in the programme will also be open to acceding countries, candidate countries and potential candidates benefiting from a pre-accession strategy, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective Framework Agreements, Association Council Decisions or similar agreements; to EFTA countries which are parties to the EEA Agreement and to countries of the European neighbourhood area in accordance with the procedures defined with those countries following the framework agreements providing for their participation in European Union programmes. The participation of the Swiss Confederation is subject to specific arrangements with that country."**

¹¹ OJ L 95, 15.4.2010, p.1.

- (d) countries of the European neighbourhood area in accordance with the procedures defined with those countries following the framework agreements providing for their participation in Union programmes.
3. The Programme shall be open for bilateral or multilateral cooperation actions targeted at selected countries or regions on the basis of additional appropriations paid by these countries or regions.
4. The Programme shall permit cooperation and joint actions with countries not participating in the Programme and with international organisations which are active in the cultural and creative sectors such as UNESCO, the Council of Europe, the Organisation for Economic Cooperation and Development or the World Intellectual Property Organisation on the basis of joint contributions for the realisation of the Programme's objectives.

CHAPTER II

[...] Cross-sectoral Strand

Article 7

[...] Cultural and Creative Sectors *Guarantee* Facility

1. The Commission shall establish a **Guarantee** Facility targeting the **Union's** cultural and creative sectors [...]. [**The Guarantee Facility may operate as a self-standing instrument or within the context of another [...]** Union debt instrument [...].]¹²

The Guarantee Facility shall be set up and managed in accordance with Title VIII of the Financial Regulation.

¹² **Depending on the negotiations on MFF and final budget of the Creative Europe.**

2. The Guarantee Facility shall have the following priorities:
- (a) to facilitate access to finance for SMEs and **micro, small and medium-sized** organisations [...] **across the Union's** cultural and creative sectors;
 - (b) [...] to improve the capacity of **participating** financial [...] **intermediaries** to assess **the risks associated with SMEs and micro, small and medium-sized organisations in the** cultural and creative **sectors and with their** projects, including **through** technical assistance, **knowledge building** and networking measures.

The priorities shall be implemented [...] **in accordance with** Annex I.

2a (new) In accordance with Article 130(3) of the Financial Regulation, the Commission shall implement the Guarantee Facility in an indirect management mode by entrusting tasks to the European Investment Fund (“EIF”) as referred to in point (iv) of Article 55(1) of the Financial Regulation, subject to the terms of an agreement to be concluded between the Commission and the EIF.¹³

Article 8

Transnational policy cooperation

In order to promote transnational policy cooperation the Cross-sectoral Strand shall provide support for:

- (a) transnational exchange of experiences and know-how on new business and management models, peer-learning activities and networking among cultural organisations and audiovisual operators and policy makers related to the development of the cultural and creative sectors, promoting digital networking where appropriate;
- (b) market data, studies, analysis of labour market and skills needs, policy analysis, support for statistical surveys and evaluations including measurement of all aspects of the impact of the Programme;

¹³ ***Explanatory note: See Annex III for more information about an agreement to be concluded between the Commission and the EIF (Article 55(1a) of the Financial Regulation.***

- (c) contribution fee for the Union membership of the European Audiovisual Observatory to foster data collection and analysis in the cultural and creative sectors;
- (d) testing of new and cross-sectoral business approaches to funding, distributing and monetising creation;
- (e) conferences, seminars and policy dialogue including in the field of cultural and media literacy promoting digital networking where appropriate;
- (f) the Creative Europe Desks set out in Article 8a to carry out their tasks.

Article 8a

[...] Creative Europe Desks

1. The Commission, acting together with the countries participating in the Programme, shall establish a network of the Creative Europe Desks.
2. The Creative Europe Desks shall carry out the following tasks:
 - (a) promote the Programme in the countries participating in the Programme;
 - (b) assist the cultural and creative sectors regarding the Programme and provide basic information on other relevant support opportunities available under Union policy;
 - (c) stimulate cross-border cooperation within the cultural and creative sectors;
 - (d) support the Commission by providing assistance regarding the cultural and creative sectors in the countries participating in the Programme, for example through the provision of available data on these sectors;
 - (e) support the Commission in ensuring proper communication and dissemination of the results and impacts of the Programme as set out in Article 15(2).

