

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012

PART ONE

**FINANCIAL REGULATION**

TITLE IV

**BUDGET IMPLEMENTATION**

*CHAPTER 1*

***General provisions***

*Article 56*

**Budget implementation in accordance with the principle of sound financial management**

1 The Commission shall implement the revenue and expenditure of the budget in accordance with this Regulation, under its own responsibility and within the limits of the appropriations authorised.

2 The Member States shall cooperate with the Commission so that the appropriations are used in accordance with the principle of sound financial management.

*Article 57*

**Information on transfers of personal data for audit purposes**

In any call made in the context of grants, procurement or prizes implemented under direct management, potential beneficiaries, candidates, tenderers and participants shall, in accordance with Regulation (EC) No 45/2001 be informed that, for the purposes of safeguarding the financial interests of the Union, their personal data may be transferred to internal audit services, to the Court of Auditors or to the European Anti-Fraud Office (OLAF) and between authorising officers of the Commission, and the executive agencies referred to in Article 69 of this Regulation and the Union bodies referred to in Articles 70 and 71 of this Regulation.

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## Article 58

### Basic act and exceptions

1 Appropriations entered in the budget for any Union action shall only be used if a basic act has been adopted.

2 By way of derogation from paragraph 1, and subject to the conditions set out in paragraphs 3, 4 and 5, the following appropriations may be implemented without a basic act provided the actions which they are intended to finance fall within the competences of the Union:

- a appropriations for pilot projects of an experimental nature designed to test the feasibility of an action and its usefulness;
- b appropriations for preparatory actions in the field of application of the TFEU and the Euratom Treaty, designed to prepare proposals with a view to the adoption of future actions;
- c appropriations for preparatory measures in the field of Title V of the TEU;
- d appropriations for one-off actions, or for actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level pursuant to the TFEU and to the Euratom Treaty, other than its right of legislative initiative to submit proposals as referred to in point (b) of this paragraph, and under specific powers directly conferred on it by Articles 154, 156, 159 and 160 TFEU, Articles 168(2), 171(2) and 173(2) TFEU, the second paragraph of Article 175 TFEU, Article 181(2) TFEU, Article 190 TFEU and Articles 210(2) and 214(6) TFEU and Articles 70 and 77 to 85 of the Euratom Treaty;
- e appropriations for the operation of each Union institution under its administrative autonomy.

3 With regard to appropriations referred to in point (a) of paragraph 2, the relevant commitment appropriations may be entered in the budget for not more than two consecutive financial years. The total amount of appropriations for pilot projects shall not exceed EUR 40 000 000 in any financial year.

4 With regard to appropriations referred to in point (b) of paragraph 2, preparatory actions shall follow a coherent approach and may take various forms. The relevant commitment appropriations may be entered in the budget for not more than three consecutive financial years. The procedure for the adoption of the relevant basic act shall be concluded before the end of the third financial year. In the course of that procedure, the commitment of appropriations shall correspond to the particular features of the preparatory action with regard to the activities envisaged, the aims pursued and the recipients. As a result, the amount of the appropriations committed shall not correspond to the amount of those envisaged for financing the definitive action itself.

The total amount of appropriations for new preparatory actions referred to in point (b) of paragraph 2 shall not exceed EUR 50 000 000 in any financial year, and the total amount of appropriations actually committed for preparatory actions shall not exceed EUR 100 000 000.

5 With regard to the appropriations referred to in point (c) of paragraph 2, preparatory measures shall be limited to a short period of time and shall be designed to establish the conditions for Union action in fulfilment of the objectives of the CFSP and for the adoption of the necessary legal instruments.

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For the purpose of Union crisis management operations, preparatory measures shall be designed, inter alia, to assess the operational requirements, to provide for a rapid initial deployment of resources, or to establish the conditions on the ground for the launching of the operation. Preparatory measures shall be agreed by the Council, on a proposal by the High Representative.

In order to ensure the rapid implementation of preparatory measures, the High Representative shall inform the European Parliament and the Commission as early as possible of the Council's intention to launch a preparatory measure and, in particular, of the estimated resources required for that purpose. The Commission shall take all the measures necessary to ensure a rapid disbursement of the funds.

The financing of measures agreed by the Council for the preparation of Union crisis management operations under Title V TEU shall cover incremental costs directly arising from a specific field deployment of a mission or team involving, inter alia, personnel from Union institutions, including high-risk insurance, travel and accommodation costs and per diem payments.

#### *Article 59*

##### **Budget implementation by Union institutions other than the Commission**

1 The Commission shall confer on the other Union institutions the requisite powers for the implementation of the sections of the budget relating to them.

2 In order to facilitate the implementation of their appropriations, Union institutions may conclude service-level agreements with each other laying down the conditions governing the provision of services, supply of products, execution of works or of building contracts.

Those agreements shall enable the transfer of appropriations or the recovery of costs, which result from their implementation.

3 Service-level agreements referred to in paragraph 2 may also be agreed upon between departments of Union institutions, Union bodies, European offices, bodies or persons entrusted with implementation of specific actions in the CFSP pursuant to Title V of the TEU and the Office of the Secretary-General of the Board of Governors of the European schools. The Commission and other Union institutions shall report regularly to the European Parliament and to the Council on the service-level agreements they conclude with other Union institutions.

#### *Article 60*

##### **Delegation of budget implementation powers**

1 The Commission and each of the other Union institutions may, within their departments, delegate their powers of budget implementation in accordance with the conditions laid down in this Regulation and their internal rules and within the limits laid down in the instrument of delegation. Those so empowered shall act within the limits of the powers expressly conferred upon them.

2 In addition to paragraph 1, the Commission may delegate its powers of budget implementation concerning the operational appropriations of its own section of the budget to Heads of Union delegations and, in order to ensure business continuity during their absence, to deputy Heads of Union delegations. Such delegation shall be without prejudice to the responsibility of Heads of Union delegations for budget implementation. Where the absence

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of a Head of Union delegation exceeds four weeks, the Commission shall revise its decision to delegate powers of budget implementation. When Heads of Union delegations, and their deputies in the absence of the former, act as authorising officers by subdelegation of the Commission, they shall apply the Commission rules for budget implementation and shall be subject to the same duties, obligations and accountability as any other authorising officer by subdelegation of the Commission.

The Commission may withdraw the delegation of powers referred to in the first subparagraph in accordance with its own rules.

For the purposes of the first subparagraph, the High Representative shall take the measures necessary to facilitate cooperation between Union delegations and Commission departments.

3 The EEAS may exceptionally delegate its powers of budget implementation concerning the administrative appropriations of its own section of the budget to Commission staff of Union delegations where this is necessary in order to ensure the continuity in the administration of such delegations in the absence of the EEAS competent authorising officer from the country where his or her delegation is based. In the exceptional cases where Commission staff of Union delegations act as authorising officers by subdelegation of the EEAS, they shall apply the EEAS internal rules for budget implementation and shall be subject to the same duties, obligations and accountability as any other authorising officer by subdelegation of the EEAS.

The EEAS may withdraw the delegation of powers referred to in the first subparagraph in accordance with its own rules.

#### *Article 61*

### **Conflict of interests**

1 Financial actors within the meaning of Chapter 4 of this Title and other persons, including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, shall not take any action which may bring their own interests into conflict with those of the Union. They shall also take appropriate measures to prevent a conflict of interests from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interests.

2 Where there is a risk of a conflict of interests involving a member of staff of a national authority, the person in question shall refer the matter to his or her hierarchical superior. Where such a risk exists for staff covered by the Staff Regulations, the person in question shall refer the matter to the relevant authorising officer by delegation. The relevant hierarchical superior or the authorising officer by delegation shall confirm in writing whether a conflict of interests is found to exist. Where a conflict of interests is found to exist, the appointing authority or the relevant national authority shall ensure that the person in question ceases all activity in the matter. The relevant authorising officer by delegation or the relevant national authority shall ensure that any further appropriate action is taken in accordance with the applicable law.

3 For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

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## CHAPTER 2

### **Methods of implementation**

#### Article 62

#### **Methods of budget implementation**

- 1 The Commission shall implement the budget in any of the following ways:
  - a directly ('direct management') as set out in Articles 125 to 153, by its departments, including its staff in the Union delegations under the authority of their respective Head of delegation, in accordance with Article 60(2), or through executive agencies as referred to in Article 69;
  - b under shared management with Member States ('shared management') as set out in Articles 63 and 125 to 129;
  - c indirectly ('indirect management') as set out in Articles 125 to 149 and 154 to 159, where this is provided for in the basic act or in the cases referred to in points (a) to (d) of Article 58(2), by entrusting budget implementation tasks to:
    - (i) third countries or the bodies they have designated;
    - (ii) international organisations or their agencies, within the meaning of Article 156;
    - (iii) the European Investment Bank ('the EIB') or the European Investment Fund ('the EIF') or both of them acting as a group ('the EIB group');
    - (iv) Union bodies referred to in Articles 70 and 71;
    - (v) public law bodies, including Member State organisations;
    - (vi) bodies governed by private law with a public service mission, including Member State organisations, to the extent that they are provided with adequate financial guarantees;
    - (vii) bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;
    - (viii) bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

With regard to point (c)(vi) of the first subparagraph, the amount of the financial guarantees required may be set out in the relevant basic act and may be limited to the maximum amount of the Union contribution to the body concerned. In the case of multiple guarantors, the repartition of the amount of the total liability to be covered by the guarantees shall be specified in the contribution agreement, which may provide for the liability of each guarantor to be proportionate to the share of their respective contribution to the body.

- 2 For the purposes of direct management, the Commission may use the instruments referred to in Titles VII, VIII, IX, X and XII.

For the purposes of shared management, the instruments for budget implementation shall be the ones provided for in sector-specific rules.

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For the purposes of indirect management, the Commission shall apply Title VI and, in the case of financial instruments and budgetary guarantees, Titles VI and X. The implementing entities shall apply the instruments for budget implementation set out in the contribution agreement concerned.

3 The Commission is responsible for budget implementation in accordance with Article 317 TFEU and shall not delegate those tasks to third parties, where such tasks involve a large measure of discretion implying political choices.

The Commission shall not, through contracts in accordance with Title VII of this Regulation, outsource tasks involving the exercise of public authority and discretionary powers of judgement.

### Article 63

#### Shared management with Member States

1 Where the Commission implements the budget under shared management, tasks relating to budget implementation shall be delegated to Member States. The Commission and Member States shall respect the principles of sound financial management, transparency and non-discrimination and shall ensure the visibility of the Union action when they manage Union funds. To that end, the Commission and Member States shall fulfil their respective control and audit obligations and assume the resulting responsibilities laid down in this Regulation. Complementary provisions shall be laid down in sector-specific rules.

2 When executing tasks relating to budget implementation, Member States shall take all the necessary measures, including legislative, regulatory and administrative measures, to protect the financial interests of the Union, namely by:

- a ensuring that actions financed from the budget are implemented correctly and effectively and in accordance with the applicable sector-specific rules;
- b designating bodies responsible for the management and control of Union funds in accordance with paragraph 3, and supervising such bodies;
- c preventing, detecting and correcting irregularities and fraud;
- d cooperating, in accordance with this Regulation and sector-specific rules, with the Commission, OLAF, the Court of Auditors and, for those Member States participating in enhanced cooperation pursuant to Council Regulation (EU) 2017/1939<sup>(1)</sup>, with the European Public Prosecutor's Office (EPPO).

In order to protect the financial interests of the Union, Member States shall, while respecting the principle of proportionality, and in compliance with this Article and the relevant sector-specific rules, carry out *ex ante* and *ex post* controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions. They shall also recover funds unduly paid and bring legal proceedings where necessary in that regard.

Member States shall impose effective, dissuasive and proportionate penalties on recipients where provided for in sector-specific rules or in specific provisions in national law.

As part of its risk assessment and in accordance with sector-specific rules, the Commission shall monitor the management and control systems established in Member States. The Commission shall, in its audit work, respect the principle of proportionality and shall take into account the level of risk assessed in accordance with sector-specific rules.

