Council of the European Union
General Secretariat

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LIMITE

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MEETING DOCUMENT

From: To:	General Secretariat of the Council Budget Committee
N° prev. doc.:	8910/22 + ADD 1 (COM(2022) 223 final + Annexes 1 to 2)
Subject:	Financial Regulation revision (recast proposal): COM replies to MS follow-up questions

Delegations will find attached a revised version of the Commission's replies to Member States' follow-up questions regarding the Financial Regulation revision (recast proposal), including the two annexes on EDES mentioned in reply to question 108.

Flowchart on extension of EDES to shared management

1.Exclusion on the basis of a conviction (final judgments and administrative decisions) with a sanction determining the duration of the exclusion – **Non-Panel Procedure**

2.Exclusion on the basis of a conviction (also final judgments and administrative decisions) without a sanction determining the duration of the exclusion – **Expedited Panel procedure**

3.Exclusion on the basis of findings at EU level (e.g. OLAF reports, EPPO investigations, ECA/EU audits) – **Panel procedure**

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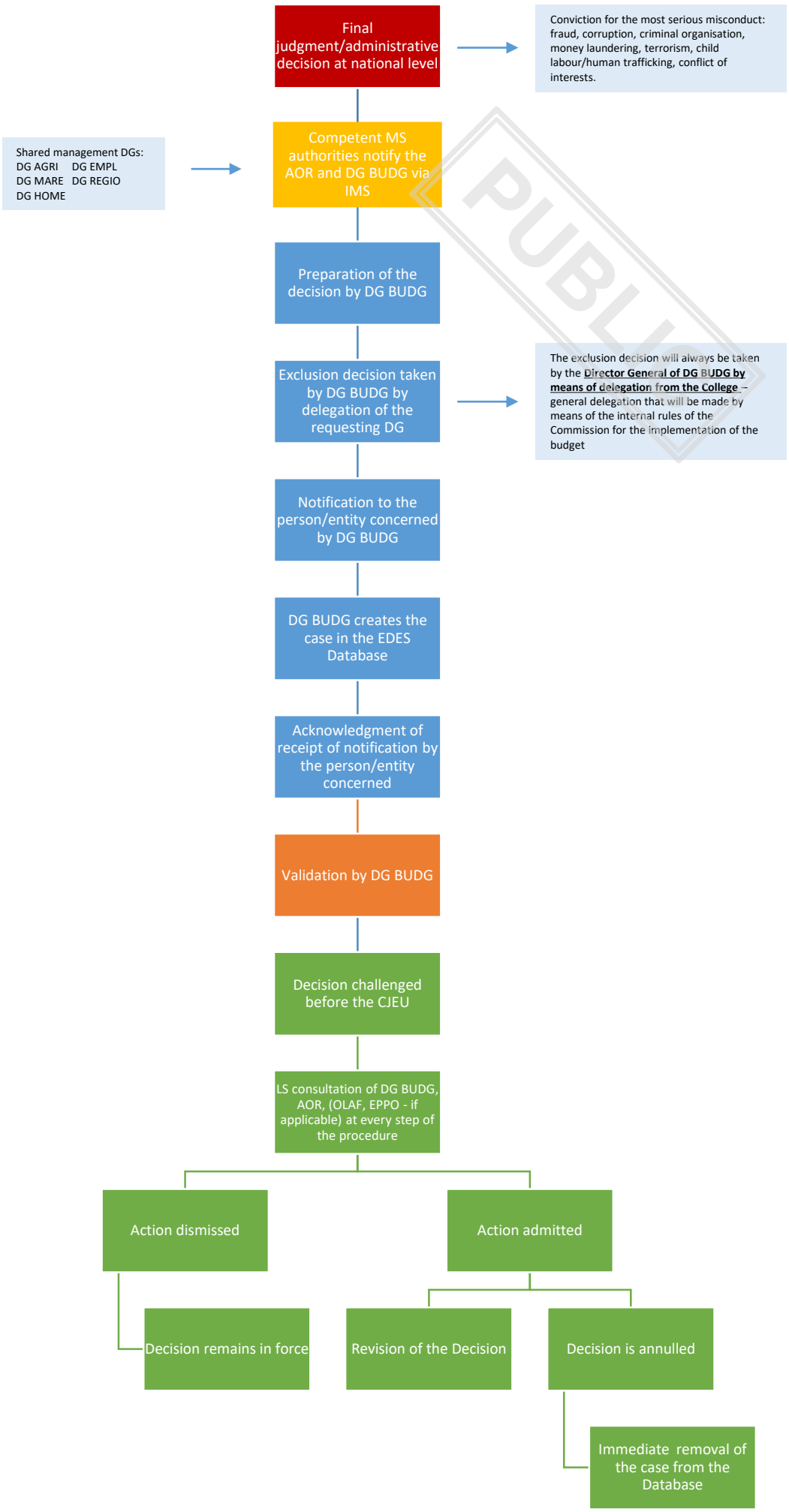
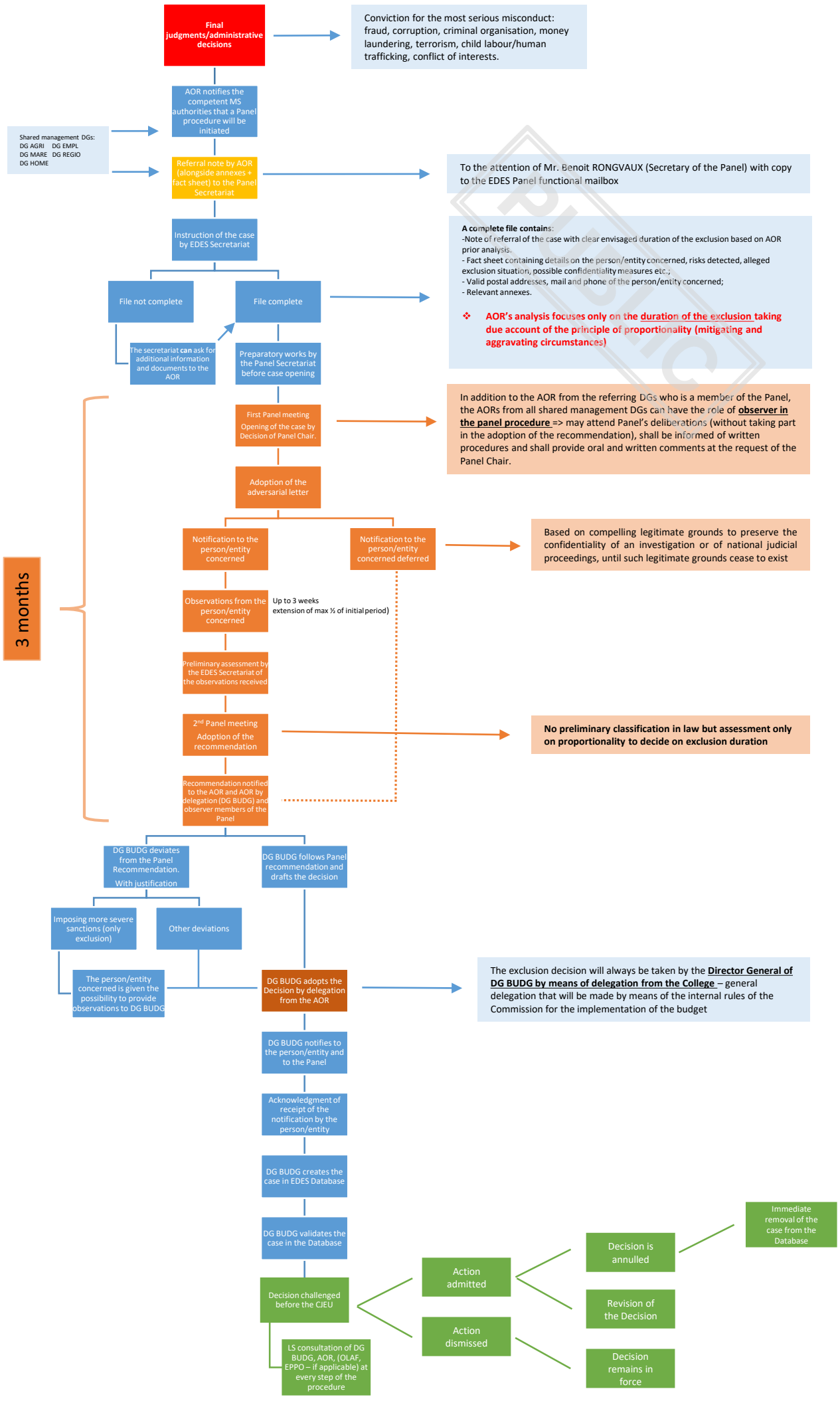
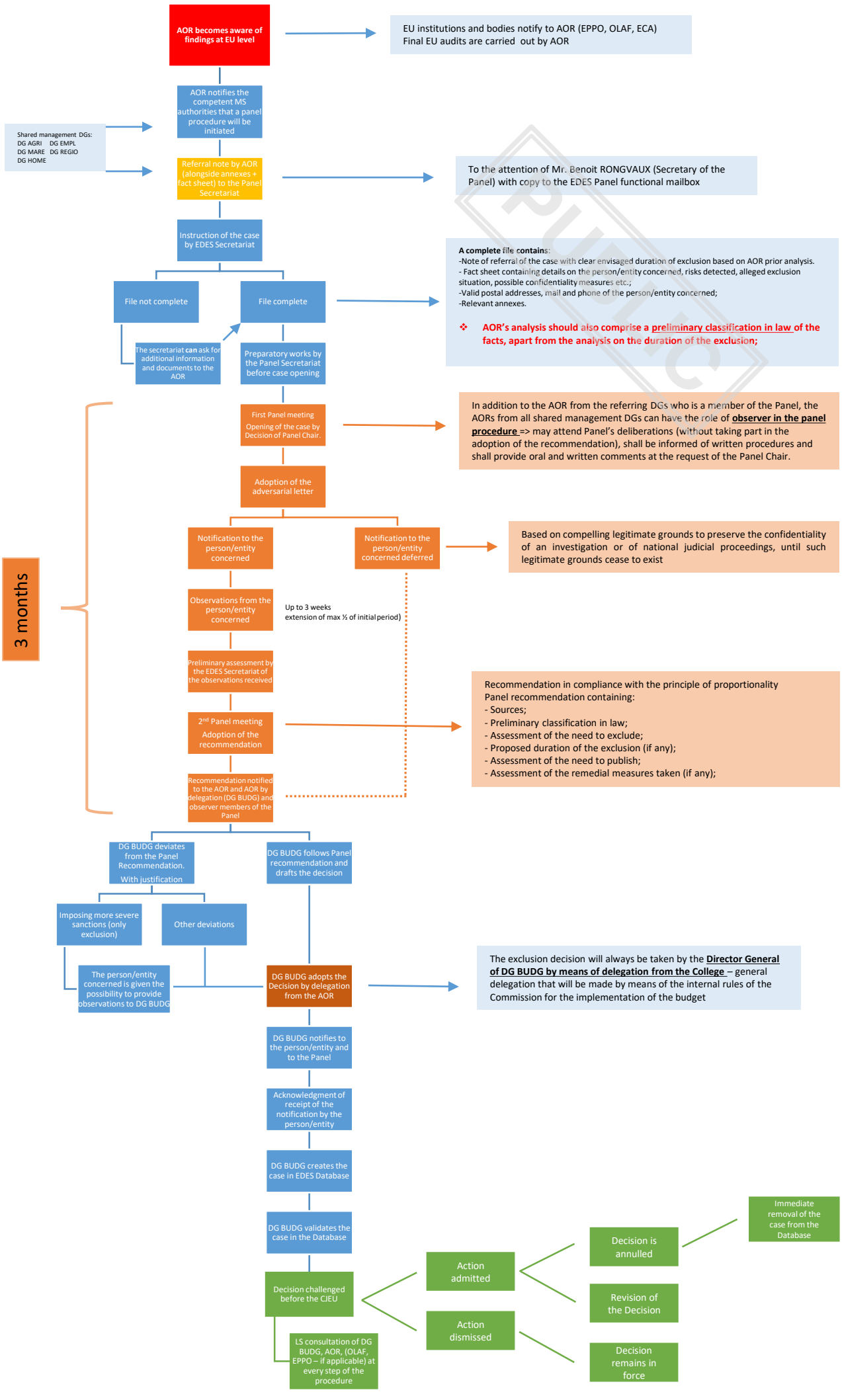
1. Exclusion based on final judgments/administrative decisions with a sanction determining the duration of the exclusion – Non-Panel Procedure



2. Exclusion based on final judgments/administrative without a sanction determining the duration of the exclusion – Expedited procedure of the Panel