CHAPTER III

Culture Strand

Article 9

Priorities of the Culture Strand

3. The priorities in the field of reinforcing the sector's capacity to operate transnationally shall be the following:
 - (a) supporting actions providing cultural players with skills, competences and know-how that contribute to strengthening the cultural and creative sectors, including encouraging adaptation to digital technologies, testing new approaches to audience development and testing of new business and management models;
 - (b) supporting actions enabling cultural players to cooperate internationally and to internationalise their careers and activities in the Union and beyond;
 - (c) providing support to strengthen European cultural organisations and international networking in order to facilitate access to professional opportunities.

4. The priorities in the field of promoting transnational circulation and mobility shall be the following:
 - (a) supporting international touring, events and exhibitions;
 - (b) supporting the circulation of European literature with a view to ensuring the widest possible accessibility;
 - (c) supporting audience development as a means of stimulating interest in and improving access to European cultural works and cultural heritage.

Article 10

Support measures of the Culture Strand

1. In order to implement the priorities set out in Article 9 the Culture Strand shall provide support for:
 - (a) transnational cooperation projects bringing together cultural organisations from different countries to undertake sectoral or cross-sectoral activities;
 - (b) activities by European networks of cultural organisations from different countries;
 - (c) activities by organisations with a European vocation fostering the development of emerging talent and stimulating the transnational mobility of cultural players and circulation of works, with a systemic and structuring effect;
 - (d) literary translation;
 - (e) special actions aiming to achieve greater visibility for the richness and diversity of European cultures, and stimulate intercultural dialogue and mutual understanding, including Union cultural prizes, the European Heritage Label and the European Capitals of Culture.

2. The support measures set out in Article 10(1) shall in particular support non-profit making projects.¹⁴

¹⁴ Recital 23 should read as follows: "With regard to the implementation of the Programme, the intrinsic value of culture and the specific nature of the cultural and creative sectors should be taken into account, including the importance of non-profit making organisations and projects under the Culture Strand, and particular care should be taken to ensure that administrative and financial procedures are simplified."

CHAPTER IV

MEDIA Strand

Article 11

Priorities of the MEDIA Strand

1. The priorities in the field of reinforcing the sector's capacity to operate transnationally shall be the following:
 - (a) facilitating the acquisition and improvement of skills and competences of audiovisual professionals and the development of networks including the use of digital technologies to ensure the adaptation to market development, testing new approaches to audience development and testing of new business models;
 - (b) increasing the capacity of audiovisual operators to develop audiovisual works with a potential to circulate in the Union and beyond and to facilitate European and international co-production;
 - (c) encouraging business to business exchanges by facilitating access to markets and business tools for audiovisual operators to increase the visibility of their projects on Union and international markets.

2. The priorities in the field of promoting transnational circulation shall be the following:
 - (a) supporting theatrical distribution through transnational marketing, branding, distribution and exhibition of audiovisual works;
 - (b) promoting transnational marketing, branding and distribution of audiovisual works;
 - (c) supporting audience development as a means of stimulating interest in and improving access to audiovisual works in particular through promotion, events, film literacy and festivals;
 - (d) promoting new distribution modes in order to allow the emergence of new business models.

Article 12

Support measures of the MEDIA Strand

In order to implement the priorities set out in Article 11 the MEDIA Strand shall provide support for:

- (a) a comprehensive offer of acquisition and improvement of skills for audiovisual professionals, knowledge sharing and networking initiatives, including the integration of digital technologies;
- (b) the development of European audiovisual works with enhanced cross-border circulation potential;
- (c) activities aiming at facilitating European co-productions of audiovisual works including television works;
- (cc) activities helping European and international co-production partners to meet and/or provide indirect support for audiovisual works co-produced;
- (d) facilitating access to professional audiovisual trade events and markets and the use of online business tools inside and outside the Union;
- (e) establishing systems of support for the distribution of non-national European films through theatrical distribution and on all other platforms as well as for international sales activities;
- (f) facilitating circulation of European films worldwide and of international films in the Union on all distribution platforms;
- (g) a European cinema operators' network screening a significant proportion of non-national European films;
- (h) initiatives presenting and promoting a diversity of European audiovisual works such as festivals and other promotional events;
- (i) activities aimed at increasing audiences' knowledge of, and interest in, European audiovisual works;
- (j) innovative actions testing new business models and tools in areas likely to be influenced by the introduction and the use of digital technologies.

CHAPTER V

Performance results and dissemination

Article 13

Consistency and complementarity

1. The Commission, in cooperation with the Member States, shall ensure overall consistency and complementarity with:
 - (a) relevant Union policies, such as those in the fields of education, employment, health, internal market, the digital agenda, youth, citizenship, external relations, trade, research and innovation, enterprise, tourism, justice and development;
 - (b) other relevant Union funding sources in the field of culture and media policies, in particular the European Social Fund, the European Regional Development Fund, the Research and Innovation Programmes, as well as the financial instruments relating to justice and citizenship, external cooperation programmes and the pre-accession instruments.¹⁵
2. This Regulation shall apply and be implemented respecting international commitments of the Union.

