

Commission Delegated Regulation (EU) No 110/2014 of 30 September 2013 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (repealed)

COMMISSION DELEGATED REGULATION (EU) No 110/2014

of 30 September 2013

on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (repealed)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002⁽¹⁾, and in particular Article 209 thereof,

Whereas:

- (1) Regulation (EU, Euratom) No 966/2012, based on the experience of having public-private partnerships institutionalised as Union bodies under Article 185 of Council Regulation (EC, Euratom) No 1605/2002⁽²⁾, introduced additional categories of public-private partnerships in order to increase the choice of instruments and include bodies whose rules are more flexible and accessible for private partners than those applicable to the Union institutions. Among those additional categories are the bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 which are entrusted with the implementation of a public-private partnership (hereinafter ‘PPP bodies’).
- (2) In order to ensure sound financial management of Union funds and to enable PPP bodies to adopt their own financial rules, it is necessary to adopt a model financial regulation for those bodies.
- (3) PPP bodies should establish and implement their budget in accordance with the budgetary principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management, which requires effective and efficient internal control, and transparency.
- (4) In order to ensure the overall implementation of the tasks and activities of the PPP body, it should be able to enter the unused appropriations for a given year in the estimate of revenue and expenditure of up to the following three financial years.
- (5) Since the Union funds put at the disposal of the PPP body are to be implemented under indirect management provided for in Article 60 of Regulation (EU, Euratom) No 966/2012, the provisions on financial planning and reporting should be consistent with the indirect management method of budget implementation. The discharge of the

budget implementation with regard to the Union contribution to the PPP bodies is to be part of the discharge given by the European Parliament to the Commission in respect of the implementation of the budget of the Union. Therefore, adequate annual reporting, including the submission of a management declaration, should be provided in accordance with Regulation (EU, Euratom) No 966/2012, allowing the Commission to better assume its responsibilities in relation to the discharge.

- (6) It is necessary to define the powers and responsibilities of the accounting officer and of the authorising officers taking into account the public-private nature of the PPP bodies. The authorising officers should be fully responsible for all revenue and expenditure operations executed under their authority and should be held accountable for their actions, including, where necessary, through disciplinary proceedings.
- (7) It is necessary to clarify the internal audit and internal control functions and to streamline the reporting requirements. The internal audit function within the PPP bodies should be performed by the Commission's internal auditor who should carry out audits when justified by the risks involved. Provisions on the establishment and functioning of internal audit capabilities should be introduced.
- (8) In order to guarantee that each body is accountable for the implementation of its budget and adheres to the objectives assigned to it at its establishment, PPP bodies should be allowed, for the performance of the tasks entrusted to them, to employ external private sector bodies only where necessary and not for tasks involving any public service mission or any use of discretionary powers of judgement.
- (9) The principles to be followed as to the revenue and expenditure operations of the PPP body should be laid down.
- (10) Given the public-private nature of the PPP bodies and in particular the private sector contribution to the budget of the PPP body, flexible procedures for the award of procurement contracts should be allowed. The relevant procedures should respect the principles of transparency, proportionality, equality of treatment and non-discrimination and partly depart from the relevant provisions laid down in Commission Delegated Regulation (EU) No 1268/2012⁽³⁾. It is necessary to ensure better and cheaper supply of goods and services, as well as the avoidance of excessive costs in managing procurement procedures through reinforced cooperation among the members of PPP bodies. The PPP bodies should therefore also have the possibility to conclude contracts without having recourse to a procurement procedure with their members other than the Union for the supply of products, provision of services or performance of work that those members provide directly, without having recourse to third parties.
- (11) In order to improve cost-efficiency, the possibility of sharing services or transferring them to another body or the Commission should be provided, in particular by allowing that the accounting officer of the Commission is entrusted with all or part of the tasks of the accounting officer of the PPP body.
- (12) For the evaluation of grant applications, projects and tenders and for providing opinions and advice in specific cases, the PPP bodies should be able to use external experts. These

experts should be selected in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.

- (13) In the award of grants and prizes, the relevant provisions of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 should apply, subject to any specific provision of the constituent instrument of the PPP body or of the basic act of the programme the implementation of which is entrusted to the PPP body in order to ensure a coherent implementation with the actions directly managed by the Commission.
- (14) Where the accounts of the PPP bodies need to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting rules applied by the PPP bodies should allow for such consolidation.
- (15) 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 of the PPP bodies as of 1 January 2014 in order to ensure coherent rules for the next multiannual financial framework,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

SCOPE

Article 1

Subject matter

This Regulation lays down the essential principles on the basis of which the Public-Private Partnership body (hereinafter ‘PPP body’) shall adopt its own financial rules. The financial rules of the PPP body shall not depart from this Regulation except where its specific needs so require and with the Commission’s prior consent in accordance with the fourth paragraph of Article 209 of Regulation (EU, Euratom) No 966/2012.

