Council of the European Union

Brussels, 1 December 2023
(OR. en)

15916/23

LIMITE

FIN 1226
CODEC 2248

PUBLIC

Interinstitutional File: 2022/0162(COD)

NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	10361/23
No. Cion doc.:	8910/22 + ADD 1 (COM(2022) 223 final + ANNEXES 1 to 2)
Subject:	Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (recast) **(first reading)** – *Preparation for the trilogue* – *Guidance on open issues*

I. INTRODUCTION

1. On 16 May 2022, the Commission submitted to the European Parliament and the Council a 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).

2. The proposal for a recast Regulation aims at:

- aligning the Financial Regulation with the multiannual financial framework (MFF) package, including the declarations made by the EU institutions in the context of the MFF, and to maintain a "single rulebook" governing the expenditure of the Union;

- including targeted improvements and simplifications, notably to address the green transition, facilitate crisis management, reduce the administrative burden for grant applicants, simplify tenders through use of electronic invoicing for procurement and facilitate digital audits and reporting;

- enhancing the protection of the EU financial interests through an update of the single integrated IT system for datamining and risk-scoring and risk-scoring tool and of the Early Detection and Exclusion System (EDES).

3. The proposal is based on Article 322(1) of the Treaty on the Functioning of the European Union (TFEU) (ordinary legislative procedure).

4. The European Data Protection Supervisor delivered its opinion No 14/2022 on 7 July 2022.

5. The Court of Auditors delivered its opinion No 6/2022 on 27 October 2022.[1]

6. On 10 May 2023, 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 Industry, Research and Energy and the Committee on Regional Development.

7. After examination in the Budget Committee, the Permanent Representatives Committee gave a mandate to the Presidency on 14 June 2023[3] to start negotiations with the European Parliament.

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1 OJ C 446, 24.11.22, p. 26.
2 A9-0180/2023.
3 Doc. 10361/23 + ADD 1.

II. STATE OF PLAY

8. To date, four political trilogues have taken place, on 28 June, 25 September, 23 October and 27 November 2023. In parallel, intensive technical discussions have taken place in several trilateral meetings at technical level and in the Budget Committee.

9. The co-legislators have reached provisional agreements on several key issues. At the Budget Committee on 5 December 2023, an assessment of such provisional agreements took place on the basis of an updated version of the 4-column table[4].

10. Technical work to finalise a number of remaining issues is ongoing.

11. The following three issues, concerning some of the main features included in the recast proposal, remain still open at political level:

    (1) single IT tool for datamining and risk-scoring;

    (2) Early Detection and Exclusion System (EDES);

    (3) negative revenue mechanism, in order to cover financial obligations in the framework of competition fines.

    Two additional outstanding issues concern the Member States' assistance in recovery of EU claims and EU values and conditionality.

12. The aim of the discussion is to enable the Presidency to prepare the fifth trilogue, planned for 7 December 2023, with a view of reaching an agreement in principle on the revision of the Financial Regulation. The Presidency intends to explore delegations' positions on its compromise proposals[5] on the open political issues.

13. The Presidency's compromise proposals, which are included in the ANNEX to this note, intend to strike a balanced compromise, that could be supported by the European Parliament and the Commission, while addressing Member States' concerns.

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4 Doc. WK 16194/2023.

5 The Presidency's compromise proposals are included in the ANNEX to this note.

III. ISSUES FOR POLITICAL GUIDANCE

14. In light of the above, the Presidency is seeking guidance on the following outstanding issues in view of continuing efforts to reach an overall agreement on the revision of the Financial Regulation (recast):

(1) Presidency compromise proposal on the data mining and risk-scoring tool[6]

The Presidency proposes to:

- include the implementation of a compulsory feed of data of the tool, as of the beginning of programs implemented under the next MFF, in order to leave the necessary time to Member States' authorities, as well as for the Commission's services to get the IT aspects necessary to the transmission of data up to the required standards;
- make the feeding of data compulsory for Member States subject to certain conditions;
- leave the decision of the compulsory use of the tool to the co-legislators and subject it to an assessment and validation of the required improvement whereas to the readiness and reliability of the system, and commit to examine this evaluation.

