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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Budget Committee
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Subject:	Financial Regulation revision (recast proposal): COM replies to MS questions

In view of the Budget Committee meeting on 22 September 2022, delegations will find attached the Commission's replies to Member States' questions regarding the Financial Regulation revision (recast proposal).

Replies to the questions of the Council's Budget Committee on the proposal for a recast of the Financial Regulation

(COM(2022)223 final)¹

Line	Member State	Topic/ Art. no	Comments/questions	Reply
1.	DK, NL and SE	general	Denmark, the Netherlands and Sweden welcome the Commission's overall intention to simplify and clarify the Financial Regulation. Denmark, the Netherlands and Sweden also welcome proposals that promote transparent and predictable regulations and a reduced administrative burden. Denmark, the Netherlands and Sweden consider that the revision should mainly be seen as an opportunity to discuss technical changes, how the EU budget can better achieve the desired results and how implementation can be streamlined and simplified and how the regulation can be adapted to regulations in other areas. Denmark, the Netherlands and Sweden consider that the principles of sound financial management should govern the design of the Financial Regulation and that the proposals should be appropriate and promote effective and efficient budget implementation. Denmark, the Netherlands and Sweden consider it important that the proposed amendments to the Financial Regulation cannot be used to enable increased expenditure in the EU budget or to affect the restrictive function of the expenditure ceilings, and the maximum spending levels set by the European Council.	We welcome the support of the overall simplification goal of the proposal. We believe that the targeted nature of the revision, which is the outcome of a strict selection of the changes to be proposed, will allow to focus on changes making budget implementation more efficient, while increasing the level of protection of the EU budget.
2.	FI	general	The Commission states in the Explanatory memorandum of the Recast proposal that no impact assessment is required and that the proposal does not have budgetary implications. However, there are questions and concerns on the economic and budgetary impacts of the proposal including indirect impacts. The Commission is requested to give a detailed account of	In line with the established practice and the Commission's statement on future revisions of the Financial Regulation ² , no impact assessment is required for the recast of the Financial Regulation. It is indeed considered that revisions of the FR do not

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

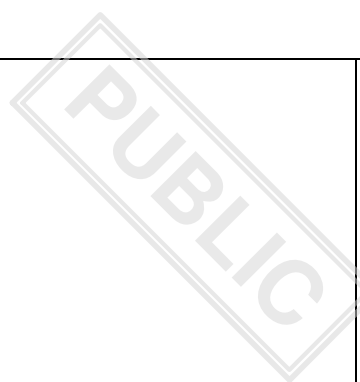
			the impacts of its proposal.	have any direct economic, environmental or social impacts which could effectively be analysed in an impact assessment. The value added from impact assessments comes when making policy choices on specific spending programmes and instruments, which have to comply with the regulatory framework provided by the Financial Regulation. Instead, the Commission has carried out a public consultation for this proposal, which is common practice. The Commission has also built on the operational experience and lessons learned, in particular to identify and analyse the issues to be addressed and the added value of Union involvement. Regarding the administrative burden for the Commission and other bodies and authorities implementing the budget that could be entailed in some of the changes proposed (e.g. 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 as much as possible. 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 to EDES, the system is already in place since the FR revision of 2016. The EDES database and the EDES Panel have been in place since 2016 as well. The changes to EDES are targeted and proportionate.
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				As regards the single data mining and risk scoring tool, the Commission is analysing the concrete functionalities that will be required of the system. These will be developed in close consultation with the Member States, other future users of the system and current users of the existing tool Arachne.
3.	FI	general	The Commission is requested to assess the administrative impacts of the proposal, including the administrative burden both on the Union's institutions, bodies and agencies and on national administrations.	Please see reply to line 2.
4.	FI	general	The Commission is invited to further elaborate on which proposed Articles are purely technical amendments and which, in fact, are important substantial changes. Which proposed provisions does the Commission consider as the most important amendments with the broadest impacts?	The recasting technique aims precisely at clearly differentiating the pure technical changes (codifications of technical points) and the substantive changes (grey shaded). As a rule and as confirmed by the Council Legal Service, the legislative work is to be limited to the substantive amendments proposed by the Commission. In line with the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts³, a consultative working party consisting of members of the legal services of the Commission, Council and Parliament delivers an opinion to the effect that the proposal does not comprise any substantive amendments other than those identified as such. The explanatory memorandum presents the overall logic of the proposal, the main topics (MFF alignment, crisis management, enhanced protection of the EU financial interests, and simplification) and the

³ Official Journal C 077, 28/03/2002, p.1.

				rationale for the proposed changes.
5.	FI	general	Are there any proposed amendments to the FR, which are not covered in the Fiches?	The aim of the 15 fiches is to cover all the amendments proposed to the FR. Any involuntary omissions will be signalled to the legislator as soon as they are spotted.
6.	PL	general	Poland presents its questions to changes in the Financial Regulation (FR) below. Most of our comments apply to the proposal regarding the EDES system, this is especially true of the numerous questions received from institutions handling EU funds. At the same time, we would like to emphasize, that Poland supports all actions that would exclude fraudulent entities from EU funding. On the other hand, solutions serving this purpose should first be well prepared and analysed in terms of effectiveness and efficiency, so as not to harm honest recipients and not to generate excessive costs and burdens for the administration. The criteria for possible sanction measures must also be precise in order to avoid disputes and costs related to their handling, also for the Commission. Clarifications from the Commission are needed and should be provided well in advance, before the real negotiations start. It will allow for better preparation of work on the FR revision. Poland declares that it is ready to cooperate on the improvement of financial provisions.	The Commission welcomes the support to exclude fraudulent entities from EU funding. From a legal standpoint, EDES is effective and legally sound. The ECA has acknowledged its robust decision-making procedure. The ECJ has upheld the system on several occasions, including the grounds for exclusion, the criteria to trigger the procedure, the role of the Panel and the safeguards of the right of defence. While bearing this in mind, the proposal for extension of EDES has been designed in a targeted and proportionate manner to respect also the peculiarities of shared management, including the respective competence of the Member States on the one hand and the Commission on the other hand. This means that the administrative burden is reduced to the minimum.
7.	SI	general	In our opinion, the changes in the regulatory framework could cause additional administrative burdens (regardless of positive impacts). Therefore, every change needs to be closely monitored in order not to cause any extra delays and additional work.	Please see reply to line 2. In terms of administrative burden in relation to EDES, this is kept to a minimum by proposing i) only necessary changes to the framework and ii) a targeted and proportionate approach as to the extension of EDES to shared management. The Commission recalls that the EDES system has been in place since the FR revision of 2016 and that all the procedural and technical features are in place

				since then. Furthermore, the Commission is proposing the mandatory use of a single integrated IT system for data-mining and risk-scoring tool which – as a preventive tool – will interact also with the EDES database. The development of the single integrated IT system for data-mining and risk-scoring will put emphasis on the interoperability with the existing national/regional electronic data systems. The data (e.g. projects, beneficiaries, contracts, contractors and expenses) should be sourced from the IT systems of the bodies that implement the budget. The aim of the IT system is to further enrich this data with other sources of information (e.g. shareholders, sanction lists, enforcement lists and adverse media lists, etc.). The interoperability of the system is a way to diminish the administrative burden and simultaneously increase the reliability of the data collected. In addition, the Commission will offer support to Member States to allow for the effective use of the system by providing guidelines, presentations, training sessions and workshops, technical support and advice to interested authorities and bodies, including on how to integrate the risk-scoring tool in their daily processes. The Commission will launch a survey on Arachne shortly, which will enable Member States to provide information about their experience with Arachne. The Commission will be then able to tackle possible
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				bottlenecks, to prevent additional administrative burdens on the Member States as much as possible. The proposal for a mandatory use of a single integrated IT system for data-mining and risk-scoring can significantly contribute to improving the efficiency and effectiveness of financial management, controls and audits during the selection of projects and their implementation. It can also help allocate efficiently the human resources capacity for desk reviews and on-the-spot controls and audits by focusing on the more risky recipients, projects, contractors and contracts. The system will also be able to provide for the possibility to assess the effectiveness and efficiency of controls and audits.
8.	AT	Fiche 2	On page 1, para 2, the COM describes: “For the 2021-2027 MFF and NGEU, the Commission proposed to improve the collection and interoperability of data by Member States on recipients of EU funding where the budget is implemented under shared management and under the Recovery and Resilience Facility (‘RRF’). Important progress was achieved in the adopted legislation as regards the type of data, including beneficial ownership data, which now has to be collected by Member States. However, the adopted legislation does not provide for the compulsory use of the single data-mining and risk-scoring tool to be provided by the Commission and the Commission made formal statements concerning this point.” Question: What has changed between the adoption of MFF 2021-2027 and NGEU, where the adopted legislation does not provide for the compulsory use of the single data-mining and risk-scoring tool and now? What are the new arguments so that Council should change its position?	The Inter-institutional Agreement refers to the use “with a view to a generalised application by Member States” which the Commission firmly believes cannot be interpreted as meaning that the use of the tool will remain voluntary. It can only mean that there should be a progressive transition towards a compulsory use. To the contrary, if the tool remained voluntary (and Member States decided not to use it), the IIA language would be deprived of any useful purpose, which is against the spirit and ambition of the IIA. Following the Commission proposals for sectoral legislation under shared management and RRF, the revision of the FR, as the overarching and horizontal regulation for the implementation and control of the EU budget, is the appropriate tool to enshrine the same core principles in the internal control of all methods of EU budget implementation (direct, indirect and shared

				management).
9.	AT	Fiche 2	On page 2 the COM proposes to establish “horizontal measures in Article 36 FR, applicable to all methods of EU budget implementation, to ensure standardised electronic recording and storing of data on the recipients of EU funding, including their beneficial owners.” Question: How will the COM ensure the duplication with (sometimes already existing) national systems?	The development of the single integrated IT system for data-mining and risk-scoring will put emphasis on the interoperability with the existing national/regional electronic data systems. The data (e.g. projects, beneficiaries, contracts, contractors and expenses) should be sourced from the IT systems of the bodies that implement the budget. The aim of the IT system is to further enrich this data with other sources of information (e.g. shareholders, sanction lists, enforcement lists and adverse media lists, etc.). The interoperability of the system is a way to diminish the administrative burden and simultaneously increase the reliability of the data collected.
10.	AT	Fiche 2	Instead of the compulsory use of a single data-mining and risk-scoring tool, would it be possible to introduce a kind of liability for the national authorities where they do not use the single integrated IT tool for data mining and risk scoring but other (already existing national) instruments or tools?	The Commission does not consider this option feasible. One of the benefits of the envisaged system is that it will encompass data of projects, beneficiaries and their beneficial owners as well as contractors of EU funding implemented in all management modes. A uniform approach to recording and storing of data on the recipients of EU funding will strengthen the protection of the EU budget. The Commission considers that the first step is to render the tool compulsory.
11.	AT	Fiche 2	Do you think it is the correct order to introduce provisions now when still not knowing when and how the “necessary adaption of electronic data systems” will work or have been introduced successfully or not?	The mandatory use of a single integrated IT system for data-mining and risk-scoring for all management modes needs to be enshrined in legal provisions. The most appropriate legal instrument to regulate such a uniform approach is the Financial Regulation. The transitional provisions cater for the need to design the best technical adaptations that do not have to be laid down in the FR.

12.	AT	Fiche 2	On page 3 the COM writes: "... for the CAP, the Commission should, by 2025, present a report on the use and interoperability of single data-mining and risk-scoring tool, accompanied by legislative proposals, if necessary." Questions: Don't COM believe that for CAP we should wait till this report is analysed? If MS are not willing to introduce for CAP a compulsory system, is it possible to keep CAP outside even after 2027? What about the difficulties to harmonies CPR, EGF, BAR and RRF (recording and storing of data on beneficial ownership) vs. CAP (data only on groups)?	The CPR, EGF, BAR, CAP and RRF Regulations include recitals or provisions recalling or requiring the Commission to make a single data-mining and risk scoring tool available and to encourage its use by Member States. Currently, the Commission is working on the inclusion of new features and sets of data in the current tool (Arachne); this development will not be of a one-off nature but should be considered as an incremental but continuous process that will feed into the development of a future system encompassing all management modes. The aim of the provision is to cover all EU funding, therefore the Commission does not consider excluding any fund.
13.	AT	Fiche 2	On page 4 we can read that "an efficient internal control shall also be based on the implementation of an appropriate anti-fraud strategy coordinated among appropriate actors involved in the control chain." Question: Why is the FR the right place to make NAFS (national antifraud strategy) compulsory and not the OLAF regulation?	Regulation (EU, EURATOM) No 883/2013 concerns the investigations conducted by OLAF, whereas the FR is the overarching regulation for the implementation and control of the EU budget. The FR is therefore the most appropriate legal instrument to regulate the requirements of budget implementation, audit and control for all budget implementing modes.
14.	AT	Fiche 2, Art. 36(2)	In the revised art. COM describes the objectives. Question: Why does COM think that under (d) "the electronic recording and storage of data" is an objective? We would understand it as an instrument, not an objective.	It is indeed an instrument for the prevention, detection, correction and follow-up of fraud, corruption, conflicts of interest, double funding and other irregularities. The proposed wording of the Article does not affect this conclusion. It is a way of highlighting the link between the overall objective of ensuring effective protection of the EU financial interests with the need of ensuring, for the above mentioned purpose to be achieved, the electronic

				recording and storage of data on the recipients of Union funds (including their beneficial owners). This also aligns with the IIA wording (points 30-32) linking the collection of beneficial ownership data and the use of an IT system to the protection of EU budget against fraud and irregularities and efficient checks on those.
15.	AT	Fiche 2, Art. 36(3)	Regarding internal control, why did COM delete (c) “avoidance of conflict of interest”? Or was it shifted elsewhere in the text?	The need to design internal control for providing reasonable assurance of effective avoidance of conflict of interests is directly mentioned in Article 36(2)(d) of the Proposal. The Commission did not delete the reference from the said Article.
16.	AT	Fiche 3	When talking (on page 2) that “the set of data to be published is essentially the same, although CAP data is to be published at Member State level whereas CPR data is to be published at managing authority level.” does this mean the same data but only on a different homepage presented?	Indeed, it does mean that the same data is collected, as CAP rules refer to the CPR rules, but published on different locations.
17.	AT	Fiche 3	When introducing a threshold of EUR 500.000 in indirect management for the transmission of data on recipients of EU funding, only for indirect management and if so, why?	This threshold indeed only applies to indirect management. This is in line with the rationale of this method of budget implementation based on reliance on partners’ rules and the equivalence of those rules to those of the Commission (through the assessment of their publication rules). The threshold aligns with that for publication of financial support provided through financial instruments for direct recipients of the implementing partners introduced in the FR 2018 revision (as stipulated in Article 38(3)(c) FR.
18.	AT	Fiche 4, Art. 213(4), last subpara.	Has the COM reached out to implementing partners about the feasibility of the proposed change of deadline?	Following the adoption of the 2018 Financial Regulation, when concluding contribution agreements and guarantee agreements with implementing partners, Commission services explained the need to advance the 15 May deadline set out in the current Article 209(4) last subparagraph, in order to meet the advanced discharge calendar with the Court of

				Auditors. As a result, some partners, e.g. the EIB and the EIF, have already agreed to submit audited financial statements by 15 March.
19.	AT	Fiche 4, Art. 221(3)	The application of sector-specific rules is mentioned. Would it be necessary to in addition mention other rules serving as a basis for the implementation of financial instruments, like eg InvestEU?	'Sector-specific rules' covers basic acts like InvestEU and NDICI, not only shared management basic acts.
20.	AT	Fiche 4, Art. 223(6)(b)	It is proposed that information on the outstanding financial obligation arising from a budget guarantee is no longer measured in compliance with the Union accounting rules or with IPSAS. Could you exemplify the consequences?	The Commission does not expect any consequence from this change on the way the EU measures and reports on its financial obligations. This is because the EU liabilities measured in line with the EU Accounting Rules/IPSAS are already reported by the counterparts in conformity with these rules under Article 213(4) FR (previously 209(4)). This information is consolidated in the EU financial statements. Under the provisions of current Article 219(6)(b), the counterparties provide, in addition, a list of their own financial operations, which are guaranteed by the Union. This serves mainly as an input data to the annex to the draft budget under Article 41(5) FR (operational and risk data). Based on this information (mainly nominal of the loans and risk parameters), the Commission itself measures the risk and assesses the adequacy of the provisioning. The accounting standards are thus not relevant for this purpose. This is why, in order to provide simplification for the counterparties, the Commission considers that, to comply with Article 223(6)b (currently 219(6)b)), the counterparties can provide the data on the operations directly available in their accounting systems. Where the EU is guaranteeing a portfolio, the current requirement is not even possible to apply and creates unnecessary confusion. Thus the only consequence will be the simplification for the counterparties.

21.	AT	Fiche 4, Art. 2(33)	Differentiation is made between “budget guarantee” and “financial assistance to a third country”. With regard to financial assistance to a third country, next to a budget guarantee what are the instruments referred to in this article?	The definition of the ‘global provisioning’ applies to financial assistance to third countries and budgetary guarantees. It does not apply to financial instruments (provisioning is always 100%) nor to financial assistance to Member States (there is no provisioning).
22.	AT	Fiche 6	On page 3 the COM describes that about EUR 60.000 financial support can be used “without having to justify on a case by case basis that their objectives would be impossible to achieve otherwise.” Question: Will there be at least in any single case an automatic ex-post check?	As with reimbursement of all types of expenditure, this will depend on the control strategy imposed by the responsible authorising officer for the programme concerned. In general grants may be selected for checking on a sample basis, or they might be selected as the subject of an ex-post audit.
23.	AT	Fiche 7	What independent body/institution will decide whether a good has still a residual value or not?	The proposal of the Commission does not distinguish between the non-financial donations of goods with limited or no residual value or with full value.. The evaluation of the residual value will be done in accordance with the applicable depreciation or accounting rules.
24.	AT	Fiche 7	Correct that COM makes no difference whether goods were bought for own use or bought for immediate donation?	This is correct, the proposal does not distinguish between non-financial donations of goods procured with the intention of donations or of goods procured for the use of the institutions.
25.	AT	Fiche 7, Art. 224(1)	“Union institutions and EU bodies may provide non-financial donations in the form of services, supplies or works.” Question: Do computers fall into the category of “supplies”?	Yes, supplies include goods, and include computers.
26.	AT	Fiche 8	Reasons for exclusion may be according to page 1 (ii) incitement to discrimination and hatred and (iii) refusal to cooperate in investigations, checks or audits. Questions: Where do I find definitions the COM will use for the categories described under points (ii) and (iii)? What happens if COM has to wait with inclusion of a case into EDES till there is a final legal court judgement?	The definitions for the grounds of exclusions are, respectively, under Article 139(1), point (c)(vi) and point (i). Please bear in mind that these grounds of exclusion apply only in the case of direct and indirect management. In the absence of a final judgment, the EDES Panel can perform a preliminary classification in law and

				recommend a sanction if the facts and findings established against the person or entity fulfil all the elements of the ground concerned. In such case, the responsible authorizing officer, having regard to the Panel's recommendation, may exclude the person or entity. Should the final judgment come at a later stage and find the person or entity not guilty, the sanction is immediately lifted (see Article 139(3)).
27.	AT	Fiche 8	On the new exclusion rules the COM writes on page 4: "The reinforcement of EDES in shared management would concern only 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: grave professional misconduct, serious breach of contracts, shell companies, and any other form of non-fraudulent irregularities." Question: Why does the extension not contain the other grounds of exclusion?	The reason for such limitation is to keep the extension to shared management more targeted and proportionate, and to limit as much as possible the administrative burden.
28.	AT	Fiche 8	"The Member States' authorities would then have the obligation to take the exclusion into account by rejecting persons or entities from being selected to implement EU funds (i.e. to enforce the exclusion decision)." Question: What happens if the MS does not reject? What are the practical consequences for the MS?	The payment requests concerning a person or entity that is excluded will not be reimbursed by the Commission.
29.	AT	Fiche 9, Art. 240(1)	It is proposed to allow for the Commission to contribute via this new vehicle when other instruments "would not be sufficient to achieve such Union policy objectives". How could we decide whether policy objectives could be "sufficiently" achieved without taking recourse to this instrument?	This is intended to establish Union contributions to global initiatives as an instrument to resort to only when other budget implementation instruments for example under indirect or direct management are not suitable to achieve the same Union policy objectives. This could be for example because the multi-donor structure of the initiative does not allow for any other type of implementation method. It could also be because of the type of actions to be taken under the initiative. A justification for the suitability of this instrument shall be included by the Commission in the Financing Decisions that are submitted to comitology.

30.	AT	Fiche 9, Art. 240(2)(i)	The union contribution could only be a minority contribution. Would the current wording allow for a contribution of 49,9%? Should the maximum share of the contribution be further specified?	A minority contribution refers to a contribution of under 50%, taking into account the global amount contributed to the initiative at the time of the contribution, as set out in Art. 240(2)(i).
31.	AT	Fiche 9, Art. 240(v)	For the prevention of and fight against irregularities and fraud it is foreseen that in the “event of suspected cases of serious irregularities” different EU actors “shall make use of the rules of the initiative to request additional information and carry out joint audit, control...” How would the Union become aware of “suspected cases”? Could such a condition be strengthened? Do global initiatives the Commission is thinking of to contribute on the basis of this new instrument allow for this type of cooperation?	This condition implies that the Union receives assurance from the initiative prior to its contribution that information on suspected cases of serious irregularities is shared with donors, as well as that the rules of the initiative allow for the request of additional information and the carrying out of joint investigations by the relevant EU institutions. This is usually done in global initiatives through information provided to the donors by the Governing Board. The proposed Article has been drafted taking into account the global initiatives that the Union has pledged to contribute to.
32.	AT	Fiche 9	The new vehicle shall allow the effective achievement of key EU policy objectives, when these objectives can only be achieved through contribution to such global initiatives. Questions: Where can we find this list of “key EU policy objectives”? Who will decide if EU budget contribution is the only alternative and not e.g. also be achieved by bilateral national contributions?	The assessment of the appropriateness of the vehicle will be made by the Commission in the financing decisions that are submitted to comitology, based on the Union policy objectives identified by the funding basic acts. The word “key” is not mentioned in Article 240.
33.	AT	Fiche 9, Art. 240(1)	In fiche 9 COM talks at several occasions only of the “Union policy objectives”. Question: Correct that you missed the word “key” and that it should always read “key Union policy objectives” as e.g. in art. 240(1) or the recital?	The word “key” is not mentioned in Art. 240(1) or the recital. The Union policy objectives here are referring to those identified in the basic acts.
34.	AT	Fiche 9	The instrument will according to the COM proposal only be used under 5 cumulative conditions. Questions: Can you confirm that if only one out of the 5 conditions is not fulfilled / respected the instrument cannot be used? Who will decide to use or not to use the new vehicle? The two arms of the budgetary authority upon a proposal by the COM?	See reply to question 32. The assessment of the fulfilment of all of the cumulative conditions will be made by the Commission and a justification for each condition will be provided in the financing decisions that are submitted to comitology.
35.	AT	Fiche 9	“Contribution is limited in time” could be an important additional condition.	A contribution could be agreed at a moment and

			Would it be possible to add it to the other conditions?	released in several tranches: the reference to time limitation could be misleading and lead to unintended constraints.
36.	AT	Fiche 10	What happens if the promised revenue (based on the contribution agreement) is not received or only with delay? Do the other MS have to pay according to their equal shares?	The exception to the standard rules set out in Article 22(2) is based on the level of certainty for these appropriations to materialise. The existing derogation in 22(2) a) is related to contributions to be paid by Member States. The Commission has a high level of trust on their reliability to pay. The proposed change merely suggests to apply the same rules to <i>all</i> MS additional contributions. The Commission fails to see why Member States would be considered as less reliable for other contributions, compared to the ones related to research or aid programmes. The risk that a Member State does not honour a commitment and transfer the corresponding amount is not considered as probable by the Commission.
37.	AT	Fiche 12	Do you see an impact on the reporting stemming from the merger of EFSI legacy and InvestEU portfolio? If yes, please elaborate?	The FR revision amendments on reporting do not have any impact on how the combination of EFSI and InvestEU guarantees will be reported. As provided in InvestEU Regulation, losses, revenues and repayments as well as potential recoveries will be attributed pro rata between EFSI guarantee and InvestEU guarantee and this attribution will be reflected in the reporting.
38.	AT	Fiche 13	Could you please provide more examples of why it is deemed necessary to change the requirements of the indirect management with regards to EU standards – next to the one provided on the EBRD finance to an UA municipality?	The example of EBRD is an example of ‘derisking’, i.e. of cases where partners have preferred not to implement an action, because of what appeared to them as unclear requirements. The objective of the changes is to give legal certainty and clarity to EU partners when they implement the budget. The text

				defines that transposition of obligations imposed on partners is needed in the agreements concluded by these partners with their contractors, beneficiaries, financial intermediaries. As for compliance with these obligations by the level below the contractors, beneficiaries and financial intermediaries of the partners, it is confirmed that, in accordance with the logic of indirect management, the Commission will rely on the checks carried out by the partners (as their systems of checks have been assessed as providing an adequate protection to the Union financial interests).
39.	AT	Fiche 13	Could you please also provide more aggregate information on the expected consequences of the amendments envisaged? What would be the additional volume of finance enabled by the changes? Is facilitation more important for certain sectors or is it a general requirement?	The changes proposed have no financial impact. It is expected that the budget implementation supported by budgetary guarantees will be facilitated by these changes.
40.	AT	Fiche 13	Could you please inform us on the experience with the pillar assessment so far? What benefits do you expect by the proposed changes? What risks do you see?	No changes to pillar assessment processes are proposed. The logic of indirect management is to rely on the rules of the partners which have been assessed to ensure an adequate protection of the Union financial interests. Pillar assessment is a way to ensure that the budget can be implemented with the support of strategic partners who need to be able to use their own rules to implement actions. There are around 200 Pillar assessed entities so far, with the most recent ones assessed for their participation in the implementation of actions under Invest EU (and EFSD+).
41.	AT	Fiche 13	We would be interested in the criteria the COM/ the IP will follow when assessing whether funds have to be recovered following a breach of contractual obligations. Is this proposal limited to partners like MSME?	There are no changes in this respect in the FR revision proposal.
42.	AT	Fiche 13	Does the COM have an estimate of the potential risk connected to the possibility of discretionary decisions on the need for recovery?	There are no changes in this respect in the FR revision proposal.
43.	AT	Fiche	How could IP practically ensure that direct recipients of funds comply with	This will be done through transposition of contractual

		13, Art. 159(2) para. 3	EU standards on eg AML/ CTF?	obligations and due diligence.
44.	AT	Fiche 13, Art. 159(6)/reference to Art. 36(6)	Will the COM set-up an IT tool that would enable IP to share data or would the IP themselves have to set up an IT tool?	The intention is to request to Partners information in a specific format so that it can be directly uploaded by the Commission in the new Financial Transparency System (FTS).
45.	AT	Fiche 13	According to page 2 COM would, in the agreements, make reference to internationally recognised standards as a tool for approximation to EU standards when the latter cannot be imposed directly on non-EU partners. Could you please provide us with examples when EU standards cannot be imposed directly on non-EU partners.	Indirect management is based on the principle of proportionality, which entails relying on the systems, rules and procedures of implementing partners that provide a level of protection of the financial interests of the Union equivalent to the one that is provided for when the Commission implements the budget itself. It aims to find a balance between protecting the EU financial interests and the EU being able to implement its policies through trusted partners. This means that the entity's systems, rules, procedures and standards do not have to be identical to the EU's, as long as they provide the equivalent level of protection of the EU's financial interests. Since non-EU partners are not subject to EU law reference to internationally recognised standards can ensure equivalent protection, when and where appropriate, and allow cooperation with certain non-EU partners. For example, neither the Financial Regulation nor the Procurement Directive will apply to non-EU partners, therefore when assessing their procurement rules, reference may be made to internationally accepted general principles of procurement. In terms of accounting and reporting standards, international accounting standards may be used. Regarding tax

				good governance (including tax avoidance), reference may be made to the OECD principles of transparency and exchange of information and the OECD work on base erosion and profit shifting (BEPS).
46.	AT	Fiche 15, Art. 25 (new 3)	Any reason why not include “where rapid reaction is needed” as a condition to accept in-kind donations?	This is already specified in recital 21: “ <i>In order to allow a rapid reaction in exceptional circumstances</i> , the Commission should be able to accept in-kind donations...). The proposal clearly frames this possibility, which should be reserved to exceptional cases, provided that all conditions are met.
47.	AT	Fiche 15, Art. 48(1) and (new 2), Art. 99(4), Art. 108(2), Art. 109	All changes in connection with the stand-alone proposal on fines (COM2022)184 of 22 April 2022 should be put into square brackets. Any reason not to do so?	Since the stand-alone proposal is not yet adopted and does not exist yet in the published version, it is presented correctly as new text.
48.	AT	Fiche 15, new Art. 104	Subject is assistance from Member States in the notification and recovery of Union claims. Questions: What is from the COM point of view not satisfactory in the present situation? Would you please give practical examples for the new assistance MS should deliver.	The current situation is not satisfactory because the Commission spends an unreasonable amount of time and resources to notify and enforce its claims – and despite all this the results are not satisfactory with a backlog of 600 cases, for a total amount of EUR 195 million. For further details on the current situation, please see part III ‘Problems with the current system’ of the Fiche 16. The proposed types of the Member States’ assistance

				to the Union would be the same as in the Directive, namely: i) transmission to the Accounting officer of the Commission of information necessary to recover the claims, including relevant information on the debtor (identity, solvency, address) and its assets, provided that such information is not classified and in compliance with the rules on personal data protection; ii) notification by the Member State, in case of failure of the standard notification by the Accounting Officer; iii) effecting enforced recovery by the Member State; iv) adoption by the Member State of precautionary measures to seize the assets of debtors in accordance with its national law.
49.	AT	Fiche 15, Art. 271(6)	Apart from building acquisitions COM adds now structural renovation projects that may also be financed through a loan. Questions: What are the reasons behind the “necessity” to add structural renovations? What problems was the COM faced with when financing structural renovations?	The Commission was not able to carry out major renovation works due to budgetary constraints so far. With the limitation of 2% annual increase of expenditure (other than staff-related expenditure) it is currently difficult, if not impossible, to finance such expensive projects from the annual appropriations available in the budget. However, in order to meet the Green Deal objectives, the Commission will need to carry out major investments in the existing building stock (e.g. changes in heating systems) not falling under the

				notion of building acquisitions. Splitting the significant costs of the structural renovations over several years by repaying a loan would enable implementation of such investments. It is therefore proposed to clarify Article 271(6) (current Article 166(6)) FR and provide for a possibility of using a loan for such major investments of structural renovation.
50.	BE	Fiche 2	Can the Commission confirm that its intention is to use Arachne, or will a new tool be developed? We would ask that the data to be collected is well defined in order to ensure proportionate and predictable demands, thus avoiding a larger administrative burden for the Member States.	The integrated IT system for data-mining used with regards to the revision of the Financial Regulation will be based on Arachne. The development of the single integrated IT system for data-mining and risk-scoring will put emphasis on the interoperability with existing national/regional electronic data systems. The data (e.g. projects, beneficiaries, contracts, contractors and expenses) should be sourced from the IT systems of the bodies that implement the budget. The aim of the IT system is to further enrich this data with other sources of information (e.g. shareholders, sanction lists, enforcement lists and adverse media lists, etc.). The interoperability of the system is a way to diminish the administrative burden and simultaneously increase the reliability of the data collected. In addition, the Commission will offer support to Member States to allow for the effective use of the single integrated IT system for data-mining and risk-scoring, including by providing guidelines, presentations, training sessions and workshops, technical support and advice to the interested authorities and bodies, including on how to integrate system in their daily processes. Finally, a survey on Arachne will be launched shortly that enables the Member States to provide

				information about their experience with Arachne. The Commission will be then able to tackle the bottlenecks, to prevent additional administrative burdens on the Member States as much as possible.
51.	BE	Fiche 2	While acknowledging the increased use of Simplified Cost Options, we would ask that the CION ensures the process remains as streamlined and simplified as possible, in particular by not interfering in expenditure/public procurements covered by a lump sum.	The introduction of a single integrated IT system for data-mining and risk-scoring represents itself a simplified extraction of data necessary to evaluate a potential risk. The Commission shall provide with guidelines and trainings (upon request) in order to ensure a smooth transition.
52.	BE	Fiche 2	How will the Commission handle the potential tensions that could arise between the specific demands for the beneficiaries and the “ultimate beneficial owners” and the application of GDPR?	As the controller, the Commission establishes the existence of the IT integrated system to be in line with the GDPR provisions. Apart from basic principles, (e.g. data minimisation, storage limitation and additional safeguards), the Commission underwent data protection impact assessments concerning the data-mining tool which has been approved by the data protection officer on 22 July 2022. In addition, the European Data Protection Supervisor was consulted and the recommendations included in its opinion 14/2022 are currently being assessed by the Commission.
53.	BE	Fiche 2	Can the Commission give an estimate of the additional administrative expenditure needed for the application of Arachne for the Commission and the additional administrative burden for MS?	No estimate of additional administrative expenditure can be given at this point in time, as this will depend on the features required from the system. See answers to questions 2 and 7.
54.	BE	Fiche 2	Currently, the control on Beneficial Owners goes through the UBO register, which is part of the AML directive. Has the Commission considered the possible need for a review of the AML directive to this end?	With regard to the interoperability of the future system with Member States’ beneficial ownership registers, it must be noted that, under the Anti-Money Laundering Directive, the Commission has neither access to those registers, nor to their interconnection (for which the Commission is responsible), except as a member of the general public, which does not allow

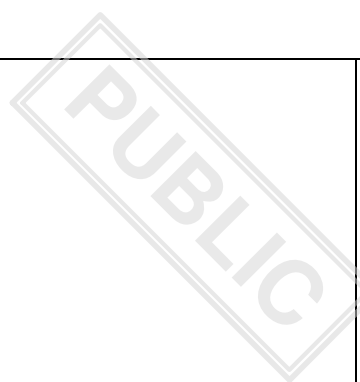
				for access to big data. Therefore, the system will not be interconnected to the beneficial ownership registers established by Member States under Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AML Directive). Since the RRF Regulation, the CPR and the FR revision require only a limited set of data with regard to beneficial owners which is not wider than the provisions of the AML Directive on making some data available to the public, the revision of the AML Directive is not deemed necessary.
55.	BE	Fiche 2, Art. 36(6)	Will the Commission link the requirement to add beneficial owners to the European UBO Database?	The system will not be interconnected to the beneficial ownership registers established by Member States under Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AML Directive). Therefore, the Member States are encouraged to ensure the interoperability of their IT systems for implementing the EU budget with their AML central registers.
56.	BE	Fiche 2, Art. 36(7)	Given potential legal issues that might arise, does the Commission plan to create a more solid legal framework or publish more solid guidelines?	The Commission considers overly regulating such a system would prevent further technical improvements unless the underlying legal framework would also be amended. Instead, the main features of such a system are described in the relevant provisions of the Financial Regulation in a manner that would not constitute an obstacle to further technical improvements. Appropriate guidance and training will be offered.
57.	BE	Fiche 2, Art.	Will the Commission also upload data as regards the funds under direct management?	Yes. Since the FR is the overarching regulation for the implementation and control of the EU budget, the

		36(8)		revised FR shall expand its use to all management modes, including direct and indirect management.
58.	BE	Fiche 3	How will the Commission handle the potential tensions that could arise between the precise demands for the beneficiaries and the “ultimate beneficial owners” and the application on GDPR?	As envisaged in recital 29 of Article 38 of the revised FR, the transparency principle shall be in line with the personal data protection rules. When establishing the system for publication, the Commission applies basic principles of processing of personal data, particularly data minimisation, purpose and storage limitation). In addition, the Commission underwent a data protection impact assessments concerning the data-mining tool which has been approved by the data protection officer on 22 July 2022. In addition, the European Data Protection Supervisor was consulted and the recommendations included in its opinion 14/2022 are currently being assessed by the Commission.
59.	BE	Fiche 8	Given the proposed reinforcement of Arachne, would there be a possibility to integrate/link EDES with Arachne, as the latter would also be reinforced, and both tools have a similar function in project management? A combination of both systems could limit the administrative burden for the Member states.	The Commission will explore the possibility to make the two systems interoperable in order to further enhance their effectiveness.
60.	DE	Fiche 4	We would like to have more details regarding the background of the proposed adjustments. Are there concrete legal gaps to be closed? Could you please provide more information on which adjustments are more than pure clarifications, updates or changes to avoid duplications.	The proposed changes reflect the practice since the entry into force of the 2018 Financial Regulation. They mainly aim at addressing inconsistencies, clarifying, updating and better reflecting the functioning of the provisioning and of the budgetary guarantees. Changes 2.2 and 2.5 could be seen as more substantive although they also reflect the practice and aim at streamlining the Commission reporting to the European Court of Auditors and simplifying the reporting of implementing partners.
61.	DE	Fiche 12	We do not have objections to streamlining reporting as long as this does not	No information will be lost. The legal requirements in

			lead to any information getting lost. Especially regarding the Common Provisioning Fund, we would appreciate to get an overview which information is required according to the current legal framework in comparison to the proposal.	terms of content are the same. The only change is the move from Article 41(5) to Article 218. Provisions in the current Article 41(5) g) and i) on the reporting on CPF: g) information about the financial management, the performance and the risk of the common provisioning fund at the end of the preceding calendar year; and i) the financial flows in the common provisioning fund during the preceding calendar year as well as the significant transactions and any relevant information on the financial risk exposure of the Union are moved to Article 218.
62.	DE	Fiche 5	Could the Commission provide information on the background and objective of introducing dedicated provisions for procurement in the situation of crises? Would the Commission consider it necessary or beneficial to introduce similar provisions in the procurement directives to enhance legal certainty for purchasing urgently needed goods and services? Are there any plans to revise the procurement directives, and if so, when? In Germany's view the clarifications, simplifications, corrections, updates and amendments – especially concerning the use of the negotiated procedure without prior publication as well as the increased flexibility for the modification of contracts – are of general interest.	The Commission introduced dedicated provisions for procurement in the situation of crisis to address the lessons learnt from the Covid-19 crisis where it was found that there was a need for simplification or exceptions to the FR provisions in situations of extreme urgency following a crisis to ensure quicker implementation. There is no decision yet on introducing similar provisions in the procurement directive, however there are new EU regulations that include provisions related to crisis management. Moreover, on the basis of the current version of the Directive it is already possible to use the negotiated procedure without publication of a contract notice (see Article 32 of Directive 24).
63.	DE	Fiche 5 Article 164(6)	We understand that in most cases a declaration of crisis is required to trigger urgency procedures. Could the Commission elaborate on the procedural details for such declaration (competent authority, scope, applicable rules, etc.)? What are the characteristics defining the required link between the procurement procedure in question and the situation of	The Covid 19 pandemic has shown the necessity to have specific tender procedures adapted to future crisis situations. The different nature of the crisis (e.g. health emergency, war, etc.) implies that it might not affect

			extreme urgency resulting from the crisis?	each Institution (Commission, EEAS, Council, etc.) in the same way and degree. Rules must be adopted by each Institution in their internal rules for the execution of the budget (see Article 60 FR) depending on the impact of the crisis. For the Commission, these internal rules are adopted at College level. The internal rules need to determine when a situation is considered a crisis, who is competent to declare the crisis, which areas of activity are affected by the crisis, and other relevant rules. As regards the link between the procurement procedure in question and the situation of extreme urgency resulting from the crisis, it has to be established depending on the nature of the crisis and the subject of procurement (for example, a pandemic could justify the procurement of masks and medicines but not of office supplies).
64.	DE	Fiche 5	We understand that the Financial Regulation fully incorporates the International Procurement Instrument (IPI). IPI measures will thus be applicable to procurement procedures carried out on behalf of the Union just as to contracting authorities in the Member States. Can the Commission confirm this understanding? Following the preliminary agreement in the trilogues on the Regulation on foreign subsidies distorting the internal market, could the Commission provide an update on the alignment with the Financial Regulation?	Yes, we confirm your understanding about the IPI. As regards foreign subsidies, given that political agreement was reached on the Foreign Subsidies Regulation (FSR) in June 2022, the alignment can be envisaged by including it in the EP and/or Council mandates and agreed during the trilogues. The Commission is currently analysing how the new rules for foreign subsidies could be applied in the context of the Financial Regulation in order to provide technical support to the co-legislators on the limited amount of necessary additions.
65.	DE	Fiche 5	Could the Commission provide an overview of how it intends to strengthen green and sustainable procurement?	The aim of the new recital added is to reinforce the use of green public procurement (encouraging the use of green selection or award criteria) in line with the

				objectives of the Green Deal.
66.	DE	Fiche 5	Are there any particular crisis management situations or other situations in which the Commission foresees EU institutions or bodies to increasingly launch joint procurement procedures on behalf of Member States or act as a central purchasing body, although the EU institutions would not be acquiring services and supplies for themselves?	There are no particular crisis management situations or other situations in which the Commission foresees EU institutions or bodies to increasingly launch joint procurement procedures on behalf of Member States or act as a central purchasing body, although the EU institutions would not be acquiring services and supplies for themselves. However, the experience so far has shown that in situations where the MSs need to act collectively, joint procurement initiatives could be beneficial for the MSs.
67.	DE	Fiche 5	Shall the strengthened joint procurement in particular also cover defence acquisitions, and if yes, what is the relationship to other current initiatives for joint procurement such as in the Defence Investment Gap Analysis?	The strengthened provisions on joint procurement could in principle apply to any procurement. However, the use of the budget in respect of military and defence operations is limited by the Treaties. To address the Defence Investment Gap Analysis, the Commission is proposing i.a. a short-term instrument to incentivize common procurement between Member States by way of grants (i.e. without involvement of the Commission in the procurement, therefore no “joint” procurement).
68.	DE	Fiche 5	Does the Commission foresee any particular EU institution/s or body/bodies to increasingly carry out the joint procurement?	No, it is not foreseen that a particular EU institution/s or body would increasingly carry out the joint procurement. The new FR enhanced provisions on joint procurement can be used by any contracting authority applying the FR when there is a need for joint procurement.
69.	DE	Fiche 7	Could you provide more details on the current practice regarding non-financial donations and give examples on the situation that should be addressed by the proposed amendments?	The Commission provided the examples in the Fiche 7 on non-financial donations. The Union institutions have already made non-financial donations of goods with very limited or no residual value, such as computers, monitors or other equipment no longer needed. The possibility for the



