

## Increasing market acceptance

### ELTI position paper on the targeted recast of the

### EU Financial Regulation

**Brussels, 17 October 2022**

On 16 May 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 included “targeted improvements”, not least on “strengthening the protection of the Union financial interests”.<sup>1</sup>

Due to the absence of impact assessment the effect of the proposed changes on EU Financial Instruments and the benefit of a greater reliance on Implementing Partners was not estimated. Such an assessment would have demonstrated that some of the proposed changes will de facto strongly discourage and consequently slow down the use of EU Financial Instruments, especially for SMEs and small-scale projects. Additionally, some proposals considerably reduce the discretion of the legislator in terms of crisis policy tools and instruments such as REPowerEU.

**In this context, the ELTI association would like to highlight proposals, as outlined further below, based on the practical experience of National Promotional Banks and Institutions (NPBIs) which are implementing partners (IPs) of EU funds, operating directly and/or with financial intermediaries.**

ELTI members pay considerable attention to the quality of support provided to the people and the economy as can be seen by the application of ESG criteria, its reporting standards and procedures as well as numerous other measures. Unfortunately, the proposed changes which 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 unmarketable, at least for small and medium-size operations, as well as considerably reducing the attractiveness of EU financial instruments**. Final beneficiaries but also financial intermediaries would expose themselves to too many obligations in light of possible advantages stemming from using EU support, no matter which form it takes and, ultimately, might end up renouncing it. As public institutions dedicated to the general interest, we understand the necessity and difficulties in controlling public budgets and of reporting on the results of public spending, and we therefore call upon a more balanced approach in order not to jeopardise the development of financial instruments that are today of critical importance for the success of major EU policies.

**The main principles underlying the amendments proposed in annex 1 are the following:**

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<sup>1</sup> COM(2022) 223 final: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022PC0223&from=EN>

- 1. Adopting a risk-based proportionality approach:** The EU Financial Regulation refers to the key legal principle of proportionality that is also enshrined in art. 5 (1) and (4) and the corresponding protocol of the EU Treaty. ELTI would like to urge the legislators to test as many provisions as possible against this fundamental principle and to apply a risk-based approach. Such a risk-based approach would help to find balanced solutions in the interest of the final beneficiary, of the implementing partner, of the intermediaries and of the EU itself. It would also favour the use of thresholds that could be conceived proportionate to the respective obligations and/or risk(s). Alternatively, or in addition, a general threshold, in analogy to the “low value grant” (but much higher in the case of financial instruments / budgetary guarantees) could be defined. This would be the same for proportionality with regard to tax requirements.
- 2. Reliance on the EU Pillar Assessment:** Pursuant to article 158.3 and 158.4, this assessment currently comprises seven pillars, including anti-money laundering and tax fraud, tax evasion. From the perspective of an implementing partner, the EU should rely on the assessed rules, systems, and procedures of the implementing organisation when it comes to implementing EU funds, which result from a complex and costly exercise. Such a reliance could reduce the administrative burden and thus the cost of implementation of EU funds, to the benefit of all, including notably the EU, the implementing partners and the final beneficiaries themselves. This process would also considerably speed up the implementation of EU instruments to the benefit of the economy and other beneficiaries.
- 3. Drawing the consequences of the plurality of implementing partners under the EU 2021-2027 multi-annual financial framework.** Both InvestEU and EFSD+ foresee various implementing partners for EU funds. With over 20 IPs other than the EIB Group having started – and partially already completed – the EU Pillar Assessment process, the role of assessed NPBI should now be fully recognised. This recognition is not only consistent with the objective of transparency pursued by the European institutions but it is equally an important institutional, operational, and finally political issue.

When it comes to deploying financial instruments, the keys to success are the ability to act in due time, with the appropriate instrument and to report appropriately, i.e. in a transparent manner with a relevant and accurate set 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 (pillar), the supervision to which they are subject (risk control, etc.), the reporting obligations and the audits.

True clarifications and simplifications, as proposed in annex 1 below, would help increase the leverage of the EU financial resources on long term investment, thanks to the highly promoted financial instruments and when it involves strengthening the EU action as close to the ground as possible whilst also speeding up the implementation process. NPBI stand ready to support the EC and the legislators in making the EU Financial Regulation a powerful tool to deliver EU support on the ground, by engaging in a dialogue as well as bringing in their respective expertise and perspective.

