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**OUTCOME OF PROCEEDINGS**

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of: Ad Hoc Group JHA financial instruments (Home formation)

on: 26 July 2012

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No Cion prop.: 17285/11 JAI 851 CADREFIN 146 ENFOPOL 407 ASIM 123 PROCIV 155  
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No pre. doc.: 12778/12 JAI 541 ENFOPOL 241 ASIM 91 PROCIV 128 CADREFIN 362  
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Subject: Draft Regulation of the European Parliament and of the Council laying down  
general provisions on the Asylum and Migration Fund and on the instrument for  
financial support for police cooperation, preventing and combating crime, and  
crisis management  
- Revised Compromise proposal by the Presidency on certain Articles

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At its meeting on 26 July 2012, the Ad Hoc Group examined a number of Articles of the  
abovementioned draft Regulation on the basis of the revised compromise proposal put forward by  
the Presidency in document 12778/12 JAI 541 ENFOPOL 241 ASIM 91 PROCIV 128 CADREFIN  
362 CODEC 1953. The outcome of the discussion is reflected in the Annex to this note.

**The Presidency asked delegations to provide written comments to the revised compromise  
proposal no later than 3 September 2012.**

The following issues were also addressed during the meeting:

The Commission representative gave a technical presentation on how the new Financial Regulation, on which political agreement was reached on 26 June 2012, would impact the Horizontal Instrument. In particular Article 56 of the new Financial Regulation was analysed, presenting some general principles, the various obligations of Member States and of the Commission under shared management, the "annual package" as well as new concepts (e.g. "designation" replacing the "accreditation"). The rules on financial corrections, set out in Article 77 (3) and (4), were also presented.

The Commission representative explained where sector specific rules (SSR) are required or possible to complement the Financial Regulation. She emphasised the need to find a balance between not repeating the Financial Regulation and ensuring that the Horizontal Instrument would be a text that was readable on its own in order to facilitate Member States' task.

The Presidency reported on the meeting of the LIBE Committee of the European Parliament on 10 July 2012, which discussed a draft report on the Horizontal Regulation and presented the main elements of the draft.

The Commission representative briefly explained what it had replied in that meeting regarding the proposed amendments.

Finally, the Commission announced that it would organise further workshops on the indicators and invited delegations to save the following dates:

- 2/10: ISF-police
- 3/10: ISF-borders
- 4/10: AMF.

An invitation would be sent out by the end of July, together with suggestions for indicators which would serve as starting point for the discussions.

2011/0367 (COD)

Draft

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 78(2), 79(2), 79(4), 82(1), 84 and 87(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

Whereas:

[(1) The European Union's home affairs policy is to create an area of freedom, security and justice: an area without internal borders where people may enter, move, live and work freely, confident that their rights are fully respected and their security assured, bearing in mind common challenges such as the development of a comprehensive Union immigration policy to enhance competitiveness and social cohesion of the Union, the creation of a common European Asylum System and the prevention and combating of threats of serious and organised crime, cybercrime and terrorism.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

- (2) Union funding to support the development of this area should constitute a tangible sign of the solidarity and responsibility sharing that are indispensable in responding to the common challenges.
- (3) The existence of a common framework should ensure the necessary coherence, simplification and uniform implementation of that funding across the policy areas concerned.
- (4) A common framework should lay down the principles of assistance and identify the responsibilities of the Member States and the Commission in ensuring the application of those principles.
- (5) This Union funding would be more efficient and better targeted if co-financing of eligible actions were based on strategic multiannual programming, drawn up by each Member State in dialogue with the Commission.
- (6) Measures in and in relation to third countries supported through the Specific regulations should be taken in synergy and coherence with other actions outside the Union supported through Union external assistance instruments, both geographic and thematic. In particular, in implementing such actions full coherence should be sought with the principles and general objectives of the Union external action and foreign policy related to the country or region in question. They should not be intended to support actions directly development-oriented and they should complement, when appropriate, the financial assistance provided through external aid instruments. Coherence will also be ensured with the Union humanitarian policy, in particular as regards the implementation of emergency assistance.
- (7) External action should be consistent and coherent as set out in article 18(4) of TEU.
- (8) Prior to the preparation of multi-annual programmes as a means to achieve the objectives of this Union funding, Member States and the Commission should engage in a policy programming dialogue and thereby establishing a coherent strategy for each individual Member State.
- (9) The strategy should be subject to a mid term review, to ensure appropriate funding in period 2018-2020.

- (10) Member States should establish a partnership with the authorities and bodies concerned to prepare, implement and monitor on their national programmes throughout the entire multiannual period. Member States should set up monitoring committees to monitor the national programmes and assist them in reviewing the implementation and progress made in achieving the objectives.
- (11) Eligibility of expenditure under the national programmes should be determined by national law, subject to common principles. The starting and closing dates for the eligibility of expenditure should be defined so as to provide for uniform and equitable rules applying to the national programmes.
- (12) Technical assistance should enable the Member States to support the implementation of their national programmes and assist beneficiaries in complying with their obligations and Union law.
- (13) To ensure an adequate framework for providing rapidly emergency assistance, this Regulation should allow support for actions the expenditure of which was incurred before the application for such assistance was made, in accordance with the provision in the Financial Regulation<sup>3</sup> which allows such flexibility in duly substantiated exceptional cases.
- (14) The financial interests of the European Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, penalties.
- (14a) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties in accordance with Regulation (EU) No XXXX/2012 of the European Parliament and of the Council on the financial rules applicable to the annual budget of the Union.<sup>4</sup>

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<sup>3</sup> Triennial revision of the Financial Regulation - Commission proposal COM(2010)0260

<sup>4</sup> This recital has been inserted in accordance with Coreper note 10044/12 “Standard provision on the protection of the financial interests of the Union in spending programmes under the new MFF (direct expenditure and external aid)” of 16 May 2012.

- (15) Member States should adopt adequate measures to guarantee the proper functioning of the management and control system and the quality of implementation. To this end, it is necessary to establish the general principles and necessary functions which these systems should fulfil.
- (16) The obligations on the Member States as regards management and control systems, the prevention, detection and correction of irregularities and infringements of Union law should be specified in order to guarantee the efficient and correct implementation of their national programmes.
- (17) In accordance with the principles of subsidiarity and proportionality, Member States should have the primary responsibility, through their management and control systems, for the implementation and control of national programmes.
- (18) Only Responsible authorities accredited by the Member States offer reasonable assurance that the necessary controls have been carried out before granting support from the Union budget to beneficiaries. It should therefore be explicitly laid down that only expenditure effected by accredited responsible authorities can be reimbursed from the Union budget.
- (19) The powers and responsibilities of the Commission to verify the effective functioning of the management and control systems, and to require Member State action, should be laid down.
- (20) Union budget commitments should be effected annually. In order to ensure effective programme management, it is necessary to lay down common rules for the payment of the annual balance, and the final balance.
- (21) The pre-financing payment at the start of programmes ensures that the Member State has the means to provide support to beneficiaries in the implementation of the programme once the programme is approved. Therefore, provisions should be made for initial pre-financing amounts. Initial pre-financing should be totally cleared at closure of the programme.
- (22) The triennial revision of the Financial Regulation<sup>5</sup> introduces changes in the shared management principles which have to be taken into account.

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<sup>5</sup> Triennial revision of the Financial Regulation - Commission proposal COM(2010)0260

- (23) With a view to strengthening accountability for expenditure co-financed by the Union budget in any given year, an appropriate framework should be created for the annual clearance of accounts. Under this framework, the Responsible Authority should submit to the Commission, in respect of a national programme, a management declaration accompanied by the annual accounts, a summary report and an independent audit opinion and control report.
- (24) To support the assurance underlying the annual clearance of accounts across the Union, common provisions should be laid down on the nature and level of the controls to be carried out by Member States.
- (25) In order to ensure the sound financial management of Union resources, it may be necessary for the Commission to make financial corrections. To ensure legal certainty for the Member States, it is important to define the circumstances under which breaches of applicable Union or national law can lead to financial corrections by the Commission. In order to ensure that financial corrections which the Commission may impose on Member States are related to the protection of the Union's financial interests, they should be confined to cases where the breach of Union or national law concerns directly or indirectly the eligibility, regularity, management or control of actions and the corresponding expenditure. To ensure proportionality it is important that the Commission considers the nature and the gravity of the breach in deciding the amount of financial correction. In this regard, it is appropriate to set out the criteria for applying financial corrections by the Commission and the procedure that may lead to a decision on the financial correction.
- (26) In order to establish the financial relationship between the Responsible Authorities and the Union budget, the Commission should clear the accounts of these authorities annually. The clearance of accounts decision should cover the completeness, the accuracy and veracity of the accounts but not the conformity of the expenditure with the Union legislation.
- (27) The Commission, which is responsible for the proper application of Union law under Article 17 of the Treaty on European Union, should decide whether the expenditure incurred by the Member States complies with Union legislation. Member States should be given the right to justify their decisions to make payments. In order to give Member States legal and financial assurances as to expenditure effected in the past, a maximum period should be set for the Commission to decide which financial consequences should follow from non-compliance.

