Per email to the Secretariat of Rapporteurs and Shadow Rapporteurs on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the financial rules applicable to the general budget of the Union (recast) COM (2022) 223

Brussels, 17th November 2022

AECM, EAPB, NEFI Joint Position on the proposal for Draft amendments of the EU Financial Regulation COM (2022) 223 final

On May 16, 2022, the European Commission published a targeted amendment of the EU Financial Regulation "aiming to strike the right balance by focusing on changes that are really necessary" and including "targeted improvements", not least on "strengthening the protection of the Union's financial interests".

Our three associations' members welcome the fact that the EU Commission has made proposals for adjustments to this central legal act. Faced with the manifold challenges at the political, social, environmental, and economical level. We believe speed is the key in order to cater for the massive investment needs that these challenges bring. While focus over the last decades has been on "protecting the EU budget", we plead proportionality aspects should now gain more weight in the financial regulation, allowing for enhanced reactivity and faster implementation of EU programmes. Society and economy are in transition, affecting financing needs and activities on the part of implementing bodies. We believe the EU Financial Regulation should pave the way for a reliable, sustainable and future-oriented spending of EU budget funds irrespective of their management form (direct, indirect, shared).

Though adjustments are clearly necessary due to legal acts established since 2018, the proposal cannot achieve its original goal of simplification. The almost complete deletion of Part II (Amendments to the Sector-Specific Regulations) or the revision in reporting of the EU Commission could represent a simplification for implementing bodies.

Unfortunately, new requirements introduced via the DNSH, EDES, electronical data storage and transparency measures regarding recipients, and tighter submission dates for financial statements counteract these reliefs. The changes proposed are not proportionate from our point of view, and both indirect and shared funding and access to finance for SMEs, small municipalities, small social housing providers could be affected. Each of our associations therefore suggests the following main principles which are further underlined by concrete draft amendment suggestions of our three organizations, which can be found in the addendum:

Avoiding additional administrative burden

AECM, EAPB and NEFI members pay much attention to the issue of quality of reporting. Unfortunately, proposed changes, that include additional reporting requirements, e. g. for intermediaries, additional levels of control (extending also to all possible sub-contractors), shortening of reporting deadlines and many other critical provisions, do not necessarily serve the purpose of better reporting and might render the EU Financial Regulation de facto

unimplementable. Final beneficiaries would expose themselves to too many obligations in comparison to possible advantages caused by using EU support, no matter which form it takes and might ultimately renounce it.

Applying the Proportionality Principle

The EU Financial Regulation refers to the key legal principle of proportionality.

AECM, EAPB and NEFI would like to urge the legislator to test as many provisions against this fundamental principle as possible. This would help finding balanced solutions in the interest of the final beneficiary, of the implementing partner, of the intermediaries and of the EU itself.

As mentioned in the preliminary remarks, applying DNSH test criteria will prove to be difficult as they have only been finalised for two of the six taxonomy environmental targets. In addition, the economic activities mentioned in the Delegated Acts to the Taxonomy only cover a part of the economic sectors, so that the demand for a taxonomy-compliant EU funding allocation would also significantly limit the universe of funding recipients. Also, the auditability and audit burden of the DNSH audit criteria has not yet been clarified by the EU legislator and, due to the lack of ESG data, , which is often not deliverable, especially for public or private development banks, long-term investors, guarantee institutions and financial institutions of small and medium-sized enterprises.

The same holds true for new requirements introduced via the EDES, electronical data storage and transparency measures regarding recipients and tighter submission dates for financial statements that counteract simplification and promised administrative reliefs. The changes proposed are not proportionate as both indirect and shared funding and access to finance for SMEs, small municipalities, small social housing providers could be affected and the extension of EDES to pillar assessed and shared management partners as well as duplicated reporting obligations will certainly be obstacles, not enablers of speedy, sound and sustainable investments.

Proportionality with regard to tax requirements in Article 159 (2) and notably clarification will also help to increase the market acceptance of EU-promoted Financial Instruments.

All in all, if adapted in its current form, the allocation of funds from the EU budget could become uneconomical or even unfeasible for a large portion of our members. For instance, DNSH audit criteria extended to programme and to project level, might jeopardize EU support for SMEs and small-scale projects in other sectors. In the worst-case scenario, this could result in the entire inapplicability of the EU budget.

Relying on both Implementing Partners and Financial Intermediaries

We would like to stress the importance of engaging with implementing partners and financial intermediaries in addition to the EIB when implementing the EU budget. National Promotional Banks and Institutions (NPBIs), Public Banks, Guarantee Institutions and Financial Institutions for SMEs are closest to the needs of the market and play a key role alongside the European Commission for indirect management of EU funds. Both institutions acting as Implementing Partner and as Financial Intermediaries contribute largely to the alignment of European and national policy objectives.

In a context where long-term investment appears to be the backbone of European economic recovery and the transition to a more sustainable and digital economy, these institutions have

a major role to play in investing as much as possible according to the needs of economic actors, be they public or private. They provide a higher level of understanding of local markets and demand needs generated by the private and public sectors. This, allows them to tailor their offer to local customers and at the same time focus on investments that provide added value to the Union's economy.

As implementing partners of the European Commission for the indirect management of EU funds, in accordance with Article 62 of the Financial Regulation, these institutions not only contribute to the fulfilment of Union policy objectives, but also ensure a high level of complementarity between promotional investment programmes financed by the EU and the Member States. Finally, these institutions increase the visibility of Europe's actions in these territories.

Taking into account that InvestEU and EFSD+ allow for indirect management we would like to stress the need to fully recognize the role of NPBIs in the Financial Regulation.

When it comes to deploying financial instruments, the keys to success are the ability to act in due time, with the appropriate instruments and to report appropriately, i.e. in a transparent manner with relevant and accurate sets of data. Proportionality and selectivity of data make this possible without imposing excessive burden on all the stakeholders. In this area, the EU can rely on a security framework made up of multiple components: the labelling of the national public financial institutions, the supervision to which they are subject, the reporting obligations, the audits.

True clarifications and simplifications, as proposed in the attached addendum, would help to increase the secure leverage of the EU financial resources on long term investment, at the same time applying the financial instruments greatly promoted to strengthen the EU action as close to the ground as possible, and furthermore speed up the implementation.

In this context the AECM, EAPB and NEFI associations would like to highlight proposals based on the practical experience of NPBIs, guarantee institutions, implementing partners or intermediaries of EU funds as outlined in the addendum of this paper.

The European Association of Guarantee Institutions (AECM), the European Association of Public Banks (EAPB)and the Network of European Financial Institutions for SMEs (NEFI) would like to thank the European Commission for its draft proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (recast) COM (2022) 223 and we look very much forward to discussing the above mentioned topics with you in more depth.

We stand ready to support the EC and the legislator in maintaining the EU Financial Regulation applicable and to engage in a true dialogue, bringing in their respective expertise and perspective.

