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From: General Secretariat of the Council  
To: Permanent Representatives Committee

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Subject: Proposal for a Regulation of the European Parliament and of the Council  
amending Regulation (EU, Euratom) No 966/2012 on the financial rules  
applicable to the general budget of the Union (**first reading**)  
– *Confirmation of the final compromise text with a view to agreement*

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**Proposal for a Regulation of the European Parliament and of the Council amending  
Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general  
budget of the Union**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a 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 opinion of the Court of Auditors<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> OJ C ....

<sup>2</sup> Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ... .

Whereas:

- (1) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council<sup>1</sup> lays down the rules for the establishment and the implementation of the general budget of the European Union. In particular, it also contains rules on public procurement. On 26 February 2014 Directive 2014/24/EU of the European Parliament and of the Council<sup>2</sup> on public procurement and Directive 2014/23/EU of the European Parliament and of the Council<sup>3</sup> on the award of concession contracts have been adopted. It is therefore necessary to adapt Regulation (EU, Euratom) No 966/2012 in order to take into account those Directives for contracts awarded by the Union institutions on their own account.
- (2) Some definitions should be added and certain technical clarifications should be made to ensure that the terminology of Regulation (EU, Euratom) No 966/2012 is in line with that of Directives 2014/24/EU and 2014/23/EU.
- (3) The *ex-ante* and *ex-post* publicity measures necessary to launch a procurement procedure should be clarified in the cases of contracts above and below the thresholds set out in Directive 2014/24/EU.
- (4) Regulation (EU, Euratom) No 966/2012 should include an exhaustive list of all the procurement procedures available to the Union institutions regardless of threshold.
- (5) In line with Directive 2014/24/EU, Regulation (EU, Euratom) No 966/2012 should allow for market consultation prior to the launch of a procurement procedure.

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<sup>1</sup> 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 (OJ L 298, 26.10.2012, p 1).

<sup>2</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p.65).

<sup>3</sup> Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts (OJ L 94, 28.3.2014, p.1).

- (6) *It should also be clarified how the contracting authorities can contribute to the protection of the environment and the promotion of sustainable development, whilst ensuring that they can obtain the best value for money for their contracts, in particular through requiring specific labels and/or through the use of appropriate award methods.*
- (7) *In order to ensure that, when executing contracts, economic operators comply with the applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU, such obligations should be part of the minimum requirements defined by the contracting authority and should be integrated in the contracts signed by the contracting authority.*
- (8) *In order to protect the Union's financial interests, a single early detection and exclusion system should be set up by the Commission and the rules for exclusion from participation in procurement procedures should be improved in order to strengthen the protection of the Union's financial interests.*
- (9) *The decision of exclusion of an economic operator from participation in procurement procedures or the imposition of a financial penalty and the decision to publish the related information should be taken by the relevant contracting authority, in view of its autonomy in administrative matters. In the absence of a final judgment or final administrative decision and in cases related to a serious breach of contract, the contracting authority should take its decision having regard to a recommendation of a panel on the basis of a preliminary classification in law of the behaviour of the economic operator concerned. The panel should also assess the duration of an exclusion in the cases where the duration has not been set by the final judgment or administrative decision.*
- (10) *The role of the panel should be to ensure the coherent operation of the exclusion system. It should be composed of a standing Chair, representatives of the Commission and a representative of the contracting authority concerned.*

- (11) *The preliminary classification in law does not prejudice the final assessment of the behaviour of the economic operator by the competent authorities of Member States under national law. The panel's recommendation as well as the decision by the contracting authority should therefore be reviewed following the notification of such a final assessment.*
- (12) Regulation (EU, Euratom) No 966/2012 should specify the *situations* which constitute *grounds* for exclusion .
- (13) An economic operator should be excluded by the contracting authority when a final administrative decision or a final judgment has been taken in case of grave professional misconduct, non-compliance, *whether intentional or not*, with the obligations related to the payment of social security contributions or the payments of taxes, fraud *to the Union budget*, corruption, participation in a criminal organisation, money laundering, terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings *or irregularity. It should also be excluded in cases of serious breach of contract or bankruptcy.*
- (14) *When deciding on the exclusion or imposition of a financial penalty and the publication thereof or the rejection of an economic operator, the contracting authority should ensure compliance with the principle of proportionality by taking into account in particular the seriousness of the situation, its budgetary impact, the time which has elapsed since the relevant conduct, its duration and its recurrence, the intention or degree of negligence and the degree of collaboration of the economic operator with and its contribution to the investigation.*
- (15) *The contracting authority should also be able to exclude an economic operator, where a legal or natural person assuming unlimited liability for the debts of that economic operator is bankrupt or in a similar situation of insolvency or fails to comply with its obligations to pay social security contributions or taxes, where such situations impact the financial situation of the economic operator.*

- (16) The economic operator should not be subject to a decision of exclusion when it ***has taken remedial measures, thus demonstrating*** its reliability ■ . This possibility should not apply in case of the most severe criminal activities.
- (17) ***In the light of the principle of proportionality, it is necessary to distinguish the cases where a financial penalty may be imposed as an alternative to the exclusion and the cases where the gravity of the behaviour of the economic operator concerned in respect of unduly attempting to obtain Union funds justifies the imposition of a financial penalty in addition to the exclusion so as to ensure a deterrent effect. It is necessary to define the minimum and maximum amounts of the financial penalty which can be imposed by the contracting authority.***
- (18) ***It is important to underline that the possibility to apply administrative and/or financial penalties on a regulatory basis is independent from the possibility to apply contractual penalties, such as liquidated damages.***
- (19) The duration of exclusion should be limited in time, in line with Directive 2014/24/EU ***and in accordance with the proportionality principle.***
- (20) ***It is necessary to determine the commencement date and the duration of the limitation period for imposing administrative sanctions.***

