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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation
applicable to the general budget of the European Communities**

EXPLANATORY MEMORANDUM

The present Commission proposal aims at amending the Financial Regulation in line with the Lisbon Treaty after its entry into force on December 1, 2009. The Lisbon Treaty introduces substantial changes concerning budgetary and financial issues which should be translated in the Financial Regulation (FR), which governs all the rules and procedures applicable to the use of EU funds and which must be respected by all institutions.

The Commission will present, as foreseen in Article 184 of the Financial Regulation, its proposal for the triennial review of the Financial Regulation at the end of the first semester 2010. However, the Commission considers that an ad-hoc, fast-track revision of the FR and IR is inevitable before and separately from the triennial review. Such delimited revision is indeed necessary in order to ensure a stable legal framework for budget implementation in line with the new Treaty. Other aspects relating to the creation of the European External Action Service (EEAS) will be covered by a separate proposal to be tabled soon by the Commission.

Changes stemming from the Lisbon Treaty

For the first time in decades, the Treaty on the Functioning of the European Union (TFEU) foresees important changes concerning budgetary and financial issues, which need to be detailed in the Financial Regulation. Adequate provisions of the Financial Regulation should therefore be introduced or modified in order to take into account the following changes:

- the introduction of the multiannual financial framework in the Treaty, and its link to annual budgetary procedure: in this regard, as a consequence of the introduction of the multiannual financial framework in the TFEU, some provisions of the Interinstitutional Agreement (IIA) on budgetary discipline and sound financial management should be introduced in the Financial Regulation.

- the new annual budgetary procedure and the abolition of the distinction between compulsory and non-compulsory expenditure, which have an impact on the provisions relating to transfers and the provisional twelfths;

The present proposal also allows for the streamlining of the Financial Regulation in line with the Lisbon Treaty, through both technical adaptations and the deletion of obsolete provisions.

New provisions introduced in Article 317 TFEU concerning the control and audit obligations of the Member States in the implementation of the budget, together with Point 44 of the Interinstitutional Agreement (IIA) on budgetary discipline and sound financial management, require an in-depth analysis and will therefore be proposed together with the triennial revision of the Financial Regulation. The triennial revision should also be the opportunity to codify or recast the text in order to take into account, in particular, the renumbering of Treaty provisions.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union, and in particular Article 322 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the Court of Auditors¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities² (hereinafter “the Financial Regulation”), lays down the budgetary principles and financial rules which should be respected in all legislative acts. It is necessary to amend certain provisions of the Financial Regulation in order to take account of amendments introduced by the Treaty of Lisbon.
- (2) Due to the specific nature and tasks of the European Central Bank, notably its independence as regards the management of its finances, it should be excluded from the scope of the Financial Regulation. For the reasons of legal certainty, that exclusion should apply from the date of the entry into force of the Treaty of Lisbon.
- (3) Police and judicial cooperation in criminal matters became an integral part of other Union policies and internal actions. The specific financial provisions applicable to that policy are thus no longer justified and should therefore be deleted.
- (4) Under the 2007-2013 multiannual financial framework, the Guarantee Fund for external actions is no longer the subject of a special regime. Payments to the Fund from the general budget of the European Union are now entered in a dedicated budget line. The applicable specific financial provisions are no longer necessary and should therefore be deleted.

¹ OJ C , , p. .

² OJ L 248, 16.9.2002, p. 1.