## Annex 1

### ELTI proposals for concrete amendments to the EU Financial Regulation

#### 1. Proportionality-related issues

The EU Treaty already refers to the principle of proportionality in article 5, making the topic of proportionality a cornerstone of any EU action. The legislators should consistently apply this notion to every single provision as well as to the financial regulation as a whole and particularly within the combination of applicable EU rules when implementing EU funds. This latter aspect, in particular, is never taken into account, but remains of fundamental importance to Implementing Partners of the EU, to intermediaries and to final beneficiaries.

#### 1.1. Introducing a risk-based proportionality approach into the EU Financial Regulation

COM proposal	ELTI proposal
<p style="text-align: center;"><del>Article 130429</del> Cooperation for protection of the financial interests of the Union</p>	<p><b><i>Title 2, Chapter 9 (new) Principle of proportionality.</i></b></p> <p><b><i>Art. 38bis (new): The principle of proportionality shall apply to all obligations on third parties stemming from the EU Financial Regulation.</i></b></p> <p><b><i>In reference to financial instruments and budgetary guarantees, a risk-based proportionality approach specified to the respective instrument should apply.</i></b></p> <p><b><i>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.</i></b></p> <p style="text-align: center;"><del>Article 130429</del> Cooperation for protection of the financial interests of the Union</p> <p><b><i>3 (new). In carrying out the respective competences in accordance with the above paragraphs, the respective bodies apply the principle of risk-based proportionality.</i></b></p>
<p><b><i>Justification:</i></b> 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? 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.</p>	

## 1.2. Data publication obligations and access rights

COM proposal	ELTI proposal
<p>(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, <b>however, there should be no special exemption</b> from the obligation to publish information on the basis of a specific threshold, in order to <b>maintain the current practice and to allow for transparency.</b></p>	<p>(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 <b>exemptions from the obligation to publish information relating to the final beneficiary should be possible</b> on the basis of a specific threshold, in order to <b>comply with the principle of proportionality, particularly in the cases of natural persons and SMEs.</b></p> <p><b>Art. 209 (bis): Intermediated low-value grants</b></p> <p><b>In case of intermediated low-value grants to natural persons or SMEs, no specific grant agreement with the final beneficiaries and no gathering and publication of the final beneficiary shall be necessary.</b></p>
<p><i>Justification:</i> 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. Even though ELTI supports the need to be transparent, the lack of exemptions is problematic from the point of view of proportionality. As such we also propose a new art.209 (bis) to outline exemptions for low value grants below € 60 000, as defined in article 2.42.</p>	

## 1.3. Clarifications and consideration of the chain of actors

COM proposal	ELTI proposal
<p>Art. 38. 3. The information referred to in <del>the first subparagraph</del> of paragraph 2 shall not be published ⇒ and shall not be submitted for publication in accordance with paragraph 6 of this Article for ⇐ : (...)</p> <p>(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;</p>	<p>Art. 38.3. The information referred to in <del>the first subparagraph</del> of paragraph 2 shall not be published ⇒ and shall not be submitted for publication in accordance with paragraph 6 of this Article for ⇐ : (...)</p> <p>(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 <b>final</b> recipients, <b>financial intermediaries or financial sub-intermediaries</b>;</p>
<p><i>Justification:</i> Consistently applying the principle of proportionality across the chain.</p>	

#### 1.4. Additional reporting obligations for financial intermediaries

COM proposal	ELTI proposal
<p>Art. 159.2. When implementing Union funds, ⇒ a person or entity referred to in Article 62(1), first subparagraph, point (c) ⇐ <del>persons and entities</del> shall:</p> <p>(a) <del>comply with applicable Union law and agreed international and Union standards and, therefore,</del> 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 ☐ ;</p> <p>(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, <del>or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information.</del></p> <p>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.</p> <p><del>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: ⇐</del></p> <p>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.</p>	<p>Art. 159 2. When implementing Union funds, ⇒ a person or entity referred to in Article 62(1), first subparagraph, point (c) ⇐ <del>persons and entities</del> shall:</p> <p>(a) <del>comply with applicable Union law and agreed international and Union standards and, therefore,</del> 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 ☐ ;</p> <p>(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, <del>or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information.</del></p> <p>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.</p> <p><del>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: ⇐</del></p> <p>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 <b>only in cases where the financial intermediary or sub-intermediary is not by law already subjected to the relevant EU legislation.</b></p> <p><b>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.</b></p>

*Justification:* 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 NPBI 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 NPBI 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.