				Commission to donate goods or supplies with full value to Member States or selected partner organisations has also been used as a form of emergency support under the Emergency Support Instrument Regulation (ESI). Under this instrument, disinfection robots have been donated to hospitals during the COVID-19 pandemic in order to limit the spread of the virus and protect medical staff and patients, while relieving cleaning staff from the risky activity of disinfection. In addition, because of supply issues with sea containers since the beginning of 2021 and the Suez Canal crisis that negatively affected the global logistics market, the Commission also supported Member States with the transport of COVID-19 vaccination-related equipment and therapeutics under the ESI Mobility Package, via the use of the Commission's transport broker.
70.	DE	Fiche 8	It is our understanding of the proposed amendments that all public authorities taking public procurement decisions are obliged to use EDES actively and passively. The current framework requires optional use only.	The understanding of the new provisions is correct.
71.	DE	Fiche 8	In Germany there are mainly decentralized authorities dealing with public procurement. The obligation to use EDES would bind a lot of resources and increase administrative burden. Could you explain how this is compatible with the Commission's aim of simplification and also with overarching data protection requirements? How can the involvement of all responsible authorities be ensured on a technical level and in conformity with the Union's data protection law? Are there any plans to link the EDES tool to national IT platforms, e.g. a Competition Register for Public Procurement?	The administrative burden is kept to a minimum. All entities involved in budget implementation in direct and indirect management are already using EDES prior to selection/award of EU funds. The feasibility (and limited burden) of such check during the stage of the award procedure is confirmed by the current practice. The EDPS has vetted the EDES system and the Commission already makes available the EDES Database to all implementing partners, including MS authorities.
72.	DE	Fiche 8, Art. 139(1)	We have strong reservations on the new reason of exclusion regarding Article 139 (1) letter (i) (refusal to cooperate in OLAF/EPPO/ECA investigations). According to our understanding of the proposal, no judicial	In the absence of a final judgment, the person or entity can still be excluded on the basis of a preliminary classification in law of the EDES Panel. The

			decision is necessary for this reason to be applicable. Could you elaborate how this is compatible with the rights of defence and the nemo tenetur principle?	Panel's role is crucial in (i) ensuring the rights of defence and due process by means of a contradictory procedure; (ii) assessing the sufficiency and reliability of evidence gathered against the person or entity concerned; and (iii) issuing a recommendation that abides also by the principle of proportionality. This is enshrined not only in the FR provisions but also in the Rules of Procedure of the Panel. The role of the Panel in safeguarding the procedural rights of the person or entity has been confirmed also by the ECJ in its case law.
73.	DE	Fiche 8	Could you elaborate more on the background for proposing stricter rules? Was there an evaluation/analysis that support these proposals? Could this information/data be made available?	The changes proposed in the context of EDES should not be regarded as stricter rules. They concern mostly the need to enhance the effectiveness of the system and they align with the views express by the EP in its resolutions and the ECA in its report on blacklisting. The background to each proposal is summarized in the fiche itself.
74.	DE	Fiche 8, Art. 275	In view of the increase administrative burden, this matter should be included into Article 275 (transitional provisions).	The Commission does not foresee a transitional period for the entry into force of the new rules on EDES, as these are limited and proportionate changes that do not require any technological improvement (unlike the data mining tool).
75.	DE	Fiche 9, Art. 240	The Commission explained that in the public consultation procedure prior to this proposal, stakeholders demanded to simplify the support of global initiatives. We would like to ask to give an overview of the arguments put forward in the consultation procedure and how they are reflected in the proposal of Article 240.	The need to allow for contributions to global initiatives were identified by the Commission based on Member States' interest in EU contribution to certain initiatives. This comes in a wider geopolitical context: addressing current global challenges requires a joint response by the international community in the form of effective global financing mechanisms to achieve those goals. Member States are already

				regularly contributing to such global mechanisms, however attempts of the EU to join global initiatives in the field of climate change, health, etc., with the existing budgetary instruments currently available under the Financial Regulation proved extremely difficult if not in certain cases impossible. This is because of the global initiatives' multi-donor, pooled governance structure, whereby the initiatives' rules are established in agreement with all donors, not catering for specific demands of each contributor. It is for this reason Article 240 is proposed, as without it the EU would be deprived of the possibility to avail itself of such initiatives, which are becoming an increasingly utilised mechanism for addressing global challenges together with Member States.
76.	DE	Fiche 9, Art. 2, 240	We would appreciate a comprehensive explanation of the new instrument by the Commission on the following aspects: • There is an explanation of “global initiative” according to Fiche No. 9. This definition should be included to Article 2 or Article 240 of the proposal of the regulation directly. • Why is financing not linked to costs considered an appropriate financing form for these contributions? • On which legal basis does the Commission take part in global initiatives so far? • Could the Commission provide an explanation on the term “minority shareholding” (Article 240 (2) letter l of the proposal). What is the basis of calculation? (commitments or amounts already paid) This definition should be included in Article 2 or Article 240 of the proposal. Which legal basis is applicable to “majority shareholdings”? • Should a participation on global initiatives be possible even when there is no control on how the funds are spent? Are EU budgetary control mechanisms applicable?	Article 240(1) already sets out a definition of a global initiative as being “multidonor, pooled funded” and “global”. The use of financing not linked to costs would be the appropriate form as the outcome of such contribution will be assessed based on performance indicators and not on costs incurred. Art. 240(2)(iii) ensures that the rules of the initiative include adequate reporting on the results achieved by the initiative, including through relevant indicators. As regards the current legal basis for participation, there is no participation in such initiative so far 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

			How will such a new instrument be implemented technically? Would the Commission create a new budget line to which funds from applicable spending programmes can be transferred? Or are the funds provided only in case of demand? Would the participation on global initiatives be part of the annual budget negotiations or could these participations also be a part of the implementation of the budget? If the latter is possible, would transfers be sufficient or would amending budgets be necessary?	through indirect management. As laid down in Art. 240(1), the new instrument for global initiatives would only be used if budget implementation instruments provided for in other Titles of the FR would not be sufficient to achieve such Union policy objectives. Regarding the difference between minority and majority donors, please see answer to question 30. A minority contribution refers to a contribution of under 50%, taking into account the global amount contributed to the initiative at the time of the contribution, as is included in Art. 240(2)(i). There is control in how funds are spent: this is carried out by the implementing entities and at the level of the board of the initiative, through the governance framework set up by donors. The Board has a responsibility towards donors to ensure that their funds are correctly spent based on the Fund's rules and objectives, including through regular reporting and audit and investigatory mechanisms. It is why proposed conditions in Art. 240 include under paragraph (2)(iv) that the EU must ensure that the initiative operates under rules ensuring sound financial management, transparency, non-discrimination and equal treatment in the use of Union funds in accordance with the principle of proportionality; and in paragraph (2)(v) that there are appropriate systems to prevent and combat irregularities and fraud as well as to report on their functioning at regular intervals and that there are appropriate rules for recoveries of funds by the Fund including their use for the same initiative.
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				Furthermore, under Art. 240(2)(v) the OLAF, EPPO and ECA are able to use the rules of the initiative to request additional information and carry out joint audit, control, or investigative missions with the relevant body under the initiative in line with Article 129 FR. Contributions to global initiatives can be transferred from current budget lines, as these contributions are a tool for the implementation of the budget under the current basic acts and spending programmes.
77.	DE	Fiche 10, Art. 52(1)(d)	According to the Commission's proposal of Article 52 (1) letter d), there should be a comprehensive overview of borrowing and lending operations as part of the budget. What information in detail is planned to be given?	The proposed addition covers all borrowing and lending activities, including those based on Article 122 TFEU mechanisms (EURI). The overview should cover information already provided, in a comprehensive way: information on the B&L operations such as legal basis, outstanding amounts of bonds and bills, maturity profile, disbursed grants and loans, repayment schedule of the disbursed loans, cost of funding, the amount that the Commission intends to issue in the coming semester, etc. The general wording allows to include an appropriate set of information, as needed.
78.	DE	Fiche 2	The data protection impact assessment of the European Data Protection Supervisor is a key requirement for us in order to consider the proposed obligatory application of a single integrated IT system for data-mining and risk-scoring (Arachne). We need deeper information if compatibility with EU Data Protection Law is secured and supervised. Any early-stage assessments on data-protection related questions would be highly appreciated in order to ensure a German opinion in Council. Coordination between the Federal Government and the Federal States will need sufficient time in advance.	The Commission consulted the European Data Protection Supervisor with regards to the revision of the Financial Regulation. On 7 July 2022, the EDPS provided its opinion on the new proposal of the Financial Regulation, including some recommendations. These include particularly additional clarifications. Only two recommendations 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. Meanwhile, a data protection impact assessment was carried out on the current integrated IT system for data-mining and risk-scoring (Arachne). Although the EDPS provided its first opinion on Arachne in 2017, the new data protection impact assessment was necessary to be made due to the novelties of the system. The data protection officer approved the data protection impact assessment on 22 July 2022 without notification obligation to the EDPS.
79.	DE	Fiche 2	According to the proposal managing authorities would transfer personal data of each recipient to the European Commission. What measures are taken for secure data transmission, processing and storage, who has access and for which specified situations will data-mining be used?	The data-mining tool serves its users (controllers, auditors and reviewers) to harmonize, standardize and process structured information on projects and beneficiaries. It shall provide its users easier identification of risks leading to an increase of effectiveness of audit resources, as well as more accurate information for reporting on EU funds' management. Last but not least, the data shall serve in order to increase efficiency and effectiveness of identifying, controlling, auditing to prevent, detect, correct and follow-up of fraud, corruption, conflicts of interest, double funding and other irregularities. As indicated in the record on Arachne (DPR-EC-00598.3), data recipients will be the Commission's staff of chosen Directorates Generals (EMPL, REGIO, AGRI, DAC, ECFIN, BUDG), as well as OLAF and EPPO. In order to resolve a technical matter, Directorate General for Informatics will also be able to access the data. External recipients include managing authorities of Member States (public or private), agencies and natural/private bodies acting in the capacity to grant/appraise applications, select projects for

				funding, manage administrative and on-the-spot checks, authorise payments, etc.. Only a limited number of users within the Management Authorities will have the possibility to upload data in the system. All other users in the Member States will have restricted read access relating only to their operations. The traffic and the storage of the data between the Arachne Web application and the Arachne database is encrypted. The storage of the data will be within the area of the EU/EEA following the secured standard storage protocols of the Directorate General for Informatics.
80.	DE	Fiche 2	We would like to ask for an assessment of the expected benefits of facilitating risk assessments provided by the proposed the proposed single integrated IT system for data-mining and risk-scoring in relation to its administrative burden to set-up, run and maintain.	Please see answer to question 7.
81.	DK, NL and SE	Fiche 1, Art. 10	Too soon to incorporate MAR 3 as the underlying own resources that are covered by this regulation have yet to be discussed and possibly agreed. Suggest deletion of reference to MAR 3 as it cannot be considered a technical change and is not necessary at present.	While drafting the legislation, the Commission always takes into account all its adopted proposals related to the legal act in question. Those which are not yet adopted by the co-legislators (e.g. MAR 3) are put in square brackets. If the proposal is adopted by the co-legislators in time the square brackets are removed and the correct reference is added. If the proposal is not adopted before the legal act in question, the reference (i.e. entire text in square brackets) is deleted. This is the usual legislative technique applied by the Commission.
82.	DK, NL and SE	Fiche 1, Art. 12(2)	Is the proposed text fully consistent with article 16 of Regulation (EU) 2021/2116? The current language, allowing carry over without time limitation goes beyond the provisions envisioned in the cited regulation(s).	The proposal to carry-over without explicit time limitation set out as proposed in Article 12(2)(d) second sub-paragraph was made to address the potential coordination/timing issues between the FR and the (next) sectoral legal basis and to allow for a

				smooth transition. It is indeed expected that there will be new legal basis in place (and on time) for the CAP to continue as of 1/1/2028 (possibly by ways of transitional rules like it was the case in this MFF). This sectoral regulation would extend the rule of the carry-over to (at least) 2028, and this would lead to a contradiction with the FR text, which would not be in line with the “single-rule book” approach.
83.	DK, NL and SE	Fiche 1, Art. 12(4)	Do the cited regulations envision limitations in euros to the funds that are carried over? If so, limitations need to be clear in the FR as well.	The quoted Regulations do not contain explicit limitations in euros. In the case of Regulation 2021/2116, the amounts that may be carried over are limited to the non-committed amounts of the agricultural reserve (remaining at the end of the budgetary year with an amount that may vary from year to year, depending on the size of the agricultural reserve in a given year and the extent to which it was used or adjusted during the year). This might be what you refer to when mentioning a “limitation in euros”. This “limitation” is reflected in the proposed Article 12(4)(g) (which refers to the agricultural reserve and to Article 16 of Regulation 2021/2116). Here are the relevant quotes from the cited regulations: - Article 30(1) of Regulation (EU) 2021/947 (NDICI) sets out the following: <i>In addition to Article 12(4) of the Financial Regulation, unused commitment and payment appropriations under the Instrument shall be automatically carried-over and may be committed and used, respectively, up to 31 December of the following financial year. The</i>

				<i>amount carried over shall be used first in the following financial year.</i> <i>The Commission shall inform the European Parliament and the Council of commitment appropriations carried-over in accordance with Article 12(6) of the Financial Regulation.</i> The above wording is fully consistent with the change proposed in Article 12(4)(e). 2. Article 9(1) last sentence of IPA III (Regulation (EU) 2021/1529) explicitly sets out the applicability of the above mentioned provision (Article 30 (quoted just above) being part of Chapter III of Title II of Regulation (EU) 2021/947): <i>“Chapter III of Title II of Regulation (EU) 2021/947 shall apply to this Regulation with the exception of Article 28(1) of that Regulation”.</i> 3. Article 81 of Council Decision 2021/1764 (OCTs) sets out that : <i>Unless otherwise specified in this Decision, Union financial assistance shall be implemented in accordance with this Decision, the Financial Regulation, and, as appropriate, the following chapters of Title II of Regulation (EU) 2021/947:</i> <i>(...)</i> <i>— Chapter III with the exception of Articles 25(1), 25(2)(a), (b) and (c) and 25(3),”</i>
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				This thereby makes Article 30(1) (part of Chapter III of Title II) of Regulation (EU) 2021/947 applicable to it. 4. Article 10(2) of Council Regulation 2021/948 (INSC) sets out that “2. <i>Support under the Instrument may also be implemented under the rules applicable to the External Action Guarantee established under Regulation (EU) 2021/947 (‘External Action Guarantee’)</i>” and recital 16 clearly sets out that “The rules and procedures laid down in Regulation (EU) 2021/947 should apply to the implementation of this Regulation, as appropriate, and the implementing provisions under this Regulation should mirror the provisions provided for in that Regulation”. 5. Article 16(2) third subparagraph of Regulation 2021/2116 (CAP) reads as follow: “<i>By way of derogation from Article 12(2), third subparagraph, of the Financial Regulation, non-committed appropriations of the reserve shall be carried over to finance the reserve in the following budgetary years until the year 2027</i>”. 6. Civil protection: Article 1(22) of Regulation (EU) 2021/836 of the European Parliament and of the Council of 20 May 2021 amending Decision No 1313/2013/EU on a Union Civil Protection Mechanism reads as follows:
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				'Article 25 is replaced by the following: (...) 7. In addition to Article 12(4) of the Financial Regulation, commitment and payment appropriations that have not been used by the end of the financial year for which they were entered in the annual budget shall be automatically carried over and may be committed and paid up to 31 December of the following year. The carried-over appropriations shall be used solely for response actions. The carried-over appropriations shall be the first appropriations to be used in the following financial year. This corresponds to the wording proposed for Article 12(4)(f).
84.	DK, NL and SE	Fiche 1, Art. 15(4)	Are the cited regulations consistent with the language in this article?	The Commission can confirm that its view is that the cited Regulations are correctly reflected in this provision. Please see details of the quoted Regulations below: 1. - Article 30(2) of Regulation (EU) 2021/947 reads as follow: 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.

				2. Article 9(1) last sentence of IPA III (Regulation (EU) 2021/1529) explicitly sets out the applicability of the above mentioned provision (Article 30 (quoted just above) being part of Chapter III of Title II of Regulation (EU) 2021/947): <i>“Chapter III of Title II of Regulation (EU) 2021/947 shall apply to this Regulation with the exception of Article 28(1) of that Regulation”.</i> 3. Article 81 of Council Decision 2021/1764 (OCTs) sets out that : <i>Unless otherwise specified in this Decision, Union financial assistance shall be implemented in accordance with this Decision, the Financial Regulation, and, as appropriate, the following chapters of Title II of Regulation (EU) 2021/947:</i> (...) — Chapter III with the exception of Articles 25(1), 25(2)(a), (b) and (c) and 25(3),” This thereby makes Article 30(2) (part of Chapter III of Title II) of Regulation (EU) 2021/947 applicable to it. 4. Article 10(2) of Council Regulation 2021/948 (INSC) sets out that “2. <i>Support under the Instrument may also be implemented under the rules applicable to the External Action Guarantee established under Regulation (EU) 2021/947 (‘External Action Guarantee’)</i>” and recital 16 clearly sets out that “The rules and
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				procedures laid down in Regulation (EU) 2021/947 should apply to the implementation of this Regulation, as appropriate, and the implementing provisions under this Regulation should mirror the provisions provided for in that Regulation”.
85.	DK, NL and SE	Fiche 2, Art. 36(6)	How does the required storage of data regarding recipients of Union funding pursuant to article 36(6) in the proposal relate to similar requirements of storage of data in other regulations concerning union programs? If other regulations require storage of more types of data than the provisions in the FR, which provisions ought to be applied and how ought the additional data be stored?	Article 36(6) establishes a minimum set of data on recipients that needs to be recorded, stored (at the level of the bodies implementing the budget) and, in addition, regularly made available in the IT system provided by the Commission. The provision aligns with those of CPR Annex XVII, RRF, SCF, BAR and EGF Regulations. Moreover, as the provisions shall apply only to programmes adopted under and financed from the post-2027 multiannual financial framework, focus will be put on a streamlining of requirements in preparation and negotiation of the relevant Regulations. In case other regulations will require storage of more types of data than the FR, these regulations will apply for the aspects not regulated by the FR. Nevertheless, only the data mentioned in Article 36(6) can be recorded and stored in Arachne.
86.	DK, NL and SE	Fiche 2	It is positive that the Commission provides tools for the Member States to use to enhance the protection of the interests of the EU budget and protect it against fraud and irregularities. There is, however, no earlier agreement that such tools, like Arachne, should be compulsory for member states to use. It should be up to each Member State to decide what tools are most effective to use in the national context for the protection of the EU-budget, in line with the risks related to EU spending in the particular Member State. We should stick to the IIA where only recitals or provisions recalling or requiring the Commission to make a single data mining and risk-scoring tool available and encouraging its use by Member States were agreed. There is	Please see replies to questions 7 and 8.

			too little knowledge and information to assess the practical benefits of the system and in that context it is incomprehensible that the system is proposed to be compulsory.	
87.	DK, NL and SE	Fiche 2	Could the Commission elaborate on the possibility to only address data differences for electronic recording and storing of data on beneficial ownership and evaluate such steps before proposing mandatory data-mining and risk-scoring?	The benefits of a system that applies to all management modes consist of the pooling of relevant information on all EU financing that provides better results for risk assessment for the purposes of selection, award, financial management, monitoring, investigation, control and audit. A partial data provision would lead to a fragmented approach and would compromise the above mentioned objective.
88.	DK, NL and SE	Fiche 2	The use of the data mining tool (Arachne) risk leading to delays in Member States' automated handling of applications, as the follow-up of Arachne searches must be done manually. Mandatory use for all will lead to additional administrative burdens in managing the significant increase of derivative parts of the data-driven control, which may or may not require a reaction. It is crucial that the system is easy to adapt and apply in relation to the existing payment systems if the Commission intends to move forward on this topic. Further, the tool is designed for the EU as a whole and the application might not fit well across Member States. How does the Commission assess the differences in effectiveness, efficiency and added value in implementing mandatory data-driven control across Member States?	The tool aims to support the bodies that are responsible for the implementation and control of the EU budget in their duties to prevent and detect risks, to identify and control as required for high-risk projects and beneficiaries and to enhance fraud prevention. It could 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. The system will not oblige to follow up on every red flag. Member States and their bodies would still be in full control to decide that in the specific circumstances of a given case, a red flag is not important enough, it is counter balanced by other positive factors, it may be a "false" red flag, etc. The system does not take management decisions, Member States and their bodies will retain discretion to take the red flags into

				account in any given case. The system will also help to allocate, in an efficient way, available human resources for desk reviews and on-the-spot controls and audits by focusing on the more risky recipients, projects, contractors and contracts. The system also provides bodies implementing the EU budget for the possibility to assess the effectiveness and efficiency of controls and audits and to record and present the results of increased effectiveness and efficiency of controls and audits over time.
89.	DK, NL and SE	Fiche 2	Denmark, the Netherlands and Sweden remain skeptical as regards the use of Arachne for direct payments under the EAGF since it is not documented that the system can be used to handle area- and animal-based support schemes without leading to unnecessary delays or extensive administrative burdens for applicants or Member State authorities. Which are the “entrusted partners”?	Please see replies to questions 2, 7 and 12. “Entrusted partners” refers to those bodies listed in Article 62(1)(c) FR.
90.	DK, NL and SE	Fiche 2	In what cases will the entrusted partners, OLAF, ECA, EPPO and other Union investigative and control bodies have access to data? Will it be on a case-to-case basis or will they have general access? This must be further specified in the regulation.	The use of and access to the data processed by the single integrated IT system for data-mining and risk-scoring must comply with applicable data protection rules. In addition, such use and access to the data is to be limited to the Commission, the Member States’ authorities, the entrusted partners, OLAF, the Court of Auditors, the EPPO and other Union investigative and control bodies, within the exercise of their respective competences and for the purposes of selection, award, financial management, monitoring, investigation, control and audit (not for transparency/publication). Access to the data would be provided to the extent EPPO, OLAF and ECA would need it to exercise their competences. For the entrusted partners this needs to be regulated in the contribution agreements but in

				principle the same principle would apply. Thus, they will have access to information that is relevant to them.
91.	DK, NL and SE	Fiche 2	We are worried about the integrity aspects of this proposal and would like to see further elaborations on this. For instance, with such a broad use of the tools and databases, how could the Commission make sure that the data is used solely for the intended purpose? Is it possible for the Commission to delegate this responsibility to the member states, entrusted partners, and EU bodies?	The purpose of the processing is established by the Commission, acting as the controller. The data shall be accessed only by the Commission's staff of chosen Directorates Generals (EMPL, REGIO, AGRI, DAC, ECFIN, BUDG), as well as OLAF and EPPO. In order to resolve a technical matter, Directorate General for Informatics will also be able to access the data. External recipients including managing authorities of Member States (public or private), agencies and natural/private bodies acting in the capacity to grant/appraise applications, select projects for funding, manage administrative and on-the-spot checks, authorise payments, etc. shall act as the processors. On the basis of Article 87, paragraph 3, mainly letters a) and b) of Regulation 1725/2018 (EUDPR), the processors may act only on instructions from the controller and need to make sure that persons authorised to process the operational personal data have committed themselves to confidentiality. From the organisation perspective, it will be the obligation of the Member States, entrusted partners and other related entities, acting as processors, to keep the access to keep the precondition of limited number of users with the possibility to upload data in the system (all other users in the Member States will have restricted read access relating only to their operations). Any deviation from these requirements would represent a breach of the processor's obligations stemming from the EUDPR, particularly

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				the purpose limitation, confidentiality and integrity. From the technical perspective, the personal data and their transfers shall be encrypted in order to prevent unauthorised or unlawful processing and against accidental loss, destruction or damage. Delegation of the controllership to Member States, entrusted partners and other EU bodies would lead to a system with various controllerships and possibly various purposes of processing of personal data, which could lead to a system that would not clearly and efficiently protect the data subject rights.
92.	DK, NL and SE	Fiche 2	We would also like to see further elaboration on the proposed access to, storage and use of potentially confidential data, such as data pertaining to the identity of natural persons.	As indicated in the record on Arachne (DPR-EC-00598.3), data recipients will be the Commission's staff of chosen Directorates Generals (EMPL, REGIO, AGRI, DAC, ECFIN, BUDG), as well as OLAF and EPPO. In order to resolve a technical matter, Directorate General for Informatics will also be able to access the data. External recipients include managing authorities of Member States (public or private), agencies and natural/private bodies acting in the capacity to grant/appraise applications, select projects for funding, manage administrative and on-the-spot checks, authorise payments, etc. Only a limited number of users within the Management Authorities will have the possibility to upload data in the system. All other users in the Member States will have restricted read access relating only to their operations. The traffic and the storage of the data between the Arachne Web application and the Arachne database is encrypted. The storage of the data will be within the area of the EU/EEA following the secured standard storage protocols of the Directorate General for

				Informatics.
93.	DK, NL and SE	Fiche 2	An introduction of the new IT tools 2027 allows for a certain time for implementation. Whether the time will be sufficient will depend on what changes must be made in national regulations, directives and processing routines. It can be added that the introduction of a new tool in 2027 would coincide with the introduction of a new program period, i.e. during a time when managing agencies workload already is considerable.	The Commission takes note. In addition to the need for sufficiently long transition for IT developments, guidance etc., it is considered that introducing such changes in the course of the implementation of programmes, rather than at the start, would be more difficult. Please see replies to question 7.
94.	DK, NL and SE	Fiche 2	Swedish and Danish agencies currently assess that an introduction of a new tool will considerably increase the administrative burden for beneficiaries as well as for administrative authorities. The proposal will entail requirements for IT development and adaptation of current IT systems and it is currently difficult to assess how much resources will be needed.	The Commission takes note. Please see replies to questions 2 and 7.
95.	DK, NL and SE	Fiche 2, Art. 36(4)(a)	The addition to the article specifies that an efficient internal control shall also be based on the implementation of an appropriate anti-fraud strategy coordinated among appropriate actors involved in the control chain. What is meant by an anti-fraud strategy? Is it supposed to be a formal document or could it be e.g. praxis developed by managing agencies or a group of steering documents?	An anti-fraud strategy is meant to structure the fight against fraud affecting the EU and national budgets, to address fraud risks in selection, award, financial management, monitoring, investigation, control and audit and to contribute to effective prevention, detection, correction and follow-up of fraud, corruption, conflicts of interest, double funding and other irregularities. This entails the adoption by all the managing authorities of manuals/guidance containing adequate rules and procedures for the prevention and detection of fraud based on international best practices. The antifraud strategy needs to be a formal document adopted at the adequate level of management. The Commission strongly encourages the Member States to adopt comprehensive National Anti-Fraud Strategies (NAFS) to create a coherent national framework for anti-fraud action, with clear objectives, actions and targets. NAFS help in identifying

				vulnerabilities to fraud in the systems, assessing the main fraud risks, setting and implementing responses, evaluating the progress made, adapting the response to the evolution of the fraud trends and the resources available and ensuring involvement of all relevant stakeholders. NAFS also ensures harmonisation of the response to fraud risks throughout the country, especially in the case of a decentralised management structure.
96.	DK, NL and SE	Fiche 3	In the recast proposal, the Commission has not provided any analysis of the budgetary impact of the proposal but has stated that the proposal does not have budgetary implications. Contrary to that statement, this proposal seems to generate additional engagement by the Commission, EU institutions and Member State agencies. We would like a budgetary impact assessment by the Commission covering these aspects.	The budgetary implications cannot be established now, as they will depend on the concrete functionalities and requirements for the system which are under development.
97.	DK, NL and SE	Fiche 3	The Commission proposes a requirement to publish unique identifiers of recipients of EU funding that are legal persons (such as VAT or Tax identification number) to allow for an easy and accurate identification, filtering and grouping of recipients of EU funding in all methods of EU budget implementation. Is this in line with data integrity regulation?	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. Consequently, the VAT number might be considered as personal data if leading to identification of a natural person. Please see also the reply to question 78.
98.	DK, NL and SE	Fiche 3	Could the Commission elaborate on the compatibility with the GDPR?	In order to be in line with the personal data protection rules, the Commission, as the controller, established the system applying the basic principles, i.e. purpose limitation, integrity, storage limitation, data minimisation etc.. With regards to the revision of FR, the Commission consulted the European Data Protection Supervisor. On 7 July 2022, the EDPS provided its opinion on the new proposal of the Financial Regulation, including some recommendations. These include particularly

				additional clarifications. Only 2 recommendations require actions to take with respect to the technical safeguards. Please also see reply to question 97.
99.	DK, NL and SE	Fiche 3, Art. 38(d)	Why is “legally” removed in revised article 38 d?	This change is a technical clarification. The word “legally” was deleted in order to avoid confusion with the definition of “legal commitment” in the FR which refers to the EU authorising officers. In shared management and indirect management, the legal commitment of the Commission is with the Member State and the entrusted partner. This wording covers the commitments of Member States or partners with their recipients.
100.	DK, NL and SE	Fiche 3, Art. 38(4)	Could the Commission confirm that publication shall be in accordance with sector-specific rules in case of shared management, and that there are no requirements for additional information?	Yes, please see proposed Article 38(3)(e) – information that is not required for publication in sector-specific rules where the budget is implemented in accordance with Article 62(1) first subparagraph, point (b) shall not be published nor submitted for publication. Moreover, as the provisions shall apply only to programmes adopted under and financed from the post-2027 multiannual financial framework, focus will be put on streamlining of requirements in the preparation and negotiation of the relevant regulations.
101.	DK, NL and SE	Fiche 3, Art. 38(6)	Does the requirement set out in paragraph 6 to transmit VAT identification number or tax identification number go beyond the requirement in article 49(3) CPR (Regulation (EU) 2021/1060)? It is essential that the content and deadline for transmission to the Commission does not impose on the managing authorities to gather extra reports, besides those the managing authorities must produce at least every four months in accordance with Article 49(3) CPR. Each report is time consuming while separate deadlines lead to complications.	Please see reply to question 100. It does not go beyond the CPR in the sense that this is envisaged with a view to improve the quality of the data transmitted without it being used for publication, as clearly mentioned in the Article of the proposal.
102.	DK, NL	Fiche 4,	While acknowledging that article 213, paragraph 3 is outside the scope of	For budgetary guarantees, all types of these revenues

	and SE	Art. 213(3)	the recast, could the Commission please provide data on the amount of revenue, including dividends, capital gains, guarantee fees and interest on loans and on amounts on fiduciary accounts paid back to the Commission or on fiduciary accounts opened for financial instruments or budgetary guarantees and attributable to the support from the budget under a financial instrument or a budgetary guarantee, that have been entered in the budget as miscellaneous revenue over the last three years?	are paid to the common provisioning fund and they contribute to the provisioning (in accordance with Article 211(4)). In relation to financial instruments, the contributions to the budget from reflows in the last three years were the following: 2019 – €298 million 2020 – €743 million 2021- €81 million
103.	DK, NL and SE	Fiche 5, heading 2.1	Allowing Union institutions to compete with other actors in the market when contracting remunerated external experts: As this will have budgetary consequences, we would like to see further elaborations and explanations on how extensive this problem is and how it effects the Union competitiveness when it comes to contracting of remunerated external experts. Also, we would like to get more information on the budgetary impact on this part of the revision.	The proposal to allow higher remuneration to external experts has the purpose to unblock the difficulty to select experts when there is a real need, only in exceptional situations and in duly justified cases. The problem arises in some areas requiring specific expertise, such as investments and financial instruments, where other actors on the market remunerate external experts with much higher fees than those the Union institutions are allowed to offer. In these circumstances, it is difficult for the EU institutions to be able to recruit highly qualified experts and to ensure evaluation process, specific opinions and expert advice of the highest standard. The Commission proposal is therefore only meant to provide a legal solution for the situations where there is concrete evidence that the same type of experts are remunerated with higher amounts on the market. This being said, the financial impact would also be limited.
104.	DK, NL and SE	Fiche 5, heading 2.1	Efficiently using lists of experts established following a call for expression of interest: It is not reasonable that such a list would be valid beyond the programme duration. There is a clear risk that the principle of rotation might be compromised or at least weakened.	The Commission proposal for extending the validity of the list was done in order to address situations such as: 1) A call for expression of interest is launched in 2021

				for selecting experts, with a validity of the list until December 2027. In January 2028, a call for proposals is launched, financed under the 2021-2027 MFF, but the list of experts needed to assist the evaluation of that call is not valid anymore in 2028 even if it relates to the same MFF. 2) A call for expression of interest is launched in 2021 for selecting experts, with a validity of the list until December 2027. The 2028-2034 MFF basic acts are not adopted in time (by 2027), but the adoption happens very late, in April-May 2028. With all the consequences of the late adoption, e.g. gap in providing support to EU beneficiaries, interruption of academic year for Erasmus+, the Commission needs to launch calls under suspensive conditions. Having valid expert lists from the previous period allows smooth evaluation of those calls and quicker signature of agreements upon adoption of the new basic act. Otherwise experts could only be contracted upon the adoption of that same basic act. In both cases, the Commission would ensure the principle of rotation by allowing new experts to apply to the existing call for expression of interest.
105.	DK, NL and SE	Fiche 5	Are the Commission's competencies extended with regards to the central purchasing body? If yes, in what way? Is there a risk, through simplification of the procedure for enabling the EU institutions to act as a central purchasing body, that competencies are delegated from Member States?	The Commission will be able to act as a central purchasing body in order to donate and resale supplies and services to the Member States as well as to launch joint procurement despite the Commission not acquiring services or supplies on its own behalf. The competencies of the Member States are not affected. In all cases (ie. joint procurement or procurement on behalf of MS) the Commission may only launch the call and conduct the procedures after an agreement

				with the Member States has been signed.
106.	DK, NL and SE	Fiche 5	In addition to the central purchasing body, the proposal includes an update on the definition of a crisis. What practical implications do the extension of this definition have?	The purpose of adding public health emergency situations to the definition of the crisis is to make it clearer that the new provisions applicable to crisis situations (ensuring quicker implementation during a crisis and addressing the lessons learned from the Covid-19 outbreak) could be also applied to such situations.
107.	DK, NL and SE	Fiche 6	Could the Commission please provide examples of non-financial prizes by EU institutions other than DiscoverEU?	The award of non-financial prizes has not been a common practice in the Union Institutions. However, following the success of DiscoverEU, the Commission recognized the need to introduce this possibility in the FR that would allow EU institutions to award prizes following a contest in the form of, for example, vouchers, trips, tickets. This is also important to allow contests targeting young people who do not have a bank account in their Member State, but who can easily receive their reward in-kind.
108.	DK, NL and SE	Fiche 6	Further, could the Commission elaborate on the need for such provisions given that DiscoverEU was indeed possible without such amendments?	The provision was proposed in order to bring more transparency, accountability and legal certainty for applicants and the Union institutions. Please see also the reply to question 107.
109.	DK, NL and SE	Fiche 6	Finally, could the Commission provide data on the amounts of Union support in the form of non-financial prizes in 2021, and estimates for 2022 and 2023.	Due to COVID-19 pandemic, DiscoverEU officially started in spring of 2022. The indicative amounts foreseen for DiscoverEU included in the annual work programmes for the years 2022 and 2023 of the Erasmus + programme are: For 2022: EUR 29 000 000 For 2023 (still to be adopted): an indicative amount of EUR 33 000 000 However, the amounts above are the indicative

				amounts for the entire procurement procedure, and do not cover only the amounts of the travel passes offered to the young people. On average, 80 % of the Discover EU budget is estimated to be spent on the travel passes.
110.	DK, NL and SE	Fiche 7, Art. 2, 133, 154, 244	How does EU institutions donating goods, services, supplies or works (art. 2, art. 133, art. 154, art. 244) impact the EU budget as well as the balance sheet of these institutions? And what is the currently estimated financial consequences?	The Commission cannot estimate future financial impact of the non-financial donations introduction, similarly to how it cannot estimate future values of grants, procurements, financial instruments or other instruments. The financial impact of this will depend on the future situations which will require that the Union donates goods, services, works based on policy assessments by the sectoral services. For the non-financial donations already concluded by the Commission, for example: • The possibility for the Commission to donate goods or supplies with full value to Member States or selected partner organisations has been used as a form of emergency support under the Emergency Support Instrument Regulation (ESI). Under this instrument, disinfection robots have been donated to hospitals during the COVID-19 pandemic in order to limit the spread of the virus and protect medical staff and patients, while relieving cleaning staff from the risky activity of disinfection. This action was publicised under the ESI financing decision/work programme adopted through Commission Decision C(2020) 5162. The amount of the procurement contract for buying the robots was of EUR 15 million.