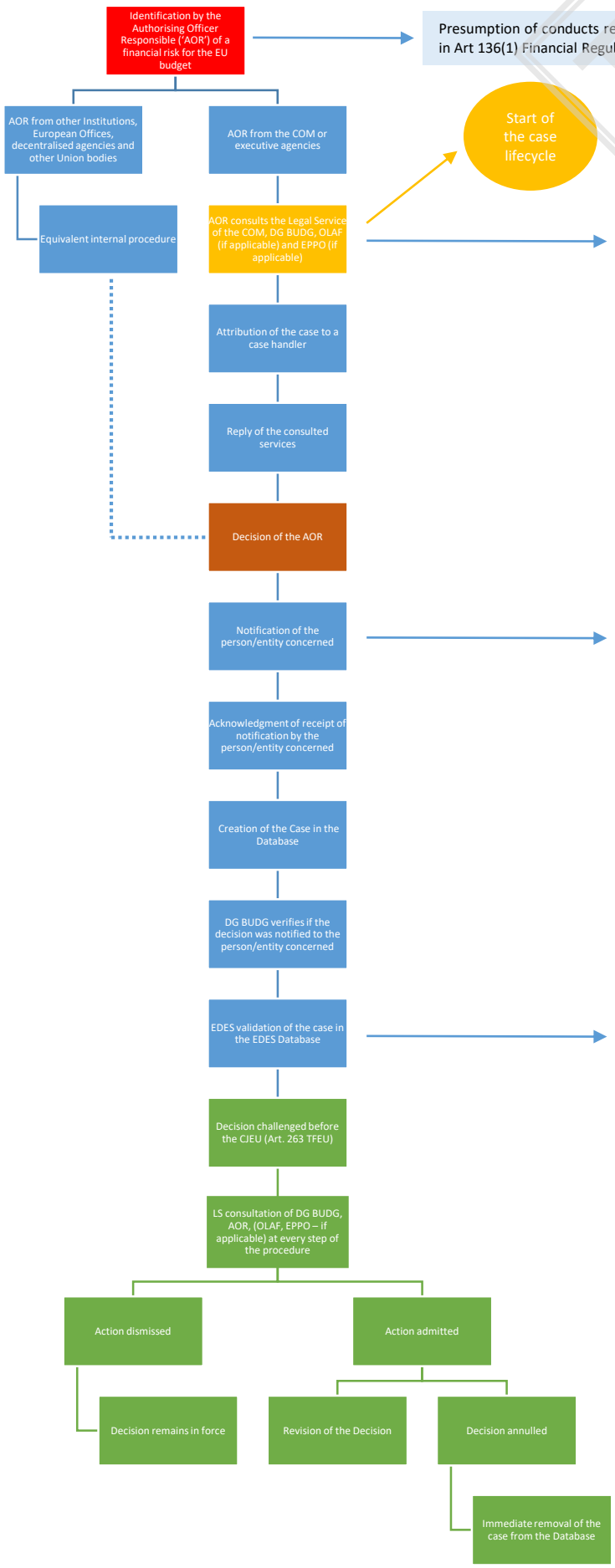


3. Panel Procedure: Exclusion on the basis of EU findings

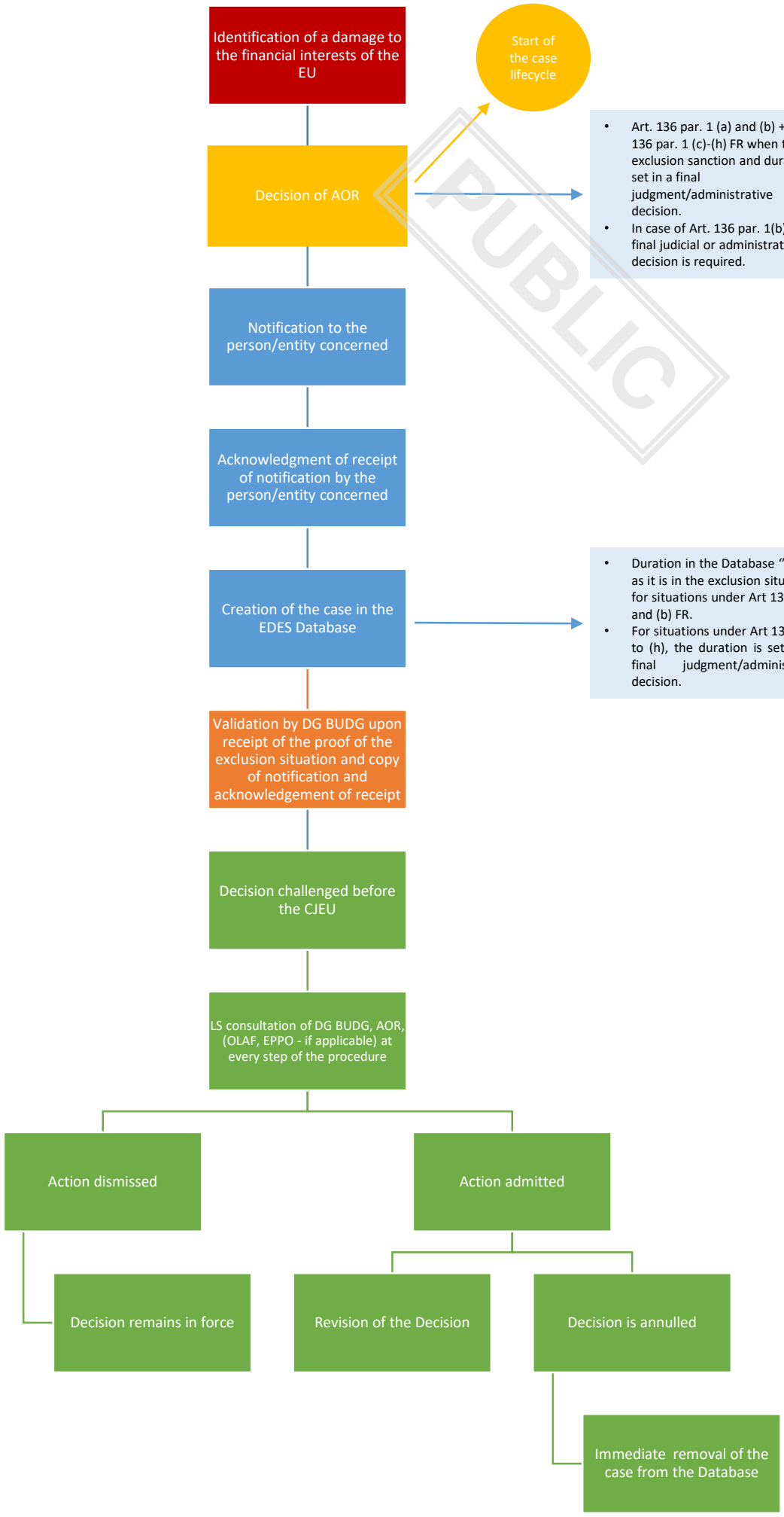


Case lifecycle under the Early Detection and Exclusion System

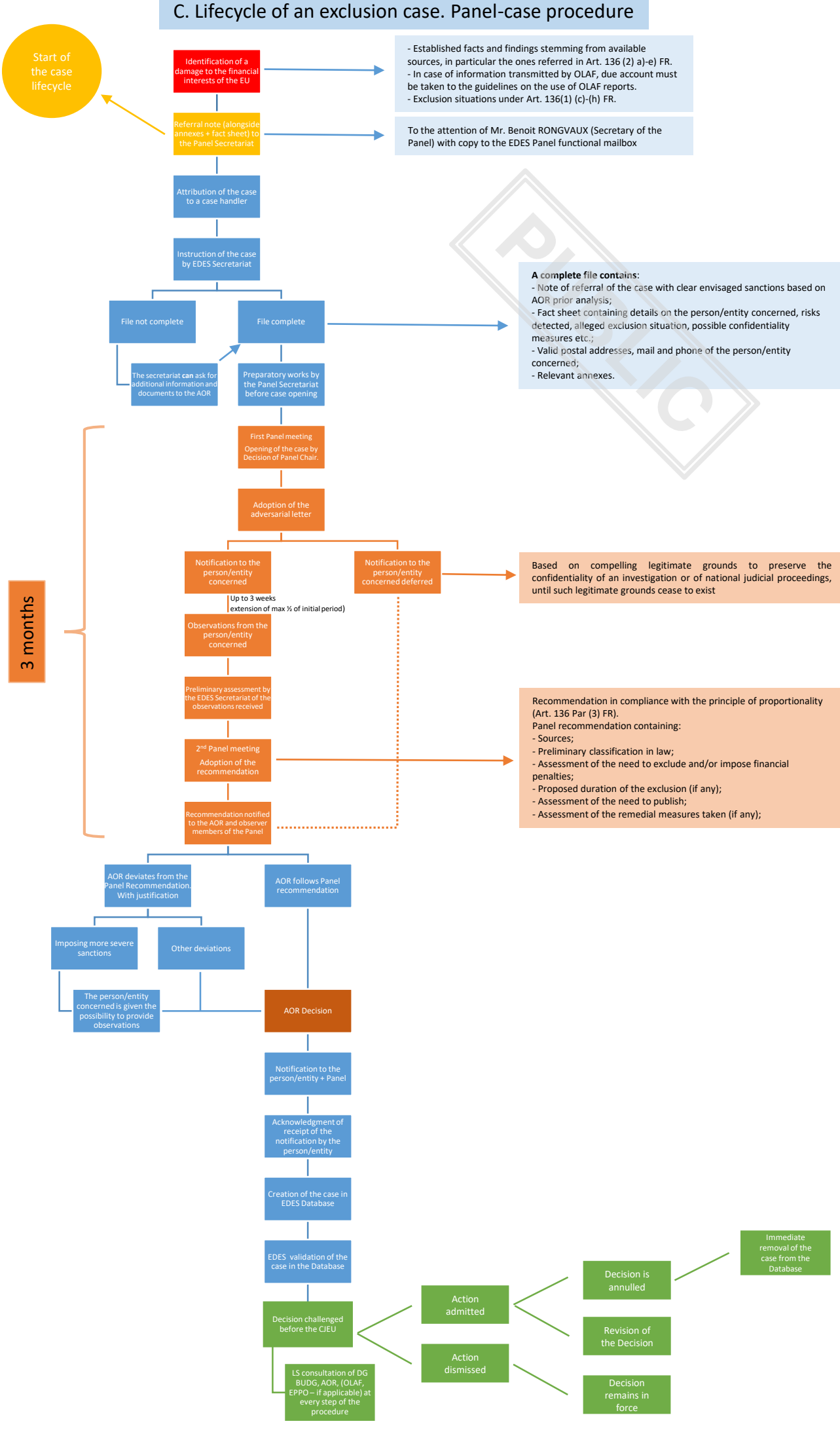
A. Lifecycle of an early detection case (presumed case/before exclusion)



B. Lifecycle of an exclusion case. Non-Panel procedure



C. Lifecycle of an exclusion case. Panel-case procedure



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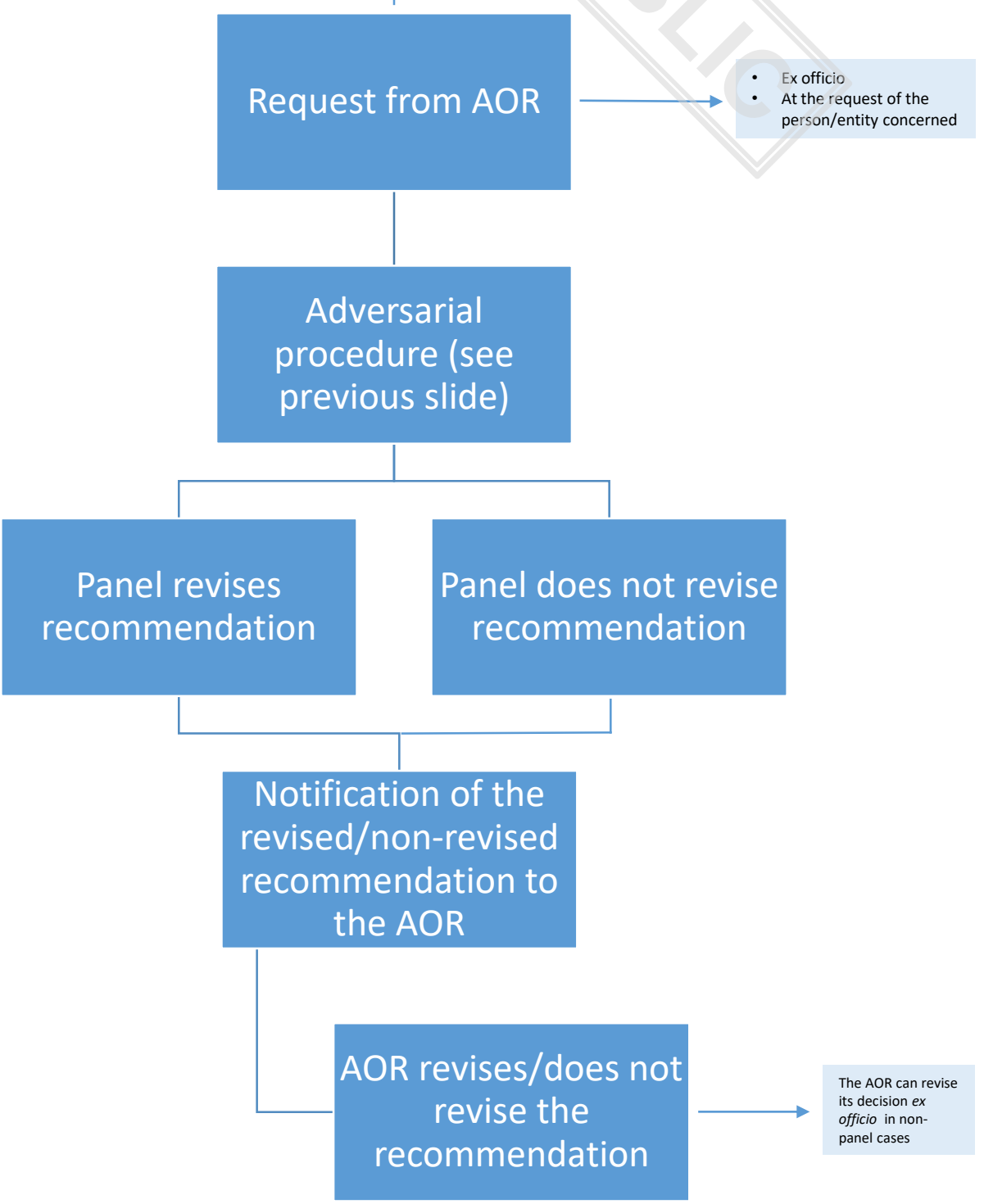
D. Revision of the recommendation of the Panel/Decision of the AOR

During the exclusion period:
- Person/entity concerned has taken remedial measures sufficient to demonstrate its reliability or has provided new elements demonstrating that the exclusion situation no longer exists;
- Judgment / administrative decision that establishes the grounds for exclusion and which does not set the duration of the exclusion (Art. 143 Par. 7 of FR)



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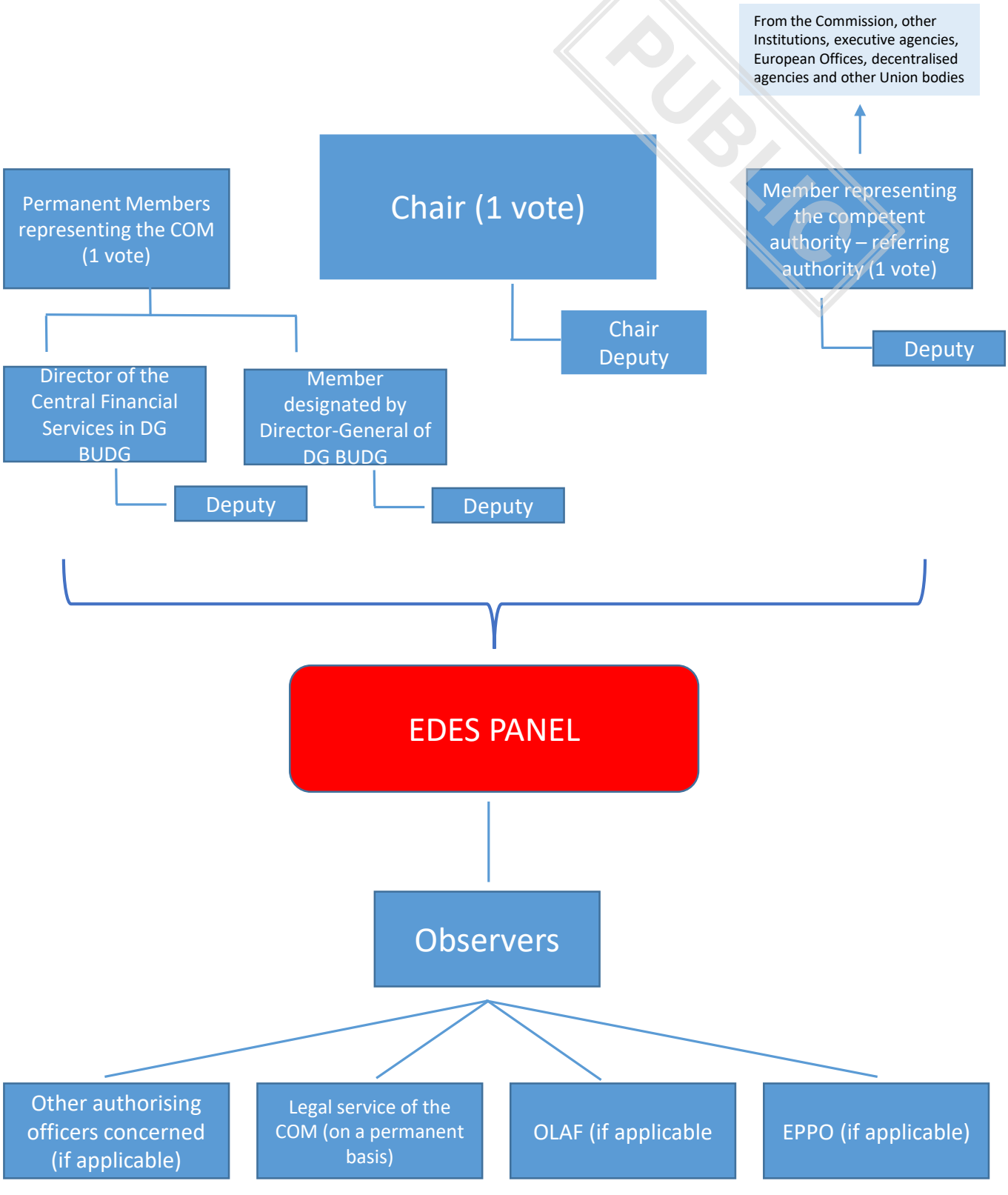
Composition of the EDES Panel



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2 December 2022

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Replies to the Council's Budget Committee follow-up questions on the Financial Regulation recast[1]

(COM/2022/223 final of 16.5.2022)[2]

Line	Member State	Topic	Comments/questions	Reply
1.	AT	Fiche 16	How high would the savings be (external costs for lawyers, procedural costs) if the EC proposal is adopted? The EC speaks of "hefty costs for hiring lawyers" in the document. Please provide a cost breakdown through the end of 2027, impact on headings, administrative expenses and staffing levels.	In 2020 and 2021, the Commission spent EUR 306 000 and EUR 299 000 respectively in enforced recovery of debts in the Member States for 74 cases and 102 cases respectively. This is on average -/+ 3.500 EUR per claim. The proposal would save around **EUR 2.1 million** over a 7-year period. In relation to administrative expenses, it is important to highlight that such a procedural support (in particular, provision of information readily available to Member States) will first and foremost allow Commission staff to dedicate more time to activities leading to actual recoveries, thus increasing the success rate and the amounts recovered. Staff/cost savings should not be seen as the main benefit from the proposal. Assistance from Member States would allow us also to recover more claims. Even if we were to take a more conservative stance and expect to increase our recoveries by 10%, this would already increase our recoveries by **EUR 19 million** (given that we have 195 million in uncollected debts).
2.	AT	Fiche 16	How much EC staff (FTE) could the EC save (internally) if the EC proposal is adopted? See reference to "several	Please see the reply above.