Addendum: Proposals for Draft amendments of the EU Financial Regulation COM (2022) 223 final

About us

The 48 members of the **European Association of Guarantee Institutions (AECM)** are operating in 31 countries in Europe. They are either private / mutual guarantee institutions or public promotional institutions or banks. Their mission is to support SMEs in getting access to finance. They provide guarantees to SMEs that have an economically sound project but do not dispose of sufficient bankable collateral. AECM's members operate with counter-guarantees from regional, national, and European level. At the end of 2021, AECM's members had about EUR 312 billion of guarantee volume in portfolio, thereby granting guarantees to around 5.9 million SMEs. AECM's members are by far the most important counterparts of the EIF concerning EU counter-guarantees, having been handling EU guarantees from the very beginning in 1998.

European Association of Guarantee Institutions – AECM
Avenue d'Auderghem 22-28, bte. 10, B-1040 Brussels
Interest Representative Register ID number: 67611102869-33

The European Association of Public Banks (EAPB) gathers member organizations (financial institutions, funding agencies, public banks, associations of public banks and banks with similar interests) from 15 European Member States and countries, representing directly and indirectly the interests of over 90 financial institutions towards the EU and other European stakeholders. With a combined balance sheet total of about EUR 3,500 billion and a market share of around 15%, EAPB members constitute an essential part of the European financial sector, providing financial services and funding for projects that support sustainable economic and social development with, amongst others, activities ranging from the funding of companies/SMEs and the promotion of a greener economy to the financing of social housing, health care, education and public infrastructure at national, regional and local level.

European Association of Public Banks – EAPB
Avenue de la Joyeuse Entrée 1-5, 1040 Brussels
Interest Representative Register ID number: 8754829960-32

The Network of European Financial Institutions for Small and Medium Sized Enterprises (NEFI), which was founded in 1999, consists currently of 21 financial institutions from 20 European Union member states and UK. NEFI pursues the objective of following the financial, political and legal developments in the fields of European economic and financial policies and all measures adopted by the EU institutions which are relevant for promotional financial institutions focusing on the facilitation of SMEs' access to finance. NEFI serves as a contact for the European Institutions providing know-how and information on all matters concerning promotional banking.

Network of European Financial Institutions for Small and Medium Sized Enterprises (NEFI)
Rue Belliard 40, 1000 Brussels / Belgium
Interest Representative Register ID number: 44013762992-64

Addendum: AECM, EAPB, NEFI -
Amendment proposals for Draft amendment of the EU Financial Regulation COM (2022) 223 final
01-12-2022

	Commission Proposal	AECM - EAPB - NEFI - Proposal
Recital 33		
	(33) For reasons of legal certainty and in accordance with the principle of proportionality, the situations in which publication should not take place should be specified. For example, information should not be published with regard to scholarships or other forms of direct support paid to natural persons most in need, to certain contracts with a very low value or to financial support below a certain threshold provided through financial instruments or budgetary guarantees, or in cases where disclosure risks threatening the rights and freedoms of the individuals concerned as protected by the Charter of Fundamental Rights of the European Union or causing harm to the commercial interests of the recipients. **For grants, however, there should be no special exemption from the obligation to publish information on the basis of a specific threshold, in order to maintain the current practice and to allow for transparency.**	(33) For reasons of legal certainty and in accordance with the principle of proportionality, the situations in which publication should not take place should be specified. For example, information should not be published with regard to scholarships or other forms of direct and intermediated financial support paid to natural persons most in need, to certain contracts with a very low value or to financial support below a certain threshold provided through financial instruments ⇨ or budgetary guarantees ⇦ , or in cases where disclosure risks threatening the rights and freedoms of the individuals concerned as protected by the Charter of Fundamental Rights of the European Union or causing harm to the commercial interests of the recipients. **For grants exemptions from the obligation to publish information relating to the final beneficiary should be possible on the basis of the threshold for low value grants according to Art. 2 (42), in order to comply with the principle of proportionality, particularly in the cases of natural persons, SMEs, municipalities or private households.**
➔ *Justification:* Recital 33 explicitly states that exemptions for the publication of data should not be foreseen based on specific thresholds for grants. Art. 38 foresees a few very limited exceptions to this rule. Although we support the need to be transparent, the lack of exemptions is problematic from a proportionality perspective.		
Recital (46), Article 2 (2), Art. 62 (Methods of budget implementation)		
	Recital (46) In order to increase inclusiveness, private or EU-law bodies established in a Member State and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, should be added to the list of entities under point (c) of the first subparagraph of article 62 (1) insofar as they are controlled by public law bodies or private law bodies with public service mission eligible under indirect management, and are provided with adequate	Recital (46) In order to increase inclusiveness, **a national promotional bank or institution, ~~as defined in article 2.50 of the present regulation~~ (➔ shouldn't this be InvestEU Regulation not 'present regulation'?) / ~~Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU programme / Article 2 (20)~~ as well as** private or EU-law bodies established in a Member State and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees should be added to the list of entities under point (c) of the first subparagraph of article 62 (1) insofar as they are controlled by public law bodies or private law bodies with public service mission eligible under indirect management, and are provided with adequate financial guarantees. Where such private or EU-law bodies do not benefit from financial backing provided by a Member State, adequate financial guarantees should take the form of joint and several liability by the controlling bodies or equivalent financial guarantees

	Commission Proposal	AECM - EAPB - NEFI - Proposal
	financial guarantees. Where such private or EU-law bodies do not benefit from financial backing provided by a Member State, adequate financial guarantees should take the form of joint and several liability by the controlling bodies or equivalent financial guarantees.	Art. 2 paragraph 6: 'blending facility or platform' means a cooperation framework established between the Commission and development or other public finance institutions with a view to combining non-repayable forms of support and/or financial instruments and/or budgetary guarantees from the budget and repayable forms of support from development or other public finance institutions **such as national promotional banks or institutions pursuant to item vii of Article 62(1), point (c), first subparagraph and defined in Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU programme / Article 2 (20)**, as well as from private-sector finance institutions and private-sector investors;
	Art. 2 paragraph 6: 'blending facility or platform' means a cooperation framework established between the Commission and development or other public finance institutions with a view to combining non-repayable forms of support and/or financial instruments and/or budgetary guarantees from the budget and repayable forms of support from development or other public finance institutions, **as well as from private-sector finance institutions and private-sector investors;**	Art.2 paragraph 50 (new): **"National promotional bank or institution" means a legal entity that carries out financial activities on a professional basis which has been given mandate by a Member State or a Member State's entity at central, regional, or local level to carry out development or promotional activities as defined in Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU programme / Article 2 (20)** Art. 2 paragraph 57 (new): **"Public finance institution" may refer to financial institutions defined as or controlled by public law bodies or private law bodies and assigned to perform public interest missions, such as national promotional bank or institution pursuant to item x of Article 62(1), point (c), first subparagraph and defined in Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU programme / Article 2 (20) (→same here: isn't this InvestEU rather than FR?)**
	Article 62 : 1. The Commission shall implement the budget in any of the following ways […] (c) indirectly ('indirect management') as set out in Articles 126 to 153 and 158 to 163, where this is provided for in the basic act or in the cases referred to Article 58(2), points (a) to (d), by entrusting budget implementation tasks to:	Article 62: 1. The Commission shall implement the budget in any of the following ways […] (c) indirectly ('indirect management') as set out in Articles 126 to 153 and 158 to 163, where this is provided for in the basic act or in the cases referred to Article 58(2), points (a) to (d), by entrusting budget implementation tasks to: ix) (NEW) bodies established in a Member State, governed by the private law of a Member State or Union law and eligible to be entrusted, in accordance with sector-specific rules, with the implementation of Union funds or budgetary guarantees, to the extent that such bodies are controlled by bodies as set out in point (v) or (vi) and are provided with adequate financial guarantees in the form of joint and several liability by the controlling bodies or equivalent financial guarantees and which may be, for each action, limited to the maximum amount of the Union support **(x) (NEW) national promotional bank or institution defined in Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU programme / Article 2 (20)**
→	*Justification:* In a context where long-term investment appears to be the backbone of European economic recovery and the transition to a more sustainable and digital economy, national public financial institutions (NPBIs) have a major role to play in investing as closely as possible to the needs of public and private economic actors. As implementing partners of the European Commission as well as potential implementing partners for the indirect management of EU funds, in accordance with Article 62 of the Financial Regulation, these institutions not only contribute to the alignment of European and national policy objectives, but also ensure a high level of complementarity between promotional investment programmes financed by the EU and by the Member States. Finally, these institutions increase the visibility of Europe's actions in the territories. The launch of a single guarantee fund, "InvestEU", as part of the 2021-2027 financial programming, which are open to NPBIs, specifically require the labelling and validation of the	