- (28) In order to encourage financial discipline, it is appropriate to define the arrangements for decommitment of any part of the budget commitment in a national programme, in particular where an amount may be excluded from the decommitment, notably when delays in the implementation result from a legal proceeding or an administrative appeal having suspending effect or from reasons of force majeure.
- (30) To ensure the appropriate application of the general rules on decommitment, the rules established should detail how the deadlines for decommitment are established and how the respective amounts are calculated.
- (30a) It is important to bring the achievements of Union funding to the attention of the general public. Citizens have a right to know how the Union's financial resources are spent. The responsibility to ensure that the appropriate information is communicated to the public should lie with both the Responsible Authorities and the beneficiaries. To ensure more efficiency in communication to the public at large and stronger synergies between the communication activities undertaken at the initiative of the Commission, the budget allocated to communication actions under this Union funding shall also contribute to cover corporate communication of the political priorities of the European Union provided that these are related to the general objectives of this Union funding.
- (31) For the purpose of ensuring a wide dissemination of information about this Union funding and to inform potential beneficiaries about funding opportunities, detailed rules relating to information and communication measures, as well as certain technical characteristics of such measures should be defined on the basis of this Regulation and each Member State should establish a website or website portal with the necessary information.
- (32) The effectiveness of actions supported also depend on their evaluation and the dissemination of their results. The responsibilities of the Member States and the Commission in this regard, and arrangements to ensure the reliability of evaluation and the quality of the related information, should be formalised.



- (33) In order to amend provisions of this Regulation on the common principles on the eligibility of expenditure, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (34) In order to ensure uniform conditions for the implementation of this Regulation, it should confer implementing powers on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers<sup>6</sup>.
- (35) The examination procedure should be used for implementing acts that lay down common obligations on Member States, in particular on the provision of information to the Commission, and the advisory procedure should be used for the adoption of implementing acts relating to the model forms for the provision of information to the Commission, given their purely technical nature.
- (36) Since the objective of this Regulation, namely to lay down general provisions cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (36a)** Insofar as its provisions lay down general rules which are necessary for enabling the implementation of other regulations which provide for its application and constitute a development of the Schengen acquis, this regulation is connected, to that extent, with the Schengen acquis.

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<sup>6</sup> OJ L 55, 28.2.2011, p. 13.

- (36b) ~~In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community and without prejudice to Article 4 of the said Protocol these Member States are not participating in the adoption of this Regulation and are not bound by or subject to its application. [OR] [In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom and Ireland gave notice of their wish to take part in the adoption and application of this Regulation.<sup>7</sup> ]~~
- (37) In accordance with Articles 1 and 2 of the Protocol of the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application; ]

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *[Article 1]*

#### **Purpose and scope**

This Regulation sets out general rules for the implementation of the Specific Regulations with regard to:

- (a) the financing of expenditure;
- (b) partnership, programming, reporting, monitoring and evaluation;
- (c) the management and control systems to be put in place by the Member States;

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<sup>7</sup> UK suggests: "In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation."

- (d) the clearance of accounts.

## *Article 2*

### **Definitions**

For the purposes of this Regulation the following definitions shall apply:

- (a) "Specific Regulations" means
- Regulation ..../2012/EU [establishing the Asylum and Migration Fund for the period 2014-2020];
  - Regulation .../2012/EU [establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management; and
  - Any other Regulation which provides for the application of this Regulation.
- (b) "programming" means the process of organisation, decision making and financing in several stages intended to implement, on a multiannual basis, the joint action by the Union and the Member States to achieve the objectives of the Specific Regulations;
- (c) "action" means a project or group of projects selected by the Responsible Authority of the national programme concerned, or under its responsibility, contributing to the general and specific objectives pursued by the Specific Regulations;
- (d) "Union action" means a transnational action or action of particular interest to the Union as defined in the Specific Regulations;
- (e) "project" means the specific, practical means deployed to implement all or a part of an action by a beneficiary of the Union contribution;<sup>8</sup>
- (f) "emergency assistance" means a project or group of projects addressing an emergency situation as defined in the Specific Regulations;

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<sup>8</sup> PL thought it was important to underline that the technical assistance is not included, as was done in point (g).

- (g) "beneficiary" means the recipient of an Union contribution **under a project**, whether a public or private body, international organisations or the Red Cross (ICRC), the International Federation of National Red Cross and Red Crescent Societies.<sup>9</sup>

## CHAPTER II

### PRINCIPLES OF ASSISTANCE

#### *[Article 3]*

#### **General principles**

1. The Specific Regulations shall provide support, through national programmes, Union actions and emergency assistance, which complements national, regional and local intervention, pursuing the objectives of the Union, and thus constituting EU added value.
2. The Commission and the Member States shall ensure that the support provided under the Specific Regulations and by the Member States is consistent with the relevant activities, policies and priorities of the European Union and complementary to other instruments of the European Union, while taking into account the specific context of each Member State.
3. The support provided under the Specific Regulations shall be implemented in close cooperation between the Commission and the Member States in accordance with the principle of subsidiarity.
4. In accordance with their respective responsibilities, the Commission and the Member States, together with the EEAS as regards actions in and in relation to third countries, shall ensure coordination among this Regulation and the Specific Regulations, and with other relevant Union policies, strategies and instruments, including those in the framework of the Union's external action.

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<sup>9</sup> PL agreed with the new wording. PL also sought a confirmation that NGOs are also covered by this provision. PRES and COM confirmed they are.

5. The Commission and the Member States shall apply the principle of sound financial management in accordance with Article [26] of the Financial Regulation.
6. The Commission and the Member States shall ensure the effectiveness of the support provided under the Specific Regulations during preparation and implementation, including through monitoring, reporting and evaluation.
7. The Commission and the Member States shall carry out their respective roles in relation to this Regulation and the Specific Regulations with the aim of reducing the administrative burden for beneficiaries, the Member States and the Commission, taking into account the principle of proportionality.

*[Article 4]*

### **Compliance with Union and national law**

Actions financed by the Specific Regulations shall comply with applicable Union and national law.

*[Article 5]*

### **Protection of the financial interests of the European Union<sup>10</sup>**

1. The Commission shall take appropriate measures ensuring that, when actions financed under the Specific Regulations are implemented, the financial interests of the European Union are protected by the application of preventive measures against fraud, corruption and any other illegal activities, by effective ~~controls~~ **checks** and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive **administrative and financial** penalties.
2. Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid together with any interest of late payments. They shall report these to the Commission and shall keep the Commission informed of the progress of administrative and legal proceedings.

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<sup>10</sup> This article has been amended to align with agreed wording, cf. Coreper note 10044/12 “Standard provision on the protection of the financial interests of the Union in spending programmes under the new MFF (direct expenditure and external aid)” of 16 May 2012.

3. When amounts unduly paid to a beneficiary cannot be recovered and this is as a result of fault or negligence on the part of a Member State, the Member State shall be responsible for reimbursing the amounts concerned to the general budget of the Union.
4. Member States shall offer effective prevention against fraud, especially as regards the areas with a higher level of risk, and which shall act as a deterrent, having regard to the benefits as well as the proportionality of the measures.
5. The Commission shall be empowered to adopt delegated acts in accordance with the procedure referred to in Article 54, concerning the obligations of Member States specified in the paragraph **2 and 3** ~~4~~.
6. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot, over all grant beneficiaries, contractors and subcontractors who have received Union funds.
7. The European Anti-fraud Office (OLAF) may carry out **investigations, including** on-the-spot controls and inspections ~~on economic operators concerned directly or indirectly by such funding~~ in accordance with the procedures laid down in **Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>11</sup> and Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities<sup>12</sup>** with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the ~~European~~ Union in connection with a grant agreement or grant decision or a contract **funded under the Specific Regulations** ~~concerning Union funding~~.
8. Without prejudice to the ~~first and second sub~~ paragraphs **1, 6 and 7**, cooperation agreements with third countries and international organisations, **contracts, and** grant agreements and grant decisions ~~and contracts~~ resulting from the implementation of this Regulation and the Specific Regulations shall **contain provisions** expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits, **and investigations, according to their respective competences** ~~on the spot controls and inspections~~.

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<sup>11</sup> OJ L 136, 31.5.1999, p. 1.

<sup>12</sup> OJ L 292, 15.11.1996, p. 2.

[Article 6<sup>13</sup>]

### **Programming**

~~The objectives of the Specific Regulations shall be pursued within the framework of the Member States' multiannual programming for the period 2014 to 2020, subject to a mid-term review in accordance with Article 15.~~

## **CHAPTER III**

### **FINANCIAL FRAMEWORK FOR UNION ACTIONS, EMERGENCY AND TECHNICAL ASSISTANCE**

*Article 7*

#### **Implementation framework**

1. The Commission shall establish the overall amount made available for Union actions, emergency assistance and technical assistance at the initiative of the Commission under the annual appropriations of the Union budget.
2. The Commission shall adopt, by way of implementing act<sup>14</sup>, the work programme for Union actions and emergency assistance. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 55(3).
3. To ensure a timely availability of resources, the Commission may separately adopt a work programme for emergency assistance.
4. Union actions, emergency assistance and technical assistance at the initiative of the Commission may be implemented
  - directly, by the Commission or through executive agencies;
  - indirectly, by entities and persons other than Member States in accordance with Article [57] of the Financial Regulation.

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<sup>13</sup> This article has been moved to Chapter IV National Programmes; new Article 10a.

<sup>14</sup> DK, DE, UK: scrutiny reservation on the whole instrument and in particular on the use of delegated and implementing acts, DE also on the financial aspects  
FR: reservation on the use of delegated and implementing acts.