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3 In accordance with the criteria and procedures laid down in sector-specific rules, Member States shall, at the appropriate level, designate bodies to be responsible for the management and control of Union funds. Such bodies may also carry out tasks not related to the management of Union funds and may entrust certain of their tasks to other bodies.

When deciding on the designation of bodies, Member States may base their decision on whether the management and control systems are essentially the same as those already in place for the previous period and whether they have functioned effectively.

If audit and control results show that the designated bodies no longer comply with the criteria set out in sector-specific rules, Member States shall take the measures necessary to ensure that deficiencies in the implementation of the tasks of those bodies are remedied, including by ending the designation in accordance with sector-specific rules.

Sector-specific rules shall define the role of the Commission in the process set out in this paragraph.

- 4 Bodies designated pursuant to paragraph 3 shall:
- a set up and ensure the functioning of an effective and efficient internal control system;
  - b use an accounting system that provides accurate, complete and reliable information in a timely manner;
  - c provide the information required under paragraphs 5, 6 and 7;
  - d ensure *ex post* publication in accordance with Article 38(2) to (6).

Any processing of personal data shall comply with Regulation (EU) 2016/679.

- 5 Bodies designated pursuant to paragraph 3 shall, by 15 February of the following financial year, provide the Commission with:
- a their accounts on the expenditure that was incurred, during the relevant reference period as defined in sector-specific rules, in the execution of their tasks and that was presented to the Commission for reimbursement;
  - b an annual summary of the final audit reports and of controls carried out, including an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned.

- 6 The accounts referred to in point (a) of paragraph 5 shall include pre-financing and sums for which recovery procedures are ongoing or have been completed. They shall be accompanied by a management declaration confirming that, in the opinion of those in charge of the management of the funds:
- a the information is properly presented, complete and accurate;
  - b the expenditure was used for its intended purpose, as defined in sector-specific rules;
  - c the control systems put in place ensure the legality and regularity of the underlying transactions.

- 7 The accounts referred to in point (a) of paragraph 5 and the summary referred to in point (b) of that paragraph shall be accompanied by an opinion of an independent audit body, drawn up in accordance with internationally accepted audit standards. That opinion shall establish whether the accounts give a true and fair view, whether expenditure for which reimbursement has been requested from the Commission is legal and regular, and whether the control systems put in place function properly. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration referred to in paragraph 6.

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The deadline of 15 February set out in paragraph 5 may exceptionally be extended by the Commission to 1 March, upon communication by the Member State concerned.

Member States may, at the appropriate level, publish the information referred to in paragraphs 5 and 6 and in this paragraph.

In addition, Member States may provide to the European Parliament, to the Council and to the Commission declarations signed at the appropriate level based on the information referred to in paragraphs 5 and 6 and in this paragraph.

8 In order to ensure that Union funds are used in accordance with the applicable rules, the Commission shall:

- a apply procedures for the examination and acceptance of the accounts of the designated bodies, ensuring that the accounts are complete, accurate and true;
- b exclude from Union financing expenditure for which disbursements have been made in breach of applicable law;
- c interrupt payment deadlines or suspend payments where provided for in sector-specific rules.

The Commission shall end all or part of the interruption of payment deadlines or suspension of payments after a Member State has presented its observations and as soon as it has taken any necessary measures. The annual activity report referred to in Article 74(9) shall cover all the obligations under this paragraph.

9 Sector-specific rules shall take account of the needs of European Territorial Cooperation programmes as regards, in particular, the content of the management declaration, the process set out in paragraph 3 and the audit function.

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

11 Member States may use resources allocated to them under shared management in combination with operations and instruments carried out under Regulation (EU) 2015/1017 in accordance with the conditions set out in the relevant sector-specific rules.

## CHAPTER 3

### *European offices and Union bodies*

#### *Section 1*

#### *European offices*

#### *Article 64*

### **Scope of competences of European offices**

1 Before setting up a new European office, the Commission shall make a cost-benefit study and an assessment of the associated risks, inform the European Parliament and the Council of the results thereof and propose to enter the necessary appropriations in an annex to the section of the budget relating to the Commission.



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- 2 Within the scope of their competences, European offices:
  - a shall perform obligatory tasks provided for in their act of establishment or in other legal acts of the Union;
  - b may, in accordance with Article 66, perform non-obligatory tasks authorised by their Management Committees having considered the costs, benefits and associated risks for the parties involved.
- 3 This Section shall apply to the operation of OLAF, with the exception of paragraph 4 of this Article, Article 66 and Article 67(1), (2) and (3).
- 4 The internal auditor of the Commission shall exercise all responsibilities laid down in Chapter 8 of this Title.

#### *Article 65*

### **Appropriations regarding European offices**

1 The appropriations authorised to implement obligatory tasks of each European office shall be entered in a specific budget line within the section of the budget relating to the Commission and shall be set out in detail in an annex to that section.

The annex referred to in the first subparagraph shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.

The appropriations entered in that annex:

- a shall cover all the financial requirements of each European office in the performance of the obligatory tasks provided for in its act of establishment or in other legal acts of the Union;
  - b may cover financial requirements of a European office in the performance of tasks requested by Union institutions, Union bodies, other European offices and agencies established by or under the Treaties and authorised in accordance with the act of establishment of the office.
- 2 The Commission shall, in respect of the appropriations entered in the annex for each European office, delegate the powers of authorising officer to the Director of the European office concerned, in accordance with Article 73.
  - 3 The establishment plan of each European office shall be annexed to that of the Commission.
  - 4 The Director of each European office shall take decisions on transfers within the annex referred to in paragraph 1. The Commission shall inform the European Parliament and the Council of such transfers.

#### *Article 66*

### **Non-obligatory tasks**

- 1 For the non-obligatory tasks referred to in point (b) of Article 64(2), a European office may:
  - a receive delegation to its Director from Union institutions, Union bodies and other European offices, together with a delegation of the powers of the authorising officer

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- concerning appropriations entered in the section of the budget relating to the Union institution, Union body or other European office;
- b conclude ad-hoc service-level agreements with Union institutions, Union bodies, other European offices or third parties.
- 2 In the cases referred to in point (a) of paragraph 1, Union institutions, Union bodies and other European offices concerned shall set the limits and conditions for the delegation of powers. Such delegation shall be agreed in accordance with the act of establishment of the European office, in particular as regards the conditions and modalities of the delegation.
- 3 In the cases referred to in point (b) of paragraph 1, the Director of the European office shall, in accordance with its act of establishment, adopt the specific provisions governing the implementation of the tasks, the recovery of costs incurred, and the keeping of the corresponding accounting records. The European office shall report the result of such accounting records to the Union institutions, Union bodies or other European offices concerned.

#### *Article 67*

### **Accounting records of European offices**

- 1 Each European office shall draw up accounting records of its expenditure, enabling the proportion of its services supplied to each of Union institutions, Union bodies or other European offices to be determined. The Director of the European office concerned shall, after approval by its Management Committee, adopt the criteria upon which the accounting records shall be based.
- 2 The remarks concerning the specific budget line, in which the total appropriations for each European office to which the powers of authorising officer have been delegated in accordance with point (a) of Article 66(1) are entered, shall show an estimate of the costs of services supplied by that office to each of the Union institutions, Union bodies and other European offices concerned. This shall be based on the accounting records provided for in paragraph 1 of this Article.
- 3 Each European office to which authorising officer powers have been delegated in accordance with point (a) of Article 66(1) shall notify the Union institutions, Union bodies and other European offices concerned of the results of the accounting records provided for in paragraph 1 of this Article.
- 4 Each European office's accounting records shall form an integral part of the Union's accounts in accordance with Article 241.
- 5 The accounting officer of the Commission, acting on a proposal from the Management Committee of the European office concerned, may delegate to a member of staff of the European office some of the officer's tasks relating to the collection of revenue and the payment of expenditure made directly by the European office concerned.
- 6 To meet the cash requirements of the European office, bank accounts or post office giro accounts may be opened in its name by the Commission, acting on a proposal from the Management Committee. The final cash position for each year shall be reconciled and adjusted between the European office concerned and the Commission at the end of the financial year.

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## Section 2

### **Agencies and Union bodies**

#### Article 68

#### **Applicability to the Euratom Supply Agency**

This Regulation shall apply to the implementation of the budget for the Euratom Supply Agency.

#### Article 69

#### **Executive agencies**

1 The Commission may delegate powers to executive agencies to implement all or part of a Union programme or project, including pilot projects and preparatory actions and the implementation of administrative expenditure, on its behalf and under its responsibility, in accordance with Council Regulation (EC) No 58/2003<sup>(2)</sup>. Executive agencies shall be created by means of a Commission decision and shall have legal personality under Union law. They shall receive an annual contribution.

2 The directors of executive agencies shall act as authorising officers by delegation as regards the implementation of the operational appropriations relating to the Union programmes which they manage in whole or in part.

3 The steering committee of an executive agency may agree with the Commission that the accounting officer of the Commission shall also act as the accounting officer of the executive agency concerned. The steering committee may also entrust the accounting officer of the Commission with part of the tasks of the accounting officer of the executive agency concerned, taking into account cost-benefit considerations. In both cases, the arrangements necessary to avoid any conflict of interests shall be made.

#### Article 70

#### **Bodies set up under the TFEU and the Euratom Treaty**

1 The Commission is empowered to adopt delegated acts in accordance with Article 269 of this Regulation to supplement this Regulation with a framework financial regulation for bodies which are set up under the TFEU and the Euratom Treaty and which have legal personality and receive contributions charged to the budget.

2 The framework financial regulation shall be based on the principles and rules set out in this Regulation, taking into account the specificities of the bodies referred to in paragraph 1.

3 The financial rules of the bodies referred to in paragraph 1 shall not depart from the framework financial regulation except where their specific needs so require and subject to the Commission's prior consent.

4 Discharge for the implementation of the budgets of the bodies referred to in paragraph 1 shall be given by the European Parliament on the recommendation of the Council. The bodies referred to in paragraph 1 shall fully cooperate with the Union institutions involved

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in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies.

5 The internal auditor of the Commission shall exercise the same powers over the bodies referred to in paragraph 1 as those exercised in respect of the Commission.

6 An independent external auditor shall verify that the annual accounts of each of the bodies referred to in paragraph 1 of this Article properly present the income, expenditure and financial position of the relevant body prior to the consolidation in the Commission's final accounts. Unless otherwise provided in the relevant basic act, the Court of Auditors shall prepare a specific annual report on each body in line with the requirements of Article 287(1) TFEU. In preparing that report, the Court of Auditors shall consider the audit work performed by the independent external auditor and the action taken in response to the auditor's findings.

7 All aspects of the independent external audits referred to in paragraph 6, including the reported findings, shall remain under the full responsibility of the Court of Auditors.

#### *Article 71*

### **Public-private partnership bodies**

Bodies having legal personality that are set up by a basic act and entrusted with the implementation of a public-private partnership shall adopt their own financial rules.

Those rules shall include a set of principles necessary to ensure sound financial management of Union funds.

The Commission is empowered to adopt delegated acts in accordance with Article 269 to supplement this Regulation with a model financial regulation for public-private partnership bodies laying down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 154.

The financial rules of the public-private partnership bodies shall not depart from the model financial regulation except where their specific needs so require and subject to the Commission's prior consent.

Article 70(4) to (7) shall apply to public-private partnership bodies.

#### *CHAPTER 4*

### ***Financial actors***

#### *Section 1*

### ***Principle of segregation of duties***

#### *Article 72*

### **Segregation of duties**

1 The duties of authorising officer and accounting officer shall be segregated and mutually exclusive.

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2 Each Union institution shall provide each financial actor with the resources required to perform his or her duties and a charter describing in detail his or her tasks, rights and obligations.

## *Section 2*

### ***Authorising officer***

#### *Article 73*

### **Authorising officer**

1 Each Union institution shall perform the duties of authorising officer.

2 For the purposes of this Title, ‘staff’ means persons covered by the Staff Regulations.

3 Each Union institution shall, in compliance with the conditions in its rules of procedure, delegate the duties of authorising officer to staff at an appropriate level. It shall, in its internal administrative rules, indicate the staff to whom it delegates those duties, the scope of the powers delegated and whether the persons to whom those powers are delegated may subdelegate them.

