# **EUROPEAN COMMISSION**



Brussels, 16.8.2012 COM(2012) 456 final

2012/0221 (APP)

Proposal for a

# **COUNCIL REGULATION**

amending Regulation (EEC/Euratom) No 354/83, as regards the deposit of the historical archives of the institutions at the European University Institute in Florence

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### **EXPLANATORY MEMORANDUM**

### 1. CONTEXT OF THE PROPOSAL

### 1.1. General context

A Council Regulation<sup>1</sup> adopted in February 1983 requires the institutions, as defined in article 1 of that Regulation, to establish historical archives and to open them to the public once they are 30 years old. It enables each institution to hold its historical archives in whatever place it considers most appropriate.

In 1984, the European Parliament, the Council and the Commission agreed to deposit their historical archives at the European University Institute in Florence (EUI) where they are made available to the public. Since then, the European Court of Auditors, the European Economic and Social Committee and the European Investment Bank have also decided to deposit their archives at the EUI. The terms of the deposit are covered by a contract dated 17 December 1984 between the European Communities, represented by the Commission, and the EUI.

The Italian government makes available to the EUI, permanently and free of charge, suitable premises to house the archives. This ensures that the archives deposited are preserved and protected in accordance with recognised international standards.

The purpose of depositing the historical archives of the institutions at the EUI is to provide access to the archives from a single location, to promote their consultation and to stimulate research into the history of European integration and the European institutions.

### 1.2 Objective of the proposal

The proposal aims to confirm the role of the EUI in managing the historical archives of the institutions. It will create a sound legal and financial basis for the partnership between the EU and the EUI.

### 1.3 Main elements of the proposal

The proposal provides for the deposit of the historical archives of the institutions at the EUI. All the institutions with the exception of the European Court of Justice and the European Central Bank will in future deposit their historical archives at the EUI once these archives have been opened to the public under the existing Regulation.

The proposal will not affect the ownership of the historical archives, which will remain with the depositing institutions, nor will it affect the existing rules under which the institutions decide which documents to open to the public after 30 years.

The operational and staff costs incurred by the EUI to manage the historical archives will be funded from the general budget of the EU, excluding any costs related to the provision and equipping of the building(s) and repositories to house the archives and its staff. The EUI will

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Council Regulation (EEC, Euratom) No 354/83 as amended by Council Regulation (EC, Euratom) No 1700/2003 of 22 September 2003. See: OJ L 43, 15.2.1983, p. 1; OJ L 243, 27.9.2003, p. 1.

provide public access to the EU historical archives. This will, however, not exclude the institutions also giving public access to their own historical archives.

The proposal distinguishes between the deposit of paper and digital archives. Paper archives will continue to be physically deposited at, and preserved by, the EUI. However, the EUI will not need to preserve the digital archives for the purpose of providing access to these archives. The long-term preservation of digital archives will remain the responsibility of the originating institutions.

The proposal clarifies the responsibilities of the EUI for the protection of personal data contained in the historical archives of the institutions. It also provides that each institution shall adopt implementing rules for the application of Regulation 354/83 that include rules for the preservation, opening to the public and protection of personal data in the historical archives.

### 2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES

This proposal does not require an impact assessment.

The interested parties have been consulted. The EUI and Italy, as host institution and host government, have both given their support for the proposal. The administrative services of the EU institutions and the EU Agencies Network also support the aim of the proposal.

The European Court of Justice and the European Central Bank have asked to be excluded from the obligation to deposit their historical archives at the EUI. However, they do not rule out doing so in future on a voluntary basis. This is due to the nature of their activities and reflects current practice in many Member States for the historical archives of similar bodies.

### 3. LEGAL ELEMENTS OF THE PROPOSAL

### 3.1 Main provision of the proposal

The proposal provides for the deposit of the historical archives by the institutions at the European University Institute in Florence, Italy, where they will be made available to the public by the EUI.

