



Council of the European Union
General Secretariat

Brussels, 20 February 2023

WK 2483/2023 INIT

LIMITE

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INFORMATION

From:	General Secretariat of the Council
To:	Budget Committee
N° Cion doc.:	8190/22 + ADD 1
Subject:	FinReg (recast): List of errors in the Commission's proposal

Delegations will find attached a list of errors spotted by the Commission in its Financial Regulation recast proposal.

Financial Regulation recast - List of errors in the proposal

Main act:

Place in the text	Phrase/sentence	Description of the error
Footnote 32	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (OJ L 141 5.6.2015, p. 73).	<p>The title of the Directive is incomplete and should be corrected as:</p> <p>“Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).”</p> <p>This complete title is already present in footnote 82 (which should be deleted, see below in this list).</p>
Footnote 41	Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures.	A reference to the Official Journal (OJ L 84, 31.3.2010, p. 1) is missing.
Footnote 68	Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a	“(Text with EEA relevance)” should be omitted.

	framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (<u>Text with EEA relevance</u>), OJ L 198, 22.6.2020, p. 13.	
Footnote 82	Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).	This should be deleted as new footnote 32 has been added that includes the same footnote.
Recital 7	(7) In the interest of clarity, all references to the repealed Regulation (EC) 45/2001 shall be replaced by references to Regulation (EU) 2018/1725 of the European Parliament and of the Council.	“Shall” should be changed to “should”.
Recital 103	It is important to avoid that a person or entity in an exclusion situation is able to apply to, or to be selected for implementing funds , or to receive such funds under a programme in shared management.	Comma is missing after “selected for” (i.e. “to apply to, or to be selected for, implementing funds”).
Recital 103	Payment applications from Member States under shared management, including expenditure related to a person or entity that has been excluded, should not be reimbursed.	Unclear sentence. The issue is the use of commas in the sentence, i.e. without commas it would be clearer. In addition of removing the commas, it would be suggested to replace 'including' by 'which include'.
Recital 103	Such exclusion should be registered in the early-detection and	This sentence incorrectly refers to Article 138(1)

	exclusion system database established under Article 138(1).	when it should refer to Article 145(1) (the obligation of registration in the database).
Recital 155	In light of the Covid-19 pandemic, it is appropriate to modify the definition of crisis, which applies in particular to the common provisions and to procurement in the field of external actions and covers public and animal health, food safety emergencies and global health threats.	The last part of the sentence (“covers public and animal health, food safety emergencies and global health threats”) refers to new areas the definitions should apply to, but that is not clear from the sentence. It should be amended to: “it is appropriate to modify the definition of crisis, which applies to ... and <u>should</u> cover ...”
Recital 161	On the one hand, the candidates, tenderers, and, where appropriate, entities on whose capacity they rely as well as envisaged subcontractors should declare the absence of such conflicting interests, and to provide related information where requested.	“To” in “to provide” should be deleted.
Recital 165	Considering the progress in digitalisation of procurement procedures, it should be clarified that public openings for open procedures may be organised remotely via video conferences.	This phrase is not linked to the dynamic purchasing system, so it should be a separate bullet/recital.
Recital 256	Some modifications regarding the transmission to the Commission of data on recipients for the purposes of publication, and regarding the electronic recording and storage of data on recipients and the use of the single integrated IT system for data-mining and risk-scoring to access and analyse those data should apply only to programmes adopted under and financed from the post-2027 multiannual financial framework in order to ensure a smooth transition by allowing sufficient time for the necessary adaption of electronic data systems and of relevant agreements, as well as the provision of	Incorrect word. To be redrafted as follows: Some modifications regarding the transmission to the Commission of data on recipients for the purposes of publication, and regarding the electronic recording and storage of data on recipients and the use of the single integrated IT system for data-mining and risk-scoring to access and analyse those data should apply only to programmes adopted under and financed from the post-2027 multiannual financial framework