Each PPP body shall adopt detailed provisions implementing these principles in its financial rules.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- ‘governing board’ means the main internal body of the PPP body that is responsible for taking decisions on financial and budgetary matters, irrespective of the name given to it in the constituent instrument of the PPP body,
- ‘director’ means the person responsible for implementing the decisions of the governing board and the PPP body’s budget as authorising officer, irrespective of the title given to him in the constituent instrument of the PPP body,

- ‘member’ means a member of the PPP body in accordance with its constituent instrument,
- ‘constituent instrument’ means the instrument of Union law governing the main aspects of the creation and operation of the PPP body,
- ‘budget of the PPP body’ means the instrument which, for each financial year, forecasts and authorises the revenue and expenditure considered necessary for the PPP body.

Article 3

Scope of the budget

The budget of the PPP body shall consist of:

- (a) the revenue of the PPP body, comprising:
 - (i) its members’ financial contribution to the administrative costs;
 - (ii) its members’ financial contribution to the operational costs;
 - (iii) revenue assigned to specific items of expenditure;
 - (iv) any revenue generated by the PPP body;
- (b) the expenditure of the PPP body, including administrative expenditure.

CHAPTER 2

BUDGETARY PRINCIPLES

Article 4

Respect for budgetary principles

The budget of the PPP body shall be established and implemented in accordance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management which requires effective and efficient internal control, and transparency as set out in this Regulation.

Article 5

Principles of unity and of budgetary accuracy

- 1 No revenue shall be collected and no expenditure effected unless booked to a line in the budget of the PPP body.
- 2 No expenditure may be committed or authorised in excess of the appropriations authorised by the budget of the PPP body.
- 3 An appropriation may be entered in the budget of the PPP body only if it is for an item of expenditure considered necessary.

4 Interests generated by pre-financing payments made from the budget of the PPP body shall not be due to the PPP body.

Article 6

Principle of annuality

1 The appropriations entered in the budget of the PPP body shall be authorised for a financial year which shall run from 1 January to 31 December.

2 Commitment appropriations shall cover the total cost of the legal commitments entered into during the financial year.

3 Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years.

4 For administrative appropriations, expenditure shall not exceed the revenue expected for the year as referred in Article 3(a)(i).

5 Given the needs of the PPP body, the unused appropriations may be entered in the estimate of revenue and expenditure of up to the following three financial years. These appropriations must be used first.

6 Paragraphs 1 to 5 shall not prevent budget commitments for actions extending over more than one financial year being broken down over several years into annual instalments where the constituent instrument so provides or where they relate to administrative expenditure.

Article 7

Principle of equilibrium

1 Revenue and payment appropriations shall be in balance.

2 Commitment appropriations shall not exceed the relevant annual Union contribution as set out in the annual transfer of funds agreement with the Commission, plus annual contributions from other members than the Union, any other revenue referred to in Article 3 and the amount of the unused appropriations referred to in Article 6(5).

3 The PPP body may not raise loans within the framework of the budget of the PPP body.

4 If the budget result is positive, it shall be entered in the budget of the following financial year as revenue.

If the budget result is negative, it shall be entered in the budget for the following financial year as payment appropriations.

Article 8

Principle of unit of account

The budget of the PPP body shall be drawn up and implemented in euro and the accounts shall be presented in euro. However, for cash-flow purposes, the accounting officer shall be authorised to carry out operations in other currencies as laid down in the financial rules of the PPP body.

Article 9

Principle of universality

1 Without prejudice to paragraph 2, total revenue shall cover total payment appropriations. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to any specific provision in the financial rules of the PPP body on cases where certain deductions may be made from payment requests, which shall then be passed for payment of the net amount.

2 Revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests, shall be used to finance specific items of expenditure.

3 The director may accept any donation made to the PPP body, such as foundations, subsidies, gifts and bequests.

Acceptance of donations which may involve a significant financial charge shall be subject to the prior authorisation of the governing board, which shall take a decision within two months of the date on which the request is submitted to it. If the governing board fails to take a decision within that period, the donation shall be deemed to be accepted.

The amount above which the financial charge involved is considered significant shall be set by a decision of the governing board.

Article 10

Principle of specification

1 Appropriations shall be earmarked for specific purposes at least by title and chapter.

2 The director may transfer appropriations from one chapter to another without limit and from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made.

Beyond the limit referred to in the first subparagraph, the director may propose to the governing board transfers of appropriations from one title to another. The governing board shall have three weeks to oppose such transfers. After that time-limit they shall be deemed to be adopted.

The director shall inform the governing board as soon as possible of all transfers carried out under the first subparagraph.

Article 11

Principle of sound financial management

1 Appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.

2 The principle of economy requires that the resources used by the PPP body in the pursuit of its activities are made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency concerns the best relationship between resources employed and results achieved.

The principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results.

3 Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget of the PPP body. The achievement of those objectives shall be monitored by performance indicators for each activity, and the information shall be provided to the governing board by the director annually and at the latest in the documents accompanying the draft budget of the PPP body.