### 3.2 Legal Basis

The legal basis of the proposal is article 352 of the Treaty on the functioning of the European Union.

Council Regulation 354/83 and its amendment in 2003 were adopted under article 308 TEC, the predecessor to article 352 TFEU. The current proposal will not affect the purpose of Regulation 354/83, i.e. the opening of the archives of the institutions after 30 years. It simply determines that they will be deposited at the EUI once the institutions concerned have opened them to the public in accordance with the existing Regulation. This formally recognises the existing situation, as most institutions that have opened their archives already deposit these at the EUI.

Article 3(3) TUE provides that the EU shall respect, inter alia, its rich cultural diversity and that it shall ensure that Europe's cultural heritage is safeguarded and enhanced. The Historical Archives of the institutions form part of the Europe's cultural heritage and their opening to the public thus serves primarily academic, educational and cultural objectives. The Union has been granted powers to adopt measures to support, coordinate or supplement the actions of Member States in these areas, but the Treaties do not provide for the necessary powers with regard to the historical archives of the institutions.

The use of another legal basis would lead to a proposal for a new Regulation and as a consequence all the provisions of Council Regulation 354/83, including its fundamental principles, would be open to debate. This would go far beyond the objective of the proposal as described above.

The possibility of basing the proposal on article 15(3) TFEU was examined, but rejected for the following reasons:

The primary objective of establishing the historical archives is to select documents on the basis of their enduring administrative, historical or evidentiary value to preserve and share the historical legacy of the institutions. Each institution pro-actively opens its historical archives to the public after 30 years and provides supplementary information that helps to place these archives in their organisational and functional context. That goes well beyond the public right of access to documents under article 15(3) TFEU, whose purpose is primarily to promote good governance and ensure the participation of members of the public in the decision-making process of the institutions.

The use of article 15(3) TFEU would reduce the scope of application of the rules governing the opening of historical archives since the European Central Bank, the European Investment Bank and the European Court of Justice, which are today governed by Regulation 354/83, would only be subject to a Regulation adopted on this basis when exercising their administrative tasks.

### 3.3 Proportionality principle

The proposal is limited to the deposit of the historical archives at the EUI by the institutions and the conditions under which the deposit will take place.

### 3.4 Choice of instruments

A Regulation is the only appropriate instrument for creating a sound legal and financial basis for the partnership between the EU and the EUI. The proposal concerns a limited amendment to an existing Regulation.

### 4. BUDGETARY IMPLICATION

The proposal to make the deposit of the historical archives at the EUI obligatory will have no new budgetary implications in the short and medium term. The long-term budgetary implications are not expected to be significant.

The three largest institutions, the European Parliament, the Council and the Commission, as well as the European Economic and Social Committee, the European Court of Auditors and the European Investment Bank, already deposit their historical archives at the EUI. The

management of these archives in Florence has been funded from the EU budget since the archives were first deposited at the EUI more than a quarter of a century ago. The Legislative Financial Statement provides for continuation of this funding. The costs shall be shared by the depositing institutions in relation to the work done by the EUI for their respective archives.

The housing for the archives and the offices of the staff managing the archives at the EUI are provided by the Italian government.

As a consequence of this amendment, the number of depositing institutions will increase. However, because the deposit concerns historical archives that have been opened to the public once they are 30 years old, it will be a considerable time before institutions other than those that already deposit their archives at the EUI will be affected by this proposal. Furthermore, the archives will increasingly become digital, which will provide opportunities to realise economies of scale in their processing and dissemination by the EUI.