5. The Commission shall inform the common Committee ‘Asylum, Migration and Security’, established by this Regulation, when ~~making use of paragraph 1~~ **taking relevant decisions under Articles 8(1) and 9(1).**<sup>15</sup>

#### *Article 8*

#### **Emergency assistance**

1. In response to an emergency situation as defined in the Specific Regulations, the Commission may decide to provide emergency assistance.
2. Within the limits of the available resources, the emergency assistance may amount to 100% of the eligible expenditure.
3. It may consist of assistance in accordance with the objectives and actions defined in the Specific Regulations.
4. Emergency assistance may support expenditure which was incurred prior to the date of submission of the grant application or the request for assistance, when this is necessary for the implementation of the action.
5. ~~The Commission shall inform the common Committee ‘Asylum, Migration and Security’, established by this Regulation, when making use of paragraph 1.~~

#### *Article 9*

#### **Union actions and emergency assistance in or in relation to third countries**

1. The Commission may decide to finance Union actions and emergency assistance in or in relation to third countries in accordance with the objectives and actions defined in the Specific Regulations.
2. When such actions are implemented directly, the following entities shall be allowed to submit grant applications:

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<sup>15</sup> FR, DE, UK supported the amendment in paragraph 5. COM considered that the wording is not clear on when and how MS are to be informed and cautioned that this should not hinder the flexibility inherent to emergency assistance. COM also noted that other institutions could equally require such information. PRES invited delegations to indicate the nature and timing of the information they would like to receive (e.g. annual reporting?); the paragraph might then be redrafted.



- (a) Member States;
- (b) third countries;<sup>16</sup>
- (c) joint bodies set up by the third countries and the Union or by Member States;
- (d) international organisations, including regional organisations, UN bodies, departments and missions, international financial institutions and development banks and institutions of international jurisdiction in so far as they contribute to the objectives of the Specific Regulation(s) concerned;
- (e) the International Committee of the Red Cross (ICRC), the International Federation of National Red Cross and Red Crescent Societies;
- (f) Non-governmental organisations established and registered in the Union and in the countries associated with the implementation, application and development of the Schengen acquis.

*[Article 10]*

**Technical assistance at the initiative of the Commission**

1. At the initiative of or on behalf of the Commission, the Specific Regulations may support the preparatory, monitoring, administrative and technical assistance, evaluation, audit and control measures necessary for the implementation of this Regulation and the Specific Regulations.
2. Those measures may include:
  - (a) Assistance and training for project preparation and appraisal;
  - (b) support for institutional strengthening and administrative capacity building for the effective management of this Regulation and the Specific Regulations;

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<sup>16</sup> FR reiterated its position made previously (footnote 26 in document 11788/12 and footnote 21 in document 10612/12 regarding MS' involvement in applications by third countries. A drafting suggestion by FR will follow. SI considered that third countries should only be allowed to apply for projects in partnership with at least one MS. SI could accept the explanation given by COM at the last meeting (see footnote 26 in document 11788/12) but would like to see this stated more clearly in the text. A drafting suggestion by SI will follow.

- (c) measures related to the analysis, management, monitoring, information exchange and implementation of this Regulation and the Specific Regulations, as well as measures relating to the implementation of control systems and technical and administrative assistance;
- (d) evaluations, expert reports, statistics and studies, including those of a general nature concerning the operation of the Specific Regulations;
- (e) actions to disseminate information, support networking, carry out communication activities, raise awareness and promote cooperation and exchange of experience, including with third countries. To bring about greater efficiency in communication to the public at large and stronger synergies between the communication activities undertaken at the initiative of the Commission, the resources allocated to communication actions under this Regulation shall also contribute to covering the corporate communication of the political priorities of the European Union provided that these are related to the general objectives of this Regulation and the Specific Regulations;
- (f) the installation, operation and interconnection of computerised systems for management, monitoring, audit, control and evaluation;
- (g) the design of a common framework for evaluation and monitoring as well as a system of indicators, taking into account, where appropriate, national indicators;
- (h) actions to improve evaluation methods and the exchange of information on evaluation practices;
- (i) conferences, seminars, workshops and other common information and training measures on the implementation of this Regulation and the Specific Regulations for designated authorities and beneficiaries;
- (j) actions related to audit.

3. The actions may **also** concern ~~also~~ the preceding and subsequent financial frameworks.

## CHAPTER IV

### NATIONAL PROGRAMMES

#### SECTION 1

#### PROGRAMMING AND IMPLEMENTATION FRAMEWORK

##### *Article 10a (Former Article 6)*

##### **Programming**

The objectives of the Specific Regulations shall be pursued within the framework of the Member States' multiannual programming for the period 2014 to 2020, subject to a mid-term review in accordance with Article 15.

*[Article 11]*

##### **Subsidiary and proportional intervention**

1. Member States and the bodies designated by them for that purpose ("designated authorities") shall be responsible for implementing programmes and carrying out their tasks under this Regulation and the Specific Regulations at the appropriate level, in accordance with the institutional, legal and financial framework of the Member State and subject to compliance with this Regulation and the Specific Regulations.
2. Arrangements for the implementation and use of the support provided under the Specific Regulations, and in particular the financial and administrative resources required in relation to the reporting, evaluation, management and control, shall take into account the principle of proportionality, while reducing the administrative burden and facilitating efficient implementation, having regard to the level of support allocated.

*Article 12*

**Partnership**

1. (deleted)
- 1a.** Each Member State shall, in accordance with its national rules and practices, organise a partnership with relevant authorities and bodies concerned. The partnership shall contribute to the development and implementation of the national programmes. The composition of the partnership may differ at different stages of the programme cycle. The partnership **shall** ~~may~~<sup>17</sup>, where deemed appropriate, include relevant public authorities at national, regional, local and/or urban level. It may also, where deemed appropriate, include relevant international organisations, non-governmental organisations and social partners.
2. The partnership shall be conducted in full compliance with the respective institutional, legal and financial jurisdiction of each partner.
3. (deleted)
4. (deleted)
5. A Member State may invite the Commission to provide guidance on or participate in an advisory capacity in the monitoring of national programmes.

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<sup>17</sup> SI, AT, MT prefer keeping "may" in the text.  
AT noted that rights and obligations of partners are not clearly set out.  
DE, NL, EL, CZ, UK agree with the newly suggested wording since the inclusion of "where deemed appropriate" provides for enough flexibility for involving bodies at national level.  
CZ noted that if "may" is kept in the text, the last two sentences of paragraph 1a could be merged.  
In reply to a concern by the UK, COM replied that involvement of NGOs in the planning phase does not preclude them from being beneficiaries unless there is a direct conflict of interest.  
COM and PRES noted that the Article will most probably be extensively discussed with the EP.

## Article 13

### Programming dialogue<sup>18</sup>

1. In order to facilitate the preparation of the national programmes, each Member State and the Commission shall hold a dialogue at the level of senior officials, **taking into account the relevant indicative timeframes of Article 14.**<sup>19</sup> The dialogue shall focus on the overall results to be achieved by means of the national programmes in order to address the needs and priorities of the Member States in the areas of intervention covered by the Specific Regulations taking account of the baseline situation in the Member State concerned and the objectives of the Specific Regulations. The dialogue may also serve as an opportunity for an exchange of views on Union Actions.

The outcome of the dialogue will serve as a guide for the preparation and approval of the national programmes and will include an indication of the date expected for the Member State's submission of the national programmes to the Commission **that will ensure the timely adoption of the programme**<sup>20</sup>. This outcome shall be recorded in agreed minutes.

- 1a. In case of actions to be implemented in and in relation to third countries, such actions shall not be directly development oriented and the programming dialogue shall seek full coherence with the principles and general objectives of the Union external action and foreign policy as regards the country or region concerned.
2. (deleted)

## Article 14

### Preparation and approval of national programmes

1. Each Member State shall<sup>21</sup> a multiannual national programme in accordance with the Specific Regulations, taking into account the outcome of the programming dialogue referred to in Article 13(1).

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<sup>18</sup> AT: maintain reservation

<sup>19</sup> AT, CH (see also footnote 33 in document 11788/12) asked for addition of the indicative timeframe (AT: and procedure) for the policy dialogue.

COM reiterated that the intention of the provision is to provide for flexibility. Imposing deadlines would be difficult since dialogues might be very different in different Member States.

<sup>20</sup> DK suggested reconsidering the wording since the date cannot "ensure" the adoption of the programme. PRES suggested replacing "ensure" by "allow".

<sup>21</sup> The word "propose" should be inserted.

2. Each proposed national programme shall cover the financial years of the period from 1 January 2014 to 31 December 2020 and consist of the following elements:
  - (a) a description of the baseline situation in the Member State;
  - (b) an analysis of requirements in the Member State and the national objectives designed to meet those requirements during the period covered by the programme;
  - (c) an appropriate strategy identifying the objectives to be pursued with the support of the Union budget, with targets for their achievement, an indicative time table and examples of actions envisaged to meet these objectives;
  - (d) the mechanisms that ensure coordination between the instruments established by the Specific Regulations and other Union and national instruments;
  - (e) information on the monitoring and evaluation framework to be put in place and the indicators to be used to measure the progress in the implementation of the objectives pursued in relation to the baseline situation in the Member State;
  - (f) (deleted)
  - (ff) implementing provisions for the national programme containing the identification of the designated authorities, and a summary description of the envisaged management and control system;
  - (g) a draft financing plan indicatively broken down by each financial year of the period, including an indication of technical assistance expenditure;
  - (h) the mechanisms and methods to be used to publicise the national programme;
  - (i) (deleted)
3. Member States shall submit the proposed national programmes to the Commission in accordance with the date indicated in the agreed minutes referred to in Article 13(1).
4. The national programmes shall be drawn up according to the model adopted by the Commission. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 55(2).