4 Unless the constituent instrument provides for evaluations to be conducted by the Commission, the PPP body, in order to improve decision-making, shall undertake evaluations, including *ex post* evaluations, of its programmes and activities which entail significant spending and evaluation results shall be sent to the governing board.

Article 12

Internal control of budget implementation

1 The budget of the PPP body shall be implemented in compliance with effective and efficient internal control.

2 For the purposes of the implementation of the budget of the PPP body, internal control is defined as a process applicable at all levels of management and designed to provide reasonable assurance of achieving the following objectives:

- a effectiveness, efficiency and economy of operations;
- b reliability of reporting;
- c safeguarding of assets and information;
- d prevention, detection, correction and follow-up of fraud and irregularities;
- e adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multi-annual character of programmes as well as the nature of the payments concerned.

3 Effective and efficient internal control shall be based on best international practices and include, in particular, the elements laid down in Article 32(3) and (4) of Regulation (EU, Euratom) No 966/2012, taking into account the structure and size of the PPP body, the nature of the tasks entrusted to it and the amounts and financial and operational risks involved.

Article 13

Principle of transparency

1 The budget of the PPP body shall be established and implemented and the accounts presented in accordance with the principle of transparency.

2 The budget of the PPP body including the establishment plan and amending budgets, as adopted, including any adaptations as provided in Article 15(1), shall be published on the

internet site of the PPP body within four weeks of their adoption and shall be transmitted to the Commission and the Court of Auditors.

3 The PPP body shall make available on its internet site no later than 30 June of the following financial year information on the recipients of funds deriving from its budget, in accordance with paragraphs 2, 3 and 4 of Article 21 of Delegated Regulation (EU) No 1268/2012, following a standard presentation.

The published information shall be easily accessible, transparent and comprehensive. The information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽⁴⁾.

4 The experts contracted pursuant to Article 34 of this Regulation shall be published on an internet site of the Union.

CHAPTER 3

FINANCIAL PLANNING

Article 14

Estimate of revenue and expenditure

1 The PPP body shall send to the Commission and to the other members no later than 31 January of the year preceding that in which the budget of the PPP body is to be implemented an estimate of its revenue and expenditure and the general guidelines underlying that estimate, together with its draft work programme referred to in Article 31(4).

2 The estimate of revenue and expenditure of the PPP body shall include:

- a an estimate of the number of permanent and temporary posts, by function group and by grade, as well as of the contract staff and seconded national experts expressed in full-time equivalents, within the limits of the budget appropriations;
- b where there is a change in the number of persons in post, a statement justifying the request for new posts;
- c a quarterly estimate of cash payments and receipts;
- d information on the achievement of all previously set objectives for the various activities;
- e the targets set for the financial year to which the estimate relates, indicating any specific budgetary needs dedicated to achieving these targets;
- f the administrative costs and the implemented budget of the PPP body in the preceding financial year;
- g the amount of financial contributions made by the members and the value of contributions in kind made by the members, other than the Union;
- h information on the unused appropriations that are entered in the estimate of revenue and expenditure per year in accordance with Article 6(5).

Article 15

Establishment of the budget

1 The budget of the PPP body and the staff establishment plan, including the number of permanent and temporary posts by function group and by grade and complemented with the number of contract staff and of seconded national experts expressed in full-time equivalents, shall be adopted by the governing board in accordance with the constituent instrument of the PPP body. Detailed provisions may be laid down in the financial rules of the PPP body. Any amendment to the budget of the PPP body, including the establishment plan, shall be the subject of an amending budget of the PPP body adopted by the same procedure as the initial budget of the PPP body. The budget of the PPP body and, where appropriate, the amending budgets of the PPP body shall be adapted in order to take into account the amount of the Union contribution as laid down in the budget of the Union.

2 The budget of the PPP body shall consist of a statement of revenue and a statement of expenditure.

3 The budget of the PPP body shall show:

- a in the statement of revenue:
 - (i) the estimated revenue of the PPP body for the financial year concerned ('year n');
 - (ii) the estimated revenue for the preceding financial year and the revenue for year n-2;
 - (iii) appropriate remarks on each revenue line;
- b in the statement of expenditure:
 - (i) the commitment and payment appropriations for year n;
 - (ii) the commitment and payment appropriations for the preceding financial year and the expenditure committed and the expenditure paid in year n-2, the latter also expressed as a percentage of the budget of the PPP body of year n;
 - (iii) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;
 - (iv) appropriate remarks on each subdivision.

4 The establishment plan shall show next to the number of posts authorised for the financial year, the number authorised for the preceding year and the number of posts actually filled. The same information shall be shown for the contract staff and seconded national experts.

CHAPTER 4

FINANCIAL ACTORS

Article 16

Budget implementation in accordance with the principle of sound financial management

1 The director shall perform the duties of authorising officer. The director shall implement the revenue and expenditure of the budget of the PPP body in accordance with the financial rules of the PPP body and the principle of sound financial management under his or her own responsibility and within the limits of the appropriations authorised. The director shall be responsible for ensuring compliance with the requirements of legality and regularity.

Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, the PPP body shall participate in fraud prevention activities of the European Anti-fraud Office (OLAF).

2 The director may delegate the powers of budget implementation to staff of the PPP body covered by the Staff Regulations, where those apply to the staff of the PPP body, in accordance with the conditions laid down in the financial rules of the PPP body. Those so empowered may act only within the limits of the powers expressly conferred upon them.

Article 17

Powers and duties of the authorising officer

1 The budget of the PPP body shall be implemented by the director in the departments placed under his or her authority.

2 Technical expertise tasks and administrative, preparatory or ancillary tasks not involving the exercise of public authority or the use of discretionary powers of judgement may be entrusted by contract to external private-sector entities or bodies, where this proves to be indispensable.

3 The director shall, in accordance with the minimum standards adopted by the governing board, and having due regard to the risks associated with the management environment and the nature of the action financed, put in place the organisational structure and the internal control systems suited to the performance of duties of the director. The establishment of such structure and systems shall be supported by a risk analysis which takes into account their cost-effectiveness.

The director may establish within his or her departments an expertise and advice function designed to help him or her control the risks involved in his or her activities.

4 The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge to the Commission in respect of implementation of the budget of the Union for the year concerned. Personal data contained in supporting document shall be deleted where possible when those data are not necessary for control and audit purposes. In any event, as regards the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply.

Article 18

Ex ante controls

1 Each operation shall be subject at least to an *ex ante* control based on a desk review of documents and on the available results of controls already carried out relating to the operational and financial aspects of the operation.

Ex ante controls shall comprise the initiation and the verification of an operation.

Initiation and verification of an operation shall be separate functions.

2 Initiation of an operation shall be understood as all the operations which are preparatory to the adoption of the acts implementing the budget of the PPP body by the authorising officer responsible.

3 *Ex ante* verification of an operation shall be understood as all the *ex ante* checks put in place by the authorising officer responsible in order to verify the operational and financial aspects.

4 *Ex ante* controls shall verify the coherence among supporting documents requested and any other information available.

The extent in terms of frequency and intensity of the *ex ante* controls shall be determined by the authorising officer responsible taking into account risk-based and cost-effectiveness considerations. In case of doubt, the authorising officer responsible for validating the relevant payment shall request complementary information or perform an on-the-spot control in order to obtain reasonable assurance as part of the *ex ante* control.

The purpose of the *ex ante* controls shall be to ascertain that:

- a the expenditure is in order and complies with the provisions applicable;
- b the principle of sound financial management set out in Article 11 has been applied.

For the purpose of controls, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising officer responsible to constitute a single operation.

Article 19

Ex post controls

1 The authorising officer responsible may put in place *ex post* controls to verify operations already approved following *ex ante* controls. Such controls may be organised on a sample basis according to risk.

The *ex post* controls may be carried out on the basis of documents and, where appropriate, on the spot.

2 The *ex post* controls shall be carried out by staff other than that responsible for the *ex ante* controls. The staff responsible for the *ex post* controls shall not be subordinate to the members of the staff responsible for the *ex ante* controls.

Staff responsible for controlling the management of financial operations shall have the necessary professional skills.

Article 20

Annual reporting

The authorising officer shall report annually to the governing board on the performance of his or her duties. For this purpose, the authorising officer shall submit no later than 15 February of the following financial year to the governing board and to the Commission:

- (a) a report on the implementation of the PPP body's annual work programme, budget of the PPP body and staff resources;
- (b) the provisional accounts of the PPP body, including the report on budgetary and financial management referred to in Article 39;
- (c) a management declaration stating that, unless otherwise specified in any reservations, the authorising officer has reasonable assurance that:
 - (i) the information is properly presented, complete and accurate (true and fair view);
 - (ii) the expenditure was used for its intended purpose;
 - (iii) the control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions;
- (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.

The report shall indicate the results of the operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control systems and be proportionate to the nature of the entrusted tasks and the amounts involved.

No later than 1 July each year the documents mentioned under points c) and d) of the first paragraph and their assessment by the governing board, the approved annual activity report and the final accounts together with their approval by the governing board pursuant to Article 43(2) shall be sent by the director to the Commission. The Commission shall send these documents to the European Parliament and to the Council.

Article 21

Protection of the financial interests of the Union

1 If a member of staff involved in the financial management and control of transactions considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform the director in writing who shall reply in writing. If the director fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the relevant panel

referred to in Article 23(3) in writing. The panel referred to in Article 23(3) shall immediately inform the governing board.

2 In the event of any illegal activity, fraud or corruption which may harm the interests of the PPP body or of its members, the member of staff shall inform the authorities and bodies designated by the applicable legislation. Contracts with external auditors carrying out audits of the financial management of the PPP body shall provide for an obligation of the external auditor to inform the authorising officer of any suspected illegal activity, fraud or corruption which may harm the interests of the PPP body or of its members.