	guidance and training.	in order to ensure a smooth transition by allowing sufficient time for the necessary adaptation of electronic data systems and of relevant agreements, as well as the provision of guidance and training.
Article 2(3)	‘award procedure’ means a procurement procedure, a grant award procedure, a contest for prizes , an award procedure for a non-financial donation or a procedure for the selection of experts or persons or entities implementing the budget pursuant to point (c) of the first subparagraph of Article 62(1), point (c), first subparagraph;	The change referring to Article 62(1)(c) first subparagraph was wrongly added i.e., there was no need to change the way we referred to Article 62(1)(c) – i.e., the only proposed change should have been the reference in grey.
Article 2(50)	‘participant’ means a candidate or tenderer in a procurement procedure, an applicant in a grant award procedure or in a non-financial donation award procedure , an expert in a procedure for selection of experts, an applicant in a contest for prizes or a person or entity participating in a procedure for implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1), point (c), first subparagraph;	The change referring to Article 62(1)(c) first subparagraph was wrongly added i.e., there was no need to change the way we referred to Article 62(1)(c) – i.e., the only proposed change should have been the reference in grey.
Article 22(1)(c) (new)	a) an attached annex, forming an integral part of the budget, setting out all the budget lines for which external and internal assigned revenue is foreseen and providing information on the estimated amount of such revenue to be received	A reference to internal assigned revenue should be added to match the current wording of Article 41(8)(a) (which covers both internal and external assigned revenue).
Article 31(5)	If the transfer is not approved or only partially approved by the European Parliament and by the Council, the corresponding part of the expenditure referred to in <u>point (b) of Article 10(5)</u> shall be charged to the payment appropriations of the following financial year.	The reference to Article 10(5) is a mistake (there is no such point (b) in this paragraph). It should refer to Article 10(7).

Article 36(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 datamining and risk-scoring provided by the Commission:	<p>The text should be modified as following:</p> <p>For the purposes of point (d) of paragraph 2, the following data <u>the Member States, the persons or entities implementing the budget pursuant to Article 62(1) of this Regulation</u> shall be recorded and stored <u>the following data</u> electronically in an open, interoperable and machine-readable format and regularly make <u>the data</u> available in the single integrated IT system for datamining and risk-scoring provided by the Commission:</p>
Article 38(3)	The first subparagraph of this paragraph shall also apply to other Union institutions when they implement the budget pursuant to Article 59(1).	<p>This subparagraph should be deleted as it is repetitive given the last sentence of the previous subparagraph:</p> <p>The first subparagraph of this paragraph shall also apply to other Union institutions when they implement the budget pursuant to Article 59(1).</p>
Article 41(5)(g)	<p><input type="checkbox"/> amount of provisioning for liabilities arising from each budgetary guarantee, an assessment of the adequacy of its provisioning rate and of the need for its replenishment <input type="checkbox"/> information about the financial management, the performance and the risk of the common provisioning fund at the end of the preceding calendar year;</p>	It seems that “and” is missing between “budgetary guarantee” and “an assessment”.
Article 41(10)	The working document referred to in paragraph 10 shall also	This is a mistake. It should refer to paragraph 9 instead.
Article 63(4)(a)	4. Bodies designated pursuant to paragraph 3 shall:	Reference should be made to the new paragraph