### 1.5. Application of the EU Taxonomy, with special reference to DNSH principles

COM proposal	ELTI proposal
<p>Art. 33. 2(d) new: 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 <u>68</u>.</p>	<p>Art. 33.2 (d) new: programmes and activities should <b><i>in general</i></b> 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 <u>68</u>. <b><i>The percentage of the EU budget that should meet this DNSH principle should be defined in the next MFF as well as in sector-specific rules. This DNSH principle would apply to programmes under the MFF following the entry into force of this regulation. A full application of the DNSH principle shall only be addressed at the level of the programme or the respective financial instrument and should not apply to low value operations funded by the financial instrument 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)..</i></b></p> <p><b><i>Art. 2 (42) bis: 'low-value financial support' means a financial instrument or a budgetary guarantee provided to the final beneficiary with a lower value than EUR 10 000 000.</i></b></p>
<p><i>Justification:</i> The question arises as to how to interpret / apply this provision to “programmes and activities” that fall under the application of this financial regulation. To be more concrete: Will support to SMEs in the future be subject to DNSH scrutiny as well? So far, SMEs are purposefully not subject to the application of the EU taxonomy. Also, the InvestEU Regulation foresees thresholds (€ 10m), to limit the substantial additional burden to larger projects / ticket sizes. Is it really the intention of the legislator to change this? Would this not jeopardise EU support to SMEs? And could this still be proportionate? Indeed, 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. It should be noted that applying a DNSH principle to all programs and projects would entail the risk of stopping 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.</p>	

Given the wording inserted into the financial regulation is very open and no limits are proposed, we would strongly recommend the insertion of thresholds that do not jeopardise EU support to SMEs 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 as it is the case in the Commission proposal. 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)

**Recital 24** should be adapted accordingly.

#### 1.6. Limit changes to the financial regulation in the middle of a programming period to those strictly necessary and allow for sufficient adaptation time

COM proposal	ELTI proposal
<p>Art. 275 (4)</p> <p>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.</p>	<p>Art. 275 (4)</p> <p>The obligations set out in Article 38, <b>first and</b> 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.</p>
<p><i>Justification:</i> 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</p>	

#### 1.7. Proportionality in audits

Present text	ELTI proposal
<p>Art. 128 Cross-reliance on audits</p> <p>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 <b>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.</b> To that end, the report of the independent auditor and the related audit documentation shall be made available on request to the European</p>	<p>Art. 128 Single audit principle</p> <p>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 <b>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, perform an additional but limited audit. In such</b></p>

Parliament, the Commission, the Court of Auditors and the audit authorities of Member States.	<b>cases, these additional costs may be recovered by the EU in the form of administrative costs.</b> 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.
<i>Justification:</i> 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. ELTI 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.	

### 1.8. IFRS in cases of indirect management

COM proposal	ELTI proposal
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. <b>Internationally-accepted accounting standards such as IFRS should generally be accepted for actions under indirect management.</b> Where an accounting rule diverges materially from those standards, the notes to the financial statements shall disclose that fact and the reasons for it.
<i>Justification:</i> 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). ELTI Members do not use the IPSAS standard, given they are not part of public administration. Many would rather report according to IFRS. In most cases both standards overlap, but there are also exceptions. In 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. Does the IPSAS reporting requirement in Article 213 prevail over the removal of this requirement in Articles 223(6b) and 159 (previously Article 155)? From our perspective, allowing implementing partners to report according to IFRS would be a significant simplification and international accounting standards such as IFRS should be generally accepted at least under indirect management.	