### Proposal for a

#### COUNCIL REGULATION

amending Regulation (EEC/Euratom) No 354/83, as regards the deposit of the historical archives of the institutions at the European University Institute in Florence

### THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the consent of the European Parliament,

After consulting the European Data Protection Supervisor,

Acting in accordance with a special legislative procedure,

#### Whereas:

- (1) In accordance with Council Regulation (EEC, Euratom) No 354/83 of 1 February 1983 concerning the opening to the public of the historical archives of the European Economic Community and the European Atomic Energy Community, the historical archives of the institutions and bodies are preserved and made available to the public wherever possible after the expiry of a period of 30 years.
- (2) The obligation to establish its historical archives and make them available to the public wherever possible is applicable to each institution referred to in article 1 of Regulation 354/83.
- (3) Regulation No 354/83 determines that each institution may hold its historical archives in whatever place it considers most appropriate.
- (4) In 1984 the European Parliament, the Council and the Commission decided to deposit their historical archives at the European University Institute (EUI) in Florence where they are made available to the public. A contract between the European Communities, represented by the Commission, and the European University Institute in Florence was signed for this purpose on 17 December 1984.

OJ L 43, 15.2.1983, p. 1.

- (5) The Economic and Social Committee and the European Court of Auditors have since agreed to adhere to the terms of the deposit contract of 17 December 1984. The European Investment Bank deposits its historical archives at the EUI under a separate Convention with the EUI signed on 1 July 2005 and the 'Rules on historical archives' adopted by the Bank's management committee on 7 October 2005<sup>3</sup>.
- (6) The Italian government has made suitable premises permanently and freely available to the EUI to ensure that the deposited archives are preserved and protected in accordance with recognised international standards and to provide the possibility for onsite consultation.
- (7) The purpose of the deposit of the historical archives of the institutions at the EUI is to provide access to these archives from a single location, to promote their consultation and to stimulate research into the history of European integration and the European institutions. The EUI is a renowned centre of academic research and learning with a focus on Europe and European integration. It has almost 30 years of experience in managing the historical archives of the institutions, provides state of the art repository and research facilities built expressly for their preservation and consultation, and has an international reputation as the centre for these archives.
- (8) The continued deposit of the historical archives of the institutions at the EUI requires a solid legal basis that reflects the role of the EUI as a partner of the institutions in the management of their historical archives.
- (9) The specific nature of the activities of the European Court of Justice and the European Central Bank justifies their exclusion from the obligation to deposit their historical archives at the EUI in accordance with this Regulation. The European Court of Justice and the European Central Bank may deposit their historical archives at the EUI on a voluntary basis.
- (10) This Regulation should apply to all other institutions. It alters neither the responsibility of each institution to open its historical archives to the public, nor the ownership by each institution of its historical archives.
- (11) Personal data contained in the historical archives deposited at the EUI should be processed in accordance with Regulation No 45/2001.<sup>4</sup>
- (12) Grants may be awarded to support the management of the archives of the institutions by the EUI.
- (13) Regulation No 354/83 should therefore be amended accordingly.

OJ C289, 22.11.2005, pp. 12-13.

<sup>&</sup>lt;sup>4</sup> OJ L 8, 12.1.2001, p. 1.

### HAS ADOPTED THIS REGULATION:

#### Article 1

Regulation (EEC, Euratom) No 354/83 is amended as follows:

