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## **MEETING DOCUMENT**

From:	General Secretariat of the Council
To:	Budget Committee
N° Cion doc.:	8910/22 + ADD 1 (COM(2022) 223 final + ANNEXES 1 to 2)
Subject:	Financial Regulation (recast): Amendments related to the recording and storing of data on recipients of EU funding and data-mining (for audit and control) (Fiche 2)

Delegations will find enclosed the Commission's Fiche No 2 regarding the amendments related to the recording and storing of data on recipients of EU funding and data-mining (for audit and control).

**Financial Regulation recast**  
(COM(2022)223 final)

**Amendments related to the recording and storing of data on recipients of EU funding and data-mining (for audit and control)**

The Inter-institutional Agreement ('IIA') of 16 December 2020 stipulates that 'in order to enhance the protection of the Union budget and the European Union Recovery Instrument against fraud and irregularities, the Institutions agree on the introduction of standardised measures to collect, compare and aggregate information and figures on the final recipients and beneficiaries of Union funding, for the purposes of control and audit' (point 30). In addition, collecting 'data on those ultimately benefitting, directly or indirectly, from Union funding under shared management and from projects and reforms supported under Regulation of the European Parliament and of the Council establishing a Recovery and Resilience Facility, including data on beneficial owners of the recipients of the funding, is necessary to ensure effective controls and audits' (point 31). Moreover, the Commission is required to 'make available an integrated and interoperable information and monitoring system, including a single data-mining and risk-scoring tool, to access and analyse the data (...) with a view to a generalised application by Member States (...) ' (point 32).

For the 2021-2027 MFF and NGEU, the Commission proposed to improve the collection and interoperability of data by Member States on recipients of EU funding where the budget is implemented under shared management and under the Recovery and Resilience Facility ('RRF'). Important progress was achieved in the adopted legislation as regards the type of data, including beneficial ownership data, which now has to be collected by Member States. However, the adopted legislation does not provide for the compulsory use of the single data-mining and risk-scoring tool to be provided by the Commission and the Commission made formal statements concerning this point.

The Commission considers that analysing relevant data on the recipients of EU funding from different perspectives, dimensions or angles and summarising it into useful new information, categorising it, and identifying relationships, correlations or patterns, can be an effective means to enhance the protection of the EU budget.

Therefore, to further improve the internal control of budget implementation, in particular the prevention, detection, correction and follow-up of fraud, corruption, conflicts of interest, double funding and other irregularities, the Commission considers essential ensuring standardised electronic recording and storing of data on the recipients of EU funding and their beneficial owners (where the recipient is not a natural person) and using an integrated IT system for data-mining and risk scoring to access and analyse those data, for control, audit and anti-fraud purposes, and identifying, based on a set of risk indicators, situations that might be susceptible to risks of irregularities, fraud, corruption and conflicts of interest.

The European Parliament has been recurrently calling on the Commission to take action in this respect, for instance in the context of the 2018, 2019 and 2020 discharge. In addition, in its own initiative report on the revision of the Financial Regulation ('FR'), the Parliament suggested the compulsory use of a single data-mining and risk-scoring tool and the systematic collection of beneficial ownership data. Moreover, in its own initiative legislative resolution (on the basis of Article 225 TFEU) on digitalisation of the European reporting, monitoring and audit, the Parliament

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<sup>1</sup> This fiche is a non-paper prepared by the responsible Commission department to facilitate the decision making process. Fragments of the Commission proposal have been inserted in Annex for ease of reference only. The authentic text of the proposal is the one published in the [Official Journal](#) of the European Union.

requested the Commission to include, as part of the targeted revision of the FR, the necessary legislative proposals with a view to establish an ‘integrated and interoperable electronic information and monitoring system, including a single data mining tool to ensure the digitalisation of European reporting, monitoring and audit for the CAP, cohesion and structural funds policies and other policies’.

Following the Commission proposals for sectoral legislation under shared management and RRF, the revision of the FR, as the overarching and horizontal regulation for the implementation and control of the EU budget, provides an opportunity to enshrine the same core principles in the internal control of all methods of EU budget implementation (direct, indirect and shared management) and therefore enhancing the protection of the EU budget against irregularities, fraud, corruption and conflicts of interest and the effectiveness of controls and audits.