5. Before approving a proposed national programme, the Commission shall examine:
- (a) its consistency with the objectives of the Specific Regulations and the outcome of the programming dialogue referred to in Article 13(1);
  - (b) the relevance of the objectives, indicators, the time table and examples of actions envisaged in the proposed national programme in the light of the strategy proposed by Member States;
  - (c) the relevance of the implementing provisions referred to in point (f) of paragraph 2 in the light of the actions envisaged;
  - (d) the compliance of the proposed programme with Union law;
  - (e) the complementarity with support provided by other Union Funds including the European Social Fund;
  - (f) Where applicable under a Specific Regulation, for objectives and examples of actions in or in relation to third countries, coherence with the principles and objectives of the Union external action and foreign policy related to the country or region concerned.
6. The Commission shall make observations within three months of the date of submission of the proposed national programme. Where the Commission considers that a proposed national programme is inconsistent with the objectives of the Specific Regulations, insufficient in light of the national strategy or does not comply with Union law, it shall invite the Member State concerned to provide all necessary additional information and, where appropriate, to modify the proposed national programme.
7. The Commission shall approve each national programme no later than ~~six four~~ **five**<sup>22</sup> months following the formal submission by the Member State, provided that any observations made by the Commission have been adequately taken into account.
8. Regardless of Article 15(1), at the initiative of the Commission or the Member State concerned, an approved national programme may be re-examined and, if necessary, revised for the rest of the programming period.

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<sup>22</sup> DE noted that the preference of DE was to have this deadline as short as possible but in view of the explanations

*[Article 15]*

**Mid term review**

1. In 2017 the Commission and each Member State shall re-examine the situation, in the light of the developments in Union policies and in the Member State concerned<sup>23</sup>.
2. Following this re-examination, Member States may revise their national programmes. National programmes shall be revised for those Member States which will receive additional allocations in accordance with the Specific Regulations.
3. The rules laid down in Article 14 on the preparation and approval of national programmes shall apply *mutatis mutandis* to the preparation and approval of the revised national programmes.
4. The Commission shall allocate, by implementing acts, to Member States the resources for national programmes which are available in the framework of the mid-term review under the Specific Regulations. After the completion of the mid term review, the Commission shall submit to the European Parliament, the Council the European and Economic and Social Committee and the Committee of the Regions a report on the mid term review carried out in accordance with the provisions of this Regulation and the Specific Regulations. **These implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 55(2).**

*Article 16*

**Financing structure**

1. Financial contributions provided under the national programmes shall take the form of grants.
2. Actions supported under the national programmes shall be co-financed by public or private sources, shall be of a non-profit nature and shall not be subject to funding from other sources covered by the Union budget.
3. The contribution from the Union budget shall not exceed 75 % of the total eligible expenditure of a project.

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<sup>23</sup> given by COM, the new suggestion is acceptable as a compromise.  
PRES suggests expressing the need to limit the administrative burden in the context of the mid-term review in



4. The contribution from the Union budget may be increased to 90% under specific actions or strategic priorities as defined in the Specific Regulations.
5. The contribution from the Union budget may also be increased to 90% in duly justified circumstances, in particular if projects could otherwise not have been implemented and the objectives of the national programme would not have been achieved.
6. The contribution from the Union budget to the technical assistance at the initiative of Member States may amount to 100% of the total eligible expenditure ~~of a project~~.

*[Article 17]*

**General Principles of Eligibility**

1. The eligibility of expenditure shall be determined on the basis of national rules, except where specific rules are laid down in this Regulation or in the Specific Regulations.
2. In accordance with the Specific Regulations, for it to be eligible, expenditure must be:
  - (a) within the scope of the Specific Regulations and their objectives;
  - (b) needed to carry out the activities covered by the project concerned;
  - (c) reasonable and comply with the principles of sound financial management.
3. Expenditure shall be eligible for support under the Specific Regulations if
  - it has been incurred by a beneficiary between 1 January 2014 and 31 December 2022; **and**
  - ~~it has been paid by a beneficiary before 31 December 2022; and~~
  - it has been actually paid by the accredited Responsible Authority between 1 January 2014 and 31 December 2023.
4. Expenditure included in payment requests from the beneficiary to the Responsible Authority shall be supported by invoices or accounting documents of equivalent probative value, except for forms of support under Article 18(1)(b), (c) and (d). For such forms of support, by way of

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recital 9.

derogation from paragraph 3, the amounts included in the payment request shall be the cost reimbursed to the beneficiary by the Responsible Authority.

5. Net revenue directly generated by a project during its implementation which has not been taken into account at the time of approval of the project, shall be deducted from the eligible expenditure of the project at the latest in the final payment request submitted by the beneficiary.

*Article 18*

**Eligible expenditure**

1. Eligible expenditure can be reimbursed in the following ways:
  - (a) Reimbursement<sup>24</sup> of eligible costs actually incurred and paid, together with, where applicable, depreciation;
  - (b) standard scale of unit costs;
  - (c) lump sums;
  - (d) flat-rate financing determined by the application of a percentage to one or several defined categories of costs.
2. The options referred to in paragraph 1 may be combined when each covers a different category of costs or where they are used for different projects forming a part of an action or for successive phases of an action.
3. Where a project is implemented exclusively through the public procurement of works, goods or services only paragraph 1 (a) shall apply.
4. The amounts referred to in paragraph 1 (b), (c) and (d) shall be established in one of the following ways:
  - (a) a fair, equitable and verifiable calculation method based on:

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<sup>24</sup> MT reiterated its suggestion made previously (footnote 51 in document 11788/12). COM suggested addressing this issue bilaterally and possibly with the involvement of lawyers.

- (i) statistical data or other objective information; or
  - (ii) the verified historical data of individual beneficiaries or
  - (iii) the application of the usual cost accounting practices of individual beneficiaries;
- (b) in accordance with the rules for application of corresponding scale of unit costs, lump sums and flat rates applicable in Union policies for a similar type of project and beneficiary;
  - (c) in accordance with the rules for application of corresponding scale of unit costs, lump sums and flat rates applied under schemes for grants funded entirely by the Member State for a similar type of project and beneficiary;
5. The document setting out the conditions for support for each project shall set out the method to be applied for determining the costs of the project and the conditions for the payment of the grant.
6. Where the implementation of a project gives rise to indirect costs, they may be calculated as a flat rate in one of the following ways:
- (a) a flat rate of up to 25% of eligible direct costs, provided that the rate is calculated on the basis of a fair, equitable and verifiable calculation method or a method applied under schemes for grants funded entirely by the Member State for a similar type of project or beneficiary;<sup>25</sup>
  - (b) a flat rate of up to 15% of eligible direct staff costs without a requirement for the Member State to execute any calculation to determine the applicable rate; or
  - (c) a flat rate applied to eligible direct costs based on existing methods and corresponding rates, applicable in Union policies for a similar type of ~~action~~ project and beneficiary.

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<sup>25</sup> SI keeps reservation on paragraph 6(a) and reiterated its suggestion made previously (footnote 52 in document 11788/12) on ending the sentence after "direct costs". COM recalled this was a standard wording and, referring to the principles of sound financial management, cautioned against making any changes.

- ~~7. Grants for which the support from the Union budget does not exceed 50,000 EUR shall take the form of lump sums, or standard scale of unit costs or flat rates.<sup>26</sup>~~
8. In addition to the methods stipulated above, where the contribution from the Union budget does not exceed 100,000 EUR, the amounts referred to in paragraph 1 (b), (c) and (d) may be established on a case-by-case basis by reference to a draft budget agreed ex ante by the Responsible Authority.
9. Depreciation costs may be considered as eligible under the following conditions:
- (a) the expenditure is eligible in accordance with the eligibility rules applicable to the national programme;
  - (b) the amount of the expenditure is duly justified by supporting documents having equivalent probative value to invoices where reimbursed in the form referred to in point (a) of paragraph(1);
  - (c) the costs relate exclusively to the period of support for the project;
  - (d) support from the Union budget has not contributed towards the acquisition of the depreciated assets.
- 9a. Without prejudice to Article 38, for the purpose of paragraphs ~~7 and 8~~ the Member States which have not adopted Euro as their national currency may use the Euro conversion rate fixed on the date of project approval or project agreement signature based on the monthly accounting exchange rate published electronically by the Commission and will not be subject to modification in course of the project.

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<sup>26</sup> FR, DE expressed doubts on the deletion of paragraph 7. It is important to have a possibility for using flat-rate system for small projects in the interest of reducing administrative burden.  
AT, SI welcomed the deletion.  
COM explained that if the provision is kept, it would represent an obligation for all MS. However, if it is deleted, MS wishing to take advantage of this possibility will be able to do it under Article 18. The suggestion of keeping paragraph 7 in and replacing "shall" by "may" would make the provision redundant and would not prevent MS from imposing other threshold than 50.000 EUR at national level.

*[Article 19]*

**Ineligible expenditure**

The following expenditure shall not be eligible for a contribution from the Union budget under the Specific Regulations:

- (a) interest on debt;
- (b) the purchase of land not built on;
- (c) the purchase of land built on, where the land is necessary for the implementation of the project, in the amount exceeding 10% of the total eligible expenditure for the project concerned;
- (d) [value added tax. However VAT amounts shall be eligible where they are not recoverable under national VAT legislation and are paid by a beneficiary other than non-taxable person as defined in the first subparagraph of Article 13(1) of Directive 2006/112/EC, provided that such VAT amounts are not incurred in relation to the provision of infrastructure.]<sup>27</sup>

*[Article 20]*

**Technical assistance at the initiative of the Member States**

1. At the initiative of a Member State for each national programme, the Specific Regulations may support actions for preparation, management, monitoring, evaluation, information and communication, networking, control and audit, as well as measures for the reinforcement of the administrative capacity for the implementation of this Regulation and the Specific Regulations.
2. Those measures may include
  - (aa) **expenditure relating to the functioning of the designated authorities in carrying out their roles and responsibilities in accordance with this Regulation and the Specific Regulations;**

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<sup>27</sup> Negotiations on VAT eligibility are taking place in the FoP group.