**(21) It is important to be able to reinforce the deterrent effect achieved by the exclusion and the financial penalty. In this regard, the deterrent effect should be reinforced by the possibility to publish the information related to the exclusion and/or of the financial penalty, in full respect of the data protection requirements set out in Regulation No 45/2001 of the European Parliament and of the Council<sup>1</sup> and in Directive 95/46/EC of the European Parliament and of the Council<sup>2</sup>. This should contribute to ensuring that the behaviour concerned is not repeated. For reasons of legal certainty and in line with the principle of proportionality it should be specified in which situations a publication should not take place. In its assessment the contracting authority should have regard to any recommendation of the panel.**

*As far as natural persons are concerned, personal data should only be published in exceptional cases, justified by the seriousness of the act or its impact on the Union's financial interests.*

- (22) The information related to an exclusion or financial penalty should only be published in the cases of grave professional misconduct, fraud, significant deficiencies in complying with the main obligations of a contract financed by the Union's budget or irregularity.**
- (23) The criteria for exclusion should be clearly separated from the criteria leading to a possible rejection from a given procedure.**

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<sup>1</sup> **Regulation (EC) No 45/2001 of 18 December 2000 of the European Parliament and of the Council 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).**

<sup>2</sup> **Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995 p. 31).**

- (24) *It is appropriate to identify and treat distinctly different cases usually referred to as situations of "conflict of interest". The notion of "conflict of interest" should be solely used for cases where an official or agent of a Union institution is in such a situation. In cases where an economic operator attempts to unduly influence a procedure or obtain confidential information, this should be treated as "grave professional misconduct". Finally, economic operators may be in a situation where they should not be selected to implement a contract because of a professional conflicting interest, for instance a company should not evaluate a project in which it has participated or an auditor should not be in a position to audit accounts it has previously certified.*
- (25) *The information on the early detection of risks and on the imposition of administrative sanctions on economic operators should be centralised. For that purpose, related information should be stored in a database set up and operated by the Commission as owner of the system. This system should operate in full compliance with the rights to privacy and to the protection of personal data.*
- (26) *While the setting up and the operation of the early detection and exclusion system is the responsibility of the Commission, other institutions and bodies, and all entities implementing the budget in accordance with Articles 59 and 60 of the Financial Regulation should participate in the centralised system by transmitting relevant information to the Commission to ensure early detection of risks.*
- (27) The *contracting authority and the panel* should guarantee the right of defence of economic operators. *The same rights should be given to economic operators, in the context of early detection, where the authorising officer envisages taking an act that could adversely affect the rights of the person concerned.* In the cases of fraud, corruption or any other illegal activity affecting the financial interest of the Union which are not yet subject to a final judgement, *the contracting authority and the panel* should be given the possibility to defer the opportunity given to the economic operator to submit its observations. This deferral should only be justified where there are compelling legitimate grounds to preserve the confidentiality of the investigation.



- (28) *This Regulation respects the fundamental rights and observes the principles enshrined in the Charter of Fundamental Rights of the European Union, in particular the need to ensure the legality and proportionality of sanctions, the right to an effective remedy, a fair trial and the right of defence and the right to privacy and protection of personal data.*
- (29) *The Court of Justice should be given unlimited jurisdiction with regard to sanctions imposed pursuant to this Regulation, in accordance with Article 261 of the Treaty on the Functioning of the European Union.*
- (30) *In order to facilitate the protection of the Union's financial interests across all management modes, the entities involved in the implementation of the budget in shared and indirect management should take into account, as appropriate, exclusions decided upon by the contracting authorities at Union level.*
- (31) In line with Directive 2014/24/EU, it should **be possible** to verify **whether an operator is excluded**, apply selection and award criteria, as well as to verify compliance with the procurement documents in any order. As a result, it should be possible to reject tenders on the basis of award criteria without prior check on exclusion or selection criteria of the corresponding tenderer.
- (32) The award of contracts should be carried out on the basis of the most economically advantageous tender in line with **Article 67 of Directive 2014/24/EU**. **It should be clarified that selection criteria are strictly linked to the evaluation of candidates or tenderers and award criteria are strictly linked to the evaluation of tenders.**
- (33) *Union public procurement should serve to ensure that Union funds are used in an effective, transparent, and appropriate way; in that regard, electronic procurement should contribute to a better use of Union funds and enhance access to contracts for all economic operators.*
- (34) It should be clarified that **there** should be **an opening phase** and **an evaluation** for any procedure. An award decision should always be the outcome of an evaluation.

- (35) Given that criteria are applied in no particular order, it is necessary to provide for the possibility for the rejected tenderers who submitted compliant tenders to receive the characteristics and relative advantages of the successful tender if they so request.
- (36) *For framework contracts with reopening of competition, it is appropriate to waive the obligation to provide the characteristics and relative advantages of the successful tender to an unsuccessful contractor, on the basis that the receipt of such information by parties to the same framework contract each time a competition is reopened might prejudice fair competition between them.*
- (37) *A contracting authority should be able to cancel a procurement procedure before the contract is signed, without the candidates or tenderers being entitled to claim compensation. This should be without prejudice to situations where the contracting authority has acted in such a way that it may be held liable for damages in accordance with general principles of Union law.*
- (38) *In line with Directive 2014/24/EU, it is necessary to clarify the conditions under which a contract may be modified during its performance without a new procurement procedure. In particular, cases such as administrative changes, universal succession and application of clear and unequivocal revision clauses or options do not alter the minimum requirements of the initial procedure. A new procurement procedure should be required in the case of material modifications to the initial contract, in particular to the scope and content of the mutual rights and obligations of the parties, including the distribution of intellectual property rights. Such modifications demonstrate the parties' intention to renegotiate essential terms or conditions of that contract. This is the case in particular if the amended conditions would have had an influence on the outcome of the procedure, had they been part of the initial procedure.*
- (39) The possibility to require contractual guarantees in the case of works, supplies and complex services should be provided in order to guarantee compliance with substantial contractual obligations in line with customary practice in these sectors to ensure proper contract implementation throughout its duration.