	Commission Proposal	AECM - EAPB - NEFI - Proposal
	European Commission. Compliance work implemented to obtain this accreditation has allowed NPBIs to demonstrate the equivalence and compatibility of their internal procedures with those of the European Commission.It is in this context that the request is made by our associations for an explicit mention in the EU financial regulation for their role as implementing partners in reference to the indirect management of EU funds.	
Recital (24) and Art. 33(2) (DNSH) and Art. 2 (42)		
	(24) Considering the importance of addressing climate and environmental challenges and in order to ensure that budget implementation contributes to the achievement of the European Green Deal, the concept of performance as regards the budget should be extended **to include the implementation of programmes and activities in a sustainable way,** which would not hinder the achievement of the environmental objectives of climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems. Art. 33.2 **(d) programmes and activities should be implemented to achieve their set objectives without doing significant harm to the environmental objectives of climate change mitigation,** climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems, as set out in Article 9 of Regulation (EU) 2020/852 of the European Parliament and of the Council.	Art. 33.2 (d) new: ~~**programmes and activities**~~ EU financing programs shall in general be implemented to achieve their set objectives without doing significant harm to the environmental objectives of climate change mitigation, climate change adaptation, the sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control and the protection and restoration of biodiversity and ecosystems, as set out in Article 9 of Regulation (EU) 2020/852 of the European Parliament and of the Council 68. **This DNSH principle shall apply to part of EU financing programs to be decided in each program. It would apply under the next MFF starting in 2028. The DNSH principle shall not apply to low-value financial operations funded by EU financing programs and that are lower than €10 million in accordance with article 2 (42) bis as well as to low value grants in accordance with art. 2 (42).** **Consequently:** **Art. 2 (42) bis refers to 'low-value financial operations' as a financial instrument or a budgetary guarantee provided to the final beneficiary with a lower value than EUR 10 000 000.** as well as Rec. 24 should be amended accordingly: **(..) the concept of performance as regards the budget should be extended to include financing and investment operations in a sustainable way (..)**
➔	*Justification:* The question arises as to how to interpret / apply this provision **to "programmes and activities"** that fall under the application of this financial regulation. Indeed, the word 'programme' in the context of the financial regulation is quite misleading. To be more concrete: Will support to SMEs, municipalities or private households in the future be subject to DNSH scrutiny as well? So far, SMEs, municipalities and private households are purposefully not subject to the application of the EU taxonomy. Also, the InvestEU Regulation reinforced by the Sustainability proofing guidance foresees that (..) *'for direct operations (investment and general corporate finance/direct equity) the threshold is € 10m*', where for intermediated operations *'for financing SMEs, small mid-caps and other enterprises **no screening or full sustainability proofing will be required**'* (..) in order to limit the substantial additional burden to larger projects / ticket sizes. We argue that in line with Art. 2 (42) "(..) and in line with the principle of proportionality, as required by Article 8 (5) of the InvestEU Regulation, operations below an established threshold are exempt from the requirement for screening and sustainability proofing." As another example, the Common Provision Rules (CPR) contains a similar provision, however it is applied at programme level, the scrutiny does not extend to the final beneficiary.	

	Commission Proposal	AECM - EAPB - NEFI - Proposal
	It should be noted that applying a DNSH principle to all programs and projects would entail the risk of stopping e.g. equity funding but also the funding of working capital needs of companies since there are no use of proceeds attached (as opposed to project financing). Yet, these fundings are key to financing the green transition of enterprises (e.g., industry) which are not natively green at the moment when they are funded. In these cases, the DNSH principle could therefore be counterproductive since it would hinder the capacity to achieve the Green deal objective of carbon neutrality by 2050. We would like to avoid that taxonomy alignment be a precondition for the spending of the EU-budget The regulation should therefore pave the way, enable and incentivise EU-supported investments. The wording is very open and no limits are proposed, we would strongly recommend the insertion of thresholds that do not jeopardise EU support to SMEs, municipalities or private households but also equity and working capital financing. This could be done within the FR – as proposed above. Alternatively, the FR would need to at least foresee an opening and leave the threshold(s) to the regulation/sector-specific rules setting up the respective instrument. Processes, especially for complex documentations and data collection, must be established as well. Thus, it seems proportionate to allow for more implementation time, e. g. the next MFF. This said, the EU taxonomy was not meant as a basis for disbursing EU funds in the first place and it is important to exclude any reference to EU taxonomy criteria. The EU taxonomy criteria does not cover all economic activities and most of all reflect criteria and standards of a decarbonised economy that the EU aims to reach in 2050. The legislators should also be aware of the very strong ties the EC proposal enshrines onto itself, making reactions to different crises, as we have been witnessing them in recent years, virtually impossible. The same is true for instruments such as the ETS Modernisation Fund and to some extent, also to the ETS Innovation Fund or REPowerEU (new chapter for the national resilience and reconstruction plans)	
Article 2 (55) (Definitions)		
	Art. 2 (55) 'professional conflicting interests' means a situation in which the previous or ongoing professional activities of an economic operator affect or risk affecting its capacity to perform a contract in an independent, impartial and objective manner'	~~Art. 2 (55)~~ ~~**'professional conflicting interests' means a situation in which the previous or ongoing professional activities of an economic operator affect or risk affecting its capacity to perform a contract in an independent, impartial and objective manner;**~~
➔	*Justification: It is not possible to distinguish between "professional" and "other" conflicts of interest, nor is it possible to measure them or document them in any meaningful way.*	
Article 36 (Internal control budget implementation) Art. 275 new		
	(..) 2. For the purposes of budget implementation, internal control shall be applied at all levels of management and shall be designed to provide reasonable assurance of achieving the following objectives: (a) effectiveness, efficiency and economy of operations; (b) reliability of reporting; (c) safeguarding of assets and information; **(d) prevention, detection, correction and follow-up of fraud , corruption, conflicts of interest, double funding and other irregularities, including through the electronic recording and storage of data on the recipients of Union funds including**	(..) 2. For the purposes of budget implementation, internal control shall be applied at all levels of management and shall be designed to provide reasonable assurance of achieving the following objectives: (a) effectiveness, efficiency and economy of operations; (b) reliability of reporting; (c) safeguarding of assets and information; (d) prevention, detection, correction and follow-up of fraud , corruption, conflicts of interest, double funding and other irregularities~~, including through the electronic recording and storage of data on the recipients of Union funds including their beneficial owners, as defined in Article 3, point (6), of Directive (EU) 2015/849 , and through the use of a single integrated IT system for data-mining and risk-scoring provided by the Commission to access and analyse those data ;~~ (..) ~~6. For the purposes of point (d) of paragraph 2, the following data shall be recorded and stored electronically in an open, interoperable and machine-readable format and regularly made available in the single integrated IT system for data-mining and risk-scoring provided by the Commission:~~

