Council of the European Union

Brussels, 22 April 2022
(OR. en)

8355/22

Interinstitutional File: 2022/0125(COD)

FIN 458
CODEC 526

PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	22 April 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2022) 184 final
Subject:	Proposal for a Regulation of the European Palriament and of the Council amending Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union

Delegations will find attached document COM(2022) 184 final.

Encl.: COM(2022) 184 final

EUROPEAN
COMMISSION

Brussels, 22.4.2022
COM(2022) 184 final

2022/0125 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Financial Regulation[1] lays down the principles and general financial rules for establishing and implementing the Union budget and controlling Union finances.

When a fine, other penalty or sanction is imposed by the Commission but contested before the Union courts, their addressees may either provisionally pay the fine or provide a bank guarantee covering the amount of the fine and the applicable interest for deferred payment, until the final judgment is rendered. In case of provisional payment, the party concerned shall credit the amount to a bank account of the Commission. Since 2009, the fines provisionally paid to the Commission are deposited in a dedicated fund (BUFI) to be directly or indirectly invested in very secure government bonds to preserve their value in case such amounts should be returned to the concerned party on foot of the cancellation or reduction of the fine by the Union courts.

In its ruling of 20 January 2021 in case C-301/19 P, *Commission* v *Printeos*, the Court held that, when acting pursuant to the obligation under Article 266(1) TFEU to take the necessary measures to comply with a judgment of the Court of Justice of the European Union reducing or annulling a competition fine provisionally paid by an undertaking, the Commission is obliged to pay default interest for late repayment of the fine from the date on which the undertaking provisionally paid the fine until the date of repayment.

In the context of its appeal in case C-221/22 P, *Commission* v *Deutsche Telekom*, the Commission requested the Court to review its judgment in *Printeos* with a view to clarifying the obligations which are incumbent on the Commission in the event of the reduction or annulment of a provisionally paid fine to adequately compensate the addressee of a fine for the unavailability of the fine paid during the period when it was subject to judicial review.

However, as long as the Court of Justice has not provided the clarifications sought, the Commission is faced with unprecedented interest claims far exceeding the interest earned on the amounts provisionally paid, and for which appropriate solution needs to be found in the Union budget. Without prejudice to the outcome of the appeal in case C-221/22 P, it is therefore urgent to propose legislative measures to ensure an appropriate level of compensation in the event of reimbursement of a provisionally paid fine and the ability of the Union budget to satisfy the resulting financial needs. This requires a number of targeted amendments to Articles 48(2), 99(4), 107(2) and 108(1), (2) and (4)

Pursuant to the general principle of *restitutio in integrum* applicable to the reimbursement of fines, other penalties or sanctions imposed by Union institutions and provisionally paid that are later cancelled or reduced by the Court of Justice of the European Union, it should be

[1] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012. (OJ L 193, 30.7.2018, p. 1.)

clarified that any negative return on the provisionally collected amount of such fines, other penalties or sanctions should not be 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, it is proposed that the amount 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. 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.

By derogation from the general rule that the budget shall not contain negative revenue, it should be specified that the above-referred interest and any other charge due on such cancelled or reduced amounts of fines, other penalties or sanctions, including any negative return related to those amounts should be considered as negative revenue of the Union's budget, so as to avoid any undue effect on the expenditure side of the Union budget.

In order to remedy as soon as possible the excessive strain on the expenditure side of the Union budget, this proposal is presented separately from the upcoming revision of the Financial Regulation.

- **Consistency with existing provisions on the policy area**

This proposal is fully consistent with the existing general financial rules and aims at avoiding excessive strain on the Union budget resulting from the *Printeos* case law.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

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

- **Subsidiarity (for non-exclusive competence)**

The adoption of Union's general financial rules falls under the exclusive competence of the Union.

- **Proportionality**

This proposal aims at ensuring an adequate compensation in the event of the reimbursement of provisionally paid fines, other penalties or sanctions and ensuring the ability of the Union to satisfy the resulting financial obligations. It does not contain rules that would not be necessary to achieve the objectives of the Treaty.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Stakeholder consultations**

No stakeholder consultation has been conducted for this limited amendment.