(2) Presidency compromise proposal on EDES[6]

The Presidency proposes a targeted extension of EDES to shared management, under certain conditions, reflected by the following limitations to the application of the system, namely:

- the application of EDES in shared management and direct management with Member States would concern only the following exhaustive list of the most serious misconduct: fraud, corruption, criminal organisation, money laundering, terrorism, child labour/human trafficking and breach of conflict of interests rules;

[6] See the ANNEX to this note.

- the subjects that would fall within the scope of EDES are the following: participants or recipients (including a person or entity applying for EU funding or to be selected to implement EU funds). The subcontractors of a contractor or capacity providers, beneficial owners and affiliated entities of the excluded entity may be excluded as well in case of serious and established misconduct, but the Member States are not bound to consult the database in respect of them;
- the exclusions can only be based on final judgments/final administrative decisions or facts duly established at EU level, and based on solid evidence, following a contradictory procedure, based on investigative activities already carried out (e.g. OLAF reports, conclusions drawn by EPPO investigations; findings of ECA/EU audits). No exclusions would be possible based on mere suspicion; solid evidence, gathered in respect of procedural safeguards, would be required, assessed in the framework of audits or investigations;
- the obligation for Member States to notify only the final judgements or final administrative decisions related to the most serious cases of exclusions (e.g. breach of conflict of interest provisions, fraud, corruption and other serious crimes) to the Commission via the Irregularity Management System (IMS) or, if a Member State prefers, via other official channels;
- the managing authorities in Member States will only have the obligation to consult the EDES database prior to awarding contracts (the decision-making phase of the award or of the selection process). This does not prevent Member States to do further voluntary checks throughout the implementation of the contract/grant, as they deem appropriate;
- managing authorities in Member States will have the obligation to enforce the EDES exclusions by rejecting the excluded person or entity from receiving or from being selected to implement Union funds, as of 1 January 2028;
- the compulsory use of EDES would not apply to funds disbursed under the Recovery and Resilience Facility (RRF);
- a transitional period is proposed for the entry into force of the extension, namely as of 1 January 2028.

(3) Presidency compromise proposal on negative revenue (fines)

The Presidency proposes:

- to support the use of the negative revenue mechanism as a limited derogation in time, acceptable only for the duration of the Multiannual Financial Framework (MFF), by including a sunset clause in Article 48;
- not to include in the provisions, nor in the draft joint statement, which is proposed as part of the compromise, any reference to make a definitive solution of the application of the negative revenue mechanism after the current MFF;
- to use a neutral language in the provisions to avoid prejudging any future developments on the mechanism.

15. With regard to the two additional issues, concerning the recovery of EU claims and the EU values, the Presidency proposes to support the compromise in the Annex.

On recovery of EU claims, the Presidency compromise proposal addresses the Member States concerns concerning administrative burden and data protection. The proposal indicates that the request shall be treated with due regard to national legislation and administrative practice, without imposing upon Member States any unreasonable or disproportionate administrative burden, which should be bound only by easily available information. In addition, it is proposed a transitional period for the entry into force of the provisions, namely as of 1 January 2028.

On EU values, the Presidency proposes to support the compromise, which responds to the European Parliament request to make reference in the provision to the Charter of Fundamental Rights of the European Union (Article 51) as well as to the Union values enshrined in Article 2 of the Treaty, and address the concerns by the Member States, as the reference is made in compliance with sector-specific rules.

III. CONCLUSIONS

With a view of reaching an agreement in principle on the revision of the Financial Regulation at the Trilogue planned on 7 December 2023, the Permanent Representatives Committee is invited to:

- provide political guidance on the Presidency's compromise proposals referred under paragraphs 14 and 15 of this note, and annexed to it, and,
- check whether the required qualified majority can be reached to support the Presidency's compromise proposals.

ANNEX

PRESIDENCY COMPROMISE PROPOSALS[7]

1. Presidency compromise proposal on the "data mining and risk-scoring tool"

(a) Recital 27 (line 37):