	Commission Proposal	AECM - EAPB - NEFI - Proposal
	their beneficial owners, as defined in Article 3, point (6), of Directive (EU) 2015/849 , and through the use of a single integrated IT system for data-mining and risk-scoring provided by the Commission to access and analyse those data ; **(..)** **6. For the purposes of point (d) of paragraph 2, the following data shall be recorded and stored electronically in an open, interoperable and machine-readable format and regularly made available in the single integrated IT system for data-mining and risk-scoring provided by the Commission:** **(a) the recipient's full legal name in the case of legal persons, the first and last name in the case of natural persons, their VAT identification number or tax identification number where available or another unique identifier at country level and the amount of funding. If a natural person, also the date of birth;** **(b) the first name(s), last name(s), date of birth, and VAT identification number(s) or tax identification number(s) where available or another unique identifier at country level of beneficial owner(s) of the recipients, where the recipients are not natural persons.** **7. The single integrated IT system for data-mining and risk-scoring shall be designed to facilitate risk assessment for the purposes of selection, award, financial management, monitoring, investigation, control and audit and contribute to effective prevention, detection, correction and follow-up of fraud, corruption, conflicts of interest, double funding and other irregularities.** **The use of and access to the data processed by the single integrated IT system for data-mining and risk-scoring shall comply with applicable data**	~~(a) the recipient's full legal name in the case of legal persons, the first and last name in the case of natural persons, their VAT identification number or tax identification number where available or another unique identifier at country level and the amount of funding. If a natural person, also the date of birth;~~ ~~(b) the first name(s), last name(s), date of birth, and VAT identification number(s) or tax identification number(s) where available or another unique identifier at country level of beneficial owner(s) of the recipients, where the recipients are not natural persons.~~ ~~7. The single integrated IT system for data-mining and risk-scoring shall be designed to facilitate risk assessment for the purposes of selection, award, financial management, monitoring, investigation, control and audit and contribute to effective prevention, detection, correction and follow-up of fraud, corruption, conflicts of interest, double funding and other irregularities.~~ ~~The use of and access to the data processed by the single integrated IT system for data-mining and risk-scoring shall comply with applicable data protection rules and shall be limited to the Commission or an executive agency as referred to in Article 69, the Member States implementing the budget pursuant to Article 62(1), first subparagraph, point (b), the Member States that receive and implement Union funds pursuant to budget implementation under Article 62(1), first subparagraph, point (a), the persons or entities implementing the budget pursuant to Article 62(1), first subparagraph, point (c), OLAF, the Court of Auditors, EPPO and other Union investigative and control bodies, within the exercise of their respective competences.~~ ~~The Commission shall be the controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725 and shall be responsible for the development, management and supervision of the single integrated IT system for data-mining and risk-scoring, for ensuring the security, integrity and confidentiality of data, the authentication of the users and for protecting the IT system against mismanagement and misuse.~~ ~~8~~.6. Member States that receive and implement Union funds, pursuant to budget implementation under Article 62(1), first subparagraph, point (a), shall apply paragraphs 1 to 7 5 of this Article. 7. For the purposes of the application of the requirements of paragraphs 2 **and** 3 ~~**and 6**~~ of this Article by Member States implementing the budget under Article 62(1), first subparagraph, point (b), references to recipients shall be understood as references to beneficiaries as defined in sector-specific rules. ~~10. As part of its control strategy, the Commission shall, where appropriate, design and perform controls and audits that use automated IT tools and emerging technologies.~~

	Commission Proposal	AECM - EAPB - NEFI - Proposal
	protection rules and shall be limited to the Commission or an executive agency as referred to in Article 69, the Member States implementing the budget pursuant to Article 62(1), first subparagraph, point (b), the Member States that receive and implement Union funds pursuant to budget implementation under Article 62(1), first subparagraph, point (a), the persons or entities implementing the budget pursuant to Article 62(1), first subparagraph, point (c), OLAF, the Court of Auditors, EPPO and other Union investigative and control bodies, within the exercise of their respective competences. **The Commission shall be the controller within the meaning of Article 3(8) of Regulation (EU) 2018/1725 and shall be responsible for the development, management and supervision of the single integrated IT system for data-mining and risk-scoring, for ensuring the security, integrity and confidentiality of data, the authentication of the users and for protecting the IT system against mismanagement and misuse.** **8.** Member States that receive and implement Union funds, pursuant to budget implementation under Article 62(1), first subparagraph, point (a), shall apply paragraphs 1 to 7 of this Article. 9. For the purposes of the application of the requirements of paragraphs 2, 3 and 6 of this Article by Member States implementing the budget under Article 62(1), first subparagraph, point (b), references to recipients shall be understood as references to beneficiaries as defined in sector-specific rules. 10. As part of its control strategy, the Commission shall, where appropriate, design and perform controls and audits that use automated IT tools and emerging technologies.	
➔	*Justification:* The Commission and the Member States implementing the budget in shared or direct management and all implementing partners of EU funding (art 62.1 c) already comply with all obligations related to the correct implementation of Union funds and budgetary guarantees (article 159). This includes prevention, detection, correction and follow-up of fraud, corruption, double funding and other irregularities. Implementing partners of EU funding and Members State are also regularly audited on these aspects.	