### 1.9. Proportionality with respect to tax requirements

COM proposal	ELTI proposal
<p>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:</p> <p>new</p> <p>(a) <b>third parties</b> to which they directly provide support from the budget comply with points (a) and (b) of the first subparagraph;</p> <p>(b) <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.</b></p> <p>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.</p>	<p>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:</p> <p>(a) <del>third parties</del> <b>the final recipient</b> to which they directly provide support from the budget comply with points (a) and (b) of the first subparagraph</p> <p><del>(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.</del></p> <p>When concluding agreements with financial intermediaries, entities implementing financial instruments and budgetary guarantees in accordance with Title X <b>shall provide for the requirements referred to in this paragraph into the relevant agreements and</b> request the financial intermediaries to report on the observance of the requirements laid down in this paragraph.</p> <p><b>The requirements set forth in points (a) and (b) of the first subparagraph should be assessed according to a proportionality criterion.</b></p> <p><b>As an example, according to a proportionality criterion:</b></p> <p><b>(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</b></p> <p><b>(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.</b></p>

*Justification:* 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).

#### 1.10. Data mining and risk scoring

COM proposal	ELTI proposal
<p>Art. 36 paragraph 2</p> <p>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: (...)</p> <p><b>(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 ;</b></p> <p><b>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:</b></p> <p><b>(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></p> <p><b>(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.</b></p>	<p>Art. 36 paragraph 2</p> <p><i>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:</i></p> <p><i>(a) effectiveness, efficiency and economy of operations;</i></p> <p><i>(b) reliability of reporting;</i></p> <p><i>(c) safeguarding of assets and information;</i></p> <p><i>(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 ;</i></p> <p><i>(..)</i></p> <p><del><b>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:</b></del></p> <p><del><b>(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></del></p> <p><del><b>(b) the first name(s), last name(s), date of birth, and VAT identification number(s) or tax identification</b></del></p>

**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. 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.**

~~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.~~

**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. Therefore, ELTI does 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.

### 1.11. Protection of the financial interest of the Union

COM proposal	ELTI proposal
<p style="text-align: center;"><i>Article <del>138</del>135</i></p> <p><b>Protection of the financial interests of the Union by means of detection of risks, exclusion and imposition of financial penalties</b></p> <p>(...)</p>	<p style="text-align: center;"><i>Article <del>138</del>135</i></p> <p><b>Protection of the financial interests of the Union by means of detection of risks, exclusion and imposition of financial penalties</b></p> <p><b>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).</b></p>

*Justification:* The recast now foresees 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.* The proposals also lack proportionality by, for example, not proposing any thresholds.

1.12. Exclusion criteria and decisions on exclusions

COM proposal	ELTI proposal
<p style="text-align: center;"><u>Article 139(2) <del>136</del></u></p> <p>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 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.</p>	<p style="text-align: center;"><u>Article 139(2) <del>136</del></u></p> <p>2. <b><i>In case of direct, indirect and shared management</i></b>, 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). <b><i>In case of direct management, in</i></b> 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 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.</p>
<p><i>Justification:</i> 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.</p>	

## 2. Stronger reliance on the EU pillar assessment

COM proposal	ELTI proposal
<p><i>Article 275279</i> Transitional provisions</p> <p>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 <b>may</b> continue to apply and shall be reviewed as appropriate.</p>	<p><i>Article 275279</i> Transitional provisions</p> <p>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 <b>shall</b> continue to apply and shall be reviewed as appropriate.</p>
<p><i>Justification:</i> To implement EU funds, NPBI, 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 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.</p>	

## 3. Recognising the role of National promotional banks and institutions as implementing partners under the EU 2021-2027 Multi-annual framework

COM proposal	ELTI proposal
<p>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 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.</p>	<p>Recital (46) In order to increase inclusiveness, a <b>national promotional bank or institution, as defined in article 2.50 of the 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</b> 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</p>

<p>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, <b>as well as from private-sector finance institutions and private-sector investors;</b></p> <p>Article 62 :</p> <p>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:</p>	<p>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</p> <p>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 <b>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)</b>, as well as from private-sector finance institutions and private-sector investors;</p> <p>Art.2 paragraph 50 (new): <b>"National promotional bank or institution"</b> 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)</p> <p>Art. 2 paragraph 57 (new): <b>"Public finance institution"</b> 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)</p> <p>Article 62:</p> <p>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:</p>
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	<p><i>(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</i></p> <p><i>(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)</i></p>
<p><i>Justification:</i> 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 partner 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.</p> <p>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 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.</p> <p>It is in this context that the request made by ELTI for an explicit mention in the EU financial regulation for their role as implementing partners in reference to the indirect management of EU funds.</p>	