"(27) In order to enhance the protection of the Union budget against ***irregularities including*** *fraud, corruption, conflicts of interest~~,~~* ***and*** *double funding ~~and other irregularities~~, standardised measures to collect, compare and aggregate information on the recipients of Union funding 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 and who ultimately profit from the misuse of EU funding. The electronic recording and storage of data on the recipients of Union funding, including their beneficial owners as defined in Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council*[8] *and the regular making of those data available in a single integrated IT system for data-mining and risk-scoring 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 ~~and other irregularities~~. The Commission should* ***act as the controller and*** *be responsible for the development, management and supervision of the single integrated IT system for data-mining and risk-scoring.* ***The Member States, Union investigative, control and audit bodies including*** *the European Anti-Fraud Office ('OLAF') ~~and other Union investigative and control bodies~~****, the European Court of Auditors ('ECA') and the European Public Prosecutor's Office ('the EPPO')*** *should have ~~the necessary~~ access to those data within the exercise of their respective competences* ***and only to the extent necessary and proportionate***

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7 Changes compared to the initial Commission proposal are indicated in **bold** and ~~strikethrough~~.

8 **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).**

to the exercise of their respective responsibilities. Data available through the single data-mining and risk-scoring tool 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 responsibilities, in the context of the discharge procedure for the Commission. *The rules related to the recording, storage, transfer and processing of data should comply with applicable data protection rules.* ***The system should be developed with a view to avoiding double reporting and reducing administrative burden for Member States and other implementing entities.****"*

(b) Recitals 27a, 27b and 27c (line 37.1):

*"****(27a) The single integrated and interoperable information and monitoring system referred to in Article 36(2) 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, from 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 comprehensive and complete data.***

(27b) The system referred to in Article 36(2) 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 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.

(27c) For the purpose of maintaining a high quality of the data-mining and risk analysis functions provided by the system referred to in Article 36(2), the following non-exhaustive list of actions and measures should be implemented where feasible:

(i) alignment of data fields with the relevant national and Commission IT systems and databases, with necessary additions for the purpose of the data mining tool, including reference to unique identifier of the operations;

(ii) integration of the relevant national IT systems and databases with the system for an automatic exchange of information;

(iii) 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;

(iv) use of artificial intelligence for analysing and interpreting data;

(v) providing users with multiple possibilities for using search options and filtering capabilities;

(vi) providing users with guidance on the interpretation and use of data and results;

(vii) training on how to navigate the system, assess risks and use them in verifications and audits.*"*

(c) Article 36 (lines 727 to 760):

"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* ~~*and other irregularities*~~*, including through the electronic recording and storage 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****, and through the* ***voluntary*** *use of a single integrated IT system for data-mining and risk-scoring provided by the Commission to access and analyse those data;*

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* ~~*and of an anti-fraud 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 point (d) of paragraph 2,* ***and without prejudice to the second subparagraph****, ~~the Member States~~,* ***Union institutions and bodies,*** *the person**s** or entities implementing the budget pursuant to Article 62(1) ~~of this Regulation~~ shall ~~record and store the following data electronically in an interoperable and machine-readable format and regularly~~* ***make the following data available to the Commission electronically, in an ~~open,~~ interoperable and machine-readable format*** *~~in the single integrated IT system for data-mining and risk-scoring provided by the Commission.~~**:***

(a) ***on*** *the recipient~~'s full legal name in the case of legal persons, the first~~**: all the data listed in Article 38(2), points (a), (b) and (c) and in the second subparagraph of Article 38(6)*** *and ~~last name~~ in the case of ~~natural persons, their VAT identification number or tax identification number where available or another unique identifier at country level and the amount of funding. If~~ a natural person, also the date of birth;*

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

*(~~b~~**c**) 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 of beneficial owner(s) of the recipients, where the recipients are not natural persons.*

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 data set out in the first subparagraph only where they have an obligation to record and store such data 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 data in their possession as referred to in the first subparagraph, on a voluntary basis.

The Commission shall present by [2028] an assessment of the readiness of the system with respect to the following criteria:

(a) Interoperability is ensured with relevant IT systems and databases, including those of the 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 are sufficiently uniform, objective, proportionate, and necessary for risk assessment, and are based on reliable sources of information;

(c) The system permits using artificial intelligence for analysing and interpreting data;

(d) The system 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, persons or entities implementing the budget pursuant to Article 62(1) may use the single integrated IT system for data-mining and risk-scoring on a voluntary basis.

7. *The single integrated IT system for data-mining and risk-scoring 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:*** ~~*: and other irregularities.*~~

(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.