Article 22

Accounting officer

1 The governing board shall appoint an accounting officer covered by the Staff Regulations, where those apply to the staff of the PPP body, who shall be totally independent in the performance of his or her duties. The accounting officer shall be responsible in the PPP body for:

- a properly implementing payments, collecting revenue and recovering amounts established as being receivable;
- b keeping, preparing and presenting the accounts in accordance with Chapter 8;
- c implementing, in accordance with Chapter 8, the accounting rules and the chart of accounts;
- d laying down and validating the accounting systems and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information; in this respect, the accounting officer shall be empowered to verify at any time compliance with validation criteria;
- e treasury management.

2 Two or more PPP bodies may appoint the same accounting officer.

PPP bodies may also agree with the Commission that the accounting officer of the Commission shall also act as accounting officer of the PPP body.

They may also entrust the accounting officer of the Commission with part of the tasks of the accounting officer of the PPP body taking into account cost-benefit considerations.

In the case referred to in this paragraph, they shall make necessary arrangements in order to avoid any conflict of interests.

3 The accounting officer shall obtain from the authorising officer all the information necessary for the production of accounts which give a true and fair view of the PPP body's financial situation and of budgetary implementation. The authorising officer shall guarantee the reliability of that information.

4 Before the adoption of the accounts by the director, the accounting officer shall sign them off, thereby certifying that he or she has a reasonable assurance that the accounts present a true and fair view of the financial situation of the PPP body.

For the purpose of the first subparagraph, the accounting officer shall verify that the accounts have been prepared in accordance with the accounting rules referred to in Article 38 and that all revenue and expenditure is entered in the accounts.

The accounting officer shall be empowered to check the information received as well as to carry out any further checks he or she deems necessary in order to sign off the accounts.

The accounting officer shall make reservations, if necessary, explaining exactly the nature and scope of such reservations.

Subject to paragraph 5, only the accounting officer shall be empowered to manage cash and cash equivalents. The accounting officer shall be responsible for their safekeeping.

5 The accounting officer may, in the performance of his or her duties, delegate certain tasks to staff members subject to the Staff Regulations, where those apply to the staff of the PPP body, where this is indispensable for the performance of his or her duties in accordance with the financial rules of the PPP body.

6 Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his or her duties by the governing board. In such a case, the governing board shall appoint an interim accounting officer.

Article 23

Liability of the financial actors

1 Articles 16 to 25 are without prejudice to any liability under criminal law which the financial actors may incur as provided for in the applicable national law and in the provisions in force concerning the protection of the Union's financial interests and the fight against corruption involving Union officials or officials of Member States.

2 Each authorising officer and accounting officer shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations. In the event of illegal activity, fraud or corruption which may harm the interests of the PPP body or of its members, the matter shall be submitted to the authorities and bodies designated by the applicable legislation, in particular to OLAF.

3 The specialised financial irregularities panel set up by the Commission or in which the Commission participates in accordance with Article 73(6) of Regulation (EU, Euratom) No 966/2012, shall exercise the same powers in respect of the PPP body as it does in respect of Commission departments, unless the governing board decides to set up a functionally independent panel, or to participate in a joint panel established by several bodies. For cases submitted by PPP bodies, the specialised financial irregularities panel set up by the Commission or in which the Commission participates shall include one staff member of a PPP body.

On the basis of the opinion of the panel referred to in the first subparagraph, the director shall decide whether to initiate proceedings for disciplinary action or for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer. If the opinion implicates the director, the panel shall send it to the governing board and to the Commission's internal auditor. The director shall refer, in anonymous form, to opinions of the panel in his or her report under Article 20 and indicate the follow-up measures taken.

4 Any member of the staff may be required to compensate, in whole or in part, any damage suffered by the PPP body as a result of a serious misconduct on his or her part in the course of or in connection with the performance of his or her duties. The appointing authority shall take a reasoned decision after completing the formalities laid down by the applicable legislation with regard to disciplinary matters.

Article 24

Conflict of interests

1 Financial actors within the meaning of Articles 16 to 25 and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the PPP body.

Where such a risk exists, the person in question shall refrain from such actions and shall refer the matter to the director who shall confirm in writing whether a conflict of interests exists. The person in question shall also inform his or her immediate supervisor. If the actor is the director, he or she must refer the matter to the governing board.

Where a conflict of interests is found to exist, the person in question shall cease all activities in the matter. The director or the governing board, in the case of the director, shall take any further appropriate action.

2 For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.

Article 25

Segregation of duties

The duties of authorising officer and accounting officer shall be segregated and mutually exclusive.

CHAPTER 5

INTERNAL AUDIT

Article 26

Appointment, powers and duties of the internal auditor

1 The PPP body shall have an internal audit function which shall be performed in compliance with the relevant international standards.

