

Targeted revision of the Financial Regulation applicable to the general budget of the Union

Fields marked with * are mandatory.

Introduction

Context

The Financial Regulation[1] lays down the principles and general financial rules for establishing and implementing the EU budget and controlling EU finances. It sets out rules on how the EU institutions procure works, supplies and services, award grants and prizes, and make use of financial instruments or budgetary guarantees.

A substantial revision of the Financial Regulation already took place in 2018. The upcoming revision will be targeted, striking a balance between the stability of the rules and alignment where necessary.

The Commission intends to, where appropriate, align the Financial Regulation with the new rules for the 2021-2027 Multiannual Financial Framework (MFF). The Commission will also follow up to the declarations made by the EU institutions in the context of the MFF package. For instance, the Commission will assess the need to revise the provisions on the external assigned revenue and on reporting on borrowing and lending[2]. The Commission will also consider transferring the full content of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget into the Financial Regulation, and to repeal Regulation 2020/2092 as a consequence[3].

In addition, the Commission will examine targeted improvements and simplifications, to respond to recent events and trends such as the Covid-19 pandemic or increased digitalisation opportunities.

Note that this public consultation aims to gather stakeholders' views specifically on those rules that the Commission thinks can be improved and simplified. It does not cover the general alignment with the rules already agreed for the MFF 2021-2027.

Further information:

- Current [Financial Regulation](#) and a [summary](#)
- [Roadmap](#) for this targeted revision
- [Financial Glossary](#)
- [How EU budget is spent](#)

[1] 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. (OJ L 193, 30.7.2018, p. 1.)

[2] Joint declaration of the European Parliament, the Council and the Commission on reassessing the external assigned revenue and borrowing and lending provisions in the Financial Regulation 2020/C 444 I/06. ([OJ C 444I , 22.12.2020, p. 6](#))

[3] The joint declaration is available [here](#). Note that incorporating this text would be a purely technical exercise, with no changes to the substance, and that Regulation 2020/2092 will be repealed. **Stakeholders are therefore kindly requested not to provide feedback on Regulation 2020/2092 as part of this public consultation.** The Commission is currently preparing guidelines on certain aspects of the application of that Regulation.

About you

* Language of my contribution

* I am giving my contribution as

* First name

* Surname

* Email (this won't be published)

* Organisation name

255 character(s) maximum

* Organisation size

Micro (1 to 9 employees)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

Belgium

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Public

Organisation details and respondent details are published: The type of respondent that you responded to this consultation as, the name of the organisation on whose behalf you reply as well as its transparency number, its size, its country of origin and your contribution will be published. Your name will also be published.

* May the European Commission contact you, in case further details on the submitted information in this questionnaire are required?

Yes

No

* Have you received financing from the EU budget or under programmes supported by the shared management funds, as...?

(more than one box can be ticked)

- a beneficiary of a grant
- an entity affiliated to a grant beneficiary
- a contractor of a procurement contract
- a recipient for financial instruments or budgetary guarantees
- an entrusted entity implementing Union funds and budgetary guarantees under indirect management
- a recipient of a prize
- a remunerated expert
- other
- no funding received

* If other, please specify below

Our members are currently financial intermediaries for several centrally managed programmes (COSME, InnovFin, CCS, EaSI) under the implementation of the EIF and for funds under shared management (mainly ERDF, EAFRD). While several members will be implementing partners for the new InvestEU programme, others will continue to intermediate InvestEU funds implemented by the EIF.

* If you have received funding, which programme did it come from?

(more than one box can be ticked)

- Horizon 2020
- Programme for the Competitiveness of Enterprises and small and medium-sized enterprises
- Connecting Europe Facility (CEF)
- Education, culture and youth programmes (e.g. Erasmus+)
- External action programmes
- Operational programmes supported by the European Structural and Investment Funds
- other

* If other, please specify below

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Items for consultation

1. Integrity of recipients of EU funding: enhanced transparency and protection of the EU's financial interests

1.1. Data on recipients of EU funds and use of a data-mining tool for control and audit purposes, and transparency towards the public

Background

Currently, for transparency purposes, data on recipients of EU funding is made available in different websites/databases by the various actors implementing the EU budget e.g. Member State authorities, entities entrusted with budget implementation in indirect management (“entrusted entities”), the Commission.