- (5) The rules should be clarified for the situation where the European Parliament decides to reduce the amount of the additional expenditure in excess of the provisional twelfths adopted by Council in accordance with Article 315 of the Treaty.
- (6) The 2007-2013 multiannual financial framework has been established by the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management³. Since the Treaty requires that multiannual financial framework is to be laid down in the form of a regulation, it is necessary to incorporate certain provisions from that Interinstitutional agreement into the Financial Regulation. In particular, in order to ensure budgetary discipline, it is necessary to establish a link between the multiannual financial framework and the annual budgetary procedure. It is also necessary to include provisions on commitment of the European Parliament and of the Council to respect the allocations of commitment appropriations laid down in the basic acts for structural operations, rural development and the European Fisheries Fund.
- (7) No distinction is made between compulsory and non-compulsory expenditure any longer. Provisions concerning transfers should therefore be adapted accordingly.
- (8) In accordance with Article 316 of the Treaty, it should be foreseen that the European Council and the Council share the same section in the Budget.
- (9) The amended annual budgetary procedure under the Treaty should be reflected in the Financial Regulation.
- (10) In the area of external action, the adoption procedure of preparatory measures should be adapted to the provisions of the Treaty.
- (11) The Commission has to submit to the European Parliament and to the Council an evaluation report on the Union's finances based on the results achieved. Adequate provisions should therefore be introduced in the Financial Regulation for such report in relation to other existing reporting requirements.
- (12) Regulation (EC, Euratom) No 1605/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 1605/2002 is amended as follows:

- (1) In the title of the Regulation, the words “the general budget of the Communities” are replaced by “the general budget of the European Union”.
- (2) Article 1 is replaced by the following:

³ OJ C 139, 14.6.2006, p. 1.

“Article 1

1. This Regulation lays down the rules for the establishment and implementation of the general budget of the European Union, hereinafter “the budget”, and the presentation and auditing of the accounts.
2. For the purposes of this Regulation, the Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Data-Protection Supervisor shall be considered institutions of the Union.

For the purposes of this Regulation, the European Central Bank shall not be considered an institution of the Union.

3. For the purposes of this Regulation, any reference to “the Communities” or to “the Union” shall be understood as a reference to “the European Union and the European Atomic Energy Community”.

(3) Article 4 is amended as follows:

- (a) in paragraph 2, point (a) is replaced by the following:

“(a) the revenue and expenditure of the European Union, including administrative expenditure occasioned for the institutions by the provisions of the Treaty on European Union relating to the common foreign and security policy, and the operating expenditure occasioned by implementation of those provisions where this is charged to the budget;”

- (b) paragraph 3 is deleted.

(4) Article 8 is amended as follows:

- (a) in paragraph 2, the abbreviation “GNP” is replaced by “GNI”;
- (b) in paragraph 6, the words “the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF)” are replaced by “the European Agricultural Guarantee Fund (EAGF)”.

(5) Article 13 is amended as follows:

- (a) paragraph 1 is replaced by the following:

“1. If the budget has not been definitively adopted at the beginning of the financial year, the first paragraph of Article 315 of the Treaty on the Functioning of the European Union shall apply to commitment and payment of expenditure which it has been possible to book to a specific chapter in the budget as part of implementation of the last budget duly adopted.”

- (b) paragraph 3 is replaced by the following:

“3. If the continuity of action by the Union and management needs so require, the Council, acting by a qualified majority on a proposal of the

Commission, may authorise two or more provisional twelfths both for commitments and for payments over and above those automatically made available in accordance with paragraphs 1 and 2. It shall forward the decision on authorisation without delay to the European Parliament.

The decision shall enter into force thirty days following its adoption unless the European Parliament, acting by a majority of its Members, decides to reduce that expenditure within those thirty days.

If the European Parliament decides to reduce that expenditure, the Council shall review the decision on authorisation taking into account the amount approved by the European Parliament.

The additional twelfths shall be authorised in full and shall not be divisible.”

(c) paragraph 4 is deleted.

(6) Article 16 is replaced by the following:

“Article 16

The multiannual financial framework and the budget shall be drawn up and implemented in euro and the accounts shall be presented in euro.

However, for the cash-flow purposes referred to in Article 61, the accounting officer and, in the case of imprest accounts, the imprest administrators, and, for the needs of the administrative management of the services in charge of the Union's external action, the authorising officer responsible shall be authorised to carry out operations in national currencies as laid down in the implementing rules.”