- (a) expenditure relating to the preparation, selection, appraisal, management and monitoring of the programme, actions or projects;
  - (b) expenditure relating to audits and on-the-spot controls of actions or projects;
  - (c) expenditure relating to evaluations of the programme, actions or projects;
  - (d) expenditure relating to information, dissemination and transparency in relation to the programme, actions or projects, including expenditure resulting from the application of Article 48;
  - (e) expenditure on the acquisition, installation and maintenance of computerised systems for the management, monitoring and evaluation of this Regulation and the Specific Regulations;
  - (f) expenditure on meetings of monitoring committees and sub-committees relating to the implementation of actions; this expenditure may also include the costs of experts and other participants in these committees, including third-country participants, where their presence is essential to the effective implementation of programmes, actions or projects;
  - (g) expenditure for the reinforcement of the administrative capacity for the implementation of this Regulation and the Specific Regulations.
3. [The appropriations may be used by the Member States to support actions for the reduction of administrative burden for beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of Member State authorities and beneficiaries to administer and to use the support provided for under the Specific Regulations<sup>28</sup>.]
4. The actions may **also** concern ~~also~~ the preceding and subsequent financial frameworks.
- 5. When one or more designated authorities are common to more than one national programme, the appropriations for the technical assistance expenditure on each of the programmes concerned may be merged, partly or entirely.**

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<sup>28</sup> This paragraph is aligned with CSF (article 52 of the CPR), where T.A. has not been discussed yet.

**[Section 2]**  
**Management and Control**

*[Article 21]*

**General principles of management and control systems**

Management and control systems shall provide for:

- (a) a description of the functions of each body concerned in management and control, and the allocation of functions within each body;
- (b) compliance with the principle of separation of functions between and within such bodies;
- (c) procedures for ensuring the correctness and regularity of expenditure declared;
- (d) computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting;
- (e) procedures for reporting and monitoring where the Responsible Authority entrusts execution of tasks to another body;
- (f) arrangements for auditing the functioning of the management and control systems;
- (g) systems and procedures to ensure an adequate audit trail;
- (h) the prevention, detection and correction of irregularities, including fraud, and the recovery of amounts unduly paid, together with any interest on late payments.

*[Article 21a]*

**Responsibilities under shared management**

In accordance with the principle of shared management, Member States and the Commission shall be responsible for the management and control of national programmes in accordance with their respective responsibilities laid down in this Regulation and the Specific Regulations.



[Article 21b]

**Responsibilities of Beneficiaries**

**Beneficiaries shall fully cooperate with the Commission and designated authorities when these are carrying out their functions and tasks in relation to this Regulation and the Specific Regulations.**

[Article 22]

**Responsibilities of Member States**

1. Member States shall fulfil the management, control and audit obligations and assume the resulting responsibilities laid down in the rules on shared management set out in the Financial Regulation and this Regulation.
2. Member States shall ensure that their management and control systems for national programmes are set up in accordance with the provisions of this Regulation and that those systems function effectively.
3. Member States shall allocate adequate resources for each body to carry out their functions throughout the programming period.
4. Member States shall set up rules and procedures for the selection and implementation of projects in accordance with this Regulation and the Specific Regulations.
5. All official exchanges of information between the Member State and the Commission shall be carried out using an electronic data exchange system established by the Commission.

[Article 23]

**Designated authorities**

1. For the implementation of its national programme each Member State shall designate the following bodies:
  - (a) an accrediting authority as defined in Article [56] of the Financial Regulation;
  - (b) an accredited Responsible Authority: a public sector body of the Member State, which shall be solely responsible for the proper management and control of a national programme and shall handle all communication with the Commission;

- (c) an Audit Authority: a national public authority or body, which is functionally independent of the Responsible Authority and the accrediting authority and which shall be responsible for verifying the effective functioning of the management and control system;
  - (d) where appropriate, one or more Delegated Authority(ies): any public or private body which carries out certain tasks of the Responsible Authority under the responsibility of that Authority.
2. Each Member State shall lay down rules governing the relations between ~~with~~ the authorities referred to in paragraph 1 and their relations with the Commission.

*[Article 24]*

**Accreditation of Responsible Authorities**

1. In accordance with Article [56(3)] of the Financial Regulation, Responsible Authorities in Member States responsible for the management and control of expenditure under this Regulation shall be accredited by formal decision of an accrediting authority at ministerial level.
2. The accreditation shall be granted subject to the body complying with the accreditation criteria on internal environment, control activities, information and communication, and monitoring laid down in or on the basis of this Regulation.
3. The accreditation shall be based on an opinion of an audit body that assesses the Responsible Authority's compliance with the accreditation criteria. **This body may be an autonomous public institution responsible for monitoring, evaluation and audit of the administration.** The audit body shall function independently from the Responsible Authority and shall carry out its work ~~in accordance~~ **taking account of** ~~with~~ internationally accepted audit standards.

4. The ~~Accrediting Authority shall~~ **may** ~~supervise the accredited Responsible Authority and~~ withdraw its accreditation by formal decision if one or more of the accreditation criteria are no longer met, unless the Responsible Authority takes the necessary remedial actions within a period of probation to be determined by the accrediting authority according to the severity of the problem. **The Accrediting Authority shall base a decision to withdraw accreditation on the audit reports.** The accrediting body shall notify the Commission immediately of the setting of any probation period for an accredited Responsible Authority and of any withdrawal decision.
5. To ensure the sound operation of this system, the Commission shall be empowered to adopt delegated acts in accordance with the procedure referred to in Article 54 concerning:
  - (a) minimum conditions for the accreditation of the Responsible Authorities with regard to the internal environment, control activities, information and communication, and monitoring, as well as rules on the procedure for issuing and withdrawing accreditation;
  - (b) rules relating to supervision and the procedure for reviewing accreditation of Responsible Authorities;
  - (c) the obligations of the Responsible Authorities as regards public intervention, as well as on the content of their management and control responsibilities.

*[Article 25]*

**General principles on controls by Responsible Authorities**

1. Responsible Authorities shall carry out a systematic administrative control ~~of all payment requests from the beneficiaries and shall supplement them by~~ on-the-spot controls of the expenditure related to the payment requests from the beneficiaries that are declared in the annual accounts in view of obtaining a sufficient level of assurance.
2. As regards the on-the-spot controls, the Responsible Authority shall draw its control sample from the entire population of beneficiaries comprising, where appropriate, a random part and a risk-based part, in order to obtain a representative error rate and a minimum confidence level, while targeting also highest errors.

3. The Responsible Authority shall draw up a control report on each on-the-spot control. ~~The Responsible Authority may in the document setting out the conditions for support for each project stipulate the responsibility of the beneficiaries in regards to the control reports.~~
4. Where problems detected appear to be systemic in nature and may therefore entail a risk to other projects, the Responsible Authority shall ensure that further examination is carried out, including additional controls where necessary, to establish the scale of such problems and whether the error rate is above the ~~materiality level~~ **acceptable level**. The necessary preventive and corrective measures shall be taken by the Responsible Authority and communicated to the Commission in the summary report referred to in Article 39(1)(c).
5. The Commission shall, by means of implementing acts, adopt the necessary rules aiming at reaching a uniform application of this Article. These rules may in particular relate to the following:
  - (a) the rules concerning administrative and on-the-spot controls to be conducted by the Member States with regard to the respect of obligations, commitments and eligibility rules resulting from the application of this Regulation and the Specific Regulations;
  - (b) the rules on the minimum level of on-the-spot controls necessary for an effective management of the risks, as well as the conditions under which Member States have to increase such controls, or may reduce them where the management and control systems function properly and the error rates are at an acceptable level;
  - (c) the rules and methods on the reporting of the controls and verification carried out and their results.

Those implementing acts shall be adopted by the Commission in accordance with the examination procedure referred to in Article 55(3).

*[Article 26<sup>29</sup>]*

**Payment to beneficiaries**

*[Article 27]*

**Functions of the audit authority**

1. The audit authority shall ensure that audits are carried out on the management and control systems, **and** on an appropriate sample of the expenditure included in the annual accounts.

The Commission shall be empowered to adopt delegated acts in accordance with the procedure referred to in Article 54 on the status of the Audit Authorities and the conditions which their audits shall fulfil.

2. Where audits are carried out by a body other than the Audit Authority, the Audit Authority shall ensure that any such body has the necessary functional independence.
3. The Audit Authority shall ensure that audit work takes account of internationally accepted audit standards.

*[Article 28]*

**Cooperation with audit authorities**

1. The Commission shall cooperate with audit authorities to coordinate their respective audit plans and methods and shall as soon as possible exchange the results of audits carried out on management and control systems in order to make the best possible and proportionate use of control resources and to avoid unjustified duplication of work.
2. The Commission and the audit authorities shall meet on a regular basis to exchange views on issues relating to improvement of the management and control systems.