~~*The use of and*~~ ~~*a*~~***A****ccess to the data processed by the single integrated IT system for data-mining and risk-scoring 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 Commission or an executive agency as referred to in Article 69*~~*, the Member States implementing the budget pursuant to Article 62(1), first subparagraph, point (b), the Member States that receive and implement Union funds pursuant to budget implementation under Article 62(1), first subparagraph, point (a), the 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,* ~~*and other Union investigative and control bodies,*~~ *within the exercise of their respective competences.* ***Data available through the single data-mining and risk-scoring tool shall be made available to the European Parliament and the Council on a case-by-case bases 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 single integrated IT system for data-mining and risk-scoring, 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 point (d) of paragraph 2. The maximum possible storage period shall not exceed 10 years from the last payment claim for the period submitted to the Commission.

(7a.) For the purposes of point (d) of paragraph 2 of this Article, Article 145(2) and Article 148, and in addition to any applicable sector-specific rule, Member States implementing the budget under point (b) of the first subparagraph of Article 62(1) and Member States that receive and implement Union funds, pursuant to budget implementation under point (a) of the first subparagraph of Article 62(1), shall transmit to the Commission information through the Irregularity Management System or any other official channel information on facts and findings established in the context of final judgments or final administrative decisions. For the same purposes, Member States shall transmit other necessary information requested by the Commission.

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

9. 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 defined in the Financial Regulation and in sector-specific rules.

10. 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."

(d) Article 275(3) (line 3133):

"Article 275

Transitional provisions

[…]

*3. ~~Without prejudice to sector-specific rules and to a voluntary application, t~~**T**he obligation~~s~~ set out in ~~Article 36,~~ point (d) of paragraph 2~~,~~ **and** paragraph~~s 6, 7 and 8~~ **of Article 36**, concerning the ~~electronic recording and storage of~~ **provision of access to** data on the recipients of funds and their beneficial owners ~~and the use of the single integrated IT system for data-mining and risk-scoring~~ shall apply only to programmes adopted under and financed from the post-2027 multiannual financial framework.*

[…]"

(e) Proposal for a draft joint statement:

*"**Draft 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***

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[9] 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, as well as the respective risk profile of expenditure programmes.

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."

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9 In particular points 30 and 32 of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission 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 Interinstitutional Agreement of 16 December 2020 between the European Parliament, the Council of the European Union and the European Commission 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 (OJ L 433I, 22.12.2020, p. 28–46).

2. <u>Presidency compromise proposal for the targeted extension of Early Detection and Exclusion System (EDES) in shared management</u>

(a) <u>Recital 103 (line 114)</u>:

"(103) In order to enhance the protection of the 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 to, or to be selected for implementing 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 as not reliable by having engaged in certain serious misconducts referred to in Article 139(1). ***To ensure this process, Member States should convey to the Commission, through the Irregularity Management System or any other official channel, information pertaining to established facts and findings within the context of such final judgments or administrative decisions.*** *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 referred to in Article 146, having regard to facts and findings established in the context of audits or investigations carried out by European Anti-fraud Office (OLAF), European Public Prosecutor Office (EPPO), the European Court of Auditors (ECA) 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 established under Article 138(1).*

The competent authorities of the *Member States~~' authorities~~ should ~~take it into account~~* ***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 EU funding. To ensure the effective implementation of the early detection and exclusion system, the authorities of the Member States should enforce the exclusions recorded in the database*** *by rejecting such persons or entities ~~from being selected to implement Union funds or~~ from receiving ~~such~~* ***or from being selected to implement Union*** *funds* ***for the entire duration of the exclusion. This 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 shall apply, as set out in sector-specific legislation."

(b) Recital 104 (line 115):

"(104) It is important to underline that the EDES system should only apply in respect of Union funds disbursed to the Member States under direct management, ~~such as those under Regulation (EU) 2021/241 of the European Parliament and of the Council[11],~~ 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 ~~and with due regard to the sui generis nature of the funds~~. 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 misconducts through final judgments and administrative decisions or facts and findings established in the context of audits or investigations carried out concerning those funds by the European Anti-fraud Office (OLAF), the European Public Prosecutor Office (EPPO), the European Court of Auditors (ECA) 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 EDES database, to enforce such decisions and to ensure that no payment application is submitted related to a person or entity that is in such an exclusion situation. ***The early detection and exclusion system should not apply to Regulation (EU) 2021/241 of the European Parliament and of the Council establishing the Recovery and Resilience Facility[10].*** *"*

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10 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).