[1] This document is a non-paper prepared by the responsible Commission departments to facilitate the decision making process.
[2] 2018/C 267 I/01

			professionals" on page 4 below or line 22.	
3.	AT	Fiche 16	The EC may still necessarily give examples in which areas of EU expenditures and revenues such requests will be addressed to MS in the future.	According to our analysis, over 90% of the claims stems from **grant agreements** in direct management.
4.	AT	Fiche 16	Has the proposal been coordinated with the respective data protection experts?	As a preliminary comment, out of -/+ 600 recovery cases, only a tiny fraction concern recoveries against natural persons (13 in total) which is less than 2%. On the substance, the procedure must, as in any other field of action, respect both Member States' and the Commission' rules on data protection stemming from the respective regulations: - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data; and - Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data. Respect of these Regulations shall be ensured at the level of the implementation and as mentioned above, would only concern a fraction of the cases.
5.	AT	Fiche 16	What is meant by "adequate compensation" as defined in Art 104(9)?	Adequate compensation would cover all the reasonable costs incurred by the national administrations for their assistance. For most cases, the requested assistance will consist in asking information on a particular debtor, for which the Member States have the information readily available in their databases. We estimate that treatment of such information requests would

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				require a maximum of two hours of work (most of the times, far less). In this case, national administrations could for instance charge the pro/rata of the average annual cost based on the average civil servant employee. In order to simplify matters, and to avoid a complex "time sheets" mechanism, the Commission and the Member State could agree on a table with standard fees and hours per type of assistance demand.
6.	AT	Fiche 16	The personnel situation is tense. Further requests for recovery must also be seen against this background and must not stand in the way of fulfilling national obligations under the Directive.	The average number of assistance requests from the Commission per country would be from 3 to 4 cases per year, which is less than 0.5% of the current requests received from other Member States under the existing mechanism in Directive 2010/24/EU. In addition, the personnel and other costs will be reimbursed. As mentioned above, most of the requests will concern obtaining information on the debtor, which requires limited workload. The mechanism would therefore imply a limited effort for the Member States at no cost but would be of high importance for the protection of the EU's budget, which is in our common interest.
7.	BE	Fiche 2	The obligation introduced (in Article 22(2)(d) of the RRF Regulation and) in the proposal for the amendment of the Financial Regulation in fiche 2, Article 36(6) for the information on beneficial owners states: For the purposes of point (d) of paragraph 2, the following data shall be recorded and stored electronically in an open, interoperable and machine-readable format and regularly made available in the single integrated IT system for datamining and risk-scoring provided by the Commission: (a) the recipient's full legal name in the case of legal persons, the first 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;	The Financial Regulation is referring to the Anti-Money Laundering Directive (AML Directive) only to recall the definition of a "beneficial owner", so that the Member States all work with the same definition. It was decided not to amend the AML Directive because the Member States are already required to collect, store, record and make available the data as per their obligations in the sectoral legislation such as the Common Provisions Regulation (CPR). Please see recital 74 and Article 72(e) of the CPR (referring to annex XVII of the CPR). We are not sure we see the point made by BE regarding the competent authority. In the CPR, the competent authority is the managing authority, thus the managing authority has access to the registers and to the data needed.

			(b) 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 collection of this information regarding the beneficial owners, the Commission refers to the public data in the UBO register. The publicly available information on the beneficial owners in the Belgian UBO register is regulated by the royal decree of 30 July 2018 on the operating modalities of the UBO register LOI - WET (fgov.be) (the RD) , in this RD, article 9, paragraph 1 states: A citizen will only have access to the following information regarding the beneficial owner of the companies referred to in Article 3 §1 for which a search has been conducted: name, month and year of birth, state of residence, nationality(ies), nature and extent of the shares effectively held. This paragraph directly transposes the requirements outlined in Article 30(5) of 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 (the AML Directive): "5. Member States shall ensure that the information on the beneficial ownership is accessible in all cases to: (a) competent authorities and FIUs, without any restriction; (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II; (c) any person or organisation that can demonstrate a legitimate interest. The persons or organisations referred to in point (c) shall access at least the name, the month and year of birth, the	

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			nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held. For the purposes of this paragraph, access to the information on beneficial ownership shall be in accordance with data protection rules and may be subject to online registration and to the payment of a fee. The fees charged for obtaining the information shall not exceed the administrative costs thereof." Due to the difference in the definition used in national legislation and in the AML Directive and the requirements stated in the RRF & financial regulations, it is not possible for Belgian control bodies to fulfil these requirements on the basis of the public available info in the UBO register, as the first name and date of birth are not accessible in it. Consequently, in order to collect all the requested information, access to the UBO register as a competent authority is required. However, this access is not so straightforward given the absence of a definition of a competent authority in the European directive and the absence of a direct reference to the UBO register in the RRF & financial regulations. At national level, the competent authority is defined in Article 2 17° of the RD as follows: "competent authorities" a public body whose legal mandate is the fight against money laundering and terrorist financing or related predicate offences, tax authorities, public bodies responsible for the seizure and forfeiture of assets of criminals, public bodies receiving information on the transportation or cross-border transportation of money or marketable bearer instruments, CTIF-CFI and supervisory authorities;	

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			As the control bodies for the RRF (and other European funds) do not meet this definition, the Council of Ministers on 7 October 2022 approved a draft law to amend the Act of 18 September 2017 on the prevention of money laundering, money and terrorist financing and on the restriction of the use of cash and its accompanying RD expanding access to: Other authorities: those authorities emanating from the federal government or the Communities and Regions responsible for detecting or controlling beneficial owners, as defined in European Regulations, in article 4, 27° of the law of 18 September 2017 or in other legal provisions, in order to fulfil their obligations under these Regulations and other legal provisions; On the basis of this adjustment, it will be possible for the above-mentioned control authorities to apply for access to the UBO register as a competent authority and to create the necessary authorisations. However, putting the necessary systems and authorisations in place requires a higher administrative workload than the Commission's answer to questions 54 & 55 suggests, due to the fact that not all requested data is part of the publicly available information and the narrow definition of competent authorities. As the Belgian government has opted for the publication of all data required by Article 30(5) of the AML Directive, we suspect that this problem will also arise in other countries. Based on a first superficial analysis, the Netherlands seems to be in a similar situation as the info page Registratie in UBO-registers | Financiële sector | Rijksoverheid.nl indicates that the date of birth is not available in the public register. These or similar restrictions will presumably also be replicated in the transposition of the AML directive in the other member states. => On the basis of what analysis has the Commission decided that there is no need to amend the AML Directive	

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			since it appears from this commentary that the European directive does not guarantee that all requested information is publicly available? => How does the Commission view the interoperability of monitoring systems with the UBO register, given the above issue of obtaining the status of competent authority status in light of the AML Directive's focus on anti-money laundering practices and terrorist financing?	
8.	DE	Fiche 2	The following questions regarding data-mining are not exhaustive. Further questions might be asked in the course of the negotiations. Furthermore, we refer to the ongoing survey on Arachne undertaken by the COM; the results of that survey need to be taken into account in the negotiations as well. All actions already taken to improve the internal control of budget implementation are concentrated on requirements for MS. The COM has to provide a single data-mining and risk-scoring tool. Up to now, the COM made only formal statements. The Commission will continue to provide training and to offer support and technical assistance and in parallel, the Commission will continue to improve the features of the IT system, its user-friendliness and interoperability with other sources of data. What kind of actions the COM has already taken to adapt the tool ARACHNE on the needs for scoring beneficiaries of direct payments and market measures? When will first developments of features relating to those measures be presented?	The Commission confirms that the intention is for the results of the Member State survey to be taken into account during the negotiations. The new functionality providing risk scoring concerning beneficiaries of direct payments under EAGF and area and animal payments under EAFRD for the CAP will be made available by the end of 2023. However, the datamining provision should apply only to programmes adopted under and financed as from the post-2027 MFF. The transitional provisions remain necessary to allow enough time for the necessary adaptation of electronic data systems of all bodies implementing the EU budget called to use the IT system (also including Commission services, Member States, and entrusted partners) and for guidance and training. For CAP, the Commission should, by 2025, present a report on the use and interoperability of the data-mining tool, accompanied by legislative proposals, if necessary. The results of this report may also require more time for further improvements and developments of the IT system. Voluntary application will remain possible and will be encouraged during that transitional period.
9.	DE	Fiche 2	Operating experience in several MS shows that ARACHNE produces a huge number of so called "red flags" (among them many "false positives"). It cannot be verified or	The Commission is well aware of the so-called “red flags” including “false positives”. Arachne, for the risk calculation, uses operational data provided by Member States as well as data obtained from

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			comprehended how these results were generated. Is the COM aware of this problem and if yes, what kind of solutions can the COM offer to avoid this problem?	national regulatory authorities and registers (through a commercial provider). "False positives" caused by missing or erroneous data are investigated and reported to the relevant data providers. The Commission looks into issues reported by the users in the Member States concerning the risk indicators. If the issues are due to the quality of the data provided by external sources, this is reported to the provider. If the problem lies within the data provided by the Member States, this is also explained to them. Arachne can be used in complement or as part of the risk assessment process bodies implementing the budget carry out anyway. Member States are free to set their own parameters in line with e.g., their fraud risk assessment analysis and their internal management and control procedures. Depending on the nature of the risk identified, the Member State needs to organise the appropriate checks. Arachne does not oblige to follow up on every red flag. Member States and their bodies would remain in full control to decide that in the specific circumstances of a given case, the red flag e.g., is not important enough, is balanced by another positive factor, or may be a "false" red flag. The system does not take management decisions, Member States and their bodies retain their discretion to take the red flags into account in any given case.
10.	DE	Fiche 2	The COM requires a unique identifier at recipient level. In the agricultural legislation on monitoring and evaluation there is already such an ID mandatory. Have MS to change their system to install a new unique identifier?	The Commission confirms that there is no need for the Member States to introduce new unique identifiers or to change their systems.
11.	DE	Fiche 2	What were the selection criteria for the collaboration with ORBIS?	A study was carried out in 2013 by the Commission, in close cooperation with some of the Member States comparing different data providers, and it was found that ORBIS was (at the time) the most complete provider.
12.	DE	Fiche 2	Is it possible to test ARACHNE in a pilot- or testversion to	Yes, it is possible to test Arachne first in a pilot phase. This is a

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			reduce the concerns or to check the additional effort necessary for implementation?	common approach taken by the Member States willing to start using Arachne. Full support and assistance are provided by the Commission.
13.	DE	Fiche 2	Identifying beneficial owners is a new task paying agencies are not equipped for. What is the idea of the Commission how this can be done without extra administrative burden?	The identification of beneficial owners stems from the CPR. It is not a new task. As stated in recital 74 of Regulation 2021/2060 of 24 June 2021, to enhance the protection of the Union's budget against irregularities, including fraud, it is necessary to process personal data of beneficial owners who are natural persons. In particular, to effectively detect, investigate and prosecute such frauds or remedy irregularities, it is necessary to be able to identify beneficial owners who are natural persons that ultimately profit from irregularities, including fraud. For that purpose, and for the sake of simplification and for reducing administrative burden, Member States should be allowed to comply with their obligation regarding information on beneficial owners by using the data stored in the register already used for the purposes of Directive (EU) 2015/849 of the European Parliament and of the Council. In that regard, the purposes of processing of personal data of beneficial owners under this Regulation, namely, to prevent, detect and correct and report irregularities including fraud, are compatible with the purposes of processing of personal data under the Directive (EU) 2015/849.
14.	EE	Fiche 3	In relation to reply to question number 133, why the Commission cannot use or build upon data already made available by MSs to commission services (which the Commission itself publishes for example on the open data platform or on KOHESIO platform, which already includes for example more than 1.5 million projects and approximately 500 000 beneficiaries – this is a database managed by the Commission)? The data only once principle should apply here as well. If the single-website will be created, will other similar websites managed by the Commission, which provide data on results, performance and beneficiaries be abolished to avoid multiple submission of the same data by MSs and multiple web-sites at EU level with overlapping data?	One of the Commission's aims for the next datamining tool is the reuse of existing data, including between Arachne, FTS and KOHESIO. It should be noted, however, that KOHESIO includes only projects under EU cohesion policy (ERDF, CF, ESF), and not the complete funding under shared management.

15.	EE	Fiche 8	Would it be possible to quantify the positive financial (prevented misuse of EU funds) impact of EDES in protecting the EU's financial interests against unreliable persons, entities and against fraudsters?	It is not possible to quantify a positive financial impact of EDES, however, we can report that 46 entities have been excluded via Panel procedure since the set-up of the EDES Panel. While bearing that in mind, the Commission notes that the only way to calculate a possible figure – but still highly speculative - would be to apply the criteria used for the loss of profit to each entity in the EDES database (i.e., the entity's rate of success + likelihood to apply for EU funds). However, the misuse of EU funds is not the only concern/target of EDES. Some exclusions relate to breaches that do not stem from a poor implementation of the contract, but rather to offences that impact the entity's credibility as well as the EU's image. Finally, the effectiveness of EDES should (also) be measured by comparing it to other measures. The financial recovery is not as efficient or deterrent as EDES administrative measures. In addition, the measures at national level are not as broad in scope as EDES.
16.	FI	Fiche 2	Would it not be possible to continue with Arachne on a voluntary basis? Which would be the main differences, in practical terms and with regard to the expected impact, between the voluntary and obligatory models?	The compulsory use of Arachne stems directly from the spirit and ambition of the Inter-Institutional Agreement and of the obligation for the Member States to put in place "effective and proportional anti-fraud measures and procedures, taking into account the risks identified" in the programming period of 2021-2027. Compulsory use means that all Member States will need to feed the tool with the required data, making the tool much more useful and efficient for those using it.
17.	FI	Fiche 2	How would information be transferred – step by step – from the Member States to the Commission, if Arachne were to be implemented obligatorily in all Member States?	On top of the currently available possibility to upload data manually into Arachne, the fully automated system-to-system integration for data upload is currently being implemented and should be made available for the Member States' national systems early 2023. The transitional provisions remain necessary to allow enough time

				for the necessary adaptation of electronic data systems of all bodies implementing the EU budget called to use the IT system (also including Commission services, Member States, and entrusted partners) and for guidance and training.
18.	FI	Fiche 2	Would the obligation to use Arachne mean that national authorities would have to compile or submit information manually? What does "in an open, interoperable and machine-readable format" mean? What does "interoperability of systems" mean in practice?	At present in the current Arachne, national authorities provide the data via an Excel sheet. In the future, the Commission intends to provide further developments of Arachne to allow different ways of collecting the data, in an automatized format. Interoperability means collection of data from various sources and their mutual communication to be able to properly evaluate the data for the given purpose. Interoperability hence allows administrative entities to electronically exchange, amongst themselves and with citizens and businesses, meaningful information in ways that are understood by all parties. The tool shall be digitally readable (machine-readable) and accessible (open). By "open" it is meant a format for storing digital data, defined by an openly published specification, usually maintained by a standards organization, which can be used and implemented by authorised users. Open data format allows seamless exchange of data since the format is standardized. Only necessary and proportionate amount of data shall be made accessible to the authorised users.
19.	FI	Fiche 2	Does the evaluation of risks using Arachne require manual work for national authorities? How much and what kind of manual work?	Yes, the national authorities are responsible for recording and storing electronically the data on each operation according to the CPR. Apart from the data included in the Annex XVII of the CPR, the national authorities can, on a voluntary basis, enlarge the amount of data fields that they upload to Arachne. Arachne can only calculate a risk indicator if all the necessary information is available. If all the data is not uploaded, some of the risk indicators cannot be calculated in Arachne. Hence, it is recommended to include in the national computerized systems all

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				the data fields that can be processed by Arachne to fully benefit from the results of the risk calculation and the potential of Arachne. The data can be then extracted from the national system and uploaded to Arachne either by using the user interface or automatically from the national system to Arachne (this option will be available in 2023). Providing additional data such as expenses will make Arachne a more useful, effective, and accurate tool. After the calculation of the risks and based on the data provided by the Member State, users can consult and assess the risks related to projects, beneficiaries, contracts, contractors, and expenses data via the Arachne web interface.
20.	FI	Fiche 2	Who is responsible for any errors in the data? How would the responsibilities be divided between the Commission and national authorities? How will possible errors be corrected?	Please see reply to question 15. The situations are different for the data provided by the Member States and the data acquired externally. Member States are responsible for correcting the errors in the operational data they provide. The Commission reports errors in the externally acquired data to the data provider that has procedures in place to fix the errors.
21.	FI	Fiche 2	Could the Commission give examples of what kind of data processing will take place, and which sets of data would be connected to each other; as concretely as possible?	The publicly available Record on processing of personal data[3] provides a full list of data categories. Amongst others, the data to be processed shall be name, surname, data of birth, VAT number, function, address, etc. Each source includes certain amount of data. Data from all chosen sources shall be connected.
22.	FI	Fiche 2	If the national authorities were obliged to use Arachne, what kind of national legislation would be required to accommodate for this?	The Financial Regulation is directly applicable in the Member States.