- **Impact assessment**

In line with the Commission's statement on future revisions of the Financial Regulation[2], no impact assessment is required. The Financial Regulation provides the general rules and the toolbox for the implementation of the spending programmes. There are therefore no direct economic, environmental or social impacts that result from revisions of the legislation, which could effectively be analysed in an impact assessment. The value added of impact assessments comes when making policy choices on specific spending programmes, which have to comply with the regulatory framework provided by the Financial Regulation. Instead, an ex ante evaluation has been carried out for this proposal, in particular in order to identify the most appropriate way to reflect the recent case-law as regards the companies concerned but also in terms of budgetary treatment of the corresponding amounts.

- **Regulatory fitness and simplification**

While this amendment of the Financial Regulation does not fall under the Regulatory Fitness and Performance Programme (REFIT), it contributes to the Better Regulation agenda. This proposal responds to the need to revisit the provisions on default and compensatory interests, and negative revenue, in line with the recent case-law. The proposed approach is fully in line with the better regulation framework and simplification efforts.

- **Fundamental rights**

The proposal complies with the Charter of Fundamental Rights of the Union.

4. BUDGETARY IMPLICATIONS

The proposal does not have budgetary implications.

5. DETAILED EXPLANATION OF THE SPECIFIC PROVISIONS OF THE PROPOSAL

As indicated under section 4, the proposal itself does not have implications for the Union budget. The proposal clarifies the budgetary tools and procedures to address the consequences brought by the judgments by the Court of Justice of the European Union that reduce or cancel fines, other penalties or sanctions initially imposed by a Union institution. Only such judgments of the Court of Justice of the European Union may trigger the payment obligations towards third parties.

Article 48(2) on negative revenue: to ensure an appropriate budgetary treatment and avoid undue financial strain on the expenditure side of the Union budget, it should be provided that interests, and any compensation due where a fine, other penalty or sanction has been

[2] 2018/C 267 I/01.

cancelled or the amount has been reduced, including any negative return related to such fines, other penalties or sanctions are to be deducted from the revenue side of the Union budget (negative revenue). This would be a limited and duly justified derogation from the general rule under Article 48(1) that the budget shall not contain negative revenue.

Article 99(4) on default interest: it should be clarified that the rate applied by the European Central Bank to its principal refinancing operations increased by one and a half percentage points where a debtor of fines, other penalties or sanctions provides a financial guarantee which is accepted by the accounting officer instead of payment, is excluded from this provision because it does not concern default interest. The reference to this rate should instead be moved to Article 108(1).

Article 107 (2) on entry in the budget: In order to secure sufficient cash flow to compensate third parties for the loss of enjoyment of monies, it should be specified that the amounts received by way of fines, other penalties or sanctions and any accrued interest or other income generated by them may be entered in the budget by the end of the following financial year.

Article 108(1), (2) and (4) on recovery of fines, other penalties or sanctions imposed by Union institutions:

As explained above, in the case of a financial guarantee, the reference to Article 99(4) in the first paragraph should be replaced by the interest rate applied by the European Central Bank to its principal refinancing operations, increased by one and a half percentage points as currently indicated in Article 99(4)(a).

In Article 108(2), a reference to sound financial management should replace the reference to aiming at positive returns. Taking into account the possibility of negative return on investments, the Commission should not aim at a positive expected return, if this requires taking an unduly high level of investment risk. Therefore, in accordance with the principle of sound financial management, it should be specified that the Commission when investing in financial assets should prioritise the aim of security and liquidity of the monies.

Pursuant to the general principle of *restitutio in integrum* applicable to the reimbursement of fines, other penalties or sanctions provisionally paid when later annulled or reduced by the Court of Justice of the European Union, it should be clarified that any negative return on the provisionally collected amount of fines, other penalties or sanctions should not be deducted from the amount to be repaid. Accordingly, the second subparagraph of Article 108(4) should be deleted. To compensate for the loss of enjoyment of monies, the amount 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, by analogy to the rate of interest that a debtor bears in case of deferred payment of a fine, other penalty or sanction covered by a financial guarantee.

2022/0125 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322(1) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Auditors[1],

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

Whereas:

(1) In its judgment of 20 January 2021 in Case C-301/19 P[3], *Commission* v *Printeos*, the Court held that, on the basis of the obligation to take the necessary measures to comply with judgments of the Court of Justice of the European Union reducing or annulling a competition fine provisionally paid by an undertaking under Article 266(1) TFEU, the Commission was under an obligation to pay default interest for late repayment of the fine from the date the undertaking provisionally paid the fine to the Commission until the date of repayment.

