

Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (repealed)

PART ONE

COMMON PROVISIONS

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 2

*Methods of implementation*

*Section 1*

**General provisions**

*Article 33*

**Management mode(Article 58 of the Financial Regulation)**

The accounting system of the Commission shall identify the management mode and, under each management mode, the type of entity or person listed in Article 58(1)(c) of the Financial Regulation entrusted with tasks of budget implementation.

As regards direct management by the Commission according to Article 58(1)(a) of the Financial Regulation, the accounting system shall distinguish management by the following:

- (a) departments of the Commission;
- (b) executive agencies;
- (c) heads of Union delegations;
- (d) trust funds referred to in Article 187 of the Financial Regulation.

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## Section 2

### **Direct Management**

#### Article 34

#### **Direct management(Article 58 (1)(a) of the Financial Regulation)**

Where the Commission implements the budget directly in its departments, implementation tasks shall be performed by the financial actors within the meaning of Articles 64 to 75 of the Financial Regulation and in compliance with the conditions laid down in this Regulation.

#### Article 35

#### **Exercise of powers delegated to executive agencies(Articles 58(1)(a) and 62 of the Financial Regulation)**

1 Decisions to delegate powers to executive agencies shall authorise them, as authorising officers by delegation, to implement appropriations relating to the Union programme the management of which is entrusted to them.

2 The Commission's instrument of delegation shall contain at least the provisions as provided for in points (a) to (d) and (h) of Article 40. It shall be formally accepted in writing by the director on behalf of the executive agency.

#### Article 36

#### **Compliance with the procurement rules(Article 63 of the Financial Regulation)**

Where the Commission entrusts tasks to private bodies under Article 63(2) of the Financial Regulation, it shall conclude a contract in accordance with Title V of Part One and Part Two Title IV Chapter III of the Financial Regulation.

## Section 3

### **Shared management with Member States**

#### Article 37

#### **Specific provisions for shared management with Member States measures to promote best practices(Article 59 of the Financial Regulation)**

The Commission shall compile a register of bodies responsible for management, certification and audit activities under the sector-specific regulations.

In order to promote best practices in the implementation of the Structural Funds, the Cohesion Fund, the European Agricultural Fund for Rural Development, the European Agricultural Guarantee Fund and the European Fisheries Fund, the Commission may make available for information purposes to bodies responsible for management and

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control activities a methodological guide setting out its own control strategy and approach, including checklists, and best practice examples. This guide shall be updated whenever it proves necessary.

#### Section 4

### **Indirect management**

#### Article 38

### **Equivalence of systems, rules and procedures in indirect management (Article 60 of the Financial Regulation)**

1 The Commission may accept that procurement rules and procedures are equivalent to its own if the following conditions are met:

- a they comply with the principle of broad competition of tenderers to obtain the best value for money, and negotiated procedures are limited to reasonable amounts or are duly justified;
- b they ensure transparency with adequate *ex ante* publication, in particular of calls for tenders, and adequate *ex post* publication of contractors;
- c they ensure equal treatment, proportionality and non-discrimination;
- d they prevent conflicts of interests throughout the entire procurement procedure.

National law of Member States or third countries transposing Directive 2004/18/EC shall be considered equivalent to the rules applied by the institutions in accordance with the Financial Regulation.

2 The Commission may accept that grant rules and procedures are equivalent to its own if the following conditions are met:

- a they comply with the principles of proportionality, sound financial management, equal treatment and non-discrimination;
- b they ensure transparency with adequate publication of calls for proposals, direct award procedures being limited to reasonable amounts or being duly justified, and adequate *ex post* publication of beneficiaries taking account of the principle of proportionality;
- c they prevent conflicts of interests throughout the entire grant award procedure;
- d they provide that grants may not be cumulative or awarded retrospectively, that they must, as a rule, involve co-financing and that they may not have the purpose or the effect of producing a profit for the beneficiary.

3 The Commission may accept that the accounting systems and the internal control systems used by entities and persons to be entrusted with budget implementation tasks on behalf of the Commission are providing equivalent levels of protection of the financial interests of the Union and of reasonable assurance of achieving the management objectives if they comply with the principles laid down in Article 32 of the Financial Regulation.

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### Article 39

#### **Ex ante assessment of rules and procedures of the entities and persons in indirect management(Article 61(1) of the Financial Regulation)**

For the purposes of the *ex ante* assessment pursuant to Article 61(1) of the Financial Regulation, the authorising officer responsible may rely on an *ex ante* assessment made by another authorising officer provided that their conclusions are relevant to the specific risks of the tasks to be entrusted, in particular their nature and the amounts involved.

The authorising officer responsible may rely on an *ex ante* assessment made by other donors as far as this assessment was made with regard to conditions equivalent to those for indirect management set out in Article 60 of the Financial Regulation.