	Commission Proposal	AECM - EAPB - NEFI - Proposal
	Therefore, we do not see any added value of creating an integrated IT system for data-mining and risk-scoring to access those data on the recipients of Union funding. This would add another heavy reporting layer to the management of EU funding for implementing partners and Member States and there is no evidence that it is needed and/or useful.	
Article 38 (Publication of information on recipients and other information)		
	Art. 38. 3. The information referred to in ~~the first subparagraph~~ of paragraph 2 shall not be published ⇨ and shall not be submitted for publication in accordance with paragraph 6 of this Article for ⇦ : (…) (d) where disclosure risks threatening the rights and freedoms of the persons or entities concerned as protected by the Charter of Fundamental Rights of the European Union or harming the commercial interests of the recipients.	Art. 38.3. The information referred to in ~~the first subparagraph of~~ paragraph 2 shall not be published ⇨ and shall not be submitted for publication in accordance with paragraph 6 of this Article for ⇦ : (…) (d) where disclosure risks threatening the rights and freedoms of the persons or entities concerned as protected by the Charter of Fundamental Rights of the European Union or harming the commercial interests **of the final recipients, financial intermediaries or financial sub-intermediaries.**
➔	*Justification:* Consistently applying the principle of proportionality across the chain.	
Article 80 (Accounting rules)		
	Art. 80 II: 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 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.	Art. 80 II: 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 liabilities, charges, income and cash flow. **Internationally-accepted accounting standards such as IFRS should generally be accepted for actions under indirect management.** Where an accounting rule diverges materially from those standards, the notes to the financial statements shall disclose that fact and the reasons for it.
➔	Justification: The European Commission reviewed its own rules and adjusted its accounting doctrine by publishing in December 2020 the "EU accounting rules" (EAR 11) consolidating the 3 IPSAS standards for financial instruments (IPSAS 28, IPSAS 30 and IPSAS 41) and allowing their early application on 1 January 2021 (instead of 2023). *Our Members do not use the IPSAS standard, given they are not part of public administration. All NPBIs would rather report according to IFRS or national GAAP or a combination of both as* in most cases both standards overlap, with only a few exceptions. The proposed revision of the Financial Regulation, Article 213 makes this requirement explicit. In parallel, Articles 223(6b) and 155 (recast in Art. 159) removes the reference to this reporting requirement expected in IPSAS. From our perspective, allowing implementing partners to report according to IFRS i.e. national GAAP would be a significant simplification and international accounting standards such as IFRS should be generally accepted at least under indirect management.	
Article 128 (Cross-reliance on audits)		
	Cross-reliance on audits Without prejudice to existing possibilities for carrying out further audits, where an audit based on internationally accepted audit standards providing reasonable assurance has been conducted by an independent auditor on the financial statements and	**Single audit principle:** Without prejudice to existing possibilities for carrying out further audits, where an audit based on internationally accepted audit standards providing reasonable assurance has been conducted by an independent auditor on the financial statements and reports setting out the use of a Union contribution, **that audit shall be considered a sufficient assurance for all other potential auditors. Where appropriate, auditors may agree, prior to a single audit on certain aspects, to be considered in the single audit. An auditor may, in duly justified cases,**

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	reports setting out the use of a Union contribution, that audit shall **form the basis of the overall assurance, as further specified, where appropriate, in sector-specific rules, provided that there is sufficient evidence of the independence and competence of the auditor.** To that end, the report of the independent auditor and the related audit documentation shall be made available on request to the European Parliament, the Commission, the Court of Auditors and the audit authorities of Member States.	**perform an additional but limited audit. In such cases, these additional costs may be recovered by the EU in the form of administrative costs.** To that end, the report of the independent auditor and the related audit documentation shall be made available on request to the European Parliament, the Commission, the Court of Auditors and the audit authorities of Member States.
➔ Justification: Multiple audits have proven to become a major cost factor when implementing EU funds over the course of the last decade. As such, we very much welcomed the insertion of art. 128 on the cross-reliance on audits into the EU Financial Regulation. However, in practice, this cross-reliance is often not lived. This results in the same projects / promotional programmes being audited several times, partially with slightly different questions or focal points. During such audits, the teams responsible for the management of the product or financing are fully absorbed by the auditor. Two solutions are possible here: Either additional audits form part of administrative costs in the future and can be refunded to the IP through the EU, or the legislators introduces the single audit principle, limiting the number of audits from the start. Our members have a strong preference for the single audit principle since it significantly reduces the costs and administrative burden. In addition, when carrying out an audit or investigation, the respective bodies should adopt the principle of risk proportionality to minimise the administrative burden at all levels.		
Article 130 (Cooperation for protection of the financial interests of the Union)		
	Article 130~~129~~ *Cooperation for protection of the financial interests of the Union*	**Title 2, Chapter 9 (new) Principle of proportionality.** **Art. 38bis (new): The principle of proportionality shall apply to all obligations on third parties stemming from the EU Financial Regulation.** **In reference to financial instruments and budgetary guarantees, as well as pillar assessed entities according to article 158.4, a risk-based proportionality approach specified to the respective instrument should apply.** **The application of the principle of proportionality shall ensure that the EU programmes and activities can be implemented swiftly and with a considerably lighter administrative burden for SMEs as well as other small-scale support in direct, indirect, or shared management, including via intermediated management and via pillar-assessed implementing partners in particular.** Article 130~~129~~ Cooperation for protection of the financial interests of the Union **3 (new). In carrying out the respective competences in accordance with the above paragraphs, the respective bodies apply the principle of risk-based proportionality.**
➔ Justification: A risk-based proportionality approach could be the solution to many of the proportionality aspects within the financial regulation. Is the risk of a misuse of EU funds really that high in the case of small amounts of grants for example in the context of development finance that a full reporting is warranted? How large is the risk of money laundering within institutions that are already subjected to EU anti-money-laundering rules? Or rather: In how far would additional reporting obligations help reduce this risk?		