Article 14

Monitoring and evaluation

1. The Commission shall ensure regular monitoring and external evaluation of the Programme against qualitative and quantitative performance indicators including the following:

¹⁵ Deleted text (“In particular, it will be important to ensure synergies at the level of implementation between the Programme and the national strategies for smart specialisation”) to be reflected in a recital.

- (a) Indicators for the general objectives referred to in Article 4:
 - i. the percentage of people reporting that they access European cultural and audiovisual works from countries other than their own;
 - ii. the cultural and creative sectors' level, change in and share of employment and share of gross domestic product.
- (b) Indicators for the specific objectives referred to in Article 5:
 - i. With regard to the objective referred to in point (a) of Article 5:
 - the scale of international activities of cultural organisations and the number of transnational partnerships created;
 - the number of learning experiences supported by the Programme which have improved competences and increased employability of cultural players and audiovisual professionals.
 - ii. With regard to the objective referred to in point (b) of Article 5:

Culture Strand¹⁶:

- the number of people directly and indirectly reached through projects supported by the Programme;
- the number of projects addressed to children, young people and underrepresented groups and the estimated number of people reached.

MEDIA Strand:

- the number of admissions for non-national European films in Europe and European film worldwide (ten most important non-European markets) in cinemas;

¹⁶ New wording of recital 27: “In compliance with the principles for performance related assessment, the procedures for monitoring and evaluating the programme should include detailed annual reports and refer to the specific, measurable, achievable, relevant and time-bound targets and indicators laid down in this Regulation. Procedures for monitoring and evaluation should take into account the work of relevant players, such as the Unesco Institute for Statistics.”

- the percentage of European audiovisual works in cinemas, TV and digital platforms.
- iii. With regard to the objective [...] referred to in point (c) of Article 5:
- volume of loans [...] **guaranteed** in the framework of the [...] **Guarantee Facility, categorised by national origin, size and [...] sectors of SMEs and micro, small and medium-sized organisations;**
 - **volume of loans granted by participating financial intermediaries, categorised by their national origin;**
 - number and geographical spread of [...] **participating financial intermediaries [...];**
 - number of **SMEs and micro, small and medium-sized organisations** benefitting from the **Guarantee Facility, categorised by their national origin, size and [...]** sectors;
 - **average default rate of loans, categorised by national origin, size and [...] sectors of SMEs and micro, small and medium-sized organisations;**
 - **achieved leverage effect of guaranteed loans [...] in relation to the indicative [...] leverage effect (1:5.7).**
- iv. With regard to the objective referred to in point (d) of Article 5:
- the number of Member States making use of the results of the Open Method of Coordination in their national policy development and the number of new initiatives and policy outcomes.
- 1a. Qualitative and quantitative performance indicators other than the indicators set out in Article 14(1) shall be adopted by the Commission in accordance with the examination procedure referred to in Article 18(2).
2. The results of the monitoring and evaluation process shall be taken into account when implementing the Programme.

3. In addition to the regular monitoring the Commission shall establish by 2017 an external evaluation report **which:**
- a) [...] **includes** qualitative and quantitative elements, in order to assess the effectiveness in achieving the objectives and the efficiency of the Programme and its European added value;
 - b) [...]
 - c) **addresses** the scope for simplification, its internal and external coherence, the continued relevance of all objectives, as well as the contribution of the measures to the Union priorities of smart, sustainable and inclusive growth;
 - d) [...] takes into account evaluation results on the long-term impact of Decisions [...] Nos 1718/2006/EC, [...] **1855/2006/EC** and [...] 1041/2009/EC [...].
- 3a. The Commission shall evaluate the longer-term impacts and the sustainability of the effects of the Programme on the basis of **the selected** quantitative and qualitative indicators **in the final external evaluation report. With regard to the objective referred to in Article 5(c), the Commission shall also evaluate the effects of the Guarantee Facility on access to bank loans and the associated costs for SMEs and micro, small and medium-sized organisation in the cultural and creative sectors.**

Article 15

Communication and dissemination

- 1. The Commission shall provide the countries participating in the Programme with information concerning the projects which have received the Union's funding by transmitting the selection decisions within two weeks of their adoption.
1. Beneficiaries of the projects supported by the Programme shall ensure communication and dissemination of information concerning the Union funding they have received and the results obtained.