In line with the Interinstitutional Agreement on budgetary matters[1], the sector-specific rules on shared management under the 2021-2027 MFF and the [Recovery and Resilience Facility](#)[2] require Member States to collect information on the beneficial ownership of recipients of EU funding. This is exclusively for control and auditing purposes. The relevant legislative acts for the common agricultural policy should contain a similar obligation. The Commission will facilitate access to and analysis of such information by making available a single data-mining and risk-scoring tool.

[1] OJ L 433I , 22.12.2020, p. 28–46

[2] Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility. OJ L 57, 18.2.2021, p. 17–75

1.1.1. Are you in favour of enhancing transparency on the use of EU funding?

- Yes (see follow up question 1.1.2 below)
- No (see follow up question 1.1.5 below)
- No opinion

1.1.2. If yes, please select one or several of the following responses specifying how to enhance transparency:

- a) By collecting and publishing data on recipients of EU funding or funding under EU-supported programmes of Member States in a central public website /database at EU level

- b) By extending the changes described above under a) to all management modes (direct, indirect and shared management[1])

[1] In direct management, the EU budget is implemented by the Commission, in indirect management with entrusted entities like the EIB, World Bank Group, or other international organisations (established inside or outside the EU), and in shared management – with the Member States.

1.1.3. Are you in favour of enhancing the protection of the EU financial interests against e.g. fraud, corruption or conflicts of interest?

- Yes (see follow up question 1.1.4 below)
- No (see follow up question 1.1.5 below)
- No opinion

1.1.4. If yes, please tick one or several of the following boxes specifying how to enhance the protection of the EU financial interests:

- a) By extending the mandatory collection of beneficial ownership information of recipients of EU funding or funding under EU-supported programmes of Member States for control and audit purposes where this is not already collected
- b) By requiring the mandatory use of a single data-mining and risk-scoring tool to access and analyse data on the recipients of EU funding or funding under EU-supported programmes of Member States for control and audit purposes
- c) By extending the changes described above under a) and b) to all management modes direct, indirect and shared management[1])

[1] In direct management, the EU budget is implemented by the Commission, in indirect management with entrusted entities like the EIB, UN organisations, World Bank Group, International Committee of the Red Cross and in shared management – with the Member States.

1.1.5. If not, please explain why

Other comments on section 1.1 (optional):

The collection of information on beneficial ownership shall not go beyond the collection of such data in the frame of anti-money laundering legislation. Discrepancies in the collection methods under AML legislation and the financial regulation could create a massive bureaucratic burden without creating informational value added. In our view, it is important to concentrate on those shareholders of a recipient of EU funding that exert effective control over this recipient. This means that on ulterior levels of ownership, a higher threshold (than the 25%+1 share threshold on the first level of ownership) shall apply for the identification of beneficial owners (see AECM position on the AML legislative proposal: https://aecm.eu/wp-content/uploads/2021/09/202109_AECM-position-on-the-AML-legislative-package.pdf).

1.2. Early Detection and Exclusion System (EDES)

Background

The Commission established the Early Detection and Exclusion system (EDES) to protect the EU's financial interests against unreliable individuals and entities. EDES identifies individuals and entities that pose a risk to the EU's financial interests, so that they can be prevented from receiving EU funds and have financial penalties imposed to them[1].

Lessons learnt since the set-up of the EDES Panel in 2016, and the European Parliament's requests[2], indicate that several situations are currently not covered by EDES. For example: (i) information on beneficiaries of funds under shared management; (ii) parent or sister companies of an excluded entity, or their beneficial owners; and (iii) entities that have already been sanctioned by other organisations (e.g. World Bank Group, European Bank for Reconstruction and Development, European Investment Bank) under equivalent rules. In addition, the current system of notifying unreliable entities allows them to elude adverse consequences of their misconduct for example by not picking up registered mail.