111.	DK, NL and SE	Fiche 7	Could the Commission confirm that the administrative costs of such donations will be financed under Heading 7?	The administrative costs of the non-financial donations will be financed in the same way as the administrative costs for the other instruments existing under FR, such as grants, procurements, prizes, etc.
112.	DK, NL and SE	Fiche 8, Art. 131	We understand that the EDES (Early Detection and Exclusion System) is mandatory also in case of shared management as reporting to the system is pulled from the IMS-system. Could the Commission confirm this?	The exclusion would be triggered in two cases: 1. Final judgments/decisions reported via IMS. 2. Findings at EU level (OLAF, EPPO, ECA etc.). For the rest, the exclusions already contained in the database would be mandatory and binding also for the MS managing authorities as they will be required to reject persons or entities therein listed.
113.	DK, NL and SE	Fiche 8, Art. 131	The article also implies - in case of shared management - that payments related to natural persons or businesses, which are in the system and excluded from support, must be kept out of payment applications to the Commission. Could the Commission confirm this?	The Commission confirms this understanding.
114.	DK, NL and SE	Fiche 8	In addition to article 131, we assume that everyone listed in the system are excluded from support – and not just those reported by the Member State through IMS (for instance exclusion is also possible for lack of payment of taxes). With this comes extra verification steps which should, as a rule, be verified by the operation – for instance in connection with entering into contracts – and not afterwards by the managing authority. It requires an in-depth scrutiny of the provisions and IT-systems concerned. What would be the administrative consequences of this particular issue, including how it may be solved in practice?	The Commission confirms this understanding. EDES has been established in 2016 along with its database. The Commission makes available access to the EDES database to all entities entrusted with budget implementation in order to take the information therein into consideration. Therefore the system is already in place and used by most Member States. The change proposed is that the check of the database would now (with this proposal) become compulsory.
115.	DK, NL and SE	Fiche 8	We note that registration in the EDES database is possible without having to wait for a final national court judgment or decision. How does such a system for exclusion of actors harmonize with national legislation and case law in the Member States?	In the absence of a final judgment, the EDES Panel can perform a preliminary classification in law and recommend a sanction if the facts and findings established against the person or entity fulfil all the elements of the ground concerned. In such case, the responsible authorizing officer, having regard to the

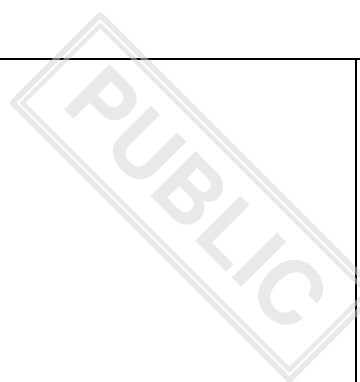
				Panel's recommendation, may exclude the person or entity. Should the final judgment come at a later stage and find the person or entity not guilty, the sanction is immediately lifted (see Article 139(3) FR). The Panel's role is crucial in (i) ensuring the rights of defence and due process by means of a contradictory procedure; (ii) assessing the sufficiency and reliability of evidence gathered against the person or entity concerned; and (iii) issuing a recommendation that abides also by the principle of proportionality. This is enshrined not only in the FR provisions but also in the Rules of Procedure of the Panel. The role of the Panel in safeguarding the procedural rights of the person or entity has been confirmed also by the ECJ in its case law.
116.	DK, NL and SE	Fiche 8	What is the threshold for exclusion without a conviction or court decision, i.e. on the basis of "findings at the EU-level"? The provision contains exclusion criteria and decisions on exclusions, and it may have far-reaching consequences to be listed – up to five years of exclusion. How will the Commission ensure that the process will be sufficiently transparent, and that the legal certainty of applicants and/or beneficiaries can be ensured? Are there any proposed safeguards to ensure that such an exclusion is a proportionate measure?	Please see the reply above.
117.	DK, NL and SE	Fiche 8	We can see some judicial consequences and difficulties with this proposal (i.e. the above mentioned) and would like a more thorough legal analysis of the proposal. To some extent the issues might be resolved by clearer defining when a procedure must be performed.	The Commission welcomes the opportunity to improve the legal drafting of these provisions to make clearer when the exclusion procedure can be triggered in shared management. To be noted that the Rules of Procedure of the Panel further spell out the steps and requirements of the whole process.
118.	DK, NL and SE	Fiche 8	The fact that suspicion of crime is sufficient in the event of an obligation to report to EDES is unsatisfactory for a criminal investigating authority, as it	A suspicion of a crime is not per se sufficient to impose a sanction. And this is true both on the basis

			may complicate a criminal investigation. If there is a crime report that can initiate a preliminary investigation, the person notified becomes aware of the risk of a crime report when he or she is notified of the EDES report and thus has the opportunity to complicate a potential criminal investigation or preliminary investigation by e.g. removing evidence.	of the FR provision and on the basis of the Panel's case-law. According to the FR, in the absence of a final judgment, the EDES Panel can perform a preliminary classification in law when there are "established facts", which might stem from EU audits, reports of investigations, non-final administrative decisions, infringement cases, checks of the authorising officer responsible, information transmitted by MS through IMS etc. This list is not exhaustive and the findings of the misconduct need to come at the end of a solid procedure (whether criminal, administrative or disciplinary) with safeguards ensured. In addition to that, the EDES Panel has never imposed sanctions in cases where the only information of the misconduct would come from an unconcluded investigation of a national authority. The evidence – assuming the authorising officer would get any at a such a delicate phase – would not be sufficient to impose a sanction. In addition, the EDES Panel is well aware that such an exclusion would be most likely overruled in Court. Finally, the need for confidentiality is always respected (see Article 13 of the RoP of the Panel and Article 143 of the FR). This means that prior to notifying the person or entity concerned and starting an exclusion procedure, the possibility that this might impair an ongoing investigation or proceeding is
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				always taken into consideration. The EDES Panel has often deferred the notification, the publication of the sanction, and/or put on hold an exclusion case where the confidentiality of an investigation or ongoing procedure had to be preserved.
119.	DK, NL and SE	Fiche 8	In that case, a report to EDES should only be made after a decision has been made to close a preliminary investigation.	Please see the reply above.
120.	DK, NL and SE	Fiche 8	In phases of the process where there is no obligation to report to EDES, pre-trial secrecy means that a reported person does not become aware of an investigation and this reduces the probability that a reported person complicates the criminal investigation.	Please see the reply above.
121.	DK, NL and SE	Fiche 8	Will definitions, such as e.g. affiliated entities, make it more difficult to apply the regulation?	No, these are well established notions under EU law.
122.	DK, NL and SE	Fiche 8	We are worried about the administrative burden this proposal would entail for national agencies and would like to see an analysis of that.	The administrative burden is kept to the minimum. Please see also the reply to question 114.
123.	DK, NL and SE	Fiche 8	What is the technical relation between Arachne and EDES, will the two systems be integrated in some way? In that case, what would be the synergies?	The two systems serve different purpose. EDES, as a database, retains information on sanctions or early-detected threats. Arachne, as a data-mining tool, serves audit and control purposes. However, the Commission is proposing the mandatory use of the data mining tool which – as a preventive tool – will interact also with the EDES database.
124.	DK, NL and SE	Fiche 8, heading G	Is exclusion due to incitement to discrimination, hatred or violence introduced because of preceding issues? Would there be any demarcation issues due to the broad nature of the definition? We would like further elaboration on the scope of this proposed grounds for exclusion. What constitutes an “incitement”, “discrimination”, “hatred” or “violence” according to the proposal? In what context and by whom must an incitement be made to lead to exclusion? Might the proposed grounds for exclusion lead to free speech concerns?	At the outset, it should be noted that all sanctions under EDES should comply strictly with the principle of proportionality. This means that a rigorous legal analysis of the facts and findings established is always performed by the EDES Panel (also by means of contradictory procedure) in order to ensure that (a) there is a need to sanction the person or entity concerned, (b) the sanction is adequate in respect to the alleged misconduct.

				As for the new exclusion ground: 1. The ground falls into the broader notion of “grave professional misconduct” and it has, as such, to be linked to wrongful conducts that have an impact on the entity’s professional credibility. The Commission is not departing from that notion. Furthermore, the second part of the (vi) indent clarifies the link with the EU budget, which is key in constructing a ground for exclusion from EU funds. 2. The wording ‘incitement, discrimination, hatred or violence’ accurately reflects the provision of the Framework Decision on combating hate speech and hate crime. 3. The objective is to make sure that EDES can address a misconduct that is incompatible with the values enshrined in Article 2 of the Treaty on European Union and the Charter of Fundamental Rights of the EU and carries a high reputational risks for the EU institutions (for instance an organization disseminating ideas that incite discrimination, breach of equality between women and men, or any form of violence). 4. The person or entity has to be – per EDES rules – an applicant or a recipient of EU funds.
125.	DK, NL and SE	Fiche 9	The reason and motivation for this new instrument is not clear enough. This goes beyond a merely technical update of the regulation and might be cost driving and change the current mandate of the commission.	Please see reply to question 75 on the reason and motivation for the new instrument, as already laid down in Fiche 9. The addition of a reference of contribution to global initiatives in the Financial Regulation 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). There is no change of the mandate of the Commission.
126.	DK, NL and SE	Fiche 10, Art. 22(2)(c) new	Could the Commission confirm that the omission of internal assigned revenue in Article 22(2)(c) (new) will be corrected?	Indeed, we can confirm that, although the IIA was limiting this visibility enhancement to EAR related to NGEU only, the Commission is willing to extend it to all assigned revenue, internal or external, and including those unrelated to NGEU. This will also allow information on the internal assigned revenue in the annex to the Draft budget/Budget to match the content of current Article 41(8)(a).
127.	DK, NL and SE	Fiche 14	Might there be a risk that the conditions for excluding participants to the award procedure are used too broadly?	There should not be such risk as the internal consultative process of the Commission ahead of adopting the Work Programme and the subsequent comitology on such decision will ensure the necessary checks and remedies.
128.	DK, NL and SE	Fiche 15	We share the concerns as mentioned by ECA in their opinion of the treatments of cancelled or reduced fines, in particular point 16 and point 25. Although it gives the Commission more flexibility in managing the budget, the proposal to record these costs as negative revenue means that the Commission would not be required to follow the ordinary budgetary procedures applicable to expenditure. There is a risk that the level of definitive fines or penalties may not cover compensation due in the same year. This means that, if this risk materialises, compensation would have to be financed from other revenue or, as a last resort, additional national contributions based on the Member States' Gross National Income (GNI). We do not see the need for a possibility for structural renovations through loans as this should be covered by strategical planning of building cost.	Reference is made to the extensive supporting material produced by the Commission in the context of the stand-alone proposal on fines (COM/2022/184 final). The Commission considers that the most appropriate way to record the compensatory interests on reimbursed fines or penalties is to deduct these amounts from the EU budget revenue. When a fine is definitive, it enters the budget, becomes general revenue and reduces the GNI contribution accordingly; it does not bring revenue for the administrative budget under Heading 7. Therefore, when the Commission has lost a case and has to reimburse a provisionally paid amount together with



				interest, such interest should not be paid from the administrative budget. The proposal aims at establishing the balance in a way that both the successful and unsuccessful cases shall be reflected on general revenue budget lines. From the policy point of view, fines result from the implementation of a Union policy (part III, title VII of the TFEU on the rules on competition) whilst expenditure under MFF Heading 7 is not policy-related. MFF Heading 7 should thus not bear the financial burden generated by implementation of a Union policy. Heading 7 is to finance administrative costs and not to ensure payments to companies. Similarly, using any other heading for this purpose would go against the purpose of the corresponding expenditure lines. The Commission considers that the risk that the amount of fines and penalties may not cover the actual costs of compensation due in the same year is very low, even non-existent, since: - the number and amounts of fines confirmed (Court cases won by the Commission) in any given period is typically much larger than those annulled or reduced (Court cases the Commission (partially) loses). - the Commission proposal is about the rate and budgetary treatment of interest ('compensation') on cases (partially) lost as the payment of such interest was recently imposed on the Commission by the Court's case-law. Interest is only a small fraction of the principal amount of the fine; - Under the Commission proposal the
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				budgetisation of definitive fines may be postponed, which would allow careful planning and a sufficient 'reserve' being available to cover the 'compensation' for (partially) lost cases. - Even if such an unlikely situation were to materialise, the Commission could also use a potential traditional own resources surplus (quite substantial in the last two financial years) before resorting to an amending budget. It should be noted that both in case of negative revenue, and of payment from the expenditure side, the GNI-based own resource will be increased with the amount of the compensation due. Revenue from fines and penalties result in a reduction of the national contributions of Member States into the EU Budget. Both in case of negative revenue, and of additional expenditure, the reduction on the national contributions would be lower and both options would lead to the same amount of the GNI-based own resource. However, the Commission solution allows for a rapid payment of the compensation due, thus avoiding compound interest from accumulating due to late repayment. *** As regards structural renovation building project financed with loans, in order to meet Green Deal objectives, the Commission will need to carry out major investments in the existing building stock (e.g. changes in heating systems) not falling under the notion of building acquisitions. Splitting the significant costs of the structural renovations over several years by repaying a loan would enable implementation of
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				such investments that would otherwise be difficult, if not impossible, to cover from the annual appropriations available in the budget, with the limitation of 2% annual increase of expenditure set by MFF. It is therefore proposed to clarify Article 271(6) FR and provide for a possibility of using a loan for such major investments of structural renovation.
129.	EE	Fiche 2, Art. 36	Member States already have operational risk management systems in place. The proposal in Article 36 of the draft financial regulation (FR) does not take into account the compatibility of Arachne with national IT systems. The use of Arachne should be subject to a decision by the MSs. The use of Arachne and/or data deployment based on the national anti-fraud strategy must take into account the already existing IT-systems and tools used in MSs. QUESTION: Does the Commission envisage, that Arachne should replace the existing national systems? If not, what should be the interaction between Arachne and national IT systems and tools developed for similar purposes?	The aim is not to eliminate the national systems. Please refer to the answer to question 7.
130.	EE	Fiche 2, Art. 36(10)	The Commission is responsible for developing, operating and collecting information on Arachne (Article 36 (10) of the draft FR). In order to avoid an increase in administrative burdens, it is important to avoid repeating requests from Member States for the same data. However, this requires Arachne to be designed in such a way that it is integrated with the existing Commission systems and that the compatibility problems of the different IT systems are addressed. QUESTION: How does the Commission intend to avoid multiple requests for data from Member States?	Please refer to the answer to question 7.
131.	EE	Fiche 2, Art. 36(4)(a)	Article 36 (4) (a) of the draft FR adds an anti-fraud strategy to the mandatory elements of the management and control system. The current wording does not specify whether this is a strategy established at national, fund or e.g. implementing authority level. QUESTION: What level of anti-fraud strategy has the FR draft meant?	An adequate anti-fraud strategy coordinated among <u>appropriate actors involved in the control chain</u> (e.g. of a fund) is an obligation imposed to all bodies and entities responsible for budget implementation, in the frame of the main elements of internal control put in place. The level of adoption of the anti-fraud strategy is not regulated. The Commission strongly encourages the Member States to adopt comprehensive National

				Anti-Fraud Strategies (NAFS) to create a coherent national framework for anti-fraud action, with clear objectives, actions and targets. Please also refer to the answer to question 95.
132.	EE	Fiche 8, Art. 138(2)	Article 138 (2) of the draft FR broadens the scope of EDES to shared management and also covers beneficial owners, affiliated entities and natural persons with powers of control or management over an entity. The amendment extends the scope of EDES considerably and entails an increase in administrative burden. However, a well-functioning Arachne functionality could also fulfil the current role of the EDES system and identify those for whom exclusion from subsidies should be considered. In addition, MSs already have exclusion systems and/or procedures in place for shared management. QUESTION: has the Commission mapped out the overlap between Arachne and EDES functionality?	The Commission cannot replace EDES with Arachne, because entities entered in EDES will always have to be heard prior to be sanctioned. The EDES database contains the information related to those sanctions. In light of the above, Arachne and EDES serve different purposes and there is no considerable overlapping. Whilst the Commission will explore the possibility to make the two system interoperable, the information stored in the two systems highly differ.
133.	EE	Fiche 2	For the implementation of the CPR funds (both 2014-2020 and 2021+), Member States shall publish extensive data on recipients of EU funds on national or regional level as well as on KOHESIO. On the basis of latter, systems have been set up at national level. The FR draft introduces a central notification requirement for all forms of funding. Creating a single web-site for the beneficiaries of all EU programs and instruments should not put any additional burden to MSs authorities, since the data is already provided and accessible for the Commission, which should be reused. QUESTION: To avoid duplication and extra workload can the dataset be subtracted from the same information presented for KOHESIO? Can the Commission elaborate further on how the process of data collection for the single website would work in practice over different policy areas, including CAP and Cohesion Policy?	To ensure the quality of the data to be published, the Commission does not intend to source data from other websites. Transmission of data to the Commission for publication should happen at least once a year. It should be transmitted in an open, interoperable and machine-readable format; to this effect the Commission will prepare a simple template for input in a Commission dedicated server allowing automatic transmission of whole data sets at once, not requiring one by one encoding.
134.	FI	Fiche 1, Art. 10	Is it not premature to include a reference to MAR 3 in the Financial Regulation? The underlying own resources that are covered by this regulation have yet to be discussed and possibly agreed.	Please refer to line 81.
135.	FI	Fiche 1, Art. 12,	Are the proposed amendments fully consistent with the MFF agreement and with the basic acts of the programmes? If not, to what extent and why? For	For a detailed analysis of the quotes of the relevant provisions in the basic acts, please refer to lines 83

		14 and 15	example, why would derogations, which are time-limited and relate to the 2021-2027 programmes, be added to the FR and be applicable without time limitation? As regards amendments duplicating the provisions of basic acts, what added value would such a duplication bring?	and 84. For time limitations, please refer to line 82. 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. So this constitutes a continuation of the current practice (the reference to last MFF basic acts are included in the current FR). To ensure legal certainty and clarity, it would in any case be necessary to open this provision as the existing references to the 2014-2020 generation of basic acts (which are now outdated) should either be completed or replaced by the references to the successor programmes. The added value is therefore to have one single consolidated text where a global overview of all budgetary principles and their specific derogations can be found.
136.	FI	Fiche 1, Art. 12(2)	Is the proposed text fully consistent with Article 16 of Regulation (EU) 2021/2116? The current language allowing carry over without time limitation goes beyond the provisions envisioned in the cited regulation.	Please refer to line 82.
137.	FI	Fiche 1, Art. 12(4)	Do the cited regulations envision limitations in euros to the funds that are carried over? If so, limitations need to be clear in the FR as well.	Please refer to line 83.
138.	FI	Fiche 1, Art. 15(2)	The Commission is invited to explain, how the proposed amendment would work in practice. How could funds be transferred between the Just Transition Fund and regional and structural policy programmes?	Article 15(2) relates to the treatment of transfers back in line with Article 26 of the CPR. Transfers to the JTF are governed by Article 27 of the CPR, which does not include a possibility for transfers back. Article 15(2) of the FR actually doesn’t apply to the JTF as it refers to Article 26 of the CPR, which concerns the possibility to transfer allocation from the funds

				under the CPR to another instrument under direct or indirect management (and not for transfer between shared management funds). The transfer back mechanism is outlined in Article 26(7) of the CPR and would work as explained below. If the Commission has not entered into a legal commitment under direct or indirect management for the transferred resources, the corresponding uncommitted resources may be transferred back to the Fund from which they have been initially transferred and allocated to one or more programme(s) of the respective Member State. In practical terms, let us assume that a Member State has decided to transfer part of its ERDF allocation to Horizon Europe. The Commission will then include these transferred resources in a global commitment, which will then be consumed by individual commitments following the signature of the respective grant agreements. However, if the Commission is unable to fully use the appropriations transferred from the ERDF, the Member State concerned has to submit a request for amendment of one or more of its cohesion policy programmes at the latest 4 months before the time limit for commitments set out in the first subparagraph of Article 114(2) of the Financial Regulation (i.e. 31 December of year n+1 following the respective global commitment). Based on this request, the respective part of the global commitment will be de-committed and the commitment appropriations will be made
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				available again on the respective ERDF budget line. Once the programme(s) amendment(s) is(are) adopted, the appropriations will be again consumed. In line with Article 26(9), the time limit for automatic de-commitments (the so called “N+3” rule) will start running in the year in which the corresponding budgetary commitment has been made.
139.	FI	Fiche 1, Art. 15(4)	Are the cited regulations consistent with the language in this Article? On what grounds does the Commission suggest a notably broader (no time-limitation, larger scope, automatic) exception to the main rule, which is the cancellation of decommitted commitments, compared with the MFF agreement and the NDICI Regulation?	Please also refer to answers to lines 83 and 84. 1. Article 30(2) of Regulation 2021/947 (NDICI) sets out the following: 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. This is the same wording as the one proposed in Article 15(4) of our proposal and the other legal texts quoted in our proposed text contain provisions making this Article 30(2) applicable to them (see below for a precise reference). Article 81 of Council Decision 2021/1764 (OCTs) sets out that : <i>Unless otherwise specified in this Decision, Union financial assistance shall be implemented in accordance with this Decision, the Financial Regulation, and, as appropriate,</i>

				<i>the following chapters of Title II of Regulation (EU) 2021/947:</i> <i>(...)</i> <i>— Chapter III with the exception of Articles 25(1), 25(2)(a), (b) and (c) and 25(3),”</i> This thereby makes Article 30(2) (part of Chapter III of Title II) of Regulation (EU) 2021/947 applicable to it. Article 10(2) of Council Regulation 2021/948 sets out that “2. <i>Support under the Instrument may also be implemented under the rules applicable to the External Action Guarantee established under Regulation (EU) 2021/947 (‘External Action Guarantee’)</i>” and recital 16 clearly sets out that “The rules and procedures laid down in Regulation (EU) 2021/947 should apply to the implementation of this Regulation, as appropriate, and the implementing provisions under this Regulation should mirror the provisions provided for in that Regulation”. Article 9(1) last sentence of IPA III (Regulation (EU) 2021/1529) also explicitly sets out the applicability of the above mentioned provision (Article 30 being part of Chapter III of Title II of Regulation (EU) 2021/947): “<i>Chapter III of Title II of Regulation (EU) 2021/947 shall apply to this Regulation with the exception of Article 28(1) of that Regulation</i>”. The proposed Article 15(4) therefore contains no new
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				or different rules compared to the sectoral basic acts and is proposed to be added in the FR in line with the “single rule book approach” (please refer to line 135 for more explanation on this approach).
140.	FI	Fiche 2, Art. 36(6)	How does the required storage of data regarding recipients of Union funding pursuant to Article 36(6) in the proposal relate to similar requirements of storage of data in other regulations concerning union programs? If other regulations require storage of more types of data than the provisions in the FR, which provisions ought to be applied and how ought the additional data be stored?	Please refer to the answer to question 85.
141.	FI	Fiche 2	It is positive that the Commission provides tools for the Member States to use to enhance the protection of the interests of the EU budget and protect it against fraud and irregularities. There is, however, no earlier agreement that such tools, like Arachne, should be compulsory for Member States to use. In the IIA, there are only recitals or provisions recalling or requiring the Commission to make a single data mining and risk-scoring tool available and encouraging its use by Member States were agreed. Each Member State may choose the most effective tools to use in the national context for the protection of the EU budget, in line with the risks related to EU spending in the particular Member State. Could the Commission provide more information on the practical benefits of the proposed system, also on a country-specific level, taking into account the heterogeneous nature of the different tools used in the Member States?	Please refer to the answers to questions 7, 8 and 9. The Commission considers that analysing relevant data on the recipients of EU funding from different perspectives, dimensions or angles and summarising it into useful new information, categorising it, and identifying relationships, correlations or patterns, can be an effective means to enhance the protection of the EU budget. A single integrated IT system for data-mining and risk-scoring provided by the Commission should facilitate risk assessment for the purposes of selection, award, financial management, monitoring, investigation, control and audit and contribute to effective prevention, detection, correction and follow-up of fraud, corruption, conflicts of interest, double funding and other irregularities. Finally, it is noted that the use of a single integrated IT system for data-mining and risk-scoring will be instrumental for the development of digital controls and audits.
142.	FI	Fiche 2	Could the Commission elaborate on the possibility to only address data differences for electronic recording and storing of data on beneficial ownership and evaluate such steps before proposing mandatory data-	Please see the answer to question 87.

			mining and risk-scoring?	
143.	FI	Fiche 2	The use of the data mining tool (Arachne) risk leading to delays in Member States' automated handling of applications, as the follow-up of Arachne searches must be done manually. Would the mandatory use for all lead to additional administrative burdens in managing the significant increase of derivative parts of the data-driven control, which may or may not require a reaction? Would the system be easy to adapt and apply in relation to the existing payment systems? As the tool is designed for the EU as a whole, might its application not fit well across Member States? How does the Commission assess the differences in effectiveness, efficiency and added value in implementing mandatory data-driven control across Member States?	Please refer to the answer to question 88.
144.	FI	Fiche 2	Would Arachne work for direct payments under the EAGF? Could the system be used to handle area- and animal-based support schemes without leading to unnecessary delays or extensive administrative burden for applicants or Member State authorities? Which are the "entrusted partners"?	Please refer to the answer to questions 7, 12 and 89.
145.	FI	Fiche 2	In what cases will the entrusted partners, OLAF, ECA, EPPO and other Union investigative and control bodies have access to data? Will it be on a case-by-case basis or will they have general access?	Please refer to the answer to question 90.
146.	FI	Fiche 2	How does the Commission plan to address the integrity and data protection aspects of the proposal? For instance, with such a broad use of the tools and databases, how could the Commission make sure that the data is used solely for the intended purpose? Is it possible for the Commission to delegate this responsibility to Member States, entrusted partners, and EU bodies? Could the Commission elaborate further on the proposed access to, storage and use of sensitive and potentially confidential data, such as data pertaining to the identity of natural persons?	Please refer to the answers to questions 91 and 92.
147.	FI	Fiche 2	What does data-mining and risk-scoring mean in practice: how will data be used e.g. to detect conflicts of interest or misuse of funds? Which other data would the nationally gathered data from shared management be combined with?	A single integrated IT system for data-mining and risk-scoring aims at facilitating risk assessment for the purposes of selection, award, financial management, monitoring, investigation, control and audit and contribute to effective prevention, detection, correction and follow-up of fraud, corruption, conflicts

				of interest, double funding and other irregularities. Arachne is first a comprehensive and integrated database of recipients and projects of EU funding. These data (projects, beneficiaries, contracts, contractors and expenses) is sourced from the IT systems of the bodies that implement the budget and is made available on a dedicated server of the Commission. After this first step, Arachne enriches the database of recipients and projects with other sources of information (shareholders, sanction lists, enforcement lists and adverse media lists, etc.) and identifies, based on a set of risk indicators, situations that might be susceptible to risks of irregularities, fraud and conflicts of interest. In practical terms, Arachne provides users with risk indicators combining data sourced from the participating Member States' programmes (internal data) with information sourced from the external databases (external data provided by ORBIS and World Compliance). The Arachne IT system is therefore suited to become an integrated and interoperable electronic information and monitoring system. The tool can help in addressing the problems of data fragmentation and allows analysing data from different perspectives, dimensions or angles and summarising it into useful new information, categorising it, and identifying relationships, correlations or patterns, and therefore is an effective means to enhance the protection of the EU budget.
148.	FI	Fiche 2	How will the Commission take into account the EDPS Opinion of 7 July 2022? The Commission is invited to give a detailed account and, where necessary, draft provisions compared the original proposal. It seems that several	EDPS, in its opinion of 7 July 2022, included 8 main recommendations which relate predominantly to clarifications concerning the IT tool to be used. Only

			amendments should be made to the proposal on the basis of the Opinion.	two recommendations include actions to take with regards to the technical safeguards. The Commission will take the recommendations of the EDPS into account and is currently assessing the EDPS opinion. Since majority of the recommendations has been already answered by the data protection impact assessment on the current data mining and risk scoring tool Arachne, which was validated by the data protection officer of the Commission and published on 22 July 2022, the Commission is assessing to what extent the text of the revised FR needs to be amended and what exact wording will have to be introduced. On the basis of the outcomes of the ongoing assessment and the number of the necessary amendments, the Commission will define whether the amendments shall be done directly to the proposed text of the FR (including proposals of the wording as well) or would opt for another way, e.g. annex to the revised FR.
149.	FI	Fiche 2	An introduction of the new IT tools 2028- would allow for a certain time for implementation. Has the Commission studied what changes must be made in national regulations, directives and processing routines? Would the introduction of a new tool considerably increase the administrative burden for beneficiaries as well as for administrative authorities? The proposal will entail requirements for IT development and adaptation of current IT systems.	Please refer to the answer to question 7.
150.	FI	Fiche 2	The Commission is requested to elaborate further, as regards shared management, e.g. what new information would need to be included in national IT systems (information on projects, applicants etc.), how data on contracts would be processed, and how data would be transferred. Is there any potential for simplification? What administrative burden will be added on the national authorities? The Commission should explain how the process would work step by step. What are the responsibilities of the Commission	Please refer to the answer to question 7. The concrete functionalities and processes of the new system are currently under development and will be based on feedback received from Member States and other users.

			and of the national authorities? How would responsibility be shared as regards possible data errors? What safeguards are in place? How would different EU level IT systems and numerous national IT systems interoperate in practice? At the national level, which functions would be automatic and which would require manual work?	
151.	FI	Fiche 2, Article 36(4)(a)	The addition to the Article specifies that an efficient internal control shall also be based on the implementation of an appropriate anti-fraud strategy coordinated among appropriate actors involved in the control chain. What is meant by an anti-fraud strategy? Is it supposed to be a formal document or could it be e.g. praxis developed by managing agencies or a group of steering documents?	Please refer to the answers to questions 95 and 131.
152.	FI	Fiche 3	The Commission is invited to provide an analysis of the economic and budgetary impact since this amendment seems to generate additional engagement by the Commission, EU institutions and Member State agencies.	Please refer to the answer to question 96.
153.	FI	Fiche 3	The Commission proposes a requirement to publish unique identifiers of recipients of EU funding that are legal persons (such as VAT or Tax identification number) to allow for an easy and accurate identification, filtering and grouping of recipients of EU funding in all methods of EU budget implementation. Is this in line with data protection regulation?	Please refer to the answer to question 97.
154.	FI	Fiche 3	Could the Commission elaborate on the compatibility with the legislation on data protection?	As indicated in the record on Arachne (DPR-EC-00598.3), the Commission demonstrates all the main principles of the personal data processing, i.e. lawfulness and transparency, data minimisation, storage limitation, purpose limitation, integrity etc. It clearly indicates the distinction of roles, the processing as such and additional safeguards. Although the EDPS provided their first opinion on Arachne still in 2017, the new data protection impact assessment was carried out on the integrated IT system for data-mining and risk-scoring (Arachne) as a response to the novelties into the system. The data protection officer approved the data protection

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				impact assessment on 22 July 2022 without notification obligation to the EDPS. In addition, the Commission consulted the European Data Protection Supervisor with regards to the revision of the Financial Regulation. On 7 July 2022, the EDPS provided its opinion on the new proposal of the Financial Regulation, including some comments and 8 recommendations. These include particularly additional clarifications. Only 2 recommendations require actions to take with respect to the technical safeguards. The Commission will take all the recommendations of the EDPS into account and is currently assessing the EDPS opinion. Since majority of the recommendations has been already answered by the data protection impact assessment on Arachne, which was validated by the data protection officer of the Commission and published on 22 July 2022, the Commission is currently assessing further steps to take.
155.	FI	Fiche 3	How will the Commission take into account the EDPS Opinion of 7 July 2022? The Commission is invited explain in detail which amendments should be made to the proposal on the basis of the Opinion.	Please refer to the answer to question 148.
156.	FI	Fiche 3	Would the new internet site and database allow for a member of the public to make information searches on a large number of natural persons? If yes, would this be consistent with data protection legislation?	On the basis of part 5 of the record on Arachne (DPR-EC-00598.3), the integrated IT tool- Arachne- shall not be accessible to a wide public. Such an approach would not be in line with the purpose limitation principle. Therefore, the access to the data from the integrated IT system Arachne shall be given solely to a limited number of users within the Management Authorities responsible for granting and appraising applications, selecting projects for funding, managing administrative and on-the-spot verifications, authorising payments, collecting data on each

				operation, and establishing anti-fraud measures. In addition, MAs should provide guidance and support to beneficiaries. In addition, access shall be given to EC staff of chosen Commission's services dealing with fund management and Arachne. In addition, only a limited number of users within the Management Authorities will have the possibility to upload data in the system. All other users in the Member States will have restricted read access. Some of them will also receive, in the context of the case management workflow, restricted write access. Management Authorities will have access solely to the data relating to their operations. Personal data will be accessed on a need-to-know basis. The system can only be accessed by users through the Commission EU Login personal username and password, linked to an Arachne account; and using a 2-factor authentication method.
157.	FI	Fiche 3	The Commission is invited to explain in detail how the process of data-gathering and publishing would work step by step. What are the responsibilities of the Commission and of the national authorities? Would every Member State have to designate one body that would gather all information from said Member State and submit it annually to the Commission? As there is are so many recipients of EU funds and many different programmes, it would be a difficult annual exercise including large amount of data, including personal data. What safeguards are in place? Would the IT system (FTS) work with other systems: Arachne, EDES and national IT systems? Transfer of information would need to be economic and simple.	Transmission of data to the Commission for publication should happen at least once a year. It should be transmitted in an open, interoperable and machine-readable format; to this effect the Commission will prepare a simple template for input in a Commission dedicated server allowing automatic transmission of whole data sets at once, not requiring one by one encoding. The concrete processes are under development.
158.	FI	Fiche 3	Would the proposed amendments in the FR on publishing data of EU fund recipients be consistent with national legislations on transparency and on publicity of documents? Has the Commission studied this question while preparing its proposal?	The creation of a common EU level public database consolidating, centralising and publishing information on recipients/projects financed by the EU budget would overcome the current fragmentation, enhance

				transparency and facilitate public scrutiny. However, the establishment of such public database should not be an obstacle to maintaining the existing publication and transparency obligations for Member State bodies and entrusted partners, as it is important that those ensure communication and visibility to the EU citizen of their use of the EU budget. The Commission believes that a proportional approach for publication of data taking into account personal data protection, avoidance of duplication of administrative procedures and reduction of the administrative burden needs to be ensured.
159.	FI	Fiche 3, Art. 38(d)	Why is “legally” removed in revised article 38 d?	Please see answer to question 99.
160.	FI	Fiche 3, Art. 38(4)	Could the Commission confirm that publication shall be in accordance with sector-specific rules in case of shared management, and that there are no requirements for additional information?	Please see answer to question 100.
161.	FI	Fiche 3, Art. 38(6)	Does the requirement set out in paragraph 6 to transmit VAT identification number or tax identification number go beyond the requirement in article 49(3) CPR (Regulation (EU) 2021/1060)? Is it sure that the content and deadline for transmission to the Commission does not impose on the managing authorities to gather extra reports, besides those the managing authorities must produce at least every four months in accordance with Article 49(3) CPR? Each report is time consuming while separate deadlines lead to complications.	Please see answer to question 101.
162.	FI	Fiche 4	Could the Commission further specify, which changes regarding financial instruments, budgetary guarantees and financial assistance are technical changes and which are substantial changes? What are the budgetary and economic impacts of these amendments? Are there changes that would allow for later or less reporting, and if yes, would this have an impact on the budgetary authority? Will all essential information be reported in a timely fashion also in the future, e.g. information on the provisioning rate?	Please see reply to question 60. For impact on reporting please see reply to question 61.

163.	FI	Fiche 4, Art. 213(3)	While acknowledging that article 213(3) is outside the scope of the recast, could the Commission please provide data on the amount of revenue, including dividends, capital gains, guarantee fees and interest on loans and on amounts on fiduciary accounts paid back to the Commission or on fiduciary accounts opened for financial instruments or budgetary guarantees and attributable to the support from the budget under a financial instrument or a budgetary guarantee, that have been entered in the budget as miscellaneous revenue over the last three years?	Please see the reply to question 102
164.	FI	Fiche 5	Remunerated external experts and lists: In what cases does the Commission use the services of remunerated external experts? How extensive is the problem and how does it effects, in practice, the Union's competitiveness? What are the budgetary consequences of the proposed amendment? Could the exception to the main rule be more specific? Could the exception be possible only after a search for an expert has in fact failed? As regards lists, what negative effects might there be if the validity of lists was extended? What difference is there between remunerated external experts, members of expert groups, and special advisers?	a. In what cases does the Commission use the services of remunerated external experts? The external experts under current Article 237 FR are contracted to provide opinion and advice at the request of EU institutions and/or to assist the institutions in evaluation of grant applications, projects and tenders and monitoring of their implementation. b. How extensive is the problem and how does it effects, in practice, the Union's competitiveness? Please see reply to question 103. c. What are the budgetary consequences of the proposed amendment? Could the exception to the main rule be more specific? Please see reply to question 103. d. Could the exception be possible only after a search for an expert has in fact failed? Increased remuneration will be possible if no experts have been found on the market. There may be cases where prior market research has demonstrated that no experts

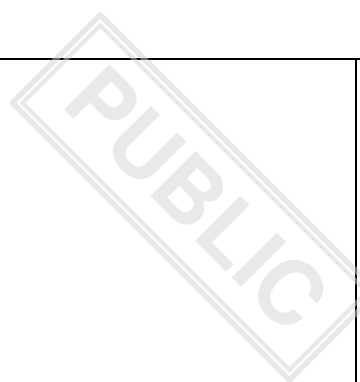
				are available with standard remuneration. e. As regards lists, what negative effects might there be if the validity of lists was extended? This exception is to be used in situations as described in reply to question 104. It will not have a material budgetary impact or other negative effects. f. What difference is there between remunerated external experts, members of expert groups, and special advisers? Please find below some differences : - The remunerated external experts follow the rules under Article 237 FR and are experts selected <i>ad personam</i>, based on their individual capacity and professional experience to provide opinion and advice at the request of EU institutions and/or to assist the institutions in evaluation of grant applications, projects and tenders and monitoring of their implementation. They are remunerated for their work and receive travel, accommodation and daily allowances. - The members of expert groups are governed by Commission Decision C(2016) 3301 establishing horizontal rules for creation and operation of Commission expert groups. These expert groups are consultative bodies set up by the Commission to assist it in proposing EU legislation or in carrying out monitoring, coordination or cooperation tasks connected with Union policies. These experts
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				are in principle not remunerated but receive reimbursement for travel and subsistence expenses. Nevertheless, in exceptional cases, members of an expert group may be remunerated for additional tasks which come in support to the group's work, in line with the abovementioned decision. - The special advisors are a special category of staff. According to the Staff Regulation, the remuneration of the special advisers shall be determined by direct agreement between the adviser concerned and the contracting authority.
165.	FI	Fiche 5	EU public procurement: The proposal includes an update on the definition of a crisis. What practical implications would an extension of the definition of a crisis have? Could the Commission further specify, in which crisis situations could the EU institutions procure on behalf of Member States? How would it work step by step? Would a Member State pay for such goods and services and how much?	For the first question please see the answer to question 106. The amended provisions on joint procurement were triggered by the needs brought by a crisis situation such as the COVID-19. There are no specific pre-defined crisis situations. As regards budgetary matters, they should be defined prior to launching any calls for tenders based on the agreement with the MS. Depending on the needs or budget availability, several options are possible; either the MS may agree to pay or the Union budget, or both will contribute jointly.
166.	FI	Fiche 5	Digitalisation is an important goal in EU public procurement. However, what additional administrative costs would the proposed amendments cause for the EU institutions, bodies and agencies? Would IT system need to be changed?	The new procurement related provisions regarding digitalisation reflect in some cases changes already implemented by the EU Institutions, like the use of virtual public openings in open procurement procedures. Savings from digital optimisation of processes will be available when the corporate IT solution is fully implemented.
167.	FI	Fiche 5	Are there solid grounds for all proposed exceptions to the main principles of EU public procurement? Are FR rules aligned, as far as possible, with the	We understand that the question mainly concerns the simplified measures proposed for crisis situations.

			Public Procurement Directive?	Those new provisions were limited to what is necessary to deal with exceptional situations faced during a crisis. Therefore, there are solid grounds for these provisions. The PPD already foresees simplifications for urgency situations (i.e. the most important one being the use of the negotiated procedure without publication of a contract notice). The need for alignment of the PPD following the COVID 19 crisis is a separate issue, not subject to this legislative procedure.
168.	FI	Fiche 5	Could the Commission further explain what kind of economic and budgetary impacts would amendments on buildings have? What problems does the proposal aim to solve as regards buildings? Are the proposed solutions necessary and proportionate? Could there be alternative solutions?	The modifications brought to the provisions on buildings do not have any kind of economic and budgetary impact as they concern removing the obligation to invite minimum 3 candidates in the negotiated procedure for building contracts given that this is not always possible for real estate. Contrary to services or goods where generally there are several alternative offers available, in real estate, location and surface (m2) are key elements for the award. Yet, these elements are known already in the prospection phase, which means that the Authorising officer is able to start negotiation with the candidate which building stands out in terms of required location and square meters needed. It should also be noted that a negotiation procedure which includes technical visits, legal due diligence on the building and its permits, analysis on the necessary fitting outs and negotiation of price and contractual conditions, in addition to the approval by the Budgetary Authority takes several months in cases foreseen in Article 271 FR (previously Article 266). In a dynamic real estate market, this means that the buildings initially proposed are sold or rented in the meantime.

169.	FI	Fiche 6	Grants. Are all amendments technical in nature? Do some of the amendments involve important impacts e.g. economic and budgetary impacts?	None of these changes would imply significant economic or budgetary impacts. Changes are mostly clarifications of existing rules in line with current custom or policy in relation to grant and prize implementation.
170.	FI	Fiche 6	Prizes. Could the Commission give examples of non-financial prizes by EU institutions other than DiscoverEU? Could the Commission further explain the need for the amendments given that DiscoverEU was indeed possible without such amendments? Could the Commission provide data on the amounts of Union support in the form of non-financial prizes in 2021, and estimates for 2022 and for 2023.	Please see replies to questions 107, 108 and 109.
171.	FI	Fiche 7, Art. 2, 133, 154, 244	How do EU institutions donating goods, services, supplies or works (articles 2, 133, 154, 244) impact the EU budget as well as the balance sheet of these institutions? What are the currently estimated financial implications?	Please see reply to question 110.
172.	FI	Fiche 7	Could the Commission confirm that the administrative costs of such donations will be financed under Heading 7?	Please see reply to question 111.
173.	FI	Fiche 7	Is the amendment necessary or are there already provisions, which allow this kind of an activity?	This amendment is necessary in order to provide legal certainty, as there is currently no provision in the Financial Regulation containing the rules applicable to non-financial donations. This lack of a general legal framework in the Financial Regulation (FR) would make it difficult for the Union institutions to use non-financial donations to provide support when needed, and when a specific instrument such as the ESI Regulation is not in place (the non-financial donations helping during the COVID-19 crisis were done based on the ESI instrument).
174.	FI	Fiche 7	What is the link with this amendment and crisis management? Are there other situations where the amendment would apply than crisis situations?	This amendment is linked to crisis management given the use of non-financial donations in order to tackle the COVID-19 crisis. The possibility for the Commission to donate goods or supplies with full value to Member States or selected partner

				organisations has also been used as a form of emergency support under the Emergency Support Instrument Regulation (ESI). Under this instrument, disinfection robots have been donated to hospitals during the COVID-19 pandemic in order to limit the spread of the virus and protect medical staff and patients, while relieving cleaning staff from the risky activity of disinfection. In addition, because of supply issues with sea containers since the beginning of 2021 and the Suez Canal crisis that negatively affected the global logistics market, the Commission also supported Member States with the transport of COVID-19 vaccination-related equipment and therapeutics under the ESI Mobility Package, via the use of the Commission's transport broker. As regards the second question, we confirm that the amendment would also cover non-financial donations for non-crisis situations, e.g. non-financial donations of goods with very limited or no residual value, such as computers, monitors or other equipment no longer needed, etc.
175.	FI	Fiche 7	Will the same safeguards apply as with regard to grants? How will equal treatment between recipients be guaranteed? Could the proposed amendment be drafted in a more specific way?	The principles applicable to grants are the following (according to Article 188 FR): (a) equal treatment; (b) transparency; (c) co-financing; (d) non-cumulative award and no double financing; (e) non-retroactivity; (f) no-profit. However, the principles of co-financing, no double financing and no-profit are financing-related principles which cannot apply to non-financial donations. The non-retroactivity principle means that a grant may not be awarded for an action which has already begun and is only applicable to grants. Non-financial donations are not linked to a specific action.