- 1a. The Commission shall ensure dissemination of relevant information to the Creative Europe Desks referred to in Article 8a.
2. The Creative Europe Desks shall ensure the communication and dissemination of information concerning the Union funding awarded and the results obtained for their country.

CHAPTER VI

Access to the Programme

Article 16
[...]¹⁷

CHAPTER VII

Implementing provisions

Article 17

Implementation of the Programme

1. The Commission shall implement the Programme in accordance with the Financial Regulation [...].
2. The Commission shall adopt by means of implementing acts **an** annual work programme concerning the strands set out in Article 6.

The annual work programme [...] shall set out the objectives pursued, the expected results, the method of implementation and the total amount of the financing plan [...] **as well as** a description of the measures to be financed, an indication of the amount allocated to each measure and an indicative implementation timetable.

¹⁷ **Moved to new Article 6a.**

For grants, [...] **the annual work programme** [...] shall include the priorities, the eligibility, selection and award criteria, and the maximum rate of co-financing.

For the Guarantee Facility, the annual work programme shall include the eligibility and selection criteria for financial intermediaries, the exclusion criteria related to the content of projects submitted to the participating financial intermediaries, the annual allocation to the EIF [...] as well as the eligibility, selection and award criteria for capacity building providers.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

3. The Commission shall adopt the general guidelines for the implementation of the Programme in accordance with the advisory procedure referred to in Article 18(3).

Article 18

Committee procedure

1. The Commission shall be assisted by a committee (“the Creative Europe Programme Committee”). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
 - 1a. The Creative Europe Programme Committee may meet in specific configurations to deal with concrete issues related to the strands set out in Article 6.
2. Where reference is made to this paragraph, Article 5 of the Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 4 of the Regulation (EU) No 182/2011 shall apply.

Article 19

Financial provisions

1. The financial [...] **reference amount for the implementation of the [...]** Programme for the period [...] **2014 to 2020** is [...] **set at [EUR 1 801 000 000.]**

The annual appropriations shall be authorised by the budgetary authority within the limits of the multiannual financial framework.

- 1a. The indicative budgetary allocation among the strands set out in Article 6 is as follows:

- (a) [...] Cross-sectoral Strand: [15%];
- (b) [...] Culture Strand: [30%];
- (c) [...] MEDIA Strand: [55%].

2. The financial allocation for the Programme may also cover expenses pertaining to preparatory, monitoring, control, audit and evaluation activities which are required directly for the management of the Programme and the achievement of its objectives; in particular, studies, meetings of experts, information and communication actions, including corporate communication of the political priorities of the [...] Union as far as they are related to the general objectives of [...] **the Programme**, expenses linked to IT networks focusing on information processing and exchange, together with all other technical and administrative assistance expenses incurred by the Commission for the management of the Programme.
3. The financial allocation may also cover the technical and administrative assistance expenses necessary to ensure the transition between [...] the measures adopted under Decisions Nos 1718/2006/EC, 1855/2006/EC [...] and [...] 1041/2009/EC [...] **and the Programme**.

If necessary, appropriations [...] **may** be entered in the budget beyond 2020 to cover similar expenses, in order to enable the management of actions not yet completed by 31 December 2020.

4. The Commission shall implement the Union financial support in accordance with **the Financial Regulation** [...].
5. In duly justified cases the Commission may consider costs directly linked to the implementation of the supported actions as eligible even if [...] **they** are incurred by the beneficiary before the submission of the financing application.

Article 20

Protection of the financial interests of the [...] Union

1. The Commission shall take appropriate measures ensuring that, when actions financed under this Regulation are implemented, the financial interests of the [...] Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the restitution of the amounts wrongly paid and, where appropriate, by effective, proportional and deterrent penalties.
2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds. The European Anti-fraud Office (OLAF) may be authorised to carry out on-the-spot checks and inspections on economic operators concerned directly or indirectly by such funding in accordance with the procedures laid down in [...] Regulation (Euratom, EC) No 2185/96 with a view to establishing that there has been fraud, corruption or any other illegal activity affecting the financial interests of the [...] Union in connection with a grant agreement or decision or a contract concerning Union funding.
3. Without prejudice to [...] paragraphs **1 and 2**, cooperation agreements with third countries and international organisations [...] **as well as** grant agreements, [...] grant decisions and contracts resulting from the implementation of [...] **the** Programme shall expressly empower the Commission, the Court of Auditors and OLAF to conduct such audits, verifications or on-the spot checks **in accordance with** [...] the Financial Regulation.