[3] DPR-EC-00598.3.

23.	FI	Fiche 2	What are the estimated costs of the Commission proposal on Arachne and FTS for the EU institutions and agencies? Expanding the scope of application is likely to incur costs.	The cost analysis of the new tool will be adjusted to its features, in response to the users' needs and requirements.
24.	FI	Fiche 2	What concrete legislative amendments (draft article text) does the Commission consider necessary, to take into account the recommendations of the EDPS? How can the Commission guarantee that the provisions of the Financial Regulation on Arachne will be fully consistent with EU data protection legislation?	The Commission is preparing drafting suggestions on Article 36 of the recast proposal to fully reflect the EDPS recommendations. Most of the suggestions consist in aligning the recast text to the recommendations already addressed by the data protection impact assessment (DPIA approved by the Data Protection Officer on 22 July 2022), which is reflected in the publicly accessible Record on processing of personal data. The drafting suggestions would ensure full compliance with EU data protection legislation and are to be considered by the legislator as part of the legislative process.
25.	FI	Fiche 2	Could the Commission distribute to the Member States the statement or the data protection impact assessment of the Data Protection Officer?	The information reflecting the DPIA is publicly accessible in the Record and Privacy statement on processing of personal data on Arachne[4]. In addition, the Commission identified that the recast needs to provide some definitions (interoperability, machine learning, open) as well as a high-level description of the tool.
26.	FI	Fiche 2	How can personal identifiers of natural persons be protected**,** and misuse prevented? This is particularly sensitive information. The Commission's proposal would give Arachne access rights to a large number of organisations and their employees in Member States. Are there risks linked to significant increase in the number of data processing actors, from the data protection point of view?	On the basis of the Record on processing on Arachne[5], the only sensitive data according to Article 10 of Regulation 1725/2018 that might be processed is the data revealing political opinions. Regardless of the data category, Arachne shall process only necessary and proportionate data to effectively reach the purpose. The number of actors shall be limited, and restricted access shall be given only to authorised users for them to exercise their competencies with regards to prevention, detection, correction and follow-up of fraud, corruption, conflicts of interest, double funding, and other irregularities. In addition, the authorised persons shall be

[4] DPR-EC-00598.3.
[5] Idem.

				bound by confidentiality and data protection rules. The DPIA approved on 22 July 2022 includes the calculation of potential risks which led to the conclusion that the processing of personal data does not represent a high risk to the rights and freedoms of natural persons, taking into account the safeguards, security measures and mechanisms to mitigate the risk.
27.	FI	Fiche 2	Could the Financial Regulation be more specific on the essential features of the IT system (tasks and responsibilities of the various actors), on the necessity and purpose limitation of data processing, on the data of natural persons that would be justified to transfer and to process (necessary to set out explicitly the categories of personal data to be processed and the sources of the data) as well as on procedures to ensure the quality and accuracy of the data?	All the relevant information about purpose limitation, actors and their roles and responsibilities, data to be processed and information on transfers are provided in the publicly available Record on processing of personal data on Arachne[6]. This record, as well as its privacy statement accessible via the record itself includes all relevant data about the IT features. Concerning the quality and accuracy of data, the Commission shall use trustworthy public sources or sources contracted, including personal data safeguards, in order to receive good quality data and yet safeguard protection of personal data. Moreover, the Commission will regularly verify the accuracy of the data, for instance by means of reviewing the accounts yearly in cooperation with Arachne local administrators. Lastly, the Commission has put in place an efficient system for application of data subject to right for rectification falling under Section 3 of Regulation 1725/2018.
28.	FI	Fiche 2	Does the Commission plan to develop Arachne IT-system further; how and when? Could the design of the IT system be developed to better take into account the protection of personal data and to have more added value in fraud prevention?	The Commission is actively working on the Arachne IT-system, and it will continue during the transition period. Concerning the data protection, the Commission will suggest to the legislator a wording addressing all the EDPS recommendations. Please see also reply to question 24.
29.	FI	Fiche 2	How does the Commission plan to take into account matters related to administrative burden and costs e.g.: 1) the accessibility of Arachne, 2) what requirements are	The Commission is committed to work closely with the Member States to develop tools that will be user-friendly and keep the administrative burden and costs to the minimum.

[6] DPR-EC-00598.3.

			associated with Arachne, 3) how extensively information would be collected, 4 how automatic the data transfer and data processing would be, 5) the effects of possible incorrect entries and related responsibility issues, and 6) how long would data be storaged. What could be the ways to keep the costs as low as possible at the national level and at the EU level?	Arachne can significantly contribute to improving the efficiency and effectiveness of financial management, controls, and audits during the selection of projects and their implementation. Once in place and part of the management and control system, Arachne can substantially increase the level of prevention and detection of irregularities and fraud. Arachne helps to allocate, in an efficient way, the human resources capacity for desk reviews and on-the-spot controls and audits by focusing on the riskier recipients, projects, contractors and contracts. The system also provides for the bodies implementing the EU budget the possibility to assess the effectiveness and efficiency of controls and audits and to record and present the results over time. The Commission offers the development and implementation of Arachne without any charges for the bodies implementing the EU budget. Upon request by the bodies implementing the EU budget, the Commission provides training for the staff of those authorities who are designated to use Arachne. Additionally, the bodies implementing the EU budget will be advised on how to integrate the IT system into their daily work and into their management and control systems. Regarding data transfer and data processing, it is envisaged that initially, data would be provided by the Member States in the form of an Excel sheet that would be sent to the Commission. For future developments of Arachne, it is intended to allow for more automatic forms for uploading the data. The data would be stored only for the period of time necessary and

				proportionate for the purpose of processing. In any case, the maximum storage duration shall be 10 years.
30.	FI	Fiche 2	Does the Commission plan to inform Member States well in advance on Arachne's features e.g. what information would be needed on applicants, how should information be transferred, what information might Member States get from Arachne and what are the national registers (possibly privately owned) that Arachne utilizes?	Please see reply to question 29.
31.	FI	Fiche 3	Would information be provided at the same time to both Arachne and FTS? If national authorities needed to collect and provide partially the same information for two different purposes on two occasions, that would cause unnecessary administrative burden.	The Commission is aware of the concerns on administrative burden and is actively working to reduce this burden as much as possible. The fact that most Member States already use Arachne on a voluntary basis shows that the benefits of the tool surpass its burden. The new Arachne aims to improve the system and the technical teams will continue working on it during the transition period until end-2027.
32.	FI	Fiche 3	How and what kind of searches could a member of the public make on the public internet site (FTS)? Are mass searches (non-personalised searches) possible or not? From the perspective of the Finnish Constitution, personal data should not be searchable as mass searches, but only as individual searches.	The FTS publications are compliant with the GDPR. Personal data is removed 2 years after the year in which the funds were legally committed to the beneficiary in compliance with Article 38(6) FR 2018. Some personal data, namely the address of the beneficiary, is never published. The address is replaced by the NUTS2 regional level nomenclature for EU countries. The website allows users to search for groups of beneficiaries (e.g., 'private companies', 'private persons') and/or names of beneficiaries (e.g., all companies having a given word in its name, or – subject to the above mentioned 2-year publication period - all persons having the same first name).
33.	FI	Fiche 3	What kind of background information**,** that will not be published, is collected? How can the data be handled securely?	The FTS uses a subset of data coming from the Commission's accounting system (ABAC). The system handles personal data according to security standards applied to the Commission's corporate tools. As regards the future collection of data on final beneficiaries, FTS does not require any sensitive information on the address, bank

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				account, etc. The FTS will be re-using data coming from other Commission's systems with established data protection protocols (e.g., Arachne, SUMMA).
34.	FI	Fiche 3	What concrete legislative amendments (draft article text) does the Commission consider necessary, to take into account the recommendations of the EDPS? How can the Commission guarantee that the provisions of the Financial Regulation on FTS will be fully consistent with EU data protection legislation?	The follow-up to the EDPS opinion is currently being prepared and the Commission is making sure the EDPS recommendations are duly taken on board.
35.	FI	Fiche 3	Could the Commission distribute to the Member States the statement or the data protection impact assessment of the Data Protection Officer?	DPIA does not relate to Article 38 of the proposal/transparency. Please see reply to question 25.
36.	FI	Fiche 3	Could the Commission provide more detailed information on the proposed safeguards (2-year time limit; in exceptional situations information would not be published; other?)	Currently, personal data is removed from the FTS publication in December of the year following the year of publication. This means that the name of a person participating in a 2020 project will not be visible after December 2022. The rest of the data (amounts, project names, addresses, etc.) is available to the wide public in a form of an interactive dashboard (the current and the previous MFF periods) on the FTS Analyse webpage[7], and in a form of downloadable datasets (2007-2013 MFF) on the FTS Help webpage[8].
37.	FI	Fiche 3	How can personal identifiers of natural persons be protected, and misuse prevented? This is sensitive information.	The FTS publications are compliant with the GDPR. Personal data is removed 2 years after the year in which the funds were legally committed to the beneficiary in compliance with Article 38(6) FR 2018. Some personal data, namely the address of the beneficiary, is never published. The address is replaced by the NUTS2 regional level nomenclature for EU countries. The FTS is re-using/going to re-use information coming from other Commission's systems with established data protection protocols (e.g., ABAC, Arachne, SUMMA).

[7] Financial Transparency System - Analyse (europa.eu).
[8] Financial Transparency System - Help (europa.eu).

38.	FI	Fiche 3	Would the data of people whose information is particularly sensitive be safe, e.g. of crime victims? How can the Commission make sure that sensitive personal data will not be published?	The FTS publications are compliant with the GDPR. All publications are subject to a verification process. In addition, regarding the new system, we understand and are aware of the requirement of masking sensitive contract information within the implementation in SUMMA. On sensitive personal data, please see the reply above.
39.	FI	Fiche 3	What are the estimated costs of the Commission proposal on Arachne and FTS for EU institutions and agencies? Expanding the scope of application is likely to incur costs.	The budgetary implications cannot be established now, as they will depend on the concrete functionalities and requirements for the system which are under development.
40.	FI	Fiche 15	DNSH: Would it be possible to continue the current practice? That is, the principle would be laid down in those Regulations on financing programmes for which it is considered particularly necessary.	Considering the importance of addressing climate and environmental challenges, the Commission proposed to introduce a general principle to ensure that no part of the implementation of EU budget would be exempt from the goals of the European Green Deal. The principle remains general, and the concrete modalities of its implementation shall be later specified for each programme (as from the next generation of spending programmes), considering the specific policy needs. Please also see reply to question 74.
41.	FI	Fiche 15	DNSH: What would be the concrete impact of the Commission proposal for example when preparing the basic acts for funding programmes for the next MFF period?	Each basic act of the next MFF would need to be compliant with the principle. The specific modalities that will ensure that the principle is respected by the actions financed by the programme will of course need to take into account the objectives and the nature of these actions.
42.	FI	Fiche 16	Could the Commission explain more in detail the proposal's relationship with current EU legislation, especially Art. 299 TFEU? Has the Commission studied, which national authorities currently give execution orders? Are they the same authorities than the ones implementing the Mutual Assistance Directive in each Member State, or not? Would the current legislation and practice be sufficient?	All the assistance requests would start with a request for information on the debtor. The information requested should be easily accessible for the Member States by consulting their data bases. Only in a fraction of the cases and based on the information provided by the Member State on the debtor's assets and solvency, the Commission may adopt an enforceable decision pursuant to Article 299 TFEU and would subsequently request the MS to enforce

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				such title. For the requested assistance, the Commission would rely on the bodies which are already designated by the Member States under the Mutual Assistance Directive. In other words, no new bodies would need to be created, and the Commission would fully rely on the currently existing mechanisms. In short, instead of a Member States potentially receiving assistance requests from the 26 other Member States, they would now also receive such requests from a 27th partner being the Commission.
43.	FI	Fiche 16	Could the Commission explain more in detail the impacts of the proposal? How many cases would the Commission expect to refer, if the proposed Article were adopted, yearly to a Member State during the next 5 years? Could the Commission specify the economic impacts, including the administrative burden, of the proposal on Member States (estimation regarding a small MS / a midsize MS / a large MS)?	Please see the reply above. It should be recalled that the recovery of claims is an existing part of the implementation of the EU budget. The proposed provision aims at increasing the speed and reliability of debt recovery (with the assistance of the MS) while at the same time saving time and money. There are currently -/+ 600 enforced recovery cases for the EU27. Annually, the Commission receives approximately 100 cases per year, which would be about 4 cases per Member State. We estimate that, for most cases, we would only need to issue an information request, and that only a fraction of cases would require actual enforced recovery assistance. In most other cases we would proceed to a waiver decision if the information provided by the Member State leads us to believe that the debtor is insolvent. However, even if the cases referred to for actual enforcement are limited, the assistance of the Member States is really significant for the protection of the EU's financial interests and the deterrent effect of the recovery (in particular in cases of fraud).

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				Since the Commission is willing to reimburse the costs for Member States regarding the recovery of the few cases per year (approximately 3 or 4 cases), this should have no significant impact on the administrative burden of any national administration.
44.	FI	Fiche 16	According to the Commission's answer to question 48, the Commission spends nowadays an unreasonable amount of time and resources to notify and enforce its claims - and despite all this, the backlog is 600 cases for a total amount of EUR 195 million euros. If tasks and responsibilities were transferred from the Commission to national authorities as proposed, would this create a substantial additional financial and administrative burden on national authorities?	Please see replies to questions 42 and 43.
45.	FI	Fiche 16	What does the Commission mean by establishing "reasonable amount of costs" in an agreement between the Commission and a Member State? The proposed Article 104 (9) reads: "The Commission and the Member States may conclude an agreement covering further arrangements on 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 to be used." What would be the reasons for not reimbursing costs fully if the proposed Article were adopted? The proposal would thus have a negative impact on national authorities and consequently on the national budgets. What if the Commission and a Member State did not agree on a reimbursement? The proposed Article seems to allow this (wording: "may conclude").	The idea behind this proposal is very simple: Member States have better access and better quality of information on the debtors established in their territory than the Commission can ever have. We are currently having to pay lawyers and executioners fees [estimated to an average of EUR 3500] to obtain a fraction of the information which we could have if Member States would provide the assistance which is foreseen in Articles 317 and 325 TFEU. In addition, in the current situation, it takes months and/or years to obtain some information, which explains the current backlog of cases. The real cost of a Member State official, e.g., for (maximum) two hours of work to have the information would constitute a fraction of what a lawyer currently charges us. This is the reason the Commission is in fact interested in fully covering the national administrations' costs: we save both money and time by receiving information in a faster manner. The same logic applies for the actual recovery procedures (which we estimate would be just a small percentage of the cases).