### Article 40

#### **Content of the agreement entrusting budget implementation tasks to entities and persons(Articles 61(3) of the Financial Regulation)**

Delegation agreements shall include detailed arrangements ensuring the protection of the financial interests of the Union and the transparency of operations carried out. They shall include at least the following:

- (a) a clear definition of the tasks assigned and the limits thereof, concerning in particular the modification of the tasks entrusted, the waiving of debts, the use of funds reimbursed or unused;
- (b) conditions and detailed arrangements for performing the tasks, responsibilities and organising the controls to be carried out, including the evaluation of the programmes;
- (c) conditions for payments of the Union contribution, including the reimbursement of costs incurred in respect of implementation as well as the remuneration of the entrusted entity, together with rules on which supporting documents are required to justify the payments;
- (d) rules on reporting to the Commission on how the tasks are performed, the results expected, irregularities which occurred and the measures taken, the conditions under which payments may be suspended or interrupted as well as the conditions under which performance of the tasks terminates;
- (e) the date, by which individual contracts and agreements which implement the delegation agreement shall be concluded, which shall be commensurate with the nature of the tasks entrusted;
- (f) exclusion rules which allow the entity or person to exclude entities which are in a situation referred to in points (a), (b) and (e) of Article 106(1) and in points (a) and (b) of Article 107 of the Financial Regulation from participating in procurement, grant or prize award procedures or from being awarded procurement contracts, grants or prizes;
- (g) detailed arrangements for Commission scrutiny as well as provisions granting the Commission, OLAF and the Court of Auditors access to the information that is required for them to perform their duties, as well as the power to conduct audits and investigations including on the spot-checks;

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- (h) arrangements providing for:
  - (i) an undertaking of the entrusted entity to inform the Commission without delay of any fraud occurring in the management of Union funds and the measures taken;
  - (ii) the designation of a contact point which shall have the appropriate powers to cooperate directly with OLAF in order to facilitate the latter's operational activities;
- (i) conditions governing the use of bank accounts and of the interest yielded as provided for in Article 8(4) of the Financial Regulation;
- (j) provisions guaranteeing the visibility of Union action in relation to the other activities of the body.

#### *Article 41*

#### **Management declaration and compliance statement(Article 60(5) of the Financial Regulation)**

In case of actions terminating before the end of the financial year concerned, the final report of the entrusted entity or person for such action may replace the management declaration referred to in Article 60(5)(b) of the Financial Regulation, provided it is submitted before 15 February of the year following the financial year concerned.

Where international organisations and third countries implement non-multiannual actions limited to 18 months, the compliance statement referred to in Article 60(5) of the Financial Regulation may be incorporated in the final report.

#### *Article 42*

#### **Procedures for the examination and acceptance of the accounts and exclusion from Union financing of expenditure made in breach of applicable rules under indirect management(Article 60(6)(b) and (c) of the Financial Regulation)**

1 Without prejudice to specific provisions contained in sector specific rules, the procedures referred to in points (b) and (c) of Article 60(6) of the Financial Regulation shall include:

- a desk reviews and, where appropriate, on-the-spot checks by the Commission;
- b the establishment by the Commission of the amount of expenditure recognised as accepted, following, where necessary, a contradictory procedure with the authorities and bodies and after these authorities and bodies have been informed;
- c where appropriate, calculation by the Commission of financial corrections;
- d recovery or payment by the Commission of the balance arising from the difference between accepted expenditure and the sums already paid to the authorities or bodies.

For the purposes of point (d) of the first subparagraph, the Commission shall recover amounts due preferably by offsetting as set out in Article 87.

2 Where budget implementation tasks are entrusted to an entity implementing a multi-donor action, the procedures referred to in points (b) and (c) of Article 60(6) of the Financial Regulation shall consist in verifying that an amount corresponding to that paid by the

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Commission for the action concerned has been used by the entity for the action and that the expenditure has been incurred in accordance with the obligations laid down in the agreement signed with the entity.

For the purpose of this Regulation, multi-donor action shall mean any action where Union funds are pooled with at least one other donor.

#### *Article 43*

#### **Specific provisions for indirect management with international organisations(Articles 58(1)(c)(ii) and 188 of the Financial Regulation)**

1 The international organisations referred to in point (ii) of Article 58(1)(c) of the Financial Regulation shall be:

- a international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations;
- b the International Committee of the Red Cross;
- c the International Federation of National Red Cross and Red Crescent Societies;
- d other non-profit organisations assimilated to international organisations by a Commission decision.

2 Where the Commission implements the budget under indirect management with international organisations, the verification agreements concluded with them shall apply.

#### *Article 44*

#### **Designation of public law bodies or bodies governed by private law with a public-service mission(Article 58(1)(c)(v) and (vi) of the Financial Regulation)**

1 The public law bodies or bodies governed by private law with a public-service mission shall be subject to the law of the Member State or the country in which they have been set up.

2 In cases of management by a network, requiring the designation of at least one body or entity by Member State or by country concerned, the body or entity shall be designated by the Member State or the country concerned in accordance with the basic act.

In all other cases, the Commission shall designate such bodies or entities in agreement with the Member States or countries concerned.

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