[1] Visit the [EDES page on the Europa site](#) for further information

[2] Resolution accompanying the 2019 Discharge adopted on 27.4.2021 [ref. to OJ to be added when it has been published] and the public hearing on the effectiveness and visibility of EDES of 14.4.2021

1.2.1. Should Union exclusion rules also apply to beneficiaries under programmes supported by the EU shared management funds, where such beneficiaries are found, by an OLAF report or an audit report or any other source made available to the Commission, to be in a situation of serious misconduct (for example corruption, fraud, money laundering, terrorism) or in a situation of conflict of interest?

- Yes
- No
- No opinion

1.2.2. Should EDES also allow excluding companies controlled by the same parent company or having the same beneficial ownership when applying for EU funding, without prejudice to the right of defence?

- Yes
- No
- No opinion

1.2.3. Should EDES also cover entities that have already been excluded from funding (“cross-debarment”) by organisations other than the EU (e.g. World Bank Group, European Bank for Reconstruction and Development, European Investment Bank)?

- Yes
- No
- No opinion

1.2.4. Should the procedure for notifying entities concerned by early detection and exclusion procedures be changed so that the procedure can continue if they avoid collecting registered letters to elude adverse consequences of their misconduct?

- Yes
- No
- No opinion

Comments on questions 1.2.1 -1.2.4 (optional):

1.3. Indirect management

Background:

Under Indirect management, the Commission entrusts the implementation of the EU budget to partners such as national organisations in EU Member States, international organisations, the European Investment Bank or the European Investment Fund. The 2018 Financial Regulation includes an obligation for entrusted entities to comply with applicable Union law and agreed international and Union standards in relation to tax avoidance and non-cooperative jurisdictions for tax purposes as well as to anti-money laundering and terrorism financing. The entrusted entities must have systems, rules and procedures in place that are equivalent to those of the Commission to protect the EU’s financial interest. The Commission checks this equivalence ex ante (before entrusting EU budget implementation), notably in areas like

internal control, accounting or fraud prevention. The Financial Regulation provides that the Commission assesses partners in accordance with the principle of proportionality and considering the nature of the activities and inherent risks involved. If weaknesses are found, the EU budget is protected by including obligations in the agreements the Commission signs with an entrusted entity. These agreements also contain other elements to protect the EU's interests, based on the EU legal framework and standards.

1.3.1. Would you consider that, in line with the principle of proportionality, appropriate due diligence by entrusted entities is an effective way to ensure compliance with applicable Union law and agreed international and Union standards?

- Yes
- No
- No opinion

Comments on question 1.3.1 or other remarks on indirect management (optional):

The emphasis here should be put on the term "proportionality". Our members observe in their InvestEU pillar assessments that the principle of proportionality is not applied. All intermediaries are evaluated with regard to the maximum provisions without adapting them to the specificities of guarantee institutions which are almost exclusively supporting SMEs and especially micro and small companies. Many of the provisions do not apply to the quasi-totality of our members' clients (e.g. ownership by companies in non-cooperative jurisdictions). We would welcome a visible proportionalisation of due diligence requirements.

1.4. Professional conflicting interests of candidates or tenderers

Background:

The Financial Regulation provides that candidates or tenderers must not be subject to conflicts of interest that may negatively affect the performance of the contract (Article 167). Where the contracting authority has established such professional conflicting interests, it may conclude that the tenderer or an involved entity does not possess the required professional capacity to perform the contract to an appropriate quality standard. The presence of professional conflicting interests is examined during the tender evaluation phase based on the statements made through the declarations on honour or commitment letters (when requested).

In an investigation on the award of a contract ([joint enquiry 853/2020/KR](#)) the European Ombudsman stated that the Commission should have been more vigilant in verifying that the company was not subject to a conflict of interest that could negatively affect the performance of the contract. The Ombudsman also found that this case raises issues that should be examined by the EU legislator.

1.4.1. Should the Commission propose to add in the Financial Regulation an obligation for tenderers to disclose any interest which could be perceived to negatively affect their performance of the tasks to be contracted?