The proposed modifications consist of:

- Establishing horizontal measures in Article 36 FR, applicable to all methods of EU budget implementation, to ensure standardised electronic recording and storing of data on the recipients of EU funding, including their beneficial owners.
- Establishing horizontal measures requiring the use a single integrated IT system for data-mining and risk-scoring (to be provided by the Commission) to access and analyse those data on the recipients of EU funding and allow identifying measures, contracts and recipients which might be susceptible to risks of irregularities, fraud, corruption and conflicts of interest.
- Applying the new provisions only to programmes adopted under and financed as from the post-2027 MFF to allow enough time for the necessary adaption of electronic data systems, and for guidance and training. Voluntary application will remain possible and will be encouraged during that transitional period.
- Including an explicit reference to the application of Article 36 FR, taking into consideration the transitional period, to any future instruments where Member States receive and implement EU funds under direct management (as in the case of Member States under RRF).

These modifications will 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. Overall support for such modifications was expressed in the public consultation on the FR that closed on 1 October 2021. These modifications are to be distinguished from the proposal for centralised publication of data on recipients of EU funding that is dealt with in a separate fiche.

## 1. Scene setter

In light of the IIA and the recurrent calls from the European Parliament and in the context of various new legal acts for the 2021-2027 MFF and NGEU (Common Provisions Regulation (CPR)<sup>2</sup>, Common

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<sup>2</sup> Recitals 72 to 74 and Art. 69(2), Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 (CPR).

Agricultural Policy<sup>3</sup>, Brexit Adjustment Reserve (BAR)<sup>4</sup>, European Globalisation Adjustment Fund for Displaced Workers (EGF)<sup>5</sup> and Recovery and Resilience Facility<sup>6</sup>), the Commission proposed the mandatory recording and storing of data on the recipients of EU funding and their beneficial owners and the use of a single data-mining and risk-scoring tool to access and analyse those data. The outcome resulted in a fragmented legal framework.

As regards the electronic recording and storing of data on beneficial ownership, in the CPR, BAR, EGF and RRF the legislator agreed to it. However, for CAP the legislator agreed on the collection of data on groups in which the beneficiaries participate.

As regards the compulsory use of a single data-mining and risk-scoring tool for the CPR, EGF, BAR, CAP and RRF only recitals or provisions recalling or requiring the Commission to make it available and encouraging its use by Member States were agreed. In addition, for the CAP, the Commission should, by 2025, present a report on the use and interoperability of single data-mining and risk-scoring tool, accompanied by legislative proposals, if necessary.

Following the proposals above mentioned the Commission aims to harmonise and expand them to all methods of EU budget implementation. The FR is the overarching and horizontal regulation for the EU budget and covers all of its methods of implementation. The FR is therefore the most appropriate legal instrument to regulate a uniform approach to recording and storing of data on the recipients of EU funding and the use of a single integrated IT system for data-mining and risk-scoring.

Finally, it is noted that the use of a single integrated IT system for data-mining and risk-scoring will be instrumental for the development of digital controls and audits.

## **2. Details of the proposal**

Article 36 FR is placed in Title II ‘Budget and budgetary principles’, Chapter 7 ‘Principle of sound financial management and performance’ and sets out the core principles for the internal control of budget implementation.

The proposed modifications aim at reinforcing the provisions of Article 36 FR, in particular, regarding the requirement for “prevention, detection, correction and follow-up of fraud and irregularities”. The proposed modifications consist of:

- 1) Establishing horizontal measures in Article 36 FR, applicable to all methods of EU budget implementation (direct, indirect and shared management), to ensure standardised electronic recording and storing of data on the recipients of EU funding, including their beneficial owners. Unique identifiers at recipient level such as the VAT registration number or tax identification number<sup>7</sup> are required in order to allow a more accurate identification, filtering and grouping of

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3 Recitals 52 and 82, Art. 59(2)(4), Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 (CAP).

4 Recital 25 and Art. 14(1), Regulation (EU) 2021/1755 of the European Parliament and of the Council of 6 October 2021 (BAR).