	(a) set up and ensure the functioning of an effective and efficient internal control system, which, where appropriate, may rely on digital controls as referred to in Article 36(9);	on digital audit in Article 36(10) (instead of 36(9)).
Article 74(5)	5. In order to prevent errors and irregularities before the authorisation of operations and to mitigate risks of non-achievement of objectives, each operation shall be subject at least to an <i>ex ante</i> control relating to the operational and financial aspects of the operation, on the basis of a multiannual control strategy which takes risk into account. As referred to in Article 36(9), <i>ex ante</i> controls shall use, where appropriate, automated IT tools and other emerging technologies.	Reference should be made to the new paragraph on digital audit in Article 36(10) (instead of 36(9)).
Article 86(2)	2. The accounting officer shall ensure that his or her Union institution has at its disposal sufficient funds to cover the cash requirements arising from budget implementation within the applicable regulatory framework and shall set up procedures to ensure that none of the <u>accounts opened in accordance with Articles 85(1) and 89(3)</u> is in debit.	The reference to Article 89(3) should have been deleted as there is no longer a reference to “accounts opened”.
Article 93(4) point a)	“when the case in referred in accordance with Article paragraph 1(a)”	It should be when the case “is” referred and not “in” referred. Moreover, it should be 'in accordance with paragraph 1, point (a) of this Article'.
Article 109(4)(a)	(a) the provisionally collected amounts or, in the event of a reduction, the relevant part thereof shall be repaid to the third party concerned;	The deletion of “including any return” has mistakenly not been marked in the proposal. It should read as follows:

		(a) the provisionally collected amounts or, in the event of a reduction, the relevant part thereof, including any return , shall be repaid to the third party concerned;
Article 114	Commitments for EAGF appropriations	The deletion of the “s” in appropriations is unintentional. The plural should stay.
Article 132(7)	7. In the case of financial framework partnerships implemented through contribution agreements, the financial framework partnership agreement and the contribution agreement taken as a whole shall comply with Article 130 and Article 159(8) .	The last cross reference should read Article 159(7), instead of Article 159(8).
Article 138(2)(c)	(c) any person or entity receiving Union funds where the budget is implemented pursuant to Article 62(1), first subparagraph, point (c), and to Article 158(4) on the basis of information notified in accordance with Article 159(8) ;	The last cross reference should read Article 159(7), instead of Article 159(8).
new Article 139(6)	When a person or entity referred to in Article 138(2), points (a) to (f) and (h) to (k), is excluded, the authorising officer responsible may also exclude or impose a financial penalty on the beneficial owner or any affiliate of the excluded entity.	“Affiliate” is used in Article 139(6) in the sense of “affiliated entity” - Article 139(6) is the only instance where the term “affiliate” is used, in addition to Article 138(2)(g), where “affiliate” is used when referring to Article 139(6).
new Article 139(1), point (d)(v)	or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision	The proposal kept the reference to Article 4 of Decision which should point to Article 14 of the Directive. The right reference should be made to Article 14 of the Directive.
new Article 139(1), point (d)(v)	terrorist offences or offences linked related to terrorist activities, as defined in Articles 34 and 123 of <u>Directive</u>	It should be offences “3 <u>to</u> 12” instead of “3 <u>and</u> 12.”

	<u>2017/541 of the European Parliament and of the Council</u>	
Article 139(9) – subparagraph 1 – point a	(a) the person or entity has taken remedial measures as specified in paragraph 7 of this Article, to an extent that is sufficient to demonstrate its reliability. This point shall not apply in the case referred to in point (d) of paragraph 1 of this Article;	The reference to paragraph 7 is incorrect and should be paragraph 10.
Article 139(10) - subparagraph 2	The remedial measures referred to in point (a) of the first subparagraph of paragraph 6 shall include, in particular:	The reference to para 6 is incorrect and it should be paragraph 9.
Article 139(10) – subparagraph 2	In order to comply with the requirements of paragraph 6 of this Article, the person or entity shall submit remedial measures that have been assessed by an external independent auditor or be considered sufficient by a decision of a national or Union authority. This is without prejudice to the assessment of the panel referred to in Article 146.	The reference to paragraph 6 is incorrect and should be paragraph 9.
new Article 139(2); new Article 139(3), fourth subparagraph, point (d)	"points (d) of Article 139(1)"; "Article 139(1), points (d),"	The plural is not intentional and therefore should be deleted (points)
Article 144	(d) has conflicting interests which may negatively affect the performance of the contract in accordance with point 20.6 of Annex I.	Text to be corrected as follows: (d) has professional conflicting interests which may negatively affect the performance of the contract in accordance with point 20.6 of Annex I. The following should be added to align the