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<sup>29</sup> This article has been moved to Section 3 "Financial Management"

### **Controls and audits by the Commission**

1. The Commission shall rely on available information, including the accreditation procedure, ~~annual management declarations, annual control reports, annual audit opinions,~~ **request for payment of the annual balance**, annual implementation reports, and audits carried out by national and Union bodies, to assess that the Member States have set up management and control systems that comply with this Regulation and that those systems function effectively during the implementation of national programmes.
2. Without prejudice to audits carried out by Member States, Commission officials or authorised Commission representatives may carry out on-the-spot audits or controls upon giving at least fifteen working days notice to the competent authority subject to the on-the-spot audit or control except in urgent cases. The Commission shall respect the principle of proportionality by taking into account the need to avoid duplication of audits or controls carried out by Member States, the level of risk to the Union budget and the need to minimise administrative burdens for beneficiaries. Officials or authorised representatives of the Member State may take part in such audits or controls.
3. The scope of the audits or controls may include, in particular:
  - (a) the verification of the effective functioning of management and control systems in a national programme or a part thereof;
  - (b) the compliance of administrative practices with Union rules;
  - (c) the existence of the required supporting documents and their correlation with the actions supported under the national programmes;
  - (d) the terms on which the actions have been undertaken and controlled;
  - (e) an assessment of the sound financial management of actions and/or the national programme.

4. Commission officials or authorised Commission representatives, duly empowered to carry out on-the-spot audits or controls, shall have access to the necessary records, documents and metadata, irrespective of the medium in which they are stored, relating to expenditure or to management and control systems. Member States shall provide copies of such records, documents and metadata to the Commission upon request.

The powers set out in this paragraph shall not affect the application of national provisions which reserve certain acts for agents specifically designated by national legislation.

Commission officials and authorised representatives shall not take part, *inter alia*, in home visits or the formal questioning of persons within the framework of national legislation.

However, they shall have access to the information thus obtained without prejudice to the competences of national courts and in full respect of the fundamental rights of the concerned legal subjects.

5. At the request of the Commission and with the agreement of the Member State, additional controls or inquiries into the actions covered by this Regulation shall be undertaken by the competent bodies of that Member State. Commission agents or persons delegated by the Commission may take part in such controls.

In order to improve controls, the Commission may, with the agreement of the Member States concerned, request the assistance of the authorities of those Member States for certain controls or inquiries.

6. The Commission may require a Member State to take the actions necessary to ensure the effective functioning of its management and control systems or the correctness of expenditure in accordance with the applicable rules.]

## **Section 3**

### **Financial Management**

#### *[Article 30 ]*

#### **Budget commitments**

1. The budget commitments of the Union in respect of each national programme shall be made in annual instalments during the period from 1 January 2014 to 31 December 2020.
2. The Commission decision approving each national programme shall constitute the financing decision within the meaning of Article [81(2)] of the Financial Regulation, and once notified to the Member State concerned, a legal commitment within the meaning of that Regulation.
3. For each national programme, the budget commitment for the first instalment shall follow the approval of the national programme by the Commission.
4. The budget commitments for subsequent instalments shall be made by the Commission before 1 May of each year, on the basis of the decision referred to in paragraph 2 of this Article, except where Article [13] of the Financial Regulation applies.

#### *Article 31*

#### **Common rules for payments**

1. Payments by the Commission of the contribution from the Union budget to the national programme shall be made in accordance with budget appropriations and depending on budget availability. Each payment shall be posted to the earliest open budget commitment concerned.
2. Payments shall take the form of initial pre-financing, annual pre-financing, payments of the annual balance and the payment of the final balance.
3. Article 87 of the Financial Regulation shall apply.<sup>30</sup>

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<sup>30</sup> PRES and COM will reconsider this provision to take account of Article 56 of the Financial Regulation.



*Article 31a*

**Payment to beneficiaries**

Responsible Authorities shall ensure that the beneficiaries receive the total amount due of the public support as quickly as possible and in full, in accordance with national rules. No amount shall be deducted or withheld and no specific charge or other charge with equivalent effect shall be levied that would reduce these amounts for the beneficiaries except where this is required by national legislation **and in accordance with Article 17(4)**.<sup>31</sup>

*[Article 32]*

**Accumulation of initial pre-financing and annual balances**

1. The total of the initial pre-financing payment and the payments of the annual balance shall not exceed 95 % of the contribution from the Union budget to the national programme.
2. When the ceiling of 95 % is reached, the Member States ~~shall~~ **may** continue transmitting requests for payment to the Commission.

*[Article 33]*

**~~Initial~~ Pre-financing arrangements**

1. Following the Commission decision approving the national programme, an initial pre-financing amount for the whole programming period shall be paid by the Commission. This shall represent 4% of the **total** contribution from the Union budget to the national programme concerned. It may be split into two instalments depending on budget availability within ~~12~~ **4** months.
2. ~~If a national programme is approved in 2015 or later, the instalments shall be paid not later than sixty days after the approval of the national programme depending on budget availability.~~

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<sup>31</sup> DK inquired what in Article 17(4) is referred to. PRES noted it was a reference to payments as such. COM noted this Article exists in the current legal basis as well as in all other shared management funds and cautioned against making changes to it since these might lead to problems in interpretation.

- 2a. An annual pre-financing amount of **5%** ~~2,5%~~ of the **total** contribution from the Union budget to the national programme concerned shall be paid before 1 ~~July~~ **February** in the years 2014~~5~~ to 2020.
- 2b. If a national programme is approved in 2015 or later, the instalments shall be paid not later than sixty days after the approval of the national programme depending on budget availability.**
- 2c. In case of amendments to the total contribution from the Union budget to a national programme, the initial as well as the annual pre-financing amounts shall be revised accordingly and reflected in the financing decision.**
3. Pre-financing shall be used ~~only~~ for making payments to beneficiaries implementing the national programme as well as for designated authorities for expenditure relating to technical assistance. It shall be made available without delay to the Responsible Authority for these purposes.
4. (deleted)
5. (deleted)
6. (deleted)

*[Article 33a]*

### **Clearance of pre-financing**

1. The amount paid as initial pre-financing shall be totally cleared from the Commission accounts in accordance with Article 36 at the latest when the national programme is closed
2. The amount paid as annual pre-financing shall be cleared from the Commission accounts in accordance with Article 35.
3. The total amount paid as pre-financing shall be reimbursed to the Commission if no payment request in accordance with Article 39 is sent within 36 months of the date on which the Commission pays the first instalment of the initial prefinancing amount.

4. Interest generated on the initial prefinancing shall be posted to the national programme concerned and deducted from the amount of public expenditure indicated on the final payment request.

#### *Article 34*

#### **Definition of the financial year**

For the purpose of this Regulation the financial year shall cover expenditure paid and revenue received and entered into the accounts of the Responsible Authority in the period beginning on 16 October in the year "N-1" and ending on 15 October of year "N".

#### *[Article 35]*

#### **Payment of the annual balance**

1. The Commission shall pay the annual balance, on the basis of the financial plan in force, the annual accounts for the corresponding financial year of the national programme and the corresponding clearance decision.
2. The annual accounts shall cover the payments made by the Responsible Authority during the financial year for which the control requirements referred to in Article 25 have been met, **including the payments relating to technical assistance.**
3. Depending on budget availability, the annual balance shall be paid not later than six months after the information and documents mentioned in Article 39(1) and Article 49 are considered admissible by the Commission and the latest annual account have been cleared.

#### *[Article 36]*

#### **Closure of the programme**

1. Member States shall submit the following documents by 31 December 2023 at the latest:
  - (a) The information required for the last annual accounts, in accordance with Article 39(1);
  - (b) a request for payment of the final balance; and
  - (c) the final implementation report for the national programme as referred to in Article 49(1).

2. The payments made by the Responsible Authority from 16 October 2022 to 31 December 2023 shall be included in the last annual accounts.
3. After receiving the documents listed in paragraph 1, the Commission shall pay the final balance, on the basis of the financial plan in force, the last annual accounts and the corresponding clearance decision.
4. Depending on budget availability, the final balance shall be paid no later than three months after the date of clearance of accounts of the final financial year or one month after the date of acceptance of the final implementation report, whichever date is later. The amounts still committed after the balance is paid shall be decommitted by the Commission within a period of six months, without prejudice to Article 47.
5. ~~Without prejudice to the rules governing State aid under Article 107 of the Treaty on the Functioning of the European Union, the responsible authority shall ensure that all the supporting documents regarding expenditure and audits on the programmes concerned are kept available for the Commission and the Court of Auditors for a period of five years following the closure of the programmes.~~

~~This period shall be interrupted either in the case of legal proceedings or at the duly substantiated request of the Commission. The documents shall be kept either in the form of the originals or in versions certified to be in conformity with the originals on commonly accepted data carriers.~~

*[Article 37]*

### **Interruption of the payment period**

1. The payment period following a request for payment may be interrupted by the authorising officer by delegation within the meaning of the Financial Regulation for a maximum period of nine months, when at least one of the following conditions is met:
  - (a) following information provided by a national or Union audit body, there is evidence to suggest a significant deficiency in the functioning of the management and control system;

- (b) the authorising officer by delegation has to carry out additional verifications following information coming to his attention alerting him that expenditure in a payment request is linked to an irregularity having serious financial consequences;
  - (c) one or more documents required under Article 39(1) were not submitted.
2. The authorising officer by delegation may limit the interruption to the part of the expenditure covered by the payment request affected by the elements referred to in paragraph 1. The authorising officer by delegation shall inform ~~the Member State and~~ the Responsible Authority immediately of the reason for interruption and shall ask them to remedy the situation. The interruption shall be ended by the authorising officer by delegation as soon as the necessary measures have been taken.