- Yes
- Yes, and they should be required to propose specific mitigating measures to remove any perception of professional conflicting interests
- No. It is sufficient if the Commission proposes internal guidelines to its staff on how to take into consideration professional conflicting interests during the procurement process (e.g. through a non-exhaustive list of examples of conflict-of-interest situations together with a clear description of the process that staff should follow and the precise criteria to be applied)
- No opinion

2. Simplification and *necessary* technical clarifications

2.1. EU security and strategic autonomy

Several EU Regulations establishing the 2021-2027 spending programmes (e.g. the EU Space programme) contain provisions on eligibility to participate and to receive EU funding, for instance in the context of EU procurement, which restrict access to the EU market to certain operators or goods in order to protect the EU's essential security or strategic interests.

2.1.1. Should the rules of the Financial Regulation be revised to take into account requirements related to EU security interests?

- Yes (see follow-up question)
- No
- No opinion

2.1.2. If yes, what should those rules be?

In our view, rules should not be revised at the level of the financial regulation, but at programme level. For example, requirements related to EU security interests shall not be taken into account in financial programmes in the area of SME financing. Here the additional complexity would largely exceed potential benefits. Instead these requirements should apply only to security related programmes.

2.1.3. Should the rules of the Financial Regulation be revised to take into account requirements related to EU strategic interests?

- Yes (see follow-up question)
- No
-

No opinion

2.1.4. If yes, what should those rules be?

Also here we would favour to regulate these requirements at programme level.

2.1.5. Should the rules in the Financial Regulation (for example on the origin of goods or on subcontracting) be revised to improve the security of services/supplies provided to the EU institutions, especially for sensitive services (for example in the area of IT)?

- Yes
- No
- No opinion

2.2. More efficient implementation under EU programmes

Background:

The 2018 revision of the Financial Regulation simplified grant rules and reduced the administrative burden for beneficiaries of EU funding. In light of the lessons learnt since its entry into force, the Commission is reflecting on further simplification. For example, the “declaration on honour” currently submitted by all applicants as part of the grant application process, could become necessary only for those applicants that will actually sign a grant agreement (the same applies to tenderers in the context of procurement under EU programmes). Another simplification could be achieved in the provisions applying to financing not linked to costs, as such financing is decoupled from the underlying costs and consequently rules related to those costs are not relevant[1].

[1] Article 125 of the Financial Regulation

2.2.1. To reduce the administrative burden for unsuccessful applicants/tenderers, would you agree that the declaration on honour currently required by the Financial Regulation (Article 196(1)(b)) would only be required after the evaluation and before the signature of the grant agreement/contract?

- Yes
- No
- No opinion

2.2.2. Where the Union contribution is not linked to any specific costs incurred by a beneficiary and instead is paid on the basis of the achievement or results and

conditions, it is clear that the principles of co-financing and no profit cannot be applied in practice, nor should the applicant be asked to submit an estimated budget (since the amount is set by the Commission). In that context, are you in favour of clarifying explicitly in the Financial Regulation that the provisions on (i) an estimated budget, (ii) co-financing, and (iii) no double funding, do not apply?

- Yes
- No
- No opinion

2.3. Financial instruments, budgetary guarantees and financial assistance

Background:

The Financial Regulation sets out several reporting obligations for financial instruments, budgetary guarantees and financial assistance. Three of them are particularly relevant for contingent liabilities^[1] of which two were introduced with the 2018 revision of the Financial Regulation:

- a working document attached to the draft budget with detailed information on budgetary guarantees (Article 41(5)(j) Financial Regulation)
- annual overview report on all financial instruments, budgetary guarantees and financial assistance (Article 250 Financial Regulation)
- annual report with a five-year forecast on the expected inflows/outflows of the budget (Article 247(1)(c) Financial Regulation)

[1] Contingent liabilities are potential financial obligations of the Union that could be incurred depending on the outcome of a future event. For example, for a budgetary guarantee, the Union budget intervenes and pays in case the beneficiary of a guaranteed loan fails to reimburse.

2.3.1. Would you support streamlining the reporting obligations for financial instruments, budgetary guarantees and financial assistance?

- Yes
- No
- No opinion

2.4. Digital controls and audits

Background:

Artificial intelligence is being used more and more, given the wealth of data available electronically. This is an opportunity for the Commission to increase the use of digital

processes and to move towards digital controls and audits (rather than physical checks of paper documents). This would contribute to increased efficiency of controls and potentially reduced administrative burden of controls and audits for all parties, without prejudice to the possibility of physical controls on-the-spot. For this to happen, the Financial Regulation would have to allow the anonymised handling of data for those purposes.