CHAPTER VIII

Final provisions

Article 21

Repeal and transitional provisions

1. Decisions Nos 1718/2006/EC, 1855/2006/EC [...]and [...] 1041/2009/EC [...] **are hereby** repealed with effect from 1 January 2014.
2. Activities undertaken **by** [...] 31 December 2013 on the basis of [...] Decisions **referred to in paragraph 1** [...] shall continue to be managed until they are terminated in compliance with [...] those Decisions.

Article 22

Entry into force

This Regulation shall enter into force on the twentieth day following **that of** its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at [...],

For the European Parliament
The President

For the Council
The President

**IMPLEMENTATION ARRANGEMENTS FOR THE CULTURAL AND CREATIVE
SECTORS GUARANTEE FACILITY**

[...] [**The Guarantee Facility may operate as a self-standing instrument or** within the context of **another [...]** Union debt instrument [...].]¹⁸ The financial support thus provided shall be earmarked to [...] **SMEs and micro, small and medium sized** organisations [...] in the cultural and creative sectors, **adapted to the specific needs of the sectors and branded as such.**

1. Tasks

The [...] **Guarantee** Facility shall [...] **have** the following tasks:

- (a) **to provide** guarantees to [...] **participating** financial intermediaries from any country participating in the [...] **Guarantee Facility**;
- (b) **to provide participating** financial intermediaries with additional expertise to evaluate risks associated with [...] **SMEs and micro, small and medium-sized organisations and with their** cultural and creative [...] **projects.**

*2. Selection of the **participating financial intermediaries***

[...] **The EIF shall select participating financial** intermediaries [...] in conformity with best market practice [...] **and with [...]** the specific objectives referred to in **Article 5(c).**

¹⁸ **Depending on the negotiations on MFF and final budget of the Creative Europe.**

The criteria used for selection shall in particular include the following:

- the volume of debt financing made available to **SMEs and micro, small and medium-sized organisations** [...],
- [...]
- [...]
- **the risk management policy for lending operations, in particular in relation to cultural and creative projects,**
- **the ability to build a diversified loan portfolio and to propose a marketing and promotion plan to SMEs and micro, small and medium-sized organisations across regions and [...] sectors.**

3. *Duration of the [...] **Guarantee Facility***

Individual guarantees may have a maturity of up to **ten** [...] years.

In accordance with [...] **point (h) of Article 18(3) of the** Financial Regulation, [...] repayments generated by the guarantees shall be assigned to the [...] **Guarantee Facility for a period not exceeding the period of commitment plus ten years.**

[...] **Repayments generated in accordance with the provisions of relevant delegation agreements by the operations of the MEDIA Production Guarantee Fund** set up in the previous period shall be assigned to the [...] **Guarantee Facility** in the current period.

The Commission shall inform the Member States of such assignments through the Creative Europe Programme Committee [...].

4. *Capacity Building*

Capacity building under the [...] **Guarantee Facility** is [...] the provision of [...] **expertise** to the **participating** financial intermediaries [...], with **a view to increasing their understanding of the cultural and creative sectors (in aspects such as the intangible nature of collateral assets, the size of the market lacking critical mass, the prototype nature of products and services) and to** providing each **participating** financial intermediary with additional expertise [...] **in building portfolios and evaluating** risks associated with cultural and creative [...] **projects**.

[...]

The resources allocated to the capacity building shall be limited to 10%]¹⁹ of the budget for the Guarantee Facility.

The EIF shall select the capacity building providers on behalf of the Guarantee Facility and under the supervision of the Commission through a public and open procurement procedure, on the basis of [...] criteria such as experience in respect of financing the cultural and creative sectors, expertise, geographical reach, delivery capacity and market knowledge.

5. *Budget*

The budgetary allocation shall cover the full cost of the Guarantee Facility, including payment obligations towards participating financial intermediaries such as losses from guarantees, management fees for the EIF managing the Union's resources, as well as any other eligible costs or expenses.

¹⁹ **Depending on the final budget for the Creative Europe programme, as agreed in the context of the MFF 2014-2020.**

6. *Visibility and awareness-raising*

The EIF shall contribute to the promotion of the Guarantee Facility towards the European banking sector. Additionally, each participating financial intermediary and the EIF shall contribute to the promotion of the Guarantee Facility by providing [...] information on the financial opportunities to the target SMEs and micro, small and medium-sized organisations. To this end, the EIF shall inter alia provide the network of Creative Europe Desks with the necessary information to enable them to carry out their tasks.