- (40) It is necessary to provide for the possibility to suspend performance of a contract in order to ascertain whether errors, irregularities or fraud have occurred.
- (41) In order to determine *the applicable* thresholds and procedures ■ , it is necessary to clarify *whether* Union institutions, *executive agencies and bodies* are *deemed* to be ■ contracting authorities. *Indeed, they should not be deemed to be such authorities when they purchase from a central purchasing body. In addition, Union institutions form a single legal entity and should only be able to conclude administrative arrangements between their departments.*
- (42) It is appropriate to include a reference to the two thresholds provided for in Directive 2014/24/EU applicable to works and to supplies and services. These thresholds should also be applicable to concession contracts for reasons of simplification as well as sound financial management, considering the specificities of the Union institutions' contracting needs. The update of these thresholds as provided for in Directive 2014/24/EU would therefore be directly applicable to procurement by the Union institutions.
- (43) It is necessary to clarify the conditions of application of the standstill period.
- (44) It is necessary to clarify which economic operators have access to procurement by Union institutions depending on their place of establishment and to provide explicitly for the possibility of such access also to international organisations.
- (45) The application of exclusion grounds should be extended to other instruments of execution of the budget such as grants, prizes, financial instruments and remunerated experts as well as *to* the case of indirect management.
- (46) *Drawing up and adoption of Special Reports of the European Court of Auditors should be done in a timely manner without prejudice to the full independence of the European Court of Auditors to determine the duration and timing of its audits.*
- (47) *The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and expressed an opinion on 3 December 2014.*
- (48) Regulation (EU, Euratom) No 966/2012 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EU, Euratom) No 966/2012 is amended as follows:

(1) *Article 58(8) shall be replaced by the following:*

*"8. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the methods of implementation of the budget, including direct management, the exercise of powers delegated to executive agencies, and specific provisions for indirect management with international organisations, with bodies referred to in Articles 208 and 209, with public law bodies or bodies governed by private law with a public service mission, with bodies governed by the private law of a Member State and entrusted with the implementation of a public-private partnership and with persons entrusted with the implementation of specific actions in the CFSP. It shall also be empowered to adopt delegated acts in accordance with Article 210 concerning criteria for assimilating non-profit organisations to international organisations."*

(2) In the first subparagraph of Article 60(2), point (d) is replaced by the following:

"(d) apply appropriate rules and procedures for providing financing from Union funds through procurement, grants, prizes and financial instruments including the obligations set out in Article 108(12);"

(3) *Article 60(3) shall be replaced by the following:*

*"3. The entities and persons entrusted pursuant to point (c) of Article 58(1) shall prevent, detect, correct and notify the Commission of irregularities and fraud when executing tasks relating to the implementation of the budget. To this end, they shall carry out, in accordance with the principle of proportionality, ex ante and ex post controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions, to ensure that the actions financed from the budget are effectively carried out and implemented correctly. They shall also recover funds unduly paid, exclude from access to Union funds or impose financial penalties and bring legal proceedings where necessary in this regard."*

(4) *In Article 60, paragraphs (7) and (8) shall be replaced by the following:*

*"7. Paragraphs 5 and 6 shall not apply to the contribution to the Union to entities which are subject to a separate discharge procedure under Articles 208 and 209.*

*8. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on indirect management, including the establishment of the conditions under indirect management according to which the systems, rules and procedures of entities and persons are to be equivalent to those of the Commission, management declarations and compliance statements, and the procedures for the examination and acceptance of the accounts, the obligation to notify the Commission of detected fraud and irregularities, the exclusion from Union financing of expenditure incurred in breach of the applicable rules and the imposition of financial penalties."*

(5) *Article 66(9) shall be replaced by the following:*

*"9. The authorising officer by delegation shall report to his or her institution on the performance of his or her duties in the form of an annual activity report containing financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:*

- (a) the information contained in the report presents a true and fair view;*
- (b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;*
- (c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.*

*The activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems, including an overall assessment of the costs and benefits of controls. It shall also include information on the overall performance of those operations, as well as an assessment of the extent to which the operational expenditure made has contributed to policy achievements and generated Union added value.*

*No later than 15 June each year, the Commission shall send to the European Parliament and the Council a summary of the annual activity reports for the preceding year. The annual activity report of each authorising officer by delegation shall also be made available to the European Parliament and the Council.*

*The annual activity reports of the authorising officers and, where applicable, authorising officers by delegation of the institutions, offices, bodies and agencies shall be published on the internet site of the respective institution, office, body or agency in an easily accessible way no later than 1 July each year for the preceding year, subject to duly justified confidentiality and security considerations."*

(6) *In Article 99 the following paragraph is inserted:*

*"3a. Each year, the Commission shall, in the context of the discharge procedure and in accordance with Article 319 TFEU, forward on request its annual internal audit report within the meaning of paragraph 3 of this Article with due regard to confidentiality requirements."*

(7) The heading of Title V of Part One is replaced by the following:

"TITLE V  
PUBLIC PROCUREMENT AND CONCESSIONS".

(8) In Chapter 1 of Title V of Part One, Sections 1, 2 and 3 are replaced by the following:

"Section 1

Scope and award principles

*Article 101*

*Definitions for the purpose of this title*

1. "Procurement" means the acquisition by means of a contract of **■** works, supplies or services ***and the acquisition or rental of land, existing buildings or other immovable property***, by one or more contracting authorities from economic operators chosen by those contracting authorities.
2. "Public contract" means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities within the meaning of Articles 117 and 190, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.

Public contracts comprise:

- (a) building contracts;
- (b) supply contracts;
- (c) works contracts;
- (d) service contracts.

