Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council

COMMISSION DELEGATED REGULATION (EU) 2019/715

of 18 December 2018

on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, in conjunction with the Treaty establishing the European Atomic Energy Community,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012[(1)], and in particular Article 70 thereof,

Whereas:

(1) Commission Delegated Regulation (EU) No 1271/2013[(2)] establishes the framework financial regulation for the bodies which are set up by the Union under the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community and which have legal personality and receive contributions charged to the Union budget (‘Union bodies’). Delegated Regulation (EU) No 1271/2013 is based on Regulation (EU, Euratom) No 966/2012[(3)]. Regulation (EU, Euratom) No 966/2012 has been replaced by Regulation (EU, Euratom) 2018/1046.

(2) It is necessary to repeal Regulation (EU) No 1271/2013 and to replace it by this Regulation in order to align it with Regulation (EU, Euratom) 2018/1046 and to allow for additional simplification and clarification of rules to take into account the experience gained in their application and to further improve the Union bodies' governance setting up and their accountability.

(3) This Regulation should establish the broad principles and basic rules applicable to the bodies set up under TFEU and the Euratom Treaty that receive contributions charged to the Union budget and without prejudice to the constituent act. On the basis of this Regulation Union bodies should adopt their own financial rules that may not depart from this Regulation except where their specific needs so require, and with the Commission's prior consent.

(4) For the sake of consistency, Union bodies that are fully self-financed and to which this Regulation does not apply, should establish similar rules where appropriate. In accordance with the Joint statement of the European Parliament, the Council and the Commission of 19 July 2012 on decentralised agencies, those bodies should submit to the European Parliament, the Council and the Commission an annual report on the execution of their budget and take duly into account their requests and recommendations.

(5) Union bodies should establish and implement their budget in accordance with the principles of unity, accuracy, universality, specification, annuality, equilibrium, unit of account, sound financial management and performance, and transparency.

(6) The balancing nature of the Union contribution should be emphasised. The part of the Union body's positive budget result that exceeds the amount of the Union contribution paid during the year should be returned to the Union budget.

(7) Where the constituent act provides that revenue is constituted by fees and charges in addition to the Union contribution and that revenue arising from fees and charges is assigned to particular items of expenditure, Union bodies should have the possibility to carry forward the balance in the form of assigned revenue. In order to allow for flexibility, the negative result related to assigned revenue from fees and charges could be offset against the accumulated surplus from previous years.

(8) It is necessary to ensure that the fees are set at an appropriate level to cover the costs of providing the services and to avoid significant surpluses.

(9) The exceptional delegation of tasks and award of grants to the Union bodies 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 Union body, while ensuring sound financial management and cost-efficiency. Those additional tasks should fall within the scope of the Union body's objectives and should be compatible with the Union body's mandate, as defined in the constituent act.

(10) In order to increase transparency the Commission should, in principle, conclude partnership agreements with EU bodies covering all funding given in addition to the annual Union contribution, notably when this funding has a significant impact on the Union body's operations.

(11) The provisions on carryovers and assigned revenues should be amended to take into account the provisions of Regulation (EU, Euratom) 2018/1046. With regard to internal assigned revenue, the financing of new building projects with the revenue from lettings and the sale of buildings should be allowed as provided for in Regulation (EU, Euratom) 2018/1046. To that end, such revenue should be considered as internal assigned revenue that can be carried over until it is fully used.

(12) In order to allow for additional flexibility, Union bodies should be able to carry out transactions in currencies other than euro for the needs of administrative management.

(13) In line with Regulation (EU, Euratom) 2018/1046, the breaking down of commitments extending over several years into annual instalments should be allowed only where

the constituent act or basic act provides so or where the commitments relate to administrative expenditure.

(14) Taking into account the specificities of Union bodies, the acceptance of donations should be made subject to enhanced scrutiny. Moreover, Union bodies should not be able to use corporate sponsoring.

(15) The concept of performance should be clarified. Performance should be linked to the principle of sound financial management. The principle of sound financial management should be clarified. A link should be established between objectives set and performance indicators, results and economy, efficiency and effectiveness in the use of appropriations.

(16) Pursuant to Article 53 of Regulation (EU, Euratom) 2018/1046, the Union body has to take part in a benchmarking exercise with other Union bodies and with Union institutions.

(17) It is necessary to establish rules on the action plan to follow up on the conclusions of overall periodic evaluations in order to ensure their efficient implementation.