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	How does the risk that a person on the EDES list uses an infrastructure built with the support of the EU compare to the obligation of providing self-declarations from all the users? Such a risk-based approach would help finding balanced solutions in the interest of the final beneficiary, of the implementing partner, of the intermediaries and of the EU itself. Such an approach would also favour the use of thresholds that could be conceived proportionate to the respective risk(s). Alternatively, a general threshold, in analogy to the "low value grant" (but much higher in the case of financial instruments / budgetary guarantees) could be defined in art. 2. In addition, the specific "proportionate approach" mentioned in the financial regulation for pillar assessed entities is too vague and would need to be clearly specified as to which concrete simplification measures it provides for in terms of simplified reporting obligations.	
Article 138 et al (EDES)		
	Article 138~~135~~ **Protection of the financial interests of the Union by means of detection of risks, exclusion and imposition of financial penalties** **(..)**	*Article 138~~135~~* Protection of the financial interests of the Union by means of detection of risks, exclusion and imposition of financial penalties ~~2. In shared management, the exclusion system shall apply to:~~ ~~(j) any person or entity applying for funding under a programme in shared management, selected for such funding, or receiving such funding;~~ ~~(k) entities on whose capacity the person or entity referred to in point (j) intends to rely, or subcontractors of such person or entity;~~ ~~(l) beneficial owners and affiliated entities of the person or entity referred to in point (j).~~ **3. (NEW) In case of pillar-assessed institutions, the respective internal processes and control systems shall be deemed sufficient and the early-detection and exclusion system shall not apply to pillar-assessed organisations implementing funds, as referred to in Art. 62 1(a), (b) and (c).**
	➔ Justification regarding (2): Unnecessary bureaucratic burden shall be avoided. ➔ Justification regarding (3): The recast could be interpreted by some to foresee the application of EDES in direct and indirect management (Section 2, art. 138 ff.), including for financial instruments and budgetary guarantees (art. 140 V). Despite a few exceptions / simplifications foreseen in cases of indirect management, the extension of the scope raises several serious (legal) questions, not least with regards to data protection issues, and, more generally, with regards to the proportionality of the entire mechanism, considering lacking thresholds. In addition, key definitions are missing. For example, the notion of "any affiliate" of the person or entity which may be excluded as referred to in Article 138(1) point (g) and in Article 139(6) remains ambiguous. Furthermore, it remains unclear how the "authorising officer" and/or an Implementing Partner is supposed to receive knowledge of the respective judgements and conducts described in art. 139 (1), particularly concerning the resistance of entities or persons to an investigation, check or audit carried out by an authorising officer or its representative or auditor, OLAF, EPPO, or the Court of Auditors. What would this provision entail for intermediated operations (i.e. intermediated by financial intermediaries like banks)?~~.~~ We strongly urge the legislators to rely on the internal checks and controls of pillar-assessed institutions instead of adding further obligations and shifting responsibilities, eventually making financial instruments impossible to implement. Overall, the proposed changes are likely to considerably increase the legal risks for any entity applying for EU support, thus increasing the hurdles and reducing the attractiveness of EU support, no matter which form. We fear that the EC proposal will increase the cost of implementation of EU financial instruments to such an extent that Implementing Partners will ultimately shy away from using such instruments in the first place.	
Article 139 (2) ~~136~~ (Exclusion criteria and decisions on exclusions)		
	(..) 2. The authorising officer responsible shall exclude a person or entity referred to in Article 138(2)(i), (j), (k) and (l) where that person or entity is in one or more of the exclusion situations referred to in point (iv) of Article 139(1)(c) or points (d) of Article 139(1). In the absence of a final judgment or a final	Article 139(2) ~~136~~ 2. **In case of direct, indirect and shared management,** the authorising officer responsible shall exclude a person or entity referred to in Article 138(2)(i), (j), (k) and (l) where that person or entity is in one or more of the exclusion situations referred to in point (iv) of Article 139(1)(c) or points (d) of Article 139(1). **In case of direct management,** in the absence of a final judgment or a final administrative decision, the decision shall be taken on the basis of a preliminary classification in law of a conduct as referred to in those points, having regard to the

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	administrative decision, the decision shall be taken on the basis of a preliminary classification in law of a conduct as referred to in those points, having regard to the established facts and findings under Article 139, paragraph 3, fourth subparagraph, points (a) and (d), contained in the recommendation of the panel referred to in Article 146. Before making the preliminary classification in law, the panel referred to in Article 146 shall give the Member State the opportunity to submit observations. Without prejudice to Article 63(2), the Member State shall ensure that payments applications related to a person or entity that is in an exclusion situation, established in accordance with Article 139(1), point (a), are not submitted to the Commission for reimbursement.	established facts and findings under Article 139, paragraph 3, fourth subparagraph, points (a) and (d), contained in the recommendation of the panel referred to in Article 146. Before making the preliminary classification in law, the panel referred to in Article 146 shall give the Member State the opportunity to submit observations. Without prejudice to Article 63(2), the Member State shall ensure that payment applications related to a person or entity in an exclusion situation, established in accordance with Article 139(1), point (a), are not submitted to the Commission for reimbursement.
➔	Justification: The recast now foresees the application of exclusion of a person or entity referred to in Article 138(2)(i), (j), (k) and (l) where that person or entity is in one or more of the exclusion situations referred to in point (iv) of Article 139(1)(c) or points (d) of Article 139(1), in the absence of a final judgment or a final administrative decision, on the basis of a preliminary classification by the panel referred to in Article 146. The extension of the scope raises several serious (legal) questions, not least with regards to data protection issues, and, more generally, with regards to the proportionality of the entire mechanism. Furthermore, it remains unclear how the "authorising officer" and/or an Implementing Partner is supposed to receive knowledge of such preliminary classification and what this provision entails for intermediated operations. We strongly urge the legislator to rely on the internal checks and controls of pillar-assessed institutions instead of adding more and more obligations and shifting responsibilities, eventually making financial instruments impossible to implement. Overall, the proposed changes are likely to considerably increase the legal risks for any entity applying for EU support, thus also increasing the hurdles and reducing the attractiveness of EU support, no matter which form. The risk is that the EC proposal could increase the cost of implementation of EU financial instruments to such an extent that Implementing Partners will ultimately shy away from using such instruments in the first place. If it is expected that such preliminary classification is also taken into account in indirect management, it should be specified how implementing partners could become aware of it.	
Article 158 (Indirect management) in conjunction with Article 275		
	Article 275~~279~~ Transitional provisions Transitional provisions 23. ⇨ Regulation (EU, Euratom) 2018/1046, ⇦ Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall continue to apply to legal commitments entered into before the entry into force of this Regulation. The existing pillar assessments, contribution agreement templates and financial framework partnership agreements may continue to apply and shall be reviewed as appropriate.	Article 275~~279~~ Transitional provisions 23. ⇨ Regulation (EU, Euratom) 2018/1046, ⇦ Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall continue to apply to legal commitments entered into before the entry into force of this Regulation. The existing pillar assessments, contribution agreement templates and financial framework partnership agreements **shall** continue to apply and **shall** be reviewed as appropriate.
➔	Justification: To implement EU funds, NPBIs, as well as other implementing partners, have been subject to a demanding process known as a Pillar Assessment (art. 158 Financial Regulation). This process has significantly gained complexity over the last decades and has by now become a very comprehensive and costly process where, in some cases, last several years to achieve. Once completed, such institutions are recognised as trustworthy for the implementation of EU funds. Considering this, the EU Financial Regulation should rely on the pillar-assessed institutions. This could for example be inserted into art. 159, as a new paragraph. Furthermore, it remains unclear if such a pillar assessment is recognised as equivalent to the management and control systems under shared management. Requiring two different management and control systems for funds under shared and indirect management seems disproportionate. Lastly, we would propose to increase legal certainty for Implementing Partners concerning	