2 The internal audit function shall be performed by the Commission's internal auditor. The internal auditor may be neither authorising officer nor accounting officer.

3 The internal auditor shall advise the PPP body on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The internal auditor shall be responsible in particular for:

- a assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them;
- b assessing the efficiency and effectiveness of the internal control and audit systems applicable to each budget implementation operation.

4 The internal auditor shall perform his or her duties in relation to all the PPP body's activities and departments. The internal auditor shall enjoy full and unlimited access to all information required to perform his or her duties.

5 The internal auditor shall take note of the report of the authorising officer under Article 20 and of any other pieces of information identified.

6 The internal auditor shall report to the governing board and the director on his or her findings and recommendations.

The internal auditor shall also report in any of the following cases:

- critical risks and recommendations have not been addressed,
- there are significant delays in the implementation of the recommendations made in the previous years.

The governing board and the director shall ensure the regular monitoring of the implementation of audit recommendations. The governing board shall examine the information referred to in Article 20 and whether the recommendations have been fully and timely implemented.

7 The PPP body shall make available the contact details of the internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.

8 The reports and findings of the internal auditor shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.

Article 27

Independence of the internal auditor

The independence of the internal auditor, the liability of the internal auditor for action taken in the performance of his or her duties and the right for the internal auditor to bring an action before the Court of Justice of the European Union shall be determined in accordance with Article 100 of Regulation (EU, Euratom) No 966/2012.

Article 28

Establishment of an internal audit capability

1 The governing board may establish with due regard to cost effectiveness and added value, an internal audit capability which shall perform its duties in compliance with the relevant international standards.

The purpose, authority and responsibility of the internal audit capability shall be provided for in the internal audit charter and shall be subject to the approval of the governing board.

The annual audit plan of an internal audit capability shall be drawn up by the Head of internal audit capability taking into consideration, inter alia, the director's assessment of risk in the PPP body.

It shall be reviewed and approved by the governing board.

The internal audit capability shall report to the governing board and the director on his or her findings and recommendations.

If the internal audit capability of a single PPP body is not cost-effective or is not able to meet international standards, the PPP body may decide to share an internal audit capability with other PPP bodies functioning in the same policy area.

In such cases the governing board of the concerned PPP bodies shall agree on the practical modalities of the shared internal audit capabilities.

The internal audit actors shall cooperate efficiently through exchanging information and audit reports and, when appropriate, establishing joint risk assessments and carrying out joint audits.

2 The governing board and the director shall ensure the regular monitoring of the implementation of internal audit capability's recommendation.

CHAPTER 6

REVENUE AND EXPENDITURE OPERATIONS

Article 29

Implementation of revenue

1 Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and recovering undue amounts. It shall also include the possibility of waiving established entitlements, where appropriate.

2 Amounts wrongly paid shall be recovered.

If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.

Where the authorising officer responsible plans to waive or partially waive recovery of an established amount receivable, he or she shall ensure that the waiver is in order and is in accordance with the principles of sound financial management and proportionality. The waiver decision shall be substantiated. The waiver decision shall state that action has been taken to secure recovery and the points of law and fact on which it is based.

The accounting officer shall keep a list of amounts due to be recovered. The PPP body's entitlements shall be grouped in the list according to the date of issue of the recovery order. The accounting officer shall also indicate decisions to waive or partially waive recovery of established amounts. The list shall be added to the PPP body's report on budgetary and financial management.

3 Any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with Delegated Regulation (EU) No 1268/2012.

4 Entitlements of the PPP body in respect of third parties and entitlements of third parties in respect of the PPP body shall be subject to a limitation period of five years.

Article 30

Members' contribution

1 The PPP body shall present to its members requests for payment of all or part of their contribution under terms and at intervals set out in the constituent instrument or agreed with them.

2 The funds paid to the PPP body by its members by way of a contribution shall bear interest for the benefit of the budget of the PPP body.

Article 31

Implementation of expenditure

1 To implement expenditure, the authorising officer shall make budgetary commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminary steps for the implementation of appropriations.

2 Every item of expenditure shall be committed, validated, authorised and paid.

Validation of expenditure is the act whereby the authorising officer responsible confirms a financial operation.

Authorisation of expenditure is the act by which the authorising officer responsible, having verified that the appropriations are available, instructs the accounting officer to pay the validated expenditure.

3 In respect of any measure which may give rise to expenditure chargeable to the budget of the PPP body, the authorising officer responsible shall make a budgetary commitment before entering into a legal commitment with third parties.

4 The annual work programme of the PPP body shall provide the authorisation by the governing board for the operational expenditure of the PPP body on the activities it covers, provided that the elements set out in this paragraph are clearly identified.

The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the action(s) to be financed and an indication of the amount allocated to each action.

Any substantial amendment to the annual work programme shall be adopted by the same procedure as the initial work programme, in accordance with the provisions of the constituent instrument.