				Therefore, the only principles applicable to non-financial donations from the principles applicable to grants are equal treatment and transparency. Those principles could be guaranteed by donating services, supplies, works in an impartial manner and by treating the same way recipients that are in the same situation. This could be done for example by launching an open call for applications, or by launching invitations for applications in specific cases such as monopoly, crises situations, urgency, humanitarian aid. Due to the variety of cases where the instrument could be used, and especially in a crisis context, the provisions should not include details on procedures which may constrain the implementation, while basic and relevant principles of Union financing should always be observed.
176.	FI	Fiche 8	Registration in the EDES database is possible without having to wait for a final national court judgment or decision. How does such a system for exclusion of actors act together with the national legislation and case law in the Member States?	In the absence of a final judgment, the EDES Panel can perform a preliminary classification in law and recommend a sanction if the facts and findings established against the person or entity fulfil all the elements of the ground concerned. In such case, the responsible authorizing officer, having regard to the Panel's recommendation, may exclude the person or entity. Should the final judgment come at a later stage and find the person or entity not guilty, the sanction is immediately lifted (see Article 139(3)). The Panel's role is crucial in (i) ensuring the rights of defence and due process by means of a contradictory procedure; (ii) assessing the sufficiency and reliability of evidence gathered against the person or entity concerned; and (iii) issuing a recommendation that abides also by the principle of proportionality. This is

				enshrined not only in the FR provisions but also in the Rules of Procedure of the Panel. The role of the Panel in safeguarding the procedural rights of the person or entity has been confirmed also by the ECJ in its case law.
177.	FI	Fiche 8	Could the Commission further explain the threshold for exclusion without a conviction or court decision, i.e. on the basis of “findings at the EU-level”? The provision contains exclusion criteria and decisions on exclusions, and it may have far-reaching consequences to the listed – up to five years of exclusion. How will the Commission ensure that the process will be sufficiently transparent, and that the legal certainty of applicants and/or beneficiaries can be ensured? Are there any proposed safeguards to ensure that such an exclusion is a proportionate measure? Could the Commission provide a more thorough legal analysis of the proposal?	Please see the above reply.
178.	FI	Fiche 8	As regards criminal procedure, should a report to EDES only be made after a decision has been made at the national level to close a preliminary investigation?	For what concerns shared management, only two situations can trigger an EDES procedure: 1) A final judgment/administrative decision. 2) Findings at EU level (OLAF, EPPO, ECA etc.). In the first case, the MS will have to inform the Commission via IMS. In the second case, the AOR of the Commission and the MS will be notified by the relevant authority and the AOR will launch the EDES procedure.
179.	FI	Fiche 8	Will definitions, such as e.g.. affiliated entities, make it more difficult to apply the FR?	Please see reply to line 121
180.	FI	Fiche 8	What is the technical relation between Arachne and EDES? Would the two IT systems be integrated in some way? In that case, what would be the synergies?	Please see replies to question 123.
181.	FI	Fiche 8	Is exclusion due to incitement to discrimination, hatred or violence introduced because of preceding issues? Would there be any demarcation issues due to the broad nature of the definition? Could the Commission further elaborate on the scope of this proposed grounds for exclusion? What constitutes an “incitement”, “discrimination”, “hatred” or “violence”	Please see reply to line 124.

			according to the proposal? In what context and by whom must an incitement be made to lead to exclusion? Might the proposed grounds for exclusion lead to free speech concerns?	
182.	FI	Fiche 8	The Commission should give a detailed account on the impacts of the proposed amendments, including on national authorities. What kind of and how big administrative costs, administrative burden and risks would the proposed amendments cause to national agencies/administrations? Which functions in the IT system would be automatic and which would require manual work? Would the system be easy and practical to apply in shared management? Would transfer of information be economic and simple?	1. The consultation of the EDES database by the Member State managing authority would become mandatory. However, this will not necessarily bear additional administrative burden/cost. The Commission already grants access to all entities entrusted with budget implementation tasks. Most Member States already use it. 2. The consultation of the database currently requires manual work. The Commission may explore new features of the system evolving towards a more practical approach. 3. Information on (possible) exclusion cases from the MS will still be channeled via IMS: so nothing will change.
183.	FI	Fiche 8	Why has the Commission not proposed to carry on with a voluntary system also in the future? In case a compulsory system is proposed, why is there no transitional period at least until 2028 as with Arachne and FTS? Regarding RRF in particular, a long transitional period would be essential to allow for smooth implementation without considerable delays. Without a transitional period and if national legislation on RRF had to be amended it would create a very important delay.	The Commission does not foresee a transitional period for the entry into force of the new rules on EDES, as there are limited and proportionate changes that do not require any technological improvement (unlike the data mining tool). There is no technical impediment that would justify further delaying the protection of the most significant part of the EU budget.
184.	FI	Fiche 8	How will EDES work in direct management, in indirect management, in shared management, and in RRF type of management? What are the essential differences?	The current legal framework applies only to direct and indirect management. The extension of EDES to shared management/RRF type of management will not concern (i) all the grounds of exclusion (Article 139(1)), (ii) all the situations that can trigger an exclusion (Article 139(3),

				fourth subparagraph). To the contrary, it will concern only the following cases: 1. Most serious misconducts (Article 139(1)(c)(iv) and (d)), 2. Final judgments and/or findings at EU level (Article 139(3)(a) and (d)).
185.	FI	Fiche 8	How would the EDES panel work in practice?	The role of the EDES Panel is to assess at central level whether the application of administrative sanctions is justified in the cases brought to its attention by the authorising officers. In particular, the Panel is asked to issue a recommendation in the absence of any final judgment or final administrative decision. The Panel also ensures the right to be heard of the person or entity concerned by handling the contradictory procedure. The Panel is composed of: - a high-level independent chair and his Deputy; - two permanent representatives of the Commission as the owner of the system, expressing joint positions; - the requesting authorising officer or an ad-hoc representative. In addition, a representative of the Legal Service of the Commission and, where necessary, of the OLAF/EPPO are invited as observers to the Panel meetings. In general, each case is examined by the Panel in two phases. In the first phase, the Panel examines the facts and findings and performs a preliminary

				qualification in law of these facts. The Panel ensures the right to be heard by sending a letter to the entity or person concerned, in which the entity or person concerned receives all the required information and is given the possibility of submitting observations in writing. In the second phase, the Panel examines the received written observations and proceeds to adopt a recommendation, which is addressed to the requesting authorising officer.
186.	FI	Fiche 8	How would the EDES black list work? Do national authorities have margin of discretion and if yes, when? What does it mean in practice that national authorities would need to check EDES database and to implement exclusion? Would the grounds for exclusion be visible to all users including at the national level? What is the legal ground for national authorities to implement the exclusion in practice? How and in what document would a national authority justify such a decision to the applicant? Could an applicant appeal a decision where the national authority would implement an exclusion registered in the IT system? How will it be guaranteed that the Rule of Law will be respected in all situations?	How does EDES blacklist work? → See the reply above. Do national authorities have margin of discretion? → When a case concerns funds disbursed under shared management, the panel shall give the Member State the opportunity to submit observations. However, the decision on the sanction is taken by the AOR of the Commission and the MS will have the obligation to enforce such decision on the ground (i.e. by rejecting the entity excluded). What does it mean in practice that national authorities would need to check EDES database and to implement exclusion? → The management authority will be required to check the EDES Database in the framework of all ongoing award procedures (procurement, grants, prizes, selection of remunerated experts or indirect management, including the implementation of financial instruments), in particular before the award/contract signature, and reject any applicant listed therein. Would the grounds for exclusion be visible to all users

				including at the national level? → Yes. What is the legal ground for national authorities to implement the exclusion in practice? → It will be Article 145(5). How and in what document would a national authority justify such a decision to the applicant? → This will be part of the correspondence with the applicant in the context of the exclusion procedure. Where necessary, the Commission can develop a template. Could an applicant appeal a decision where the national authority would implement an exclusion registered in the IT system? How will it be guaranteed that the Rule of Law will be respected in all situations? → Decisions of exclusions are subject to the unlimited jurisdiction of the ECJ.
187.	FI	Fiche 8	How will the Commission take into account, as regards EDES, the EDPS Opinion of 7 July 2022?	The EDPS opinion of 7 July 2022 focuses on the data-mining tool without any reference to EDES. In addition, the EDPS has already vetted the EDES system.
188.	FI	Fiche 8	Could the Commission further elaborate how would the non-automatic exclusion, e.g. on the basis of conflicts of interest, work?	In the absence of a final judgment, the EDES Panel can perform a preliminary classification in law and recommend a sanction if the facts and findings established against the person or entity fulfil all the elements of the ground concerned. In such case, the responsible authorizing officer, having regard to the Panel's recommendation, may exclude the person or entity. In general, each case is examined by the Panel in two phases. In the first phase, the Panel examines the facts and findings and performs a preliminary

				qualification in law of these facts. The Panel ensures the right to be heard by sending a letter to the entity or person concerned, in which the entity or person concerned receives all the required information and is given the possibility of submitting observations in writing. In the second phase, the Panel examines the received written observations and proceeds to adopt a recommendation, which is addressed to the requesting authorising officer.
189.	FI	Fiche 9, Art. 240	Could the Commission further explain the grounds for the amendment? The proposal goes beyond a merely technical update. What are the foreseeable financial and budgetary impacts, including indirect impacts? What are the practical situations that the Commission envisages? Is there any other provision in the current FR or in other EU legislation, which would already allow for such implementation of the EU budget?	The proposed instrument for Union contribution to global initiatives is a budget implementation tool: it does not affect the nature of the resources used and thus has no financial or budgetary impacts. 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. Please see response to question 76 as regards the practical situations: There is no participation in such initiative so far 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. As laid down in Art. 240(1), the new instrument for global initiatives would only be used if budget implementation instruments provided for in other Titles of this Regulation would not be sufficient to achieve such Union policy objectives. Please see response to question 75 as regards more details on the grounds for this amendment and

				current provisions in the FR: Due to the lack of an appropriate vehicle in the Financial Regulation matching the logic of a multi-donor, pooled funded global initiative, several issues have arisen at EU level during recent appeals to join global initiative. It is for this reason that Article 240 is proposed, as without it the EU would be deprived of the possibility to avail itself of such initiatives, which are becoming an increasingly used mechanism for addressing global challenges together with Member States.
190.	FI	Fiche 9, Art. 240	What does the Commission mean by the following drafting in Art. 240: "Union contributions to global initiatives shall be subject to the following conditions, taking into account the nature of the Union financing"?	It means that we need the conditions described in the Article to be fulfilled in order to allow for the Union contribution under Art. 240. Without fulfilment of these conditions, the EU cannot contribute to global initiatives under this Article. The fulfilment of these conditions need to be described in detail as a justification in the Financing Decision to be submitted to comitology.
191.	FI	Fiche 9	How could the budgetary principles as well as audit and control be enforced in such situations, in practice?	As per Art. 240(2)(v) FR, the EU has to ensure that the rules of the initiative have appropriate systems to prevent and combat irregularities and fraud as well as to report on their functioning at regular intervals and there are appropriate rules for recoveries of funds by the Fund including their use for the same initiative and have to allow the OLAF, EPPO and ECA to request additional information and carry out joint audit, control, or investigative missions with the relevant body under the initiative in line with Article 129. In practice this means that the implementing entity and the Governing Board of the initiative are responsible for carrying out audit and control and the Governing Board reports back to the donor at regular intervals. Thus, the Board of the initiative will provide

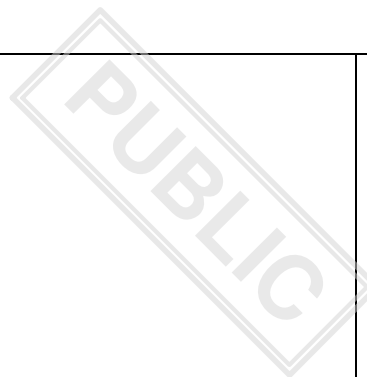
				information to the Commission (including OLAF, EPPO and ECA) and upon this it will be possible to ask for additional information and to join investigations launched by the Board in cases of serious irregularities.
192.	FI	Fiche 9	What are the implications for the system of EU's own resources considering that one of the conditions is that at least one Member State directly supports the same international initiative on the same conditions?	This is a budget implementation tool: it does not affect the nature of the resources used.
193.	FI	Fiche 10, Art. 22(2) new	Could the Commission confirm that the omission of internal assigned revenue in Article 22(2)(c) (new) will be corrected?	Please see reply to line 126.
194.	FI	Fiche 10	Could the Commission further specify, which changes regarding assigned revenue are technical changes and which are substantial changes? The Commission should provide an account of the impacts of substantial changes.	Both changes are to be considered as substantive from a recasting technique perspective (and therefore marked as grey shaded in the proposal). The first change will enhance transparency and visibility as the information on the expected level of the (internal and external) assigned revenue to be received in following year (year of the draft budget) will be annexed to the draft and budget adopted and will not be presented in the working document which is considered more as a "technical" document only attached to the draft budget. The second change will have an impact on the timing of cashing of the specific additional financial contributions of the Member States (i.e., the ones not included in 21(2)(a) at the moment), which will occur only when the payment need arises (and not when the commitment is signed).
195.	FI	Fiche 10	Would some changes allow for later or less reporting, and if yes, does this have an impact on the budgetary authority? Would all essential information be reported in a timely fashion also in the future? In particular, the forecast	The proposed change is in line with the intention of the Institutions provided in the Interinstitutional agreement (in particular part H with respect to EURI)

			for external assigned revenue for the following year. What are the reasons to change the FR? Would it not be suitable to publish the forecast as a Working Document to the Draft Budget also in the future (and not as an Annex to the budget)?	by expanding the approach on reporting on the use of such revenue to all types of external and internal assigned revenue. This would allow providing the budgetary authority with all necessary information in one single document and without repetition and/or fragmentation of the information. This information will be available at the time of adoption of both the Statement of Estimates and the voted budget.
196.	FI	Fiche 10	Is internal assigned revenue adequately covered by proposed reporting provisions?	Please see our reply to line 126. The reference to internal assigned revenue may be added under Article 22(2)(c) in the course of the negotiations. In addition, the Commission reports on the implementation of the internal (and external) assigned revenue in the preceding year in the Working Document V as stipulated in Art. 41(3)(d).
197.	FI	Fiche 10	Possible additional contributions by Member States. What are the specific problems that the proposal tries to solve? Why is the current FR and other EU legislation not sufficient? The Commission should provide an account of the impacts of these changes, including indirect economic and budgetary implications. What implications would such an amendment have on the Commission's own financial management; are there risks? Could the Commission proposal be problematic in view of the Own Resources system?	The current text sets out a different treatment between i) specific additional contribution from MS in the area of research and external actions and ii) other specific additional contributions which are created by a basic act in accordance with Article 21(5). In case of i), these appropriations benefit from the specific availability rule under Article 22(2)(a) (possibility to commit as from the signature of the agreement), while in case ii) all appropriations must be cashed in by the Commission before any commitment may be made (and thus well before the payment is due). This leads to a situation of unnecessary "parking of money" on the EU accounts and, from the Member State perspective, it requires transferring the amount well before it is actually needed. This change will not have any economic and budgetary implication for the EU budget but it will avoid that the

				EU budget receives amounts not yet necessary. The proposal will have no impact on the own resources system, which follows a different logic and legal framework and is not affected by the stream of assigned revenue coming on top of MS's contributions to the voted budget.
198.	FI	Fiche 11	The Commission should further explain the impacts of these changes, including economic and budgetary impacts. How would reporting requirements be changed? Are there impacts on the budgetary authority? Would all essential information be reported in a timely fashion also in the future?	The proposed change aims at increasing and streamlining reporting obligations in relation with borrowing and lending. A comprehensive overview of borrowing and lending would be added, covering all borrowing and lending activities, including those based on Article 122 TFEU mechanisms (EURI). The overview should cover information already provided, in a comprehensive way and allow to add further information, as needed. There would be no economic and budgetary impact. All essential information will still be reported in a timely fashion.
199.	FI	Fiche 12	Commission should further explain the impacts of these changes, including economic and budgetary impacts. How would reporting requirements be changed? Are there impacts on the budgetary authority? Would all essential information be reported in a timely fashion also in the future?	These changes will have no budgetary and economic impact. Please see also reply to question 61.
200.	FI	Fiche 13	The Commission should provide an account of the impacts of these changes, including economic and budgetary impacts, and including indirect impacts.	These changes will have no budgetary and economic impact, in the sense that they will not increase the overall costs of operations/budget implementation: on the contrary, the legal certainty they provide can bring savings in time spent on negotiations etc.
201.	FI	Fiche 13	What are the concrete problems that the proposal aims to solve? Are there any alternatives to the proposed amendments, legislative or other? Are all proposed amendments justified by the proportionality principle, taking also into account the protection of EU financial interests?	The implementation of the pass on obligation in a context of indirect management is the concrete problem to address. Fiche 13 provides further details. The proposal is based on proportionality (reliance on

				rules of the partners) while ensuring protection of Union financial interests.
202.	FI	Fiche 13	What are the impacts on national authorities? E.g. exemption from pillar assessment.	Public entities are eligible to work under indirect management. The proposal to exempt a sub-category of public entities, e.g. managing authorities implementing Union programmes under shared management in Member States will enable them to implement the budget under indirect management without a pillar assessment being necessary.
203.	FI	Fiche 14	Might there be a risk that the conditions for excluding participants to the award procedure are used too broadly?	Please see the reply to question 127.
204.	FI	Fiche 14	Would the proposal respect the division of competences between the EU and the Member States with regard to security and the public order? Could the Commission explain more in detail and give examples, which kinds of grant procedures and public procurement influences security and public order, especially in Member States? Is it sufficient that one Member State is affected? Which safeguards would apply? How does the Commission gather sufficient and accurate information on the situation in different Member States?	The provision does not have an impact on the competencies of the Union and its Member States. The proposed provision is introduced in the section on rules applicable to direct and indirect management and only concerns award procedures under the scope of the FR, i.e. grants, procurement, prizes, indirect management, etc. implementing the EU budget and therefore does not affect Member States implementing their own budget in national procurement procedures or under shared management. The objective of the provision is to establish a clear horizontal framework for Union award procedures where a protection of the security and public order of the Union and its Member States is necessary. Accordingly the Commission does expect that the provision will be applied only in a very limited number of cases that concern these security interest. On the safeguards please see reply to question 127. The identification of specific action areas as affecting security and public order will require a policy assessment which cannot be provided in advance as it may vary by individual action context and change over

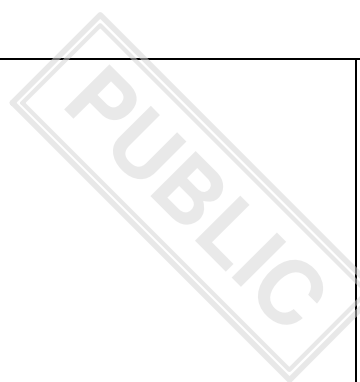
				time. However, provisions already contained in basic acts and implemented in Work Programmes can offer examples that actions affecting security and public order may concern access to sensitive technologies, defence actions, assets such as communication satellites, cybersecurity and quantum computing. Where applicable, identification of these actions will regularly be provided by the Work Programmes which are submitted to comitology.
205.	FI	Fiche 14	The Commission is invited to explain more in detail the impacts of the proposed amendment, including the impact on national authorities. Will the amendment apply to share management and if yes, how?	Please see the above reply. If the provision is introduced as proposed in Chapter 2, it will only apply to direct and indirect management.
206.	FI	Fiche 15	The payment of interest with regard to a cancelled or reduced amount of a competition fine after a judicial procedure should be dealt with as expenditure under Heading 7. The stand-alone proposal and the recast proposal should be negotiated together.	Reference is made to the extensive supporting material produced by the Commission in the context of the stand-alone proposal on fines (COM/2022/184 final). The Commission considers that the most appropriate way to record the compensatory interests on reimbursed fines or penalties is to deduct these amounts from the EU budget revenue. When a fine is definitive, it enters the budget, becomes general revenue and reduces the GNI contribution accordingly; it does not bring revenue for the administrative budget under Heading 7. Therefore, when the Commission has lost a case and has to reimburse a provisionally paid amount together with interest, such interest should not be paid from the administrative budget. The proposal aims at establishing the balance in a way that both the successful and unsuccessful cases shall be reflected on general revenue budget lines. From the policy point of view, fines result from the implementation of a Union policy (part III, title VII of the TFEU on the rules on



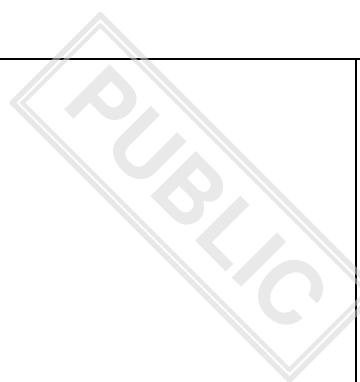
				competition) whilst expenditure under MFF Heading 7 is not policy-related. MFF Heading 7 should thus not bear the financial burden generated by implementation of a Union policy. Heading 7 is to finance administrative costs and not to ensure payments to companies. Similarly, using any other heading for this purpose would go against the purpose of the corresponding expenditure lines. Handling the stand-alone amendment of the Financial Regulation as part of the main proposal (recast of the Financial Regulation), rather than separately, would cause a significant delay. The negotiations and adoption of the recast would likely take most of 2023 or even beyond. Such a timeline would not be compatible with the urgency to address already in 2022 the budgetary impact of the recent case law on fines by treating interest to be paid to companies as negative revenue. Pending the adoption of the negative revenue approach, the EU budget would be exposed to unforeseen expenditure, should the Union courts decide that default interest at punitive rates is to be paid. The status quo furthermore implies delays in paying interest to the companies, during which compound interest would accumulate and further increase the EU budget liability. The Commission may need to pay EUR 85 million of interest in 2022/2023 and more than EUR 593 million by 2024. The Commission will not be able to pay these amounts from Heading 7. Therefore, an amending budget would be required each time the amount to be paid exceeds the return yielded on the provisionally paid amount. If due in 2023 and in the absence of a
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				sustainable solution such as negative revenue, paying such an amount would require the mobilisation of a special instrument (Flexibility Instrument/Single Margin Instrument) as the margin under the sub-ceiling for administrative expenditure of the institutions in Heading 7 will be fully exhausted due in particular to the impact of high inflation and rising energy prices. The recourse to special instruments would unduly restrict the EU budget's capacity to react to the challenging geopolitical environment and the impact of increasing interest rates on the funding costs of NGEU. Moreover, the time required for the adoption of an amending budget and the mobilisation of a special instrument would cause a delay in the payment of the interest, during which compound interest would accumulate and further increase the EU budget liability. By contrast, the negative revenue approach would ensure a quick payment to the companies.
207.	FI	Fiche 15	Is there a need for a possibility for structural renovations through loans? Should the strategical planning of building cost cover this?	In order to meet the Green Deal objectives, the Commission will need to carry out major investments in the existing building stock (e.g. changes in heating systems) not falling under the notion of building acquisitions. Splitting the significant costs of the structural renovations over several years by repaying a loan would enable implementation of such investments that would otherwise be difficult, if not impossible, to cover from the annual appropriations available in the budget, with the limitation of 2% annual increase of expenditure set by MFF. It is therefore proposed to clarify Article 271(6) FR and provide for a possibility of using a loan for such major investments of structural renovation.

208.	FI	Fiche 15	Member State authorities assistance in the recovery of EU claims: Are there any other provisions in the current FR or in other EU legislation, which actually already cover such situations, such as TFEU 299 and Art. 100 FR?	No, there are no other provisions which cover such situations: - Article 100 FR concerns the assistance from the Commission to other EU institutions in certain specific circumstances. - Enforceable decisions within the meaning of Article 299 TFEU, imposing on a debtor the obligation to pay, are indeed useful tools, but such decisions must be first notified to take effect and then they must be enforced. It is in these crucial steps (i. notification and ii. enforcement) that the assistance from Member States is requested. For further details on the current situation, please see parts II 'Background – current situation of enforced recoveries' and III 'Problems with the current system' of Fiche 16.
209.	FI	Fiche 15	The grounds for the amendment have so far only dealt with impacts on the Commission. It is necessary for the Commission to give a detailed account on the impacts on Member States and national authorities, including economic, budgetary and administrative implications.	The proposal is based on the mechanism established under Council Directive 2010/24/EU (Mutual Assistance Directive), which is already in place among Member States. Therefore, it is not necessary to set up new schemes or structures. In addition, Member States could charge the Commission for the administrative costs incurred. The proposed Article 104(9) foresees that an agreement is to be signed with Member States which



				shall establish a reasonable amount of costs for each type of assistance (information, notification, precautionary measures and recovery) which the Commission will reimburse to the Member State, as it is important that Member States are correctly compensated for the time and means spent to assist the EU in their recovery of EU funds. Such fee may be established as lump sums for the sake of simplicity. For further details on how the current system set up by the Directive works, please see part IV 'The Directive on Mutual assistance between Member States' of Fiche 16.
210.	FI	Fiche 15	Is the proposal consistent with the principle of proportionality, taking account the very large amount of additional work, responsibilities etc. on national authorities? Are there other options, legislative or other? How could national authorities, which are responsible to implement the Directive on mutual aid between Member States in certain fields, take upon such important new and broad tasks ("EU claims")? Has the Commission studied the current situation in Member States? Which national authorities could potentially be affected?	The proposal aims at requesting assistance from Member States as a last resort: It is self-evident that the Commission will first try to notify a debtor (as this is the standard procedure) and only where notification has not been possible, the authorising officer will request the assistance from the Member State. Please note that it is an obligation of means, not of result. Regarding recoveries, it only applies to enforceable decisions within the meaning of Article 299 TFEU, after the voluntary period of payment has expired. The assistance from Member States will also encompass requests for information about the debtor – if such information held by the Member State is sufficient to determine that the debtor is objectively insolvent. For instance – when a procedure to recover debts regarding social security or taxes has been carried out



				by the Member State against the same debtor and has yielded no results, such information would suffice to consider that debtor insolvent and the claim should be waived at that stage, without the need to carry out further steps or incur further costs. The Member State has more information (in terms of quantity and quality) than the information the Commission may gather through the service of a local lawyer or enforcement officer. These are the same requests made among Member States in the framework of the Mutual Assistance Directive, using the same schemes and structures already set up. In light of the above, the proposal appears compliant with the principle of proportionality.
211.	FR	Fiche 6	Comment la Commission entend-t-elle assurer le suivi des sommes associés à ces prix ?	L'introduction de prix non financiers dans le Règlement Financier (RF) ne constitue pas un nouvel instrument d'exécution budgétaire, mais seulement une précision selon laquelle les prix peuvent également être non financiers. Par conséquent, la Commission continuera d'appliquer les mêmes règles de prix financiers aux prix non financiers. Par exemple, les concours pour des prix d'une valeur unitaire égale ou supérieure à 1 000 000 EUR ne peuvent être publiés que si ces prix sont mentionnés dans la décision de financement visée à l'article 110 du RF actuel (article 111 dans la proposition de

				révision).
				En outre, l'article 207, paragraphe 5, du RF actuel (article 211, paragraphe 5, de la proposition de révision) relatif à la publication de tous les prix décernés au cours d'un exercice continuera de s'appliquer.
212.	FR	Fiche 6	Ces prix non financiers seront-ils plafonnés et si oui de quelle façon et à quel niveau ?	Les prix non financiers suivront les mêmes règles générales établies dans le Règlement Financier pour les prix constituant des contributions financières. Par conséquent, en général, les prix non financiers ne seront pas plafonnés. En outre, il reste que tous les prix, financiers ou non financiers, d'une valeur unitaire de EUR 1 million ou plus doivent être spécifiquement mentionnés dans la décision de financement et le programme de travail selon l'Article 111 de la proposition de révision du RF.
213.	FR	Fiche 5	La mise en place d'une centrale d'achats (central purchasing body) impliquera-elle des besoins en matière d'emploi (ETP) ?	The procurement will be carried out at central level to have more control and ensure professionalization of staff, implying that workload will be relieved for the decentralised services (ie. at DG level). As a consequence, the work will be carried out following reorganisation without any need for additional staff.
214.	FR	Fiche 5	Quelle direction générale de la Commission assurera-t-elle la coordination du travail de cette centrale ?	This is an internal decision for the Commission which has not yet been taken.
215.	FR	Fiche 5	Comment ce changement affectera-t-il l'examen des dossiers immobiliers (acquisitions et locations) au sein du comité budgétaire ?	The proposed modifications on the FR building related provisions have no impact as regards the need for approval by the Budgetary Authority. Please also note that the modifications brought to the provisions on buildings do not have economic and budgetary impact.
216.	FR	Fiche 5	Existe-t-il des actuellement des contraintes limitant le recours aux experts ?	Please see reply to question 104 and 164.

217.	FR	Fiche 5	La proposition d'amendement prévoit la possibilité pour la Commission de recourir aux listes d'experts pour des périodes plus longues. Cette extension de durée pourrait-elle être précisée ?	Please see reply to question 104.
218.	FR	Fiche 6, Art. 135	Comment la clarification/précision concernant la procédure contradictoire (adversarial procedure, article 135) va-t-elle affecter la pratique actuelle en matière de procédure d'attribution ?	En ajoutant cette précision, il devient certain que l'organisation d'une procédure contradictoire n'est pas nécessaire pour les candidatures rejetées pour des raisons telles que le non-respect des conditions de recevabilité, d'éligibilité, de sélection ou d'attribution. Les motifs de rejet mentionnés ci-dessus ne doivent pas être précédés d'une procédure contradictoire, car il existe déjà des voies de recours suffisantes mises à la disposition des candidats et qui remplissent la même fonction : faire valoir le droit de la défense du candidat (voir ci-dessous les voies de recours administratives et judiciaires). Par conséquent, la clarification proposée à l'article 135 de la révision du RF vise à maximiser le rapport coût-efficacité des procédures d'attribution et à éviter les lourdes charges administratives causées par la duplication des procédures. Les moyens de recours : Dans les lettres de rejet, les candidats seront informés des motifs de leur rejet et des voies de recours administratif et judiciaire. <u>Voies de recours administratif</u> • Dans tels cas, les candidats peuvent soumettre une demande de révision devant l'ordonnateur compétent ou le comité de recours, le cas échéant, dans les 30 jours suivant la réception de la lettre de rejet. • L'introduction d'une plainte administrative

				n'empêche pas le candidat d'engager une action judiciaire ou de déposer une plainte auprès du Médiateur européen. <u>Voies de recours judiciaire</u> Les candidats peuvent introduire un recours en annulation au titre de l'article 263 du traité sur le fonctionnement de l'Union européenne contre la Commission ou l'Agence devant le Tribunal dans un délai de 2 mois à compter de la réception de la lettre de rejet ou, le cas échéant, de la lettre de recours.
219.	FR	Fiche 7	La Commission a-t-elle estimé les gains financiers et en termes de temps qui pourraient être retirés de l'introduction de la réponse rapide ?	Nous présumons que 'l'introduction de la réponse rapide' se réfère à l'introduction des dons non-financiers. L'introduction de cet instrument n'est pas basée sur des gains financiers ou en terme de temps, mais son but est de conférer la sécurité juridique aux procédures de dons non-financiers, en fournissant une base juridique stable et des principes applicables.
220.	FR	Fiche 2	La Commission a-t-elle évalué le gain financier qui pourrait être retiré des mesures proposées en matière de digitalisation ?	The financial savings have not been quantified so far in an aggregated manner at the level of the Commission. The main reason is that each initiative (corporate or at the level of DGs) will require upfront investments in IT tools to be developed or enhanced, aiming for a qualitative improvement of the controls and increased efficiency. A concrete budgetary impact cannot therefore be established at this point in time, as this will depend on the concrete functionalities required of the systems. The IT tools are likely not to be entirely focused on digital controls, but rather embed such modules, which makes it more complex to identify the financial cost of digitalizing controls.

				A meaningful quantification of the cost effectiveness of such digital controls will be made by each individual DG, as part of the reporting requirements of the AAR.
221.	FR	Fiche	Au-delà du principe do-no-significant-harm, comment la Commission entend-elle formaliser le suivi/reporting des dépenses liées au climat ?	The methodology that has been developed to track the climate-related financing has been laid down in Annex I of the staff working document on Climate Mainstreaming Architecture in the 2021-2027 Multiannual Financial Framework⁴. Tracking is based on an activity-based approach where all programmes that finance specific types of interventions apply the same EU climate coefficient. The coefficients have been grouped by larger policy areas⁵. Each policy area includes a variety of different intervention types. The methodology has already been used in the Draft budget 2023 exercise to report on climate-related expenditure of the EU programmes in 2021.
222.	FR	Fiche	La méthode de suivi/reporting évoquée dans le cadre de l'Accord interinstitutionnel (du 16 décembre 2020) ne pourrait-elle pas être incluse et détaillée dans le règlement financier?	La Commission considère que le Règlement Financier n'a pas vocation à répéter le contenu d'autres actes et textes légaux. La méthode de suivi est applicable et doit être respectée par les Institutions en vertu de l'Accord interinstitutionnel sans qu'aucune référence ou mention ne soit nécessaire dans le Règlement Financier. De plus, il n'est pas considéré comme approprié d'entrer dans un tel niveau de détail au niveau du Règlement Financier. Il est rappelé que la dernière révision générale du Règlement Financier a consisté précisément à retirer du texte un certain nombre de dispositions, considérées comme trop

⁴ SWD(2022) 225 final

⁵ Energy, Transport, Environment and Natural Resources, Climate Change Adaptation, Good Governance & Social Dimension, and Research & Innovation

				détaillées et rendant la lecture du texte trop complexe.
223.	FR	Fiche, Art. 271	Comment la Commission définit-elle la notion de rénovation structurelle (structural renovation, article 271) ?	The notion of structural renovation is not new to the Financial Regulation. It already exists under Article 266(5) points (b) and (c) of the Financial Regulation. Structural renovation exceeding the thresholds indicated in those points has to be considered as building project likely to have significant financial implication for the budget. A structural renovation is an alternative to an acquisition, extending the useful life of an asset or creating additional asset value.
224.	FR	Fiche 2	La Commission pourrait-elle confirmer que ce système intégré ne s'appliquera pas à la Réserve d'ajustement au Brexit (2021-2023) et à la Facilité pour la reprise et la résilience (2021-2026) ?	The new provisions apply only to programmes adopted under and financed as from the post-2027 MFF.
225.	FR	Fiche 2	La cotation des risques proposée dans le cadre de ce système IT répond-elle également à l'objectif d'évaluation des risques en matière de vérification de gestion prévu à l'article 74.2 du règlement 2021/1060 ?	As it is mentioned in Article 72(4) of Regulation 2021/1060, management verifications, referred to in point (a) of the first subparagraph of paragraph 1 of the same Article, shall be risk-based and proportionate to the risks identified ex ante and in writing. The data mining and risk scoring system will generate risk indicators to help, amongst others, managing authorities and their intermediate bodies to prevent and detect irregularities linked to projects or their beneficiaries, and to further investigate any indicators of fraud suspicion or conflict of interest. These features can help the managing authorities to set up risk-based verifications and controls, proportionate to the risks identified ex ante.
226.	FR	Fiche 14, Art. 137	La Commission pourrait-elle confirmer si la proposition (article 137) s'appliquera également aux procédures d'attribution relatives aux investissements en matière de défense ?	In general, the proposed provision is introduced in the section on rules applicable to direct and indirect management and only concerns award procedures

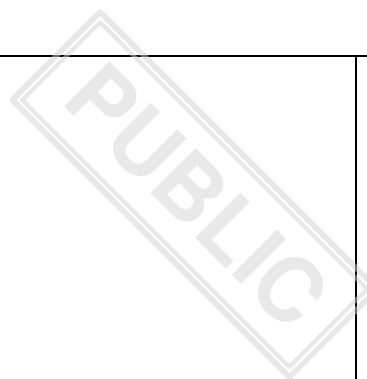
				under the scope of the FR, i.e. grants, procurement, prizes, indirect management, etc. implementing the EU budget and therefore does not affect Member States implementing their own budget in national procurement procedures or under shared management. The objective of the provision is to establish a clear horizontal framework for Union award procedures where a protection of the security and public order of the Union and its Member States is necessary. The defence basic acts already contain the necessary restrictive conditions e.g. restrictions for control by third countries. Those restrictions will apply.
227.	FR	Fiche 15, Art. 104(9)	La Commission pourrait-elle préciser le type de dépenses couvertes par les remboursements mentionnés à l'article 104.9 (" the payment by the Commission of fees and costs to the Member States ») ?	Dans l'accord à signer entre la Commission et les États Membres, chaque État peut fixer les frais et coûts engendrés selon le type de demande de la Commission (renseignements, notifications, saisies, etc). Cela englobe par exemple, le couts/heure du personnel qui traitera le dossier. Pour des raisons de simplification l'estimation de ces frais pourrait se faire de façon forfaitaire.
228.	HR	Fiche 5, new recital 150	As regards Fiche No. 5 and the proposal for the new recital 150, it is unclear/disputable who and at what moment will assess whether some specific case can be deemed a "crisis" case. Namely, there is a real possibility that more or less all grants (especially those of a higher value) will be classified as cases of crisis, in which case it will be possible to modify them. Moreover, it is also not defined to what extent and in what way the grants	Recital 150 is linked only to the FR procurement related articles. The new proposed crisis related provisions do not apply to grants.

			could be modified in such situations, namely it is not specified clearly enough how this provision will be implemented in practice.	
229.	HR	Fiche 5, recital 169(1)	As regards the proposal for the recital 169 (1) on Interinstitutional procurement, joint procurement and procurement on behalf of the Member States, we have similar worries as with the new recital 150, only here it would be cases of exceptional urgency resulting from the crisis, that would serve as basis for the introduction of a new legal entity (albeit before the signing of the grant). It is not defined well enough what extreme urgency resulting from the crisis means (what situations can be classified as cases of “extreme urgency resulting from a crisis”), as well as who and in what way would evaluate whether all the conditions for the application of the specific article are met.	Recital 169 does not apply to grants.
230.	HR	Fiche 5, Art. 176	As regards the proposal for changes in the article 176, we ask for an additional clarification (or a list of several examples) which would be considered as situations of extreme urgency arising from the crisis, in which it would be allowed to change the grant in such a way as to increase the initial amount of the contract by 100%. Connected to this, also explain how it would be evaluated whether a contractor has correctly assessed that it was indeed a case of extreme urgency. The draft article states that these situations should be related to the conditions from the article 164, paragraph 4.	Article 176 applies only to procurement and not to grants. Furthermore, please see Recital 150 where it is stated: <i>“A declaration of crisis should be required in line with the relevant internal rules prior to having recourse to such simplified rules, except for procurement in the field of external action where such declaration is not required. In addition, the authorising officers responsible should justify case-by-case the extreme urgency resulting from the declared crisis.”</i> As regards the internal rules, we refer to the internal rules of each Institution. For more information on the crisis declaration, please see the reply to question 63.
231.	HR	Fiche 5	As regards the document COM(2022)223 final, in the introductory remarks on the page 10 it is sad that “...the Commission proposal for a regulation on foreign subsidies is currently being negotiated. Depending on how the proposals progress, the Financial Regulation may be aligned to that new regulation in the course of the negotiations.” This wording suggests that maybe there will be no such alignment, hence we would like to know how does the Commission plan to deal with the	Please see the reply to question 64 on the Foreign Subsidies Regulation. Please note as well that the majority of the procurement conducted by the EU Institutions does not fall under the scope of the FSR (notification threshold of 250 million euro).

			proposal for the procedure for verifying foreign subsidies in public procurement procedures carried out by EU institutions in the context of the Financial regulation. Being large public contracting authorities EU institutions, procurement procedures being conducted by them should be subject to the control of foreign subsidies. Therefore, we would like to suggest adding in the Financial regulation the following (or similar) wording: Award of the procurement and concession contracts under this Regulation is subject to investigation of foreign subsidies according to the Regulation XXX of the European Parliament and of the Council on foreign subsidies distorting the internal market. In this respect, we would like to recall that during the discussions on the proposal for a Regulation on the foreign subsidies, Croatia proposed that the scope of this proposal also include procurement under the Financial Regulation, but Commission explained at the time that this would be resolved in the proposal for the financial regulation (which was still being drafted at the time). We are of the opinion that the Commission did not take this into account in the current proposal of the Financial Regulation (recast), so we are asking for Commission's clarifications in this regard.	
232.	HR	Fiche 15, Art. 271	Please provide explanations for the deletion of the article 271 dealing with sustainable tourism infrastructure and contributions from the ERDF, as well as for the deletion of the recital on the page 67 also dealing with the tourism. We find these deletions problematic, given that tourism is of high strategic importance to HR and that we already have investments planned to be financed from ERDF. Therefore, we argue in favour of keeping this article and recital.	This provision is part of Part 2 of the current Financial Regulation, which was dedicated, at the time of the last general revision of the FR in 2018, to amendments made to several sectoral basic acts of the last MFF ("omnibus"). The proposal for a recast removes the entire Part 2 and the corresponding recitals.
233.	HU	Fiche 2, Art. 36(6)	Why there is an obligation to record the VAT identification number of a natural person? The underlined part in point a) Article 36 (6) suggests that also in case of natural persons these numbers are to be registered. Furthermore, why there is an obligation to record the „date of birth“ in case of a legal person (point b) Article 36 (6))? It seems there is some kind of a confusion in the wording of these points: one should have defined the data to be registered for a natural person, while the other should have provided rules for legal persons.	Unique identifiers at recipient level, such as the VAT registration number or tax identification number, are required in order to allow for more accurate identification, filtering and grouping of recipients of EU funding. Points a) refers to data related to recipients, and point b) to data related to beneficial owner(s) of the recipients, where the recipients are not natural

			6. 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 data-mining 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; (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.	persons. For the latter, a VAT identification number or tax identification number where available or another unique identifier at country level is required.
234.	HU	Fiche 3, Art. 38(6)	According to the proposed text of Article 38 (6), the Member States are to submit to the Commission the VAT identification number or tax identification number of natural persons where available or another unique identifier established at country level about those receiving EU funds. What is the concrete purpose of this proposal? As an explanation the Fiche uses the term: „with the view to improve the quality of the data...”. What is going to happen with these data of natural persons? Originally, as the wording of Fiche 3 also admits, the underlying reason of this new rule is to provide transparency of EU funding, and it is meant to be different from the purposes of data mining and risk scoring. („These modifications are to be distinguished from the proposal for recording and storing of data on recipients of EU funding and the use of a single integrated IT system for data-mining and risk-scoring for control and audit purposes that are dealt with in a separate fiche.”). Furthermore, data mining and risk scoring is not aimed at focusing on natural persons, either. Could you give us clarification on this?	These unique identifiers of natural persons will not be published, but used for accurate identification, filtering and grouping of recipients of EU funding. Based on this data, the Commission will perform quality checks prior to publication of the other data.
235.	HU	Fiche 3	According to the corresponding Fiche, the Commission will prepare a simple template for the transmission of the input data. When this template is going to be ready? Can the Commission already share the format of the template?	The template is in preparation and will be shared in due time.