(7) Article 24 is replaced by the following:

“Article 24

1. The Commission shall submit its proposal simultaneously to the two arms of the budgetary authority.
2. The budgetary authority shall take decisions on transfers of appropriations as provided for in paragraphs 3 to 6, save as otherwise provided in Title I of Part Two.
3. Save in urgent circumstances, the Council, by a qualified majority, and the European Parliament, shall deliberate upon the Commission proposal within six weeks of the date on which the two institutions received the proposal for each transfer submitted to them.
4. The transfer proposal shall be approved, if within the six-week period:
 - both arms approve it;

- one of the two arms approves it and the other refrains from acting;
 - both arms refrain from acting or have not taken a decision contrary to the Commission proposal.
5. The six-week period referred to under point 4 will be reduced to three weeks, unless one arm of the budgetary authority requests otherwise, when:
- i) the transfer represents less than 10% of the appropriations of the line from which the transfer is made and does not exceed EUR 5 million;
- or
- ii) the transfer concerns only payment appropriations and the overall amount of the transfer does not exceed EUR 100 million.
6. If one of the two arms of the budgetary authority has amended the transfer while the other approved it or refrains from acting, or if both arms have amended the transfer, the smaller amount approved either by the European Parliament or the Council shall be deemed approved, unless the Commission withdraws its proposal.”
- (8) Article 26 is amended as follows:
- (a) in the second subparagraph of paragraph 2, the first sentence is replaced by the following:

“The procedure provided for in Article 24(3) and (4) shall apply.”
- (9) In Article 27(3), the third sentence is replaced by the following:
- “Such information, as referred to in Article 33(2)(d), shall be provided annually and at the latest in the documents accompanying the draft budget.”
- (10) In Article 30, paragraph 2 is deleted.
- (11) The first paragraph of Article 31 is replaced by the following:
- “The European Parliament, the European Council and the Council, the Court of Justice of the European Union, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the Ombudsman as well as the European Data-Protection Supervisor shall draw up an estimate of their revenue and expenditure, which they shall send to the Commission before 1 July each year.”
- (12) Article 33 is amended as follows:
- (a) paragraph 1 is replaced by the following:

“1. The Commission shall submit a proposal containing the draft budget to the European Parliament and the Council, at the latest, by 1 September of the year preceding that in which the budget is to be implemented.

The draft budget shall contain a summary general statement of the expenditure and revenue of the Union and consolidate the estimates referred to in Article 31.”

- (b) in paragraph 2, the introductory sentence is replaced by the following:

“The Commission shall attach to the draft budget:”.

- (13) Article 34 is replaced by the following:

”Article 34

Until the Conciliation Committee referred to in Article 314 of the Treaty on the Functioning of the European Union is convened, the Commission may, on its own initiative or if requested by the other institutions, each in respect of its own section, present simultaneously to the European Parliament and the Council letters of amendment to the draft budget on the basis of new information which was not available at the time the draft was established, including a letter of amendment updating expenditure estimates for agriculture.”

- (14) The following Article 34a is inserted:

”Article 34a

Once the Conciliation Committee has agreed on a joint text, the European Parliament and the Council shall endeavour to approve the outcome of the Conciliation Committee as soon as possible in accordance with Article 314(6) of the Treaty on the Functioning of the European Union, in accordance with their respective internal rules of procedure.'

- (15) Article 35 is deleted.

- (16) Article 37 is replaced by the following:

”Article 37

1. If there are unavoidable, exceptional or unforeseen circumstances, the Commission may present draft amending budgets.

Requests for amending budgets, in the same circumstances as referred to in the preceding paragraph, from institutions other than the Commission shall be sent to the Commission.

Before presenting a draft amending budget, the Commission and the other institutions shall examine the scope for reallocation of the relevant appropriations, taking into account any expected under-implementation of appropriations.

2. The Commission shall, save in exceptional circumstances, submit any draft amending budget simultaneously to the European Parliament and the Council

by 1 September each year at the latest. It may attach an opinion to the requests for amending budgets from the other institutions.

3. The European Parliament and the Council shall discuss them with due account for their urgency."

(17) Article 38 is deleted.

(18) In Article 39, the first sentence is replaced by the following:

"The Commission and the budgetary authority may agree to bring forward certain dates for the transmission of the estimates, and for the adoption and transmission of the draft budget."