(c) Recital 131 (line 142):

"(131) 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 ~~under shared and indirect management to take into account, as appropriate,~~ ***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.*"*

(d) Article 36(7a) (lines 757.3-758):

"Article 36

Internal control of budget implementation

*"****7a. For the purposes of point (d) of paragraph 2 of this Article, Article 145(2) and Article 148, and in addition to any applicable sector-specific rule, Member States implementing the budget under point (b) of the first subparagraph of Article 62(1), and Member States that receive and implement Union funds, pursuant to budget implementation under point (a) of the first subparagraph of Article 62(1), shall transmit to the Commission through the Irregularity Management System or any other official channel information on facts and findings established in the context of final judgments or final administrative decisions. For the same purposes, Member States shall transmit other necessary information requested by the Commission, in particular information related to the administrative follow up.***

(e) New Article 131 (lines 1716 and 1717):

"Article 131

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)(b), with regards to any person or entity applying for or receiving these Union funds, under the conditions set out in Article 139(2) of Section 2 of Chapter 2 of Title V ***and Article 275 of Title XVII****."*

(f) Article 138(2) (lines 1792-1795):

"Article 138(2)

Protection of the financial interests of the Union by means of detection of risks, exclusion and imposition of financial penalties

In shared management, the exclusion system shall apply to:

(j) any person or entity applying for funding under a programme in shared management, selected for such funding, or receiving such funding;

(k) entities on whose capacity the person or entity referred to in point (j) intends to rely, or subcontractors of such person or entity;

(l) beneficial owners and ***any*** *affiliate~~d~~* ~~*entities*~~ *of the* ~~*the person or*~~ *entity* ***excluded as*** *referred to in* ~~*point (j)*~~ ***Article 139(6)****."*

(g) Article 139(2) and (3) (lines 1825 to1832 and 1835):

"Article 139

Exclusion criteria and decisions on exclusions

2. The authorising officer responsible shall exclude a person or entity referred to in Article 138(2)(i), (j), (k) and (l) where that person or entity is in one or more of the exclusion situations referred to in point (iv) of Article 139(1)(c) or point (d) of Article 139(1).

*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 Article 139, paragraph ~~3~~**2**, fourth subparagraph, points (a) and (d) contained in the recommendation of the panel referred to in Article 146.*

*Before making the preliminary classification in law, the panel referred to in Article 146 shall give the Member State the opportunity to submit observations**, with regard to the procedure in Article 139, paragraph 3**.*

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 Article 139(1), point (a), 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 points (c), (d), (f), (g) and (h) of paragraph 1 of this Article, or in the case referred to in points (e) and (i) of paragraph 1 of this Article, the authorising officer responsible shall exclude a person or entity referred to in Article 138(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 146.

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 138(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 138(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 14~~36~~.***

Where such final judgment or final administrative decision holds that the person or entity referred to in Article 138(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 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;

[…]

(d) information transmitted in accordance with Article 145(2), point (d), ~~as well as~~ ***in particular*** *facts and findings established in the context of* ***a final*** *administrative or judicial decision~~s~~ at national level as to the presence of the exclusion situations referred to in point (iv) of Article 139(1), point (c), or Article 139(1), point (d), by entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (b).”*

(h) Article 145(5) (lines 1949 and 1950):

"Article 145

The early-detection and exclusion system

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 139.

Except where the budget is entrusted to persons or entities in Article 62, paragraph 1, point (c), according to the modalities referred to in Article 158(4), all persons and entities involved in budget implementation shall enforce such decisions with regards to the person or entity applying for~~,~~ ***or*** *selected* ~~*or receiving*~~ ***to implement*** *Union funds."*

(i) Article 275 (new lines to be introduced (after line 3128):

"Article 275

Transitional provisions

Without prejudice to sector-specific rules and voluntary application, and subject to the second subparagraph, the obligations set out in Articles 36(7), 36(8), 131, 138(2), 139(2), and 145(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 from [1 January 2028].

The early detection and exclusion system shall not apply to Regulation (EU) 2021/241 of the European Parliament and of the Council[11]."

[11] 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).