		proposal with the Foreign Subsidies Regulation: <u>(d) e) is subject to a decision of the authorising officer responsible prohibiting the award of the contract due to a foreign subsidy distorting the internal market. The authorising officer responsible shall act in accordance with the Internal rules of the Union institution concerned.</u>
Article 147(3)(a)	When made on paper, be considered notified when they have been delivered to the latest available postal address indicated by the recipient party.	“Available” is superfluous and should be deleted (if an address has been indicated, it has to be available).
Article 150(1)	<u>Electronic information may be subject to digital controls and audits as referred to in Article 36(9).</u>	Reference should be made to the new paragraph on digital audit in Article 36(10) (instead of 36(9)).
Article 153	Where persons of entities referred to in Article 138(2), point (b), are concerned, the applicant shall be responsible for communicating to the contracting authority the address of the entity concerned.	It should be ‘persons or entities’.
Article 153(8)	Paragraphs 1 to <u>67</u> of this Article shall not apply to the selection of persons or entities implementing Union funds pursuant to <u>point (e) of the first subparagraph of Article 62(1), first subparagraph, point (c).</u>	The text should read: Paragraphs 1 to <u>67</u> of this Article shall not apply to the selection of persons or entities implementing Union funds pursuant to <u>point (e) of the first subparagraph of Article 62(1), first subparagraph, point (c), unless the selection is made further to a call for expression of interest.</u>

		<p>Technical adjustment to align to proposal for amendment of Article 2(2): definition of ‘application document’. The provision on application documents (Article 153 juncto Article 2.2) should be applicable for the selection of entities under indirect management when this selection takes place following a call for expression of interest.</p>
Article 158(6)	<p>6. In multi-donor actions, where the Union contribution reimburses expenditure, the procedure set out in paragraph 4 shall consist in verifying that an amount corresponding to that paid by the Commission for the action concerned has been used by the person or entity in accordance with the conditions laid down in the relevant grant, contribution or financing agreement.</p>	<p>Correction of a mistake in the cross reference to refer to the right provision. This should be:</p> <p>6. In multi-donor actions, where the Union contribution reimburses expenditure, the procedure set out in Article 159, paragraph 4 shall consist in verifying that an amount corresponding to that paid by the Commission for the action concerned has been used by the person or entity in accordance with the conditions laid down in the relevant grant, contribution or financing agreement.</p>
Article 158(7), second subparagraph, points (c) and (d)	<p>The Commission may decide not to require an ex ante assessment as referred to in paragraphs 3 and 4:</p> <p>(cb) for third countries or the bodies they designate, in so far as the Commission retains financial management responsibilities that guarantee a sufficient protection of the financial interests of the Union; or</p>	<p>At the moment the points read (c) and (d), however, as a new subparagraph has been added, it should read (a) and (b).</p>

	(d) for Member States organisations entrusted with the implementation of Union funds in accordance with Article 62(1), point (b), for which the Commission has confirmed that the programme's management and control system is functioning.	
Article 159(2), point (b)	Article 158(4) and in particular subparagraph (a) thereof,	The text should say “Article 158(4) and in particular first subparagraph, point (a), thereof,”. Correction for the sake of correct legislative drafting and cross-referencing.
Article 159(7)	7. In multi-donor actions, where the Union contribution reimburses expenditure, the procedure set out in paragraph 4 shall consist in verifying that an amount corresponding to that paid by the Commission for the action concerned has been used by the person or entity in accordance with the conditions laid down in the relevant grant, contribution or financing agreement.	To be deleted. This provision has been moved under Article 158(6) of the recast. Due to an omission, despite being moved, the provision was not deleted from Article 159(7) (Article 155(5) 2018 FR). It must therefore be removed to avoid duplication of the same provision under two different articles (158 and 159). The deletion will lead to renumbering of Articles 159(8) to 159(10) of the FR recast and to changes in cross references to these articles in other provisions (Articles 132(7), 138(2)(c), 162(2) 190(1)).
Article 159(8)	8. Contribution agreements, financing agreements and guarantee agreements shall [...]	Number of the paragraph to change from 8 to 7 in view of the deletion of duplicated provision 159(7). See explanation on Article 159(7).
Article 159(9)	9. All contribution agreements, financing agreements and guarantee agreements shall be made available to the European Parliament and to the Council at their request.	Number of the paragraph to change from 9 to 8 in view of the deletion of duplicated provision 159(7). See explanation on Article 159(7).