*[Article 37a]*

**Suspension of payments**

1. All or part of the annual balance may be suspended by the Commission where:
- (a) there is a serious deficiency in the management and control system of the national programme which affects the reliability of the procedure for the annual accounts and for which corrective measures have not been taken; or
  - (b) expenditure in the annual accounts is linked to a serious irregularity which has not been corrected; or
  - (c) there is a serious breach by a Member State of its obligations under Article 22(1) and (2).
2. The Commission may decide to suspend all or part of an annual balance after having given the Member State the opportunity to present its observations within a period of two months.
3. The Commission shall end suspension of all or part of an annual balance where the Member State has taken the necessary measures to enable the suspension to be lifted. Where the required measures are not taken by the Member State, the Commission may adopt the decision to cancel all or part of the Union contribution to the national programme in accordance with Article 42.

*[Article 38]*

**Use of the euro**

1. Amounts set out in programmes submitted by Member States, forecasts of expenditure, statements of expenditure, payment requests, annual accounts and expenditure mentioned in the annual and final implementation reports shall be denominated in euro.
2. Member States which have not adopted the euro as their currency on the date of a payment request shall convert the amounts of expenditure incurred in national currency into euro. This amount shall be converted into euro using the monthly accounting exchange rate of the Commission in the month during which the expenditure was registered in the accounts of the Responsible Authority of the national programme concerned. The rate shall be published electronically by the Commission each month.
3. When the euro becomes the currency of a Member State, the conversion procedure set out in paragraph 2 shall continue to apply to all expenditure recorded in the accounts by the Responsible Authority before the date of entry into force of the fixed conversion rate between the national currency and the euro.

**[SECTION 4]**

**CLEARANCE OF ACCOUNTS AND FINANCIAL CORRECTIONS**

*[Article 39<sup>32</sup>]*

**~~Submission of information~~ Request for payment**

1. By 1 February of the year following the financial year, each Member State shall submit the following documents and information to the Commission in accordance with Article [56] of the Financial Regulation **servicing as the request for payment of the annual balance**:
  - (a) the annual accounts of the Responsible Authority;

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<sup>32</sup> This Article is kept in square brackets awaiting the outcome of the negotiations on the Financial Regulation.

- (b) the management declaration of assurance as to the completeness, accuracy and veracity of the annual accounts, the proper functioning of the internal control systems as well as to the legality and regularity of the underlying transactions and the respect of the principle of sound financial management;
  - (c) a summary report of all available audits and controls carried out, including an analysis of systematic or recurrent weaknesses as well as corrective actions taken or planned;
  - (d) an audit opinion by the Audit Authority on the management declaration of assurance covering all its elements, accompanied by a control report setting out the findings of the audits carried out relating to the financial year covered by the opinion.
2. ~~If requested to do so by the Commission the Member State shall provide further information to the Commission~~ **The Commission may ask a Member State to provide further information for the purpose of the annual clearance of account.** If a Member State does not provide the requested information by the deadline for its submission set by the Commission, the Commission may take its decision on the clearance of the accounts on the basis of the information in its possession.
3. ~~The documents foreseen in paragraph 1 shall serve as the request for payment of the annual balance.~~
4. The documents listed in paragraph 1 shall be drawn up according to the models adopted by the Commission by means of implementing acts. Those implementing acts shall be adopted by the Commission in accordance with the advisory procedure referred to in Article 55(2).]

*[Article 40]*

**Annual clearance of accounts**

1. By 30 April of the year following the financial year, the Commission shall decide on the clearance of the annual accounts for each national programme. The clearance decision shall cover the completeness, accuracy and veracity of the annual accounts submitted and be without prejudice to any subsequent financial corrections.

2. The Commission shall, by means of implementing acts, lay down the modalities for the implementation of the annual clearance of accounts procedure, as regards the measures to be taken in connection to the adoption of the decision and its implementation, including on the exchange of information between the Commission and the Member States and the deadlines to be respected. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 55(3).

*[Article 41]*

**Financial corrections by the Member States**

Member States shall make financial corrections where **breaches of applicable Union and national law irregularities or negligence** are detected under the national programmes by cancelling all or part of the contribution from the Union budget concerned. Member States shall take into account the nature and gravity of the **breaches of applicable Union and national law irregularities** and the financial loss to the Union budget and shall apply a proportionate correction.

Amounts cancelled and amounts recovered, as well as the interest thereon, shall be reallocated to the national programme concerned, excluding the amounts resulting from irregularities identified by the European Court of Auditors and the Commission services including OLAF.

After the closure of the national programme, the Member State shall refund the unused sums recovered to the Union budget.

*[Article 42]*

**Conformity clearance and financial corrections by the Commission**

1. The Commission shall make financial corrections by cancelling all or part of the Union contribution to a national programme and effecting recovery from the Member State in order to exclude from Union financing expenditure which is in breach of applicable Union and national law, including in relation to deficiencies in the management and control systems of Member States which have been detected by the Commission or the European Court of Auditors.



2. A breach of applicable Union or national law shall lead to a financial correction only where one of the following conditions is met:
  - (a) the breach has or could have affected the selection of projects under the national programme;
  - (b) there is a risk that the breach has or could have affected the amount of expenditure declared for reimbursement by the Union budget.
3. When deciding on the amount of a financial correction under paragraph 1, the Commission shall take account of the nature and gravity of the breach of applicable Union or national law and its financial implications for the Union budget.
4. Before the adoption of any decision to refuse financing, the findings from the Commission and the Member State's replies shall be notified in writing, following which the two parties shall attempt to reach agreement on the action to be taken.
5. Financing may not be refused for:
  - (a) expenditure which is incurred by the Responsible Authority more than 36 months before the Commission notifies the Member State in writing of its findings;
  - (b) expenditure on multiannual actions within the scope of the national programmes, where the final obligation on the beneficiary occurs more than 36 months before the Commission notifies the Member State in writing of its findings;
  - (c) expenditure on actions in national programmes, other than those referred to in point (b) of this paragraph, for which the payment or, as the case may be, the final payment, by the Responsible Authority, is made more than 36 months before the Commission notifies the Member State in writing of its findings.

**In consequence, all documentation related to the final payment shall be kept for 3 years after the submission of the payment request.**

6. The Commission shall, by means of implementing acts, lay down the modalities for the implementation of the conformity clearance as regards the measures to be taken in connection with the adoption of the decision and its implementation, including the information exchange between the Commission and the Member States and the deadlines to be respected. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 55(3).

*[Article 43]*

### **Obligations of Member States**

A financial correction by the Commission shall not prejudice the Member State's obligation to pursue recoveries under Article 21(h) of this Regulation and to recover State aid in the meaning of Article 107(1) of the Treaty and under Article 14 of Council Regulation (EC) No 659/1999.

*[Article 44]*

### **Repayment**

1. Any repayment due to be made to the general budget of the Union shall be effected before the due date indicated in the order for recovery drawn up in accordance with Article [77] of the Financial Regulation. The due date shall be the last day of the second month following the issuing of the order.
2. Any delay in effecting repayment shall give rise to interest on account of late payment, starting on the due date and ending on the date of actual payment. The rate of such interest shall be one-and-a-half percentage points above the rate applied by the European Central Bank in its main refinancing operations on the first working day of the month in which the due date falls.

## Section 5 Decommitment

*[Article 45]*

### Principles

1. National programmes shall be submitted to a decommitment procedure established on the basis that amounts linked to a commitment which are not covered by the initial pre-financing referred to in Article 33 or a request for payment in accordance with Article 39 by 31 December of the second year following that of the budget commitment shall be decommitted.
  - 1a. **By way of derogation from paragraph 1, the deadlines for decommitment shall not apply to the annual budget commitment related to the 2014 total annual contribution.**
  - 1b. **If the first annual budget commitment is related to the 2015 total annual contribution, by way of derogation from paragraph 1, the deadlines for decommitment shall not apply to the annual budget commitment related to the total annual contribution of 2015. In such cases, the Commission shall calculate the amount under paragraph 1 by adding one fifth of the annual budget commitment related to the 2015 total amount contribution to each of the 2016 to 2020 budget commitments.**
2. The commitment related to the last year of the period will be decommitted according to the rules followed for the closure of the programmes.
3. Any commitment still open on the latest date for expenditure to be eligible as referred to in Article 17(3) for which a payment request has not been made by the Responsible Authority within six months after that date shall be automatically decommitted.

*[Article 46]*

### Exceptions to the decommitment

1. The amount concerned by decommitment shall be reduced by the amounts that the Responsible Authority has not been able to declare to the Commission because of:
  - (a) actions suspended by a legal proceeding or by an administrative appeal having suspensory effect; or

- (b) reasons of *force majeure* seriously affecting implementation of all or part of the national programme. Responsible Authorities claiming *force majeure* shall demonstrate the direct consequences of the force majeure on the implementation of all or part of the national programme.

The reduction may be requested once if the suspension or *force majeure* lasted up to one year, or several times corresponding to the duration of the *force majeure* or the number of years between the date of the legal or administrative decision suspending the implementation of the action and the date of the final legal or administrative decision.

2. The Member State shall send the Commission information on the exceptions referred to in paragraph 1 by 31 January for the amount to be declared by the end of preceding year.
3. The part of the budget commitments for which a payment request has been made but payment of which has been reduced or suspended by the Commission at 31 December of year  $N + 2$  shall be disregarded in calculating the automatic decommitment.