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				It is for the national administrations to indicate their average costs for their personnel and other costs incurred during the recovery proceedings. The Commission is the first interested party in having a satisfactory agreement signed. There is no question that the Commission would not fully reimburse costs, on the basis of an agreement to be concluded.
46.	FI	Fiche 16	The Commission has replied to question 209 and 210 that it would not be necessary to set up new schemes or structures because the proposal is based on the mechanism of the Mutual Assistance Directive. Could the Commission provide further information on the implementation of the Mutual Assistance Directive: which national authorities are involved and do they have general competence regarding notification and enforcement of claims? Crucially, is there in Member States a national authority that is competent to implement all kinds of EU claims? The scope of the proposed Article is much broader than the scope of the Mutual Assistance Directive. The Directive covers certain taxes, payments and agricultural subsidies. These claims are usually quite technical and straightforward. For example in Finland, procedural tax legislation is applied. The Mutual Assistance Directive regulates co-operation between national authorities in certain fields whereas the proposed Article to FR regulates broadly EU claims.	In nearly all cases, tax authorities are the designated authorities under the Mutual Assistance Directive (please see question 60). There have been several detailed Commission reports on the implementation of the Mutual Assistance Directive by the Member States, the most recent ones from 2017 and 2020, namely COM(2020) 813 final and the accompanying Staff Working Document SWD(2020) 340 final of 18 December 2020[9]. In most cases, the requested assistance would be a simple information request where national tax authorities are the best positioned bodies to provide information on solvency and current tax debts of an entity. As for notification or seizures, the proposal expressly specifies in paragraph 8 that regarding the enforced recovery of the claim, "*it shall be treated as if it was a claim of the requested Member State of the same nature*." Since more than 90% of the EU claims to be recovered stem from grants, it is for each Member State to carry out the procedure as if the claim stemmed from a grant given by a national ministry. In case

[9] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0340&rid=1

				the EU claim stems from an EU competition fine, Member States will follow the procedure for the recovery of a fine stemming from national competition authority. While our contact point would be the competent authorities of the Member States as defined by Article 4(1) of Directive 2010/24/EU, this does not prevent such authorities to transfer the file to another competent department.
47.	FI	Fiche 16	Since the Mutual Assistance Directive's scope is specific and narrow, what kind of national legislation would be needed to implement the proposed Article on the relationship between national authorities e.g. on access to data held by another national authority?	The question is very broad: - The requested national authority should provide information on the data that they have themselves and should not access another Member State's data (for which the Commission should direct an assistance request directly to that other national authority). - Within each Member State, it is for the government to see if additional national legislation would still be necessary, taking into account that the Financial Regulation (as any other regulation) is already fully binding and directly applicable in Member States and therefore does not need - contrary to Directives such as the Mutual Assistance Directive - implementing provisions. By virtue of the primacy of Union law, national courts and national administrative bodies have a duty to apply and interpret national regulations in the light of those Union provisions.
48.	FI	Fiche 16	What kind of documents would the Commission send to national authorities for notification and enforcement? What documents could serve as the basis for requests of assistance on an EU claim? What would happen if the documents provided were not sufficient?	The practical agreement to be signed would foresee the documents to be provided: i) For a simple information request on a debtor (as in most cases), we would rely on the debit note (in the language of the debtor or a necessary translation in the official language of the requested MS). The debit note contains all the identification of the debtors' details, the amount due and the source of the

				claim. These elements should suffice, together with eventual information on the latest address and contact information of the debtor. ii) For the notifications, we would use a uniform template inspired (and adapted) on the Annex I "uniform notification form" of the Commission Implementing Regulation.[10] iii) For the enforcement, the necessary document would be a Commission decision adopted pursuant to Article 299 TFEU in the language of the debtor (and translated in the requested MS language, if necessary). If necessary, the Commission would provide all (missing) necessary documents upon request.
49.	FI	Fiche 16	Could the document related an EU claim be some other document than a decision of an EU institution pursuant to Art. 299 TFEU? How similar would the new requests for assistance be with current requests pursuant to Art. 299 TFEU? Compare with the proposed Article 104 (5): "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."	No. For the recovery and precautionary measures, the only necessary document is the enforceable decision by the Commission pursuant to Article 299 TFEU.
50.	FI	Fiche 16	Could the Commission further clarify what are precautionary measures, when and how are they taken, and give examples?	It is for each Member State to assess which precautionary measures would be applied under its national law for claims of similar nature. In general, a precautionary measure in the field of recoveries aims at freezing the assets of the debtor (for instance bank accounts) until

[10] Commission Implementing Regulation (EU) No 1189/2011 of 18 November 2011 laying down detailed rules in relation to certain provisions of Council Directive 2010/24/EU concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

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				the matter is definitively settled, to prevent the debtor from making their assets "disappear". The proposal (Article 104 paragraphs (5) and (6)(a)) explicitly foresees that a precautionary measure could only be requested upon a formal decision pursuant to Article 299 TFEU, as soon as it is adopted by the Commission (*i.e., the 299 Decision first needs to be notified and the order for enforcement*[11] *is stamped on the Decision by the competent Member State.*) We need such precautionary measures because: i) Sometimes the debtor is notified but the Decision has not yet received the official order for enforcement stamp (it takes around 6 months on average). During this period, there is a risk of the debtor hiding their assets. ii) Sometimes, we cannot notify the debtor of the Decision. This means that the Decision can only take effect later when there is a due notification (as per Art. 297(2) TFEU), but in the meantime there are still assets to be seized/frozen. Once these assets have been seized/frozen, generally the debtor "re-appears" to contest the measure. The abovementioned specific situations highlight the need for a legal provision.
51.	FI	Fiche 16	Is the last sentence of Article 104 (3) in contradiction with	We do not see any contradiction, but maybe the question could be rephrased? In any case, if it is a drafting issue, we are most willing to

[11] Article 299(2) TFEU: "[…] The **order for its enforcement** shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union."

			the rest of the Article? (The sentence reads: "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.")	take into account any clarification.
52.	FI	Fiche 16	What does the provision in Article 104 (6) mean in practice: "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"?	Please see reply to question 50. In practice, the workflow is as follows: Before issuing a Commission decision pursuant to Article 299 TFEU, we would first request the Member State for information on the debtor. Upon receiving such information regarding the debtor's existence/(in)solvency, we would proceed with the adoption of the Decision taken pursuant to Article 299 TFEU. As soon as the Decision is taken, but before the notification and before a copy of the Decision, with the enforcement order stamped by the national ministry, has been received, the Commission may request the Member State to take precautionary measures to identify and freeze the known assets of the debtor. It is for each Member State to proceed with the applicable procedures on precautionary measures as with their own claims of the same nature.
53.	FI	Fiche 16	Who decides on closing a case e.g. after unsuccessful enforcement actions?	It should be recalled that the obligation of assistance would be an obligation of means (Member States will deploy their best efforts to assist the Commission) and not of results and that the Commission shall reimburse the administrative costs. However, the whole mechanism is based on the premise that if a Member State, which has the most enforcement powers and information regarding a debtor and its assets, has not been able to recover an EU (or national) claim from the debtor, the Commission will not be able to do so either.

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				Thus, if and when the Member State concludes that the recovery is unsuccessful, the case would be "sent back" to the Commission, which logically would proceed to the waiver of the claim (unless it can identify other assets in another Member State or proceed to an offsetting, etc.).
54.	FI	Fiche 16	Could the Commission specify and give practical examples of "EU claims" that would fall into the scope of the proposed Article?	Please see replies to questions 3 and 46. More than 90% of the claims are related to **grants** given to legal entities.
55.	FI	Fiche 16	What information related to the proposed Article does the Commission already have access to via registers?	The Commission only has access to commercial registries. However, this information is by far insufficient: i) In most cases these registries are only limited to commercial companies – while most grants are given to associations (NGOs). ii) The financial information in these registries concerns the annual accounts of the previous year, and only for commercial companies. What we would need from the Member States is the information regarding the debtor, in particular if they hold any movable or immovable property or bank accounts, or if they have any unpaid tax or social security debts. Indeed, if we know that they have a tax debt and the Member State has been unable to recover it, we would not be able to recover our claims either and could proceed to waive them.
56.	FI	Fiche 16	Why does the Commission not propose a transition period for such a major change?	Most of the requests would be asking the Member States for information on the debtor, which should have no major administrative impact and hence does not necessitate a transition period. Such transition period is also unnecessary in view of the proposal's minimal impact to the workload of the Member States (on average 3 to 4 cases per year).

				For the rare cases of enforcement, for which an enforceable decision pursuant to Art. 299 TFEU is given, we would only require to enforce them as a debt of the same nature (see line 68 for more details on this notion) so, again, the Commission does not consider this proposal to constitute "a major change".
57.	HU	Fiche 3	In reply to Q98, the Commission indicated that – according to the Opinion of the EDPS –, they will further adjust their practices with respect to technical safeguards. Could you elaborate on what kind of actions are to be taken?	Apart from the application of basic principles, the Commission applies encryption and considers pseudonymisation in case of non-published data as recommended by the EDPS. Pseudonymisation means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person.
58.	HU	Fiche 3	In Q156, FI inquired about whether after the installation of the new transparent website any member of the public would be able to search data about natural persons receiving EU funds and whether it would be consistent with data protection legislation. In its reply, the Commission referred to the data mining tool, and specified some elements and functioning of the Arachne. Could the Commission elaborate on the functionality of the new website?	The FTS publications are fully compliant with the GDPR and verified before publication. Moreover, data protection requirements laid down in Article 38 FR 2018 apply to the FTS. For questions on datamining/Arachne, see the replies related to Fiche 2.
59.	HU	Fiche 3	In reply to Q96 and 152, the COM stated that the budgetary implications of the creation of the new transparent website could not be established as they would depend on the functionalities and the requirements of the system which is under development. In addition, the Commission states that whole recast proposal does not have any budgetary implications. How come that there would be no budgetary implications at all or that they cannot be assessed now? The elaboration of the necessary IT systems would need extra resources that the Commission should properly assess,	Please see question 39.

			especially as there is no different timing for the entry into force of the rules on the new, transparent database.	
60.	HU	Fiche 16	The Commission would create a new recovery system similar to the one based on Directive 2010/24/EU. According to Article 4 of the Directive, each Member State had to inform the Commission of its competent authorities for the purposes of the Directive. Could the Commission give a list of these authorities in order to check the appropriateness of them?	The Commission refers to the following link which indicates the official list of national authorities: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011XC1012(02)&from=EN For detailed information on the implementation of the Mutual Assistance Directive by the Member States, reference is made to the Commission's 2017 and 2020 reports[12].
61.	HU	Fiche 16	Agreeing with the concerns of PL stated in Q297, we would like to know why the COM has not defined in its proposal a different time limit for the applicability of Article 104. The adjustment of national legislation with the designation of the competent national authority and providing the necessary human and administrative resources, the creation of the supporting IT systems, the development of the implementation framework would absolutely necessitate more time than the presently proposed 20 days.	Most of the assistance requests would be asking the Member States for information on the debtor, which should have no major administrative impact. As of the entry into force, the only thing that would change is that the Commission would be able to request information from the Member States on the EU claims and only after receiving such information, may request assistance for the enforcement. The Commission would work hand in hand with the Member States via a conclusion of an agreement to settle all possible implementation implications.
62.	HU	Fiche 16	We consider that the proposed rules in Article 104 are not precise enough to be implemented by the Member States. In its present form, the amendment omits all the issues that are addressed by Council Directive 2010/24/EU, which serves as a model, with regard to tax collection cooperation. However, the latter system proved to be quite effective thanks to the legal instruments created by the Directive, such as: the uniform delivery form (UNF), the uniform instrument permitting enforcement (UIPE), common communication network (CCN mail correspondence system),	For reasons of readability and simplification, we cannot insert in the Financial Regulation all the relevant paragraphs from Directive 2010/24 and the Commission Implementing Regulation (EU) No 1189/2011. The idea would be to insert the necessary provisions in a practical arrangement between the Commission and the Member State in question, which would be inspired from current practice and adapted as necessary.

[12] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0340&rid=1

			the uniform enquiry forms to be issued by the central web application provided by the Commission (eFCA) and the detailed rules of cooperation defined by Commission Implementing Regulation 1189/2011/EU. As these legal instruments have not been set up within the framework of the Financial Regulation, neither the expected administrative burden (HR needs, IT infrastructure, translation costs), nor the guarantee of the taxpayers' rights (e.g. availability of the documents in the debtor's native language, legal remedy questions) can be assessed.	Paragraph 9 of the proposed Article already foresees explicitly these matters: "*The Commission and the Member States may conclude an agreement covering further arrangements on 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 to be used*."
63.	HU	Fiche 16	In addition, the Financial Regulation doesn't provide a clear procedure for the process of endorsement of the enforceable document. It is not clear who should perform this task. Article 299 TFEU requires the national authorities designated by the governments of the Member States to endorse the documents. Presumably, this task would remain within the competence of the national courts (in the framework of judicial cooperation) which could then be handed over to the national contact offices either by the requesting party (no channel is designated) or by the national court that performs the endorsement (by request). However, the reason for adapting the framework for tax recovery is precisely to speed up the procedures, as the Commission has noted among the problems with the current system[13]. On the other hand, the new Preamble (72) of the Financial Regulation suggests that the national contact points may also be involved in preparatory acts prior to the adoption of decisions. Therefore, it is questionable whether this can be interpreted as meaning that it is also the task of the requested enforcement body to apply to the court for	The enforcement of claims would only concerns claims that are adopted through an enforcement decision pursuant to Article 299 TFEU. Once these decisions were adopted and notified, they would follow the normal course of action: the Commission would send an original copy of the Decision to the permanent representation of the Member State, which would send it to the competent ministry (generally the Ministry of Justice or European affairs), which would stamp the enforceable order ("formule executoire") and send it back to us. We would then send this document to the national authorities for the enforcement. The national authorities would possibly be requested to notify the decision if the Commission could not notify the debtor via a letter sent by registered post.

[13] "It takes a long time to establish the legal basis for the enforceability of claims (e.g. by court decision), during which time the debtor often goes out of business, goes into liquidation or insolvency proceedings."

			the enforcement clause or whether the current system, which has created the problems (as being a lengthy, cumbersome procedure), is maintained.	
64.	HU	Fiche 16	We would like to know whether the enforceable decision would also be available in the language of the Member State concerned and whether they would be accompanied by a regularized form. What kind of communication channel will be used for forwarding the requests?	The enforceable decision would always be adopted in the language of the debtor, which, save in rare cases, would also be the language of the Member State from which assistance is requested. If this would not be the case, an official translation would be sent by the Commission. An enforceable decision would not need to be a regularized form (except the formalities for enforcement mentioned in Article 299 TFEU) as the recitals would explain the context and reasoning for the recovery, and the articles of the Decision would indicate the debtor, the amount, the bank account where to pay, and the reference of the debit note.
65.	HU	Fiche 16	How would the Commission regulate these procedural questions? Presently, they are not mentioned in the Financial Regulation recast proposal, will they be laid down in another legal instrument (e.g. implementing decision?) or in a bilateral/multilateral agreement?	In principle, this would be done through a bilateral/multilateral agreement mentioned in paragraph 9 of the proposed Article which already foresees these matters: "*arrangements on 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 to be used*."
66.	HU	Fiche 16	Furthermore, in reply to Q209, the Commission argues that it is not necessary to set up new schemes or structures, which leads to the conclusion that the Commission intends to build on the instruments already developed for tax collection cooperation. However, there is no special mentioning of it in the text. What is the reason for this?	For reasons of simplification, the proposal concentrates on the principle of Member States' assistance and sets out the main features of the assistance mechanism in a single article. All the non-essential elements would be agreed with the Member States on a bilateral/multilateral basis (see paragraph 9 of the proposal which refers to an agreement to be concluded with the Member States).
67.	HU	Fiche 16	In reply to the questions on the potential administrative burden and costs, the Commission has not given concrete details, they referred to the agreement that could be concluded between the Commission and the Member States. Here, we would like to know how the increased workload of the national administration would be defined	Please see the answer provided above.