3. Presidency compromise proposal on "the negative revenue mechanism" (fines)

(a) Proposed compromise for the draft joint statement, based on the Commission's text:

*"**Draft joint statement on the budgetary treatment of interest or other charges due on cancelled or reduced fines, other penalties or sanctions***

*The European Parliament and the Council agreed that any interest or other charge~~s~~ due on **the amounts resulting from** cancelled or reduced fines, other penalties or sanctions will be recorded as negative revenue for the duration of the current multiannual framework.*

The European Parliament and the Council invite the Commission to present, on a regular basis, a report the Budgetary Authority on the cases when any interest or other charge~~s~~ due on the amounts resulting from cancelled or reduced fines, other penalties or sanctions would be recorded as negative revenue. The report should include the information on the case and the financial impact.

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 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."

(b) Recital 42 (line 53)

"(42) It is necessary to allow deducting from the revenue of the general budget of the Union 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. 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, 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 is not deducted from the amount to be repaid. To compensate for the loss of enjoyment of monies from the date the undertaking provisionally paid the fine to the Commission until the date of repayment, the amount to be repaid should be increased by an 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 the undertaking 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, another penalty or a sanction, and provides a financial guarantee instead of payment. ***Such interest or other charges should only be deducted as negative revenue until 31 December 2027. Past experience and expected future developments might be taken into account to examine a subsequent solution for the financing of such interest or other charges, 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.*** *In order to secure sufficient cash flow to compensate the concerned third parties for the loss of enjoyment of monies in the cases referred to in Article 109(4), it is 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."*

4. Presidency compromise proposal for Member States' assistance in recovery of EU claims

(a) Article 104 (lines 1446 to 1460)

"Article 104

~~Assistance~~ Information from Member States ~~in the notification and recovery~~ on debtors of Union claims

1. ***For the purpose of notification and recovery of Union claims from debtors established or having assets in the Member States, Member States shall assist t~~T~~he accounting officer of the Commission ~~may require the competent authorities of the Member States as defined by Article 4(1) of Directive 2010/24/EU to provide assistance for the notification and recovery of~~ with regard to any financial claim of the Union, or of an executive agency when it implements the budget, or of claims pursuant to Article 100(2), the second subparagraph of this Regulation.*

2. *Such ~~claims, including the interests related to them,~~ assistance shall ~~include in particular:~~*

   ~~(a) financial claims stemming from any public procurement contract, grant agreement or from grant decisions awarded by the Commission or an executive agency, or claims pursuant to Article 100(2), the second subparagraph;~~

   ~~(b) financial claims stemming from sanctions, administrative measures of recovery and fines or penalty payments imposed by the Union.~~

~~*3. The requested Member State shall assist the accounting officer of the Commission by*~~ ***consist in*** *providing information****, upon the Commission's accounting officer's request,*** *on the identity, solvency and known domicile or registered address of the debtor~~, beneficial owners~~* ***and legal representatives*** *in case of legal persons****, and on*** *any assets of the debtor and any other ~~relevant~~* ***necessary*** *information. ~~Upon request, it shall also notify any necessary documents to debtors, and proceed to seizures and recoveries of the claims and take the necessary precautionary measures.~~*

~~*4. A Member State shall not be obliged to grant assistance if the total amount of the claims for which the assistance is requested is below the threshold foreseen in Article 18(3) of Directive 2010/24/EU.*~~

~~***5***~~*3. Member States ~~may only proceed to the recovery or the adoption of precautionary measures concerning claims under paragraph 1 further to a Decision enforceable pursuant to Article 299 TFEU.~~*

~~*6. Upon request of the accounting officer of the Commission, and on the basis of a Decision enforceable pursuant to Article 299 TFEU, the requested Member State authority shall:*~~

~~*(a) take precautionary measures as soon as the Decision has been adopted, if allowed by its national law and in accordance with its administrative practices, to ensure recovery.*~~

~~*(b) enforce recovery of the claim, which*~~ *shall ~~be~~ treat~~ed~~* ***such requests with the same diligence*** *as if it was a~~n claim of the~~* ***information*** *request~~ed Member State~~ of the same nature* ***made by a national authority from that Member State. Such request shall be treated with due regard to national legislation and administrative practice, shall not impose upon Member States any unreasonable or disproportionate administrative burden and shall rely upon easily available information held by Member States****.*

~~*The requested Member State authority shall recover the claim in its own currency. Conversions to euro shall be done in accordance with the provisions of Article 19 of this Regulation.*~~