3. "Concession contract" means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities within the meaning of Articles 117 and 190, in order to entrust the execution of works or the **provision and** management of services to an economic operator. The remuneration shall consist either solely in the right to exploit the works or services or in that right together with payment. The award of a works or services concession shall involve the transfer to the concessionaire of an operating risk in exploiting those works or services encompassing demand or supply risk or both. The concessionaire shall be deemed to assume **an** operating risk where, under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services at stake.
4. "Contract" means a public contract or a concession contract.
5. "Framework contract" means a public contract concluded between one or more economic operators and one or more contracting authorities, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
- 5a. "Dynamic purchasing system" means a completely electronic process for making commonly used purchases.**
6. "Economic operator" means any natural or legal person, **including a** public entity, **or group of such persons**, which offers to supply products, execute works or provide services **or immovable property**.



7. "Procurement document" means any document produced or referred to by the contracting authority to describe or determine elements of the procedure including:
- (a) the publicity measures set out in Article 103;
  - (b) *the invitation to tender*;
  - (c) *the tender specifications, which shall include the technical specifications and the relevant criteria, or the descriptive documents in case of a competitive dialogue*;
  - (d) *the draft contract* ■ .
- 7a. *"Final administrative decision" means a decision of an administrative authority having final and binding effect in accordance with the law of the country in which the economic operator is established, or where the contracting authority is located, or with the applicable Union law.*
- 7b. *"Central purchasing body" means a contracting authority providing centralised purchasing activities and, possibly, ancillary purchasing activities.*
- 7c. *"Tenderer" means an economic operator that has submitted a tender.*
- 7d. *"Candidate" means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a competitive dialogue, an innovation partnership, a design contest or a negotiated procedure.*
- 7e. *"Vendor" means an economic operator registered in a list of vendors to be invited to submit requests to participate or submit tenders.*
- 7f. *"Sub-contractor" means an economic operator who is proposed by a candidate or tenderer or contractor to perform part of a contract. It has no direct legal commitment with the contracting authority.*

- 7g. *A contract covering two or more types of procurement (works, supplies or services) or concessions (works or services) or both, shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject matter of the contract in question.*
8. Except for Articles **105a** to 108, this Title shall not apply to grants, or to contracts for technical assistance as defined in accordance with Article 125(8) concluded with the EIB or the European Investment Fund.
9. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the *further* definition and scope of public and concession contracts, *on applicable nomenclature by reference to the "Common Procurement Vocabulary (CPV)", on mixed contracts, on economic operators, as well as on* framework contracts and specific contracts *based thereon, covering the maximum duration of framework contracts and the award of and methods for implementing specific contracts based on framework contracts concluded with a single economic operator or with several economic operators respectively.*

#### Article 102

##### *Principles applicable to procurement procedures and contracts*

1. All procurement procedures and contracts shall respect the principles of transparency, proportionality, equal treatment and non-discrimination.
2. All contracts shall be put out to competition on the broadest possible basis, except when use is made of the negotiated procedure referred to in point (d) of Article 104(1).

*The estimated value of a contract may not be determined with a view to circumventing the applicable rules, nor may a contract be split up for that purpose.*

*The contracting authority shall divide a contract into lots whenever appropriate with due regard to broad competition.*

3. Contracting authorities shall not use framework contracts improperly or in such a way that their purpose or effect is to prevent, restrict or distort competition.

## Section 2

### Publicity

#### *Article 103*

##### *Publicity measures*

1. For procedures equal to or greater than the thresholds under Article 118(1) or Article 190, the contracting authority shall publish in the *Official Journal of the European Union*:
  - (a) a contract notice to launch a procedure, except in the case of the procedure under Article 104(1)(d);
  - (b) a contract award notice on the results of the procedure.
2. Procedures with a value below the thresholds set out in Article 118(1) or Article 190 shall be advertised by appropriate means.
3. Publication of certain information on contract award may be withheld where its release would impede law enforcement, or otherwise be contrary to the public interest, would harm the legitimate commercial interests of economic operators or might prejudice fair competition between them.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the requirements for the advertising of procedures ***by reference to their value in comparison to the thresholds referred to in Article 118(1), on advertising which the contracting authority may undertake in full respect of the principle of non-discrimination, and on the content*** and publication of notices.

## Section 3

### Procurement procedures

#### *Article 104*

##### *Procurement procedures*

1. Procurement procedures for awarding concession or public contracts including framework contracts shall take one of the following forms:

- (a) open procedure;
- (b) restricted procedure, including through a dynamic purchasing system;
- (c) design contests;
- (d) negotiated procedure, ***including without prior publication***;
- (e) competitive dialogue;
- (f) competitive procedure with negotiation;
- (g) innovation partnership;
- (h) procedures involving a call for expression of interest.

***1a. In open procedures any interested economic operator may submit a tender.***

***1b. In restricted procedures, competitive dialogue, competitive procedures with negotiation and innovative partnerships any economic operator may submit a request to participate by providing the information that is requested by the contracting authority. The contracting authority shall invite all candidates who satisfy the selection criteria and who are not in a situation set out in Articles 106 and 107 to submit a tender.***

*Notwithstanding the first subparagraph, the contracting authority may limit the number of candidates to be invited to participate in the procedure on the basis of objective and non-discriminatory selection criteria, which shall be indicated in the contract notice or the call for expression of interest. The number of candidates invited shall be sufficient to ensure genuine competition.*

- 1c. In all procedures involving negotiation, the contracting authority shall negotiate with tenderers the initial and any subsequent tenders or parts thereof, except their final tenders, in order to improve their content. The minimum requirements and the criteria specified in the procurement documents shall not be subject to negotiation.*

*A contracting authority may award a contract on the basis of the initial tender without negotiation where it has indicated, in the procurement documents, that it reserves the possibility to do so.*

4. The contracting authority may use:

- (a) the open or restricted procedure for any purchase;*
- (b) the procedures involving a call for expression of interest for contracts with a value below the threshold referred to in Article 118(1), to preselect candidates to be invited to submit tenders in response to future restricted invitations to tender, or to collect a list of vendors to be invited to submit requests to participate or submit tenders;*
- (c) the design contest to acquire a plan or design selected by a jury after being put out to competition;*
- (d) the innovation partnership to develop an innovative product, service or innovative works and the subsequent purchase of the resulting supply, services or works;*