2.4.1. Would you agree that the enhanced use of artificial intelligence, machine learning and big data analytics to promote digital auditing and control is reflected in the revised Financial Regulation?

- Yes
- No
- No opinion

3. Crisis– reflecting lessons learnt

Background:

Following lessons learned as a consequence of the Covid-19 crisis, certain adaptations to crisis management would increase the reactivity of the EU to future crises.

3.1. Lessons learnt from the COVID-19 crisis

3.1.1. Based on your experience with rules on EU funding and COVID 19 crisis management actions, would you recommend changes to the Financial Regulation?

- Yes
- No
- No opinion

3.1.2. If yes, please briefly present the changes you consider appropriate and are not already covered by this questionnaire, and how these changes would improve and simplify current rules:

In a crisis situation such as the outbreak of the Covid-19 pandemic, it is of utmost importance that support measures such as capped guarantees can be provided for free (can, not must!). This was crucial during the current crisis when the Commission and the EIB Group topped up (and improved conditions) of the COSME programme. In such a situation, many of the beneficiary companies - already in a difficult financial situation due to the loss of revenue caused by the lockdown and social distancing measures - might not be able to pay for an urgently needed guarantee. We therefore call for the possibility to offer budgetary guarantees free of charge in duly justified cases.

3.1.3. Under current rules, financial support to third parties for humanitarian aid, emergency support and civil protection operations, and crisis management measures for amounts greater than EUR 60 000, should be justified on a case-by-case. Experience shows that higher amounts are often necessary in the context of humanitarian crises. Should such case-by-case justification:

- ... Be dropped?
- ... Be maintained (for amounts greater than EUR: 60 000 (status quo))
- ... Be maintained, but for amounts higher than EUR 60 000 (see follow up question below)?
- No opinion

3.1.4. If a case-by-case justification should be maintained for a higher amount, please specify the amount:

3.2. Procurement: joint procurement, donations and procurement on behalf of EU Member States, contracts with multiple suppliers (multi-sourcing)

Taking the Emergency Support Instrument[1] rules into account, would you be in favour of allowing EU institutions/bodies to anticipate or provide support in future crises by:

[1] Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union, OJ L 70, 16.3.2016, p. 1. For instance, this Regulation allows the Commission, based on an agreement, to purchase vaccines on behalf and for the account of the Member States.

3.2.1. Procuring on behalf of EU Member States or acting as a central purchasing body in order to donate/resell goods/services to them?

- Yes
- No
- No opinion

3.2.2. Jointly procure e.g. with EU Member States, also when the EU institutions /bodies launching the call are not acquiring the services/supplies themselves?

- Yes
- No
- No opinion

3.2.3. Using multi-sourcing contracts that allow the EU institutions/bodies to draw up contracts with multiple suppliers for the same acquisitions, exceptionally and in particular for critical equipment and services?

- Yes
- No
- No opinion

Final remarks (optional)

If you wish to raise specific points not covered by the questionnaire and/or make concrete proposals, please insert them here:

First of all we would like to emphasise that any simplification is very welcome. Most of our members are very small promotional financial institutions without profit making intention. Extensive reporting obligations weigh heavily on them and distract them from their main mission of supporting viable SMEs in overcoming market failure and thereby accessing finance.

The provision to provide the Union with a remuneration for its budgetary guarantee consistent with its share of the risk (art. 209 2f) impairs the promotional character of a guarantee programme. In our view, the Financial Regulation shall allow for free of charge guarantees in cases where the policy objective justifies such a promotional measure. The success of the COSME programme shows that free of charge guarantees play an important role in small business promotion. A guarantee under InvestEU risks - depending on the price - not to reach the smallest firms (with the most restricted resources). We therefore recommend that provisions on the remuneration of the budgetary guarantee should be introduced in the promotional programme depending on its policy objective, but that no provisions shall be made in the Financial Regulation.

Upload files (optional)

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

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