

NOTE TO THE MANAGEMENT BOARD

1. CONTEXT OF THE DELEGATED ACT

The (General) Financial Regulation adopted by the Council and the European Parliament in July 2018 provides for the adoption of a delegated act by the European Commission on the Framework Financial Regulation for the bodies which are set up under the Treaty on the Functioning of the European Union (TFEU) and the Euratom Treaty and which have legal personality and receive contributions charged to the budget.

The delegated regulation adopted by the European Commission in December 2018 contains essential financial rules on the basis of which the Union bodies referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and the Council on the financial rules applicable to the general budget of the Union¹ (hereinafter "Financial Regulation 2018") should adopt their own financial rules.

The delegated Regulation replaces Commission Regulation (EU, Euratom) 1271/2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council. The delegated Regulation aligns the current rules with those of the Financial Regulation 2018 and also provides for additional simplification and clarification taking into account the experience gained with Commission Regulation 1271/2013. The Union bodies' governance set up and their accountability are further improved.

While the main objective of this revision was an alignment with the new Financial Regulation 2018, it was also the occasion to introduce changes aiming at:

1. Simplification: contrary to the current delegated regulation, the new text is mostly limited to specificities of Union bodies. Most provisions identical to the Financial Regulation 2018 are replaced by a simple reference to the latter.
2. Clarification: based on experience gained in the implementation of the current FFR, clarifications ensure coherent implementation of such provisions amongst bodies (e.g. Article 18 on the use of the euro).
3. Additional flexibility, mostly based on requests from the Network of Agencies: e.g. Article 21 (budget structure to accommodate assigned revenue) now says that the total amount of commitment appropriations from a contribution agreement may be made available upon entry into force of such agreement; Article 43 (Method of implementation of the budget) now foresees the generalised use of Service-Level Agreements.

¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) 223/2014, (EU) No 283/2014, and Decision No 541/2013/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193 of 30 July 2018, p.1



4. Strengthening of the governance of EU bodies through the following measures:
- Report cases of fraud / financial irregularities / investigations to the Commission without delay;
 - Include in the programming document the strategy for preventing recurrence of problems that have led to critical (internal or external) audit recommendations;
 - Adjust the internal control systems where a body runs decentralised offices away from the main seat;
 - Conflicts of interest: extend the rules to Board members; bodies should present a strategy to avoid conflicts of interest as part of their work programme;
 - Introduce the possibility of partnership agreements with the Commission covering all funding given in addition to the basic subsidy, to increase transparency.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission has prepared this Delegated Act in accordance with the Framework Agreement on relations between the European Parliament and the European Commission and with the Common Understanding of the European Parliament, Council and Commission on delegated acts. Member States and other relevant stakeholders have been duly involved and consulted during the preparatory work.

Union bodies have been consulted through the EU Agencies Network. Their comments have been considered, including the need to allow for transitional provisions for the single programming document and for the consolidated annual activity report and for a reasonable period after the entry into force of this Regulation for Union bodies to adopt their own financial rules.

The European Court of Auditors has been consulted as well.

The Commission has actively considered the comments received during these consultations, and, to the greatest extent possible, included them in the present delegated Regulation, taking into account the need to maintain ad-hoc contributions and grants received by Union bodies exceptional and to allow the possibility to conclude financial framework partnership agreements with Union bodies.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The Framework Financial Regulation sets the essential rules for the implementation of the budget by the union bodies. It follows the structure of the Financial Regulation 2018: Budgetary principles, Establishment and structure of the budget, financial actors, Revenue and expenditure operations, internal auditor, Procurement, Grants, Prizes, Accounting, Administrative Appropriations, External audit and Discharge and Final Provisions.

The delegated Regulation respects the limits of the empowerments granted by the co-legislators and concerns only elements based on the principles and rules set out in Regulation (EU, Euratom) 2018/1046, taking into account the specificities of the Union bodies.



4. MAIN RELEVANT ASPECTS

The Framework Financial Regulation establishes the broad principles and basic rules applicable to the bodies set up under the TFEU and the Euratom Treaty. On the basis of this Regulation, EFSA shall adopt its own financial rules that may not depart from this Regulation except where their specific needs so require, and with the Commission's prior consent.

1. The Authority shall establish and implement its budget in accordance with the principles of unity, accuracy, universality, specification, annuality, equilibrium, unit of account, sound financial management and performance, and transparency.
2. The balancing nature of the Union contribution is emphasised. The part of the Authority's positive budget result that exceeds the amount of the Union contribution paid during the year is to be returned to the Union budget.
3. The exceptional delegation of tasks and award of grants to the Authority needs to be allowed in the constituent act or in a basic act and duly justified by the characteristics of the tasks and the specific expertise of the Authority, while ensuring sound financial management and cost-efficiency. Those additional tasks should fall within the scope of the Authority's objectives and should be compatible with the Authority's mandate, as defined in the constituent act.
4. In order to increase transparency the Commission should, in principle, conclude partnership agreements with the Authority covering all funding given in addition to the annual Union contribution, notably when this funding has a significant impact on the Authority's operations.
5. The possibility for Union bodies to conclude service-level agreements, in particular with each other and with Union institutions is foreseen, in order to facilitate the implementation of their appropriations, when this is in line with sound financial management. Appropriate reporting on those Service-Level Agreements should be ensured.
6. In order to improve the cost-efficiency of Union bodies, the possibility of sharing services or transferring them to another Union body or to the Commission exists.
7. The Authority should have the possibility to award grants and prizes in accordance with the constituent act or by delegation of the Commission pursuant to Article 62(1)(c)(iv) of Regulation 2018/1046.
8. In addition to the forms of Union contribution already well established (reimbursement of the eligible costs actually incurred, unit cost, lump sums and flat-rate financing), Union bodies are allowed to provide financing not linked to costs of the relevant operations. This additional form of financing should be based on the fulfilment of certain conditions ex ante or on the achievement of results measured by reference to previously set milestones or through performance indicators.
9. Performance should be linked to the principle of sound financial management. A link should be established between objectives set and performance indicators, results and economy, efficiency and effectiveness in the use of appropriations.
10. For the purpose of ensuring consistent programming, the Authority shall draw up a single programming document (SPD) containing:



- Annual and multiannual programming,
- An estimate of its revenue and expenditure, the allocation of financial and human resources to the activities,
- Information on its building policy,
- A strategy for cooperation with third countries and/or international organisations, the demonstration of the Union body contribution to EU political priorities,
- A strategy for achieving efficiency gains and synergies,
- A strategy for operational management and internal control systems, including an anti-fraud strategy,
- A strategy for preventing recurrence of cases of conflict of interest, irregularities and fraud, in particular where weaknesses have led to critical recommendations.

The SPD should take into account Commission guidelines.

11. Rules pertaining to the action plan are set to follow up on the conclusions of overall periodic evaluations in order to ensure their efficient implementation.
12. Streamlined reporting obligations: Union bodies shall provide a consolidated annual activity report that includes comprehensive information on the achievement of objectives and results, the implementation of its work programme, budget, staff policy, and its operational management and internal control systems.
13. Transitional provisions for the single programming document and for the consolidated annual activity report are foreseen given that the Commission needs time to develop the appropriate guidelines in cooperation with the Union bodies and the Union bodies need time to adapt to the new programming and reporting duties.
14. The Framework Financial Regulation was published in the Official Journal on May 10, 2019 and shall enter into force on the day following that of its publication in the Official Journal of the European Union in order to allow for the timely adoption of the revised financial regulations by the Union bodies at the latest by 1 July 2019 and so that agencies benefit from the simplification and alignment with Regulation (EU, Euratom) 2018/1046.