- (e) *the competitive procedure with negotiation or the competitive dialogue for concession contracts, for the service contracts referred to in Annex XIV to Directive 2014/24/EU of the European Parliament and of the Council<sup>1</sup>, for cases where only irregular or unacceptable tenders were submitted in response to an open or restricted procedure after the initial procedure has been completed, and for cases where this is justified by the specific circumstances linked inter alia to the nature or the complexity of the subject-matter of the contract or to the specific type of contract, as further detailed in the delegated acts adopted pursuant to this Regulation;*
- (f) *the negotiated procedure for contracts with a value below the thresholds referred to in Article 118(1) or, where the negotiated procedure is without prior publication, only for specific types of purchases falling outside the scope of Directive 2014/24/EU and under clearly defined exceptional circumstances as set out in the delegated acts adopted pursuant to this Regulation.*

4a. *The dynamic purchasing system shall be open throughout its duration to any economic operator who satisfies the selection criteria.*

*The contracting authority shall follow the rules of the restricted procedure for procurement through a dynamic purchasing system.*

5. *The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the types of and additional modalities for the procurement procedures for the award of contracts referred to in paragraph 1 with reference to their value in comparison to the thresholds referred to in Article 118(1), on the minimum number of candidates to be invited for each type of procedure, on the further conditions for using the different procedures, on a dynamic purchasing system and on irregular and unacceptable tenders.*

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<sup>1</sup> *Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p.65).*

## **Article 104a**

### ***Joint and inter-institutional procurement***

1. Where a contract or a framework contract is of interest to two or more institutions, executive agencies or bodies referred to in **Articles** 208 and 209, and whenever there is a possibility for realising efficiency gains, the contracting authorities concerned may carry out the procedure and the management of the subsequent direct or framework contract on an inter-institutional basis under the lead of one of the contracting authorities.

The bodies established by the Council under the CFSP pursuant to Title V of the TEU may also participate in inter-institutional procedures.

The terms of a framework contract may only apply between those contracting authorities that are identified for this purpose from the launch of the procurement procedure and those economic operators party to the framework contract.

2. Where a contract or framework contract is necessary for the implementation of a joint action between an institution and one or more contracting authorities from Member States, the procurement procedure may be carried out jointly by the institution and the contracting authorities ("***joint procurement***").

Joint procurement may be conducted with EFTA states, and Union candidate countries, if this possibility has been specifically provided for in a bilateral or multilateral treaty.

***In the case of a joint procurement procedure, the procedural provisions applicable to the institution shall apply.***

***Where the share pertaining to or managed by the contracting authority of a Member State in the total estimated value of the contract is equal to or above 50 %, or in other duly justified cases, the institution may decide that the procedural rules applicable to the contracting authority from a Member State shall apply, provided that they can be considered as equivalent to those of the institution.***

*The institution and the contracting authority from Member States, EFTA States or Union candidate countries, concerned by the joint procurement procedure shall agree in particular upon the practical modalities for the evaluation of the requests for participation or the tenders, the award of the contract, the law applicable to the contract and the competent court for hearing disputes.*

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on *inter-institutional procurement*.

#### Article 105

##### *Preparation of a procedure*

1. Before launching a procedure, the contracting authority may conduct a preliminary market consultation with a view to preparing the procurement.
2. In the procurement documents, the contracting authority shall identify the subject matter of the procurement by providing a description of its needs and the characteristics required of the works, supplies or services to be bought and specify the applicable *exclusion, selection and award* criteria. It shall also indicate which elements define the minimum requirements to be met by all tenders. ***Minimum requirements shall include compliance with applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU.***
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the content of procurement documents, ***in particular the draft contracts, on the characteristics of environmental, social or other labels, norms and standards,*** and on the preliminary market consultation.



**Article 105a**

***Protection of the Union's financial interests by means of detection of risks and imposition of administrative sanctions***

- 1. In order to protect the Union's financial interests, the Commission shall set up and operate an early detection and exclusion system.***

***The purpose of such a system is to facilitate:***

- (a) the early detection of risks threatening the Union's financial interests;***
  - (b) the exclusion of economic operators which are in one of the situations of exclusion listed in Article 106(1);***
  - (c) the imposition of a financial penalty on an economic operator pursuant to Article 106(13).***
- 2. The decision to exclude or to impose a financial penalty shall be taken by the contracting authority. Such decision shall be based on a final judgment or on a final administrative decision.***

***However, in the situations referred to in Article 106(2), the contracting authority shall refer the case to the panel referred to in Article 108(5) in order to ensure a centralised assessment of those situations. In such cases, the contracting authority shall take its decision based on a preliminary classification in law, having regard to a recommendation of the panel.***

***Where the contracting authority decides to deviate from the recommendation of the panel, it shall justify such decision to the panel.***

- 3. In the cases referred to in Article 107, the contracting authority shall reject an economic operator from a given procedure.***

*Exclusion criteria and administrative sanctions*

1. ***The contracting authority shall exclude an economic operator from participating in procurement procedures governed by this Regulation where:***
  - (a) ***the economic operator is bankrupt, subject to insolvency or winding-up procedures, where its assets are being administered by a liquidator or by a court, where it is in an arrangement with creditors, where its business activities are suspended, or it is in any analogous situation arising from a similar procedure provided for under national laws or regulations;***  
**■**
  - (b) ***it has been established by a final judgment or a final administrative decision that the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the legal provisions of the country in which it is established or with those of the country where the contracting authority is located or those of the country of the performance of the contract;***
  - (c) ***it has been established by a final judgment or a final administrative decision that the economic operator is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the economic operator belongs, or by having committed any wrongful conduct which has an impact on its professional credibility where such conducts denote a wrongful intent or gross negligence, including, in particular, any of the following conducts:***
    - (i) ***fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;***

- (ii) *entering into agreement with other economic operators with the aim of distorting competition;*
  - (iii) *violating intellectual property rights;*
  - (iv) *attempting to influence the decision-making process of the contracting authority during the procurement procedure;*
  - (v) *attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure;*
- (d) *it has been established by a final judgment that the economic operator is guilty of any of the following:*
- (i) *fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995<sup>1</sup>;*
  - (ii) *corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union<sup>2</sup>, drawn up by the Council Act of 26 May 1997 and Article 2(1) of Council Framework Decision 2003/568/JHA<sup>3</sup>, as well as corruption as defined in the legal provisions of the country where the contracting authority is located or the country in which the economic operator is established or the country of the performance of the contract;*
  - (iii) *participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA<sup>4</sup>;*

<sup>1</sup> OJ C 316, 27.11.1995, p. 48.