236.	HU	Fiche 8	Why is it appropriate to extend the application of EDES right now to shared management when – as the Special Report 11/2022 of the European Court of Auditors also confirmed – the EDES is still not used properly under the other management modes, where it functions already as obligatory?	The ECA report acknowledges that EDES has a solid decision-making procedure and a broad range of exclusion grounds. The criticism and the weaknesses highlighted therein concern specifically (i) the fact that the system does not yet apply to 80% of the budget, disbursed under shared management, (ii) the fact that more categories of persons/entities should be tackled, (iii) the need to improve oversight of cases under direct management and indirect management. Whilst the last point is being addressed through several internal improvements, point (i) and (ii) are dealt through the new targeted provisions contained in this proposal, which have been well received by ECA as well.
237.	HU	Fiche 8	We understand that several situations are listed among the reasons for exclusions which would clearly fall under the scope of criminal law while – according to the proposal – many of these situations would now be treated by the EDES Panel instead of the proper criminal authority of the Member States. According to our understanding, this way, procedural guarantees existing in the law of the Member States would be ignored. How would the proposal secure the procedural guarantees required under national law during the exclusion procedure?	The current framework applying to direct and indirect management is not changing. For direct and indirect management, in the absence of a final judgment or administrative decision, the Panel can perform a preliminary classification in law for the facts falling within the grounds under Article 139(1), point (c) to (i). This will not change. In the case of shared management, the grounds for exclusions are only the ones listed under Article 136(1), point (c)(iv) and (d). The situations that can trigger an exclusion under those grounds are: 1. Final judgments/administrative decisions; 2. Findings at EU level. In the second case, the EDES Panel will be able to perform a preliminary classification in law and recommend a sanction if the facts and findings



				established against the person or entity fulfil all the elements of the ground concerned. In such case, the responsible authorizing officer, having regard to the Panel's recommendation, may exclude the person or entity. Should the final judgment come at a later stage and find the person or entity not guilty, the sanction is immediately lifted (see Article 139(3)). The Panel's role is crucial in (i) ensuring the rights of defence and due process by means of a contradictory procedure; (ii) assessing the sufficiency and reliability of evidence gathered against the person or entity concerned; and (iii) issuing a recommendation that abides also by the principle of proportionality. This is enshrined not only in the FR provisions but also in the Rules of Procedure of the Panel. The role of the Panel in safeguarding the procedural rights of the person or entity has been confirmed also by the ECJ in its case law. In general, each case is examined by the Panel in two phases. In the first phase, the Panel examines the facts and findings and performs a preliminary qualification in law of these facts. The Panel ensures the right to be heard by sending a letter to the entity or person concerned, in which the entity or person concerned receives all the required information and is given the possibility of submitting observations in writing. In the second phase, the Panel examines the received written observations and proceeds to adopt a recommendation, which is addressed to the requesting authorising officer.
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238.	HU	Fiche 8	Why is it necessary to extend the scope of the range of persons affected by the exclusion in a much broader way than the current EU legislation provides for (e.g. extending it to the actual owner, the subsidiaries and affiliated enterprises)? Why there is no independent judicial protection provided under the proposed procedure?	All decisions taken by the authorising officer responsible under EDES are (and will be) subject to the unlimited jurisdiction of the ECJ. As far as the broadening of the scope <i>ratione personae</i> is concerned, the proposal stems from the application of the current rules in practice which brought to light a considerable loophole in the framework, given the possibility for excluded persons or entities of circumventing the law by applying for EU funds through “alter-egos”. This has proved to be an area of growing risk insofar as cases submitted to the EDES Panel over the past years often concern (i) findings against interlinked companies, set up by the same manager, where the affiliate is just used to facilitate the misconduct of the primary entity (e.g. by paying the expert hired in breach of conflict of interest provisions; by gathering confidential information on the relevant tender, and so forth); (ii) judgments or administrative decisions issued against large corporates where the parent company of the excluded entity had an active or passive involvement in the primary entity’s wrongdoing. In the cases above, the authorising officer does not have any legal basis to exclude the affiliate that is not already a recipient or participant under direct or indirect management. The ECA has also advocated in its report for this broadening of EDES scope.
239.	HU	Fiche 8	We would require detailed information of the procedure: preliminary classification in law of a conduct (what kind of information is used in these	In the absence of a final judgment, the EDES Panel can perform a preliminary classification in law and

			procedures, what procedural safeguards apply, anonin examples, if any; etc.).	recommend a sanction if the facts and findings established against the person or entity fulfil all the elements of the ground concerned. In such case, the responsible authorizing officer, having regard to the Panel's recommendation, may exclude the person or entity. Should the final judgment come at a later stage and find the person or entity not guilty, the sanction is immediately lifted (see Article 139(3)). The Panel's role is crucial in (i) ensuring the rights of defence and due process by means of a contradictory procedure; (ii) assessing the sufficiency and reliability of evidence gathered against the person or entity concerned; and (iii) issuing a recommendation that abides also by the principle of proportionality. This is enshrined not only in the FR provisions but also in the Rules of Procedure of the Panel. The role of the Panel in safeguarding the procedural rights of the person or entity has been confirmed also by the ECJ in its case law. In general, each case is examined by the Panel in two phases. In the first phase, the Panel examines the facts and findings and performs a preliminary qualification in law of these facts. The Panel ensures the right to be heard by sending a letter to the entity or person concerned, in which the entity or person concerned receives all the required information and is given the possibility of submitting observations in writing. In the second phase, the Panel examines the received written observations and proceeds to adopt a recommendation, which is addressed to the requesting authorising officer.
240.	HU	Fiche 9	During the discharge procedures of the last 2 years we have heard many	This is precisely the reason for setting conditions for

			times that it is difficult for the European Court of Auditors (ECA) to get certain information from international partners as they sometimes do not acknowledge ECA as an auditing body. In the present proposal there is a new form for EU involvement in global initiatives, however, we do not see any proposed rules aimed at eliminating the ECA's audit deficiency. Why there was no proposal made in this direction?	the participation of the Union in global initiatives: the funding is to be provided as financing not linked to costs and not costs incurred. The requirements will be for indicators to be used in the way the initiative will report to donors so that the donors can get the guarantee that the funding provided has enabled the achievement of specific results. Furthermore under Art. 240(v), ECA is to make use of the rules of the initiative to request additional information based on the information provided to donors and carry out joint audits with the relevant body under the initiative in line with Article 129.
241.	HU	Fiches 12 – 14, Art. 41(5)	With regard to the requirements on reporting obligations related to financial instruments and budgetary guarantees, the Commission itself explains in Fiche 12 that the present report under Article 41(5) FR is attached to the draft budget which is normally ready „by the end of May of each year.” In Fiche 14, with regard to the the Working Document on building policy, the Commission explains that the newly proposed change (aligning the deadline of the budiling policy report with the presentation of the Draft Budget) would solve the repeated issue that this document was not ready by the previous deadline (1st June). We note that our preference is to receive the Draft Budget with all its working document earlier than in the last two-three years (June), at least receiving it again by the end of May each year, as the Commission itself correctly explains it in Fiche 12. It would provide proper time and professional insight for the Council, which is also one arm of the Budgetary Authority.	The Commission aims to make all Draft Budget documents and accompanying Working Documents available to the European Parliament and the Council in good time for the annual budget procedure, and at the latest in accordance with the deadlines set out in Article 314 TFEU (i.e. 1 July for the Commission's Statement of Estimates and 1 September for the Draft Budget).
242.	IE	Fiche 11, Art. 33(2)	In relation to article 33.2, please advise how doing no significant harm is to be evidenced?	The Commission laid down the principles of implementation of the 'do no (significant) harm' principle in Annex II of the staff working document on

				Climate Mainstreaming Architecture in the 2021-2027 Multiannual Financial Framework ⁶ . The implementation modalities of the principle include the tool used for each programme of the 2021-2027 MFF, its definition and the rationale. The types of tools depend on the programme – in particular the kinds of actions it finances and management type. A programme can use several of these tools.
243.	IE	Fiche 5, Art. 164	IE Observations on Article 164 and related PP provisions: In general terms the draft proposal follows the extant 2018 Regulation. It seeks to update the rulebook in the light of recent developments such as the Covid 19 pandemic, which impacted on procurement services in a critical manner. The number of ‘corrections’ in the PP provisions points to loose drafting carried out for the 2018 Regulation. IE understands the political and operational contexts behind the recast initiative but wishes to place a scrutiny reservation on the provisions of Article 16 and related in terms of the complex technical nature of extant procurement procedures and the risk of applying misaligned technical and operational innovation to that corpus of operational regulation. It is not clear as the extent of contracts covered by this Regulation as a proportion of overall procurement activity. Idiomatically, a select set of rules here, which go beyond existing PP rules and procedures, may have limited impact so long as they remain small in scale, compartmentalised and have no unintended impacts on the extant PP framework. Cross-contamination of new provisions and terminology outside of the core PP legislation could be the source of problems in the future. IE would highlight the following innovations as giving cause for concern in the absence of assurances that a diligent scrutiny has been carried out to ensure full alignment with existing PP law: Article 2.10: Term ‘building contract’ conflicts with the exclusion of this area	- Article 2(10): Indeed building procedures are not in the scope of the Procurement Directive, however it has been decided by the EU legislator to have them in the scope of the FR which is the legal basis for any instrument implementing EU budget. - Article 2(43): The definition of ‘Member State Organisation’ is a definition that exists under the current FR (see Article 2(42)). - Article 2(51): the definition of ‘presumed successful tenderer(s)’ was necessary for the changes brought to the FR to reflect the case law (T-661/18 Securitec v Commission). - Article 2(53): Definition of Article 2(53) is not a new definition. It is the definition of Article 2(49) in the current FR. -Article 2(55): The term conflicting interest is also used in the Directive. The new definition on ‘professional conflicting interest’ is necessary for clarity to the relevant FR provisions. - Article 2(76): Alignment of terms works contract and public works contract; the modification is necessary in order to align the FR to the Directive (see Article 2(6))

⁶ SWD(2022) 225 final

		in Directive 2014/24/EU; Article 2.43: Introduction of term ‘Member State Organisation’ appears to conflate public bodies and private bodies acting in the public realm thereby overlapping with the provisions of Directive 2014/25/EU. The boundaries here need to be clarified; Article 2.51: New definition “presumed successful tenderer(s); Article 2.53: Inclusion of buildings in scope; Article 2.55: New definition ‘professional conflicting interest’; Article 2.76: Alignment of terms works contract and public works contract; Article 144.1: Introduction of authorising officer into award procedures; Article 164: Scope appears to be open ended in terms of application to CAs in Member States; Article 169.2: ‘Choosing’ of competent court for disputes is probably ultra vires; Article 174: While standstill is addressed the application of the Remedies Directives remains unaddressed; Article 174(3): Misaligned with PP legislation; Article 175: Term ‘Partially’ – problematical; Article 176: Significant parallel additions to A72 of Classic Dir; Article 180: FSR not mentioned.	for the definition of public works contracts). The discrepancy is visible in the French version as the terms “works (EN) = travaux (FR)” and “a work (EN) = ouvrage (FR)” have different meanings. - Article 144(1): There is no proposed change to the current FR linked to the ‘Introduction of authorising officer into award procedures’ - Article 164: The FR does not apply to public procurements launched by CAs in MS. - Article 169(2): The reference to ‘the competent court’ already exists in the current FR Article 165. - Article 174: As a preliminary comment, Directives are addressed to Member States and not to the Institutions. However, on the substance, the level of remedies available in the procurements covered by the Financial Regulation complies with the standards in the Remedies Directives in so far: (a) the same standstill procedure is foreseen, and (b) any grieved participant may request the European Court of Justice (General Court) to take an interim measure to: suspend the signature of the contract⁷, annul any decision unlawfully awarded, and award damages resulting from such infringement (based on Article 340 TFEU) including the loss of profits (lucrum cessans). Therefore the level of protection in regard of the remedies are equivalent to those in the Member States. - Article 174(3): It is not explained in the question
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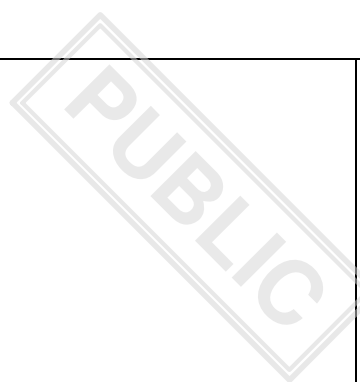
⁷ Since 1992, according to EU Court of Justice database (curia.eu), there has been 344 cases of interim procedures in the field of EU public procurement. Moreover, since the Vanbreda case law (case C-35/15 P(R)), a specific easing of the condition of urgency in the context of procurement warrants that an effective judicial protection can be warranted and that the suspension of the signature may effectively take place if a particularly serious prima facie case occurs.

				what would be the misalignment with PP legislation. Article 174(3) FR is more detailed than the Directive on the tenderers entitled to receive privileged information following the award of a procedure. -Article 175: It is not explained in the question why the term 'Partially' is problematic. This modification is brought to improve the efficiency in the way procurement is conducted and to address a problem that currently exists when (in a procedure with more than one lot), where only one lot has to be cancelled and then the whole procedure for all lots has to be cancelled as well. - Article 176: as regards the "Significant parallel additions to A72 of Classic Dir", paragraph 4 was added for alignment with the Directive to clarify the meaning of a modification altering the subject matter of the contract; paragraph 5 was added following lessons learned from Covid-19 crisis, in order to allow us in the future to support the Member States and ensure the necessary flexibility in a crisis situation, considering that in any case the negotiated procedure without publication of a contract notice may be used in extreme urgency situations allowing us to negotiate only with one company. - Article 180: The Foreign Subsidies Regulation ("FSR") is not linked to Article 180 on access to procurement. Please see the reply to question 64 on the FSR.
244.	IT	Fiche 7, new recital 248, new	The current requests have been both addressed, firstly, in the EXPLANATORY MEMORANDUM of the main Commission proposal - i.e. document COM(2022) 223 final, 16.5.2022 - in the paragraph 1.2. "Crisis management, modernisation and simplification": 1. "Amendments related to non-financial donations by Union	On the question on duplications with the Member States: the Commission would proceed the same way as it proceeds for avoiding double funding (not donating twice the same goods to the same entity, unless the nature of the support warrants so, e.g. in-

	paragraph 3 of the Art. 25 and new Art. 244	institutions” (I would like to point out a typo on p. 2 of the relevant fiche n. 7 - WK 7469/2022 INIT: “Article 238a”, instead of the correct “Article 244”); and 2. “foreign subsidies that cause distortions in the internal market”. 1. Non-financial donations to the EU institutions In the legal framework that allows the Union institutions and EU bodies to donate (accepting and providing) services, supplies or works, the Commission proposal of Financial Regulation’s recast intends, inter alia, to include “non-financial donations”, as a new budget implementation instrument under direct management (new recital 248, new paragraph 3 of the Art. 25 and new Art. 244). This instrument will enable the involved actors - in exceptional circumstances and for the purposes of humanitarian aid, emergency support, civil protection or crisis management - to accept and provide any in-kind donation, irrespective of its value. These in-kind donation could be awarded in accordance with the principles of transparency and equal-treatment and where applicable, with the requirements set out in sector-specific rules. In the framework of the Union Civil Protection Mechanism assistance to Ukraine, private in-kind donations were channelled by the Member States where these companies were based, thanks to the coordination of the different stakeholders by the civil protection authorities. With regard the possibility to accept the aforementioned new in-kind donations, could the Commission clarify how it intends to avoid competition and duplications with the Member State, since both Commission and Member State would be potential beneficiaries? Moreover it would be appreciated to receive information on: a. Commission procedures to manage, distribute and evaluate the donations to the beneficiaries and to identify who will be accountable for it; b. whether and how the Commission envisages to address any non-financial donations through rescEU capacities in the framework of the Union Civil Protection Mechanism; and c. Commission procedures to respect the principle of equal treatment of all beneficiaries in the same situation and to ensure that potential	kind support to refugees or most deprived in the form of food or other basic commodities). <u>On point b</u> The Commission cannot estimate future situations which will require the use of non-financial donations under UCPM and in particular through rescEU capacities. Those will depend on the needs in the specific future circumstances. <u>On points a and c</u> The management of the non-financial donation would be done on the basis of the provisions set-up in the agreement for the donation. This agreement may refer for example to liability rules, obligations of the beneficiary following the donation, such as obligation to ensure visibility of the EU support; consequences of non-compliance with the contract such as recovering the goods, termination of the contract; rights of Commission, OLAF, EPPO to perform checks, reviews, audits, investigations. The distribution of the non-financial donations would be done for example following a call for applications or by launching invitations for applications in specific cases such as monopoly, crises situations, urgency, humanitarian aid. The proposal of the Commission includes some adaptations in order to extend the application of existing provisions on direct management to non-financial donations. For example, some of the definitions from Article 2 are adjusted (‘applicants’, ‘application documents’, ‘award procedure’, ‘participants’, ‘recipients’, ‘legal commitment’). This will ensure that Articles applicable to direct management such as Article 130 on Cooperation for
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			beneficiaries receive timely and accurate information on EU support. 2. Foreign subsidies that cause distortions in the internal market The Commission proposal of Financial Regulation's recast, with reference to foreign subsidies that cause distortions in the internal market, provides that "the Commission proposal for a regulation on foreign subsidies is currently being negotiated. Depending on how the proposals progress, the Financial Regulation may be aligned to that new regulation in the course of the negotiations" (cfr. document COM(2022) 223 final - Proposal for a regulation on the financial rules applicable to the general budget of the Union - Explanatory Memorandum, p.12). On 13 July 2022 Coreper confirmed the provisional agreement on the regulation on foreign subsidies distorting the internal market, reached by the Council of the European Union and the European Parliament in the Trilogue of 30 June 2022. Against this background, we would like to know how the Commission intends to ensure legislative consistency and a level playing field, so that public procurement procedures, awarded by the Union institutions on their own behalf, are also subject to the scrutiny of the European Commission on foreign subsidies distorting the internal market.	protection of the financial interests of the Union, Article 134 on Record-keeping, Article 135 on Adversarial procedure and means of redress, Article 139 on Exclusion criteria and decisions on exclusions, Article 154 on Evaluation committee are also applicable to non-financial donations. Therefore, the evaluation of the applications for donations would be done on the basis of Article 154 by an impartial evaluation committee. Equal treatment would be guaranteed by donating services, supplies, works in an impartial manner and by treating the same way recipients that are in the same situation. Transparency principle would be guaranteed for example by the publication of the respective calls for applications, so that all potential applicants receive the same information in the same time. 2. On Foreign subsidies, please see our reply in line 64.
245.	LV	Fiche 6, recital 196 (new)	Further clarifications needed on "double funding" verifications. Do we understand correctly that such controls are not required if SCO (FNLC) used?	This is correct. In practice, contractual arrangements relating to grants providing a contribution in the form of FNLC will not impose a prohibition on double funding, precisely because FNLC is not used to reimburse any particular costs – instead we pay only on the basis of a result. Since there are no costs to check, we cannot verify if FNLC was used to pay for the same costs as another programme. This change would clarify and give legal certainty to that practice. However, the budget will not finance the same activities twice independently of their form of financing. NB – FNLC under Article 125 of the Financial

				Regulation should be differentiated from the form of contribution provided for in the Recovery and Resilience Facility, which is an ad hoc instrument with very specific implementation features that differ from those set out in the Financial Regulation.
246.	LV	Fiche 6, (recital 161, para 55 article 2, para 1.d) article 144, para 1.c) article 17, Annex I - 18.4., 20.2., 20.6)	Please provide more clarifications on how this differs from general/regular 'conflict of interests'. What is the scope - does it cover Commission, MSs, MSs public institutions and economic operators? What kind of consequences and action are established in case the professional conflict of interests is enforced? What conditions shall be verified/assessed in order to determine whether there is no professional conflicting interests. What level and depth of checks to be done for awarding contracts? Some concrete examples would be appreciated.	Recital 104 of the Financial Regulation 2018 already included a reference to the difference between situations of “conflict of interests” and situations of “professional conflicting interest”. The new additions to the Financial Regulations were included to the proposal, in order to clarify the obligations of the contracting authority and of the candidates or tenderers and to ensure the absence of professional conflicting interests that may affect or risk affecting the capacity to perform the contract in an independent, impartial and objective manner. The notion of “conflict of interests” refers normally to situations where an agent of the contracting authority is in one of the cases listed in Article 61 FR, i.e. where the impartial and objective exercise of the function of the person is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other interest with a candidate, tenderer or contractor. The term "conflict of interests" does not apply to economic operators. On the other hand, “professional conflicting interest” means a situation in which the previous or ongoing professional activities of an economic operator affect or risk affecting its capacity to perform a contract in an independent, impartial and objective manner. This provision is meant to avoid any situations in



				which the previous or ongoing professional activities of an economic operator or even the personal situation of a key manager affects its capacity to perform a contract in an independent, impartial and objective manner. Examples of such situations are cases where an operator is awarded a contract: - to evaluate a project in which it has participated or has vested interests; -to audit accounts which it has previously certified; -to evaluate a programme under which it has previously received subsidies; -to conduct a study providing input to a Union policy regulating a sector where the operator has its business interests. When foreseen in the tender specifications, the presence of conflicting interests shall be examined by the evaluation committee based on the statements made by the candidates/tenderers through the Declarations on Honour and, where applicable, the commitment letters signed by identified subcontractors. The evaluation committee should propose the rejection of the tenderer when in view of the subject matter of the contract, there are serious and reasonable doubts that the impartial and object performance of the contract would be compromised. These cases often arise in contracts for the provisions of services where the objectivity is of great importance such as contracts for evaluation, audit framework contracts, contracts for the provision of consultancy services as well as policy related contracts.
247.	LV	Fiche	With regard to Audit no. SA/ESIF/2020/10 national audit authority placed the query in SFC system on 29.11.2021 (on 30.11.2021. system's	To add "immediate family" is not considered useful for the purpose of Article 61, as the existing

		confirmation was received – Annex 1 to this e-mail). So far there was no feedback from the Commission. The letter of the Ministry of Finance was sent to the Commission on 16.12.2021. (Annex 2). The Commission's response was received 07.03.2022 but it provided just part of clarifications (Annex 3). "Immediate family" definition is given only in EU guidance, which is not a legal act. Such significant definition should be in FR, specially because national regulation on Conflict of interest is way narrow (also regarding family), than FR and EU guidance. Now we have situation that according to national law some relatives which are mentioned in COM guidance as "immediate family" are not subjects of Col. And there is legal uncertainty how to treat such situations as there is no breach of national law, however there is a breach of EU guidance, which is not legal act. We propose (1) to define "Immediate family" in Article 61, foreseeing part 4 which will give precise definition of the immediate family in legal act and will be directly applicable or (2) include reference in Article 61 that term relatives should be interpreted in accordance to national law. 1. Could you please clarify, is contracting authority (for example municipality which is beneficiary of the project) which performs public procurement with EU funds co-financing is also part of this definition and Article 61 is applicable to contracting authority staff and procurement committee? Not clear legal certainty. 2. Could you please clarify, is private company, which receives EU funds via EU funded project (beneficiary) in shared management programme/direct management programmes and makes purchases of goods/services (for example construction works and equipment in RDI project) is considered as a "national authority at any level, involved in budget implementation" and such company shall also respect Article 61? We would highly appreciate if you could provide more clarity in the regulation in regards to level of parties involved in budget implementation under direct, indirect and shared management – is it applicable to the contracting authorities (both - public (please see Point 1) and private (pl.see Point 2)). Example. XXX Ltd. is a beneficiary within the RDI EU co-financed project, which is purchasing equipment from YYY Ltd. which owners are in conflict of interest as they are brother in XXX Ltd. and sister in YYY Ltd. Does A61 is applicable in this case? Should the financial correction to be applied? And additonal question: How the contracts shall be treated in regards to conflict of	formulation was carefully discussed by the legislator when agreeing on Article 61 (3) as it stands. The Commission will reply separately with respect to the questions raised in the audits.
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			interest for contracts below the thresholds and in case the recipient of funds is private party? <i>This questions is significant not only for Audit Authority, IB and MA, but also for EPPO. We know that they have totally the same questions.</i> Is article 61 of FinReg applicable to the concession (rent) agreements within EU funds co-financed projects. Example: Municipality receives GBER aid (art. 56) for infrastructure project. Infrastructure has been rent from municipality to private company Ltd "ABC" in accordance with GBER article 56. However auditors found, that one of the committee's member which was involved in decision-making process on rental rights is married with owner of company Ltd "ABC" owner and didn't exclude himself and informed about conflict of interests situation. Is Article 61 of FinReg applicable in such case and how does it affect eligibility of the whole project costs (infrastructure costs)? Or should such situation be treated only in accordance with national law and financial correction is not necessary?	
248.	NL	Fiche 4, Art. 2(9)	In Article 2(9), the phrase "irrevocable and unconditional" is added. Could the Commission further explain this addition, as budgetary guarantees are sometimes coupled with a form of conditionality?	This addition only reflects current Article 219(1) FR. Budgetary guarantees are irrevocable and unconditional in the sense that the EU must pay in case of default. Indeed, guarantee agreements stipulate requirements with respect to e.g. anti-money laundering or EU restrictive measures, aimed at protecting the EU budget. This, however, does not affect the irrevocable and unconditional character of budgetary guarantees.
249.	NL	Fiche 15, Art. 33(2)	NL are very satisfied with this addition, good that this is in line with the taxonomy directive. Does this also mean that all DNSH-criteria in the delegated acts (for the taxonomy) are fully applicable to the financial regulation? How will this be checked in practice, and how can member states ensure that they act in accordance with this principle? Moreover, how will this be monitored and will this be further elaborated (also given the recent outcomes found in the ECC report on climate tracking)?	While the Taxonomy Regulation (and its delegated acts) constitutes an important reference to frame application of the 'do no significant harm' principle, criteria defined therein are applicable to economic activities, and cannot be applied exhaustively to a wide range of instruments through which the EU budget is implemented. The EU budget programmes have implemented different safeguard measures tailored to each

				programme to ensure the respect of the principle in relation to each programme's features, without the direct application of the Taxonomy's technical screening criteria. Starting from each programme's objectives and analysing the actual projects financed under it, each programme has mapped for which of the six DNSH aspects (which are also defined in the proposal) it could present a risk. On this basis, different approaches and tools have been developed to ensure compliance with each aspect of the principle. The abovementioned approaches and tools are laid down in Annex II of the staff working document on Climate Mainstreaming Architecture in the 2021-2027 Multiannual Financial Framework⁸.
250.	NL	Fiche 2, Art. 36	We have some question about the functionality of Arachne. The Commission is currently working on the improvement of Arachne; what kind of improvements does the Commission plan to do or is the Commission currently doing?	A survey on Arachne will be shared with the Member States shortly and will enable the Member States to provide information about their experience with Arachne. The Commission will be then able to tackle the bottlenecks and to improve the toll so as to meet the Member States' needs and prevent potential administrative burdens. Some improvements are already being made for improving the quality and interoperability of data on recipients of EU funding. The new Regulations for the 2021-2027 programming period require Member States to collect and use additional data on beneficial owners (natural persons), in relation to beneficiaries and contractors, to better detect risks of fraud or conflict of interest. This will contribute to enhancing the protection of the

⁸ SWD(2022) 225 final

				financial interests of the Union. The Commission has therefore planned to enhance the tool to allow Member States to include this additional data. As a result, new risk indicators (such as checking the reliability of the provided beneficial owner data or the links between beneficial owners and involved companies or related people) will also be developed, using this new information that will be enriched with external data. Moreover, following the extension of the CPR to other Funds (i.e. Asylum, Migration and Integration Fund, Border Management and Visa Instrument and the European Maritime, Fisheries and Aquaculture Fund), the use of Arachne could be extended to these Funds, in addition to the Cohesion Policy Funds and the Resilience and Recovery Facility. This would require further developments to adapt the tool to the specificities of all concerned Funds. Furthermore, while Arachne has proven to be a useful data-mining tool for managing authorities, its underlying architecture and technology were developed almost a decade ago. In light of the above developments, the use of Arachne and its functionalities are expected to expand significantly and to cover more domains and Funds, involving larger amounts of data to be assessed and stored. The Commission is therefore currently exploring ways to further develop the capacity of Arachne in order to respond to these increasing needs, taking into account the possible use of more advanced technologies. Overall, the Commission will continue to improve the features of the IT system, its user-friendliness and interoperability with other sources of data.
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251.	NL	Art. 63, 101	Does the Financial Regulation currently contain possibilities to impose financial sanctions or to suspend EU fund payments when member states do not adhere to the Charter of Fundamental Rights of the EU? If so, which Article(s) contain this possibility? Is this the case with Articles 63 and 101? If so, could the Commission explain how these articles provide such a legal basis? How can member state authorities be held accountable?	The sanctions provided under EDES (i.e. exclusion from funding and financial penalties) address the misconduct of a person/entity not of the MS. In such case, a violation of the Charter of the EU could be considered under the notion of grave professional misconduct (Article 139(1)(c)).
252.	NL	Fiche 8, Art. 138(2) and recital 102	The NL concludes, based on Article 138(2) and recital 102, that EDES is not applicable to member state authorities, but only to persons or entities that pose a risk to the financial interests of the EU. Can the Commission confirm this?	The understanding is correct.
253.	NL	Fiche 8, Art. 139(1)(c)(vi)	In the case of a grave professional misconduct, is it correct to assume that exclusion is only possible in the case of a final judgement or final administrative decision (Article 139, paragraph 1 under c, (vi))?	No, the exclusion would also be possible, in the absence of a final judgment, on the basis of a preliminary classification in law of the Panel. When it comes to the extension of EDES to shared management, the preliminary classification in law would be performed only in case of facts and findings established at EU level (reports of OLAF/EPPO/ECA etc).
254.	NL	Fiche 8	Is the application range of grave professional misconduct limited to EDES, or is this definition relevant outside the scope of EDES?	The notion of grave professional misconduct is contained in the Public Procurement Directive and has been further elaborated by the Court of Justice in its case-law. However, for what concerns the definition in Article 139, it is relevant for EDES scope.
255.	NL	Fiche 5	How does the Commission envision the addition of RFS to the FR? Are there any plans for additional regal regulations or only the application module procurement? Could the Commission say anything about the scope of the problem; does the Commission have any idea in how many cases the EU subsidies end up in companies with distorting foreign subsidies?	Please see the reply to question 64 on the Foreign Subsidies Regulation.

256.	PL	Art. 214	Poland presents below a proposal to supplement the proposed <i>REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the financial rules applicable to the general budget of the Union (recast)</i> (COM(2022) 223 final) (Financial Regulation). It results from noticing the role and importance of National Promotional Banks and Institutions (NPBIs) in providing long- term investments that create added value for Union's economy and are of great importance for the local societies. Another aspect of the Polish proposal is to assure that economy in non-Eurozone EU Member States would be able to benefit from EU financial instruments and guarantees at least to the same degree as the Eurozone Member States. Following points were also raised by European Association of Long-Term Investors during the public consultation on the revision of Financial Regulation, held in 2021. New paragraph no 4 in article 214: <i>Article 214^{214A}</i> <i>Financial liability of the Union</i> 1. <i>The financial liability and aggregate net payments from the budget shall not exceed at any time:</i> <i>(a) for financial instruments: the amount of the relevant budgetary commitment made for it;</i> <i>(b) for budgetary guarantees: the amount of the budgetary guarantee authorised by the basic act;</i> <i>(c) for financial assistance: the maximum amount of funds that the Commission is empowered to borrow for funding the financial assistance as authorised by the basic act, and the relevant interest.</i>	The Commission does not agree with such a proposal for this revision of the FR. For the current MFF programmes this proposal comes too late as the maximum financial liability of InvestEU Guarantee is already set out in the basic act in EUR and all guarantee agreements under InvestEU are planned to be signed at the latest by mid-2023. The analysis of the proposal would require further in-depth assessment by the Commission, particularly in the context of possible effects and similar demands for external guarantees, where such opening could imply that a significant part of Union resources is spent for FX risk (instead of credit risk). The Commission cannot also exclude that the proposal would open discussion with co-legislators with respect to programmes with grants. Moreover, such proposal could possibly also concern international financial institutions which operate both in EUR and in several local currencies (thus we would have at least two different amounts of financial liability in different currencies).
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		2. <i>Budgetary guarantees and financial assistance may generate a contingent liability for the Union which shall only exceed the financial assets provided to cover the financial liability of the Union if provided for in a basic act establishing a budgetary guarantee or financial assistance and under the conditions set out therein.</i> 3. <i>For the purposes of the annual assessment provided for in Article point (j) of Article 41(5) Article 41(5) 253(1), point (g) i, the contingent liabilities arising from budgetary guarantees or financial assistance borne by the budget shall be deemed sustainable, if their forecast multiannual evolution is compatible with the limits set by the regulation laying down the multiannual financial framework provided for in Article 312(2) TFEU and the ceiling on annual payment appropriations set out in Article 3(1) of <u>Decision (EU, Euratom) 2020/2053</u>Decision 2014/335/EU, Euratom.</i> 4. Budgetary guarantees may be denominated in other currencies than euro if this is to provide for the equal access to them or if this is justified by the objectives of the basic act. Article 19 shall apply accordingly. Justification: Currently only budgetary guarantees in euro are available, which hampers the access to them for entities located and acting in countries outside the euro area. Budgetary guarantees are usually long-term financing instrument, thus the currency risk costs may be significant. Imposing the currency risk costs and other costs linked to the currency conversion on these entities when at the same time other entities do not have such costs means their unequal treatment. It is to be noted that for example the exchange rate range for the PLN/EUR conversion for the period 2000-2022 reaches 35%, where the maximum rate was 4,9647 PLN/EUR (April 2004) and the minimum rate was 3,2026	
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			PLN/EUR (July 2008). The proposed provision aims to provide equal access to the EU budgetary guarantees. Additionally, such provision will allow for the wider use of the EU budgetary guarantees and more successful implementation of their objectives.	
257.	PL	Art. 62(1)(c)	New point no (x) in article 62.1.(c): <i>Article 62</i> Methods of budget implementation 1. <i>The Commission shall implement the budget in any of the following ways:</i> <i>(a) directly ('direct management') as set out in Articles 126125 to 157153, by its departments, including its staff in the Union delegations under the authority of their respective Head of delegation, in accordance with Article 60(2), or through executive agencies as referred to in Article 69;</i> <i>(b) under shared management with Member States ('shared management') as set out in Articles 63 and 126125 to 130129;</i> <i>(c) indirectly ('indirect management') as set out in Articles 126125 to 153149 and 158154 to 163159, where this is provided for in the basic act or in the cases referred to Article 58(2), points (a) to (d), by entrusting budget implementation tasks to:</i> <i>(i) third countries or the bodies they have designated ⇒, as referred to in Article 162 ⇐;</i> <i>(ii) international organisations or their agencies, within</i>	This proposal refers to Article 2(20) (definitions) of the InvestEU Regulation which reads as follows: <i>national promotional bank or institution' means a legal entity that carries out financial activities on a professional basis which has been given mandate by a Member State or a Member State's entity at central, regional or local level to carry out development or promotional activities.</i> However according to the InvestEU Regulation, InvestEU is to be implemented under direct or indirect management (Article 6): the InvestEU Regulation does not derogate from the FR: the entities eligible to work under indirect management listed in the InvestEU Regulation are those eligible under the FR. There is consequently no need to amend Article 62(1)(c) as the notion of "<i>legal entity that carries out financial activities on a professional basis which has been given mandate by a Member State or Member State entity</i>" is covered already by (v) or (vi) of Article 62(1)(c) of the FR: <i>(v) public law bodies including Member State organisations</i> <i>(vi) bodies governed by private law with a public service mission, including Member State organisations,</i>

			the meaning of Article 160¹⁵⁶; (iii) the European Investment Bank ('the EIB') or the European Investment Fund ('the EIF') or both of them acting as a group ('the EIB group'); (iv) Union bodies referred to in Articles 70 and 71; (v) public law bodies, including Member State organisations; (vi) bodies governed by private law with a public service mission, including Member State organisations, to the extent that they are provided with adequate financial guarantees; (vii) bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees; (viii) bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act;¹⁵⁷	to the extent that they are provided with adequate financial guarantees; Furthermore, it is not appropriate to refer to specific basic acts in Article 62 FR. The eligibility of InvestEU is aligned to FR.
			↓ new (ix) bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by bodies as set out in point	

			<i>(v) or (vi) and are provided with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support.</i> <i>(x) national promotional bank or institution such as defined in Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU programme / Article 2 (20)</i> Justification: In a context where long-term investment appears to be the backbone of European economic recovery and the transition to a more sustainable and digital economy, national public financial institutions have a major role to play in investing as closely as possible to the needs of economic actors public or private. NPBI provide a much more understanding of local markets and demand generated by private and public sector. Which allows them to tailor their offer to local customers and at the same time focus on investments that provide added value to the Union's economy. As implementing partners of the European Commission for the indirect management of EU funds, in accordance with Article 62 of the Financial Regulation, these institutions not only contribute to the fulfilment of Union policy objectives, but also ensure a high level of complementarity between promotional investment programmes financed by the EU and by the Member States. Finally, these institutions increase the visibility of Europe's actions in the territories. The launch of a single guarantee fund, "InvestEU", as part of the 2021-2027 financial programming, open to NPBI and its European partners, required	
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			the European Commission labelling. Compliance work implemented to obtain this accreditation allowed NPBI to demonstrate the equivalence and compatibility of their internal procedures with those of the European Commission.	
258.	PL	Fiche 5	Comment concerning procurement in crisis situations Poland supports amendments in the FR related to procurement management in crisis situations, however we would like to emphasize the need to maintain consistency of solutions and flexibility in this field proposed in the FR with the possibilities that Member States have/will have in the case of awarding public contracts covered by Public Procurement Directive (Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement). Question: Does the European Commission plan to propose similar crisis situations solutions which may be applied to public procurement under the Public Procurement Directive, for example as an element of the future Single Market Emergency Instrument?	There is no decision yet on introducing similar provisions in the Procurement Directive, however there are new EU regulations that foresee provisions related to crisis management (ie. the proposal for a Regulation on a framework of measures for ensuring the supply of crisis-relevant medical countermeasures in the event of a public health emergency at Union level). Moreover, on the basis of the current version of the Directive 2014/24 it is already possible to use the negotiated procedure without publication of a contact notice (see Article 32 of Directive 24).
259.	PL	Fiche 5	Comments resulting from the analysis of consistency of the FR with the Public Procurement Directive, in the cases where the European Commission refers to the need of alignment to Directive 2014/24/EU: Modifications in the dynamic purchasing system In point 9.3 of Annex I, the European Commission proposes to remove the reference to 15 working days when it comes to the prolongation of deadline for evaluation of requests for participation in dynamic purchasing system. The European Commission explains that the current wording of point 9.3 is not clear and the modification will be in line with provisions of the Public Procurement Directive. However, article 34 point 5 of directive 2014/24/EU states that contracting authorities indicate in the procurement documents the length of the extended period that they intend to apply. Question: In order to ensure transparency and compliance with directive 2014/24/EU, does the European Commission consider to add in Annex I to the FR a provision indicating an obligation to specify the length of extended period for assessing requests submitted in the dynamic purchasing system?	This reference was removed as, based on the Commission's experience, it was not considered efficient for the EU procurement. Specifying an appropriate time frame may be explored.
260.	PL	Fiche 5,	Editorial error in the content of the Fiche regarding changes in award	Indeed, the fiche will be corrected.

		new recital 164	criteria: In the Fiche, on pages 11-12, the editorial error was found in the explanations concerning the possibility to use as an award criterion the organisation, qualification and experience of the staff assigned to perform the contract. Namely, it is likely that the text of new recital (164) adapting recital (107) was copied incorrectly because the part of recital deleted within the FR recast, was indicated in the Fiche as newly added text. Question: We understand that the authentic text of the proposal is the one published, but perhaps it would be worth keeping the correctness of the Fiche in this regard.	
261.	PL	Fiche 5, Art. 2(46)	Comments related to new instruments which may be relevant for the possible future changes in the Public Procurement Directives: Multiple sourcing procurement: In article 2 point 46 of the FR, the European Commission proposes to add a definition of multiple sourcing procurement. This solution was described in more detail in new point 34 of Annex I. Question: Is the addition of this instrument in the provisions of the FR and Annex I intended to confirm the already existing possibility of its application within concluding a framework contract or a public contract? If yes, can this solution be used when awarding public contracts / concluding framework agreements, even if it is not explicitly defined in the Public Procurement Directive?	The multiple framework contracts (FWC) do not serve the same purpose as the multiple sourcing procurement, as in multiple FWC in cascade or with reopening, the contracting authority benefits from the services of one contractor at a time. The justification for multiple sourcing can be explained with the example of the Joint Research Centre (JRC) which has to use such multiple contracts where the validation of results needs to be done in parallel by several different laboratories. The current FR (and the PP Directive) are silent on the possibility to sign such multiple sourcing contract(s) and therefore, in order to ensure legal certainty it is necessary to lay down rules in the Financial Regulation. This interpretation of the FR is not new – see Article 14(1) (c) of the Space Regulation (EU) 2021/696, which provides that “<i>by way of derogation from Article 167 of the Financial Regulation, to use, wherever appropriate, multiple supply sources in order to ensure better overall control of all the Programme’s components, their cost and schedule</i>”. An explicit authorisation for the use of this

				instrument, whenever justified, is now needed at the level of the FR with the appropriate rules (e.g. regarding partial cancellation of the procurement procedure). For more details on multiple sourcing procurement, we refer to the reply to question 317.
262.	PL	Fiche 5	Extension of the condition for using the negotiated procedure without prior publication of contract notice: In point 11.1 (a) of Annex I, the European Commission proposes to extend the condition for using negotiated procedure without prior publication of a contract notice concerning lack of tenders, suitable tender, request to participate or suitable request to participate, in the previously conducted procedure. According to this, the competitive procedure with negotiation where a contract notice is published was added to the catalogue of procedures in case of which lack of tenders or requests entitles to use the negotiate procedure without prior publication. At the same time, there is no such solution in provisions of the Public Procurement Directives. Question: Does the European Commission consider that it would be appropriate to add a competitive procedure with negotiations to the similar condition for use of negotiated procedure without prior publication in the case of provisions of the Public Procurement Directives?	There is no decision yet on introducing similar provisions in the Procurement Directive.
263.	PL	Fiche 5, Art. 169(3), 70, 71, 69	Procurement on behalf of Member States: In article 169 point 3 of the FR, the possibility to conduct procurement on behalf of Member States was added, also under normal circumstances. In line with this provision a Union institution, Union body referred to in Articles 70 and 71 or an executive agency referred to in Article 69 of the FR may procure on behalf of or in the name of one or several Member States, on the basis of a mandate, or act as a wholesaler, by buying, stocking and reselling or donating supplies and services, including rentals, to Member States. Question: Will the purchase of services and supplies be voluntary for Member States in the case when Union institution/body/agency acts as a wholesaler?	In order for an EU Institution to conduct procurement on behalf of Members States, it is required to sign an agreement between all the parties prior to the launch of a call for tenders. This agreement may include among other, provisions on whether the purchase of services or supplies would be voluntary for Member States, or opt-in, opt-out clauses.