- 1. Article 8 paragraph 1 is replaced by the following:
- "1. Each institution, other than the European Court of Justice and the European Central Bank, shall deposit at the European University Institute (EUI) in Florence the documents which are a part of its historical archives and which they have opened to the public in accordance with this Regulation. The deposit shall take place in accordance with the annex."
- 2. In Article 8 the following paragraphs are added:
- "3. The European Court of Justice and the European Central Bank may deposit their historical archives at the EUI on a voluntary basis.
- 4. The deposit of the historical archives of the institutions at the EUI does not affect the ownership or protection of the archives as provided for in Article 2 of the Protocol on the Privileges and Immunities of the European Union annexed to the treaty.
- 5. The EUI shall ensure the preservation and protection of deposited archives. This preservation and protection must comply with recognised international standards for the physical protection of archives and must at least respect the technical and security rules that correspond with those used for the preservation and management of public archives in Italy. To this end the deposited documents shall be preserved in a purpose-built repository.
- 6. Each depositing institution has the right to request information with respect to the management of its archives by the EUI and to carry out an inspection of the archives that it has deposited there.
- 7. The EUI shall make available to the public the historical archives that it receives in accordance with paragraphs 1 and 3. The institutions may make available to the public a version of the same historical archives.
- 8. Grants may be awarded to the EUI to support the management of the historical archives in accordance with this Regulation, in compliance with Council Regulation No 1605/2002 and provided that the budgetary authority makes available the necessary appropriations on the relevant budget line. The costs of managing the archives shall be shared among the depositing institutions on a proportional basis. Costs related to the provision and equipping of the building(s) and repositories to house the archives and its staff shall not be eligible.
- 9. The EUI shall process personal data contained in the historical archives of the institutions in accordance with Regulation 45/2001. The EUI shall act as processor in accordance with article 2 of that Regulation, under instructions from the depositing institutions.
- 10. The European Data Protection Supervisor shall have supervisory powers over the EUI with respect to the processing of personal data contained in the historical archives deposited by the institutions."

3. Article 9 paragraph 1 shall be replaced by the following:

"Each institution shall adopt internal rules for the application of this Regulation. These shall include rules for the preservation, opening to the public and protection of personal data contained in the historical archives. Wherever possible, the institutions shall make their archives available to the public by electronic means. They shall also conserve documents which are available in forms meeting special needs (Braille, large text or recordings)."

4. An Annex is added in accordance with the Annex to this Regulation.

#### Article 2

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,

For the Council The President

### **ANNEX**

The following annex is added:

#### "Annex

# Provisions for the deposit of the historical archives of the institutions at the European University Institute in Florence

1. In the case of non-digital archives, the original documents shall be deposited at the EUI for permanent preservation, together with a microform and/or digital copy.

In the case of digital archives, the EUI shall have permanent access to the documents in such a way as to allow it to fulfil its obligation to make the historical archives accessible to the public from a single location and to promote their consultation. The originating institutions will remain responsible for the permanent preservation of their digital archives.

- 2. The deposit shall take place in annual instalments and, to the extent possible, under the normal archival processing procedures of the institutions.
- 3. The depositing institutions may, for legal or administrative reasons, exclude the deposit of certain original documents at the EUI. In that case, they shall deposit a microform or digital copy.
- 4. The depositing institutions shall retain the ownership of their archives, as well as exclusive responsibility for the composition of the documents and files that are deposited at or otherwise made available to the EUI. The EUI shall not modify the archival classification established by the depositing institutions, eliminate or alter either documents or files.
- 5. The EUI shall return to the depositing institutions the originals of any deposited documents and files if requested by these institutions. The depositing institutions shall return the originals to the EUI as soon as they no longer need them.
- 6. The EUI shall immediately inform depositing institutions about any circumstances that could put at risk the inviolability of the archives that they have deposited.

# **LEGISLATIVE FINANCIAL STATEMENT**

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

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# **LEGISLATIVE FINANCIAL STATEMENT**

### 1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

# 1.1. Title of the proposal/initiative

Council Regulation amending Regulation (EEC/Euratom) No 354/83, as regards the deposit of the historical archives of the institutions at the European University Institute in Florence

# 1.2. Policy area(s) concerned in the ABM/ABB structure<sup>5</sup>

Relations with civil society, openness and information

# 1.3. Nature of the proposal/initiative

The proposal relates to the extension of an existing action

### 1.4. Objectives

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

The objective of the proposal is to regularise and establish a sound basis for the existing partnership with the EUI in the management and dissemination of the historical archives of the institutions. The purpose of the deposit at the EUI is to provide access to those archives from a single location, to promote their consultation and to stimulate research into the history of European integration and the European institutions.

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

Specific objective No 25.02.01.01

ABM/ABB activity(ies) concerned:

Relations with civil society, openness and information

Institutions of European interest / Historical archives of the European Union

1.4.3. Expected result(s) and impact

The partnership with the EUI provides added value to the historical archives of the institutions and serves to promote the dissemination and public consultation of those archives.