<sup>2</sup> OJ C 195, 25.6.1997, p. 1.

<sup>3</sup> Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

<sup>4</sup> Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (iv) *money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council<sup>1</sup>;*
  - (v) *terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA<sup>2</sup> respectively, or inciting or aiding or abetting or attempting to commit such offences, as referred to in Article 4 of that Framework Decision;*
  - (vi) *child labour or other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council<sup>3</sup>;*
- (e) *the economic operator has shown significant deficiencies in complying with main obligations in the performance of a contract financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties or which has been discovered following checks, audits or investigations by an authorising officer, OLAF or the Court of Auditors;*
- (f) *it has been established by a final judgment or final administrative decision that the economic operator has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95<sup>4</sup>.*

<sup>1</sup> *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).*

<sup>2</sup> *Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).*

<sup>3</sup> *Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).*

<sup>4</sup> *Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).*

2. *In the absence of a final judgment or, where applicable, a final administrative decision in the cases referred to in points (c), (d) and (f) of paragraph 1, or in the case referred to in point (e) of paragraph 1, the contracting authority shall exclude an economic operator on the basis of a preliminary classification in law of a behaviour referred to in those points, having regard to established facts or other findings contained in the recommendation of the panel referred to in Article 108.*

*The preliminary classification referred to in the first subparagraph does not prejudice the assessment of the conduct of the economic operator concerned by the competent authorities of the Member States under national law. The contracting authority shall review its decision to exclude the economic operator and/or to impose a financial penalty on it without delay following the notification of a final judgment or a final administrative decision. In cases where the final judgment or final administrative decision does not set the duration of the exclusion, the contracting authority shall set this duration on the basis of established facts and findings and having regard to the recommendation of the panel referred to in Article 108.*

*Where such final judgment or final administrative decision holds that the economic operator is not guilty of the behaviour subject to a preliminary classification in law, on the basis of which it has been excluded, the contracting authority shall, without delay, bring an end to that exclusion and/or reimburse, as appropriate, any financial penalty imposed.*

*The facts and findings referred to in the first subparagraph include in particular:*

- (a) facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control made under the responsibility of the authorising officer;*
- (b) non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;*

- (c) *decisions of the European Central Bank, the European Investment Bank, the European Investment Fund or international organisations;*
- (d) *decisions of the Commission relating to the infringement of the Union's competition rules or of a national competent authority relating to the infringement of the Union's or national competition rules.*
3. *Any decision of the contracting authority taken under Articles 106 to 108 or, where applicable, any recommendation of the panel referred to in Article 108, shall be made in compliance with the principle of proportionality and in particular taking into account the seriousness of the situation, including the impact on the Union's financial interests and image, the time which has elapsed since the relevant conduct, its duration and its recurrence, the intention or degree of negligence, the limited amount at stake for point (b) of paragraph 1 of this Article or any other mitigating circumstances, such as the degree of the economic operator's collaboration with the relevant competent authority and its contribution to the investigation as recognised by the contracting authority, or the disclosure of the situation of exclusion by means of the declaration referred to in paragraph 11.*
4. *The contracting authority shall exclude the economic operator where a person who is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control is in a situation listed in points (c) to (f) of paragraph 1. An economic operator shall also be excluded where a natural or legal person that assumes unlimited liability for the debts of that economic operator is in a situation listed in point (a) or (b) of paragraph 1.*

5. *Where the budget is implemented in indirect management with third countries, the Commission may, having regard, where applicable, to the recommendation of the panel referred to in Article 108, take an exclusion decision or impose a financial penalty under the conditions set out in this Article, following the failure of the third country entrusted pursuant to point (c) of Article 58 (1) to do so. This does not affect the responsibility, under Article 60 (3), of the third country to prevent, detect, correct and notify irregularities and fraud, or to take an exclusion decision or impose financial penalties.*
6. *In the cases referred to in Article 106(2), the contracting authority may exclude an economic operator provisionally without a prior recommendation of the panel, where the participation of the economic operator concerned in procurement procedures would constitute a serious and imminent threat to the Union's financial interests. In such cases the contracting authority shall immediately seize the panel and shall take a final decision no later than 14 days after having received the recommendation of the panel.*
7. *The contracting authority, having regard, where applicable, to the recommendation of the panel referred to in Article 108, shall not exclude an economic operator from participating in procurement procedures where:*
  - (a) *it has taken remedial measures specified in paragraph 8, thus demonstrating its reliability; this shall not apply in the case referred to in point (d) of paragraph 1;*
  - (b) *it is indispensable to ensure the continuity of service, for a limited duration and pending the adoption of remedial measures specified in paragraph 8;*
  - (c) *such exclusion would be disproportionate on the basis of the criteria referred to in paragraph 3 of this Article.*

*In addition*, point (a) of paragraph 1 shall not apply in the case of the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities or the liquidators in an insolvency procedure, an arrangement with creditors, or a similar procedure under national law.