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			and assessed in these agreements knowing that presently the cost of these tasks are calculated with the fees of law firms.	
68.	HU	Fiche 16	Could the Commission define, what kind of recovery claims should be treated as being a claim of the same nature as a claim of an EU institution based on national law? (In the framework of tax cooperation, this issue is settled: if there is no claim of the same nature in national law, then the rules governing income tax are to be applied.)	The Commission has applied the same analogy as in the current Article 106 of the Financial Regulation: *"National treatment for entitlements of the Union:* *In the event of insolvency proceedings, entitlements of the Union shall be given the same preferential treatment as entitlements of the same nature due to public bodies in Member States where the recovery proceedings are being conducted*." Thus, in an insolvency proceeding, the insolvency liquidator or the judge would have to treat the Commission's claim stemming from a Horizon 2020 grant in the same way as it would treat a claim stemming from a grant awarded by the ministry of a Member State. Likewise, it should treat a claim stemming from a competition fine imposed by the Commission in the same way as it would treat a claim stemming from a fine issued by its own competition authority, and so on for other claims. It is for each Member State to decide which rules to apply for each claim.
69.	HU	Fiche 16	In order to have sufficiently precise procedural rules and uniform interpretation of them at Member State level, an expert-level consultation involving the national contact offices would be welcomed. Does the Commission plan to organise such consultations?	Before concluding the agreement referred to in paragraph 9 of the proposed Article, an expert level consultation will have to be established.
70.	PL	Fiche 2, 3, 15 and 16	**General issue regarding amendments included in fiches 2, 3, 15 and 16 – the need to assess the impact of the proposed amendments.** The Commission's proposal contains significant changes to	In line with the constant practice and with the Commission statement of 2018 (2018/C 267 I/01), the Commission can only maintain its position that the revisions of the Financial Regulation are not subject to an impact assessment as the Financial Regulation provides the general rules and the toolbox for the implementation

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			the EU budget implementation system, which managing and implementing authorities consider to be burdensome and with significant administrative impact. Additional burdens arise from: mandatory implementation of Arachne (despite the fact that effective and validated audit and control tools already exist in the Member States); a wide range of support from Member States in the recovery of Union claims; implementation of new budgetary rules, i.e. Do Not Significant Harm (DNSH) and national anti-fraud strategies. This is in contrary to the Commission's view that the changes are proportionate and targeted. In our opinion, such changes should not be processed within the framework of the recasts, but <u>as a separate proposal in the complete legislative process together with the proper impact assessment.</u> As regards the absence of an impact assessment on the current recast, the Commission refers to its statement of 2018, in which it states that amendments to this legal act do not entail any direct economic impact that could be subject to useful analysis in the context of the impact assessment. Poland notes that this statement is not in line with the current situation where major changes are proposed to the system of spending funds with direct effects on administrations and beneficiaries. But even the above-mentioned statement indicates that the Commission will also continue to conduct targeted consultations and public consultations with all stakeholders and indicate in the explanatory memorandum of future revisions how it has taken into account relevant evaluations of programmes implementing rules or tools provided in the Financial Regulation (FR) that it proposes to modify. At present, these targeted consultations are lacking. General public consultations on the revision of the FR carried out in	of the spending programmes. There are therefore **no direct economic, environmental, or social impacts** that result from it that could be usefully analysed in an impact assessment. The added value of impact assessments comes when specific policy choices are made in specific spending programmes, which must comply with the regulatory framework provided by the Financial Regulation. In line with the established practice, the Commission carried out a public consultation in 2020. It covered all the main aspects of the proposed targeted revision, including in particular possible improvements of the early-detection and exclusion system (EDES), which were generally welcomed. This proposal includes virtually all changes stakeholders have supported in the dedicated public consultation. Regarding the specific elements mentioned: - In relation with the compulsory use of a risk-scoring and datamining tool, the Commission is committed to work closely with the Member States to develop tools that would be user-friendly and keep the administrative burden to the minimum. The Commission has in addition proposed a long transition period that should allow both for the development of such tools and for sufficient time to prepare for their smooth implementation by all actors. - In relation with the proposed support from MS on the recovery of EU claims, the Commission maintains its assessment that the entailed burden shall be limited and associated costs for the Member States shall be compensated (for more details, please see replies to questions 5 and 6). - In relation to the introduction of the DNSH principle, please note that it will only be applicable as from the next generation of programmes. It is thus a clear case where it is indeed in the context of the adoption of the spending programme itself that the impact of this principle in the specific policy area may and

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			2020 cannot be considered as sufficient. Therefore, Poland kindly asks the Commission to prepare and present the impact assessment of the proposed changes (including impact of changes in EDES system).	should be assessed. Regarding national anti-fraud strategies (NAFS), these are essential for the coherence of the fight against fraud in a Member State. They should be considered a minimum requirement to ensure an effective and efficient anti-fraud action at national level, and hence do not constitute a disproportionate measure. A majority of Member States have already adopted a NAFS or are in the process of doing so. The Commission will continue to support the Member States who still have not done so or are updating their NAFS.
71.	PL	Fiche 2	There is a question regarding the Commission's answer no 78, where the Commission stated, that there are *two recommendations of the EDPS which require action to be taken with respect to the technical safeguards. These are currently being assessed by the Commission in order to propose further steps*. Could the Commission present more details regarding these recommendations and their consequences for the proposal? In general, the issue of processing of data such as unique tax identification numbers or even dates of birth where recipients are natural persons requires deeper analysis in terms of compliance with data protection rules. Poland still has scrutiny reservation on this issue , but the horizontal question is whether the purpose justifies providing access to sensitive personal data for a wide range of entities and persons (see answer no 90). Some of the indicated data collected in national systems are made available only to statutory entities for the performance of strictly defined tasks. At this stage, it seems that this will require changes in national	For technical safeguards, please see question 71. In relation to the VAT data, the Commission is aware that in some cases even the data concerning legal persons may be considered as personal data, as clarified by the Case C-817/19[14]. Consequently, the VAT number might be considered as personal data if leading to identification of a natural person. The latest data protection impact assessment approved on 22 July 2022 concluded that the established principles and technical safeguards were sufficient to ensure the protection of personal data. It needs to be emphasized that on the basis of the Record on processing on Arachne[15], the only sensitive data according to Article 10 of Regulation 1725/2018 that might be processed is the data revealing political opinions.

[14] Judgment of 21 June 2022, *Ligue des droits humains v Conseil des ministers* (C-817/19), ECLI:EU:C:2022:491.
[15] DPR-EC-00598.3.

			legislation.	
72.	PL	Fiche 2	The Commission did not address the specific issues raised by Poland (referred to in questions 272, 273, 274), including the call for using of "self-powering data system" like BORIS (question 270). Poland kindly asks to provide answers to the above-mentioned questions.	Please refer to question 7.
73.	PL	Fiche 2	The Commission's promise to take action as indicated in answer 7 or 50 like providing guidelines, presentations, training sessions and workshops or "survey on Arachne" is not a response to concerns raised by Member States. Can the Commission provide examples/data confirming that Arachne's replacement of systems has improved the indicators, if so, which ones? In what programs? What specific objectives does the Commission have in this regard? The obligatory Arachne system was rejected during the negotiations of the 2021-2027 for cohesion policy regulations. In cohesion policy, systems for risk analysis and control have been improved for years. Member States should be able to use their best practices and systems, the effectiveness of which has been confirmed by checks and controls inter alia through a systematic decrease in the level of errors and irregularities. The new Arachne system should be applied on a voluntary basis and in the acts agreed by the legislators. This should not be a pre-imposed tool. This is contrary to the principle of proportionality.	Arachne has improved over time on the basis of experiences of Arachne end-users, requests coming from Arachne workgroups in the Member States, and the outcomes of surveys, together with technical evolutions. Improvements have included e.g., reviews of specific screens, functionalities and risk calculation rules. The evolution of the risk indicators in Arachne has facilitated the recording and presentation of the results and increased the effectiveness and efficiency of management verifications. For the future, the Commission is currently carrying out an analysis to provide for future (completer and more comprehensive) features going beyond national systems.
74.	PL	Fiche 15	As regards the introduction of DNSH as a budgetary rule within the sound financial management (Commission's replies no 249 and 404), Poland points out that it is necessary to provide legislators with the possibility of a flexible approach in certain areas, as for example, in the case of the REPowerEU instrument, where the Commission proposed a derogation from DNSH principle. In addition,	The introduction of an explicit reference to the do-no-significant-harm principle is fully in line with the Commission's commitment to sustainable financing and green transition. Regarding its concrete implementation, the principle is worded in a general manner. This means that sufficient flexibility remains for its application to be tailored as appropriate to each programme. When

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			currently not all budget expenditure is covered by this rule (e.g. The Common Agricultural Policy). It is therefore reasonable to introduce the DNSH principle into sector-specific acts in which it is to be applied instead of adopting it as a mandatory horizontal budgetary principle. Or at least include a supplement to the provision allowing different solutions to be applied in sectoral acts, if so agreed by the legislators. Why the Commission did not consider this approach?	drafting/negotiating the next generation of EU programmes, different safeguard measures tailored to each of the programmes will need to be elaborated to ensure the respect of the principle in the implementation of each programme. This process will take into account all relevant circumstances and adapt in particular to the aim and the specificities of each programme. Please also see question 40.
75.	PL	Fiche 16	Poland is of the opinion that there is insufficient justification and analysis of the effects of using the legal framework of the Mutual Assistance Directive (2010/24/EU) to recover the Union's claims (new Article 104, e.g. reply no 297). Therefore this amendment in FR is not acceptable for Poland. Poland stresses that the mutual assistance of the Member States concerns the recovery of a strictly defined group of claims and not the action of those States for a specific entity (the Commission) in respect of an indefinite number and types of claims. On the basis of the Directive 2010/24, Member States cannot provide or request assistance to each other in respect of a number of significant public debts (administrative penalties, fees, etc.). Introducing the new article 104 would favour claims of the Union over public-law claims of Member States not listed in Directive 2010/24/EU.	The Commission stresses that recovery is a fundamental part of the implementation of the EU budget and that Member States, pursuant to Articles 317 and 325 TFEU have the obligation to provide assistance to the Commission. It is important to remind that the EU budget comes from national taxpayers, and that recovering EU claims encourages good spending, deters against fraud and, in fine, should lead to an increased rate of recovery which in turn will reduce the Member States contributions to the budget. Such assistance, in most cases, would consist of information requests for which most of the information is already in the hands of the Member States. It should also be underlined that the Mutual Assistance Directive has a different legal basis than the current proposal. The legal basis for the Directive is Articles 113[16] and 115[17] TFEU, which is the reason

[16] *Article 113 TFEU: "The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition."*

			New entitlements imposed by the Commission by way of a decision are emerging in the draft EU acts, and it is therefore difficult to predict what burden the administrations of the Member States would face in the future if the legal framework of Mutual Assistance Directive is applied to the enforcement of claims imposed by the Commission (e.g. Chips Act — Art. 28 penalties and fines, draft regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market — Articles 15, 25 and 32 of fines and periodic penalty payments). In the event that there are indeed 100 cases per year, it does not seem reasonable, in our opinion, to introduce systemic changes and confusion in the legal systems of the Member States. The judgment in Case C-217/16 (pointed out by the Commission) does not prejudge that the enforcement of the Commission's claims should take place in administrative proceedings, it concerns the examination of appeals against the enforcement of Commission's decisions. There are no sufficient data justifying the statement that enforcement in a civil proceeding is less effective than the administrative enforcement.	why Union's claims are not included within the scope of the Directive. Thus, the Commission does not see any "favoritism" of EU claims over national authorities' claims. Member States are free to agree, on a bilateral or multilateral basis, to assist each other in any national claims that they may have.
76.	RO	Fiche 15?	**How do synchronize the provisions of the proposed Art. 63(5)(b) of the FR recast proposal with Art. 77(3)(b)of REGULATION (EU) 2021/1060 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (Common Provisions Regulation)** of 24 June 2021, which states: *"an annual control report fulfilling the requirements of*	Article 63(5)(b) FR corresponds to existing text and no change is proposed, so it is outside the scope of this recast. Furthermore, there seems to be a misunderstanding of the provisions of Articles 63(5) FR and 77(3)(b) CPR in the sense that "an annual summary of final audit reports" and "an annual audit report"

[17] *Article 115: "Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market."*

			point (b) of Article 63(5) of the Financial Regulation, inaccordance with the template set out in Annex XX to this Regulation, which supports the annual audit opinionreferred to in point (a) of this paragraph and sets out a summary of findings, including an analysis of the nature andextent of errors and deficiencies in the systems as well as the proposed and implemented corrective actions and theresulting total error rate and residual error rate for the expenditure entered in the accounts submitted to theCommission." **We propose the following form for Art. 63(5)(b) of the FR (recast):** *"an annual ~~summary of the final audit reports~~ audit report, **compiled by the member state national audit authority, which will present the main findings and conclusions** ~~and~~ from the audits carried out, including an analysis of the nature and extent of errors and weaknesses identified ~~in systems~~, as well as corrective action taken or planned".* RO considers that this modification will align better art 63, al (5), (b) of the FR (recast) with Art. 77(3)(b) of CPR 2021/1060 by clarifying that for the programming period 2021 - 2027 there is **no** need for 2 separate documents (annual report and annual summary).	are different types of documents. The former is a summary to be compiled by the national audit authority while the latter is an audit document.
77.	SE	Fiche 2	On the answers to questions 7, 9 and 50: The Commission's answer does not explain how to ensure compatibility, but only describes the benefits of compatibility. Could the Commission develop how to ensure compatibility with national systems?	The compatibility between Arachne and national data bases is not yet automatic. The data needs to be retrieved manually from one system and uploaded into the other system. The Commission is working to change this. As an example, an integrated administration and control system (IACS) is being developed for payments to farmers by MS in shared management. IACS consists of several digital and interconnected databases, in

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				particular: - a system for the identification of all agricultural plots in EU countries, called the land parcel identification system; - a system allowing farmers to graphically indicate the agricultural areas for which they apply for aid (the geospatial aid application); - a computerised database for animals in EU countries where animal-based aid schemes apply; - an integrated control system which ensures systematic checks of aid applications based on computerised cross checks and physical on-farm controls (on-the spot checks).
78.	SE	Fiche 2	On the answer to question 7: Is there a uniform horizontal definition of the concept of " final recipients and beneficiaries" set out in the proposal? Is it intended to be the final recipient of aid? Is the concept referring to the applicant for aid, the recipient or beneficiaries of the aid? New recital 27 states that it is “necessary to be able to identify the natural persons that ultimately benefit, directly or indirectly[…]” Can the Commission give example of what should be understood as indirectly benefits? The broader the concept, the greater the process for managing authorities. It is important that the use of the term is clearly formulated and delimited.	The Financial Regulation does not define final recipients or final beneficiaries and there is no proposal to add such a definition. As an example, a beneficial owner, as defined in the AML Directive, benefits indirectly.
79.	SE	Fiche 2	About the answers to questions 52, 76 and 148: Does the Commission have more information on the recommendations of the European Data Protection Supervisor now? Will they prompt any changes? If so, will the changes take place in the text of the regulation or in the annex?	Please see reply to question 24.
80.	SE	Fiche 2	About the answers to questions 90 and 91: The circle of actors with the possibility of making extracts from the system will be wide, according to the answer to question 91. At the same time, they should only have access to data that is "relevant to them" according to the answer to question	The access to the processors and recipients shall be limited only to authorised users who shall have access only to the data necessary for and proportionate to the exercise of their respective competences.