- 1.4.4. Indicators of results and impact
  - (1) Archives deposited at the EUI in Florence by the institutions

<sup>&</sup>lt;sup>5</sup> ABM: Activity-Based Management; ABB: Activity-Based Budgeting.

- (2) Collection and description by the EUI of private archives and personal papers of individuals, public and private organisations that have contributed to the construction of Europe
- (3) Production and publication of holding guides, inventories, source publications and other research tools
- (4) Reading room and reading room facilities provided by the EUI
- (5) Inventories and archives made available online
- (6) Visitors to the reading room
- (7) Actions to promote the consultation of the historical archives of the institutions

## 1.5. Grounds for the proposal/initiative

# 1.5.1. Requirements to be met in the short or long term

Managing and making available to the public the historical archives deposited by the institutions at the European University Institute in Florence.

### 1.5.2. Added value of EU involvement

The partnership with the EUI serves to promote the dissemination and public consultation of the historical archives of the institutions.

Bringing the archives of the institutions together in one location of itself enhances their value. It also allows the EUI to provide added value by creating cross links between the different archives, where necessary producing finding aids and other research tools and providing both on-site access and online public access to the archives.

### 1.5.3. Lessons learned from similar experiences in the past

Six institutions deposit their historical archives at the European University Institute in Florence (EUI) under the terms of a contract dated 17 December 1984 between the European Communities and the EUI. The 1984 deposit contract has, however, become outdated and needs to be replaced by a more solid legal and financial basis for the partnership with the EUI.

### 1.5.4. Coherence and possible synergy with other relevant instruments

n.a.

# 1.6. Duration and financial impact

Proposal of unlimited duration.

# 1.7. Management mode(s) envisaged<sup>6</sup>

Centralised direct management by the Commission

### 2. MANAGEMENT MEASURES

# 2.1. Monitoring and reporting rules

The EUI will submit a draft work programme for each calendar year for discussion with the Commission, including an establishment plan for the staff in place on 31 December of the year concerned, the previous and the next year. This submission will take place in February of the preceding year.

After consultation with the other depositing institutions, the work programme will be agreed between the Commission and the EUI and annexed to the annual grant agreement.

The Commission will monitor the implementation of the work programme.

The EUI will submit an annual activity report for the Historical Archives after the end of each calendar year.

# 2.2. Management and control system

### 2.2.1. Risks identified

The potential risks for the preservation of the deposited paper archives of the institutions are minimal. The Italian government has provided a purpose-built archival repository that complies with the highest international standards for the long-term preservation of archives.

### 2.2.2. Control methods envisaged

Partnership agreements with the EUI will provide a framework for ongoing discussion, examination and evaluation of the budget and work programme. Each depositing institution has the right to request information with respect to the management of its archives by the EUI and to carry out an inspection of the archives that it has deposited there.

# 2.3. Measures to prevent fraud and irregularities

Article 287(3) TFEU provides the Court of Auditors with the power to audit any natural or legal person that receives a payment from the EU budget. The powers of the Commission and OLAF to fight against fraud to the EU financial interests are regulated by specific provisions concerning this matter (i.e. Council Regulation No 2185/96 and Regulation No 1073/1999 of the Council and the European Parliament) and Council Regulation No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities. Pursuant to article 120(3) of the latter,

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Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: <a href="http://www.cc.cec/budg/man/budgmanag/budgmanag en.html">http://www.cc.cec/budg/man/budgmanag/budgmanag en.html</a>.

each grant decision or agreement shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all contractors and subcontractors who have received EU funds.

# 3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

# 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

• Existing expenditure budget lines

<u>In order</u> of multiannual financial framework headings and budget lines.