#### 4. Other topics

COM proposal	ELTI proposal
<p><i>Article <del>213209</del></i></p> <p>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 <del>249243</del> and in compliance with the accounting rules referred to in Article 80 and the International Public Sector Accounting Standards (IPSAS).</p> <p>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</p>	<p><i>Article <del>213209</del></i></p> <p>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 <del>249243</del> and in compliance with the accounting rules referred to in Article 80 and the International Public Sector Accounting Standards (IPSAS).</p> <p>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</p>

(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 <del>May</del> ⇒ <b>April</b> ⇐ of the following financial year.	(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 <del>May</del> of the following financial year.
<i>Justification:</i> 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 risk when deliberating on this important change. We would propose to stick to the current deadline of 15.05.	

COM proposal	ELTI proposal
Article 159155	Article 159155
Implementation of Union funds and budgetary guarantees	Implementation of Union funds and budgetary guarantees
1. Persons and entities implementing Union funds or budgetary guarantees shall provide the Commission with:	1. Persons and entities implementing Union funds or budgetary guarantees shall provide the Commission with:
(d) a summary of the final audit reports and of controls carried out, including an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned. Where cross-reliance on audits as referred to in Article 128427 takes place, the summary referred to in point (d) of the first subparagraph of this paragraph shall include all relevant audit documentation to be relied upon.	(d) a summary of the final audit reports and of controls carried out, including an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned. Where cross-reliance on audits as referred to in Article 128427 takes place, the summary referred to in point (d) of the first subparagraph of this paragraph shall include all relevant audit documentation to be relied upon.
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 <b>February</b> of the following financial year.	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 <b>May</b> of the following financial year.
(...)	(...)
The documents referred to in the first subparagraph shall be provided to the Commission no later than 15 <b>February</b> of the following financial year. The opinion referred to in the third subparagraph shall be provided to the Commission no later than 15 <b>March</b> of that year.	The documents referred to in the first subparagraph shall be provided to the Commission no later than 15 <b>May</b> of the following financial year. The opinion referred to in the third subparagraph shall be provided to the Commission no later than 15 <b>June</b> of that year.
(...)	(...)
<i>Justification:</i> 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.	

COM proposal	ELTI proposal
<p>6. The amount of a budgetary commitment for which no payment within the meaning of Article <del>116415</del> 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.</p>	<p>6. The amount of a budgetary commitment for which no payment within the meaning of Article <del>116415</del> 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, <b>or in case of budgetary commitments under indirect management in justified cases.</b></p>
<p><i>Justification:</i> Article 115 (6) (new art. 116): In case of indirect management of budgetary commitments – especially outside of the EU – the <b>two years limitation has proven too strict</b> 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".</p>	

COM proposal	ELTI proposal
	<p><b><i>“implementing partner” means a financial institution whose systems and procedures have been assessed by the European Commission to be entrusted with the management of EU funding, in direct, indirect and share management modes.</i></b></p> <p><b><i>“final recipient means a legal or natural person receiving financial support from the EU budget.</i></b></p> <p><b><i>“beneficiary” means</i></b></p> <p><b><i>“financial intermediary” means an entity that acts as the middleperson between the Implementing Partner and the final recipient or beneficiary of EU support.</i></b></p> <p><b><i>“financial sub-intermediary” means...</i></b></p> <p><b><i>“established” (reference art. 159(2)b) means...</i></b></p> <p><b><i>“affiliate” means...</i></b></p> <p><b><i>“third parties” means...</i></b></p> <p><b><i>“other third parties” means...</i></b></p> <p><b><i>“Authorising officer” means ...</i></b></p>
<p><i>Justification:</i> Inserting definitions of “final recipient or beneficiary” as well as “financial intermediary” and “financial sub-intermediary” into art. 2 might bring more clarity to the Financial Regulation and, for example, avoid that final recipient that ultimately receives the credit guarantee provided can be interpreted to refer to the partner financial institution Other definitions like “third parties”, “other third parties”, “authorising officer” could be usefully included since these concepts are mentioned several times in the financial regulation with no clear definition, creating legal uncertainty.</p>	

COM proposal	ELTI proposal
	<p><b>Art. 214 (4) new:</b></p> <p><b>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.</b></p>
<p><i>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.</i></p>	