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			90. How is the Commission supposed to ensure that it has access to the data needed to make meaningful checks, but at the same time does not have access to so much data that there is a risk of spreading data improperly?	Concerning the amount of data collected, data categories reflected in the record on processing of personal data[18] are proportionate and strictly necessary for the purpose
81.	SE	Fiche 2	The answer to question 92 is not enough. What we are wondering is whether a beneficiary has, for example, a protected identity, or if the data to be stored in relation to the recipient is otherwise confidential, will that information remain confidential when the data is stored in Arachne and made technically available to the Commission (and potentially other MS and external actors)?	As indicated in the record on processing of personal data[19], within the Commission, the access shall be given to EC staff using Arachne. All the EU staff are bound by confidentiality. Apart from the access permission and the binding confidentiality of EU staff, the personal data shall be encrypted as an additional safeguard.
82.	SE	Fiche 2	About the answer to question 250: the Commission is now carrying out development work at Arachne, including a survey sent out about how MS feels that Arachne works. Will MS get a summary of how Arachne works today to be able to decide whether the system should be expanded and made mandatory?	The intention of the survey is to get feedback from the current users to provide improvements for the future Arachne. The Arachne information website[20] provides comprehensive summaries of how Arachne functions. There will be a European Parliament public hearing on Arachne on 5 December 2022, where the results of the survey will be presented and where the Commission will present how Arachne functions currently.
83.	SE	Fiche 2	As noted in the Q and A document, questions on the use of Arachne for direct payments under the CAP has been raised by several MS. Could the commission please provide us with a more detailed answer on whether Arachne would work for direct payments under the EAGF? More specific, could the system be used to handle area- and animal-based support schemes?	This is in the pipeline for next year. The current version of Arachne can already help with payments, but the system will be made more user-friendly. Please also see reply to question 77 on IACS.
84.	SE	Fiche 3	On the answers to questions 58, 98 and 154: [same question	Please see question 24.

[18] DPR-EC-00598.3
[19] Idem.
[20] European Social Fund Plus (ESF+) - Employment, Social Affairs & Inclusion - European Commission (europa.eu).

			as above on fiche 2] Does the Commissions have more information on the recommendations of the European Data Protection Supervisor now? Will they prompt any changes? If so, will the changes be made to the text of the regulation or to the annex?	
85.	SE	Fiche 3	On the answer to question 96: the Commission cannot present what budgetary consequences the introduction of this would entail for MS, but could the Commission give any type of indication of what costs this entails and the size of these costs?	Please see question 39.
86.	SE	Fiche 16	Could the Commission confirm that the same documents should be sent along according to the proposed article 104 (3), as under the directive concerning mutual assistance for recovery of claims, in the case of request for notification and enforcement request?	Yes. Please see reply to question 75.
87.	SE	Fiche 3	Would you please explain if the limit of 500 000 EUR, for the beneficiaries which we must publish, is set for payments for the whole member state or just for one single payment? Does this amount include just EU funding or also (slovenian) national part added?	The EUR 500 000 threshold applies already for financial instruments in direct management and to indirect management via the agreements with entrusted partners. The new FR provisions require Member States to submit information to the Commission for publication. It applies only to beneficiaries as defined in sector-specific rules (Article 38(1) second subparagraph) and only to the extent that the information is required for publication under sector-specific rules (Article 38(3)(e)). There are also other exceptions to the information to be submitted and published as set out in Article 38(3). In the context of financial instruments under the CPR, a beneficiary is defined as the body that implements the holding fund or, where there is no holding fund structure, the body that implements the financial instrument. Member States are required to publish information on those beneficiaries but not on final recipients they support.

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				The above means that Member States must publish and submit to the Commission for publication data on the beneficiary of financial instruments (body that implements the holding fund or the body that implements the financial instrument) regardless of the amount (including the programme contribution (EU and national co-financing) signed in the funding agreement with each beneficiary). The threshold of EUR 500 000 would only apply to final recipients (which is not the case as explained above) but not to the bodies that implement financial instruments.
88.	FI	Fiche 9	Could the Commission indicate – in order to outline the scale – which global initiatives concretely has the EU not been able to join in recent years? What is their magnitude in euros?	So far, there is no participation in such initiatives with the exception of the Global Fund to Fight AIDS, Tuberculosis and Malaria, which has a different legal nature and was given legal personality and has been pillar assessed, thus allowing for the contribution through indirect management. Over the 20 years since its establishment, the Global Fund has invested more than US$ 55,4 billion to date (estimated at EUR 54,5 billion). Other initiatives that the Commission has not been able to join have in certain cases allowed for the Commission's indirect contribution via other pillar assessed partners, for example via the United Nations Development Programme (UNDP) to the Adaptation Fund. The Adaptation Fund has since 2010 committed US$ 923,5 million in funding to date (estimated at EUR 909,5 million). The use of a pillar-assessed partner as a vehicle for the EU contribution remains however an ad-hoc solution, especially if a more sizeable Union contribution envisaged, as it limits the visibility of EU funding as well as the EU's influence on the Governing Board's decision-making.
89.	FI	Fiche 9	Is, for example, CREWS such a global initiative to which the EU has not acceded?	The Commission has not contributed to the CREWS initiative.
90.	FI	Fiche 9	Could the Commission provide more examples of practical situations of application?*	Please see reply to question 88.
91.	FI	Fiche 9	How can the EU ensure the sound financial management,	The assessment of the fulfilment of all of the cumulative conditions

			transparency and effectiveness of global initiatives in question? Could there be a stronger mechanism than what the Commission proposes?	will be made by the Commission on the basis of information provided, including for example the operational policies and guidelines of the initiative. This assessment ensures that the contribution is in line with the general principles of Union financing in the Financial Regulation and will be justified in the Financing Decision to be submitted to comitology.
92.	FI	Fiche 9	Are there funds in the EU programmes to implement the proposal, taking into account available appropriations and basic acts of the programmes? Does the proposal create at least indirect financial impacts and additional pressure on the EU budget, in the short term and in the long term?	The proposed instrument is a budget implementation tool and does not affect the nature of the resources used and thus has no financial or budgetary impact. The funds used to contribute to such initiatives are used from the relevant spending programmes and in line with the objectives of the basic acts, depending on the type of global challenge the initiative is focused on.
93.	FI	Fiche 9	In the proposed provision, the role of the budget authority would seem small and the role of the Commission would seem to be large. Could this cause imbalances? Would some other method be more appropriate than comitology?	The role of the budget authority is that of the use of any other budget implementation tool. The proposed Article falls within the mandate of the Commission prerogatives attributed by the Treaties to implement EU budget and is aimed at identifying the conditions for the Commission to use this budget implementation tool, as any other tool at its disposal (conditions for the award of grants, procurement etc.).
94.	FI	Fiche 9	The Commission would have the power to assess whether conditions are met and to formulate justifications. Could the Council be given the right to be heard and to discuss with the Commission at an earlier stage than comitology, especially on initiatives of political importance?	The Commission would have the same powers as with any other budget implementation tool within the remit of its mandate to implement the budget and would follow the usual comitology procedure where Member States are represented.
95.	FI	Fiche 9	The proposed Article would be used as a last resort. Does it mean that the Commission would actively seek to influence and support, already at the planning stage of a measure, another framework than a global initiative?	The Commission would first seek to use any other budget implementation tools (such as indirect management, grants, procurement etc.) at its disposal in the Financial Regulation. Only when other budget implementation tools are not suitable to achieve the same Union policy objectives e.g., because of the structure of the initiative or the type of action, would the contribution to global initiatives be used under the fulfilment of the strict cumulative conditions.
96.	FI	Fiche 9	Would it affect the arrangement or practical activities, if the EU minority share under 50 % turned out, however, to be	The condition of a minority contribution is reasoned on the basis that if a contribution is above 50% the Commission would have

			the most significant donor of all?	significant influence on the rules of the initiative and the contribution could be implemented under a different existing budget implementation instrument. Practically, this would imply the imposition of different EU conditions in the rules of the initiative in line with other budget implementation instruments.
97.	FI	Fiche 9	The proposed provision would be a budget implementation tool used in accordance with the priorities set out in other EU Regulations. The goals of a global initiative should therefore meet the priorities that the EU has defined for example in the NDICI Regulation. The goals and intended uses of the external action funds have been carefully crafted. If a global initiative came about unexpectedly, how would it be possible to prepare for this in programming or in the "cushion"?	The Union would only be able to contribute to global initiatives where the contribution would be in line with the objectives of the basic acts, depending on the type of global challenge the initiative is focused on. Therefore, as with any other budget implementation tool, the contribution to such initiatives would be used in line with the programming from the relevant spending programmes.
98.	FI	Fiche 9	If the EU took part in a global initiative so that funding would come from several EU external action financing programmes in accordance with their priorities, would the proposal be dealt with by more than one committee?	The spending programmes would depend on the type of global challenge the initiative is focused on, which can include external or EU internal objectives. As with any other budget implementation tool, the appropriate committee for the applicable spending programme would be responsible.
99.	FI	Fiche 1	According to the preliminary national position (the national process is still ongoing), Finland has strong reservations about the proposal regarding **Article 15(4)** that would mean a considerable expansion on the re-use of decommitments compared with the MFF agreement. The proposed Article 15(4) refers to the NDICI Regulation and three other Regulations but does not take into account that the FR is a permanent Regulation, whereas the NDICI Regulation concerns only the current MFF. Thus, the derogation would not be linked to a certain MFF period but would be valid until further notice, which would lead to the recycling of commitments for an unlimited period. The proposed Article 15(4) would, in a very problematic way, anticipate the legal provisions and operating practices of the	The introduction of this proposed Article 15(4) only "codifies" in the Financial Regulation provisions which are already contained in the quoted basic acts (Regulation (EU) 2021/947, Regulation (EU) 2021/1529, Decision (EU) 2021/1764 and Council Regulation (Euratom) 2021/948). This is in line with Article 30(2) of Regulation 2021/947 (NDICI), which provides: "*In addition to the rules laid down in Article 15 of the Financial Regulation on making appropriations available again, commitment appropriations corresponding to the amount of decommitments made as a result of total or partial non-implementation of an action under the Instrument shall be made available again to the benefit of the budget line of origin*." The same wording is proposed in Article 15(4) and the other legal

			future MFF periods. The reason for the exception during years 2021-2027 was specifically related to bringing the European Development Fund within the MFF. Thus, it would not be justified to extend the application of derogations when the original reason was specifically the EDF. So far, there has been only one exception to the re-use of de-commitments: Article 15(3), in the Horizon and Euratom programmes, related to research. The proposed Article 15(4) with its automatic mechanism would increase pressure on Member states' EU payments for the long period and weaken the predictability of national budget planning. It is highly undesirable to form such a practice that a derogation is made to a fixed-term basic act, and later on the same exception is included in the permanent FR under the single rulebook thinking. The FR should not become a list of exceptions. Could the Commission provide further reasoning of its proposal regarding Article 15(4) in the light of the above mentioned remarks?	texts quoted in our proposed text contain provisions making this Article 30(2) NDICI applicable to them (see our previous set of reply, line 139 for the detailed references). The proposed Article 15(4) FR therefore contains no new or different rules compared to the sectoral basic acts. It does not extend the NDICI derogation, nor does it prejudge "the legal provisions and operating practices of the future MFF periods". In line with the established practice, it is important to incorporate derogations from the budgetary principles where they belong - into Title II FR (see in particular Article 3 FR). This is to preserve the "single rule book" approach for the Financial Regulation: a single and transparent set of general financial rules.
100.	FI	Fiche 1	Finland has reservations about the proposed changes to **Article 12** that would mean derogations from the main principle by which unused appropriations are cancelled at the end of the financial year. The FR already has quite a wide range of exceptions and concessions to the carry over rules. What is the estimated volume of carry overs nowadays, in euros? How much larger would the volume become, in euros, under the proposed Article 12? In general, derogations to budgetary principles should not be added to the FR. It is sufficient that these provisions are in the basic acts.	The estimated volume of carry overs should not be affected by the proposed change in the Financial Regulation, as this is merely a codification of the rules set out in the specific basic acts. The exceptionally high level of carry overs from 2021 to 2022 (EUR 4 billion in commitment and EUR 3,6 billion of payments (special instruments included)) was mostly due to the late adoption of the basic acts of the programmes, which hindered the planned implementation. The level of carry overs in the remaining years of the MFF should be much smaller once all programmes in shared management are adopted.

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				In line with the established practice, it is important to incorporate derogations from the budgetary principles into Title II FR, to preserve the "single rule book" approach for the Financial Regulation: a single and transparent set of general financial rules. The derogation from Article 12(2)d is included to reflect the new financing mechanism of the EAGF agricultural reserve, which has been introduced with the CAP 2023-2027 reform, as provided for in Article 16 of Regulation (EU)2021/2116: - Previously, the reserve was fed from direct payment allocations, carry-overs of the unused amount and the reimbursement to the farmers applied every year; - From now on, the unused amount will be carried over in the budget until it is used in the following year(s); - However, the annually carried-over amount will be in the same order of magnitude as before (e.g., EUR 497,3 million for the 'old' crisis reserve in 2022 compared to EUR 450 million for the 'new' agricultural reserve as of 2023). The proposed derogation from paragraph 7 of Article 12 FR for carry-overs related to EAGF suspensions aims at extending the validity of the carried-over credits for payments that may be suspended for more than one year. The modification would not change the volume of carry-overs but facilitate the management of suspended payments. The proposed modification in Article 12(4)(a) for the SEAR is an alignment with Article 9(2) of the MFF Regulation, which as such would not result in an increase of the carried-over amounts.
101.	FI	Fiche 8	According to the preliminary national position, Finland has reservations about the proposal of making EDES mandatory in shared management. In addition, some of the proposed	The proposal for extension of EDES to shared management has been designed in a targeted and proportionate manner to also respect the peculiarities of shared management, including the respective competence of the Member States on the one hand and the

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			amendments and additions to the exclusion criteria appear to be unclear. Furthermore, the FR must meet all the requirements of data protection legislation. The proposal would increase the number of data processing actors. The data would mainly concern legal entities, but there are also natural persons. The processing of personal data should be limited to what is necessary and proportionate to achieve the objectives of the regulation. Could the Commission distribute to the Member States the opinion of the EDPS to which it refers? Does the opinion only apply to the current EDES or also to the proposed extension? Could the EDPS recommendations on Arachne be taken into account where applicable? (187)	Commission on the other hand. The definitions for the grounds of exclusions are, respectively, in Article 139(1) of the proposal. Please bear in mind that these grounds of exclusion apply only in case of direct and indirect management. The reinforcement of EDES in shared management would only concern the following exhaustive list of the most serious misconduct: fraud, corruption, criminal organisation, money laundering, terrorism, child labour/human trafficking, conflict of interests. The extension would not target the other grounds of exclusion applicable in direct and indirect management: grave professional misconduct, serious breach of contracts, shell companies, and any other form of non-fraudulent irregularities. The reason for such limitation is to keep the extension to shared management more targeted and proportionate, and to limit the administrative burden as much as possible. As regards data protection, the EDPS has already confirmed the compatibility of the EDES system as it is currently applicable with its prior checking opinion in Case 2016-0864. The recommendations of the EDPS were fully implemented. The record on the basis of Article 31(1) of Regulation 2018/1725 for the EDES system is to be found under reference: DPR-EC-04410. A data protection impact assessment in line with Article 39 of Regulation 2018/1725 was also performed. The record and the data protection impact assessment will also be accordingly updated after the adoption of the new amending act of Regulation 2018/1046. The EDPS recommendation 14/2022 of 7 July 2022 refers only to a data-mining tool, i.e., Arachne and is thus not applicable to EDES. It is important to emphasize that EDES and Arachne are two separate tools with different functionalities and structures. Therefore, the