(2) That recent case law has led to unprecedented interest claims, far exceeding the interest earned on the amounts provisionally paid, for which appropriate solution needs to be found in the Union budget. To ensure an appropriate level of compensation in the event of reimbursement of a provisionally paid fine and the ability of the Union budget to satisfy the resulting financial needs, it is urgent to make a number of targeted amendments to the Financial Regulation.

(3) In particular, it is necessary to include a derogation from the general rule set out in Article 48(1) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and

---

1 Opinion No XXX of XXX (OJ C , , p.).

2 Position of the European Parliament of XXX and decision of the Council of XXX.

3 Judgment of the Court of Justice of 20 January 2021, European Commission v Printeos, SA, C-301/19 P, ECLI:EU:C:2021:39.

of the Council[4], which provides the budget is not to contain negative revenue. That derogation should allow to deduct 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.

(4) 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. It is therefore appropriate to delete the relevant provision in Article 108(4) of Regulation (EU, Euratom) 2018/1046.

(5) 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. It is also appropriate to clarify that 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 does not constitute default interest for late payment, by amending Articles 99(4) and 108(1) of Regulation (EU, Euratom) 2018/1046.

(6) 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 108(4) of Regulation (EU, Euratom) 2018/1046, 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.

(7) Taking into account the possibility of negative return on investments, the Commission should not aim at a positive expected return, should this require assuming a disproportionately high level of investment risk. The Commission should be allowed to invest in financial assets, while prioritising the aim of security and liquidity of the amounts provisionally paid as fines, other penalties or sanctions in accordance with the principle of sound financial management.

(8) Given the urgent need to address the budgetary impact of the recent case law, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(9) Regulation (EU, Euratom) 2018/1046 should therefore be amended accordingly,

---

[4] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU, Euratom) 2018/1046 is amended as follows:

(1) Article 48 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The budget shall not contain negative revenue.’;

(b) the following paragraph 1a is inserted:

‘1a. By way of derogation from paragraph 1, the following shall be deducted from the revenue of the budget:

(a) negative remuneration of deposits in total;

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

(2) in Article 99(4), the first subparagraph is replaced by the following:

‘In the case of fines, other penalties or sanctions, the interest rate for amounts receivable not paid or covered by a financial guarantee acceptable to the accounting officer of the Commission within the deadline set in the decision of the Union institution imposing a fine, other penalty or sanction shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the decision imposing a fine, other penalty or sanction has been adopted, increased by three and a half percentage points.’;

(3) in Article 107(2), the following second subparagraph is inserted:

‘For the purposes of applying Article 48(1a), point (b), the necessary amounts referred to in paragraph 1 may be entered in the budget by the end of the following financial year.’;

(4) Article 108 is amended as follows:

(a) paragraphs 1 and 2 are replaced by the following:

‘1. Where an action is brought before the Court of Justice of the European Union against a decision of a Union institution imposing a fine, other penalty or sanction under the TFEU or the Euratom Treaty and until such time as all legal remedies have been exhausted, the debtor shall either provisionally pay the amounts concerned on the bank account designated by the accounting officer of the Commission or lodge a financial guarantee acceptable to the accounting officer of the Commission. The guarantee shall be independent of the obligation to pay a fine, other penalty or

sanction and shall be enforceable on demand. It shall cover the claim as to principal and interest that the debtor shall pay in the case referred to in point (b) of paragraph 3 at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the decision imposing a fine, other penalty or sanction has been adopted, increased by one and a half percentage points, as from the deadline set in the decision of the Union institution imposing a fine, other penalty or sanction.;

2. The Commission may invest the provisionally collected amounts in financial assets, prioritising the aim of security and liquidity of the monies in accordance with the principle of sound financial management.';

(b) paragraph 4 is amended as follows:

(i) the first subparagraph is replaced by the following:

'4. After all legal remedies have been exhausted and where the fine, other penalty or sanction has been cancelled or the amount has been reduced, one of the following measures shall be taken:

(a) the provisionally collected amounts or, in the event of a reduction, the relevant part thereof shall be repaid to the third party concerned;

(b) where a financial guarantee has been lodged, it shall be released accordingly.

The amount or the relevant part thereof referred to in point (a) of the first subparagraph shall be increased by interest at the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* in force on the first calendar day of the month in which the decision imposing a fine, other penalty or sanction was adopted, increased by one and a half percentage points.'

(ii) the second subparagraph is deleted.

Article 2

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

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*