Article 159(10)	10. This Article shall not apply to the Union contribution to Union bodies which are subject to a separate discharge procedure under Articles 70 and 71, with the exception of possible ad-hoc contribution agreements.	Number of the paragraph to change from 10 to 9 in view of the deletion of duplicated provision 159(7). See explanation on Article 159(7).
footnote 88	Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms , amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176 27.6.2013, p. 338).	The original title of the Directive 2013/36/EU has been amended to exclude the part in bold; it should hence be deleted.
Article 162(2)	2. For the part of the action implemented indirectly with the third country or the bodies it has designated, the financing agreement shall, in addition to the elements referred to in Article 159(8) 155(5) , clearly define the roles and responsibilities of the third country and of the Commission in the implementation of the funds. The financing agreement shall also determine the rules and procedures to be applied by the third country when implementing Union funds.	The correct cross-reference should be Article 159(7).
Article 176(3) – subparagraph 1 – point c – point i	(i) the thresholds referred to in Article 179(1), and in point 38 of Annex I in the field of external actions, applicable at the time of the modification; and	The reference is incorrect. It should be point 39 and not 38.
Article 176(4), paragraph (a)	Draft proposal in the Recast: (a) the modification introduces or supresses significant conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other tenderers than those initially selected or for the acceptance of a tender other than that originally accepted, or would have	Proposed modification for alignment of the terminology: (a) the modification introduces or supresses significant conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of other tenderers

	attracted additional participants in the procurement procedure, or would not have led to the selection of the winning tenderer;	than those initially selected or for the acceptance of a tender other than that originally accepted, or would have attracted additional participants in the procurement procedure, or would not have led to the selection of the winning <u>successful</u> tenderer;
Article 180(2)	For the purpose of Article 164 (4), the JRC shall be considered as a legal person established in a Member State.	<p>In Article 176(2), Regulation (EU, Euratom) 2018/1046 now reads:</p> <p>2. For the purpose of Article 160(4), the JRC shall be considered as a legal person established in a Member State.</p> <p>The change from Article 160 to Article 164 should be marked in the recast as technical change (double underlined, double strikethrough).</p>
New article 180(3)	<p>Draft proposal in the Recast:</p> <p>3. For contracts awarded by Union delegations or awarded exclusively in the interest of Union Delegations in third countries, participation in procurement procedures shall be open on equal terms to all natural and legal persons established in the third country where the Delegation concerned is established. In addition, it may be decided under exceptional circumstances duly justified by the authorising officer responsible, to allow third-country nationals or entities, to tender for contracts.</p>	<p>Proposed modification to clarify that paragraph 3 is in addition to paragraph 1 for EU Delegations. The general rule in Paragraph 1 would also apply to EU Delegations. “In addition”, and “also” should be added.</p> <p>3. <u>In addition,</u> for contracts awarded by Union delegations or awarded exclusively in the interest of Union Delegations in third countries, participation in procurement procedures shall <u>also</u> be open on equal terms to all natural and legal persons established in the third country where the Delegation concerned is established.</p>