COM proposal	ELTI proposal
<p>Art. 2 (55)</p> <p><b>'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;</b></p>	<p>Art. 2 (55)</p> <p><del>'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;</del></p>
<p><i>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. As a second-best option, the EU Financial Regulation should define clear criteria. This should not happen in any delegated or implementing act, given everything in the EUFR is essential.</i></p>	

COM proposal	ELTI proposal
<p>Article 102</p> <p>Recovery by offsetting</p> <p><b>4. The opening of insolvency proceedings shall not affect the right of the accounting officer to proceed with a recovery by means of offsetting as referred to in paragraph 1.</b></p>	<p>Article 102</p> <p>Recovery by offsetting</p> <p><del>4. The opening of insolvency proceedings shall not affect the right of the accounting officer to proceed with a recovery by means of offsetting as referred to in paragraph 1.</del></p>
<p><i>Justification: This idea would thwart all attempts in crowding in public and private investors, thereby leveraging EU funds, and would possibly violate national insolvency laws in many Member States.</i></p>	

## The European Association of Long-Term Investors – ELTI

ELTI members represent an European-wide network of National Promotional Banks and Institutions who offer financial solutions tailored to the specific needs of their respective country and economy. Multilateral financial institutions complement the activities at national level with specific cross-boarder solutions or investments with an European impact. Following the specific public mission of each member the business model of each institution differs from country to country including different products and approaches. This is the same for multilateral ELTI members. Most of the members offer various debt-products but not all members have a mandate for investment in equity.

The 31 members of the European Long-Term Investors Association (ELTI) a.i.s.b.l. are major long-term investors and represent a combined balance sheet of EUR 2,6 trillion. The Association promotes and attracts quality long-term investment in the real economy, including:

- strengthening cooperation, including at an operational level, between European financial institutions as well as with other Institutions of the European Union (EU) acting as long-term financiers;
- informing the EU and its Institutions on the role and potential of the Members as institutions and agencies for long-term financing;
- strengthening the access of the Members to information on matters related to the EU;
- exchanging information and experiences among Members and with national and international organisations sharing the Association's interest in the promotion of long-term investment;
- developing the concept of long-term investment within the economic and financial sector and promoting academic research on long-term investments;
- representing, promoting and defending the shared interests of its Members in the field of Long-Term Investment in full transparency.

The Full Members of ELTI are generally national official financial institutions dedicated to the promotion of public policies at national and EU level<sup>2</sup>. The European Investment Bank (EIB) as the status of a permanent observer. ELTI also includes Associate Members notably multilateral financial institutions, regional financial institutions and non-banking institutions<sup>3</sup>.

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<sup>2</sup> Oesterreichische Kontrollbank (OeKB) Austria, Federal Holding and Investment Company (SFPI) Belgium, Bulgarian Development Bank (BDB) Bulgaria, Croatian Bank for Reconstruction and Development (HBOR) Croatia, National Development Bank-CZ (NDB CZ) Czech Republic, Caisse des Dépôts et Consignations (CDC) France, La Banque publique d'Investissement (bpifrance) France, KfW Bankengruppe (KfW) Germany, Hellenic Development Bank (HDB) Greece, Hungarian Development Bank (MFB) Hungary, Strategic Banking Corporation of Ireland (SBCI) Ireland, Cassa Depositi e Prestiti (CDP) Italy, Latvian Development Finance Institution (ALTUM) Latvia, Public Investment Development Agency (VIPA) Lithuania, Société Nationale de Credit et d'Investissement (SNCI) Luxembourg, Malta Development Bank (MDB), Malta, Invest-NL Netherlands, Bank Gospodarstwa Krajowego (BGK) Poland, Banco Português de Fomento (BPF) Portugal, Slovak Investment Holding (SIH) Slovakia, Slovenska Izvozna in Razvojna Banka (SID) Slovenia, Instituto de Credito Oficial (ICO) Spain

<sup>3</sup> Nordic Investment Bank (NIB), Council of Europe Development Bank (CEB), Long-Term Infrastructure Investors Association (LTIIA), Participatiemaatschappij Vlaanderen NV (PMV) Belgium, Fund Manager of Financial Instruments in Bulgaria (FMFIB) Bulgaria, NRW.Bank Germany, Consignment Deposits and Loans Fund (CDLF) Greece, INVEGA Lithuania, Turkiye Sinai Kalkinma Bankasi (TSKB) Turkey