(18) For the purpose of ensuring consistent programming, the Union body should draw up a single programming document containing annual and multiannual programming, an estimate of its revenue and expenditure, resources programming, information on its building policy, a strategy for cooperation with third countries and/or international organisations, a strategy for achieving efficiency gains and synergies. The Union body should also draw up a strategy for operational management and internal control systems, including an anti-fraud strategy. The single programming document should take into account Commission guidelines.

(19) The programming document should include the strategy for preventing recurrence of cases of conflict of interest, irregularities and fraud, in particular where weaknesses have led to critical recommendations.

(20) The timetable for the single programming document should be aligned with the budgetary procedure to ensure its efficiency and consistency of all programming documents.

(21) Union bodies should adjust their internal control systems where they run offices away from the main seat.

(22) It is appropriate to provide for the possibility for Union bodies to conclude service-level agreements in accordance with Article 59 of Regulation (EU, Euratom) 2018/1046, in particular with each other and with Union institutions, 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.

(23) It is necessary to clarify the architecture of the internal audit and internal control functions and to streamline reporting requirements. The internal audit function within a Union body should be performed by the Commission's internal auditor who should

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/715. (See end of Document for details)*

carry out audits when justified by the risks involved. It is necessary to provide rules on the establishment and functioning of internal audit capabilities.

(24) Reporting obligations should be streamlined. Union bodies should 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.

(25) In order to improve the cost-efficiency of Union bodies, it is necessary to provide for the possibility of sharing services or transferring them to another Union body or to the Commission. It is therefore necessary to allow the accounting officer of the Commission to be entrusted with all or part of the tasks of the accounting officer of the Union body.

(26) In order to align the rules on assigned revenue with those of Regulation (EU, Euratom) 2018/1046, it is necessary to provide for rules on a differentiation of internal and external assigned revenue and on their carry over.

(27) In order to align the rules on treatment of interest generated by the Union contribution to the Union body with those of Regulation (EU, Euratom) 2018/1046, it is necessary to provide that interest is not due to the budget.

(28) Regulation (EU, Euratom) 2018/1046 provides for the possibility to enter a legal commitment before a budgetary commitment in specific cases. Union bodies should also have that possibility.

(29) In order to ensure consistency, specific provisions on procurement and grants should not be allowed. The application of a single set of rules ensures simplification of the Union body's work and enables the use of the guidelines and models prepared by the Commission.

(30) The Union body 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 (EC) No 2018/1046.

(31) 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), it is appropriate to allow Union bodies 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.

(32) In order to protect the financial interests of the Union, the rules on a single early-detection and exclusion system set up by Regulation (EU, Euratom) 2018/1046 should apply to Union bodies.

(33) Pursuant to Article 8(1) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council[(4)], EU bodies shall transmit to the European Anti-Fraud Office without delay any information relating to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union. Pursuant to Article 24(1) of Council Regulation (EU) 2017/1939[(5)], Union bodies shall without undue delay report to the European Public Prosecutor's Office any criminal conduct in

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respect of which it could exercise its competence in accordance with that regulation. In order to strengthen the governance of Union bodies, they should also report cases of fraud, financial irregularities, as well as investigations, to the Commission without delay. The Commission and the Union bodies should put procedures in place that duly protect personal data and ensure the respect of the need-to-know principle in any transmission of information related to presumed fraud and other irregularities and on-going or completed investigations.

(34) To identify and correctly manage the risk of actual or perceived conflict of interests, Union bodies should be required to adopt rules on the prevention and management of conflict of interests. Such rules should take into account guidance developed by the Commission.

(35) Comprehensive access rights for the Commission, the European Anti-Fraud Office and the Court of Auditors should be spelled out in this Regulation.

(36) The provisions regarding building policy, including the possibility and conditions for Union bodies to finance building acquisition projects through loans, should be aligned with Regulation (EU, Euratom) 2018/1046 to ensure a consistent application of the rules by all Union bodies and institutions.

(37) Given that Delegated Regulation (EU) No 1268/2012[(6)] has been repealed, the requirement for the EU body to adopt its own implementing rules with Commission's prior consent should also be deleted.

(38) It is necessary to provide for transitional provisions for programming and for the consolidated annual activity reporting 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.

(39) This Regulation should 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.

HAS ADOPTED THIS REGULATION:

TITLE I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down the essential financial rules for bodies which are set up by the Union under the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community and which have legal personality and receive contributions charged to the Union budget (‘Union bodies’).