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	the pillar assessment. This seems even more warranted in light of the significant increase in complexity of the entire pillar assessment process. Another question relates to the newly proposed changes within the EU Financial Regulation and their impact on recently-completed pillar assessment processes. Given the complexity of the process, the pillar assessment should remain valid for at least an entire MFF cycle.	
Article 159 (Control issues of indirect management)		
	Art. 159.2. When implementing Union funds, ⇨ a person or entity referred to in Article 62(1), first subparagraph, point (c) ⇦ ~~persons and entities~~ shall: (a)~~comply with applicable Union law and agreed international and Union standards and, therefore,~~ not support actions that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion ⌦ according to applicable Union law, and international and Union standards; (b)when implementing financial nstruments and budgetary guarantees in accordance with Title X, not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant Union policy on non-cooperative jurisdictions or that are identified as high-risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849, ~~or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information.~~ Entities may derogate from point (b) of the first subparagraph only if the action is physically implemented in one of those jurisdictions, and does not present any indication that the relevant operation falls under any of the categories listed in point (a) of the first subparagraph. ~~When concluding agreements with financial intermediaries,~~ Entities implementing financial instruments and budgetary guarantees in accordance with Title X shall ~~transpose the requirements referred to in this paragraph into the relevant agreements and shall request the financial intermediaries to report on their observance.~~ ⇨ ensure that: ⇦ When concluding agreements with financial	Art. 159 2. When implementing Union funds, ⇨ a person or entity referred to in Article 62(1), first subparagraph, point (c) ⇦ ~~persons and entities~~ shall: ~~(a)comply with applicable Union law and agreed international and Union standards and, therefore~~, not support actions that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion ⌦ according to applicable Union law, and international and Union standards; (b)when implementing financial instruments and budgetary guarantees in accordance with Title X, not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant Union policy on non-cooperative jurisdictions or that are identified as high-risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849, ~~or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information.~~ Entities may derogate from point (b) of the first subparagraph only if the action is physically implemented in one of those jurisdictions, and does not present any indication that the relevant operation falls under any of the categories listed in point (a) of the first subparagraph. ~~When concluding agreements with financial intermediaries,~~ Entities implementing financial instruments and budgetary guarantees in accordance with Title X shall ~~transpose the requirements referred to in this paragraph into the relevant agreements and shall request the financial intermediaries to report on their observance~~. ⇨ require that: ⇦ **Amendment 1:** When concluding agreements with financial intermediaries, entities implementing financial instruments and budgetary guarantees in accordance with Title X shall request the financial intermediaries to report on the observance of the requirements laid down in this paragraph **only in cases where the financial intermediary or sub-intermediary is not by law already subjected to the relevant EU legislation.** **Paragraph 11 (new): In case of pillar-assessed organisations pursuant to article 158.3 and 158.4, the EU should fully rely on the rules and procedures already in place in those organisations operating under direct, indirect and shared management modes.**

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	intermediaries, entities implementing financial instruments and budgetary guarantees in accordance with Title X shall request the financial intermediaries to report on the observance of the requirements laid down in this paragraph. Art. 159.2, para. 2: (…) Entities may derogate from point (b) of the first subparagraph only if the action is physically implemented in one of those jurisdictions, and does not present any indication that the relevant operation falls under any of the categories listed in point (a) of the first subparagraph. Entities implementing financial instruments and budgetary guarantees in accordance with Title X shall ensure that: new (a) **third parties** to which they directly provide support from the budget comply with points (a) and (b) of the first subparagraph; (b) **for other third parties, rules, procedures and remedial measures assessed as appropriate in line with Article 158(4) and in particular subparagraph (a) thereof, are in place in order to ensure that those third parties benefit from support from the budget subject to respecting Union or equivalent international standards on money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.** When concluding agreements with financial intermediaries, entities implementing financial instruments and budgetary guarantees in accordance with Title X shall request the financial intermediaries to report on the observance of the requirements laid down in this paragraph. For actions terminating before the end of the financial year concerned, the final report may replace the management declaration referred to in point (c) of the first subparagraph, provided it is submitted before 15 **February** of the following financial year. (…)	**Amendment 2:** Art. 159.2, para. 2: (…) Entities may derogate from point (b) of the first subparagraph only if the action is physically implemented in one of those jurisdictions and does not present any indication that the relevant operation falls under any of the categories listed in point (a) of the first subparagraph. Entities implementing financial instruments and budgetary guarantees in accordance with Title X shall ensure that: (a) ~~third parties~~ **the final recipient** to which they directly provide support from the budget comply with points (a) and (b) of the first subparagraph ~~(b) for other third parties, rules, procedures and remedial measures assessed as appropriate in line with Article 158(4) and in particular subparagraph (a) thereof, are in place in order to ensure that those third parties benefit from support from the budget subject to respecting Union or equivalent international standards on money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.~~ When concluding agreements with financial intermediaries, entities implementing financial instruments and budgetary guarantees in accordance with Title X shall **provide for the requirements referred to in this paragraph into the relevant agreements and** request the financial intermediaries to report on the observance of the requirements laid down in this paragraph. **The requirements set forth in points (a) and (b) of the first subparagraph should be assessed according to a proportionality criterion.** **As an example, according to a proportionality criterion:** **(1) operations with a size threshold equal or below EUR 500 000 for the final recipient, whereby the final recipient is a small- mid cap enterprise (*) established or incorporated in the same jurisdiction of (i) the direct financial intermediary counterpart (and the) of (ii) the Implementing Partner and the financial flows of the operation have no-cross border links and** **(2) operations whereby the final recipient is a governmental entity, or an entity wholly owned by a governmental entity shall be considered as a lower tax avoidance risk transactions and would thus fall outside the scope of this paragraph.** **Amendment 3:** For actions terminating before the end of the financial year concerned, the final report may replace the management declaration referred to in point (c) of the first subparagraph, provided it is submitted before 15 **May** of the following financial year. (…)

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	The documents referred to in the first subparagraph shall be provided to the Commission no later than 15 **February** of the following financial year. The opinion referred to in the third subparagraph shall be provided to the Commission no later than 15 **March** of that year. (…) 6. The amount of a budgetary commitment for which no payment within the meaning of Article 116~~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.	The documents referred to in the first subparagraph shall be provided to the Commission no later than 15 **May** of the following financial year. The opinion referred to in the third subparagraph shall be provided to the Commission no later than **15 June** of that year. (…) **Amendment 4:** 6. The amount of a budgetary commitment for which no payment within the meaning of Article 116~~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, **or in case of budgetary commitments under indirect management in justified cases.**