4 The powers of authorising officer shall be delegated or subdelegated only to staff.

5 The authorising officer responsible shall act within the limits set by the instrument of delegation or subdelegation. The authorising officer responsible may be assisted by one or more members of staff entrusted, under his or her responsibility, with the carrying out of certain operations necessary for budget implementation and the production of the financial and management information.

6 Each Union institution and each Union body referred to in Article 70 shall inform the European Parliament, the Council, the Court of Auditors and the accounting officer of the Commission within two weeks of the appointment and the termination of the duties of authorising officers by delegation, internal auditors and accounting officers, and of any internal rules it adopts in respect of financial matters.

7 Each Union institution shall inform the Court of Auditors of delegation decisions and of the appointment of imprest administrators under Articles 79 and 88.

#### *Article 74*

### **Powers and duties of the authorising officer**

1 The authorising officer shall be responsible in the Union institution concerned for implementing revenue and expenditure in accordance with the principle of sound financial management, including through ensuring reporting on performance, and for ensuring compliance with the requirements of legality and regularity and equal treatment of recipients.

2 For the purposes of paragraph 1 of this Article, the authorising officer by delegation shall, in accordance with Article 36 and the minimum standards adopted by each Union institution and having due regard to the risks associated with the management environment and the nature of the actions financed, put in place the organisational structure and the internal control systems suited to the performance of his or her duties. The establishment of such

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structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost effectiveness and performance considerations.

3 To implement expenditure, the authorising officer responsible shall make budgetary and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminary steps for the implementation of appropriations.

4 To implement revenue, the authorising officer responsible shall draw up estimates of amounts receivable, establish entitlements to be recovered and issue recovery orders. Where appropriate, the authorising officer responsible shall waive established entitlements.

5 In order to prevent errors and irregularities before the authorisation of operations and to mitigate risks of non-achievement of objectives, each operation shall be subject at least to an *ex ante* control relating to the operational and financial aspects of the operation, on the basis of a multiannual control strategy which takes risk into account.

The extent in terms of frequency and intensity of the *ex ante* controls shall be determined by the authorising officer responsible taking into account the results of prior controls as well as risk-based and cost-effectiveness considerations, on the basis of the authorising officer's own risk analysis. In case of doubt, the authorising officer responsible for validating the relevant operations shall, as part of the *ex ante* control, request complementary information or perform an on-the-spot control in order to obtain reasonable assurance.

For a given operation, the verification shall be carried out by staff other than those who initiated the operation. The staff who carry out the verification shall not be subordinate to the members of staff who initiated the operation.

6 The authorising officer by delegation may put in place *ex post* controls to detect and correct errors and irregularities of operations after they have been authorised. Such controls may be organised on a sample basis according to risk and shall take account of the results of prior controls as well as cost-effectiveness and performance considerations.

The *ex post* controls shall be carried out by staff other than those responsible for the *ex ante* controls. The staff responsible for the *ex post* controls shall not be subordinate to the members of staff responsible for the *ex ante* controls.

The rules and modalities, including timeframes, for carrying out audits of the beneficiaries shall be clear, consistent and transparent, and shall be made available to the beneficiaries when signing the grant agreement.

7 Authorising officers responsible and staff responsible for budget implementation shall have the necessary professional skills.

In each Union institution, the authorising officer by delegation shall ensure the following:

- a that the authorising officers by subdelegation and their staff receive regularly updated and appropriate information and training concerning the control standards and the methods and techniques available for that purpose;
- b that measures are taken, where needed, to ensure the effective and efficient functioning of the control systems in accordance with paragraph 2.

8 If a member of staff, involved in the financial management and control of transactions, considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principle of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform his or her hierarchical

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superior accordingly. If the member of staff does so in writing, the hierarchical superior shall reply in writing. If the hierarchical superior fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the authorising officer by delegation in writing. If that officer does not reply within a reasonable time given the circumstances of the case and in any event within a month, the member of staff shall inform the relevant panel referred to in Article 143.

In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, the member of staff shall inform the authorities and bodies designated in the Staff Regulations and in the decisions of Union institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the interests of the Union. Contracts with external auditors carrying out audits of the financial management of the Union shall provide for an obligation of the external auditor to inform the authorising officer by delegation of any suspected illegal activity, fraud or corruption which may harm the interests of the Union.

9 The authorising officer by delegation shall report to his or her Union institution on the performance of his or her duties in the form of an annual activity report containing financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:

- a the information contained in the report presents a true and fair view;
- b the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management; and
- c the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The annual activity report shall include information on the operations carried out, by reference to the objectives and performance considerations set in the strategic plans, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems. The report shall include an overall assessment of the costs and benefits of controls and information on the extent to which the operational expenditure authorised contributes to the achievement of strategic objectives of the Union and generates EU added value. The Commission shall prepare a summary of the annual activity reports for the preceding year.

The annual activity reports for the financial year of the authorising officers and, where applicable, authorising officers by delegation of Union institutions, Union bodies, European offices and agencies shall be published by 1 July of the following financial year on the website of the respective Union institution, Union body, European office or agency in an easily accessible way, subject to duly justified confidentiality and security considerations.

10 The authorising officer by delegation shall, for each financial year, record contracts concluded by negotiated procedures in accordance with points (a) to (f) of point 11.1 and point 39 of Annex I. If the proportion of negotiated procedures in relation to the number of contracts awarded by the same authorising officer by delegation increases significantly in relation to earlier years or if that proportion is distinctly higher than the average recorded for the Union institution, the authorising officer responsible shall report to the Union institution setting out any measures taken to reverse that trend. Each Union institution shall send a report on negotiated procedures to the European Parliament and to the Council. In the case of the Commission, that

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report shall be annexed to the summary of the annual activity reports referred to in paragraph 9 of this Article.

#### *Article 75*

### **Keeping of supporting documents by authorising officers**

The authorising officer shall set up paper-based or electronic systems for the keeping of original supporting documents relating to budget implementation. Such documents shall be kept for at least five years from the date on which the European Parliament gives discharge for the financial year to which the documents relate.

Without prejudice to the first paragraph, documents relating to operations shall in any case be kept until the end of the year following that in which those operations are definitively closed.

Personal data contained in supporting documents shall, where possible, be deleted when those data are not necessary for budgetary discharge, control and audit purposes. Article 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

#### *Article 76*

### **Powers and duties of Heads of Union Delegations**

1 Where Heads of Union delegations act as authorising officers by subdelegation in accordance with Article 60(2), they shall be subject to the Commission as the Union institution responsible for the definition, exercise, monitoring and appraisal of their duties and responsibilities as authorising officers by subdelegation and shall cooperate closely with the Commission with regard to the proper implementation of the funds, in order to ensure, in particular, the legality and regularity of financial transactions, respect for the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union. They shall be subject to the internal rules of the Commission and to the Commission Charter for the implementation of the financial management tasks subdelegated to them. They may be assisted in their duties by Commission staff of Union delegations.

To this effect, Heads of Union delegations shall take the measures necessary to prevent any situation likely to put at risk the Commission's capacity to fulfil its responsibility for budget implementation subdelegated to them, as well as any conflict of priorities which is likely to have an impact on the implementation of the financial management tasks subdelegated to them.

Where a situation or conflict referred to in the second subparagraph arises, Heads of Union delegations shall without delay inform the Directors-General responsible of the Commission and of the EEAS thereof. Those Directors-General shall take appropriate steps to remedy the situation.

2 If Heads of Union delegations find themselves in a situation as referred to in Article 74(8), they shall refer the matter to the panel referred to in Article 143. In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, they shall inform the authorities and bodies designated by the applicable legislation.

3 Heads of Union delegations acting as authorising officers by subdelegation in accordance with Article 60(2) shall report to their authorising officer by delegation so that



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the latter can integrate their reports in his or her annual activity report referred to in Article 74(9). The reports of Heads of Union delegations shall include information on the efficiency and effectiveness of internal control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and provide the assurance referred to in the third subparagraph of Article 92(5). Those reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the European Parliament and to the Council having due regard, where appropriate, to their confidentiality.

Heads of Union delegations shall fully cooperate with Union institutions involved in the discharge procedure and provide, as appropriate, any necessary additional information. In this context, they may be requested to attend meetings of the relevant bodies and assist the authorising officer by delegation responsible.

Heads of Union delegations acting as authorising officers by subdelegation in accordance with Article 60(2) shall reply to any request by the authorising officer by delegation of the Commission at the Commission's own request or, in the context of discharge, at the request of the European Parliament.

The Commission shall ensure that the subdelegating of powers to Heads of Union delegations is not detrimental to the discharge procedure under Article 319 TFEU.

4 Paragraphs 1, 2 and 3 shall also apply to deputy Heads of Union delegations when they act as authorising officers by subdelegation in the absence of Heads of Union delegations.

### *Section 3*

#### ***Accounting officer***

#### *Article 77*

#### **Powers and duties of the accounting officer**

1 Each Union institution shall appoint an accounting officer who shall be responsible in that institution for the following:

- a properly implementing payments, collecting revenue and recovering amounts established as being receivable;
- b preparing and presenting the accounts in accordance with Title XIII;
- c keeping the accounts in accordance with Articles 82 and 84;
- d laying down the accounting rules, procedures and the chart of accounts, in accordance with Articles 80 to 84;
- e laying down and validating the accounting systems and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information;
- f treasury management.

With respect to the tasks referred to in point (e) of the first subparagraph, the accounting officer shall be empowered to verify at any time compliance with the validation criteria.

2 The responsibilities of the accounting officer of the EEAS shall concern only the section of the budget relating to the EEAS as implemented by the EEAS. The accounting officer of the Commission shall remain responsible for the entire section of the budget relating to the Commission, including accounting operations relating to appropriations subdelegated to Heads of Union delegations.

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The accounting officer of the Commission shall also act as the accounting officer of the EEAS in respect of the implementation of the section of the budget relating to the EEAS.

#### *Article 78*

##### **Appointment and termination of duties of the accounting officer**

1 Each Union institution shall appoint an accounting officer from officials subject to the Staff Regulations.

The accounting officer shall be chosen by the Union institution on the grounds of his or her particular competence as evidenced by diplomas or by equivalent professional experience.

2 Two or more Union institutions or bodies may appoint the same accounting officer.

In such case, they shall make the necessary arrangements in order to avoid any conflict of interests.

3 A trial balance shall be drawn up without delay in the event of termination of the duties of the accounting officer.

4 The trial balance accompanied by a hand-over report shall be transmitted to the new accounting officer by the accounting officer who is terminating his or her duties or, if it is not possible, by an official in his or her department.

The new accounting officer shall sign the trial balance in acceptance within one month from the date of transmission and may make reservations.

The hand-over report shall contain the result of the trial balance and any reservations made.

#### *Article 79*

##### **Powers which may be delegated by the accounting officer**

The accounting officer may, in the performance of his or her duties, delegate certain tasks to subordinate staff and to imprest administrators appointed in accordance with Article 89(1).

The instrument of delegation shall set out those tasks.

#### *Article 80*

##### **Accounting rules**

1 The accounting rules to be applied by Union institutions, European offices and the agencies and Union bodies referred to in Section 2 of Chapter 3 of this Title shall be based on internationally accepted accounting standards for the public sector. Those rules shall be adopted by the accounting officer of the Commission following consultation with the accounting officers of other Union institutions, European offices and Union bodies.

2 The accounting officer may deviate from the standards referred to in paragraph 1 if he or she considers this necessary in order to give a fair presentation of the assets and

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liabilities, charges, income and cash flow. Where an accounting rule diverges materially from those standards, the notes to the financial statements shall disclose that fact and the reasons for it.

3 The accounting rules referred to in paragraph 1 shall lay down the structure and content of the financial statements, as well as the accounting principles underlying the accounts.

4 The budget implementation reports referred to in Article 241 shall respect the budgetary principles laid down in this Regulation. They shall provide a detailed record of budget implementation. They shall record all revenue and expenditure operations provided for in this Title and give a fair presentation thereon.