*In the cases of non-exclusion as referred to in the first and second subparagraphs of this paragraph, the contracting authority shall specify the reasons for not excluding the economic operator and inform the panel referred to in Article 108 of these reasons.*

8. *The measures referred to in paragraph 7 which remedy the situation of exclusion may include in particular:*
  - (a) *measures to identify the origin of the situations giving rise to exclusion and concrete technical, organisational and personnel measures within the concerned business area of the economic operator appropriate to correct the behaviour and prevent further occurrence;*
  - (b) *proof that it has undertaken measures to compensate or redress the damage or harm caused to the Union's financial interests by the underlying facts giving rise to the situation of exclusion;*
  - (c) *proof that it has paid or secured the payment of any fine imposed by a competent authority or of any contributions or taxes referred to in point (b) of paragraph 1.*
  
9. *The contracting authority, having regard, where applicable, to the revised recommendation of the panel as referred to in Article 108(10), shall, without delay, revise its decision to exclude the economic operator ex officio or on request from an excluded economic operator, where the latter has taken remedial measures sufficient to demonstrate its reliability or has provided new elements demonstrating that the situation of exclusion as referred to in Article 106(1) no longer exists.*



10. *The candidate or tenderer shall declare at the moment of submitting the request to participate or tender, whether it is in one of the situations referred to in paragraph 1 of this Article or in Article 107, and, where applicable, whether it has taken remedial measures referred to in point (a) of paragraph 7 of this Article. Where appropriate, the candidate or tenderer shall provide the same declaration signed by an entity on whose capacity it intends to rely. However, the contracting authority may waive these requirements for very low value contracts to be defined in the delegated acts adopted pursuant to Article 210.*
11. Whenever requested by the contracting authority *and where this is necessary to ensure the proper conduct of the procedure, the candidate or tenderer as well as the entity on whose capacity it intends to rely*, shall provide:
- (a) appropriate evidence that it is not in one of the situations of exclusion listed in paragraph 1;
  - (b) information on persons that are members of its administrative, management or supervisory body or that have powers of representation, decision or control *and* appropriate evidence that one or several of those persons are not in one of the situations of exclusion listed in *points (c) to (f) of paragraph 1*;
  - (c) *appropriate evidence that legal or natural persons that assume unlimited liability for the debts of that candidate or tenderer or entity are not in a situation of exclusion listed in point (a) or (b) of paragraph 1.*
12. The contracting authority may also *apply paragraphs 1 to 11 to a subcontractor. In that case, it shall require that a candidate or tenderer replaces a subcontractor or an entity on whose capacity it intends to rely, which is in an exclusion situation.*

**13. In order to ensure a deterrent effect, the contracting authority may, having regard, where applicable, to the recommendation of the panel referred to in Article 108, impose a financial penalty on an economic operator who has attempted to obtain access to Union funds by participating or requesting to participate in a procurement procedure, whilst being in one of the following exclusion situations without having declared it in accordance with paragraph 10:**

- (a) regarding the situations referred to in points (c), (d), (e) and (f) of paragraph 1, as an alternative to a decision to exclude the economic operator, where such an exclusion would be disproportionate on the basis of the criteria referred to in paragraph 3;**
- (b) regarding the situations referred to in points (c), (d) and (e) of paragraph 1, in addition to an exclusion which is necessary to protect the Union's financial interests, where the economic operator has adopted a systemic and recurrent behaviour with the intention to unduly obtain Union funds.**

**The amount of the financial penalty shall represent between 2 % and 10 % of the total value of the contract.**

**14. The duration of exclusion shall not exceed any of the following:**

- (a) the duration, if any, set by the final judgement *or final administrative decision of a Member State*;**
- (b) five years for the cases referred to in point (d) of *paragraph 1*;**
- (c) three years for the cases referred to in points (c), (e) and (f) of *paragraph 1*.**

An economic operator shall be excluded as long as it is in one of the situations referred to in points (a) and (b) of *paragraph 1*.

15. *The limitation period to exclude and/or impose financial penalties on an economic operator shall be five years calculated from any of the following dates:*

- (a) *the date on which the behaviour giving rise to exclusion is committed or, in the case of continued or repeated acts, the date on which the behaviour ceases, in the cases referred to in points (b), (c), (d) and (e) of paragraph 1;*
- (b) *the date of the final judgment of a national jurisdiction or of the final administrative decision of a public authority or of an international organisation in the cases referred to in points (b), (c) and (d) of paragraph 1.*

*The limitation period shall be interrupted by an act of the Commission, OLAF, the panel or of any entity involved in the implementation of the Union budget, notified to the economic operator and relating to investigations or judicial proceedings. A new limitation period shall begin to run on the day following the interruption.*

*For the purpose of point (f) of paragraph 1, the limitation period to exclude and/or impose financial penalties on an economic operator provided for in Article 3 of Regulation (EC, Euratom) No 2988/95 shall apply.*

*Where the conduct of the economic operator qualifies under several grounds listed in paragraph 1, the limitation period of the most serious ground applies.*

16. *In order to, where necessary, reinforce the deterrent effect of the exclusion and/or financial penalty, the Commission shall, subject to the decision of the contracting authority, publish on its internet site the following information related to the exclusion and, where applicable, the financial penalty for the cases referred to in points (c), (d), (e) and (f) of paragraph 1:*

- (a) *the name of the economic operator concerned;*
- (b) *the situation of exclusion by reference to Article 106(1);*
- (c) *the duration of the exclusion and/or the amount of the financial penalty.*

*Where the decision on the exclusion and/or financial penalty has been taken, on the basis of a preliminary classification as referred to in paragraph 2, the publication shall indicate that there is no final judgment or, as applicable, final administrative decision. In those cases information about any appeals, their status and their outcome as well as any revised decision of the contracting authority shall be published without delay. Where a financial penalty has been imposed, the publication shall also indicate whether that penalty has been paid.*

*The decision to publish the information is taken by the contracting authority either following the relevant final judgment or, if applicable, final administrative decision, or following the recommendation of the panel referred to in Article 108, as the case may be. It shall take effect three months after notifying the economic operator of the decision to publish the information concerned.*

*The information published shall be removed as soon as the exclusion has come to an end. In the case of a financial penalty, the publication shall be removed six months after payment of this penalty.*