[...]

7. *Types of loans*

Types of loans covered by the Guarantee Facility shall include in particular:

- investment in tangible or intangible assets;
- business transfers;
- working capital (such as interim finance, gap finance, [...]).

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**“TITLE VIII
FINANCIAL INSTRUMENTS**

Article 130

Definition and scope

1. For the purpose of this Regulation, "financial instruments" shall mean Union measures of financial support provided **on a complementary basis** from the budget in order to address ~~a~~ **one or more** specific policy objectives of the Union ~~by way~~. **Such instruments may take the form** of loans, guarantees, equity or quasi-equity investments ~~or participations~~, or other risk-~~esharing~~ instruments, ~~possibly~~ **and may, where appropriate, be** combined with grants.

Financial instruments shall be authorised by means of a basic act.

Notwithstanding the second subparagraph, financial instruments may be established, in duly justified cases, without being authorised by means of a basic act, provided that such instrument is included in the budget in accordance with point (da) of Article 46(1).

The following definitions shall apply:

- (a) **"loan" means an agreement which obliges the lender to make available to the borrower a sum of money for the agreed amount and time. The borrower is obliged to repay during a certain period the loan made available to him. Usually the borrower is obliged to pay interest on the loan amount;**

²⁰ Changes compared to the Commission's proposal recorded in document 5129/11 are indicated in **bold** and ~~striketrough~~.

- (b) **"guarantee"** means a written commitment to be responsible for all or part of the debt, obligation or successful performance of a third party in an event that triggers such guarantee, such as a loan default;
 - (c) **"equity investment"** means the provision of capital to a firm, invested directly or indirectly in return for total or partial ownership of that firm and where the equity investor may assume some management control of the firm and may share the firm's profits;
 - (d) **"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. Quasi-equity investments can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or as preferred equity.
 - (e) **"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.
2. ~~The provisions of this title shall also apply to~~ **Where Union support is provided by means of financial instruments pursuant to Article 130(1) and combined in a single measure with elements directly related to financial instruments targeting the same final recipients, including technical assistance, interest rate rebates and guarantee fee subsidies, Title VIII shall apply to all elements of that measure.**
- 2a. **Where financial instruments are combined with grants funded from the Union budget under Title VI for elements not directly relating to financial instruments, separate records shall be maintained for each source of financing.**
3. The Commission may implement financial instruments in direct management mode; or in indirect management mode, **as set out in the basic act**, by entrusting tasks to the entities referred to in points ~~(iii) and~~ **(ii)**, (iv) **and (vi)** of Article 55(1)~~(bc)~~.

The entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c), when implementing financial instruments, may further entrust, under their responsibility, part of the implementation to financial intermediaries provided that these entities ensure that the financial intermediaries satisfy the criteria laid down in Article 131(1), (2) and (4). Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interests.

The Commission shall remain responsible for ensuring that the implementation framework for financial instruments complies with sound financial management and supports the attainment of defined and timed policy objectives, measured by outputs and results. The Commission shall be accountable for the implementation of financial instruments without prejudice to the entrusted entities' legal and contractual responsibility, in accordance with the applicable law.

- 4. Where financial instruments are implemented in shared management with Member States, the provisions applying to those instruments, including rules for contributions to financial instruments managed directly or indirectly under this Title, shall be laid down in the regulations referred to in Article 167.**
- 4a. The Commission shall be empowered to adopt delegated acts concerning detailed rules on financial instruments, including the selection of entities entrusted with the implementation of financial instruments, the content of the agreement in indirect management, the management costs and fees, the specific rules for fiduciary accounts, the direct implementation of the financial instruments and the selection of managers, of financial intermediaries and of final recipients.**

Article 131

Principles and conditions applicable to financial instruments

1. Financial instruments shall be ~~provided~~ **used to final recipients of Union funds** in accordance with **the principles of** sound financial management, transparency, **proportionality, non-discrimination, and equal treatment and subsidiarity**, and in accordance with their objectives **and, where applicable, the duration** established in the basic act ~~that applies to~~ for those financial instruments.