### *Article 81*

#### **Organisation of the accounts**

1 The accounting officer of each Union institution or body shall draw up and keep updated documents describing the organisation of the accounts and the accounting procedures of his or her Union institution or body.

2 Revenue and expenditure shall be recorded in a computerised system according to the economic nature of the operation, as current revenue or expenditure or as capital.

### *Article 82*

#### **Keeping the accounts**

1 The accounting officer of the Commission shall be responsible for laying down the harmonised charts of accounts to be applied by Union institutions, by European offices and by the agencies and Union bodies referred to in Section 2 of Chapter 3 of this Title.

2 The accounting officers shall obtain from authorising officers all the information necessary for the production of accounts which give a fair presentation of the financial situation of Union institutions and of budget implementation. The authorising officers shall guarantee the reliability of that information.

3 Before the adoption of the accounts by the Union institution or the Union body referred to in Article 70, the accounting officer shall sign them off, thereby certifying that he or she has reasonable assurance that the accounts give a fair presentation of the financial situation of the Union institution or the Union body referred to in Article 70.

For that purpose, the accounting officer shall verify that the accounts have been prepared in accordance with the accounting rules referred to in Article 80, and the accounting procedures referred to in point (d) of the first subparagraph of Article 77(1), and that all revenue and expenditure is entered in the accounts.

4 The authorising officer by delegation shall, in accordance with the rules adopted by the accounting officer, send the accounting officer any financial and management information required for the performance of the accounting officer's duties.

The accounting officer shall be informed, regularly and at least for the closure of the accounts, by the authorising officer of the relevant financial data of the fiduciary bank accounts in order to allow the use of Union funds to be reflected in the accounts of the Union.

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The authorising officers shall remain fully responsible for the proper use of the funds they manage, the legality and regularity of the expenditure under their control and the completeness and accuracy of the information sent to the accounting officer.

5 The authorising officer responsible shall notify the accounting officer of all developments or significant modifications of a financial management system, an inventory system or a system for the valuation of assets and liabilities, if it provides data for the accounts of the Union institution or is used to substantiate data thereof, so that the accounting officer can verify compliance with the validation criteria.

At any time, the accounting officer may re-examine a financial management system already validated and may request that the authorising officer responsible establishes an action plan in order to correct, in due time, possible weaknesses.

The authorising officer shall be responsible for the completeness of information sent to the accounting officer.

6 The accounting officer shall be empowered to check the information received as well as to carry out any further checks he or she deems necessary in order to sign off the accounts.

The accounting officer shall, if necessary, make reservations, explaining exactly the nature and scope of such reservations.

7 A Union institution's accounting system shall serve to organise the budgetary and financial information in such a way that figures can be entered, filed and registered.

8 The accounting system shall consist of general accounts and budget accounts. The accounts shall be kept in euro and on the basis of the calendar year.

9 The authorising officer by delegation may also keep detailed management accounts.

10 Supporting documents for the accounting system and for the preparation of the accounts referred to in Article 241 shall be kept for at least five years from the date on which the European Parliament gives discharge for the financial year to which the documents relate.

However, documents relating to operations not definitively closed shall be kept until the end of the year following that in which the operations are closed. Article 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

Each Union institution shall decide in which department the supporting documents are to be kept.

### *Article 83*

#### **Content and keeping of budget accounts**

1 The budget accounts shall for each subdivision of the budget show:

a in the case of expenditure:

- (i) the appropriations authorised in the budget, including the appropriations entered in amending budgets, the appropriations carried over, the appropriations available following collection of assigned revenue, transfers of appropriations and the total appropriations available;
- (ii) the commitment appropriations and payment appropriations in respect of the financial year;

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- b in the case of revenue:
  - (i) the estimates entered in the budget, including the estimates entered in amending budgets, assigned revenue and the total amount of estimated revenue;
  - (ii) the entitlements established and the amounts recovered in respect of the financial year;
- c the commitments still to be paid and the revenue still to be recovered, carried forward from preceding financial years.

The commitment appropriations and payment appropriations referred to in point (a) of the first subparagraph shall be entered and shown separately.

- 2 The budget accounts shall show separately:
  - a the use of appropriations carried over and the appropriations for the financial year;
  - b the clearance of outstanding commitments.

On the revenue side, amounts still to be recovered from preceding financial years shall be shown separately.

#### *Article 84*

### **General accounts**

- 1 The general accounts shall, in chronological order using the double-entry method, record all events and operations which affect the economic and financial situation and the assets and liabilities of Union institutions and of the agencies and Union bodies referred to in Section 2 of Chapter 3 of this Title.
- 2 Balances and movements in the general accounts shall be entered in the accounting ledgers.
- 3 All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which the entries shall refer.
- 4 The accounting system shall be such as to leave a clear audit trail for all accounting entries.

#### *Article 85*

### **Bank accounts**

- 1 For the requirements of treasury management, the accounting officer may, in the name of his or her Union institution, open accounts with financial institutions or national central banks or request for such accounts to be opened. The accounting officer shall also be responsible for closing those accounts or for ensuring that they are closed.
- 2 The terms governing the opening, operation and use of bank accounts shall, depending on internal control requirements, provide that cheques, bank credit transfer orders or any other banking operations must be signed by one or more duly authorised members of staff. Manual instructions shall be signed by at least two duly authorised members of staff, or by the accounting officer.

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3 Within the implementation of a programme or an action, fiduciary accounts may be opened on behalf of the Commission in order to allow for their management by an entity pursuant to point (c)(ii), (iii), (v) or (vi) of the first subparagraph of Article 62(1).

Such accounts shall be opened under the responsibility of the authorising officer in charge of the implementation of the programme or action in agreement with the accounting officer of the Commission.

Such accounts shall be managed under the responsibility of the authorising officer.

4 The accounting officer of the Commission shall lay down rules for the opening, management and closure of fiduciary accounts and their use.

#### *Article 86*

### **Treasury management**

1 Unless otherwise provided in this Regulation, only the accounting officer shall be empowered to manage cash and cash equivalents. The accounting officer shall be responsible for their safekeeping.

2 The accounting officer shall ensure that his or her Union institution has at its disposal sufficient funds to cover the cash requirements arising from budget implementation within the applicable regulatory framework and shall set up procedures to ensure that none of the accounts opened in accordance with Articles 85(1) and 89(3) is in debit.

3 Payments shall be made by bank credit transfer, by cheque or, from imprest accounts, or if specifically authorised by the accounting officer, by debit card, direct debit or other means of payment, in accordance with the rules laid down by the accounting officer.

Before entering into a commitment towards a third party, the authorising officer shall confirm the payee's identity, establish the legal entity and payment details of the payee and enter them in the common file by the Union institution for which the accounting officer is responsible in order to ensure transparency, accountability and proper payment implementation.

The accounting officer may only make payments if the payee's legal entity and payment details have first been entered in a common file by the Union institution for which the accounting officer is responsible.

Authorising officers shall inform the accounting officer of any change in the legal entity and payment details communicated to them by the payee and shall check that those details are valid before they authorise any payment.

#### *Article 87*

### **The inventory of assets**

1 Union institutions and agencies or Union bodies referred to in Section 2 of Chapter 3 of this Title shall keep inventories showing the quantity and value of all their tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

They shall also check that entries in their respective inventories correspond to the actual situation.

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All items acquired with a period of use greater than one year, which are not consumables, and whose purchase price or production cost is higher than that indicated by the accounting procedures referred to in Article 77 shall be entered in the inventory and recorded in the fixed assets accounts.

2 The sale of the Union's tangible assets shall be suitably advertised.

3 Union institutions and agencies or Union bodies referred to in Section 2 of Chapter 3 of this Title shall adopt provisions on safeguarding the assets included in their respective inventories and decide which administrative departments are responsible for the inventory system.

#### *Section 4*

### ***Imprest administrator***

#### *Article 88*

### **Imprest accounts**

1 Imprest accounts may be set up for the payment of expenditure where, owing to the limited amounts involved, it is materially impossible or inefficient to carry out payment operations by budgetary procedures. Imprest accounts may also be set up for the collection of revenue other than own resources.

In Union delegations, imprest accounts may also be used to execute payments of limited amounts by budgetary procedures, if such use is efficient and effective due to local requirements.

The maximum amount which may be paid by the imprest administrator where it is materially impossible or inefficient to carry out payment operations by budgetary procedures shall be established by the accounting officer and shall in any case not exceed EUR 60 000 for each item of expenditure.

However, in the field of crisis management aid and humanitarian aid operations, imprest accounts may be used without any limitation on the amount, while respecting the level of appropriations decided by the European Parliament and by the Council on the corresponding budget line for the current financial year and in accordance with the internal rules of the Commission.

2 In Union delegations, imprest accounts shall be set up for the payment of expenditure from both the sections of the budget relating to the Commission and to the EEAS, ensuring full traceability of expenditure.

#### *Article 89*

### **Creation and administration of imprest accounts**

1 The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer of the Union institution, on the basis of a duly substantiated proposal from the authorising officer responsible. That decision shall set out the respective responsibilities and obligations of the imprest administrator and the authorising officer.

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Imprest administrators shall be chosen from officials or, should the need arise and only in duly substantiated cases, from other members of staff or in accordance with the conditions established in the internal rules of the Commission from personnel employed by the Commission in the field of crisis management aid and humanitarian aid operations provided that their employment contracts guarantee equivalent level of protection in terms of liability as applicable to staff pursuant to Article 95. Imprest administrators shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.

2 In proposals for decisions to create an imprest account, the authorising officer responsible shall ensure that:

- a priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;
- b imprest accounts are used only in duly substantiated cases.

In decisions to create an imprest account, the accounting officer shall specify the operating terms and the conditions for use of the imprest account.

The amendment of the operating terms for an imprest account shall also be the subject of a decision by the accounting officer on a duly substantiated proposal from the authorising officer responsible.

3 Bank accounts for the imprest shall be opened and monitored by the accounting officer, who shall also authorise delegated signatures on them on the basis of a duly substantiated proposal from the authorising officer responsible.

4 Imprest accounts shall be endowed by the accounting officer of the Union institution and shall be placed under the responsibility of imprest administrators.

5 Payments made shall be followed by formal final validation decisions or payment orders signed by the authorising officer responsible.

The imprest transactions shall be settled by the authorising officer by the end of the following month, so that the accounting balance and the bank balance can be reconciled.

6 The accounting officer shall carry out checks, or have them carried out by a staff member in his or her own department or in the authorising department specifically empowered for that purpose. Those checks shall as a general rule be effected on the spot and, where necessary, without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time limit set. The accounting officer shall communicate the findings of those checks to the authorising officer responsible.



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## CHAPTER 5

### **Liability of financial actors**

#### *Section 1*

#### **General rules**

##### *Article 90*

#### **Withdrawal of delegation of powers to and suspension of duties of financial actors**

- 1 Authorising officers responsible may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.
- 2 Accounting officers or imprest administrators, or both, may at any time be suspended temporarily or definitively from their duties by the authority which appointed them.
- 3 Paragraphs 1 and 2 shall be without prejudice to any disciplinary action taken in respect of the financial actors referred to in those paragraphs.

##### *Article 91*

#### **Liability of financial actors for illegal activity, fraud or corruption**

- 1 This Chapter is without prejudice to any liability under criminal law which the financial actors referred to in Article 90 may incur as provided for in applicable national law and in the provisions in force concerning the protection of the financial interests of the Union and the fight against corruption involving Union officials or officials of Member States.
- 2 Without prejudice to Articles 92, 94 and 95 of this Regulation, each authorising officer responsible, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, or for the personnel employed by the Commission in the field of crisis management aid and humanitarian aid operations as referred to in Article 89(1) of this Regulation in their employment contracts. In the event of illegal activity, fraud or corruption which may harm the interests of the Union, the matter shall be referred to the authorities and bodies designated by the applicable legislation, in particular to OLAF.

#### *Section 2*

#### **Rules applicable to authorising officers responsible**

##### *Article 92*

#### **Rules applicable to authorising officers**

- 1 The authorising officer responsible shall be liable for payment of compensation as laid down in the Staff Regulations.