~~*7. The requested Member State authority shall make use of the powers and procedures provided under its national laws, regulations or administrative provisions applying to claims of the same nature, including provisions allowing the debtor additional time to pay or authorising payment in instalments.*~~

~~*8. Matters of procedure shall be governed by the applicable law of the requested Member State. Any substantive matters that may arise shall be governed by the substantive Union law and, if applicable, national law applicable to the claim. Questions concerning periods of limitation including the suspension, interruption or prolongation of periods of limitation, shall be governed solely by the provisions of this Regulation.*~~

4. The accounting officer of the Commission shall transmit the request with a copy of the debit note and any other necessary information to the contact point designated by the Member State, which by default shall be the competent authorities of the Member States as defined by Article 4(1) of Directive 2010/24/EU, unless otherwise specified by the Member State to the Commission's accounting officer.

5. The request shall be addressed in the official language of the requested Member State.

~~*9*~~*6. The Commission and ~~the~~ Member States may conclude an agreement covering ~~further arrangements on~~* ***practical implementation*** *matters such as ~~the payment by the Commission of fees and costs to the Member State,~~ means of communications or the ~~disclosure of information and the language~~* ***specific request forms*** *to be used.*

7. A Member State shall not be obliged to provide information if the total amount of the claims for which the assistance is requested is below the threshold foreseen in Article 18(3) of Directive 2010/24/EU.*"*

(b) Recital 72 (line 83), corresponding to the changes made in Article 104. The proposal includes a transitional period:

"(72) In order to ensure sound financial management and to guarantee the efficient recovery of Union claims, it is necessary for the accounting officer of the Commission to be able to rely on the assistance from Member States for the recovery of Union claims. ***Such assistance should be limited to the provision of information which is readily available to Member States and should not constitute an unreasonable administrative burden for their administration. The aim of the assistance should consist in providing sufficient and reliable information to the accounting officer of the Commission in cases of enforced recovery, in particular where the debtor is de facto insolvent or cannot be located, therefore allowing either an effective recovery or the waiver of the claim. The Member States should provide the requested assistance with the same diligence as if it was an information request of the same nature made by a national authority from that Member State and in accordance with national law and administrative practices. Such request shall not impose upon Member States any unreasonable or disproportionate administrative burden and shall rely upon easily available information held by Member States.***

Such assistance should be conducted in a similar way to the one between Member States for the notification and recovery of their claims pursuant to Council Directive 2010/24/EU. ~~*The purpose of the assistance should not only be to allow to recover whenever the debtor has sizeable assets, but also to provide sufficient and reliable information to the accounting officer in cases of insolvency of the debtor so that a waiver decision to waive a recovery, can be adopted in cases where the debtor is insolvent or cannot be located. The assistance regarding notification to the debtor by the Member State should be done in accordance with the applicable national procedures. It should include not only the enforceable decisions pursuant to Article 299 of the Treaty on the Functioning of the European Union (TFEU) but also the preparatory acts prior to the adoption of such a decision, including the notification of debit notes, reminders and letters of formal notice and precautionary measures to safeguard the rights of the Union in cases where enforceable decisions have been adopted but either have not yet been notified or are waiting for the order for its enforcement to be appended pursuant to Article 299 TFEU.*~~ *The details of such assistance should be laid down in an agreement between the Commission and Member States either bilaterally or multilaterally. Nevertheless, the obligation to provide such assistance shall exist even if no such agreement is signed.* ***In order to allow for sufficient time for Member States to nominate a contact point to which the accounting officer of the Commission should address requests for information on debtors of Union claims, the obligation to provide assistance should apply at the latest from 1 January 2028.****"*

(c) Article 275 (line 3134.2):

"Article 275

Transitional provisions

[…]

5. The obligations set out in Article 104 shall apply no later than 1 January 2028."

5. Presidency proposal on the "EU values and conditionality"

(a) Recitals 11a and 11b

"(11a) It is essential that in the implementation of the Union budget the 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.

(11b) This Regulation should enable the authorizing officer, where relevant in accordance with sector specific rules, to adopt appropriate measures and take action to protect the Union 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."

(b) Article 6(2a):

"(2a) In the implementation of the Union 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, where applicable under the conditions laid down in the sector-specific rules."