[Article 47]

#### **Procedure**

1. Whenever there is a risk of application of decommitment under Article 45 the Commission shall inform the Member State as soon as possible.
2. On the basis of the information it has on 31 January, the Commission shall inform the Responsible Authority of the amount of the decommitment resulting from the information in its possession.
3. The Member State shall have two months to agree to the amount to be decommitted or to submit its observations.
4. The Commission shall carry out the automatic decommitment not later than nine months after the last time-limit resulting from the application of paragraphs 1 to 3.
5. In the event of automatic decommitment, the contribution from the Union budget to the national programme concerned shall be reduced, for the year in question, by the amount automatically decommitted. The Union contribution in the financing plan will be reduced pro-rata, unless the Member State produces a revised financing plan.

**CHAPTER V**  
**INFORMATION, COMMUNICATION, MONITORING, EVALUATION AND**  
**REPORTING**

*Article 48*

**Information and publicity**

1. Member States and Responsible Authorities shall be responsible for:
  - (a) a website or a website portal providing information on and access to the national programmes in that Member State, including, where relevant, information on funding opportunities under the national programme;
  - (b) (deleted)
  - (c) publicising to Union citizens the role and achievements of the Specific Regulations through information and communication actions on the results and impact of the national programmes.
2. Member States shall ensure transparency on the implementation of the national programmes and maintain a list of actions supported by each national programme which shall be accessible through the website or the website portal except where information is restricted due to its confidential nature, particularly concerning security, public order, criminal investigations and protection of personal data.
3. (deleted)<sup>33</sup>
4. The Commission shall, by means of implementing acts, define the technical characteristics of information and publicity measures. Those implementing acts shall be adopted by the Commission in accordance with the examination procedure referred to Article 55(3).

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<sup>33</sup> DE: on the basis of explanations given by COM at the previous meeting, DE agrees to have paragraph 3 reintroduced.  
FR still considers it should be deleted.  
COM referred to Article 56 of the Financial Regulation which sets out an obligation to ensure visibility of the funds. It would be regrettable if no provision is kept in the text which would allow for definition of common rules on information and publicity, except for the technical details covered by paragraph 4. There are two ways of dealing with this in other funds - either all details are put in the basic act, or COM is empowered to adopt a delegated act (since it is considered to be an obligation complementary to the basic act).

*Article 49*

**Implementation reports<sup>34</sup>**

1. By 31 March 2016 and by 31 March of each subsequent year until and including 2022, the Responsible Authority shall submit to the Commission an annual report on implementation of each national programme in the previous financial year.

The report submitted in 2016 shall cover the financial years 2014 and 2015.

The Member State shall submit a final report on implementation of the national programmes by 31 December 2023.

2. Annual implementation reports shall set out summary information on:
  - (a) implementation of the national programme by reference to the financial data and the indicators;
  - (b) any significant issues which affect the performance of the national programme.
3. In the light of the mid-term review, the annual implementation report submitted in 2017 shall set out and assess:
  - (x) the information referred to in paragraph 2
  - (a) the progress towards achieving the objectives in the national programmes pursued with the contribution from the Union budget;<sup>35</sup>
  - (b) the involvement of relevant partners as referred to in article 12
4. The annual implementation report submitted in 2020 and the final implementation report shall, in addition to the information and assessment set out in paragraphs 2 include information on and assess progress towards achieving the objectives of the national programme.

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<sup>34</sup> SI: maintain reservation on the reporting requirements. A drafting suggestion by SI will follow.

<sup>35</sup> DE reiterated its suggestion made previously (footnote 108 in document 11788/12) on the deletion of point (a).

5. The annual implementation reports referred to in paragraphs 1 to 4 shall be admissible where they contain all the information required in those paragraphs. The Commission shall inform the Member State within 15 working days from the date of receipt of the annual implementation report if it is not admissible, failing which it shall be deemed admissible.
6. The Commission shall inform the Member State of its observations on the annual implementation report within two months from the receipt of the annual implementation report. Where the Commission does not provide observations within this deadline, the reports shall be deemed to be accepted.
7. The Commission may make observations to issues in the Responsible Authority's annual implementation report, which significantly affect the implementation of the national programme. Where such observations are made, the Responsible Authority shall provide necessary information with regard to these observations and, where appropriate, inform the Commission within three months of the measures taken.
8. The annual and final implementation reports shall be drawn up according to the models adopted by the Commission. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 55(2).

*Article 50*

**The common monitoring and evaluation framework<sup>36</sup>**

1. The Commission shall carry out regular monitoring of this Regulation and the Specific Regulations, where appropriate, in cooperation with the Member States.
2. The implementation of the Specific Regulations shall be evaluated by the Commission in partnership with the Member States in accordance with Article 52.

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<sup>36</sup> SI maintained reservation and referred to its comment made previously (footnote 109 in document 11788/12) relating to the need for flexibility of the system.

3. A common monitoring and evaluation framework shall be established with a view to measuring the relevance, effectiveness, efficiency, added value, sustainability of the actions and the simplification and the reduction of administrative burden, in the light of the objectives of this Regulation and the Specific Regulations and the performance of this Regulation and the Specific Regulations as instruments contributing to the development of the area of freedom, security and justice.
4. The Commission shall be empowered to adopt delegated acts<sup>37</sup> in accordance with the procedure referred to in Article 54 to develop the common monitoring and evaluation framework with due consideration to the specific circumstances in Member States, and with a view to reduce the administrative burden.
5. Member States shall provide the Commission with the necessary information to permit the monitoring and evaluation of this Regulation and the Specific Regulations.
6. The Commission shall also consider the complementarity between the actions implemented under the Specific Regulations and those pursued under other relevant Union policies, instruments and initiatives.

#### *Article 51*

#### **Evaluation of national programmes by Member States<sup>38</sup>**

1. Member States shall carry out the evaluations referred to in Article 52 (1). The evaluation to be carried out in 2017 should contribute to improving the quality of the design and the implementation of national programmes, in accordance with the common monitoring and evaluation framework.
2. In this regard, Member States shall ensure that procedures are in place to produce and collect the data necessary for the evaluations, including data related to indicators in the common monitoring and evaluation framework.

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<sup>37</sup> MT: reservation on the use of delegated acts. MT would prefer implementing acts.

<sup>38</sup> SI maintained reservation and referred to its comment made previously (footnote 111 in document 11788/12) relating to the need for flexibility of the system.



3. The evaluations referred to in Article 52 (1) shall, preferably,<sup>39</sup> be carried out by experts that are functionally independent of the Responsible Authorities, Audit Authorities and Delegated Authorities. These experts may be affiliated with an autonomous public **or private** institution responsible for monitoring, evaluation and audit of the administration.<sup>40</sup> The Commission shall provide guidance on how to carry out evaluations.
4. The evaluations referred to in article 52 (1) shall be made public except where information is restricted due to its confidential nature, particularly concerning security, public order, criminal investigations and protection of personal data.

#### *Article 52*

#### **Evaluation reports by the Member States and the Commission**

1. In accordance with the common monitoring and evaluation framework, the Member States shall submit to the Commission:
  - (a) an interim evaluation report on the implementation of actions under the national programmes by 31 December 2017;
  - (b) an ex-post evaluation report on the effects of actions under the national programmes by 31 December 2023.
2. On the basis of the reports referred to in paragraph 1, the Commission shall submit to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:
  - (a) an interim evaluation report on the implementation of this Regulation and the Specific Regulations at the level of the Union by 30 June 2018;
  - (b) an ex-post evaluation report on the effects of this Regulation and the Specific Regulations, following the closure of the national programmes, by 30 June 2024.

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<sup>39</sup> PL, HU prefer keeping "preferably" in the text and referred to cases when it might be advisable not to disclose certain sensitive information.  
DE agrees with the new text.  
COM prefers keeping "preferably" deleted, also in view of the discussions with the EP. COM recalled the principle of evaluation being an important aspect of sound financial management. Making evaluations public can be decided at a later stage.

<sup>40</sup> COM expressed doubts on the second sentence. The intention of the original COM proposal was to leave room for manoeuvre regarding the definition of types of experts to be involved in evaluations. It is not very clear what "private institutions" mean and to what extent they should take over responsibility for evaluation.  
PRES invited delegations to provide their views on whether or not to keep the sentence in the text.

3. The ex-post evaluation of the Commission shall also examine the impact of the Specific Regulations on the development of the area of freedom, security and justice in terms of their contribution to the following objectives:

- (a) the development of a common culture of border security, law enforcement cooperation and crisis management;
- (b) effective management of migration flows into the EU;
- (c) the development of the Common European Asylum System;
- (d) fair and equal treatment of third-country nationals;
- (e) solidarity and co-operation between Member States in addressing migration and internal security issues;
- (f) a common approach of the Union on migration and security towards third countries.

*[Article 53]*

#### **Report on the mid term review**

In 2018 the Commission shall submit to the European Parliament, the Council, the European and Economic and Social Committee and the Committee of the Regions a report on the mid term review carried out in accordance with the provisions of this Regulation and the Specific Regulations.

## **CHAPTER VI**

### **FINAL PROVISIONS**

*[Article 54]*

#### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in this Regulation shall be conferred on the Commission for a period of seven years from the entry into force of this Regulation. The delegation of power shall be tacitly extended for a period of an identical duration, unless the European Parliament or the Council opposes such extension no later than 3 months before the end of each period.
3. The delegation of powers referred to in this Regulation may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to this Regulation shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

[Article 55]

### **Committee Procedure**

1. The Commission shall be assisted by the common Committee 'Asylum, Migration and Security' established by this Regulation. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

[Article 56]

### **Review**

On the basis of a proposal from the Commission, the European Parliament and the Council shall review this Regulation by 30 June 2020 at the latest.

[Article 57]

### **Entry into force**

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

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

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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