The governing board may delegate the power to make non-substantial amendments to the work programme to the authorising officer of the PPP body.

Article 32

Time limits

The payment of expenditure must be carried out within the time limits specified in and in accordance Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012.

CHAPTER 7

IMPLEMENTATION OF THE BUDGET OF THE PPP BODY

Article 33

Procurement

1 As regards procurement, Title V of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraphs 3 to 6 of this Article.

2 The PPP body shall participate in the central exclusion database set up and operated by the Commission pursuant to Article 108 of the general Financial Regulation.

3 For contracts with a value between EUR 60 000 and the thresholds laid down in Article 118 of Regulation (EU, Euratom) No 966/2012 the procedure set out Delegated Regulation (EU) No 1268/2012 for contracts with a low value not exceeding EUR 60 000 may be used.

4 The PPP body may be associated, at its request, as contracting authority, in the award of Commission or interinstitutional contracts and with the award of contracts of other Union or PPP bodies.

5 The PPP body may conclude a contract, without having recourse to a public procurement procedure, with the Commission, the interinstitutional offices, the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94⁽⁵⁾ and other PPP bodies for the supply of goods, provision of services or performance of work that the latter provide.

The PPP body may conclude a contract, without having recourse to a public procurement procedure, with its members other than the Union for the supply of goods, provision of services or performance of work that those members directly provide without having recourse to third parties.

The goods, services or work provided under the first and second subparagraph shall not be considered part of the contribution of the members to the budget of the PPP body.

6 The PPP body may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs or with contracting authorities of Member States, the European Free Trade Association States or Union candidate countries which participate in it as members. In such cases, Article 133 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis*.

The PPP body may use joint procurement procedures with its private members or with contracting authorities of countries participating in Union programmes which

participate in it as members. In such cases, the first paragraph of Article 133 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis*.

Article 34

Experts

Article 287 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis* for the selection of experts subject to any specific procedure laid down in the basic act of the programme the implementation of which is entrusted to the PPP body. Such experts shall be paid on the basis of a fixed amount announced in advance and shall be chosen on the basis of their professional capacity.

The PPP body may use the lists drawn up by the Commission or by other Union or PPP bodies.

The PPP body may, if deemed appropriate and in duly justified cases, select any individual with the appropriate skills from outside the lists.

External experts shall be selected on the basis of skills, experience and knowledge appropriate to carry out the tasks assigned to them and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.

Article 35

Grants

As regards grants, Title VI of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to any specific provisions of the constituent instrument.

Article 36

Prizes

1 As regards prizes, Title VII of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraph 2 of this Article.

2 Contests for prizes with a unit value of EUR 1 000 000 or more may only be published if they are provided for in the draft work programme referred to in Article 14(1).

Article 37

Indication of means of redress

1 Where a procedural act of an authorising officer adversely affects the rights of an applicant or tenderer, beneficiary or contractor, it shall contain an indication of the available means of administrative and/or judicial redress for challenging this act.

2 In particular, the nature of the redress, the body or bodies before which it can be brought, as well as time limits for their exercise shall be indicated

3 Paragraphs 1 and 2 shall be subject to any specific procedure laid down in the basic acts of the programme the implementation of which is entrusted to the PPP body.

CHAPTER 8

ACCOUNTING

Article 38

Rules governing the accounts

The PPP body shall set up an accounting system providing accurate, complete and reliable information in a timely manner.

The accounting of the PPP body shall conform to the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012.

Article 39

Structure of the accounts

The accounts of the PPP body shall comprise:

- (a) the financial statements of the PPP body;
- (b) the reports on implementation of the budget of the PPP body (report on budgetary and financial management).

The PPP body shall prepare a report on budgetary and financial management for the financial year. This report shall give an account, both in absolute terms and expressed as a percentage, at least, of the rate of implementation of appropriations together with summary information on the transfers of appropriations among the various budget items.

Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the PPP body shall send the report on budgetary and financial management to the European Parliament, the Council and the Court of Auditors by 31 March of the following financial year.

Article 40

Accounting principles

The financial statements shall present information, including information on accounting policies, in a manner that ensures it is relevant, reliable, comparable and understandable. The financial statements shall be drawn in accordance with generally accepted accounting principles as outlined in the accounting rules according to Article 143 of Regulation (EU, Euratom) No 966/2012 or the accrual based International Public Sector Accounting Standards (hereafter 'IPSAS').

Article 41

Financial statements

- 1 The financial statements shall be presented in euro and shall comprise:
 - a the balance sheet and the statement of financial performance, which represent all assets and liabilities, the financial situation and the economic result at 31 December of the preceding year; they shall be presented in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012 or the accrual based IPSAS;
 - b the cash-flow statement showing amounts collected and disbursed during the year and the final treasury position;
 - c the statement of changes in net assets presenting an overview of the movements during the year in reserves and accumulated results.
- 2 The notes to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the PPP body's activities.