264.	PL	Fiche 5	Extension of the condition for using the negotiated procedure without prior publication of contract notice in the case of services provided by an international organisation: In point 11.1 (I) of Annex I, the European Commission proposes to add new entities in the condition for using the negotiated procedure without prior publication of a contract notice in the case of services provided by an international organisation where it cannot participate in competitive procedures according to its statute or act of establishment. These new entities are public organisations in Member States that may not be able to participate to tender procedures. Question: What does 'Member State organization' mean? Does the modification result from practical experiences?	As regards the first question, please see the definition of a Member State Organisation in Article 2 (42) of the current FR. This proposal is based on information that public organisations in some Member States may not be able to participate to tender procedures.
265.	PL	Fiche 5	Procurement procedures conducted by the Union Delegations in third countries: In the explanations concerning alignment of the threshold for procurement procedures for the Union Delegations in third countries, the European Commission indicates that some Member states do not apply provisions of the Public Procurement Directives outside the EU: 'need for more flexibility for the rules applied to EU delegations in third countries considering the local market conditions and Member States' practices for their embassies.' (page 1) 'Furthermore, the proposal takes into account the practices of the Member States whose financial procedures outside the EU are much lighter, simpler and more adapted to the local conditions. For example, some Member States do not apply the Public Procurement Directive outside the EU' (page 33) Question: Do the above-mentioned explanations mean that the provisions of the Public Procurement Directives may not be applied by embassies/delegations of Member States in third countries?	The proposal is justified by the need for simplified procedures for procurement carried out by EU delegations due to the specificities of the local market in third countries. As a general rule the procurement directive rules and principles apply to procurement of embassies/delegations of MS in third countries. However, most of these purchases are of value below the directive threshold or related to specific needs (e.g. monopoly situations etc), therefore the Directives' competitive purchasing rules are not applied. It appears that some MS apply specific rules for their embassies in third countries.
266.	PL	Fiche 2	Among other things, the European Commission proposes to increase the interoperability of data on recipients of EU funding and on entities ultimately benefiting, directly or indirectly, from this funding. In practice, therefore, the Commission proposes to extend the application of the system	Please refer to the answer to question 7. At this point in time, the Commission cannot provide answers on the concrete functionalities and processes

			to beneficial owners (i.e. the same as in the case of EDES), where the recipient of EU funding is not a natural person. The Commission proposes that the application of the system should be mandatory for: - o The European Commission and its executive agencies; - o Member States in shared management; - o Member States in direct management— e.g. in programs within RRF; - o persons or entities in indirect management. The Commission clarifies that in shared management references to recipients should be understood as references to beneficiaries defined in sectoral legislation. The new obligations would apply to programmes adopted under the MFF after 2027. At the same time, the Commission will enable and encourage voluntary use during the transition period. Question: This tool is aimed at data mining and risk scoring. How will this risk be assessed? Will a list of risk indicators be created, as in the case of Arachne? Will Member States be involved in the creation of this list? Will it vary depending on the situation (e.g. an expenditure ratio higher than the cost of the project is not adequate at a time of high inflation)? Will the tool be equipped with a user panel where it will be possible to select individual risk indicators, based on the risk analysis adopted for the programme? Such a solution would allow to shift the administrative burden from analysing whether the flag is adequate for a given project, to adapt the controls to the actual risk factors in the programme and in the projects.	of the future system. Member States and other users of the future system will be closely involved in its development.
267.	PL	Fiche 2	On what basis does the EC expect that the use of this tool will be crucial for the development of digital controls and audits? It is worrying to introduce automatic decision-making, especially in the absence of adequate transparency of the criteria and the reproducibility of the decision-making algorithm. It is possible to rely on the results of the analysis of the tool in the control and audit work, but only if the Commission ensures the key involvement of the Member States in the process of shaping the principles of risk assessment: this includes developing and weighing and adapting the set of indicators to the specificities of programs and projects (as already indicated in question 9.). In addition, if the Commission envisages that in the	The Commission takes note. The system aims to support the bodies that are responsible for the implementation and control of the EU budget in their duties to prevent and detect risks, to identify and control as required high-risk projects and beneficiaries and to enhance fraud prevention. It does not oblige to follow up on every red flag. The system does not take management decisions, Member States and their bodies retain its discretion

			future this tool will use machine learning technology, it will be necessary to provide representative batch data on the relevance of risk scoring in this tool. Taking into account the above, it should be possible for the user to determine whether the alert has proven to be justified already at the stage of use of the tool. Currently, there is no such functionality in Arachne.	to take the red flags into account in any given case.
268.	PL	Fiche 2	How will this tool be used in the process of selecting projects, concluding agreements with beneficiaries (awards) and monitoring projects?	The use of the system should be similar to the one of the current tool Arachne. The Commission will provide guidance and training to Member States (see also answer to question 7).
269.	PL	Fiche 2	The recast of FR provides for the creation of the Anti-fraud Strategy Coordinated by Member State. Does the European Commission expect the mandatory preparation of NAFS? (National Anti-Fraud Strategy?) So far, this obligation was assigned to the Managing Authority, while the FR has completely omitted this issue. Wouldn't it be better to leave this issue to the decision of each Member State so far? What are the reasons behind this mandatory transfer of competences?	Please refer to the answer to questions 95 and 131.
270.	PL	Fiche 2	The FR also addresses the issue of entering data into the new Arachne system. The data about beneficial owners of the recipients of EU funding that the European Commission wants to obtain for its new IT tool can be distributed in several databases on Member State's level (for example centralized register of beneficial owners of companies, centralized information on bank accounts with info about beneficial owners of account owners etc.). From what exactly databases should the data come from – could the Commission indicate the exact foreseen sources? According to the proposed provisions, the Member State would be obliged to collect the audit trail data in one place to feed the Commission's tool. As regards information on beneficial owners of companies and other legal entities in the case of Poland data is published on a dedicated website and the new Arachne system could access directly via web page or API instead of requesting batch. Did the Commission considered such solution? Understanding difficulties related to different ways of beneficial owners registers organization in different Member States we would like to draw your attention to the BORIS system – IT system built to provide common	Please refer to the answer to question 74.

			interface to beneficial owners registers in all Member States. In our opinion BORIS could be adopted to provide access to the beneficial owners registers across the UE countries for the Arachne system. Did the Commission considered such solution?	
271.	PL	Fiche 2	The Commission provides for “preferential rules” in the case of indirect management — the obligation to provide data on beneficial owners would only apply to situations where “entrusted partners” collect such data in accordance with their rules and procedures. This is justified by the principle of reliance on implementing partner’s rules, the principle of proportionality and the right balance between the protection of the EU’s financial interests and the need to collect data and feed IT system by entrusted partners. Will similar facilitations, reducing administrative burdens, be applied to Member States implementing the EU budget in direct and shared management? It seems that the rules should be equal for all. If not, could the Commission present reasoning behind such decision.	As regards indirect management, data on the beneficial owners of the recipients will be collected by entrusted partners (and made available in the IT system) with regard to their direct recipients and to the extent that data on beneficial owners is collected in accordance with their rules and procedures. This is in line with the rationale of this method of budget implementation, based on reliance on partners’ rules, the equivalence of those rules to those of the Commission and the principle of proportionality. The proposed approach strikes the right balance between the protection of the EU financial interests and the need to collect and feed the IT system by the entrusted partners
272.	PL	Fiche 2	Notwithstanding the above, it is worth noting that the currently functioning systems have been developed and refined during many financial perspectives. They were subsequently revised and improved as a result of the relevant recommendations in the framework of the Commission and ECA audits. Basing the control system on a single integrated IT system for data mining and risk scoring requires a change in all control procedures, the effectiveness of which has been confirmed by audits of the Commission services, inter alia through a systematic decrease in the level of errors and irregularities, in the case of Poland for example in the Operational Programme Infrastructure and Environment 2014 – 2020, the largest programme in the EU. It should also be noted that the control staff are very familiar with the current procedures. A change in the current system may result in a decrease in the effectiveness of controls due to the competence gaps associated with the transition to the new control system. Did the	The Commission takes note. Pease refer to the answer to question 7.

			Commission take these risks into account?	
273.	PL	Fiche 2	It is also likely that the operation of one top-down system for all programmes and all Member States may not be appropriate. The risks to infrastructure projects are completely different from those of social or IT projects. The procurement systems and the specificities of the different markets are also different. The above factors can cause a lot of red flags in selected areas and distract control services from the appropriate risks. In some areas, it may be more appropriate to use other dedicated risk scoring tools. In view of the above, the Commission should not close the possibility of using such tools, and it would be virtually impossible to use two. Has the Commission considered such a solution?	The Commission takes note. Please refer to the answer to question 7.
274.	PL	Fiche 2	In addition, the implementation of this solution without adequate independent evaluation studies may result in a significant weakening of the control system. For example, the Managing Authority for the Infrastructure and Environment Operational Programme tested another point risk assessment system (for procurement) and the correlation with irregularities was not confirmed. The above experience has shown that such systems should be approached with extreme caution and that the tool should be tested independently and compared with the current control system before introducing them. Did the Commission make such comparative studies and tests and take into account the risks of weakening of the control systems in effect of this?	The Commission takes note. Please refer to the answer to question 7.
275.	PL	Fiche 3	The Commission's proposal concerns the obligation to send to the Commission at least once a year information on recipients of EU funding, which is then to consolidate with information from direct management and publish in a database on a single page covering all methods of implementation of the Union budget. Therefore, at Member State's level, this obligation will apply to EU funds both in shared management and directly (i.e. within RRF). As in the case of Arachne, the obligation is only for programmes adopted after 2027. The Commission proposes amendments to Article 38 of the FR, specifying the deadlines for publication, the detailed scope and period of availability of data on recipients/beneficiaries, exceptions to the application of the	Please refer to the answer to question 17.

			obligation to transmit and publish data. 18. Question: In its proposals, the Commission provides for “preferential rules” in the case of indirect management — the obligation to provide data on recipients of EU funding would be applied only in cases where the EU financial support exceeds EUR 500 000 and this is justified, among others, by the Commission basing on reliance on implementing partner’s rules and the principle of proportionality. Will similar facilitations, reducing administrative burdens, be applied to Member States implementing the EU budget in direct management? We believe that the rules should be equal for all. Similarly, in shared management — which in the proposal to amend the FR benefits from an exemption in favour of sectoral legislation — perhaps such a threshold could be introduced into sectoral legislation, e.g. in cohesion policy?	
276.	PL	Fiche 8, Art. 138(2)	The Commission proposes extending the application of the EDES system to shared management as well as to direct management implemented by the Member States (e.g. RRF). The exclusion of entities and persons at EU level would result in their exclusion from all Union funds allocated to the implementation of projects in all Member States. The Commission also proposes: - o broadening the list of grounds for exclusion, including the addition of so-called autonomous grounds for exclusion; - o extending the scope of excluded entities (as well as financial penalties) — including so-called beneficial owners and affiliated entities, as well as contractors and subcontractors; - o extension of the Commission’s competences: exclusions/exemptions from the possibility of reimbursement based on the recommendations of the EDES panel. Proposed scope of application of EDES in shared management [Article 138(2)]: • any person or entity applying for funding, selected for such funding or receiving such funding, i.e. in practice all applicants and beneficiaries, and • any person or entity with which the applicant or beneficiary INTENDS to cooperate (“on whose capacity the person or entity (...) intends to rely”), and	The Commission considered the current mechanism in place (e.g. safeguards laid down in the CPR provisions) which does not provide for an exclusion system at EU level and does not have a preventive mechanism for all authorities to reject unreliable counterparts. The proposal puts forward an EU-wide exclusion system covering all funds with a targeted and proportionate approach in shared management. The Commission must be able to act on the basis of EU findings (OLAF, EPPO, ECA reports) without incurring further losses on account of the same person/entity. In this regard, the EDES database allows for the information on the entity that has been sanctioned to reach all MS. The Commission, including its Legal Service, has considered the specificities of the shared management mode and the proposal put forward is

			• their (the applicant's or beneficiary's) subcontractors, and • their beneficial owners (i.e. the actual owners) and • any entities associated with applicant or beneficiary (affiliated entities). The above means a new administrative burden (which will require additional resources from the Member States) at every stage of the project selection and implementation, both on the part of the institutions of the cohesion policy implementation system (and other shared-management policies) and the beneficiaries themselves — who would in some way have to verify their partners and contractors/subcontractors. Question: Poland expresses doubts whether the Commission's proposal for a single exclusion system for all management modes complies with the principle of proportionality. How does the Commission assess the scale of the actual problems underlying the proposal and is the proposed solution proportionate, especially given the future administrative burden on beneficiaries of funds, Member States and the Commission itself? Given that there are different methods of budgetary management well-established in EU law with established and adequate control measures - does the scale of the problem justify the introduction of uniform measures at EU level, i.e. widespread exclusion? Does the current scale of irregularities justify the increase in administrative costs? Could the Commission present the data in this regard presenting the current scale of irregularities and its expectations to reduce it? In our opinion such a proposal requires a cost benefit analysis. It should be also consulted with working groups in the Council responsible for programmes implemented under shared management – has the Commission presented its proposals in the forum of other working groups? If yes, could the Commission indicate these groups? What was the outcome of these discussions?	targeted and framed accordingly. As for the rationale of the proposal, the Commission has duly considered its proportionality, analyzing in particular the repartition of competences between EU Institutions and MS. The Commission will cover all of these questions during the article by article reading of the proposal. For a more detailed analysis of the possible influx of cases, the Commission refers to the data in Fiche 8. Immediately after adopting its proposal on 16 May 2022, the Commission has engaged in discussions with COMBUD members of the Council with a general presentation of the proposal. The Commission has so far not engaged in discussions with other working groups of the Council but is of course willing to do so at the request of the Presidency.
277.	PL	Fiche 8	Who and under what conditions will provide EDES with data on entities excluded under shared management?	All persons and entities involved in budget implementation in accordance with Article 62 shall be granted access by the Commission to the information on decisions on exclusion pursuant to Article 139.

				The management authority can make the request through the FMB of the EDES Secretary and access will be given to the users. The Commission has already prepared guidance to help the contracting authorities requesting access.
278.	PL	Fiche 8	The ECA report No. 11/2022 on protecting the EU budget, better use of blacklisting needed shows that some Member States have their own registers of entities excluded from the possibility of applying for co-financing of projects from EU funds. Have the Commission analyzed the national experiences with national exclusion registers and initiated the discussion with Member States in this regard? If yes, what was the outcome of these analysis/discussions? Has the Commission considered such an approach that if a Member State has a national register with a defined scope of data, this State would not have to introduce EDES?	The existence of an effective national exclusion system cannot rule out the need for extending EDES to shared management. This is because the effect of an exclusion under EDES has effects at EU level (so well beyond the relevant MS). For this reason, a similar sanction has to be taken at the level of the EU institution on the basis of a well-established system with a strong decision-making procedure.
279.	PL	Fiche 8	What will be the validity and update indicators of the data the EDES database? In other words – how up-to-date will be the data available in EDES?	EDES contains information on the sanction imposed. The day the sanction expires, the information is immediately removed by the system. This is specified in Article 143 and 145 of the FR and in the relevant exclusion decision.
280.	PL	Fiche 8	How does the exclusion period end? What will be the procedures in this regard?	See the reply above (line 279)
281.	PL	Fiche 8	In practice, how does the Commission intend to apply the procedure of exclusion of an entity solely on the basis of a preliminary legal classification, i.e. without a final judgment or a final administrative decision without at the same time breaching the rule of law, including the presumption of innocence and “full respect of the rights to defence”? How does the Commission intend to guarantee “the right to be heard” for an entity or person in the context of EDES? Will the Commission organize “hearings” or “interviews”? And if so, where will they take place? Who will finance the costs of participating in such a procedure? Registration in the EDES system is, in principle, based on a final judgment or	Please see reply to question 239.

			a final administrative decision. However, the Commission envisages the possibility of taking a decision on exclusion on the basis of a preliminary legal classification, taking into account the facts and findings made. It should be borne in mind that the exclusion applies to entities entered in the EDES, whereas in this case, i.e. in the case of exclusion solely on the basis of a preliminary qualification, such an entry does not yet exist. The Commission's proposal on exclusion on the basis of a preliminary qualification seems to be unacceptable from the legal point of view. There is no possibility for the institutions of a Member State to exclude natural persons or entities from applying for and benefiting from EU funding — without a final judgment or administrative decision — but only on the basis of the EDES 'Panel' recommendation, which is the body appointed by the European Commission, in the original assumption for the purposes of the Commission administration. There is a high risk of a discretion and corruption resulting from such a proposal. Did the Commission considered this risk?	
282.	PL	Fiche 8	What will be the legal nature of the entry in EDES (declarative/constitutive)? Poland assumes that such an entry will be constitutive and not declaratory. In the light of the above, could the Commission explain the effect of exclusion by entering into the EDES register for completed/implemented co-financing agreements, taking into account the financial progress of closed projects and on-going projects as well as possible stages of litigation (final judgments, annulled judgments, cases during trial, reports of crime, indictments, etc.).	The exclusion can have effects only for the future. For what concerns ongoing legal commitments, the relevant Contracting Authority enjoys a discretion on whether to terminate the contract in light of the established misconduct or to proceed. The Commission has already prepared <i>ad hoc</i> guidelines that can be shared with the Council.
283.	PL	Fiche 8	What appeal procedure against an exclusion decision is planned? Could the Commission present an appeal procedure for entities wrongly excluded, e.g. on the basis of EDES panel recommendations, including an indication of how the entities affected by erroneous decisions will be able to claim compensation in situation when the exclusion decision was taken at EU level and the national or regional institution refused to grant funding? Compensation in such cases would have to come from the EU budget. If this proposal is maintained, are the Commission and EU courts prepared for massive lawsuits from those deprived of their rights without adequate grounds (i.e. a judgment or an administrative decision)? It should be noted	All the exclusion decisions are subject to unlimited jurisdiction of the ECJ. Throughout these six years of work of the EDES Panel and numerous claims for annulment brought before the ECJ by the concerned entities, only one decision of exclusion has been annulled. This demonstrates the legal soundness of the Panel's recommendations.

			that any exclusion decision may affect the liquidity of the recipients of the funds and lead to bankruptcy, which may result in the impossibility of completing the projects.	
284.	PL	Fiche 8	Does the Commission consider any derogations from the EDES system - concerning categories of entities to be excluded, for example: governmental, local governmental entities or any others?	There is no derogation.
285.	PL	Fiche 8	The extended scope of operators who could be excluded also raises doubts. The Commission plans to extend the sanctions to individuals who are deemed considered responsible for the misconduct in a company. How should “deemed responsible” be defined, including who will make such an assessment, on what basis and using what legal procedure? How does the Commission plan to carry out a procedure to prove such a situation without judicial or administrative proceedings? Who would carry out the above-mentioned procedure — a Member State, European Commission, or EDES panel?	Please see reply to question 239.
286.	PL	Fiche 8	The Commission foresees a very wide personal scope of application of EDES — including contractors and subcontractors of the applicant or beneficiary and entities with which it intends to cooperate (intends to rely on). How would this be verified in practice, in particular for contractors/subcontractors and partners of the applicant or beneficiary? Would all persons or entities applying for and benefiting from the EU Funds have access to the lists of excluded entities and would be required to verify these entities? Or would these responsibilities lie with the Member State’s institutions? It should be stressed that at the project selection stage, the Member States’ institutions do not yet have information on future contractors/subcontractors. In addition, the Member States’ institutions do not participate in tenders organized by the beneficiaries. Therefore, it is hard to imagine how to carry out such ex-ante verification.	The only verification that will have to be done on the side of managing authority is the check of the EDES database. Prior to awarding/signing a contract, the managing authority would have to check if the person or entity is listed in the database. There is no additional ex-ante verification.
287.	PL	Fiche 8	According to the Commission’s proposal, in addition to excluded entities included in the EDES, Member States should refuse access to EU funding also to other affiliated entities of the excluded entities. Member State’s institutions do not have instruments from which they could obtain information on entities linked to an excluded person or entity, beneficial	MS should refuse access to funding to the person or entity already in the database (i.e. already sanctioned), regardless of whether the exclusion procedure was originally triggered against the entity as applicant/recipient/subcontractor/beneficial

			owners, natural persons exercising effective control, etc. There is also no ground for possible exclusion of these persons and entities (similar to the above) – so would the potential exclusion of such affiliated entities take place without a judgment or a final administrative decision? Would the source of such data be a tool analogous to Arachne? Who and by what means would determine the criteria for the extent of the links to be examined? In other words, what would be the “depth and breadth” of the links studied, which would result in the exclusion of related persons or entities. Technically, how many nodes in the graph do we study? Will the existing definitions of an autonomous partner and linked enterprises developed under State aid law apply? Or is the Commission planning to create a different terminology network? In the fiche prepared by the Commission, there is also a proposal to develop criteria for attributing responsibility to beneficial owners or affiliated entities, for example by differentiating the degree of control and introducing exceptions. As it stands, the proposed solution seems opaque.	owner/affiliated entity. The provision does not require to reject a participant or affiliate that is not already sanctioned.
288.	PL	Fiche 8	It should be noted that in the event that EDES would become a base for all methods of managing the budget with an extended scope of exclusion, it would have to be mandatory for beneficiaries of cohesion policy (e.g. small municipalities). Do we understand the Commission’s intention that, as a consequence, any applicant or beneficiary (e.g. a small municipality) would have to have access to the list of excluded entities in EDES and check in the database before awarding the contract whether its potential contractors and subcontractors have not been excluded throughout the EU? However, what about the entities related to these potential contractors — would the beneficiary has to verify this as well?	According to the current legal framework, all persons and entities involved in budget implementation in accordance with Article 62 shall be able to access the EDES database and verify the information therein. This is already laid down in the FR. What is changing is that the check will become mandatory as well as the rejection of a person/entity listed in the database. As for the entities related to the applicant/contractor, the management authority – once it has the relevant information – should also verify that such persons or entities are not listed in the database (see Article 145(5)).
289.	PL	Fiche 8	Many questions also arise with regard to the proposed new grounds for exclusion, including misconduct against values, including incitement to discrimination, hatred or violence, as well as unreliable guarantors. Who and under what conditions would investigate such a basis for exclusion and	Please see reply to question 124.

			under what procedure? The rule of law is the guarantee of individual and civil rights, including the right to a fair trial, the rights of defence. In the Commission's proposals, this issue seems to be completely overlooked. The reasons for possible exclusion should be precisely defined.	
290.	PL	Fiche 8	The proposed regulation penalises the “unjustified lack of cooperation” in the context of controls, investigations and audits. Who, in such a situation, and under what procedure will confirm effectively and impartially that the situation has occurred? For example, there may have been no effective contact between OLAF auditors or auditors with the entity. Which institution will have the final decision to register in EDES? OLAF - a party to such proceedings? The proposed reasons for excluding a person or entity seem to be excessive and raise legitimate concerns about its possible abuse. In addition, it does not take into account the situation of a Member State that have not joined the EPPO. Indeed, it is apparent from the proposed provision that exclusion may also be made for obstructing the investigation, control carried out by the EPPO. This high generality of the above-mentioned conditions for obstructing the investigation or control is of concern, especially in the context that it can be applied only on the basis of the so-called preliminary legal classification of the conduct described and it would not be necessary to have a final judicial decision or a final administrative decision. In any case the Commission should consult the Member State, which can transmit its observations. Otherwise this may lead to a situation in which an entity is excluded, despite the fact that it is subject to appropriate national proceedings which do not confirm the existence of exclusionary conduct. In this case, the person or entity will be removed from the list of excluded persons. However, this does not in any way compensate for the potential losses incurred. At the same time, despite the absence of a finding of irregularities or fraud, the Member State will not be entitled to declare expenditure (for this entity) to the Commission. Could the Commission present its ideas, how to deal with such problems?	The refusal to cooperate in the context of investigations, checks or audits carried out by an authorising officer, OLAF, EPPO or the Court of Auditors is not explicitly listed so far in the EDES framework. However, such misconduct has been covered in past cases under the concept of grave professional misconduct or significant deficiencies in the compliance of contractual obligations. Notwithstanding the above, the Commission considered that an autonomous ground with an appropriate penalty range, consistent with the seriousness of the misconduct, should be added. The obligation to cooperate with investigative bodies is laid down in the relevant legal basis, including the Regulation establishing the body and/or the contract with the person or entity. In order to consider that there has been an intentional failure to cooperate, a proper assessment of the conditions for complying with the obligation to cooperate is carried out by the EDES Panel. Any administrative proceeding for exclusion entails a contradictory phase where the person or entity can submit observations/exculpatory evidence. This is not a ground for automatic exclusion and it is not meant to impair any pending national proceeding.

291.	PL	Fiche 8	The possibility of exclusion on the basis of OLAF's decision raises doubts. Evidence from OLAF's investigations is of questionable quality, as evidenced by the average proportion of cases handled by the judicial authorities leading to an indictment of 37 % for the EU-28. According to the ECA's 2019 report 'Fighting fraud in EU spending — action is needed', OLAF issued a total of 541 judicial recommendations between 2009 and 2016. So far, Member State authorities have taken decisions on 308 of these recommendations, issuing indictments in 137 cases (44.5 %) and dismissing 171 cases (55.5 %). However, there is no information on the number of final judgments. So far, Member States' judicial authorities have issued approx. 17 indictments following cases initiated by OLAF. Moreover, as is apparent from the report (point 109 of the report), as regards the recovery of unduly paid EU funds, in a number of cases the Directorates-General of the Commission stated that OLAF's final reports did not provide sufficient information that could give rise to the initiation of the recovery procedure. In such cases, the Directorates take further action (on their own or through external bodies) to determine whether recovery of the amount given in the OLAF recommendation is possible or relying in this regard on evidence from their own controls. The data clearly demonstrate the inefficiency of long-term OLAF investigations and their limited use by the Commission itself. Is it therefore justified to exclude beneficiaries on the basis of OLAF's findings?	Please see the reply above.
292.	PL	Fiche 8	In the case of remedial measures required for the revision of the decision to exclude or revise the 'Panel' recommendation, the Commission takes the view that its resources (the EDES Panel, Authorising Officers) are not in a position to assess whether the above measures are sufficient. In such a situation, the Commission proposes that their assessment can be taken over by Member States or independent auditors. This will undoubtedly create additional administrative and financial burdens on the institutions and beneficiaries of EU funds. In that case, does the Commission envisage providing adequate resources for this purpose — under technical assistance in direct management?	The proposal on remedial measures should be read in the sense that it is upon the person/entity to submit measures that have been either: 1. audited by an external independent firm; and/or 2. assessed in a decision of a competent national or EU authority. The reference to the decision of a national/EU authority concerns proceedings in which remedial measures can be also taken into consideration (such

				as, by competition authorities). The provision does not require an assessment of the MS or of the management authorities.
293.	PL	Fiche 8	The Commission proposed that payment claims for entities entered in EDES should not be submitted to the Commission for reimbursement. Is it mentioned anywhere in the proposal for amending the FR that the entry in the EDES register or the preliminary legal qualification indicating that the conditions for such an entry have been met (and its affiliates') ineligibility to submit applications for co-financing, execute contracts in projects or in suspending reimbursement of expenses incurred in ongoing projects? Without such provisions how are the institutions of the implementation system supposed to terminate contracts, withhold payment and demand refunds?	The legal basis to enforce decision on exclusions is laid down in Article 145(5). The decisions can display effects only for future legal commitments. Therefore, a contracting authority is not obliged to terminate an ongoing contract on the basis of an exclusion decision, but it shall not award other EU funds.
294.	PL	Fiche 8, Art. 147(2)	Poland draws attention to the Article 147 para. 2 of the project, which contains a fairly extensive catalogue of means of delivery. <u>Therefore the question arises as to whether all of them provide certainty of service to the designated person and whether, consequently, there is a presumption of effective service.</u> Poland suggests a re-examination of delivery methods taking into account information society trust services (eIDAS) standards.	The provision in question has been carefully designed and takes into consideration the minimum standard for a presumption of notification. It remains that the person/entity can always prove otherwise.
295.	PL	Art. 16(a) (Article 265)	Why the provisions on the CEF Blending Facility previously contained in Chapter V, in particular in the Article 16a of the FR (vide: page 238 of the project) were deleted? Was the intention of the European Commission to generalise these provisions also to other instruments of the EU budget?	This provision is part of the Part 2 of the Financial Regulation, which was dedicated, at the time of the last general revision of the FR, to amendments made to several sectoral basic acts of the last MFF ("omnibus"). This Article 16a is part of Article 275, dedicated to amendments to Regulation 1316/2013, which is no longer in force (it has been repealed by Regulation 2021/1153, which establishes the "new" CEF under this MFF). Obsolete provisions and the corresponding recitals are to be removed as part of the recasting. There is no intention of the Commission for these deletions, which are of a legislative technique nature,

				to have any effect on the basic acts currently in force.
296.	PL	Fiche 9, Art. 240	Are the new provisions on global initiatives referred to in Article 240 FR (vide page 274 of the project) also related to financing the reconstruction of Ukraine? How will the decision-making procedure for the EU's involvement in a global initiative take place? Who and in what procedure will decide not to participate in the EU and assess the effectiveness of the funds spent? Is the Council involved in this process and on the basis of which provisions? What global initiatives could be financed under the new rules and which could not be financed under the current FR — could the Commission deliver examples?	Subject to completion of the internal Commission decision making process, the support to Ukraine, would be an EU led initiative where coordination of actions is expected to be carried out outside of a 'classical' financial intermediary fund. The proposed provisions in Art. 240 on global initiatives refer to the proposal of a new budgetary implementation instrument in the FR to allow for Union contributions to global initiatives, when this is not achievable through other budget implementation instruments. Please see question 75 for more detail on the grounds for creation of Art. 240. The EU will be a donor to a global initiative. The Governing Board is responsible for decision-making in the global initiative in accordance with the rules of the initiative and responsible to the donors for correct implementation of the funds, including by way of regularly reporting back to the donor on the basis of relevant indicators. In certain cases, the EU can also decide to become a Board member in initiatives, depending on political considerations and the rules of the initiative. Please see response to question 32, which states that the assessment of the appropriateness of the vehicle will be made by the Commission in the financing decisions that will be submitted to comitology, based on the Union policy objectives identified by the funding basic acts. As regards the effectiveness of the funds spent, the contribution will be in the form of financing not linked to costs. The Governing Board of

				each initiative will report back to the donors at regular intervals on the basis of relevant indicators on the funds spent. There is no participation in such initiative so far 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. As laid down in Art. 240(1), the new instrument for global initiatives would only be used if budget implementation instruments provided for in other Titles of this Regulation would not be sufficient to achieve such Union policy objectives.
297.	PL	Fiche 15, Art. 104	As regards the new Article 104, it should be noted that Article 299 of the Treaty on the Functioning of the European Union provides that enforcement proceedings are governed by the rules of civil procedure in force in the State in whose territory it takes place. Therefore, decisions of the European Commission are not implemented through administrative enforcement. It should also be noted that <i>Council Directive 2010/24/EU on mutual assistance for the recovery of claims relating to taxes, duties and other measures</i> does not provide for assistance in the enforcement of claims to the European Commission. Only assistance in enforcing receivables listed in that Directive is granted through administrative enforcement. The provision of Article 104 of the FR is therefore contrary to the abovementioned Directive and to Article 299 TFEU. Therefore, the European Commission's claim should be enforced in a civil manner, in accordance with Article 299 TFEU. <u>How will the Commission comment on this contradiction?</u> The draft also foresees that the Regulation will enter into force on the twentieth day following its publication (Article 278). This is an unacceptable time limit for a possible adjustment of national legal orders.	The European Court of Justice has ruled in the case <i>Dimos Zagoriou v Commission</i> (C-217/16) that the enforcement proceedings may be done via administrative proceedings. For the relevant excerpts of this judgment, please see section IV 'Enforcement following the civil procedures' of part iv 'Key elements of the proposal' of the non-paper.
298.	PL	Fiche 10, Art.	The question concerns the amendment of Article 21.2.a — <u>will the extension of the definition of EAR to all Member States' contributions interfere with</u>	This change does not interfere in any way with the principles mentioned in the question and the

		21(2)(a) <u>the Treaty principle that the OR are the source of funding for the EU budget and that AR cannot become the main means of financing EU programmes? Does this violate the budgetary principle of universality? So far Article 21.2.a limits specific additional financial contributions from Member States that constitute external assigned revenue to only two types. The proposed amendment removes the limit what may create a risk that through basic acts (QMV) we may introduce new EAR without restrictions omitting legal changes in the OR system (unanimity). The Commission's justification for this change is included in the fiche, but the change may also have a side effects. It seems that the issue of the EAR's readiness to use (after the contract has been signed or only after payment) does not need to be regulated in the provision concerning the derogation from the universality principle, which is AR. <u>Is there a different purpose of change than described by the Commission? According to the Commission, the current changes of FR is of a limited and targeted nature. So what exactly will the proposed provisions in the Commission's opinion change compared to the current situation?</u></u>	Commission does not see side effects or different purpose. As regards the Treaty, it is assumed that reference is made to Article 311 TFEU. The proposed change does not interfere with this provision. The change is related to <i>additional</i> (voluntary) Member States contributions. It is recalled that most of the external assigned revenue stems from third country contributions to EU programmes. As explained in the fiche, this change does not aim at extending the scope of external assigned revenue but to allow the application of the specific availability rule contained in Article 22(2)(a) (possibility to commit as from the signature of the agreement) to all specific <i>additional</i> financial contributions from Member States. There is no reason to treat these specific additional contributions differently when they are created by a basic act in policy areas other than research and external aid. The lack of applicability of this specific availability rule requires the Commission to ask for the payment of the contribution by the Member State at the moment of the commitment, while the payment need might only arise much later, which may lead to large cash balances. This has already been mentioned as an issue in the context of the Facility for Refugees in Turkey. This change does not affect the budgetary principles (and their exceptions) either. Such assigned revenue (specific additional financial contribution from Member States) shall continue to be created by basic acts in accordance with Article 21(5).
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				While the FR refers to specific additional financial contributions from Member States in the research and external aid areas, as these were the “traditional” areas where such EAR was created, basic acts have created assigned revenue in other areas (e.g. the Emergency Support Instrument). The aim of the present proposal is to ensure equal treatment of all these contributions, as there are no reasons to treat them differently.
299.	PL	Fiche 13, Art. 62(1)(c)	During the Budget Committee meeting on June 19, the Commission stated in its reply to the Polish non-paper <i>on the currency of the EU budgetary guarantees and the role of the national promotional banks</i> , that NPBI are already included in the FR. <u>Poland kindly asks to indicate which point of Art. 62.1.c relates to the NPBI? There are several bodies that are directly identified in Art. 62.1.c - what is the justification for the direct listing of certain entities in Art. 62.1.c, while for others such as the NPBI, this is unjustified. Taking into account Art. 158 and 159 of the draft, whether there are differences between the requirements imposed by the Commission on the NPBI in comparison to other entities admitted to indirect management and specified in Art. 62.1.c. (ii), (v), (vi), (vii), (vii), (ix)?</u>	Please see reply to question 257.
300.	PL		Regarding the currency of the guarantee, the issue that should be addressed in the FR is ensuring equal access to guarantees for entities, regardless of whether they are based in the euro area or outside it. <u>Is it possible, then, to create such an option at FR level for further specification in the sectoral acts?</u> The provision indicating that a guarantee in national currency is possible if allowed by the basic act should be included in the current RF recast to remove this legal deficit. The Polish proposal for the wording of the provision is included in the non-paper.	Please see reply to question 256. Please note that FX losses cannot be quantified ex-ante (but can be significant – even 30% of the amount of the guarantee). It will be thus impossible to define upfront the amount authorised in the basic act (as required in Article 210(1)(b)).
301.	SI	Fiche 8	In what way is the use of the EDES (Early detection and exclusion system) expected to be operational. What will be the necessary and obligatory input from member states?	According to the current legal framework, all persons and entities involved in budget implementation in accordance with Article 62 shall be able to access the EDES database and verify the information therein.