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2 The obligation to pay compensation shall apply in particular if the authorising officer responsible, whether intentionally or through gross negligence on his or her part:

- a determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation;
- b omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the Union institution liable to civil action by third parties.

3 An authorising officer by delegation or sub-delegation who receives a binding instruction which he or she considers to be irregular or contrary to the principle of sound financial management, in particular because the instruction cannot be carried out with the resources allocated to him or her, shall inform the authority from which he or she received the delegation or subdelegation about that fact in writing. If the instruction is confirmed in writing and that confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer by delegation or subdelegation has challenged, the authorising officer by delegation or subdelegation shall not be held liable. He or she shall carry out the instruction, unless it is manifestly illegal or constitutes a breach of the relevant safety standards.

The same procedure shall apply in cases where an authorising officer considers that a decision, which is his or her responsibility to take, is irregular or contrary to the principle of sound financial management or where an authorising officer learns, in the course of acting on a binding instruction, that the circumstances of the case could give rise to such a situation.

Any instructions confirmed in the circumstances referred to in this paragraph shall be recorded by the authorising officer by delegation responsible and mentioned in his or her annual activity report.

4 In the event of subdelegation within his or her service, the authorising officer by delegation shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation.

5 In the event of subdelegation to Heads of Union delegations and their deputies, the authorising officer by delegation shall be responsible for the definition of the internal management and control systems put in place, as well as their efficiency and effectiveness. Heads of Union delegations shall be responsible for the adequate setting up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry out within the Union delegation under their responsibility. Before taking up their duties, they shall complete specific training courses on the tasks and responsibilities of authorising officers and budget implementation.

Heads of Union delegations shall in accordance with Article 76(3) report on their responsibilities pursuant to the first subparagraph of this paragraph.

Each year, Heads of Union delegations shall provide to the authorising officer by delegation of the Commission assurance on the internal management and control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and the results thereof, in order to allow the authorising officer to make the statement of assurance provided for in Article 74(9).

This paragraph shall also apply to deputy Heads of Union delegations when they act as authorising officers by subdelegation in the absence of Heads of Union delegations.

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## Article 93

### Treatment of financial irregularities on the part of a member of staff

1 Without prejudice to the powers of OLAF and to the administrative autonomy of Union institutions, Union bodies, European offices or bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU in respect of members of their staff and with due regard to the protection of whistle-blowers, any infringement of this Regulation, or of a provision relating to financial management or the checking of operations, resulting from an act or omission of a member of staff shall be referred for an opinion to the panel referred to in Article 143, by any of the following:

- a the appointing authority in charge of disciplinary matters;
- b the authorising officer responsible, including Heads of Union delegations and their deputies in their absence acting as authorising officers by subdelegation in accordance with Article 60(2).

Where the panel is directly informed of a matter by a member of staff, it shall transmit the file to the appointing authority of the Union institution, Union body, European office or body or person concerned and shall inform the member of staff accordingly. The appointing authority may request the panel's opinion on the case.

2 A request for an opinion of the panel pursuant to the first subparagraph of paragraph 1 shall be accompanied by a description of the facts and the act or omission which the panel is asked to assess, as well as by relevant supporting documents, including reports of any investigation which has taken place. Wherever possible, the information shall be produced in anonymised form.

Before submitting a request or any additional information to the panel, the appointing authority or the authorising officer, as appropriate, shall give the member of staff involved the opportunity to submit its observations, after having notified to him or her the supporting documents referred to in the first subparagraph, insofar as that notification does not seriously undermine the pursuit of further investigations.

3 In the cases referred in paragraph 1 of this Article, the panel referred to in Article 143 shall be competent to assess whether, on the basis of the elements submitted to it pursuant to paragraph 2 of this Article and any additional information received, a financial irregularity has occurred. On the basis of the opinion of the panel, the Union institution, Union body, European office or body or person concerned shall decide on the appropriate follow-up actions in accordance with the Staff Regulations. If the panel detects systemic problems, it shall make a recommendation to the authorising officer and to the authorising officer by delegation, unless the latter is the member of staff involved, as well as to the internal auditor.

4 Where the panel gives the opinion referred to in paragraph 1 of this Article, it shall be composed of the members referred to in Article 143(2) as well as the following three additional members, which shall be appointed taking into account the need for avoiding any conflicts of interests:

- a a representative of the appointing authority in charge of disciplinary matters of the Union institution, Union body, European office or body or person concerned;
- b a member appointed by the staff committee of the Union institution, Union body, European office or body or person concerned;
- c a member of the legal service of the Union institution employing the member of staff concerned.

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*Status: Point in time view as at 31/01/2020.*

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Where the panel gives the opinion referred to in paragraph 1, it shall be addressed to the appointing authority of the Union institution, Union body, European office or body or person concerned.

5 The panel shall have no investigative powers. The Union institution, Union body, European office or body or person concerned shall cooperate with the panel with a view to ensuring that it has all the information necessary for giving its opinion.

6 Where the panel considers that the case is a matter for OLAF, it shall in accordance with paragraph 1 transmit the file to the relevant appointing authority without delay and inform OLAF immediately.

7 The Member States shall fully support the Union in the enforcement of any liability, under Article 22 of the Staff Regulations, of temporary staff to whom point (e) of Article 2 of the Conditions of Employment of Other Servants of the European Union applies.

### *Section 3*

#### ***Rules applicable to accounting officers and imprest administrators***

##### *Article 94*

#### **Rules applicable to accounting officers**

An accounting officer shall be liable to disciplinary action and payment of compensation, as laid down in, and in accordance with, the procedures in the Staff Regulations. An accounting officer may, in particular, become liable as a result of any of the following forms of misconduct on his or her part:

- (a) losing or damaging funds, assets or documents in his or her keeping;
- (b) wrongly altering bank accounts or postal giro accounts;
- (c) recovering or paying amounts which are not in conformity with the corresponding recovery or payment orders;
- (d) failing to collect revenue due.

##### *Article 95*

#### **Rules applicable to imprest administrators**

An imprest administrator may in particular become liable as a result of any of the following forms of misconduct on his or her part:

- (a) losing or damaging funds, assets or documents in his or her keeping;
- (b) not providing proper supporting documents for the payments he or she has made;
- (c) making payments to persons other than those entitled to such payments;
- (d) failing to collect revenue due.

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## CHAPTER 6

### **Revenue operations**

#### *Section 1*

#### **Making own resources available**

##### *Article 96*

#### **Own resources**

1 An estimate of revenue constituted by own resources, as referred to in Decision 2014/335/EU, Euratom shall be entered in the budget in euro. The corresponding own resources shall be made available in accordance with Regulation (EU, Euratom) No 609/2014.

2 The authorising officer shall draw up a schedule indicating when the own resources defined in Decision 2014/335/EU, Euratom will be made available to the Commission.

Own resources shall be established and recovered in accordance with the rules adopted pursuant to that Decision.

For accounting purposes, the authorising officer shall issue a recovery order for credits and debits to the account for own resources referred to in Regulation (EU, Euratom) No 609/2014.

#### *Section 2*

#### **Estimate of amounts receivable**

##### *Article 97*

#### **Estimate of amounts receivable**

1 When the authorising officer responsible has sufficient and reliable information in respect of any measure or situation which may give rise to an amount being owed to the Union, the authorising officer responsible shall make an estimate of the amount receivable.

2 The estimate of the amount receivable shall be adjusted by the authorising officer responsible as soon as he or she is aware of an event modifying the measure or the situation which gave rise to the estimate being made.

When establishing the recovery order on a measure or situation that had previously given rise to an estimate of amounts receivable, that estimate shall be adjusted accordingly by the authorising officer responsible.

If the recovery order is drawn up for the same amount as the original estimate of amounts receivable, that estimate shall be reduced to zero.

3 By way of derogation from paragraph 1, no estimate of the amount receivable shall be made before Member States make available to the Commission the amounts of own resources

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defined in Decision 2014/335/EU, Euratom, which are paid at fixed intervals by Member States. The authorising officer responsible shall issue a recovery order in respect of those amounts.

### *Section 3*

#### ***Establishment of amounts receivable***

#### *Article 98*

#### **Establishment of amounts receivable**

- 1 In order to establish an amount receivable, the authorising officer responsible shall:
  - a verify that the debt exists;
  - b determine or verify the reality and the amount of the debt; and
  - c verify the conditions according to which the debt is due.

The establishment of an amount receivable shall constitute recognition of the right of the Union in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.

- 2 Any amount receivable that is identified as being certain, of a fixed amount and due shall be established by a recovery order by which the authorising officer responsible instructs the accounting officer to recover the amount. It shall be followed by a debit note sent to the debtor, except for the cases where a waiver procedure is carried out immediately in accordance with the second subparagraph of paragraph 4. Both the recovery order and the debit note shall be drawn up by the authorising officer responsible.

The authorising officer shall send the debit note immediately after establishing the amount receivable and at the latest within a period of five years from the time when the Union institution was, in normal circumstances, in a position to claim its debt. Such period shall not apply where the authorising officer responsible establishes that, despite the efforts which the Union institution has made, the delay in acting was caused by the debtor's conduct.

- 3 To establish an amount receivable the authorising officer responsible shall ensure that:
  - a the amount receivable is certain, meaning that it is not subject to any condition;
  - b the amount receivable is fixed, expressed precisely in cash terms;
  - c the amount receivable is due and is not subject to any payment time;
  - d the particulars of the debtor are correct;
  - e the amount is booked to the correct budgetary item;
  - f the supporting documents are in order; and
  - g the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) or (b) of the first subparagraph of Article 101(2).
- 4 The debit note shall be to inform the debtor that:
  - a the Union has established the amount receivable;
  - b if payment of the debt is made within the deadline, as specified in the debit note, no default interest will be due;
  - c failing payment of the debt within the deadline referred to in point (b) of this subparagraph the debt shall bear interest at the rate referred to in Article 99, without any prejudice to any specific regulations applicable;

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- d failing payment of the debt by the deadline referred to in point (b) the Union institution will effect recovery either by offsetting or by enforcement of any guarantee lodged in advance;
- e the accounting officer may in exceptional circumstances effect recovery by offsetting before the deadline referred to in point (b), where it is necessary to protect the financial interests of the Union when he or she has justified grounds to believe that the amount due to the Union would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting;
- f if, after taking all the steps set out in points (a) to (e) of this subparagraph, the amount has not been recovered in full, the Union institution will effect recovery by enforcement of a decision secured either in accordance with Article 100(2) or by legal action.

Where following the verification of the particulars of the debtor or on the basis of other relevant information available at the time, it is clear that the debt falls under the cases referred to in point (a) or (b) of the first subparagraph of Article 101(2), or that the debit note has not been sent in accordance with paragraph 2 of this Article, the authorising officer shall, after having established the amount receivable, decide to directly waive recovery in accordance with Article 101 without sending a debit note, in agreement with the accounting officer.

In all other cases, the authorising officer shall print out the debit note and send it to the debtor. The accounting officer shall be informed of the dispatch of the debit note through the financial information system.

- 5 Amounts wrongly paid shall be recovered.

#### *Article 99*

#### **Default interest**

1 Without prejudice to any specific provisions deriving from the application of specific regulations, any amount receivable not repaid on the deadline referred to in point (b) of the first subparagraph of Article 98(4) shall bear interest in accordance with paragraphs 2 and 3 of this Article.

2 Except in the case referred to in paragraph 4 of this Article, the interest rate for amounts receivable not repaid on the deadline referred to in point (b) of the first subparagraph of Article 98(4) shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by:

- a eight percentage points where the obligating event is a supply contract or a service contract;
- b three and a half percentage points in all other cases.

3 Interest shall be calculated from the calendar day following the deadline referred to in point (b) of the first subparagraph of Article 98(4) up to the calendar day on which the debt is repaid in full.

The recovery order corresponding to the amount of the default interest shall be issued when that interest is actually received.

4 In the case of fines or other penalties, the interest rate for amounts receivable not paid within the deadline referred to in point (b) of the first subparagraph of Article 98(4) shall be the rate applied by the European Central Bank to its principal refinancing operations, as published

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in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the decision imposing a fine or other penalty has been adopted, increased by:

- a one and a half percentage points where the debtor provides a financial guarantee which is accepted by the accounting officer instead of payment;
- b three and a half percentage points in all other cases.