Article 42

Budgetary implementation reports

The budgetary implementation reports shall be presented in euro. They shall consist of:

- (a) reports which aggregate all budgetary operations for the year in terms of revenue and expenditure;
- (b) explanatory notes, which shall supplement and comment on the information given in the reports.

The structure of the budgetary implementation reports shall be the same as that of the budget itself.

Article 43

Provisional accounts and approval of the final accounts

1 Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the PPP body shall send the provisional accounts to the Court of Auditors by 15 February of the following year.

In the case referred to in the first subparagraph, the accounting officer of the PPP body shall also send by 15 February of the following year a reporting package to the accounting officer of the Commission, in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

2 The accounting officer shall draw up the final accounts of the PPP body. The director shall send them by 15 March, together with the opinion of the external auditor referred to in Article 46, to the governing board for approval.

Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting officer shall send the final accounts, together with the opinion of the external auditor referred to in Article 46 and the approval of the governing board to the Court of Auditors, the European Parliament and the Council, by 1 July of the following financial year. In such case the accounting officer of the PPP body shall also send by 1 July a reporting package to the accounting officer of the Commission in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the PPP body shall also send to the Court of Auditors, with a copy to the accounting officer of the Commission, at the same date as the transmission of the final accounts, a representation letter covering those final accounts.

The final accounts shall be accompanied by a note drawn up by the accounting officer in which the latter declares that the final accounts were prepared in accordance with this chapter and with the applicable accounting principles, rules and methods.

The final approved accounts of the PPP body shall be published on its internet site within one month from their approval.

Article 44

Accounting system

1 Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the harmonised chart of accounts to be applied by the PPP body shall be adopted by the Commission's accounting officer in accordance with Article 152 of Regulation (EU, Euratom) No 966/2012.

2 The accounting system shall consist of general accounts and budgetary accounts. The accounts shall be kept in euro on the basis of the calendar year.

3 The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the PPP body.

4 The budgetary accounts shall provide a detailed record of the implementation of the budget of the PPP body. They shall record all budgetary revenue and expenditure operations.

Article 45

Inventories

The PPP body shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting its or Union property. Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the PPP body shall keep those inventories in accordance with a model drawn up by the accounting officer

of the Commission. The PPP body shall check that entries in the inventory correspond to the actual situation.

CHAPTER 9

EXTERNAL AUDIT AND COMBATTING FRAUD

Article 46

External audit

The PPP body shall be subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an independent audit body. The opinion of the external auditor shall establish whether the accounts give a true and fair view, whether the control systems put in place function properly, and whether the underlying transactions are legal and regular. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration referred to in Article 20. The opinion shall be submitted to the governing board. It shall be transmitted to the Commission together with the final accounts of the PPP body by 15 March at the latest.

Article 47

Examination of the accounts by the Court of Auditors

1 Unless otherwise provided for in the constituent instrument of the PPP body, the Court of Auditors shall scrutinise the accounts of the PPP body in accordance with Article 287 of the Treaty on the Functioning of the European Union. In its examination, the Court of Auditors may consider the audit work performed by the independent external auditor referred to in Article 46 of this Regulation and the action taken in response to his or her findings.

2 The scrutiny carried out by the Court of Auditors shall be governed by Articles 158 to 163 of Regulation (EU, Euratom) No 966/2012.

Article 48

On-the-spot checks by the Commission, the Court of Auditors and OLAF

1 Without prejudice to Article 47(1), the PPP body shall grant Commission staff and other persons authorised by it, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.

2 OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013⁽⁶⁾ of the European Parliament and of the Council and Council Regulation (Euratom, EC) No 2185/96⁽⁷⁾ with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or contract funded by the PPP body.

3 Without prejudice to paragraphs 1 and 2, contracts, agreements and decisions of the PPP body shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct such audits and investigations, according to their respective competences.

CHAPTER 10

FINAL AND TRANSITIONAL PROVISIONS

Article 49

Information requests

The Commission and the members of the PPP body other than the Union may request any necessary information or explanations from the PPP body regarding budgetary matters within their fields of competence.

Article 50

Adoption of the PPP body's financial rules

Each body referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 shall adopt new financial rules in view of their entry into force on 1 January 2014 or, in any event, within nine months of the date on which a PPP body falls within the scope of Article 209 of that Regulation.

Article 51

Entry into force

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

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

Done at Brussels, 30 September 2013.

For the Commission

The President

José Manuel BARROSO

- (1) [OJ L 298, 26.10.2012, p. 1.](#)
- (2) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ([OJ L 248, 16.9.2002, p. 1.](#)).
- (3) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union ([OJ L 362, 31.12.2012, p. 1.](#)).
- (4) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ([OJ L 8, 12.1.2001, p. 1.](#)).
- (5) Council Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union ([OJ L 314, 7.12.1994, p. 1.](#)).
- (6) Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 ([OJ L 248, 18.9.2013, p. 1.](#)).
- (7) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ([OJ L 292, 15.11.1996, p. 2.](#)).