

Amendments to the Financial Regulation

2022/0125(COD) - 08/09/2022 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Budgets and the Committee on Budgetary Control Monika HOHLMEIER (EPP, DE) and Nils UŠAKOVŠ (S&D, LV) on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union.

The proposal aims to revise the Financial Regulation to address the consequences on the EU budget of recent judgments by the Court of Justice of the European Union that reduce or cancel competition fines.

In the context of its appeal in case C-221/22 P, Commission v Deutsche Telekom, the Commission requested the Court to review its judgment in Printeos to clarify the obligations incumbent on the Commission in case of reduced or cancelled fines. However, pending the clarifications by the Court, the Commission is faced with unprecedented interest claims, far exceeding the interest earned on the amounts provisionally paid. EUR 85 million might become due in 2022/23.

Under the current financial rules, those payments would have to come from the expenditure side of the EU budget, notably MFF Heading 7 (European Public Administration). This would in turn require an amending budget and the mobilisation of special instruments already in 2023, as the sub-ceiling for administrative expenditure is already stretched because of the current high inflation. In the estimates for the draft budget 2023, the Commission is already highlighting that the prevailing high inflation and rising energy prices have a very direct impact on the costs of administration and heading 7 will be under particular pressure in both 2022 and 2023. Despite very strict reprioritisation, in order to respect all legal obligations, the Commission underlines that the margin under the sub-ceiling will be fully exhausted, and recourse to special instruments is necessary in 2023 for an amount of EUR 62.5 million

The Commission proposal intends to address the situation essentially as follows:

- interest and compensation due where a fine is reduced or cancelled would be deducted from the revenue side of the budget ('negative revenue') instead of impacting on the expenditure side; this would be a limited derogation from the rule against negative revenue laid down in Article 48(1) of the Financial Regulation;
- the interest rate on the amount repaid to an undertaking in case a fine is reduced or cancelled would be specifically set in legislation to the ECB refinancing rate increased by 1.5 percentage points.

The committee supports the approach of the Commission's proposal as the only sensible way forward given the circumstances and recommend that it be taken over by Parliament.

In an amendment, however, Members clarify that where the Commission does not repay the relevant part of the provisionally collected amounts for a reduced or annulled fine within 60 days, the conditions on late payments laid down in Article 116(5) of the Regulation should apply, with an interest rate set at the ECB refinancing rate plus 3.5 percentage points.

At the same time, the rapporteurs cannot avoid noting that several recent Commission decisions in high-profile competition cases have been annulled by the General Court and therefore call on the Commission, in line with recent Parliament resolutions, to draw the necessary lessons from the judgments with a view to minimising the risks of annulment or reduction of provisionally paid fines in future cases, which may bear significant impact on the EU budget.