5 Recital 44 and Art. 23(2), Regulations (EU) 2021/691 of the European Parliament and of the Council of 28 April 2021 (EGF).

6 Recital 54 and Art. 22(4), Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 (RRF).

<sup>7</sup> OECD provides an overview of domestic rules in the different jurisdictions (including third countries) governing the issuance, structure, use and validity of Tax Identification Numbers ("TIN") or their functional equivalents. The jurisdiction-specific information of the TINs is split into a section for individuals and a section for entities. Please see further details here <https://www.oecd.org/tax/automatic-exchange/crs-implementation-and-assistance/tax-identification-numbers/>.

recipients of EU funding. Such data should be made available in the single integrated IT system for data-mining and risk-scoring mentioned below.

- 2) Establishing horizontal measures requiring the use of a single integrated IT system for data-mining and risk-scoring (provided by the Commission) to access and analyse those data on the recipients of EU funding and allow identifying measures, contracts and recipients which might be susceptible to risks. The IT system should 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.
- 3) Specifying that an efficient internal control shall also be based on the implementation of an appropriate anti-fraud strategy coordinated among appropriate actors involved in the control chain;
- 4) Assigning to the Commission the responsibility to develop the IT system and specifying that the use of and access to the data processed by IT system is limited to some bodies/entities within the exercise of their respective competences (the Commission, Member State authorities, entrusted partners, OLAF, ECA, EPPO and other Union investigative and control bodies) and that such use and access must comply with applicable data protection rules.
- 5) Including an explicit reference to the application of Article 36 FR, taking into consideration the transitional period, to any future instruments where Member States receive and implement EU funds under direct management (as in the case of Member States under RRF). Given the latest developments of new instruments with Member States in the context of direct management (as opposed to those under shared management already regulated by Article 36 FR), such application would cover potential future instruments and avoid lengthy legislative proposals.
- 6) As regards indirect management, data on the beneficial owners of the recipients will be collected by entrusted partners (and made available in the IT system) with regard to their direct recipients and to the extent that data on beneficial owners is collected in accordance with their rules and procedures. This is in line with the rationale of this method of budget implementation, based on reliance on partners' rules, the equivalence of those rules to those of the Commission and the principle of proportionality. The proposed approach strikes the right balance between the protection of the EU financial interests and the need to collect and feed the IT system by the entrusted partners.
- 7) Applying the new provisions only to programmes adopted under and financed as from the post-2027 MFF to allow enough time for the necessary adaption of electronic data systems, for the provision of guidance and training on the IT system and, in the case of indirect management, for renegotiating the agreements with entrusted partners, just revised in 2021. It is also noted that for CAP, the Commission should, by 2025, present a report on the use and interoperability of the data-mining tool, accompanied by legislative proposals, if necessary. The results of this report may also require more time for further improvements and developments of the IT system. Voluntary application will remain possible and will be encouraged during the transitional period. The Commission will continue to provide training and to offer support and technical assistance and in parallel, the Commission will continue to improve the features of the IT system, its user-friendliness and interoperability with other sources of data.