Where the Court of Justice of the European Union, in the exercise of its competence under Article 261 TFEU, increases the amount of a fine or other penalty, interest on the amount of the increase shall run from the date of the judgment of the Court.

5 In cases where the overall interest rate would be negative it shall be set at zero percent.

#### *Section 4*

#### ***Authorisation of recovery***

#### *Article 100*

#### **Authorisation of recovery**

1 The authorising officer responsible shall, by issuing a recovery order, instruct the accounting officer to recover an amount receivable which that authorising officer responsible has established ('the authorisation of recovery').

2 A Union institution may formally establish an amount as being receivable from persons other than Member States by means of a decision which shall be enforceable within the meaning of Article 299 TFEU.

If the efficient and timely protection of the financial interests of the Union so requires, other Union institutions may, in exceptional circumstances, request the Commission to adopt such an enforceable decision for their benefit with respect to claims arising in relation to staff or in relation to members or former members of a Union institution, provided that those institutions have agreed with the Commission on the practical modalities for the application of this Article.

Such exceptional circumstances shall be deemed to exist when there is no prospect of recovery of the debt by the Union institution concerned by means of a voluntary payment or by means of offsetting as provided for in Article 101(1) and the conditions for waiving the recovery under Article 101(2) and (3) are not met. In all cases, the enforceable decision shall specify that the amounts claimed shall be entered in the section of the budget relating to the Union institution concerned, which shall act as authorising officer. The revenue shall be entered as general revenue except if it constitutes assigned revenue as provided for in Article 21(3).

The requesting Union institution shall inform the Commission of any event likely to alter the recovery and shall intervene in support of the Commission in the event of an appeal against the enforceable decision.



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## Section 5

### Recovery

#### Article 101

##### Rules on recovery

1 The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. The accounting officer shall exercise due diligence to ensure that the Union receives its revenue and shall ensure that the Union's rights are safeguarded.

Partial reimbursement by a debtor who is subject to several recovery orders shall first be posted on the oldest entitlement unless otherwise specified by the debtor. Any partial payments shall first cover the interest.

The accounting officer shall recover amounts due to the budget by offsetting them in accordance with Article 102.

2 The authorising officer responsible may waive recovery of all or part of an established amount receivable only in the following cases:

- a where the foreseeable cost of recovery would exceed the amount to be recovered and the waiver would not harm the image of the Union;
- b where the amount receivable cannot be recovered in view of its age, of delay in the dispatch of the debit note in the terms defined in Article 98(2), of the insolvency of the debtor, or of any other insolvency proceedings;
- c where recovery is inconsistent with the principle of proportionality.

Where the authorising officer responsible plans to waive or partially waive recovery of an established amount receivable, he or she shall ensure that the waiver is in order and is in accordance with the principles of sound financial management and proportionality. The decision to waive recovery shall be substantiated. The authorising officer may delegate the power to take that decision.

3 In the case referred to in point (c) of the first subparagraph of paragraph 2, the authorising officer responsible shall act in accordance with predetermined procedures established within his or her Union institution and shall apply the following criteria which are compulsory and applicable in all circumstances:

- a the facts, having regard to the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeated offence, intent, diligence, good faith, manifest error);
- b the impact that waiving recovery would have on the operation of the Union and its financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law).

4 Depending on the circumstances of the case, the authorising officer responsible shall, where appropriate, take the following additional criteria into account:

- a any distortion of competition that would be caused by the waiving of recovery;
- b the economic and social damage that would be caused were the debt to be recovered in full.

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5 Each Union institution shall send to the European Parliament and to the Council each year a report on the waivers granted by it pursuant to paragraphs 2, 3 and 4 of this Article. Information on waivers below EUR 60 000 shall be provided as a total amount. In the case of the Commission, that report shall be annexed to the summary of the annual activity reports referred to in Article 74(9).

6 The authorising officer responsible may cancel an established amount receivable in full or in part. The partial cancellation of an established amount receivable does not imply the waiver of the remaining established Union entitlement.

In the event of a mistake, the authorising officer responsible shall cancel totally or partially the established amount receivable and include adequate reasons.

Each Union institution shall in its internal rules lay down the conditions and procedure for delegating the power to cancel an established amount receivable.

7 Member States shall have primary responsibility for carrying out controls and audits and for recovering amounts unduly spent, as provided for in sector-specific rules. To the extent that Member States detect and correct irregularities on their own account, they shall be exempt from financial corrections by the Commission concerning those irregularities.

8 The Commission shall make financial corrections on Member States in order to exclude expenditure incurred in breach of applicable law from Union financing. The Commission shall base its financial corrections on the identification of amounts unduly spent, and the financial implications for the budget. Where such amounts cannot be identified precisely, the Commission may apply extrapolated or flat-rate corrections in accordance with sector-specific rules.

The Commission shall, when deciding on the amount of a financial correction, take account of the nature and gravity of the breach of applicable law and the financial implications for the budget, including deficiencies in management and control systems.

The criteria for establishing financial corrections and the procedure to be followed may be laid down in sector-specific rules.

9 The methodology for applying extrapolated or flat-rate corrections shall be laid down in accordance with sector-specific rules with a view to enabling the Commission to protect the financial interests of the Union.

## *Article 102*

### **Recovery by offsetting**

1 Where the debtor has a claim on the Union, or on an executive agency when it implements the budget, that is certain within the meaning of point (a) of Article 98(3), of a fixed amount and due relating to a sum established by a payment order, the accounting officer shall, after expiry of the deadline referred to in point (b) of the first subparagraph of Article 98(4), recover established amounts receivable by offsetting.

In exceptional circumstances, where it is necessary to safeguard the financial interests of the Union and where the accounting officer has justified grounds to believe that the amount due to the Union would be lost, the accounting officer may recover by offsetting before the expiry of the deadline referred to in point (b) of the first subparagraph of Article 98(4).

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The accounting officer may also recover by offsetting before the expiry of the deadline referred to in point (b) of first subparagraph of Article 98(4) when the debtor agrees.

2 Before proceeding with any recovery in accordance with paragraph 1 of this Article, the accounting officer shall consult the authorising officer responsible and inform the debtors concerned, including of the means of redress in accordance with Article 133.

Where the debtor is a national authority or one of its administrative entities, the accounting officer shall also inform the Member State concerned of his or her intention to resort to recovery by offsetting at least 10 working days in advance of proceeding with it. However, in agreement with the Member State or administrative entity concerned, the accounting officer may proceed with the recovery by offsetting before that deadline has passed.

3 The offsetting referred to in paragraph 1 shall have the same effect as a payment and discharge the Union for the amount of the debt and, where appropriate, of the interest due.

#### *Article 103*

### **Recovery procedure failing voluntary payment**

1 Without prejudice to Article 102, if the full amount has not been recovered by the deadline referred to in point (b) of the first subparagraph of Article 98(4), the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.

2 Without prejudice to Article 102, where the recovery method referred to in paragraph 1 of this Article cannot be used and the debtor has failed to pay in response to a letter of formal notice sent by the accounting officer, the accounting officer shall effect recovery by enforcement of a decision secured either in accordance with Article 100(2) or by legal action.

#### *Article 104*

### **Additional time for payment**

The accounting officer may, in collaboration with the authorising officer responsible, allow additional time for payment only at the written request of the debtor, with due indication of the reasons, and provided that the following conditions are fulfilled:

- (a) the debtor undertakes to pay interest at the rate specified in Article 99 for the entire additional period allowed, starting from the deadline referred to in point (b) of the first subparagraph of Article 98(4);
- (b) in order to safeguard the rights of the Union, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the accounting officer of the Union institution.

The guarantee referred to in point (b) of the first paragraph may be replaced by a joint and several guarantee by a third party approved by the accounting officer of the Union institution.

In exceptional circumstances, following a request by the debtor, the accounting officer may waive the requirement of a guarantee referred to in point (b) of the first paragraph

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when, on the basis of his or her assessment, the debtor is willing and able to make the payment in the additional time period but is not able to lodge such guarantee and is in a situation of financial distress.

#### *Article 105*

##### **Limitation period**

1 Without prejudice to the provisions of specific regulations and the application of Decision 2014/335/EU, Euratom, entitlements of the Union in respect of third parties and entitlements of third parties in respect of the Union shall be subject to a limitation period of five years.

2 The limitation period for entitlements of the Union in respect of third parties shall begin to run on the expiry of the deadline referred to in point (b) of the first subparagraph of Article 98(4).

The limitation period for entitlements of third parties in respect of the Union shall begin to run on the date on which the payment of the third party's entitlement is due according to the corresponding legal commitment.

3 The limitation period for entitlements of the Union in respect of third parties shall be interrupted by any act of a Union institution or a Member State acting at the request of a Union institution, notified to the third party and aiming at recovering the debt.

The limitation period for entitlements of third parties in respect of the Union shall be interrupted by any act notified to the Union by its creditors or on behalf of its creditors aiming at recovering the debt.

4 A new limitation period of five years shall begin to run on the day following the interruptions referred to in paragraph 3.

5 Any legal action relating to an entitlement as referred to in paragraph 2, including actions brought before a court which later declares itself not to have jurisdiction, shall interrupt the limitation period. A new limitation period of five years shall not begin to run until a judgment having the force of *res judicata* is given or there is an extrajudicial settlement between the same parties on the same action.

6 Where the accounting officer allows the debtor additional time for payment in accordance with Article 104, this shall be considered as an interruption of the limitation period. A new limitation period of five years shall begin to run on the day following the expiry of the extended time for payment.

7 Entitlements of the Union shall not be recovered after the expiry of the limitation period, as provided for in paragraphs 2 to 6.

#### *Article 106*

##### **National treatment for entitlements of the Union**

In the event of insolvency proceedings, entitlements of the Union shall be given the same preferential treatment as entitlements of the same nature due to public bodies in Member States where the recovery proceedings are being conducted.

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### *Article 107*

#### **Fines, other penalties, sanctions and accrued interest imposed by Union institutions**

1 Amounts received by way of fines, other penalties and sanctions, and any accrued interest or other income generated by them, shall not be entered in the budget as long as the decisions imposing them are or could still become subject to an appeal before the Court of Justice of the European Union.

2 The amounts referred to in paragraph 1 shall be entered in the budget as soon as possible following the exhaustion of all legal remedies. Under duly justified exceptional circumstances or where the exhaustion of all legal remedies occurs after 1 September of the current financial year, the amounts may be entered in the budget in the following financial year.

Amounts that are to be returned to the entity that paid them, following a judgment of the Court of Justice of the European Union, shall not be entered in the budget.

3 Paragraph 1 shall not apply to decisions on clearance of accounts or financial corrections.

### *Article 108*

#### **Recovery of fines, other penalties or sanctions imposed by Union institutions**

1 Where an action is brought before the Court of Justice of the European Union against a decision of a Union institution imposing a fine, other penalty or sanction under the TFEU or the Euratom Treaty and until such time as all legal remedies have been exhausted, the debtor shall either provisionally pay the amounts concerned on the bank account designated by the accounting officer of the Commission or lodge a financial guarantee acceptable to the accounting officer of the Commission. The guarantee shall be independent of the obligation to pay the fine, other penalty or sanction and shall be enforceable on demand. It shall cover the claim as to principal and the interest due as specified in Article 99(4).

2 The Commission shall secure the provisionally collected amounts by having them invested in financial assets, thereby ensuring the security and liquidity of the monies whilst also aiming at yielding a positive return.

3 After the exhaustion of all legal remedies and where the fine, other penalty or sanction has been confirmed by the Court of Justice of the European Union, or where the decision imposing such a fine, other penalty or sanction may no longer become subject to an appeal before the Court of Justice of the European Union, one of the following measures shall be taken:

- a the provisionally collected amounts and the return on them shall be entered in the budget in accordance with Article 107(2);
- b where a financial guarantee has been lodged, it shall be enforced and the corresponding amounts entered in the budget.