(19) In Article 40, the following second paragraph is added:

"The European Council and the Council shall share the same section of the budget."

(20) Article 46 is amended as follows:

(a) point 2 of paragraph 1 is replaced by the following:

"(2) in each section of the budget, the revenue and expenditure shall be shown in the same structure as in point 1;"

(b) point 5 of paragraph 1 is deleted.

(21) In Title III, the following Chapter 3 is added:

“Chapter 3 Budgetary discipline

Article 47a

The budget shall comply with the multiannual financial framework.

Article 47b

Where by implementation of an act of the Union the appropriations available in the budget or the allocations available in the multiannual financial framework would be exceeded, such act may be implemented in financial terms only after the budget has been amended and, if necessary, the financial framework has been appropriately revised. ”

(22) Article 49 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

“A basic act shall first be adopted before the appropriations entered in the budget for any action by the Union may be used.”

(b) paragraph 3 is replaced by the following:

“3. In application of Title V of the Treaty on European Union, a basic act may take one of the forms specified in Articles 26(2), 28(1), 29, 31(2), 33 and 37 of the Treaty on European Union.”

(c) paragraph 4 is deleted;

(d) paragraph 6 is amended as follows:

(i) the introductory sentence is replaced by the following:

“By way of derogation from paragraphs 1, 2 and 3, the following may be implemented without a basic act provided the actions which they are intended to finance fall within the powers of the Union:”

(ii) points (b) and (c) are replaced by the following:

“(b) appropriations for preparatory actions in the field of application of the Treaty on the Functioning of the European Union and the Euratom Treaty, designed to prepare proposals with a view to the adoption of future actions. The preparatory actions are to follow a coherent approach and may take various forms. The relevant commitment appropriations may be entered in the budget for not more than three successive financial years. The legislative procedure must be concluded before the end of the third financial year. In the course of the legislative procedure, the commitment of appropriations must correspond to the particular features of the preparatory action as regards the activities envisaged, the aims pursued and the persons benefited. Consequently, the means implemented cannot correspond in volume to those envisaged for financing the definitive action itself.

When the draft budget is presented, the Commission shall submit a report to the budgetary authority on the actions referred to in point (a) and the first paragraph of this point which shall also contain an assessment of results and the follow-up envisaged;

(c) appropriations for preparatory measures in the field of Title V of the Treaty on European Union. These measures shall be limited to a short period of time and shall be designed to establish the conditions for European Union action in fulfilment of the objectives of the CFSP and for the adoption of the necessary legal instruments;

For the purpose of EU crisis management operations, preparatory measures are designed *inter alia* to assess the operational requirements, to provide for a rapid initial deployment of resources, or to establish the conditions on the ground for the launching of the operation;

Preparatory measures shall be agreed by the Council, on a proposal by the High Representative of the Union for Foreign Affairs and Security Policy.

In order to ensure the rapid implementation of preparatory measures, the High Representative of the Union for Foreign Affairs and Security Policy shall inform the Commission as early as possible on the Council's intention to launch a preparatory measure and in particular of the estimated resources required for this purpose. In conformity with the provisions of this Regulation, the Commission shall take all the necessary measures to ensure a rapid disbursement of the funds;”.

(23) Article 146(2) is replaced by the following:

”2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts, financial statements and the evaluation report referred to in Article 318 of the Treaty on the Functioning of the European Union. It shall also examine the annual report made by the Court of Auditors together with the replies of the institutions under audit, and any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.”

(24) The following Article 155a is inserted:

“Article 155a

The European Parliament and the Council undertake to respect the allocations of commitment appropriations provided for in the relevant basic acts for structural operations, rural development and the European Fisheries Fund.”

(25) Article 184 is replaced by the following:

“Article 184

Every three years, or whenever it proves necessary to do so, this Regulation shall be the subject of a review in accordance with the procedure laid down by Article 322 of the Treaty on the Functioning of the European Union. ”

Article 2

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

However, point 2 of Article 1 shall apply from 1 December 2009.

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President