2. ~~Without prejudice to points (d) and (e) of Article 46(1),~~ **Financial instruments shall comply with the following:**
 - (a) **addressing market failures or sub-optimal investment situations, which have proven to be financially viable but do not give rise to sufficient funding from market sources;**

 - (b) **additionality: financial instruments of the EU shall not aim at replacing those of a Member State, private funding or another financial EU intervention;**

 - (c) **non-distortion of competition in the internal market and consistency with State aid rules;**

 - (d) **leverage effect: the Union contribution to a financial instrument shall aim at mobilising a global investment exceeding the size of the Union contribution according to the indicators defined in advance;**

 - (e) **alignment of interest: when implementing financial instruments, the Commission shall ensure that there is a common interest in achieving the policy objectives defined for a financial instrument, possibly fostered by provisions such as co-investment, risk-sharing requirements or financial incentives, while preventing conflict of interest with other activities of the entrusted entity;**

(f) **financial instruments shall be established on the basis of on an *ex ante* evaluation, including an evaluation of the possible re-use of additional resources referred to in paragraph 6(g).**

3. **The budgetary expenditure linked to a financial instrument and the financial liability of the Union shall be kept within in no case exceed the amount of the relevant budgetary commitment made for it, thus excluding contingent liabilities for the Union budget.**
34. **The entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c) and all financial intermediaries involved selected to participate in the execution of financial operations under a financial instrument shall comply with relevant standards and applicable legislation on the prevention of money laundering and, the fight against terrorism and tax fraud. For the implementation of financial instruments under this title, the entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c) shall not be established and shall not maintain business relations with entities incorporated in territories whose jurisdictions do not co-operate with the Union in relation to the application of the internationally agreed tax standards and shall transpose such requirements in their contracts with the selected financial intermediaries.**
4. **Each agreement between an eEntityies referred to in points (iii) and (ii), (iv) and (vi) of Article 55(1)(bc) and a, financial intermediaryies referred to in paragraph 3 involved in managing Union financial instruments, and final recipients of Union support under this title shall provide expressly for the Commission and afford the Court of Auditors to exercise their powers of control, on documents and on the premises and on all the facilities and give it all the information, even stored on electronic media, over all third parties who have received Union funds which the Court of Auditors considers necessary for the performance of its task, pursuant to Article 152.**

Regulation (Euratom, EC) No 2185/96 and Regulation No 1073/1999²¹ shall apply to Union support under this title.

²¹ Regulation of the European Parliament and Council concerning investigations conducted by the European Anti-fraud Office (OLAF).

- 5. Amounts corresponding at least to the Union contribution, or, where applicable, multiples thereof shall be used for the attainment of the specific policy objectives targeted through the financial instrument and shall not generate undue advantages, in particular in the form of undue dividends or profits for third parties.**

Without prejudice to sector-specific rules for shared management, revenues, including dividends, capital gains, guarantee fees and interest on loans and on amounts on fiduciary accounts paid back to the Commission or fiduciary accounts opened for financial instruments and attributable to the support from the Union budget under a financial instrument, shall be entered into the general 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 fiduciary accounts opened for financial instruments and attributable to the support from the Union budget under a financial instrument, shall constitute internal assigned revenue in accordance with Article 18 and shall be used for the same financial instrument, without prejudice to paragraph 6a, for a period not exceeding the period for the commitment of appropriations plus two years, unless specified otherwise in a basic act.

- 5a. 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 amounts. In case the amounts on the fiduciary accounts are sufficient to cover the contractually stipulated minimum reserve on the fiduciary accounts, increased by the disbursement forecasts for the current financial year and the amounts needed to exclude contingent liabilities in relation to out-currency payment obligations, no further payment to the fiduciary accounts will be made. Disbursement forecasts are to be provided on an annual or, where appropriate, on a semi-annual basis.**

- 6. The Commission shall report annually to the European Parliament and the Council on the activities. The report shall include, for each financial instrument supported:**
- (a) an identification of the financial instrument and the basic act;**
 - (b) a description of the financial instrument, implementation arrangements and the added value of the Union contribution;**
 - (c) the financial institutions involved in the implementation, including any issues relating to the application of paragraph 4;**
 - (d) the aggregate budgetary commitments and payments from the Union budget for each financial instrument;**
 - (e) the performance of the financial instrument, including the investments realised;**
 - (ea) an evaluation of the use of any amounts returned to the instrument as internal assigned revenue per paragraph 5;**
 - (f) the balance on the trust account;**
 - (g) revenues and repayments under paragraph 5;**
 - (h) the value of equity investments, with respect to previous years;**
 - (i) the accumulated figures on impairments of assets of equity/risk-sharing instruments, and on called guarantees for guarantee instruments;**
 - (j) the target leverage effect, and the achieved one;**