Where the amount of the fine, other penalty or sanction has been increased by the Court of Justice of the European Union, points (a) and (b) of the first subparagraph of this paragraph shall apply up to the amounts of the original decision of the Union institution or, if applicable, to the amount laid down in a former judgment by the Court of Justice of the European Union in the same proceedings. The accounting officer of the Commission

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shall collect the amount corresponding to the increase and the interest due as specified in Article 99(4), which shall be entered in the budget.

4 After all legal remedies have been exhausted and where the fine, other penalty or sanction has been cancelled or the amount has been reduced, one of the following measures shall be taken:

- a the provisionally collected amounts or, in the event of a reduction, the relevant part thereof, including any return, shall be repaid to the third party concerned;
- b where a financial guarantee has been lodged, it shall be released accordingly.

In the cases referred to in point (a) of the first subparagraph, where the overall return on the provisionally collected amount is negative, the loss incurred shall be deducted from the amount to be repaid.

#### *Article 109*

### **Compensatory interests**

Without prejudice to Articles 99(2) and 116(5), and for cases other than fines, other penalties and sanctions as referred to in Articles 107 and 108, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union or as a result of an amicable settlement, the interest rate shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month. The interest rate shall not be negative. The interest shall run from the date of payment of the amount to be reimbursed until the date at which the reimbursement is due.

In cases where the overall interest rate would be negative it shall be set at zero percent.

#### *CHAPTER 7*

### **Expenditure operations**

#### *Article 110*

### **Financing decisions**

1 A budgetary commitment shall be preceded by a financing decision adopted by the Union institution or by the authority to which powers have been delegated by the Union institution. The financing decisions shall be annual or multiannual.

The first subparagraph of this paragraph shall not apply in the case of appropriations for the operations of each Union institution under its administrative autonomy that can be implemented without a basic act in accordance with point (e) of Article 58(2), of administrative support expenditure and of contributions to the Union bodies referred to in Articles 70 and 71.

2 The financing decision shall at the same time constitute the annual or multiannual work programme and shall be adopted, as appropriate, as soon as possible after the adoption of the draft budget and in principle no later than 31 March of the year of implementation. Where the relevant basic act provides for specific modalities for the adoption of a financing decision

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or a work programme or both, those modalities shall be applied to the part of the financing decision constituting the work programme, in compliance with the requirements of that basic act. The part which constitutes the work programme shall be published on the website of the Union institution concerned immediately after its adoption and prior to its implementation. The financing decision shall indicate the total amount it covers and shall contain a description of the actions to be financed. It shall specify:

- a the basic act and the budget line;
- b the objectives pursued and the expected results;
- c the methods of implementation;
- d any additional information required by the basic act for the work programme.

3 In addition to the elements referred to in paragraph 2, the financing decision shall set out the following:

- a for grants: the type of applicants targeted by the call for proposals or direct award and the global budgetary envelope reserved for the grants;
- b for procurement: the global budgetary envelope reserved for procurements;
- c for contributions to Union trust funds referred to in Article 234: the appropriations reserved for the trust fund for the year together with the amounts planned over its duration, from the budget as well as from other donors;
- d for prizes: the type of participants targeted by the contest, the global budgetary envelope reserved for the contest and a specific reference to prizes with a unit value of EUR 1 000 000 or more;
- e for financial instruments: the amount allocated to the financial instrument;
- f in the event of indirect management: the person or entity implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or the criteria to be used to select the person or entity;
- g for contributions to blending facilities or platforms: the amount allocated to the blending facility or platform and the list of entities participating in the blending facility or platform;
- h for budgetary guarantees: the amount of annual provisioning and, where applicable, the amount of the budgetary guarantee to be released.

4 The authorising officer by delegation may add any additional information considered appropriate either in the respective financing decision constituting the work programme or in any other document published on the website of the Union institution.

A multiannual financing decision shall be consistent with the financial programming referred to in Article 41(2) and shall specify that the implementation of the decision is subject to the availability of budget appropriations for the respective financial years after the adoption of the budget or as provided for in the system of provisional twelfths.

5 Without prejudice to any specific provision of a basic act, any substantial change in a financing decision already adopted shall follow the same procedure as the initial decision.

### *Article 111*

#### **Expenditure operations**

1 Every item of expenditure shall be committed, validated, authorised and paid.

At the end of the periods referred to in Article 114, the unused balance of budgetary commitments shall be decommitted.

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When executing operations, the authorising officer responsible shall ensure that the expenditure is in compliance with the Treaties, the budget, this Regulation, and other acts adopted pursuant to the Treaties as well as with the principle of sound financial management.

2 Budgetary commitments shall be made and legal commitments entered into by the same authorising officer, except in duly justified cases. In particular, in the field of crisis management aid and humanitarian aid operations, legal commitments may be entered into by Heads of Union delegations, or in their absence by their deputies, on the instruction of the authorising officer responsible of the Commission who remains fully responsible, however, for the underlying transaction. The personnel employed by the Commission in the field of crisis management aid and humanitarian aid operations may sign legal commitments linked to payments executed from imprest accounts of a value not exceeding EUR 2 500.

The authorising officer responsible shall make a budgetary commitment before entering into a legal commitment with third parties or transferring funds to a Union trust fund referred to in Article 234.

The second subparagraph of this paragraph shall not apply:

- a to legal commitments concluded following a declaration of a crisis situation in the framework of a business continuity plan, in accordance with the procedures adopted by the Commission or by any other Union institution under its administrative autonomy;
- b in the case of humanitarian aid operations, civil protection operations and crisis management aid, if efficient delivery of the Union's intervention requires that the Union enter into a legal commitment with third parties immediately and if prior booking of the individual budgetary commitment is not possible.

In the cases referred to in point (b) of the third subparagraph, the budgetary commitment shall be booked without delay after entering into a legal commitment with third parties.

3 The authorising officer responsible shall validate expenditure by accepting that an item of expenditure is charged to the budget, after having checked the supporting documents attesting the creditor's entitlement as per the conditions set in the legal commitment when there is a legal commitment. For that purpose, the authorising officer responsible shall:

- a verify the existence of the creditor's entitlement;
- b determine or verify the reality and the amount of the claim through the endorsement 'certified correct';
- c verify the conditions according to which payment is due.

Notwithstanding the first subparagraph, the validation of expenditure shall also apply to interim or final reports not associated with a payment request in which case the impact on the accounting system is limited to the general accounts.

4 The validation decision shall be expressed through electronically secured signature in accordance with Article 146 by the authorising officer, or by a technically competent member of staff duly empowered by a formal decision of the authorising officer, or, exceptionally, for paper workflow take the form of a stamp incorporating that signature.

With the endorsement 'certified correct' the authorising officer responsible, or a technically competent member of staff duly empowered by the authorising officer responsible, shall certify:

- a for pre-financing: that the conditions required in the legal commitment for the payment of the pre-financing are met;



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- b for interim and balance payments in contracts: that the services provided for in the contract have been properly provided, the supplies properly delivered or that the work has been properly carried out;
- c for interim and balance payments in grants: that the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement, including, where applicable that the costs declared by the beneficiary are eligible.

In the case referred to in point (c) of the second subparagraph, cost estimates shall not be deemed to comply with the eligibility conditions set out in Article 186(3). The same principle shall also apply to interim and final reports not associated to a payment request.

5 In order to authorise the expenditure, the authorising officer responsible shall, after having verified that the appropriations are available, issue a payment order to instruct the accounting officer to pay the amount of expenditure which was previously validated.

Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, the authorising officer may, subject to that officer's risk analysis, order the application of a direct debit system from an imprest account. The application of such a system may also be ordered if it is specifically authorised by the accounting officer in accordance with Article 86(3).

## *Article 112*

### **Types of budgetary commitments**

- 1 Budgetary commitments shall fall into one of the following categories:
- a individual: when the recipient and the amount of the expenditure are known;
  - b global: when at least one of the elements necessary to identify the individual commitment is still not known;
  - c provisional: to cover routine management expenditure for the EAGF as referred to in Article 11(2), and routine administrative expenditure where either the amount or the final payees are not definitively known.

Notwithstanding point (c) of the first subparagraph, routine administrative expenditure relating to Union delegations and Union representations may be covered by provisional budgetary commitments also when the amount and final payee are known.

2 Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the basic act so provides or where they relate to administrative expenditure.

3 A global budgetary commitment shall be made on the basis of a financing decision.

The global budgetary commitment shall be made at the latest before the decision on the recipients and amounts is taken and, where implementation of the appropriations concerned involves the adoption of a work programme, at the earliest after that programme has been adopted.

4 A global budgetary commitment shall be implemented either by the conclusion of a financing agreement, itself providing for the subsequent entering into one or more legal commitments, or by entering into one or more legal commitments.

Financing agreements in the field of direct financial assistance to third countries, including budget support, which constitute legal commitments may give rise to payments without entering into other legal commitments.

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Where the global budgetary commitment is implemented by the conclusion of a financing agreement, the second subparagraph of paragraph 3 shall not apply.

5 Each individual legal commitment entered into following a global budgetary commitment shall, prior to signature, be registered by the authorising officer responsible in the central budgetary accounts and booked to the global budgetary commitment.

6 Provisional budgetary commitments shall be implemented by entering into one or more legal commitments giving rise to an entitlement to subsequent payments. However, in cases relating to expenditure on staff management, expenditure on members or former members of a Union institution or expenditure on communication engaged in by Union institutions for the coverage of Union events, or in the cases referred to in point 14.5 of Annex I, they may be implemented directly by payments without entering into prior legal commitments.

### *Article 113*

#### **Commitments for EAGF appropriations**

1 For each financial year, the EAGF appropriations shall include non-differentiated appropriations for expenditure related to measures referred to in Article 4(1) of Regulation (EU) No 1306/2013. Expenditure related to the measures referred to in Article 4(2) and Article 6 of that Regulation, with the exception of measures financed under non-operational technical assistance and contributions to executive agencies, shall be covered by differentiated appropriations.

2 The Commission decisions fixing the amount of reimbursement of expenditure related to the EAGF incurred by Member States shall constitute global provisional budgetary commitments, which shall not exceed the total appropriations entered in the budget for the EAGF.

3 Global provisional budgetary commitments for the EAGF which have been made for a financial year and which have not given rise to a commitment on specific budget lines by 1 February of the following financial year shall be decommitted in respect of the financial year concerned.

4 Expenditure effected by the authorities and bodies referred to in the rules relating to the EAGF shall, within two months of receipt of the statements sent by Member States, be the subject of a commitment by chapter, article and item. Such commitments may be made after the expiry of that two-month period where a procedure for a transfer of appropriations concerning the relevant budget lines is necessary. Except where payment has not yet been made by Member States or where eligibility is in doubt, the amounts shall be charged as payments within the same two-month period.

The commitments referred to in the first subparagraph of this paragraph shall be deducted from the global provisional budgetary commitment referred to in paragraph 1.

5 Paragraphs 2 and 3 shall apply subject to the examination and acceptance of the accounts.

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## Article 114

### Time limits for commitments

1 Without prejudice to Articles 111(2) and 264(3), legal commitments relating to individual or provisional budgetary commitments shall be entered into by 31 December of year  $n$ , year  $n$  being the one in which the budgetary commitment was made.

2 Global budgetary commitments shall cover the total cost of the corresponding legal commitments entered into up to 31 December of year  $n+1$ .

Where the global budgetary commitment gives rise to the award of a prize referred to in Title IX, the legal commitment referred to in Article 207(4) shall be entered into by 31 December of year  $n+3$ .

In external actions, where the global budgetary commitment gives rise to a financing agreement concluded with a third country, the financing agreement shall be concluded by 31 December of year  $n+1$ . In that case, the global budgetary commitment shall cover the total costs of legal commitments implementing the financing agreement entered into within a period of three years following the date of conclusion of the financing agreement.

However, in the following cases, the global budgetary commitment shall cover the total costs of legal commitments entered into until the end of the period of implementation of the financing agreement:

- a multi-donor actions;
- b blending operations;
- c legal commitments relating to audit and evaluation;
- d the following exceptional circumstances:
  - (i) modifications made to legal commitments which have already been entered into;
  - (ii) legal commitments that are to be entered into after early termination of an existing legal commitment;
  - (iii) changes of the implementing entity.