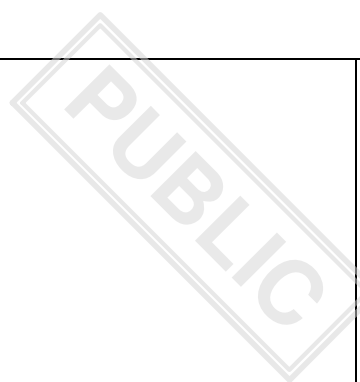
				The managing authority can therefore request access to the EDES database in order to be able to verify whether a person or entity is therein listed. The Commission can provide further details.
302.	SI	Fiche 8	Will there be any technical support for the implementation of the EDES system available for member states?	Yes. The Commission can provide ad hoc training and guidelines to help management authorities in the MS get acquainted with the system.
303.	SI	Fiche 8	Is there a possibility of the transfer of data from another MS system into the EDES?	No. the relevant MS can transmit data only via IMS. That information is later taken into account for the purpose of triggering an EDES procedure.
304.	SI	Fiche 2	Is the use of Arachne from 2027 onwards obligatory for all MS, even if they have their own data mining tool?	Yes.
305.	SI	Fiche 2	Some more details regarding the use of “due diligence” will be needed from the Commission services - in what scope, for which programs, and to what extent. Please bear in mind that the use of this principle will most certainly further prolong the procedures in the field of public procurement and lower the absorption capacities of MS!	The use of the system should be similar to the one of the current tool Arachne. The Commission will provide guidance and training to Member States (see also answer to question 7).
306.	SI	Fiche 5	Regarding the use of simplified public procurement procedures in a health crisis - who will decide when the crisis begins? WHO, EC, somebody else? This is very unclear and vague. If this remains in the regulation it needs to be explained in detail.	Please see recital 150 where it is stated <i>“A declaration of crisis should be required in line with the relevant internal rules prior to having recourse to such simplified rules, except for procurement in the field of external action where such declaration is not required. In addition, the authorising officers responsible should justify case-by-case the extreme urgency resulting from the declared crisis.”</i> For more information on the crisis declaration, we refer to the reply to question 63.
307.	SI	Fiche 5	All changes in the field of public procurement will inevitably lead to changes in public procurement legislation on the MS level. This will further prolong the procedures and time scope of actual project implementation. Are Commission services aware of this?	The Commission proposal on the FR recast concerns only the procurement conducted by the EU Institutions. It is not linked to the legislation of the MS which cover the procurement conducted by the MS.
308.	AT	Fiche 3,	Pursuant to the proposed modifications in this Article, MS that receive and	

		Art. 38	implement EU funds under direct management, persons and entities implementing the EU budget under indirect management and other Union institutions and bodies shall transmit to the COM for publication, at least on a yearly basis, information on their recipients and amounts of EU funding, which the COM collects and publishes in a single website and database. AT considers in the light of Art. 38 (3) b that the publication requirements also apply to procurements of contracting authorities according to Title VII; can COM confirm? If yes, why do the data on “contract awards” significantly deviate from the PP Directives (like: publication not within 30 days after the award but instead of “no later than 30th June of the year following the financial year in which the contract was awarded”; content of published data: see Art. 38 (2) in comparison to the data as foreseen in Regulation 2019/1780 – the “eForms Regulation”)? AT considers, that up-to-date transparency regarding Union procurement is absolutely necessary. AT welcomes, that the data will be published in an “OGD” format; AT however sees no reason not to publish the procurement data in TED (Art. 38 just requires the publication “on its [the Commissions] website”); is there a reason why procurement data should not be published on TED (which is a dedicated procurement Website)? What are the reasons to have the exemption in Art. 38 (3) letter e?	Application to procurements of contracting authorities according to Title VII: confirmed. The provisions in Article 38 are not a replacement of transparency provisions in the Public Procurement Directives; publication in TED will not be impacted. Exemption in Article 38(3)(e): This serves to clarify that information that is not published does not need to be transmitted as required by paragraph 6. This is for instance to avoid asking for data transmission below thresholds defined in CAP (EUR 1250).
309.	AT	Fiche 5	Does COM (after the adoption of the amendment to the FR) commit itself to propose the same simplifications for the Public Procurement Directives (2014/23/EU, 2014/24/EU, 2014/25/EU, 2009/81/EC)? AT points out that not doing so will have a significant impact on the negotiations concerning the procurement Chapter in the FR!	There is no decision yet on introducing similar provisions in the Procurement Directive. However, if the question refers to the newly added provisions on crisis management, there are new EU regulations that foresee provisions related to crisis management (i.e. the proposal for a Regulation on a framework of measures for ensuring the supply of crisis-relevant medical countermeasures in the event of a public health emergency at Union level). Moreover, on the basis of the current version of the Directives it is possible to use the negotiated procedure without publication of a contact notice (see Article 32 of Directive 24).

310.	AT	Fiche 5, Art. 2, 139, 144	The Procurement provisions are now – in a very unsystematic manner – split between the Regulation itself and its Annex. This leads to a layer of unnecessary complexity which should be avoided. Furthermore it results in inconsistencies, (legal) uncertainties and provisions with the same/similar content: see for ex. the definitions in Art. 2 FR and Point 32 (the latter effectively being a definition of “central purchasing activities” see Art. 2 (1) no 14 of Directive 2014/24/EU); Point 18.1. and 18.4. of Annex I which regulate the same (“shall accept the ESPD”); mixing up of “exclusion” (of tenderers) and “rejection”(of tenders) see Art. 139 and Art. 144; total uncertainty if submission of documents/ESPD is obligatory or not in below threshold area (see wording of Art. 139 and DG BUDGETs Vade-Mecum on PP in the Commission, Point 3.7.4.); Art. 168 (5) letter e and point 12.1. letter b of the Annex) - Why does COM stick to this systematic approach? It would be better to make a complete Recast and incorporate all necessary PP rules in the text of the FR itself!	There are no changes in this respect in the FR revision proposal. The split between the Regulation, namely TITLE VII PROCUREMENT AND CONCESSIONS and Annex 1, was decided in the previous revision in 2018. The split allows us to differentiate between the common provisions, the provisions applicable to contracts awarded by Union institutions on their own account (chapter 2) and the provisions applicable for procurement in the field of external actions (chapter 3). One of the main difference between the FR and the Directive is that the FR has to incorporate rules for procurement applicable to external actions, whereas the Directive applies only within EU (its rules being transposed in the FR for procurement procedures launched by the EU Institutions on their own account with some adaptations).
311.	AT	Fiche 5	Recital 33 of the IPI-Regulation (Regulation 2022/1031) states as following: “Public procurement rules and principles applicable to public contracts awarded by Union institutions on their own account are set out in Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council and thus fall outside the scope of this Regulation. Under Regulation (EU, Euratom) 2018/1046, those rules are based on the rules set out in Directives 2014/23/EU and 2014/24/EU. It is therefore appropriate to assess whether, in the context of a revision of Regulation (EU, Euratom) 2018/1046, the rules and principles set out in this Regulation should be made applicable also to public contracts awarded by Union institutions.” AT welcomes COM intentions to include IPI corresponding provisions in the Financial Regulation (see Art. 180 (4)). However, since Art. 180 (4) applies only to contracts (and concessions? – see headline to Chapter 2) it seems	Article 180(4) states that <i>“Participation in procurement procedures and performance of the contracts awarded shall be subject to conditions laid down in Regulation 20xx/xxx (IPI Regulation) and in implementing acts (IPI measures) adopted under that Regulation.”</i> Article 180(4) does not differentiates between the procedures in the FR, thus it would apply to all procedures.

			that there will be a gap because not all procedures conducted by COM will follow the IPI regime. Can COM explain in detail?	
312.	AT	Fiche 5, Art. 2(10)	Why is the definition needed [especially in the light of the definitions in Art. 2 (75) and (76)] and not properly aligned with the definition of “works contracts” in Art. 2 (1) no 6 and 7 of Dir. 2014/24/EU especially in the light of ECJ Case C-537/19? AT sees no point in having this definition!	This question appears outside the scope of this targeted revision. Article 2(10) refers to the definition of ‘building contract’ which is different in scope than the definition in Article 2(75) and (76) covering works contracts, based on the Directive 25. There are two different types of contracts covering different activities. The definition of building contracts which was added in the previous revisions in order to implement the case law) is necessary to fill in a “gap”, given that “building contracts” are explicitly excluded from the scope of Directive 25 (see Article 10 of Directive 25: <i>“This Directive shall not apply to public service contracts for: (a) the acquisition or rental, by whatever financial means, of land, existing buildings or other immovable property or concerning rights thereon;”</i>)
313.	AT	Fiche 5, Art. 2(12)	Why are the definitions of “centralised purchasing activities” and “ancillary purchasing activities” in the FR missing (see Art. 2 (1) no 14 and 15 of Directive 2014/24/EU) although those terms are mentioned in Art. 2 (12)?	The proposed change (addition of definitions for “centralised purchasing activities” and “ancillary purchasing activities” in the FR appears outside the scope of this targeted revision. It could be envisaged and discussed in the context of the next general revision of the Financial Regulation.
314.	AT	Fiche 5, Art. 2(14)	Why is the term “that are the subject of the contract” missing in letter a, and the sentence “The part of the risk transferred to the concessionaire shall involve real exposure to the vagaries of the market, such that any potential estimated loss incurred by the concessionaire shall not be merely nominal or negligible.” missing in letter b?	This question appears outside the scope of this targeted revision. Article 2(14) of the FR has been transposed with the previous revisions of the FR. For simplification it was decided not to include those parts.
315.	AT	Fiche 5, Art. 2(18)	Why is there no reference to concessions (note: the definition in (17) differentiates btw a “public contract” and a “concession contract”; see as well the stand alone definition of “public contract” in Art. 2 [56])?	This proposed change appears outside the scope of this targeted revision. The definition in Article 2(18) is the definition of the “contractor” which means an

				<i>economic operator with whom a public contract has been signed;</i>" the Article does not include a reference to "concessions" because it concerns only public contracts. This is in line with Directives 23 and 24. The equivalent of the "contractor" in a concession contract is the "concessionaire". In line with the definition in Article 5(5) of Directive 23 <i>"'concessionaire' means an economic operator which has been awarded a concession;"</i>
316.	AT	Fiche 5, Art. 2(22)	The proposed references to "public health" and "food safety emergencies" are very general. What exactly should these terms cover? How is the term "public health" distinguished from "global health threats"; what are the criteria? AT points out that COM is touching upon areas of national competences (the same with the already existing reference to "wars"); the primary competence of the MS in these areas must be preserved (cf. Art. 168 and 346 TFEU). The current proposal makes this delimitation of competences very unclear. This is especially true when looking at recent legislative proposals/acts (like HERA, European Chips Act a.s.o.) where COM wants to play a role as a "central purchasing body" acting on behalf of MS.	The competencies of the Member States are not affected. On the Food safety part, we take note of the proposal. It may be considered to add 'plant health' (e.g. a plant health crisis could result in food shortages). As regards Health and in particular the "public health": while health remains the competence of Member States, the meaning of "disasters, crisis or extraordinary circumstances having effects related to public health" is meant to be more general in scope to cover crisis other than "threats to health" within the meaning of the Decision 1082/2013 (e.g. crisis caused by parallel cyberattacks against hospitals in several Member States). However, any action taken to combat such crisis would still be within the limits set out by Article 168(5) of the Treaty, i.e. measures to combat these situations would be "designed to protect and improve human health". Regarding the "global health threats", this term would basically cover the definition under Article



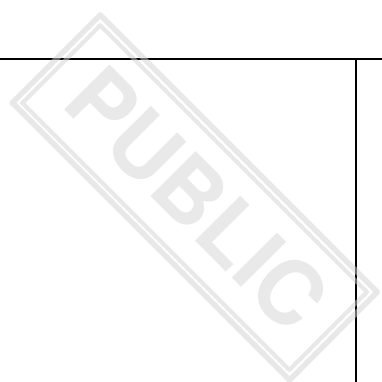
				2(1)(a) of the Decision 1082/2013 on serious cross-border threats to health (i.e. threats of biological origin, consisting of communicable diseases, including those of zoonotic origin, antimicrobial resistance and healthcare-associated infections related to communicable diseases, biotoxins or other harmful biological agents not related to communicable diseases). We believe that the term “serious cross-border threats to health”, which is defined in Article 2(1) of the Decision 1082/2013, was not used to avoid duplications. It covers also the areas that were already included in the current definition of “crisis” in the Financial Regulation (chemical or environmental origin of threats). In all cases (i.e. joint procurement or procurement on behalf of MS) the Commission may only launch the call and conduct the procedures after an agreement with the Member States has been signed.
317.	AT	Fiche 5, Art. 2(46)	The term “multiple sourcing procurement” does not exist in the PP Directives. It is definitely NOT a “technical update” as suggested in WK 7464/2022! Over-reliance on a single provider for critical supplies or services (see Point 34 of Annex I) can be avoided for ex by using framework agreements with multiple suppliers. A single procurement procedure (with the result of multiple – basically identical - contracts) can already now be conducted. AT sees a substantial problem using such an instrument for “quasi-identical” services – what is exactly meant by this term and what is the definition of “quasi-identical”? AT definitely needs a more substantial explanation and examples for which supplies and services and in which situations COM wants to use this new procedure so as to understand the rationale of the proposal!	The multiple framework contracts (FWC) do not serve the same purpose as the multiple sourcing procurement, as in multiple FWC in cascade or with reopening the contracting authority benefits from the services of one contractor at a time. The justification for multiple sourcing can be explained in the example of the Joint Research Centre (JRC) which has to use such multiple contracts where the validation of results needs to be done in parallel by several different laboratories. The current FR is silent on the possibility to sign such multiple sourcing contract(s) and therefore, in order to ensure legal certainty it is necessary to lay down rules in the Financial Regulation. This interpretation of the FR is not new – see Article

				14(1)(c) of the Space Regulation (EU) 2021/696, which provides that “by way of derogation from Article 167 of the Financial Regulation, to use, wherever appropriate, multiple supply sources in order to ensure better overall control of all the Programme’s components, their cost and schedule”. An explicit authorisation for the use of this instrument, whenever justified, is now needed at the level of the FR with the appropriate rules (e.g. regarding partial cancellation of the procurement procedure). As regards the term “quasi-identical” it is proposed in order to ensure the necessary flexibility where a contractor would propose in its offer slightly different services/products as compared to the others. In any case, the subject matter, the scope of the contract, the criteria and the technical specifications would be the same for all contractors. For instance, a laboratory could propose in its offer a quicker delivery time than the minimum imposed. In this scenario, its services would be quasi-identical with the others, meaning that the same activity/evaluation will have to be performed (same requirements, etc.) but it committed to quicker delivery (which makes its services “quasi”-identical).
318.	AT	Fiche 5, Art. 2(51)	The term “presumed successful tenderer” does also not exist in the PP Directives, why should it be defined in the Regulation?	The modification proposed in Article 2(51) is linked with the modifications following the Judgment of the General Court of 8 July 2020, T-661/18, Securitec v Commission, EU:T:2020:319. More explanations are found in the explanatory memorandum (page 6). Given that this judgement is recent, the PP Directives could not have incorporated this case law.

319.	AT	Fiche 5, Art. 2(48)	Would an organisation dependent from a (political) party, trade union or lobbying organisation also be considered as a “NGO”? – the current definition could be understood as covering such organisations as NGOs! – However: NGOs should never directly nor indirectly be dependent from a government, political party, trade union or lobbying organisation and should pursue societal goals in the general interest. The definition should be revised!	The Commission agrees that an organisation dependent from a political party, trade union should not be understood as an NGO. After adoption of the provision the central services of the Commission will provide horizontal guidance to the authorising officers in the Commission, the Executive Agencies and other EU funding bodies on the procedures and implementation. This clarification could be added in the guidance document, as it might overcomplicate the text of the Financial Regulation if added.
320.	AT	Fiche 5, Art. 2(72)	AT wonders why no Union Agency is mentioned under this definition. AT is aware that (separate) Agencies operate under their own rules but AT questions this approach – why is the FR not used as “the” central legal instrument containing the rules how money from the budget of the EU is spent (this general rule can of course be supplemented with special provisions according to the mission of the respective Agency)?	Article 2(72) provides for a definition of EU institutions so that decentralised agencies (which are EU bodies) could not be included in it. The Financial Regulation makes a distinction between, on the one hand, EU institutions defined under Article 2(72) and, on the other hand, EU agencies and bodies which are primarily regulated under Articles 68-71 of the Financial Regulation. Rules applicable to EU bodies like decentralised agencies , and in particular rules applicable to the implementation of their budget, are largely based on (and often identical to) the Financial Regulation. In the case of executive agencies, all operational appropriations are implemented in accordance with the Financial Regulation applicable to the General Budget (as per Article 16(2) of Regulation 58/2003 laying down the statute for executive agencies). There are no exceptions to this rule. In the case of decentralised agencies, their applicable

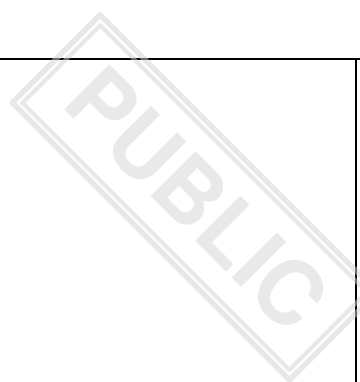
				financial rules are based on a framework financial regulation that the Commission is empowered to adopt (under the conditions set out in Article 70 of the Financial Regulation) and which shall be based on the principles and rules set out in the Financial Regulation, taking into account the specificities of the bodies. The individual financial rules of each decentralised agencies shall not depart from the framework financial regulation except where its specific needs so require and subject to the Commission's prior consent (Article 70(3) of the Financial Regulation). It is important to highlight that regarding budget implementation, the financial framework regulation (currently Commission Delegated Regulation 2019/715) follows closely the Financial Regulation and in many cases provides for the direct application of its provisions (e.g. EDES, grants and procurement rules). It can thus be considered that the Financial Regulation is in effect the "central legal instrument containing the rules how money from the budget of the EU is spent".
321.	AT	Fiche 5,	Can COM clarify and confirm that any derogations from the principles as contained in Art. 164 (1), (2) first sentence and (3) are not possible, since these principles are principles derived from primary law?	There are no changes in this respect in the FR revision proposal. There is no derogation foreseen to the principles established in Article 164 (1), (2) and (3). The negotiated procedure without publication is exceptional and it is included in paragraph 3: "2. <i>All contracts shall be put out to competition on the broadest possible basis, except when use is made of the procedure referred to in point (d) of Article 168(1).</i>"
322.	AT	Fiche 5,	Late payment is of particular concern to COM; COM therefore urges MS	This question appears outside the scope of this

		Art. 117(1)	(contracting authorities) to pay as soon as possible their service providers and suppliers. Directive 2011/7/EU provides for a payment time limit of 30 days which may be extended in certain cases to 60 days – why is COM not aligning the time limits in Art. 117 to the time limits of the “Late Payment Directive”?	targeted revision. The time-limits (Article 117) are similar to those in the Directive (30-60-90 days) and depending on the technical complexity of the underlying verifications. The 90 days is exceptional and it is to be used only for particularly complex contracts, which is in line with Directive 2011/7/EU that allows payments beyond 60 (see Recital 13 of the Directive: “<i>However, there may be circumstances in which undertakings require more extensive payment periods, for example when undertakings wish to grant trade credit to their customers. It should therefore remain possible for the parties to expressly agree on payment periods longer than 60 calendar days, provided, however, that such extension is not grossly unfair to the creditor.</i>” It is recalled that the Commission's President announced at the 2022 State of the Union address that the Late Payment Directive will be revised.
323.	AT	Fiche 5, Art. 125	Why is specific reference made to “framework contracts” which are according to Art. 2 (32) “public contracts” (which are considered as “contracts” according to Art. 2 (17) and therefore covered by the term “legal commitment” – see definition in Art. 2 (38))?	<i>This question appears outside the scope of this targeted revision.</i> It was decided in the previous proposals to include the reference to framework contracts for the sake of clarity.
324.	AT	Fiche 5, Art. 129	Can COM explain how they will implement (or already have implemented”) the only-once principle contained in Art. 129 in the field of procurement on the Union level?	<i>This question appears outside the scope of this targeted revision.</i> The use of already available information is used in the field of procurement in the following cases:



				• An economic operator may reuse an ESPD or a declaration on exclusion criteria which has already been used in a previous procedure. In this case, it must confirm that the information contained in the document continues to be correct. • The contracting authority may waive the obligation for a candidate or tenderer to submit the documentary evidence (on exclusion and selection criteria) if it has already been submitted for another procurement procedure of the same contracting authority and provided the documents were issued not more than one year earlier and are still valid at the date of their request by the contracting authority. In such cases, the candidate or tenderer must declare on its honour that the documentary evidence has already been provided in a previous procurement procedure, provide reference to that procedure and confirm that that there has been no change in the situation. • The contracting authority must also waive the obligation for a candidate or tenderer to submit the documentary evidence if it can access it on a national database free of charge or in the case of material impossibility to provide such evidence.
325.	AT	Fiche 5, Art. 135(1)	Why has the possibility to submit observations (regarding measures affecting the rights of tenderers and candidates) been reduced to specific circumstances in the case of procurement? Can COM explain the rationale? AT fears that this might lead to more litigation!	Referring to the provision of Article 133(1) FR, we should have a teleological interpretation of this provision. This paragraph was introduced in the Common Rules Title in 2018 with the objective of

				avoiding unnecessary repetitions in other places of the FR, notably in the EDES provisions with regard to the imposition of administrative sanctions, the application of protective financial measures during contract implementation, the suspension/termination of on-going contracts/grants and the extension of audit findings in case of grants. The aim of this provision was not to revolutionise the approach applied in procurement procedures where the possibility to submit observations in case of rejection is given <u>only after the decision is taken (in line with Article 174 of the FR recast)</u>. The means of redress are available to the tenderers and clearly presented in the procurement documents. Unsuccessful tenderers are informed of the means of redress in the notification letters. Please see the reply to question 218 on the modification of Article 135.
326.	AT	Fiche 5, Art. 137(1)	Can COM explain the provision? Is the provision to be seen in the light of COMs Guidance C(2019) 5494? How will COM implement/apply this provision in practice (for ex: will CHN companies be excluded/not admitted)?	In general, the proposed provision is introduced in the section on rules applicable to direct and indirect management and only concerns award procedures under the scope of the FR, i.e. grants, procurement, prizes, indirect management, etc. implementing the EU budget and therefore does not affect Member States implementing their own budget in national procurement procedures or under shared management. The objective of the provision is to establish a clear horizontal framework for Union award procedures where a protection of the security and public order of the Union and its Member States is necessary. 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. Safeguards are added to ensure that conditions are limited to what is strictly necessary for the protection of security and public order of the Union and its Member States. Accordingly, for an award procedure that concerns critical security interest, it will be assessed which security measure are required. Exclusion of third country entities or entities controlled by third countries may be required for certain procedures but the Commission expects that in many cases other measures (e.g. security clearance, security guarantees, limitations on use of result possibly regarding export) will suffice to address security concerns.
327.	AT	Fiche 5, Art. 137(2)	Can the COM provide some examples, when it is necessary and duly justified, that specific award procedures affect security or public order (are for ex. electronic chips “strategic assets”)? When do award procedures affect security or public order (does Sol and SoS play a role in this regard)?	The identification of specific action areas as affecting security and public order will require a policy assessment which cannot be provided in advance as it may vary by individual action context and change over time. However, provisions already contained in basic acts and implemented in Work Programmes can offer examples that actions affecting security and public order may concern access to sensitive technologies, defence actions, assets such as communication satellites, cybersecurity and quantum computing. Where applicable, identification of these actions will be provided by the Work Programme in which Member States will be fully involved through the comitology procedure provided for in the basic acts.

328.	AT	Fiche 5, Art. 137(3)	The reference to Art. 125 in the 1st sentence is unclear; pls explain!	The reference is included to clarify that security conditions may be set in grant agreements, procurement contracts etc. directly or in framework contracts and financial framework partnership agreements.
329.	AT	Fiche 5, Art. 137(3) last subpara.	AT opposes the possibility, that the listed specific conditions may be complemented by “any conditions provided for in a basic act”. The respective conditions should be centrally included in the FR! Therefore the basic acts should amend the FR itself and not create additional provisions to the FR!	Due to the sequence of legislation under the MFF, the FR needs to accommodate and avoid conflicts with already adopted basic acts. By nature, the FR provisions aim at establishing the general framework, while sector specific provisions may still find their appropriate place in sectoral legislation. The same logic transpires in other references of the FR to sectoral legislation and basic acts.
330.	AT	Fiche 5	By way of introduction, it should be noted that AT supports the Recast of the Financial Regulation. However, when it comes to the proposed changes to public procurement it has to be pointed out, that the proposed changes must also be reflected in the PP Directives! The alignment with the PP Directives is of utmost importance and deviations between the two PP systems must be kept to the absolute necessary minimum! Furthermore, the corresponding provisions of the DFS (Proposal for a Regulation concerning Distortive Foreign Subsidies) should be included in the Financial Regulation as well (the DFS will be adopted soon).	There are no changes in this respect in the FR revision proposal. As regards the alignment with the PP Directives, the majority of the changes are proposed in the FR recast for alignment with the Directives. Please see the reply to question 64 on the Foreign Subsidies Regulation.
331.	AT	Fiche 5, Art. 164(5) lit b	The wording should be aligned with the wording of Art. 10 lit. e of Dir 2014/24/EU (“financial services <u>in connection with</u> the issue..”).	This would in principle be considered as acceptable by the Commission.
332.	AT	Fiche 5, Art. 164(5) lit c	AT suggests the deletion of the first “services” (“ services of document certification and authentication services.. ”) since this word is repeated twice.	This would in principle be considered as acceptable by the Commission.
333.	AT	Fiche 5, Art. 164(6)	When is the procedure justified by a situation of extreme urgency that is resulting from a crisis? Are there any guidelines for when the subject matter of the procurement relates to the specific crisis or is every procurement	As regards the internal rules, we refer to the internal rules of each Institution (e.g. for EC it would be EC’s internal rules). For more information on the crisis

			procedure checked individually? As far as AT is aware the declaration of a crisis can be made by various institutions (Council ...) – what are the “internal rules” addressed in para 6? Are those Commission internal rules? If yes, who is responsible for such a declaration of crisis? AT notes, that according to various instruments COM can launch framework agreements for battling a crisis (for ex regarding vaccines, pharmaceuticals): to be efficient in practice, such procedures must be launched well in advance of a crisis otherwise the procedure would take too long to provide the necessary supplies/services; AT considers that such procedures would not fall under para 6 although such procedures may be triggered “in response to a crisis”! Would COM agree? Therefore the latter term should be redrafted for ex as follows: “... <i>carried out to respond to an imminent or ongoing crisis</i> ...”!	declaration, we refer to the reply to question 63. The last sentence of the new paragraph 6 was added in Article 164 in order to avoid abuses. The scope of each procedure should fall within the general declaration of crisis. Concretely, the subject matter of the procurement should relate to the specific crisis (i.e. buying medicines in a health crisis is justified, whereas buying pens or chairs it is not). In principle, the AO should be able to justify the urgency for each procedure (as it is the practice now). It is not accepted to apply the derogations foreseen in the FR for crisis situations to procedures anticipating a crisis (in the absence of a crisis therefore), since this might lead to abuses. More precisely, it should be exceptionally allowed to launch procedures without competition and apply the derogations related to urgencies. As regards the comment about the lengthy procedures, this is precisely a derogation applied in crisis situations (e.g. the negotiated procedure on the basis of urgency is very quick, it is one of the most simplified procedures foreseen in the FR and the PP Directives). As regards the timing, indeed, if a crisis is “imminent” the urgency could be justified. However, we consider that adding the word “imminent” would not bring added value, and in any case a crisis declaration should be made even if the crisis is imminent (the declaration could apply retroactively).
334.	AT	Fiche 5,	Why are the detailed rules on procurement laid down in Annex I to the	The proposed change appears outside the scope of

		Art. 165	Regulation? Because of this unsystematic approach the rules on procurement are found in several different parts of the Regulation (Art. 164 ff as well as in Annex I) which makes it hard to trace and understand them. Since the entire regulation is being revised, AT suggests integrating the provisions of Annex I into the text of the regulation itself.	this targeted revision. The split between the Regulation, namely TITLE VII PROCUREMENT AND CONCESSIONS and Annex 1, was decided in the previous revision in 2018. The split allows us to differentiate between the common provisions, the provisions applicable to contracts awarded by Union institutions on their own account (chapter 2) and the provisions applicable for procurement in the field of external actions (chapter 3). One of the main difference between the FR and the Directive is that FR has to incorporate rules for procurement applicable to external actions, whereas the Directive applies only within EU (its rules being transposed in the FR for procurement of the EU Institutions on their own account with some adaptations).
335.	AT	Fiche 5, Art. 166(4)	AT points out, that the current version of the CPV is to be found in Regulation 213/2008! AT proposes to update the reference!	This would in principle be considered as acceptable by the Commission.
336.	AT	Fiche 5, Art. 167	Why does COM differentiate as regards transparency obligations between “regular” contracts/concessions and contracts/concessions in the field of external action? AT considers that 1) the same thresholds and 2) the same level of transparency should apply! Specifically the threshold of 300.000 € for services and supplies in the field of external action is problematic. What are the “appropriate means” mentioned in Art. 167 (2)?	The differentiation is necessary because the procurement procedures in the field of external actions are not on behalf and in the name of contracting authorities within the EU, but on behalf of third parties. There are rules in the FR for such procedures, contrary to the Directive that applies only for the award of public contracts by or on behalf of Member States’ authorities. The “appropriate means” for contracts below the Directive threshold refers to any means other than publication on the Official Journal which is mandatory

				only for contracts above the Directive threshold. It is typically publication on the website of the Institution.
337.	AT	Fiche 5, Art. 168	Can COM explain the wording of para 1 letter b (reference to DPS)? What is the difference between a “negotiated procedure” (letter d) and a “competitive procedure with negotiations” (letter f) which can be with or without prior publication (see Annex point 11.1. iii) according to the proposal (like letter d)? This raises some questions because in the following provisions sometimes the former is mentioned but not the latter and vice versa (see for ex Art. 168 (3))!	This question appears outside the scope of this targeted revision. As regards letter b) – the difference between a restricted procedure and the DPS is that the latter is done via an electronic system where companies can apply during the whole duration of the DPS. The similarity is that both are two-step procedures. As regards letters d) and f) –one of the difference is that the negotiated procedure without publication or the negotiated procedures below the Directive’s threshold can be done as a one-step procedure, while the competitive with negotiation is a two-step procedure. Moreover, the grounds/conditions for using these procedures are different (see Point 11 vs Point 12 of Annex 1 to the FR).
338.	AT	Fiche 5, Art. 168(4)	Art. 168 (4) states that the “criteria” specified in the procurement documents shall not be subject to negotiations. The respective provision in the PP Directives (see for ex Art. 29 (3) 2nd subpara of 2014/24/EU) limits this to “award criteria” – what is the reason for having this divergent provision in the FR?	This question appears outside the scope of this targeted revision. The comparison is not justified for the following reasons: - Article 29(3) of the Directive refers only to the competitive procedure with negotiation where only the “tenders” in the second steps are negotiated (thus including only the award criteria, and not the exclusion and selection which are evaluated in the first step). - Article 168 of the FR refers to all types of negotiated procedures including all the criteria (exclusion,

				selection, award) which should not be subject to negotiation.
339.	AT	Fiche 5, Art. 169(1) last subpara.	Unforeseen and necessary modifications (including an increase in price up to 50 % of the initial contract value) can already be made according to (new) Art. 176 (3) lit b FR. Why is the proposed new sub-para even needed? When are such situations of extreme urgency resulting from a crisis? Can the COM elaborate? AT points out, that this provision clearly contradicts the ECJ ruling in Case C-216/17! The Court held (at no 56): “It is sufficient that such a contracting authority appear as a potential beneficiary of that framework agreement from the date on which it is concluded by being clearly identified in the tender documents with an explicit reference that makes both the ‘secondary’ contracting authority itself and any interested operator aware of that possibility. That reference can appear either in the framework agreement itself or in another document, such as an extension clause in the tender specifications, as long as the requirements as to advertising and legal certainty and, consequently, those relating to transparency are complied with.” Therefore the envisaged way of adding new contracting authorities to a framework contract contradicts the basic principle of transparency and would be illegal! AT points out that COM always has the possibility to circumscribe other CAs as potential parties to a framework contract in an abstract way (see Rec 60 of 2014/24/EU). It has to be added, that the addition of new CA as parties to a framework contract will regularly have a significant impact on the contract and will regularly “substantially alter” the contract (different delivery dates, delivery places and delivery terms, value of the contract)!	The last sub-paragraph under Article 169(1) is not about increasing the value of the contract but it is meant to allow us to add new contracting authorities after launching the procedure in a crisis situation, which under normal circumstances is not possible. The new sub-paragraph is proposed following lessons learned from Covid-19 crisis. We do not consider it contradicts the ECJ ruling given that the contracting authorities would be added before the signature of the contract. The case law forbids addition of new contracting authorities to a signed contract (in the ruling, a framework agreement more precisely), and also stipulated that “it is sufficient that such contracting authority appear as a potential beneficiary of that framework agreement from the date it is concluded”. You pointed out that “the addition of new CA as parties to a framework contract will regularly have a significant impact on the contract and will regularly “substantially alter” the contract (different delivery dates, delivery places and delivery terms, value of the contract)” – nevertheless, in our view the addition can be made during the procedure (before the signature) considering that in a <i>crisis situation</i> the negotiated procedure without publication of a contract notice is used which allows negotiation/modification of the offers.
340.	AT	Fiche 5, Art.	The Financial Regulation has so far not contained a provision which authorizes the COM to act as a “CPB” or agent on behalf of MS (see for ex	The Commission will rely on the technical expertise of each DG depending on the subject matter of the

		169(3) and new recital 155	European Chips Act, see Art 22 of 2022/0032 (COD)). AT understands the (theoretical) rationale of the proposal but questions the ability of COM to procure in an effective manner due to the lack of knowledge of the various markets concerned (electronic chips, pharmaceuticals, other crisis relevant goods). How will COM ensure, that COM provides the very specific and up-to-date knowledge of all the markets in which COM is now proposed to act in this way?	procurement (e.g. for market analysis, evaluation...).
341.	AT	Fiche 5, Art. 169(2) first subpara.	AT considers, that a provision (based on Art. 322 (1) TFEU) cannot provide, that MS (!!) “may acquire, rent or lease fully the capacities jointly procured” because this is clearly an issue which has to be dealt with in the PP Directives (effectively, this creates a new exclusion from the PP Directives). AT considers that this provision cannot be contained in the FR and needs to be based on a different legal base!	On a preliminary comment, it should be recalled that the ultimate objective of the PP Directive is to ensure the respect of the <i>“principles of the Treaty on the Functioning of the European Union (TFEU), and in particular the free movement of goods, freedom of establishment and the freedom to provide services, as well as the principles deriving therefrom, such as equal treatment, non-discrimination, mutual recognition, proportionality and transparency”, “to ensure that those principles are given practical effect and public procurement is opened up to competition”</i> (first preamble of the PP Directive). Given that procurement organised under the FR, is de jure opened to all Member States operators, such objective is fully guaranteed. In addition, one should not ignore that the Directive only allows joint procurement among Member States (Article 38), thus the Directive’s scope does not cover the activities of the Institutions.
342.	AT	Fiche 5, Art. 169	MS are either required to apply their respective national Procurement Laws (cf. Art. 37 para. 2 sub-para. 3 of Dir 2014/24/EU) if a CPB solution is chosen and MS are conducting the call-offs (and only this way this construct would make sense) or – in practice – they would need to apply Belgium law (since in practice it is to be expected, that based on Art. 169 (2) 3rd subpara COM will conclude a single contract under Belgium law! Can COM confirm this	Article 169 in the proposal of the new FR provides the legal framework for a Union institution or agency to act as a central purchasing body (“CPB”). The provisions of Article 37 of the Directive are not applicable in this case. Secondly, it should be recalled that according to point

			assumption?). In both cases various legal questions do arise. For ex: Since contracts under the “agent-model” are concluded by COM “on behalf” of the participating MS, according to AT's opinion, it is a “situation involving a conflict of laws, to contractual obligations in civil and commercial matters” (cf. Art. 1 of Regulation (EG) No. 593/2008 - "Rome I"). If, therefore, an explicit choice of law in accordance with Art. 3 Rome I is not made in the respective contract, the subsidiary rule of Art. 4 Rome I would apply. Taking into account the different possible types of contract (supplies and services) and in view of the fact that the supplier or service provider does not necessarily have to be based in the EU (cf. Art. 180 Financial Regulation), already from an European perspective an explicit choice of the applicable law (in the contract) is recommended (and – see above – it is expected that COM will choose the Belgium law). However this might be in contradiction to nation legal requirements of MS, because if COM is acting “on behalf” of MS, the agent is supposed to apply the law of the person it represents (for ex in AT).	16.4 of Annex I of the FR, all contracts must specify the applicable law and competent courts. The Commission takes notes of the comments raised. In order to address them adequately, the Commission asks for further clarifications: - You refer to Article 169(2) third subparagraph of the proposal which refers to the “procedural provisions applicable to Union institutions”. Does your question refer to the applicable law in the administrative phase of the procurement procedure (i.e. until contract signature) or to the law applicable to the contract resulting from the procurement? - Do the comments refer to the scenario of joint procurement referred to in paragraph 2 of Article 169 FR, or to the scenario of the procurement on behalf of MS as referred to in paragraph 3 of the same Article, or to both? - With regard to the comment in relation to the “contradiction to nation legal requirements of MS” – can you be more specific and refer to the legal basis?
343.	AT	Fiche 5	Furthermore, if the COM intends to conclude a single contract for the participating MS, AT assumes that legal disputes arising out of such contracts (e.g. warranty claims) would usually not be based on Austrian law (the COM would probably choose Belgian law, see above). This would then lead to the consequence that all legal disputes of the participating MS arising from the contracts would have to be brought before (Belgian) courts under (Belgian) law. This has far-reaching (practical and financial)	Please refer to the clarification provided in point 342.

			implications for MS. AT assumes that the legality of acts of the Commission (as an agent of the participating MS in connection with the award of contracts pursuant to the proposed provision) can be reviewed by the Court according to Art. 263 TFEU. Can the COM confirm this view? However, it is unclear how remedies can be introduced in cases of framework agreements where call-offs are conducted under national (!) law (cf. Art. 37 para. 2 subpara. 3 of Dir 2014/24/EU) and the responsible national review body (court) has concerns regarding the legality of the procedure to conclude the framework agreement. Would such questions have to be dealt within a preliminary ruling under Art. 267 TFEU (where acts of the Commission could not be annulled) or by way of an action for annulment under Art. 263 TFEU (the latter would have the problem of the 2-month period under Art. 263 para. 6 TFEU)? AT asks for more information and strongly opposes the current proposal!	
344.	AT	Fiche 5, Art. 169(2) last subpara.	Any significant changes – even due to a crisis situation – must be evaluated in the light of the jurisprudence of the ECJ. Since no distinction is made between various procedures this provision would also allow (based on its wording) theoretically to add new CA after an award decision has been communicated in an open procedure (because this would still be “before contract signature”)! As has been pointed out above, such changes would most likely be considered “substantial changes” which must be communicated to all participants and (in some cases) to all potentially interested parties. The ECJ emphasizes in his constant jurisprudence that “in accordance with the principle of transparency, all the conditions and detailed rules of the award procedure must be drawn up in a clear, precise and unequivocal manner in the contract notice or specifications” (see for ex C-387/19, RTS infra, at no 35; emphasis added)! AT cannot see, how this provision conforms with the jurisprudence of the ECJ and opposes the proposal!	We understand you refer to the following proposal: <i>In a situation of extreme urgency resulting from a crisis, new contracting authorities may be added after the launch of the procurement procedure and before contract signature, subject to the conditions set out in Article 164(6).</i> Please see the answer provided for question 339 (about Article 169(1) last subparagraph)
345.	AT	Fiche 5, Art. 169(3)	See observations above regarding para 2 – <u>AT opposes this provision!</u>	This provision is necessary in order to allow the EU Institutions to provide support to MS in crisis situations.