		In addition, it may be decided under exceptional circumstances duly justified by the authorising officer responsible, to allow third-country nationals or entities, to tender for contracts.
Article 190(1)	Where the grant takes the form specified in point (b) of the first subparagraph of this paragraph and where, due to specificities of an action, the grant can only be expressed in terms of an absolute value, the verification of the eligible costs shall be done in accordance with Article 159 (4) and, where applicable, Article 159(7) .	The correct cross-reference should be Article 158(6).
Article 221(1) and (3)	<p>Treatment of contributions Combination with from funds implemented under shared management</p> <p>1. Separate records shall be kept for <u>in case of</u> contributions to combination of funds implemented under shared management with support from financial instruments established under this Section from funds implemented under shared management.</p> <p>...</p> <p>3. As regards contributions from <u>combinations of</u> funds implemented under shared management to <u>with support from</u> financial instruments established under this Section, sector-specific rules shall apply. Notwithstanding the first sentence, managing authorities may rely on an existing ex ante evaluation, carried out in accordance with point (h) of the first subparagraph and the second subparagraph of Article 209(2),</p>	Both in paragraphs 1 and 3, after financial instruments there should be included a mention “or budgetary guarantees”.

	<i>prior to contributing to an existing financial instrument.</i>	
Article 240(2), subparagraph 2	In the event of suspected cases of serious irregularities such as fraud, corruption or conflict of interests, the authorising officer responsible, the EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, OLAF and the Court of Auditors shall make use of 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	The reference to Article 129 should be corrected to Article 130 due to renumbering.
Article 252(5), first subparagraph	5. After approving the final consolidated accounts and its own final accounts, the Commission shall, by 30 June 31 July , send them by electronic means to the European Parliament, to the Council and to the Court of Auditors.	31 July should have been deleted (i.e., in grey double strikethrough).
Article 252(5)	After approving the final consolidated accounts and its own final accounts, the Commission shall, by 30 June 31 July , send them by electronic means to the European Parliament, to the Council and to the Court of Auditors.	31 July should have been deleted (i.e., in grey double strikethrough).

Annex:

Place in the text	Phrase/sentence	Description of the error
Point 11.1(k)	(k) for the purchase of public communication networks and electronic communications services within the meaning of Directive 2002/21/EC (EU) 2018/1972 of the European Parliament and of the Council ³ ;	As the reference Directive has been changed, the footnote should have been deleted and replaced by the new Directive.

Annex I, footnote 3	Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33).	Wrong reference, it should now be Directive (EU) 2018/1972.
Point 14.4	Draft in the recast 14.4. A contract of a value not exceeding EUR 15000 shall be deemed of very low value. Point 6.3 shall apply to such contracts.	Proposed modification given that the threshold in point 14.4 should be different for EU Delegations in third countries as aligned with Point 14.5, read in conjunction with Point 14.3. 14.4. A contract of a value not exceeding EUR 15000 shall be deemed of very low value. Point 6.3 shall apply to such contracts. <u>For contracts awarded by Union delegations or exclusively in the interest of Union delegations a contract not exceeding EUR 20 000 shall be deemed of very low value.</u>
Point 16.4	Draft in the recast Points (c) and (d) of the first subparagraph of this point may be waived for contracts signed in accordance with point (m) of the second subparagraph of point 11.1.	Proposed modification for correction of errors in the cross-references (given that paragraph m) became l) in Point 11). Points (c) and (d) of the first subparagraph of this point may be waived for contracts signed in accordance with point (m) <u>(l)</u> of the second subparagraph of point 11.1.
Point 18.5	(c) procedures for contracts awarded in accordance with points (b), (e), (f)(i) and (iv), (h) and (m) of the second subparagraph of point 11.1.	(c) procedures for contracts awarded in accordance with points (b), (e), (f)(i) and (iv), (h) and (m) <u>(l)</u> of the second subparagraph of point 11.1.