- ➔ Justification to Amendment 1: Art. 159.2 introduces a new reporting requirement for financial intermediaries with respect to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion. Even though these issues form a legitimate interest of the Union and NPBIs are themselves committed to them, financial intermediaries are themselves banks or financial institutions and thus directly subject to the EU rules or the respective national rules. Furthermore, some NPBIs use the entire national banking sector as (sub-) intermediaries. To comply with the principle of proportionality, this obligation should thus be limited to intermediaries that are not, by law already, subject to the EU or equivalent provisions or subject to pillar assessment. In case of equivalence, a single report on the application of these provisions (unless in case of major updates) should suffice to reduce the bureaucratic burden.
- ➔ Justification to Amendment 2: From a general standpoint, in the context of the recasting of the FR, a specific paragraph under Article 159(2) aimed at describing the required ex-ante tax assessment's process in the managing of the EU Funds, the possible methodology, the perimeter of the process at stake, and how this process could be performed, could be considered. Moreover, the above clarification could be useful regarding transactions involving Financial Intermediaries and whereby finally taking into account that the amendment proposed to Article 159(2) of the FR has laid to the elimination of the transposition of the tax check duties to a financial intermediary, as provided under the actual provision set forth under Article 155(2) of the FR. With reference to the latter scenario, it could be worth specifying who is in charge to do what.
  Finally, we note that in the context of the recast of the FR reference should be made to the principle of proportionality. To this end, it could be worth considering the opportunity to (i) insert an explicit reference to proportionality criteria (also) in the context of Article 159(2) and (ii) identify the criteria on the basis of which a simplified approach on tax assessment may be applied, for example by identifying some key low-risk indicators, such as the absence of cross-border links, low size thresholds of the loans/guarantees, the nature of the Final Recipient (for example, transaction involving listed companies, public administration, state-owned enterprises, small enterprises).
- ➔ Justification to Amendment 3: In compliance with Art. 159, the Management Declaration shall be provided to the Commission no later than 15 February of the following financial year. The Management Declaration ensures that the Financial Statements is properly presented in the agreed form, complete and accurate. We would like to propose to postpone the deadline. It would be more suitable to provide the Management Declaration together with the Audited Financial Statement. In fact, the Financial Statements may be subject to changes because of external and internal review activities between 15/02 and the final submission of Financial Statements. Such amendments will require an update of the Management Declaration and consequently a new signature from the Implementing Partner's Management. Our proposal aims to issue a single, final and official declaration signed by Management.
- ➔ Justification to Amendment 4: Article 115 (6) (new art. 116): In case of indirect management of budgetary commitments – especially outside of the EU – the two years limitation has proven too strict in the past. Thus, we would suggest allowing for an extension of up to four years particularly in complex cases or, alternatively to add "with the exception of budgetary commitments under indirect management in justified cases".

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Article 213 in conjunction with Article 80 (Principles and conditions applicable to financial instruments and budgetary guarantees		
	Article 213~~209~~ 2. (f) provide for remuneration of the Union that is consistent with the sharing of risk among financial participants and the policy objectives of the financial instrument or budgetary guarantee; 4. The authorising officer responsible for a financial instrument, a budgetary guarantee or a financial assistance shall produce a financial statement covering the period 1 January to 31 December, in accordance with Article 249~~243~~ and in compliance with the accounting rules referred to in Article 80 and the International Public Sector Accounting Standards (IPSAS). For financial instruments and budgetary guarantees implemented under indirect management, the authorising officer responsible shall ensure that unaudited financial statements covering the period 1 January to 31 December prepared in compliance with the accounting rules referred to in Article 80 and with IPSAS, as well as any information necessary to produce financial statements in accordance with Article 82(2), be provided by the entities pursuant to points (c)(ii), (iii), (v) and (vi) of the first subparagraph of Article 62(1) by 15 February of the following financial year and that audited financial statements be provided by those entities by 15 ~~May~~ ⇨ April ⇦ of the following financial year.	Article 213~~209~~ Amendment 1: 2. (f) **generally** provide for remuneration of the Union that is consistent with the sharing of risk among financial participants and the policy objectives of the financial instrument or budgetary guarantee; **In an economic crisis situation or where the policy objectives justifies it, a financial instrument or a budgetary guarantee may be granted free of charge.** Amendment 2: 4. The authorising officer responsible for a financial instrument, a budgetary guarantee or a financial assistance shall produce a financial statement covering the period 1 January to 31 December, in accordance with Article 249~~243~~ and in compliance with the accounting rules referred to in Article 80 ~~and the International Public Sector Accounting Standards (IPSAS)~~. For financial instruments and budgetary guarantees implemented under indirect management, the authorising officer responsible shall ensure that unaudited financial statements covering the period 1 January to 31 December prepared in compliance with the accounting rules referred to in Article 80 ~~and with IPSAS~~, as well as any information necessary to produce financial statements in accordance with Article 82(2), be provided by the entities pursuant to points (c)(ii), (iii), (v) and (vi) of the first subparagraph of Article 62(1) by 15 February of the following financial year and that audited financial statements be provided by those entities **by 15 May** of the following financial year.

➔ Justification to Amendment 1: Article 213 f and g of the regulation requires the remuneration of the Union for its share in the risk taken. Such a remuneration was not due under COSME but it will be charged under InvestEU. This introduction impairs the promotional character of the guarantee. 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 limited 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.

➔ Justification to Amendment 2:
Art. 213 (4) proposes to advance the deadline by an entire month, from 15.05. to 15.04. This is a considerable change that might be impossible to meet especially for Implementing Partners in indirect management, thus preventing them de facto from using EU guarantees such as InvestEU and EFSD+. The legislators should consider this

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	risk when deliberating on this important change. We would propose to stick to the current deadline of 15.05.	
➔	By the same token as in the proposed amendment of Art. 80 a subsequent amendment in Art. 213 (4) is suggested: Internationally accepted accounting standards, both IPSAS, IFRS and national GAAP should be accepted here.	
Article 214 (Financial liability of the Union)		
	1. The financial liability and aggregate net payments from the budget shall not exceed at any time: (a) , (b) ,(c) 2. Budgetary guarantees and financial assistance establishing a budgetary guarantee or financial assistance and under the conditions set out therein. 3. For the purposes of the annual assessment provided for in Article point (j) of Article 41(5) 253(1), point (g) , the contingent liabilities arising from budgetary guarantees or financial assistance borne by the budget shall be deemed sustainable, if their forecast multiannual evolution is compatible with the limits set by the regulation laying down the multiannual financial framework provided for in Article 312(2) TFEU and the ceiling on annual payment appropriations set out in Article 3(1) of Decision (EU, Euratom) 2020/2053Decision 2014/335/EU, Euratom.	Art. 214 (4) new: 4. Budgetary guarantees may be denominated in other currencies than ‚Euro' if this is to provide for the equal access to them or if this is justified by the objectives of the basic act. Article 19 shall apply accordingly.
➔	Justification: This additional paragraph would ensure an equal access and thus equal treatment of entities located outside the EURO area in light of currency risks that those entities are currently exposed to.	
Article 275 (Transitional provisions)		
	Art. 275 (4) The obligations set out in Article 38, third subparagraph of paragraph 4 and in paragraph 6, shall apply only to programmes adopted under and financed from the post-2027 multiannual financial framework.	Art. 275 (4) The obligations set out in Article 38, **first and** third subparagraph of paragraph 4 and in paragraph 6, shall apply only to programmes adopted under and financed from the post-2027 multiannual financial framework.
➔	Justification: Major changes to the current programming period should be avoided unless they represent real simplifications for the implementation of EU funds and thus lead to reduced administrative burden. Any other changes should allow sufficient time for adaptation. In this respect, the changes proposed to art. 38 paragraph 1 should apply only from the next programming period only, in line with those made to art. 38 paragraph 4	