346.	AT	Fiche 5, Art. 170	Since “Union law” in the field of environment and social/labour law requirements are formally addressed to MS: does COM considers itself to be bound by this body of Union law as well? If yes, on which basis? Would it be enforceable if COM infringes such requirements? If yes, how?	This question appears outside the scope of this targeted revision. This Article is about imposing conditions to economic operators, it is not about requirements applicable to EU Institutions. In line with Article 170, the EU Institutions may define in the procurement documents conditions that tenderers must comply with, including: <i>“Minimum requirements 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 conventions listed in Annex X to Directive 2014/24/EU.”</i>
347.	AT	Fiche 5, Art. 171(1) lit c	Can COM explain what is meant and how “access to procurement” plays a role at this stage?	Economic operators established in third countries have the right to participate in procurement procedures if an international agreement in the field of public procurement grants them the right to do so, otherwise the economic operator is not entitled to participate. Exceptionally, the competent authorising officer still has the right to open a procedure to entities not covered by an international agreement in duly justified cases. Therefore, as a general rule, a contract cannot be awarded to a tenderer who does not have access to the market.
348.	AT	Fiche 5, Art. 171(1) lit c	The PP Directives cover only “conflicting interests”, why was a different approach chosen here and how the verification (!) of an absence of professional (why not also private?) conflicting interest shall take place (by whom) in practice?	Recital 104 of the Financial Regulation 2018 already included a reference to the difference between situations of “conflict of interests” and situations of “professional conflicting interest”. The new additions to the Financial Regulations were included to the proposal, in order to clarify the obligations of the

				contracting authority and of the candidates or tenderers and in order to ensure the absence of professional conflicting interests that may affect or risk affecting the capacity to perform the contract in an independent, impartial and objective manner. Please see the reply to question 246 on the details of the verification of an absence of a professional (and also personal) conflicting interest.
349.	AT	Fiche 5, Art. 173(1) new subpara.	Why does COM not present this (new) information in the internet as well so as to inform all potential other candidates? It is unclear, to which procedures this new provision shall apply: only all 2-stage procedures? AT needs clarification on the following part of the sentence (emphasis added): “all invited candidates before the time limit for receipt of requests to participate or tenders”.	In situation of crisis, exceptional negotiated procedures are used when the urgency is justified and time lines of a standard competitive procedures cannot be followed. There is no publication foreseen on Internet and due to the urgency, the CA might need to contact the candidates/tenderers to confirm their commitment to submit requests to participate/tenders. In particular, when this commitment is not confirmed, the CA might need to cancel the procedure and relaunch a new one. Please note that the following provision: “All invited candidates before the time limit for receipt of requests to participate or tenders” should be read as including also the tenderers.
350.	AT	Fiche 5, Art. 174(3)	Can COM explain which “other grounds of rejection this provision refers to? Wouldn’t it suffice to say “... who is not rejected and who makes ...”?	The grounds of rejection are not all covered by Article 144. The rationale of this provision is to cover all rejection grounds foreseen by the FR.
351.	AT	Fiche 5, Art. 175	The new addition leads to the question, under which circumstances and according to which criteria a “partial” cancellation is possible/admissible? Can COM provide practical examples?	The purpose of launching a procurement procedure with several lots or with multiple sourcing is to ensure efficiency gains and allow potential savings. If during the procedure, there is a specific need to cancel the procedure related to one lot, the other lots should not be affected, therefore the procedure should continue and contract award should be allowed for the

				respective lot(s) which are not subject to the cancellation. A practical example could be the following: an administrative error spotted in the organisation of the procedure or procurement needs that are not valid anymore.
352.	AT	Fiche 5, Art. 176(3) lit a i and ii	These criteria are cumulative – see Art. 72 (1) b i and ii of Directive 2014/24; AT considers this to be wrong and supports the current wording of the FR provided that this amendment will be proposed for the PP Directives as well!	This question appears outside the scope of this targeted revision, as it is related to a change to the PP Directive. The Commission takes note. There is no decision yet on introducing similar provisions in the Procurement Directive.
353.	AT	Fiche 5, Art. 176(3) lit. a iii	AT supports the current wording of the FR provided that this amendment will be proposed for the PP Directives as well (see the de minimis thresholds in Art. 72 (2) of 2014/24/EU)!	Please see the reply to question 352. This question appears outside the scope of this targeted revision, as it is related to a change to the PP Directive. The Commission takes note. There is no decision yet on introducing similar provisions in the Procurement Directive.
354.	AT	Fiche 5, Art. 176(3) b	AT supports the current wording of the FR provided that this amendment will be proposed for the PP Directives as well (see Art. 72 (1) c of 2014/24/EU where an additional requirement “no alteration of overall nature” is included)!	This question appears outside the scope of this targeted revision. The Commission takes note. There is no decision yet on introducing similar provisions in the Procurement Directive.
355.	AT	Fiche 5, Art. 176(3) c i	The reference to point 38 is wrong (should be 39) and why not refer to Art. 182 (which contains the same thresholds)?	Indeed, for consistency purposes, it is better to replace the reference to point 39 with reference to Article 182.
356.	AT	Fiche 5, Art.	Please explain and provide practical examples!	This question appears outside the scope of this targeted revision. The Commission takes note.

		176(3) lit d		
357.	AT	Fiche 5, Art. 176(4)	Since the new para 4 is proposed to define the modifications that might alter the subject matter of the contract in alignment with Art 72 (4) of Dir 2014/24/EU, the wording of the proposal should be aligned exactly with the wording of the PP Directives. For example: not only the modification of “the subject matter” but also other modification might change the contract in a “substantial” way! In letter c it could be added “extends or diminishes” the scope (see in this regard ECJ, Case C-549/14, Finn Frogne).	While the Financial Regulation should be aligned with the PP Directive in its principles and conditions, it should not be an exact verbatim reproduction of the Directive. Thus, Article 176 transposes Article 72 of the PP Directive with a slightly different wording. Point c) reflects entirely the PPD wording, which foresees “the modification extends the scope of the contract or framework agreement considerably”, therefore no need to add “extends or diminishes”.
358.	AT	Fiche 5, Art. 176(5) first subpara.	Pursuant to this proposed para, a contract or a framework contract may be modified beyond the threshold referred to in para 3 (b) (ii), provided that it does not exceed 100 % of the initial contract value and it is justified as strictly necessary to respond to the evolution of the crisis. AT could support the proposed wording of the FR under the condition that this amendment will be proposed for the PP Directives as well! In a Recital it should be clarified with examples under which circumstances a modification is justified as strictly necessary! AT however points out that according to constant jurisprudence of the ECJ (see Case C-337/98, Commission/France, and C-454/06, pressetext) “substantial” modifications to contracts require a new procurement procedure in accordance with the union procurement rules. The Court of Justice has consistently emphasized, that substantial modifications to contracts during their term, unless expressly authorized under the terms of the original contract, would inevitably lead to infringement of the principles of transparency and equal treatment (cf. for example already Rs C-496/99 P, Commission/CAS Succhi di Frutta, at No. 121.)	This possibility/derogation is foreseen only for exceptional situations of crisis when the urgency is duly justified by the contracting authority. There is no decision yet on introducing similar provisions in the Procurement Directive. This possibility to increase the contract beyond 50% in a situation of extreme urgency is reasonable, given that in such a situation it is allowed to invite and negotiate with only one economic operator, on the basis of Point 11.1 c) of Annex 1 to FR. Therefore, if the contracting authority already has a contract ongoing with contractor X, allowing increase of the contract value via an amendment or negotiating a new contract with the same contractor X would lead to the same result. The difference is that signing an amendment is much faster (important element in a situation of urgency) than signing a new contract, and also less bureaucratic.

				In practice, we have experienced situations where this derogation was needed (eg. for the monkeypox vaccine, where a contract was in place following a joint procurement and the MS wanted to increase the quantities beyond 50%.)
359.	AT	Fiche 5, Art. 176(5) second subpara.	This provision does in no way specify the kind or extent of modification! Such unspecified und (possibly) extremely far reaching modifications are in contradiction to primary law (esp. transparency) – see C-454/06, pressetext, and other judgements already cited above (regarding the addition of an additional CA see Case C-216/17, Antitrust, already cited and explained above); see also Art. 160 para. 1 of the Financial Regulation. Furthermore, at the time of the commencement of the procurement procedure, the Commission has to calculate the estimated value of the procurement in accordance with the requirements as set out in Annex I, Point 35 of the Financial Regulation. According to Point 35.2. with regard to framework contracts, the value to be taken into account shall be the maximum value of all the contracts envisaged during the total duration of the framework contract. From this follows that the Commission would have to determine the needs of the participating CA before commencing the procurement procedure. If, therefore, the number of participating CAs could be changed at a later date (after the award of the contract), this would have an impact on the group of participants and would have to be qualified as an (inadmissible) substantial modification of the contract (see in this regard for example Art. 72 para. 4 of Dir. 2014/24/EU and Art. 176 para 4). Furthermore, the ECJ has already stated several times, that call-offs under a framework agreement are only permitted up to the specified maximum amount (see C-23/20, Simonsen & Weel, at No. 68, with reference to C-216/17, Antitrust, at No. 61). The ECJ has also expressly stated that framework agreements will no longer have any effect once that limit has been reached. Against this background, AT cannot support this provision! What are COMs arguments that this proposal would be in line with the basic principles?	The rationale of the proposed provision is to allow addition of new contracting authorities after the signature of the contract. This should be allowed exceptionally, only in situation of crisis, when the contracting authority can duly justify the extreme urgency and the need of this modification. In reality, this flexibility should only apply in the case of a negotiated procedure without prior publication, because in a situation of extreme urgency resulting from a crisis it is inconceivable to have recourse to an open procedure considering the time constraints. In the past, during the Covid-19 crisis it was necessary to allow new contracting authorities from Member States to be added to the procedure and also to the contract (eg. in the joint procurement procedure for the purchase of masks, Malta expressed its willingness to participate after the launch of the procedure which had to be urgent given the crisis).

360.	AT	Fiche 5, Art. 176(5) second subpara.	In order to open up framework agreements for a future addition of CA, such authorities could already be described in the original contract (see in this regard Recital 60 of Dir 2014/24/EU). Couldn't this be an alternative for the COM?	Please see answer to question 359.
361.	AT	Fiche 5, Art. 179(1) second subpara.	AT understands the rationale of the proposal but can only support it, if COM presents arguments concerning the GPA compatibility and if a similar provision will be introduced in the PP Directives!	Please also see answer to question 265. The proposal responds to the need for more flexible rules for Union delegations in third countries (for contracts awarded on their own account), factoring in local market conditions. Therefore, the threshold for and the rules on market access are aligned with those that currently apply to external action procurement. Regarding the compatibility with the GPA, the Agreement would remain applicable under the conditions laid down in the Agreement (according to the threshold of the GPA (ie. above 140k), signatory parties, if the goods and services are covered...). . There is no decision yet on introducing similar provisions in the Procurement Directive.
362.	AT	Fiche 5, Art. 180(1), 180(3)	Can COM explain the relationship btw Art. 180 (1) and Art. 180 (3)?	Article 180(3) complements Article 180(1), meaning that it allows a wider access to delegations procurement on top of the access provided in 180(1). The wording of Article 180(3) can be clarified through the following addition: "In addition, for contracts awarded by Union delegations or awarded exclusively in the interest of Union Delegations in third countries, participation in procurement procedures shall also be open on equal terms to all natural and legal persons established in the third country where the Delegation concerned is established."

363.	AT	Fiche 5, Art. 180(4)	Regarding Art. 180 (4) see introductory remarks! (Refers to point 330 of this table.)	Please see the reply to question 330.
364.	AT	Fiche 5, Art. 182(1)	Can COM explain the threshold of 300.000 Euros and its conformity with the GPA? According to Annex 1 of the GPA the EEAS is supposed to apply a threshold of 130.000 SDR for goods and services (this corresponds today 140.000 Euro)! See https://e-gpa.wto.org/en/Annex/Details?Agreement=GPA113&Party=EuropeanUnion&AnnexNo=1&ContentCulture=en . AT is aware that Chapter 3 applies (inter alia) to contracts where COM acts as an agent (see Art. 182 (2) lit. a) but also to contracts by union institutions (see Art. 179 (1) 2nd subpar) and Art. 182 is also referred to for ex in Art. 167 (publicity) and Art. 174 (award decision).	Please see the reply to question 382. <i>This question appears outside the scope of this targeted revision. Article 182(1) is not modified.</i> To be clarified that there is a difference between procurement conducted by EEAS on their own account with administrative budget (eg. for buildings and the functioning of the Delegations) and procurement in the field of external actions (on behalf of a third party beneficiary). This question addresses the provisions in Article 182 meaning procurement in the field of external actions (not procurement conducted by EU Delegations on their own account). Chapter 3 applies to procurement in the field of external actions, while Chapter 2 applies to contracts awarded by EU Institutions on their own account. This threshold is not new – it has been in the successive Financial Regulations for a number of years. As regards the applicability of the GPA to procurement in the field of external, Article 179(3) FR provides that, where an agreement on widening the market for procurement of goods or services to which the Union is party applies, the procurement procedures shall be open to natural and legal persons

				established in the third country “<i>under the conditions laid down in that agreement</i>”. Consequently, the terms of the Agreement (eg. GPA, TCA...) will dictate whether a particular procurement carried out by the EU must be open to third country operators. Furthermore, considering that the procurement in the field of EU external actions can take place in a variety of ways, encompass different goods and services and be carried out by different entities, it has to be determined on a case-by-case basis whether each prospective contract falls under the scope of such Agreements. In addition, according to Article II.3.e of the GPA: “<i>Except where provided otherwise in a Party's annexes to Appendix I, this Agreement does not apply to procurement conducted i. for the specific purpose of providing international assistance, <u>including development aid</u>;</i>”. It follows from the above provision that procurement for the specific purpose of development aid is excluded from the scope of the GPA. In addition, as regards the question about the applicability of the GPA to contracts awarded by EU Delegations on their own account, please see answer to question 361. Indeed, currently EU Delegations apply the GPA for contracts awarded on their own account. “
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365.	AT	Fiche 5, Annex I Chapter 1, point 1.2	The wording of the proposed addition is misleading. According to Art. 33 (2) third sub-para of Dir 2014/24/EU contracts based on a framework agreement may under no circumstances entail substantial modifications to the terms laid down in that framework agreement (see point 1.1. 3rd subpara which wording should be aligned with 2014/24/EU as well). Already now the term “within the limits of the terms laid down in the framework contract” indicate the possibility to modify the call-offs; the new addition may be misunderstood as allowing “substantial modifications” (which would not be admissible). Can the COM elaborate why the new addition is needed?	The general legal basis for modification of contracts is Article 176. The proposal made under point 1.2 of the Annex I is related only to modification of specific contracts under framework contracts concluded with a single supplier. This modification shall be done within the limits of the terms laid down in the framework contract and should not be substantial.
366.	AT	Fiche 5, Annex I Chapter I, point 9.3	AT has no problem with the deletion but the following should be added to 9.3. “provided that no invitation to tender is issued during the extended evaluation period. Contracting authorities shall indicate in the procurement documents the length of the extended period that they intend to apply.” (see Art. 34 (5) 2nd subpara of 2014/24/EU).	This would in principle be considered as acceptable by the Commission.
367.	AT	Fiche 5, Annex I Chapter 1, point 9.4	Can COM explain the change in the 2nd subpara? AT points out, that the current text – which is aligned with 2014/24/EU – would provide more flexibility!	In order to reach more flexibility, it is proposed to replace ‘invitation to tender’ by ‘procurement documents’, as the invitation to tender is one of the procurement documents. As a general rule, more detailed information is provided in the ‘tender specifications’ document.
368.	AT	Fiche 5, Annex I Chapter 1, point 11.1. iii	AT can support the text only under the condition that the PP Directives will be amended accordingly!	The proposal is intended to extend the use of this legal basis also to competitive procedure with negotiation where a contract notice is published, in addition to open and restricted procedures. There is no decision yet on introducing similar provisions in the Procurement Directive.
369.	AT	Fiche 5, Annex I Chapter 1, point 11.1. b	The following text must be added: “The exceptions set out in points (ii) and (iii) shall only apply when no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.” (see Art. 32 (2) b of 2014/24/EU). Why is this text not aligned?	The proposed change appears outside the scope of this targeted revision. The Commission takes note.
370.	AT	Fiche 5,	AT considers, that the new text (“following a crisis ...”) is already covered by	For alignment with existing provisions in the field of

		Annex I Chapter 1, point 11.1. c	the current text (see as well the various COM Communications on PP in connection with the refugee crisis and the pandemic). Can COM elaborate why this addition is needed?	external actions, it is proposed to add under Point 11.1.c) of Annex I that following a crisis declaration the authorising officers responsible may only rely on such crisis declaration if the specific procurement procedure is justified by a situation of extreme urgency that is resulting from the crisis. The element of 'crisis situation' is new and has the purpose to ensure faster implementation in case of crisis.
371.	AT	Fiche 5, Annex I Chapter 1, point 11.1. f v	AT can support the text only under the condition that the PP Directives will be amended accordingly! Can COM elaborate on the GPA compatibility of this provision?	The modification proposed is to ensure quicker implementation during a crisis and to address the lessons learned from Covid-19 outbreak is the addition of a new subparagraph under Point 11.1.f) for supply contracts, to clarify that the negotiated procedure can be used for the purchase of medicines for human use or medical related products as well as for products allowing the eradication or containment of certain animal diseases, zoonoses and quarantine pests of plants, provided specific conditions are fulfilled. There is no decision yet on introducing similar provisions in the Procurement Directive. It will be used in limited circumstances, provided the conditions are fulfilled, products must be "innovative, not readily available on the market or there is a need to adopt a readily available solution". Article 3.b) of the GPA (Security and general exceptions) provides for the possibility to impose or enforce measures "necessary to protect human, animal or plant life or health". The proposal may fall within this exception.
372.	AT	Fiche 5, Annex I	Such contracts are covered by the PP regime (see inter alia Art. 5k (2) d of Regulation 833/2014). The current wording is unspecified ("for all	It is necessary to tackle cases where decisions of the contracting authority compel the award of contracts

		Chapter 1, point 11.1. m	contracts”) and could cover significant contract values. AT sees no need to deviate from transparent PP procedures in such cases! Can COM explain why it considers otherwise? Why does the wording of the text in the Fiche No. 5 deviate from the one in the proposal itself (the text in the fiche starts with “where the EEAS has issued a decision for opening a new delegation..” whereas the text in the regulation itself starts with “where it has been decided to open a new..”)?	in the briefest deadlines (i.e. when there is a decision to open a new Delegation in the briefest deadlines).
373.	AT	Fiche 5, Annex I Chapter 1, point 14(2)(3) (5)	When is a contract exclusively in the interest of Union delegations? AT points out, that the special regime of point 14.2. for “Union delegations” is in contradiction to the obligations under the GPA (see observations above)!	Please see our reply to question 361 and 364.
374.	AT	Fiche 5, Annex I Chapter 1, point 18.1. second subpara.	The possibility to reuse a declaration of honour doesn’t seem to make sense since a confirmation that the information is (still) correct is needed anyway – therefore a new declaration can also be made. Can COM elaborate on the reasons for this proposal?	This new addition is in line with the PPD Directive which foresees the possibility of the reuse of an ESPD by an economic operator. The declaration on honour foreseen by the FR is the equivalent of the ESPD which has not been yet implemented by the EU institutions for their own procedures but works are ongoing in order to develop a model which is harmonised with the ESPD model used by the MS.
375.	AT	Fiche 5, Annex I Chapter 1, point 18.1. third subpara.	Can COM explain the proposed system of “confirming the ESPD” or the “declaration of honour” respectively? What is the relationship between the ESPD and the mentioned “declaration of honour” (which – according to AT reading – duplicates certain aspects of the ESPD)? Why does COM not duplicate the system of Art. 59 (4) of 2014/24/EU? How does this tie in with the proposed change in Point 18.4.? What is the system below the thresholds of Art. 179 FR?	Please see answer to question 374. The change proposed is a correction of a substantial error in FR 2018 where Article 141(2) RAP has not been taken over (i.e. obligation of the successful tenderer to provide supporting documents). The obligation of providing supporting documents for exclusion criteria can be waived for a procedure below the thresholds of Article 179.
376.	AT	Fiche 5, Annex I	AT opposes these proposals! The Court held in his judgement of 8th July 2020 (T-661/18, Securitec), that from the basic principles as enshrined in	These provisions are proposed to be used in very exceptional cases of crisis situations when the urgency

		Chapter 1, point 18.1. 4 th subpara, 18.4. 2 nd subpara	Art. 102 of the Financial Rules follows the obligation of the contracting authority (in the current context: the Commission) to check at the latest at the time of the award of the contract whether the bidder who has submitted the cheapest/best offer actually fulfills the conditions set out in the specifications of the tender. This obligation would not be fulfilled if the specifications of the tender, as proposed in Art. 7 para. 2 letter a), allow the contract to be awarded on the basis of a declaration by a tenderer by which he undertakes, after signing the contract, to meet a condition which is the minimum requirement for the execution of the contract (see at No. 105ff of the judgement). The Court held at No. 108/109 of his judgement that a clause which provides for the possibility of fulfilling a criterion which was specified as a minimum requirement in the specifications of the tender, does not comply with the principle of equal treatment, because it can be used to award the contract to a tenderer who does not meet this requirement, while other participants who have met that requirement at the time of the award of the contract will be rejected. If it is only checked after the contract has been awarded whether the contractor actually has the suitability or professional skills required for its execution, this would lead to the termination of the contract, in violation of legal certainty, if the contractor is unable to provide the relevant proof. A new procedure would then have to be organized to carry out the project which is the subject of the contract in question. Since the Court based his judgement on the fundamental principles of Union Law (as enshrined in the TFEU), namely the principles of transparency and equal treatment, AT considers, that the proposed “simplification” would be illegal (because it is in contradiction to the TFEU). This proposal might also lead to very problematic situations: what happens if after the award COM discovers that the contractor should not have been awarded the contract (because it should have been excluded)?	is duly justified by the authorising officer, who should be able to request supporting documents to be provided at the latest by the contract signature, instead of before the award decision. Please note that the FR has been modified (see Recital 87 and Point 18(1) Annex I) so that in principle, the authorising officer should request evidence before the award decision, in order to ensure compliance with the case law of the Court of Justice (judgment of the General Court in Case T-661/18, Securitec v Commission).
377.	AT	Fiche 5, Annex I Chapter 1, Point 18.4.	See observations above regarding Point 18.1. 3rd subpara!	Please see the reply to question 375.

		last subpara		
378.	AT	Fiche 5, Annex I Chapter 1, Point 18.7	The suggested addition whether they are subcontractors or not is not in line with the PP Directives (see in this regard Art. 63 (1) second sub-para of Dir 2014/24/EU)!	The elements triggering the check of selection criteria for subcontractors are whether the tenderer relies on the capacity of that subcontractor or not and whether there is a specific requirement in the procurement documents for the subcontractors to fulfil the selection criterion individually. However, there is no link between the part (%) of subcontracting and selection criterion. The suggested change aims to clarify this aspect. It is a useful update for the performance of the contract.
379.	AT	Fiche 5, Annex I Chapter 1, Point 20.6	Can the COM give examples for “professional conflicting interests”? The PP Directives only know the term “conflicting interest” (cf. Art. 58 (4) of Dir 2014/24/EU), why should a different term be used here (AT considers, that both concepts should be identical)?	Recital 104 of the FR 2018 already included a reference to the difference between situations of “conflict of interests” and situations of “professional conflicting interest”. The word “professional” was added in Point 20.6 of the Annex of the FR Recast to highlight the contracting authority’s obligation to assess whether there are such interests and to avoid any confusion between the use of these two distinct notions. Please see the reply to question 246 on more information on the scope of these terms and on examples of “professional conflicting interests”.
380.	AT	Fiche 5, Annex I Chapter 1, Point 28.1.	How does COM in practice envisage the attendance, if electronic tenders are opened?	For electronic submission of tenders, the attendance to public opening can be ensured physically or virtually through secure access granted to tenderers’ representatives. The access rights will be encrypted and password provided following confirmation of attendance by tenderers.
381.	AT	Fiche 5, Annex I	The term and concept of “multiple sourcing procurement” is new, as it cannot be found in the PP Directives. Further explanations are needed (see	Please see the replies to questions 261 and 317.

		Chapter 2, Point 34	also the comments above to Art. 2 (46))!	
382.	AT	Fiche 5, Annex I Chapter 3, Point 39	AT has serious concerns as to the GPA compatibility for example of the “local open procedure” (see observations above concerning the GPA compatibility in the field of external actions)	Please see answer to question 364.
383.	AT	Fiche 6, Art. 184(4)	The first sentence is quite misleading (“Each Union institution may award public contracts or grants for communication activities.”). First grants and public contracts are two mutually exclusive instruments and second these instruments have different legal consequences (public contracts can be enforced, in case of grants the grant has to be paid back as a consequence if the required “behaviour” is not set).	This sentence is already part of the current Financial Regulation (see Article 180(4)) and is not part of the modifications proposed by the Commission.
384.	AT	Fiche 8	Can COM explain the interchange of the provisions of Section 2 with Regulation 1302/2008 (central exclusion database)? Why is there no specific reference to the Regulation in the FR (neither the text itself nor in the Annex)? Is the mentioned database the database referred to in Art. 145? Would COM consider granting access to this database for MS contracting authorities?	According to the current legal framework, all persons and entities involved in budget implementation in accordance with Article 62 shall be able to access the EDES database - which since 2016 has replaced the Central Exclusion Database - and verify the information therein. At present, the MS’s managing authority can therefore request access to the EDES database in order to be able to verify whether a person or entity is therein listed. The proposal renders the use of the database compulsory. The Commission can provide further details on the procedure to follow.
385.	At	Fiche 8, Art. 138(2) letters g to i	How will COM implement the envisaged regime vis-à-vis “beneficial owners”, “affiliates” “natural persons”, “entities on whose capacity candidates or tenderers rely” and “subcontractors” in procurement? Will COM create a specific database and will MS have access to this database?	MS should refuse access to funding to a person or entity already in the database (i.e. already sanctioned), regardless of whether the exclusion procedure was originally triggered against that person or entity as

				applicant/recipient/subcontractor/beneficial owner/affiliated entity. There is no need for a distinct database. The provision does not require to reject a participant or affiliate that is not already sanctioned.
386.	AT	Fiche 8, Art. 139	General remark: the structure of Art. 139 is extremely complicated! This has an impact also on other Articles (for ex: Art. 140 (1) refers to Art. 139 (9) 1st subpara letter a) which refers to Art. 139 (7) which itself refers to para 3 and other Articles a.s.o.)! AT suggests to streamline Art. 139 and make it better readable!	The Commission will reflect on this comment.
387.	AT	Fiche 8, Art. 139(1) letter a	Why has COM not proposed for reasons of clarification the addition of “restructuring” (see Dir. 2019/1032 - preventive restructuring)?	Preventive restructuring is taken into consideration when applying Article 139(1)(a).
388.	AT	Fiche 8, Art. 139(1) letter c iv)	AT proposes the following wording: “... process to obtain Union funds for example by taking advantage ...”; this would enable COM to apply this provision on a broader basis.	The Commission will reflect on this comment.
389.	AT	Fiche 8, Art. 139(1) letter c vi)	Can COM provide examples for this obligatory exclusion ground!	By means of this ground, the Commission seeks to exclude any person or entity that, inter alia, engages in hate-speech against any kind of sexual orientation or religion; incites to discrimination (e.g. between men and women); supports terrorism propaganda etc.
390.	AT	Fiche 8, Art 139(1) letter e	Are i) to iii) cumulative preconditions for applying the exclusion ground?	No they are not cumulative.
391.	AT	Fiche 8, Art. 139(1)	A new exclusion ground is proposed, according to which a person or entity should be excluded from participating in award procedures when the person or entity refuses to grant the necessary access to its premises or any other	The refusal to cooperate in the context of investigations, checks or audits carried out by an authorising officer, OLAF, EPPO or the Court of

		letter i	areas used for business purposes, concealing or refusing to disclose information or providing false information. The maximum length of exclusion would be up to 5 years (cf. Art. 142 (1) letter b sublit I of the Financial Regulation). The PP Directives do not contain such an exclusion ground. Can the COM elaborate why this new exclusion is necessary and why it considers this obligatory exclusion to be a proportionate sanction (see in regard of the latter ECJ, Case C-30/19, Braathens Regional Aviation AB, at no 38: the severity of the sanctions must be commensurate to the seriousness of the breaches for which they are imposed)?	Auditors is not explicitly listed so far in the EDES framework. However, such misconduct has been covered in past cases under the concept of grave professional misconduct or significant deficiencies in the compliance of contractual obligations. Notwithstanding the above, the Commission considered that an autonomous ground with an appropriate penalty range, consistent with the seriousness of the misconduct, should be added. In fact, the deliberate or sometimes even reckless failure to cooperate may have severe implications on the protection of the Union's financial interests. The obligation to cooperate with investigative bodies is laid down in the relevant legal basis, including the Regulation establishing the body and/or the contract with the person or entity. In order to consider that there has been an intentional failure to cooperate, a proper assessment of the conditions for complying with the obligation to cooperate is carried out by the EDES Panel. It should be borne in mind that any administrative proceeding for exclusion entails a contradictory phase where the person or entity can submit observations/exculpatory evidence.
392.	AT	Fiche 8, Art. 139(2)	Art. 139 (1) first sentence and Art. 139 (2) first sentence are not harmonized (in both cases an obligation to exclude but different scope of applicable obligatory exclusion grounds)! What is the reason for doing so? Can COM explain the concept of Art. 139 (2) 2nd sentence: what is a "preliminary classification in law"; can COM provide examples?	Indeed, there is a difference in the two paragraphs which concerns the scope of the exclusion. This is because the Commission intends to keep the extension of EDES to shared management targeted and proportionate. Therefore, in the case of shared

				management, the exclusion would concern only the most serious misconducts (e.g. fraud, corruption, criminal organization). For what concerns the concept of preliminary classification in law, this is done by the EDES Panel in the absence of a final judgment/administrative decision. In a nutshell, the Panel qualifies the facts and findings established against the entity and assesses whether such facts fulfil all the elements of the ground concerned. In general, each case is examined by the Panel in two phases. In the first phase, the Panel examines the facts and findings and performs a preliminary qualification in law of these facts. The Panel ensures the right to be heard by sending a letter to the entity or person concerned, in which the entity or person concerned receives all the required information and is given the possibility of submitting observations in writing. In the second phase, the Panel examines the received written observations and proceeds to adopt a recommendation, which is addressed to the requesting authorising officer.
393.	AT	Fiche 8, Art. 139(2) last sentence	AT opposes this provision because it can't be implemented: first it is an obligation addressed to MS and no provision concerning contracting authorities of the Union! Second it is totally unclear how MS shall know which persons/entities are involved in a budgetary procedure (therefore they do not know if they are in a situation according to Art. 139 (1) letter a) and at which point in time they should verify this circumstance. Furthermore: how shall MS "ensure that payment applications are not submitted to the Commission"?	The MS management authority will have an obligation to check the EDES database and ensure that no EU funds are awarded to a person or entity listed therein. This is how they will know that persons/entities should be rejected for being in an exclusion situation. This also means that no request for payments concerning that person or entity should be submitted to the Commission.

394.	AT	Fiche 8, Art. 139(6)	What are the criteria according to which COM may also impose a financial penalty according to Art. 139 (6)? Is exclusion/financial penalty an alternative sanction (arg. “or”) or can they be applied cumulatively (see in this regard the remarks above concerning Art. 139 (1) letter i and the principle of proportionality)?	The criteria to apply a financial penalty are laid down in Article 141. The financial penalty can be applied as an alternative to exclusion or in addition to it respecting the proportionality principle.
395.	AT	Fiche 8, Art. 139(8)	Can the COM provide some examples when the nature or the circumstances of a case require an expedited procedure?	The following cases would qualify. a) a final judgment or a final administrative decision has been issued by a Member State’s authority and the case must therefore be submitted to the Panel for the determination of the length of the exclusion, in application of the principle of proportionality; b) a final judgment or a final administrative decision has been issued in a third country which is subject to the jurisdiction of the European Court of Human Rights and which provides sufficient guarantees as regards effective and efficient protection of the rule of law; c) a sanction has been already imposed on the person or entity by virtue of a decision of (i) international organisations or their agencies, (ii) EIB, (iii) EIF, where these organisations have been considered to apply equivalent sanction procedures under Article 154 FR
396.	AT	Fiche 8, Art. 139(1) last	Can COM explain; the system is unclear?	If the question refers to point (i) of Article 139(i), which is the last exclusion ground, please find the reply below.

		sentenc e		In the absence of a final judgment, the person or entity can still be excluded on the basis of a preliminary classification in law of the EDES Panel. In the case of point (i), the obligation to cooperate with investigative bodies is laid down in the relevant legal basis, including the Regulation establishing the body and/or the contract with the person or entity. In order to consider that there has been an intentional failure to cooperate, a proper assessment of the conditions for complying with the obligation to cooperate is carried out by the EDES Panel. The Panel's role is crucial in (i) ensuring the rights of defence and due process by means of a contradictory procedure; (ii) assessing the sufficiency and reliability of evidence gathered against the person or entity concerned; and (iii) issuing a recommendation that abides also by the principle of proportionality. This is enshrined not only in the FR provisions but also in the Rules of Procedure of the Panel.
397.	AT	Fiche 8, Art. 142(1) letter b	Can COM explain why it considers an exclusion period of 5 years to be proportionate in the case of Art. 139 (1) letter i?	The Commission considers that the deliberate or sometimes even reckless failure to cooperate may have severe implications on the protection of the Union's financial interests. Thus, the sanction for such misconduct should be up to 5 years.
398.	AT	Fiche 8, Art. 144(1)	Can COM clarify what the difference between the "rejection from an award procedure" in cases of obligatory "exclusion" according to Art. 139?	The rejection concerns a specific award procedure where the participant: a) is in an exclusion situation established in accordance with Article 139; b) has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information;

				c) was previously involved in the preparation of documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition, that cannot be remedied otherwise. (See Article 144.) In case (b) and (c), the person or entity does not have to be “excluded” (meaning sanctioned). On the other hand, the exclusion bears effects on all procurement and awarded procedures funded by the EU. When the entity has been excluded for a certain period on account of a specific ground, the rejection is the consequence.
399.	AT	Fiche 8, Art. 144(1) letter d	According to Art. 139 (1) letter c iv) a conflict of interest leads to an exclusion of the respective participant – Art. 144 (1) letter d provides for a rejection; what is the difference and why is it not foreseen, that “other less intrusive measures” should be tried first and exclusion/rejection is only the last resort (see in this regard Art. 57 (4) letter e of Dir 2014/24/EU)?	Please see the reply above.
400.	AT	Fiche 8, Art. 147	Why is secure electronic mail (exchange system) not the preferred means of communication and only in absence of the possibility to use electronic mail communication paper may be used?	The secure electronic exchange system will be the preferred means of communication.
401.	AT	Fiche 5, Art. 242(5)	What is meant by exceptionally and duly justified cases? What is meant by “to allow the Union institutions to compete on equal footing with other actors in the market” (does this refer to the fact that higher fees are required on the market)? Can the COM provide explanations/examples? Since the services of the “external experts” fall within the scope of the procurement chapter, service contracts for external experts above an estimated value above 140.000 Euros must be awarded according to the provisions of Titel VII (this also follows from the obligations under the GPA).	Please see replies to question 103.

402.	AT	Fiche 15, Art. 61(2)	AT regards the addition to Art. 61 (2) as quite unclear: COM obviously wants to include the various “conflict of interest” definitions and situations into Art. 61; however: on a national level (AT can only speak for its national situation) various definitions of conflict of interest may exist which do apply in different situations (for ex in AT: definition in § 7 of the General Administrative Procedure Act as compared to the definition in § 26 of the Federal Procurement Act) – how will COM decide which national definition will be applicable? AT points out, that Art 24 of Directive 2014/24/EU contains a definition of “conflict of interests” which is not totally aligned with the definition in Art. 61 (3) – why didn’t COM align the provisions so as to have a uniform concept specifically in light of its Guidance on the avoidance and management of conflicts of interest under the Financial Regulation (2021/C 121/01)?	The interaction with national legislations is a known issue which the Commission has been progressively addressing by: 1) a definition of conflict of interests applying to all management modes; 2) the General Conditionality Regulation; 3) the broad notion of applicable law included in this proposal. For reasons of legal certainty, it is necessary to clarify that the applicable law, under which any appropriate actions are to be taken with regard to conflict of interests, includes EU and national law relating to conflict of interests. The Commission will not decide which national definition will be applicable. The relevant authorising officer by delegation or the relevant national authority shall ensure that any further appropriate action is taken in accordance with the applicable law, including, in cases involving a member of staff of a national authority, with the national law relating to conflict of interests.
403.	AT	general	AT reserves its right to submit further questions and remarks to the Recast of the Financial Regulation.	The Commission takes note of this reservation.

404.	FR	Fiche 15	Le respect du principe <i>do-no-significant-harm</i> sera-t-il mesuré par référence aux critères définis dans les annexes de l'acte délégué sur le climat du règlement sur la taxonomie ? Si ce n'est pas le cas, la Commission prévoit-elle de publier des modèles de rapport dédiés précisant les indicateurs à utiliser par les bénéficiaires des programmes et activités de l'UE ? Cette obligation s'appliquera-t-elle à tous les projets financés par les programmes et fonds européens sans prévoir l'introduction de seuils minimums (par exemple, montant minimum de financement européen comme condition de déclaration taxonomique) ? Cette obligation entraînera-t-elle une révision des règlements dédiés aux fonds et programmes européens (par exemple : règlement <i>InvestEU</i>, règlement sur les dispositions communes, etc.), et donc une modification des rapports de durabilité actuellement exigés dans le cadre de ces programmes et fonds ?	The intention is not to apply the DNSH of the taxonomy throughout, but rather to apply a similar principle on a programme-by-programme basis (i.e. the principle would be operationalised taking into account the specificities of the programme). This would be spelled out through the appropriate provisions (implementing acts, guidelines, etc). We would like to refer to the recently published staff working document on the climate mainstreaming methodology (Commission SWD(2022) 225). This methodology contains a part where this issue is discussed in some detail. The formal requirement to factor in the DNSH principle stemming from the revision of the Financial Regulation would apply for the next generation of basic acts. No changes are foreseen in existing regulations, which do not include a <i>de minimis</i> rule, so that if a project is funded under a given programme the respective programme rules apply.
405.	FR	Fiche 4, Art. 213	L'obligation de <i>reporting</i> dans les normes IPSAS prévue à l'article 213 prévaut-elle sur la suppression de cette obligation aux articles 223, paragraphe 6b, et 159 (anciennement article 155) ?	L'obligation de reporting prévue à l'article 213 et celle prévue à l'article 223(6)b diffèrent dans l'objectif et le contenu. Sous l'article 213(4), les contreparties fournissent l'information sur la garantie de l'Union (passifs). Cette information est consolidée dans les comptes annuels de l'Union et doit être établie conformément aux règles comptables de l'Union (fondées sur IPSAS). Sous l'article 213(4), les contreparties fournissent la liste de leurs opérations financières qui sont couvertes par la garantie budgétaire (ce sont leur propres actifs). Cette information contribue au reporting sous l'article 41.5

				(reporting opérationnel et sur le risque). Par conséquent, cette information peut être fournie conformément aux règles comptables des contreparties. Les deux reporting contribuent au reporting suite à l'article 159.
406.	FR	Fiche 4	IPSAS : Cette nouvelle rédaction vise-t-elle à rendre la disposition plus compréhensible ?	Oui, et également à refléter la pratique.
407.	FR	Fiche 4, Art. 163	Operations de mixage : Au sens du 4 de l'article 163, pour autant que les différents types de soutien financier soient clairement distingués, les rapports attendus peuvent-ils être conçus de manière unifiée et rationalisée pour le mécanisme/la plateforme ?	Information on blending facilities will be reported to the European Parliament and the Council per blending facility, in a structured way in accordance with Article 41(4) (i.e. in a working document attached to the draft budget presenting for each financial instrument the information listed in paragraph 4 of the Article) and 41(5) (i.e. in a working document attached to the draft budget presenting for each budgetary guarantee and for the common provisioning fund the information listed in paragraph 5 of the Article) of the Financial Regulation, as follows: • Blending facility/platform combining Union support in the form of a budgetary guarantee and a financial instrument will be reported under both Article 41(4) and 41(5). • Blending facility combining Union support in the form of a grant and a budgetary guarantee will be reported under Article 41(5). • Blending facility combining Union support in the form of a grant and a financial instrument will be reported under Article 41(4). • Blending facility combining Union support in the form of a budgetary guarantee, a financial

				instrument and a grant will be reported under both Article 41(4) and 41(5).
408.	FR	Expl. Memo	- « Les autorités françaises souhaitent (i) savoir si l'alignement du règlement financier sur le règlement relatif aux subventions étrangères faussant le marché intérieur annoncé dans l'exposé des motifs de la proposition de révision du 16 mai 2022 sera réalisé et, dans l'affirmative, (ii) connaître le contenu et le timing de cette transposition ».	Please see our reply to line 64.
409.	FR	Fiche 8	- « Les autorités françaises souhaitent savoir si la formulation actuelle de l'article 139 (vi), particulièrement la notion de discrimination, permettrait d'empêcher qu'une association reçoive des subventions européennes dans le cas où elle prône des idées contraires au principe d'égalité entre les femmes et les hommes. Si une telle exclusion n'était pas claire, nous proposons de renforcer le texte par une référence explicite au respect de cette valeur essentielle de l'Union européenne ».	The ground of exclusion under Article 139(c)(vi) will also tackle misconducts consisting in discrimination between men and women.