3 The third and fourth subparagraphs of paragraph 2 shall not apply to the following multiannual programmes that are implemented through split commitments:

- a the Instrument for Pre-accession Assistance established by Regulation (EU) No 231/2014 of the European Parliament and of the Council<sup>(3)</sup>;
- b the European Neighbourhood Instrument established by Regulation (EU) No 232/2014 of the European Parliament and of the Council<sup>(4)</sup>.

In the cases referred to in the first subparagraph, the appropriations shall be automatically decommitted by the Commission in accordance with sector-specific rules.

4 The individual and provisional budgetary commitments for actions extending over more than one financial year shall, except in the case of staff expenditure, have a final date for implementation set, in accordance with the conditions in the legal commitments to which they refer, and taking into account the principle of sound financial management.

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5 Any parts of budgetary commitments which have not been implemented by payments six months after the final date for implementation shall be decommitted.

6 The amount of a budgetary commitment for which no payment within the meaning of Article 115 has been made within two years of the entering into the legal commitment shall be decommitted, except where that amount relates to a case under litigation before judicial courts or arbitral bodies, where the legal commitment takes the form of a financing agreement with a third country or where there are special provisions laid down in sector-specific rules.

### *Article 115*

#### **Types of payments**

1 Payment of expenditure shall be made by the accounting officer within the limits of the funds available.

2 Payment shall be made on production of proof that the relevant action is in accordance with the contract, the agreement or the basic act and shall cover one or more of the following operations:

- a payment of the entire amount due;
- b payment of the amount due in any of the following ways:
  - (i) pre-financing providing a float, which may be divided into a number of payments in accordance with the principle of sound financial management; such pre-financing amount shall be paid either on the basis of the contract, the agreement or the basic act, or on the basis of supporting documents which make it possible to check that the terms of the contract or agreement in question are complied with;
  - (ii) one or more interim payments as a counterpart of a partial execution of the action or partial performance of the contract or agreement, which may clear pre-financing in whole or in part, without prejudice to the basic act;
  - (iii) one payment of the balance of the amounts due where the action is completely executed, or the contract or agreement is completely performed;
- c payment of a provision into the common provisioning fund established pursuant to Article 212.

The payment of the balance shall clear all preceding expenditure. A recovery order shall be issued to recover unused amounts.

3 A distinction shall be made in budgetary accounting between the different types of payment referred to in paragraph 2 at the time each payment is made.

4 The accounting rules referred to in Article 80 shall include the rules for clearing the pre-financing in the accounts and for the acknowledgment of the eligibility of costs.

5 Pre-financing payments shall be cleared regularly by the authorising officer responsible, according to the economic nature of the project and, at the latest, at the end of the project. The clearing shall be performed on the basis of information on costs incurred or confirmation of the conditions for payment being fulfilled in accordance with Article 125 as validated by the authorising officer in accordance with Article 111(3).

For grant agreements, contracts or contribution agreements above EUR 5 000 000, the authorising officer shall obtain at each year-end at least the information needed

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to calculate a reasonable estimate of the costs. That information shall not be used for clearing the pre-financing, but may be used by the authorising officer and the accounting officer to comply with Article 82(2).

For the purposes of the second subparagraph, appropriate provisions shall be included in the legal commitments entered into.

## *Article 116*

### **Time limits for payments**

- 1 Payments shall be made within:
  - a 90 calendar days for contribution agreements, contracts and grant agreements involving technical services or actions which are particularly complex to evaluate and for which payment depends on the approval of a report or a certificate;
  - b 60 calendar days for all other contribution agreements, contracts and grant agreements for which payment depends on the approval of a report or a certificate;
  - c 30 calendar days for all other contribution agreements, contracts and grant agreements.
- 2 The time allowed for making payments shall be understood to include validation, authorisation and the payment of expenditure.

It shall begin to run from the date on which a payment request is received.

- 3 A payment request shall be registered by the authorised department of the authorising officer responsible as soon as possible and is deemed to be received on the date it is registered.

The date of payment is deemed to be the date on which the Union institution's account is debited.

A payment request shall include the following essential elements:

- a the creditor's identification;
- b the amount;
- c the currency;
- d the date.

Where at least one essential element is missing, the payment request shall be rejected.

The creditor shall be informed in writing of a rejection and the reasons for it as soon as possible and in any case within 30 calendar days from the date on which the payment request was received.

- 4 The authorising officer responsible may suspend the time limit for payment where:
  - a the amount of the payment request is not due; or
  - b the appropriate supporting documents have not been produced.

If information comes to the notice of the authorising officer responsible which puts in doubt the eligibility of expenditure in a payment request, he or she may suspend the time limit for payment for the purpose of verifying, including by means of on-the-spot checks, that the expenditure is eligible. The remaining time allowed for payment shall begin to run from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out.

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The creditors concerned shall be informed in writing of the reasons for a suspension.

5 Except in the case of Member States, the EIB and the EIF, on the expiry of the time limits laid down in paragraph 1, the creditor shall be entitled to interest in accordance with the following conditions:

- a the interest rates shall be those referred to in Article 99(2);
- b the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment laid down in paragraph 1 up to the day of payment.

However, in the event that the interest calculated in accordance with the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only on a request submitted within two months of receiving late payment.

6 Each Union institution shall submit to the European Parliament and Council a report on the compliance with and the suspension of the time limits laid down in paragraphs 1 to 4 of this Article. The report of the Commission shall be annexed to the summary of the annual activity reports referred to in Article 74(9).

## CHAPTER 8

### *Internal auditor*

#### *Article 117*

#### **Appointment of the internal auditor**

1 Each Union institution shall establish an internal audit function which shall be performed in compliance with the relevant international standards. The internal auditor appointed by the Union institution concerned shall be accountable to the latter for verifying the proper operation of budget implementation systems and procedures. The internal auditor shall not be the authorising officer or the accounting officer.

2 For the purposes of the internal auditing of the EEAS, Heads of Union delegations, acting as authorising officers by subdelegation in accordance with Article 60(2), shall be subject to the verifying powers of the internal auditor of the Commission for the financial management subdelegated to them.

The internal auditor of the Commission shall also act as the internal auditor of the EEAS in respect of the implementation of the section of the budget relating to the EEAS.

3 Each Union institution shall appoint its internal auditor in accordance with arrangements adapted to its specific features and requirements. Each Union institution shall inform the European Parliament and the Council of the appointment of its internal auditor.

4 Each Union institution shall determine, in accordance with its specific features and its requirements, the scope of the mission of its internal auditor and shall lay down in detail the objectives and procedures for the exercise of the internal audit function with due respect for international internal audit standards.

5 Each Union institution may appoint as internal auditor, by virtue of their particular competence, an official or other servant covered by the Staff Regulations selected from nationals of Member States.

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6 If two or more Union institutions appoint the same internal auditor they shall make the necessary arrangements for the internal auditor to be declared liable for his or her actions as laid down in Article 121.

7 Each Union institution shall inform the European Parliament and Council when the duties of its internal auditor are terminated.

### *Article 118*

#### **Powers and duties of the internal auditor**

1 The internal auditor shall advise his or her Union institution on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The internal auditor shall in particular be responsible for:

- a assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them;
- b assessing the efficiency and effectiveness of the internal control and audit systems applicable to each budget implementation operation.

2 The internal auditor shall perform his or her duties in relation to all the activities and departments of the Union institution concerned. He or she shall enjoy full and unlimited access to all information required to perform his or her duties, if necessary also on-the-spot access, including in Member States and in third countries.

The internal auditor shall take note of the annual report of the authorising officers and any other pieces of information identified.

3 The internal auditor shall report to the Union institution concerned on his or her findings and recommendations. The Union institution concerned shall ensure that action is taken with regard to recommendations resulting from audits.

Each Union institution shall consider whether the recommendations made in the reports of its internal auditor are suitable for an exchange of best practices with other Union institutions.

4 The internal auditor shall submit to the Union institution concerned an annual internal audit report indicating the number and type of internal audits carried out, the principal recommendations made and the action taken with regard to those recommendations.

That annual internal audit report shall mention any systemic problems detected by the panel set up pursuant to Article 143 where it gives the opinion referred to in Article 93.

5 The internal auditor shall, during the elaboration of the report, particularly focus on the overall compliance with the principles of sound financial management and performance, and shall ensure that appropriate measures have been taken in order to steadily improve and enhance their application.

6 Each year, the Commission shall, in the context of the discharge procedure and in accordance with Article 319 TFEU, forward on request its annual internal audit report with due regard to confidentiality requirements.

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7 Each Union institution shall make available the contact details of its internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.

8 Each year each Union institution shall draft a report containing a summary of the number and type of internal audits carried out, a synthesis of the recommendations made and the action taken on those recommendations and forward it to the European Parliament and to the Council as provided for in Article 247.

9 The reports and findings of the internal auditor, as well as the report of the Union institution concerned, shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.

10 Each Union institution shall provide its internal auditor with the resources required for the proper performance of the internal audit function and a mission charter detailing the tasks, rights and obligations of its internal auditor.

#### *Article 119*

### **Work programme of the internal auditor**

1 The internal auditor shall adopt the work programme and shall submit it to the Union institution concerned.

2 Each Union institution may ask its internal auditor to carry out audits not included in the work programme referred to in paragraph 1.

#### *Article 120*

### **Independence of the internal auditor**

1 The internal auditor shall enjoy complete independence in the conduct of the audits. Special rules applicable to the internal auditor shall be laid down by the Union institution concerned and shall be such as to guarantee that the internal auditor is totally independent in the performance of his or her duties, and to establish the internal auditor's responsibility.

2 The internal auditor shall not be given any instructions nor be restricted in any way as regards the performance of the functions which, by virtue of his or her appointment, are assigned to him or her under this Regulation.

3 If the internal auditor is a member of staff, he or she shall exercise exclusive audit functions in full independence and shall assume responsibility as laid down in the Staff Regulations.

#### *Article 121*

### **Liability of the internal auditor**

Each Union institution alone, proceeding in accordance with this Article, may act to have its internal auditor, as a member of staff, declared liable for his or her actions.

Each Union institution shall take a reasoned decision to open an investigation. That decision shall be communicated to the interested party. The Union institution concerned may put in charge of the investigation, under its direct responsibility, one or more



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officials of a grade equal to or higher than that of the member of staff concerned. In the course of the investigation, the views of the interested party shall be heard.

The investigation report shall be communicated to the interested party, who shall then be heard by the Union institution concerned on the subject of that report.

On the basis of the report and the hearing, the Union institution concerned shall adopt either a reasoned decision terminating the proceedings or a reasoned decision in accordance with Articles 22 and 86 of and Annex IX to the Staff Regulations. Decisions imposing disciplinary measures or financial penalties shall be notified to the interested party and communicated, for information purposes, to other Union institutions and the Court of Auditors.

The interested party may bring an action in respect of such decisions before the Court of Justice of the European Union, as provided for in the Staff Regulations.

#### *Article 122*

### **Action before the Court of Justice of the European Union**

Without prejudice to the remedies allowed by the Staff Regulations, the internal auditor may bring an action directly before the Court of Justice of the European Union in respect of any act relating to the performance of his or her duties as internal auditor. He or she shall lodge such an action within three months running from the calendar day on which the act in question came to his or her knowledge

Such actions shall be investigated and heard in accordance with Article 91(5) of the Staff Regulations.

#### *Article 123*

### **Internal audit progress committees**

1 Each Union institution shall establish an internal audit progress committee tasked with ensuring the independence of the internal auditor, monitoring the quality of the internal audit work and ensuring that internal and external audit recommendations are properly taken into account and followed up by its services.

2 The composition of the internal audit progress committee shall be decided by each Union institution taking into account its organisational autonomy and the importance of independent expert advice.

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- (1) Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).
- (2) Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ L 11, 16.1.2003, p. 1).
- (3) Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11).
- (4) Regulation (EU) No 232/2014 of the European Parliament and of the Council of 11 March 2014 establishing a European Neighbourhood Instrument (OJ L 77, 15.3.2014, p. 27).

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