## **Annex: Financial Regulation proposal – relevant parts**

<b>Recital/Article</b>	<b>Proposed modifications</b>
New recital (27) for collection of BO data and integrated IT system for data-mining and risk-scoring (for revised Article 36)	(27) In order to enhance the protection of the Union budget against fraud, corruption, conflicts of interest, double funding and other irregularities, standardised measures to collect, compare and aggregate information on the recipients of Union funding should be introduced. In particular, in order to effectively prevent, detect, investigate and correct frauds or remedy irregularities, it is necessary to be able to identify the natural persons that ultimately benefit, directly or indirectly, from Union funding and who ultimately profit from the misuse of EU funding. The electronic recording and storage of data on the recipients of Union funding, including their beneficial owners as defined in Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council and the regular making of those data available in a single integrated IT system for data-mining and risk-scoring provided by the Commission, should 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 Commission should be responsible for the development, management and supervision of the single integrated IT system for data-mining and risk-scoring. The Commission, the Member States, the persons or entities implementing the budget, the European Anti-Fraud Office ('OLAF') and other Union investigative and control bodies should have the necessary access to those data within the exercise of their respective competences. The rules related to the recording, storage, transfer and processing of data should comply with applicable data protection rules.
New recital (256) for transitional provisions Articles 36 and 38	(256) Some modifications regarding the transmission to the Commission of data on recipients for the purposes of publication, and regarding the electronic recording and storage of data on recipients and the use of the single integrated IT system for data-mining and risk-scoring to access and analyse those data should apply only to programmes adopted under and financed from the post-2027 multiannual financial framework in order to ensure a smooth transition by allowing sufficient time for the necessary adaption of electronic data systems and of relevant agreements, as well as the provision of guidance and training.
Revised Article 36	<p>Article 36</p> <p><b>Internal control of budget implementation</b></p> <p>1. Pursuant to the principle of sound financial management, the budget shall be implemented in compliance with the effective and efficient internal control appropriate to each method of implementation, and in accordance with the relevant sector-specific rules.</p> <p>2. 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> <ul style="list-style-type: none"> <li>(a) effectiveness, efficiency and economy of operations;</li> <li>(b) reliability of reporting;</li> <li>(c) safeguarding of assets and information;</li> <li>(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</li> </ul>

Recital/Article	Proposed modifications
	<p>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;</p> <p>(e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.</p> <p>3. Effective internal control shall be based on best international practices and include, in particular, the following elements:</p> <p>(a) segregation of tasks;</p> <p>(b) an appropriate risk management and control strategy that includes control at recipient level; <del>(e) — avoidance of conflict of interests;</del></p> <p><del>(c)</del> adequate audit trails and data integrity in data systems including electronic ones;</p> <p><del>(d)</del> procedures for monitoring effectiveness and efficiency;</p> <p><del>(e)</del> procedures for follow-up of identified internal control weaknesses and exceptions;</p> <p><del>(f)</del> periodic assessment of the sound functioning of the internal control system.</p> <p>4. Efficient internal control shall be based on the following elements:</p> <p>(a) the implementation of an appropriate risk management and control strategy and of an anti-fraud strategy coordinated among appropriate actors involved in the control chain;</p> <p>(b) the accessibility for all appropriate actors in the control chain of the results of controls carried out;</p> <p>(c) reliance, where appropriate, on management declarations of implementation partners and on independent audit opinions, provided that the quality of the underlying work is adequate and acceptable and that it was performed in accordance with agreed standards;</p> <p>(d) the timely application of corrective measures including, where appropriate, dissuasive penalties;</p> <p>(e) clear and unambiguous legislation underlying the policies concerned, including basic acts on the elements of the internal control;</p> <p>(f) the elimination of multiple controls;</p> <p>(g) the improvement of the cost benefit ratio of controls.</p> <p>5. If, during implementation, the level of error is persistently high, the Commission shall identify the weaknesses in the control systems, analyse the costs and benefits of possible corrective measures and take or propose appropriate action, such as simplification of the applicable provisions, improvement of the control systems and redesign of the programme or delivery systems.</p> <p>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</p>

Recital/Article	Proposed modifications
	<p>format and regularly made available in the single integrated IT system for data-mining and risk-scoring provided by the Commission:</p> <ul style="list-style-type: none"> <li>(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;</li> <li>(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.</li> </ul> <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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
Specific provisions for indirect management in Article 159(5)	<p>5. Article 36(6), points (a) and (b), shall apply to persons or entities implementing Union funds pursuant to Article 62(1), first subparagraph, point (c) with regard to their direct recipients and in respect of the beneficial owners of these recipients to the extent that data on beneficial owners is collected in accordance with their rules and procedures.</p>



Recital/Article	Proposed modifications
Transitional provisions in Article 275(3)	<p>3. Without prejudice to sector-specific rules and to a voluntary application, the obligations set out in Article 36, point (d) of paragraph 2, paragraphs 6, 7 and 8, concerning the electronic recording and storage of data on the recipients of funds and their beneficial owners and the use of the single integrated IT system for data-mining and risk-scoring shall apply only to programmes adopted under and financed from the post-2027 multiannual financial framework.</p>