- (k) the contribution of the financial instrument to the achievement of the objectives of the programme concerned as measured by the established indicators, including, where applicable, the geographical diversification.
- 6a. Where the European Parliament and/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 the winding down of the instrument. In the event of the winding down of the instrument, any new repayments of such financial instrument pursuant to the third subparagraph of paragraph 5 shall be considered as general revenue.
7. The purpose of the financial instruments and, where applicable, their specific legal form and legal place of registration shall be published on the Commission website.
8. For financial instruments the authorising officer responsible shall ensure that financial statements, covering the period 1 January to 31 December and in compliance with the EU accounting rules and IPSAS, as well as any information necessary to produce financial statements in accordance with Article 65(3), will be provided by the entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c) by 15 February of the following year. The authorising officer responsible shall also ensure that audited financial statements for financial instruments will be provided by the entities referred to in points (ii), (iv) and (vi) of Article 55(1)(c) by 15 May of the following year.
9. The Commission shall ensure a harmonised management of financial instruments in particular in the area of accounting, reporting, monitoring and financial risk management.
10. The Commission shall be empowered to adopt delegated acts concerning detailed rules on the implementation of financial instruments, including the conditions for their use, the leverage effect, the ex-ante evaluation, the monitoring and the treatment of contributions from the CFS Funds.
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**CHAPTER 2
METHODS OF IMPLEMENTATION**

Article 55

Methods of implementation of the budget

1. The Commission shall implement the budget in the following ways:
 - (a) **directly**, by its departments, ~~by including its staff in the~~ Union Delegations **under the authority of their respective Head of Delegation**, in accordance with the second paragraph of Article 53, or through executive agencies referred to in Article 59;
 - b) ~~indirectly~~, in shared management with Member States; or
 - (c) **indirectly, where this is foreseen in the basic act or in the cases referred to in points (a) to (d) of Article 51(2)**, by entrusting budget implementation tasks to:
 - (i) third countries or the bodies they have designated;
 - (ii) international organisations and their agencies;
 - ~~(iii) financial institutions entrusted with the implementation of financial instruments pursuant to Title VIII;~~

²² Changes compared to the Commission's proposal recorded in document 5129/11 are indicated in **bold** and ~~striketrough~~.

- (iv) the European Investment Bank and the European Investment Fund ~~or any other subsidiary of the Bank~~;
- (v) bodies referred to in Articles 200 and 201;
- (vi) public law bodies or bodies governed by private law with a public service mission as far as these latter provide adequate financial guarantees;
- (vii) bodies governed by private law of a Member State, entrusted with the implementation of a public and private partnership and providing adequate financial guarantees;
- (viii) persons entrusted with the implementation of specific actions **in the Common Foreign and Security Policy** pursuant to Title V of the ~~Treaty on the European Union~~ TEU, and identified in the relevant basic act within the meaning of Article 51 ~~of this Regulation~~.

The Commission remains responsible for the implementation of the budget (Article 317 TFEU) and shall inform the European Parliament and the Council on the operations carried out by the entities under points (i) to (viii). Where the entrusted entity is identified in a basic act, the financial statement provided for in Article 27 shall provide a full justification for the choice of this particular entity under points (i) to (viii).

- 1a. The entities and persons entrusted with budget implementation tasks in accordance with point (c) of Article 55(1) shall fully cooperate in the protection of the Union's financial interests. Agreements concluded with such entities shall provide for the right of the European Court of Auditors, as well as the European Anti-Fraud Office to comprehensively exert their competences under the TFEU in the audit of funds so managed.**

The Commission shall make the entrustment of implementing tasks contingent upon the existence of transparent, non-discriminatory, efficient and effective review procedures concerning the actual implementation of these tasks.

All agreements concluded with such entities and persons shall be made available to the European Parliament and the Council at their request.

Entities and persons listed in points (i) to (viii) of paragraph 1(c) to which implementation tasks are delegated shall ensure, in conformity with Article 31(2), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget. The Commission shall be notified of the measures taken.

2. Member States, and entities and persons listed under point (c) of paragraph 1 shall not have the status of authorising officer by delegation.
3. The Commission may not entrust third parties with executive powers it enjoys under the Treaties where they involve a large measure of discretion implying political choices.
- 3a. **The Commission shall be empowered to adopt delegated acts concerning detailed rules on the methods of implementation of the budget, including direct management, the exercise of powers delegated to executive agencies, specific provisions for indirect management with international organisations, with bodies referred to in Articles 200 and 201, with public law bodies or bodies governed by private law with a public service mission, with bodies governed by private law of a Member State and entrusted with the implementation of a public and private partnership and with persons entrusted with the implementation of specific actions in the CFSP.**