Heading of	Budget line	Type of expenditure	Contribution				
multiannual financial framework	Historical archives of the European Union	Diff./non- diff.	from EFTA <sup>8</sup> countries	from candidate countries <sup>9</sup>	from third countries	within the meaning of Article 18(1)(a) of the Financial Regulation	
5 Adminis tration	25.02.01.01	Diff.	NO	NO	NO	NO	

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Diff. = Differentiated appropriations / Non-diff. = Non-Differentiated Appropriations.

<sup>8</sup> EFTA: European Free Trade Association.

<sup>&</sup>lt;sup>9</sup> Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

# 3.2. Estimated impact on expenditure

# 3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:			" Administrative expenditure "						
		2013	2014	2015	2016	2017	2018	2019 <sup>10</sup>	TOTAL 2013-2019
DG: SG				•	•				
Human resources		0.038	0.038	0.038	0.038	0.038	0.038	0.038	0.266
Missions		0.004	0.004	0.004	0.004	0.004	0.004	0.004	0.028
• 25.020101 Historical archives		2.268	2.268	2.268	2.268	2.268	2.268	2.268	15.876
TOTAL SG		2.310	2.310	2.310	2.310	2.310	2.310	2.310	16.170
TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)								
TOTAL appropriations	Commitments								
under HEADINGS 1 to 5 of the multiannual financial framework	Payments								

It is expected that the impact on expenditure will continue to evolve at the same rate after 2019.

# 3.2.2. Estimated impact on operational appropriations

The proposal does not require the use of operational appropriations

# 3.2.3. Estimated impact on appropriations of an administrative nature

# 3.2.3.1. Summary

The proposal requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	2013	2014	2015	2016	2017	2018	2019 -	TOTAL
HEADING 5 of the multiannual financial framework								
Human resources								
Other administrative expenditure								
Subtotal HEADING 5 of the multiannual financial framework								
Outside HEADING 5 <sup>11</sup> of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 5 of the multiannual financial framework								
TOTAL	2.310	2.310	2.310	2.310	2.310	2.310	2.310	16.170

The administrative resources required will be covered by the allocation that may be granted to the managing DG under the annual allocation procedure in the light of existing budgetary constraints.

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Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

### 3.2.3.2. Estimated requirements of human resources

The proposal requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

		2012	2013	2014	2015	2016	2017	2018
• Establishment plan po	osts (officials and tempor	ary agents	s)					
25 01 01 01 (Headquarters and Commission's Representation Offices)			0.3	0.3	0.3	0.3	0.3	0.3
XX 01 01 02 (Delegation	ons)							
XX 01 05 01 (Indirect r	esearch)							
10 01 05 01 (Direct rese								
• External personnel (in	nit: FTE)	2						
XX 01 02 01 (CA, INT, SNE from the 'global envelope')								
XX 01 02 02 (CA, INT, JED, LA and SNE in the delegations)								
WW 01 04 13	- at Headquarters <sup>14</sup>							
<b>XX</b> 01 04 <i>yy</i> <sup>13</sup>	- in delegations							
XX 01 05 02 (CA, INT, SNE — Indirect research)								
10 01 05 02 (CA, INT, SNE — Direct research)								
Other budget lines (spec								
TOTAL		0.3	0.3	0.3	0.3	0.3	0.3	0.3

**XX** is the policy area or budget title concerned.

The human resources required will be covered by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation that may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents	Preparation of partnership and grant agreements. Preparation of the budget request. Monitoring of the work programme and expenditure. Possible ex post evaluations.
External personnel	

### 3.2.4. Compatibility with the current multiannual financial framework

The proposal is compatible with the current multiannual financial framework.

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CA= Contract Agent; INT= agency staff ('Intérimaire'); JED= 'Jeune Expert en Délégation' (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert; .

Under the ceiling for external personnel from operational appropriations (former 'BA' lines).

Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

# 3.2.5. Third-party contributions

The proposal does not provide for co-financing by third parties

# 3.3. Estimated impact on revenue

The proposal has no financial impact on revenue.