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				data protection matters are handled separately by two different records on processing of personal data (EDES[21] and Arachne[22]).
102.	FI	Fiche 2/3	It is important that the FR does not limit the implementation of national legislation on document openness and secrecy, with regard to the collection and publication of recipients' data. Which Article in the proposal will safeguard that national openness and secrecy of documents can be maintained?	The FR only applies within the limits of its scope (Article 1). It does not affect national law on "openness and secrecy of documents" as this is outside the scope of the FR, but it is not appropriate to specify this in the FR text (as we should not specify to what matters the FR does *not* apply as the list risks being rather long). This being said, the FR is binding and directly applicable in the MS, and prevails over any national law that would regulate matters within the scope of the FR. Therefore, we cannot have binding rules in FR on "collection and publication of [EU budget] recipients' data" and at the same time more restrictive national rules (e.g., excluding collection/publication in some cases where the FR requires it) that continue to apply.
103.	FI	Fiche 8	In the Commission's answers to AT questions (26), it says that in the absence of the final judgement the Commission's *"responsible authorizing officer, having regard to the Panel's recommendation, may exclude the person or entity."* However, in another reply to the AT question (28), the Commission states that if a Member State will not follow the Panel's recommendation then *"the payment requests concerning a person or entity that is excluded will not be reimbursed by the Commission."* Why is it voluntary for the Commission authorizing officer to decide whether to follow EDES Panel recommendation or not? And why are the rules stricter to Member States?	First, it should be noted that the FR poses an obligation upon the authorizing officer to exclude a person or entity in an exclusion situation. The discretion that still remains in the adoption of an exclusion decision is limited by the FR to very specific cases, and namely where the exclusion would be disproportionate or for reasons of business continuity. When an exclusion decision is taken by an authorizing officer, all the other authorising officers of the Commission are bound by it and are obliged to enforce it.
104.	FI	Fiche 8	Why are there such severe financial consequences proposed	The payment requests concerning a person or entity that is excluded

[21] DPO Public register (europa.eu)
[22] DPO Public register (europa.eu)

			in the event e.g. of an omission to consult the EDES database? The proposal would cover many award procedures and public procurements, and thus, a wide range of authorities in Member States.	will not be reimbursed by the Commission. This is the consequence of the omission.
105.	FI	Fiche 8	When does the Commission expect that there will be automatic data transfer between EDES and Arachne, and what kind?	The objective is to have EDES measures feeding into Arachne as of 2028.
106.	FI	Fiche 8	Which Commission services are/will be able to use the EDES directly? And which Commission services are/will be able to use the Arachne directly?	The EDES system is already in place, accessible and working. The MS management authorities can already request access and consult the information therein. For what concerns Arachne, only spending DGs working with shared management funds already have access to the database. In the future, all Commission services/DGs will have access.
107.	FI	Fiche 8	Do EDES and IMS operate in connection with each other? How will they operate in the future, possibly in a more automatic way? (123) For example, will fraud entries in the IMS system be included in EDES?	Information channeled by the relevant MS through the IMS can be accessed via EDES (the website of the EDES database also has an entry for IMS). However, the information stored therein, including information on fraud, does not (and will not) lead to an automatic exclusion: this is taken into consideration only as a source of potential exclusion situations.
108.	FI	Fiche 8	Could the Commission make a process description, including the steps, actors and responsibilities?	For a better understanding of the EDES procedure, please see the two attached annexes on the email for the flowcharts on EDES.
109.	FI	Fiche 8	Would it be more targeted, predictable and unambiguous to base the proposed exclusion in shared management only on final administrative decisions or final judgements?	The proposal is already kept targeted and proportionate. In fact, only two sources of exclusion situations are included in the scope, i.e., final judgments/administrative decisions and findings at EU level. To disregard the EU findings would mean, once again, to seriously undermine the protection of EU financial interests.
110.	FI	Fiche 8	In shared management, where would the excluded person	A claim for annulment of an exclusion decision can be brought

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			or entity submit an appeal? National court or CJEU? Who would be the parties in such a case? Would the Commission or the national authority be the defendant?	before the General Court. The interested parties would be, on the one hand, the person or entity concerned and, on the other hand, the Commission or other IBOA that adopted the decision.
111.	FI	Fiche 8	How does the Commission intend to develop EDES IT-system further during the next couple of years? For example, what information will be added to EDES, e.g. on excluded actors?	No change is foreseen for what concerns the type of information stored in the EDES database. In the future, however, EDES information on exclusion and financial penalties will also be found in the datamining tool (Arachne).
112.	FI	Fiche 8	What information would in the future be visible to national authorities in shared management? How detailed information would they have at their use when carrying out an exclusion?	The Commission notes that the MS' managing authorities can already access the EDES database and see the exclusions/financial penalties stored therein. More specifically, the authority accessing the database can see: - the name of the person/entity; - the ground for exclusion; - the duration of exclusion/amount of the fine; - whether publication of the sanction is also foreseen.
113.	FI	Fiche 8	Safeguards are central with regard to exclusion. Is it a sufficient safeguard that a person or entity may submit written observations to the EDES panel?	The decision-making process of the system has been upheld by the Court of Justice of the European Union in several instances. In addition, the European Court of Auditors has also confirmed its validity in the report on blacklisting. Please see also reply to question 114.
114.	FI	Fiche 8	Could the Commission specify in which judgment does the CJEU would confirm the Panel's capacity to safeguard the procedural rights of a person or company (176)?	Please see, inter alia, cases T-290/18[23], T-652/19[24], T-672/19[25] and T-609/20[26].
115.	FI	Fiche 14	According to the preliminary national position, Finland does	The objective is to establish a clear horizontal framework for Union

[23] Judgment of 13 May 2020, *Agmin Italy SpA v European Commission* (T-290/18), ECLI:EU:T:2020:196.
[24] Judgment of 9 February 2022, *Elevolution - Engenharia, SA v European Commission* (T-652/19), ECLI:EU:T:2022:63.
[25] Judgment of 9 February 2022, *Companhia de Seguros Índico SA v European Commission* (T-672/19), ECLI:EU:T:2022:64.
[26] Judgment of 29 June 2022, *LA International Cooperation Srl v European Commission* (T-609/20), ECLI:EU:T:2022:407.

			not consider it necessary to add in the FR a provision that would enable to set conditions concerning security and public order. If the provision were added, it should be formulated precisely and clearly. Could the Commission give concrete examples what are the expected situations of application?	award procedures where the protection of the security and public order of the Union and its Member States is necessary and allowed in accordance with international agreements. The provision is needed to: (1) protect the security and public order in award procedures implemented without a basic act (e.g., administrative procurement of Commission IT-systems and infrastructure that may otherwise be vulnerable to third country interference during installation or throughout the supply chain) for which currently no or only ad-hoc measures can be taken with the resulting risks of inconsistence; AND (2) to ensure horizontal consistence between sectoral basic acts, in particular in the application of complex measures already foreseen in such basic acts such as restricting access for entities controlled by third countries (here it is vital to introduce a horizontal frame to ensure consistency of e.g., the control method applied, the conclusion taken and apply this in a harmonized consistent fashion across programmes). For that purpose, the proposed new provision provides a toolbox of specific conditions for the participation in Union award procedures which concern security or public order and the rules and procedures to apply these conditions in accordance with the international obligations of the Union, in particular in the area of public procurement.
116.	FI	Fiche 14	Are the Commission's internal procedures sufficient to ensure that actors are not excluded to an unnecessarily large extent?	The new provision only allows restrictions of actions were absolutely necessary. The provision also limits any security measures only to those which are absolutely necessary to protect security or public order. This will enable the Commission (through guidance and internal consultation processes) to establish a framework guaranteeing that restrictions are applied only where necessary and

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				in line with the Union's international agreements. Moreover, the Member States will have the established instruments of comitology in sectoral basic acts to exercise their control, for example in the process of adopting the work programme.
117.	FI	Fiche 14	Could the role of Member States in decision-making be strengthened already at an earlier stage than comitology?	The role of the Member States in the implementation of the EU budget is ensured in line with the treaties and applicable legislation, in particular sectoral basic acts, including through comitology that may be applied to the work programme and in some programmes even to the subsequent award decisions.
118.	HU	Fiche 3	In reply to Q98, the Commission notes that based on the Opinion of the EU Data Protection Supervisor, certain elements of the data management practices are to be improved (especially technical safeguards). Could the Commission elaborate what these exactly refer to?	Please see question 57.
119.	HU	Fiche 3	Under Q156, FI inquired about whether the new internet site and database would also allow for the public to make information searches on a large number of natural persons. The Commission replied only in relation to the Arachne system, therefore, we would be interested in the other part of the answer (the feasibility of data searches on the internet site).	In case of identified risks for private persons, beneficiaries, or their commercial interests, business and technical requirements will be introduced to limit data searches on the internet site.
120.	HU	Fiche 8	Presently, the Commission has not proposed all reasons for exclusion to be applicable under shared management. What is the plan of the Commission on this for the future?	The Commission does not envisage, at date, to further extend the scope of EDES in shared management apart from what is already included in the current proposal.
121.	HU	Fiche 8	According to the proposal, the EDES Panel encounters certain limitations regarding the verification of the measures to remedy the situation justifying the exclusion, and therefore external assistance is needed to evaluate the appropriateness of the corrective measures. Could the Commission give examples on what kind of services can act in these cases? Whose findings would the EDES Panel accept as being an appropriate ground for verifying the cases? Who	The Commission, with its proposal, refers to independent audits or judgments/decisions of a national authority. The costs of the audit would be covered by the person/entity concerned.

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			should cover the costs of the verification process?	
122.	HU	Fiche 8	Are the procedural rights of those potentially affected by the exclusion also properly ensured in the accelerated procedure of the EDES Panel? Will there be changes proposed to the Rules of Procedure of the Panel in this regard?	Yes. In this regard, the system has been fully upheld by the Court of Justice. The Panel conducts its adversarial procedure, strictly in accordance with the current Article 143(5) of the Financial Regulation: "*The panel shall uphold the right of the person or entity concerned, as referred to in Article 135(2), to submit observations on the facts or findings referred to in Article 136(2) and on the preliminary classification in law before adopting its recommendations.*" As such, the preliminary classification in law is proposed by the Panel when launching the adversarial procedure with an entity in order to precisely give an opportunity to the entity to submit observations on such preliminary classification in law. This being said, the Panel takes under due consideration the arguments provided in the observations of the entity and it would re-consider such preliminary classification in law, if justified after the assessment of such observations. This is also the purpose of the adversarial procedure. The solidity and legality of the decision-making process of the EDES Panel has also been confirmed by the ECA in its report on blacklisting. In paragraph 27 of the said report, the ECA states: "*As in the US system, the Financial Regulation requires counterparties to be given prior notification and an opportunity to make observations before an exclusion decision is taken. The EDES panel considers counterparties observations alongside the facts and findings provided by authorising officers and issues recommendations. The panel's assessment procedure protects the fundamental rights of counterparties, such as the right to be heard*".
123.	AT	Fiche 5	The proposal contains several provisions concerning "crisis related procurement" and the intention is to establish an emergency mechanism. To this end the proposal "includes	1) The European Commission takes note of AT's remarks and will assess them appropriately.

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			targeted improvements and simplifications" (see page 1 of the Explanatory Memorandum) for ex. in Art. 164 (6), 169 and 176 as well as for ex in Point 18 of Annex I. Some of these proposals are – according to our understanding – not in line with the jurisprudence of the European Courts (see for ex. amendment of contracts versus Cases C-454/06, pressetext, and others; verification of minimum requirements in the contract documents after the award of the contract versus T-661/18, Securitec) which was based on primary law. AT therefore asks COM/Council Legal Service to provide in writing an opinion, if 1) these crisis related provisions are in fact in line with the cited judgements and primary law and 2) why the specific crisis related provisions (specifically the choice of procedure) are necessary, considering that the Financial Regulation already contains provisions regarding "extreme urgency procurement" (see Point 11.1 letter c of Annex I); is there and - if yes – which difference is between the situation of "extreme urgency" and a "crisis" given that COM issued a Communication in the context of the COVID-19 crisis explaining that procurement in the context of COVID-19 could be handled with the "extreme urgency" procedure?	2) Existing procurement rules under the "extreme urgency" procedure were used during Covid-19 crisis but would not have been sufficient to procure at scale vaccines for and on behalf of the Member States without the specific provisions of the Emergency Support Instrument Regulation. With the FR proposal, the Commission addresses the lessons learnt from the Covid-19 crisis and proposes to establish ready to use crisis procurement package going beyond the existing FR rules. This being said, the amendment to point 11.1c of Annex I clarifies that a crisis declaration by itself is not sufficient to run extreme urgency procedure. Such extreme urgency should still be justified by the responsible authorizing officer considering the nature of the crisis.
124.	AT	Fiche 5	Art. 169 (2) first subpara of the proposal contains inter alia the following provision: "Where it is necessary to carry out a joint procurement between a Union institution, a Union body referred to in Articles 70 and 71 or an executive agency referred to in Article 69 and one or more contracting authorities from Member States, Member States may acquire, rent or lease fully the capacities jointly procured." (emphasis added). AT understands this provision as containing an exemption for MS to acquire goods/services from a joint procurement without having to apply the	The aim of this provision is not to touch upon the provisions of the Public Procurement Directive. This provision is intended to allow EU institutions to conduct joint procurement with Member States without the need for EU institutions to acquire any capacities for themselves. We would like to stress once more that the Financial Regulation sets the rules for procurement conducted by EU institutions, and not Member States. This provision is thus not touching upon the competencies of the Member States. However, the Commission is available to discuss how to improve the wording while preserving the initial policy goal as described above.

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			provisions of the PP Directives (namely Dir. 2014/24/EU). To understand it as just an "enabling" provision for MS (that they can acquire goods/services … from COM) would not make any sense because the FR cannot regulate what MS can do or cannot do (the FR does not address MS). If it is to be understood as AT explained – AT asks the Council Legal Service to provide its view on this point – it opens the question if such a derogation from the PP Directives can be implemented in the Financial Regulation; AT would take the preliminary view that the legal basis of the FR would not cover such a provision and that such a provision must be incorporated in the PP Directives. AT asks the Council Legal Service to provide its opinion on this issue as well as COM to provide further input.	
125.	DE	Fiche 5	Procurement in situations of crisis (Question 62): We agree with the motive for facilitating procurement in crisis situations. On MS level we see a similar need for facilitations. Past situations have shown that the options under the procurement directive are not sufficient. We need better coordination and strengthening of joint procurement but this can't replace the necessary procedural facilitations.	We take note of the comment and the need expressed by DE.
126.	DE	Fiche 5	On green/sustainable procurement (Question 65): Green criteria should not only be applied on the level of selection and award criteria. Also within the performance framework green minimum criteria can create important incentives. We thank CION for confirming that recital 158 does not prevent this from being done. We also look to CION to elaborate on how ambitious and sustainable procurement can be ensured in the framework of the financial regulation overall, in particular regarding social sustainability.	We confirm that green criteria can also be applied within the performance framework of contracts. Recital 158 does not limit the application of green criteria only to selection and award criteria. Its aim is to only encourage the use of green selection or award criteria. To be noted that compliance of procurement with environmental, social and labour law by EU institutions and bodies implementing the EU budget is ensured directly via provisions of the Financial Regulation. Minimum requirements to be met by all tenders shall include compliance with applicable environmental, social and labour law obligations established by Union law, national law, collective agreements or the applicable international social and environmental

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				conventions listed in the Procurement Directive 2014/24/EU. Authorising officers shall exclude an operator if it has been established by a final judgment or a final administrative decision that the person or entity is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law. We would also like to stress that the Commission is taking action to ensure that social and professional inclusion are respected and prioritized. Hence, under the proposed addition in point 17.3 of the Annex to the FR Recast, the technical specifications for all purchases intended for use by natural persons shall be formulated to include accessibility criteria for persons with disabilities or the design for all users, except in duly justified cases.
127.	DE	Fiche 5	On Article 169 para. 3: EU institutions shall be entitled to procure goods and services in the name of MS as well as store, sell and donate them. CION explains that experiences during COVID showed that this possibility should be applicable also during normal times. How does CION come to this assessment? Is this compatible e.g. with special provisions for the health sector in Art. 168 para. 7 TFEU, according to which the competence for pharmaceutical supplies lies with MS?	The Commission does not want to close the door to such possibility in case of non-crisis situations as it might prove to be necessary. In both crisis or non-crisis mode, the Commission may conduct such procedures only after an agreement with Member States has been signed, mandating the Commission to procure on behalf of Member States or to act as a wholesaler. We confirm once more that the proposal has neither the intention nor the effect of impacting any competencies of the Member States according to the Treaty.

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