*In accordance with the requirements of Regulation (EU) No 45/2001, where personal data is concerned, the contracting authority shall inform the economic operator of its rights under the data protection rules and of the procedures available for exercising those rights.*

**17. The information referred to in paragraph 16 shall not be published in any of the following circumstances:**

- (a) where it is necessary to preserve the confidentiality of an investigation or of a national judicial proceeding;**
- (b) where publication would cause disproportionate damage to the economic operator concerned or would otherwise be disproportionate, on the basis of the proportionality criteria set out in paragraph 3 and to the amount of the financial penalty;**

(c) *where a natural person is concerned, unless the publication of personal data is exceptionally justified inter alia by the seriousness of the act or its impact on the Union's financial interests; in such cases, the decision to publish the information shall take the right to privacy and the rights provided for in Regulation (EC) No 45/2001 duly into consideration.*

18. *The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the content of the declaration referred to in paragraph 10 of this Article and evidence referred to in point (a) of paragraph 11 of this Article, that an economic operator is not in one of the situations of exclusion, including by reference to the European Single Procurement Document as provided for in Article 59(2) of Directive 2014/24/EU, and on the situations in which the contracting authority may or may not require the submission of such a declaration or evidence.*

#### Article 107

##### Rejection from a given procedure

1. *The contracting authority shall not award a contract ■ for a given procurement procedure to an economic operator who:*
  - (a) *is in a situation of exclusion established in accordance with Article 106 ■ ;*
  - (b) *has misrepresented the information required as a condition for participating in the procedure or has failed to supply that information;*
  - (c) *was previously involved in the preparation of procurement documents where this entails a distortion of competition that cannot be remedied otherwise.*
2. *Before taking a decision to reject an economic operator from a given procedure, the contracting authority shall give the economic operator the opportunity to submit its observations, unless the rejection has been justified in accordance with point (a) of paragraph 1 by an exclusion decision taken with regard to the economic operator, following examination of its observations.*

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the measures to avoid distortion of competition and on declaration and evidence that an economic operator is not in one of the situations listed in paragraph 1 of this Article.

#### Article 108

##### *The early detection and exclusion system*

1. ***Information exchanged within the system referred to in Article 105a shall be centralised in a database set up by the Commission and shall be managed in full compliance with the right to privacy and the rights provided for in Regulation (EC) No 45/2001.***

***Information shall be entered in the database by the relevant contracting authority in the context of its ongoing procurement procedures and existing contracts after notifying the economic operator concerned. This notification may be exceptionally deferred, where there are compelling legitimate grounds to preserve the confidentiality of an investigation or of national judicial proceedings, until such compelling legitimate grounds to preserve the confidentiality cease to exist.***

***In accordance with Regulation (EC) No 45/2001, any economic operator subject to the early detection and exclusion system shall have the right to be informed of the data stored upon request to the accounting officer of the Commission.***

***The information contained in this database shall be updated, where appropriate, following rectification or erasure or any modification of data. It shall only be published in accordance with Article 106(16) and (17).***

2. The early detection of risks threatening the Union's financial interests *as referred to in point (a) of paragraph 1 of Article 105a shall be* based on the transmission of information *to the Commission* by any of the following:
- (a) OLAF in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council<sup>1</sup> where an OLAF investigation in progress shows that it might be appropriate to take precautionary measures to protect the financial interests of the Union, *with due regard to the respect for procedural and fundamental rights, and to the protection of whistle-blowers*;
  - (b) an authorising officer of the Commission, *of a European office set up by the Commission* or of an executive agency in case of presumed grave professional misconduct, irregularity, fraud, *corruption* or serious breach of contract;
  - (c) another institution, *another European office*, body or *agency* in case of presumed grave professional misconduct, irregularity, fraud, *corruption* or serious breach of contract;
  - (d) *entities implementing the budget in accordance with Article 59 in cases of detected fraud and/or irregularity, where required in sector-specific rules*;
  - (e) *entities implementing the budget in accordance with Article 60 in cases of detected fraud and/or irregularity*.

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<sup>1</sup> 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).

3. *Except in cases where information is to be submitted in accordance with sector-specific rules, the information to be transmitted pursuant to paragraph 2 shall include:*
- (a) the identification of the economic operator concerned;*
  - (b) a summary of the risks detected or the facts in question;*
  - (c) information that could assist the authorising officer in carrying out the verification referred to in Article 108(4) or in taking a decision on exclusion as referred to in Article 106(1) or (2), or a decision to impose a financial penalty as referred to in Article 106(13);*
  - (d) where applicable, any special measures necessary to ensure the confidentiality of the information transmitted, including measures for the safeguarding of evidence to protect the investigation or the national judicial proceedings.*
4. *The Commission shall transmit the information referred to in paragraph 3 without delay ■ to its authorising officers and those of its executive agencies, all other institutions, bodies, European offices and agencies in order to allow them to carry out the necessary verification in respect of their ongoing procurement procedures and existing contracts.*

*In carrying out this verification, the authorising officer shall exercise his/her powers as foreseen under Article 66 and shall not go beyond what is foreseen in the terms and conditions of the procurement documents and contractual provisions.*

*The retention period for the information transmitted in accordance with paragraph 3 shall not exceed one year. If, during this period, the contracting authority requests the panel referred to in Article 105a to issue a recommendation in an exclusion case, the retention period may be extended until such time, when the contracting authority has taken a decision.*



5. *A decision to exclude and/or to impose a financial penalty, and a decision to publish the related information, may only be taken by the contracting authority after having obtained a recommendation of the panel, where such a decision is based on a preliminary classification as referred to in Article 106(2).*
6. *The panel shall be convened at the request of any contracting authority as referred to in Article 117.*
7. *The panel shall be composed of:*
  - (a) *a standing high-level independent Chair;*
  - (b) *two representatives of the Commission as owner of the system, who shall express a joint position; and*
  - (c) *one representative of the requesting contracting authority.*

*The panel shall be composed so as to ensure the appropriate legal and technical expertise.*

*The panel shall be assisted by a permanent secretariat hosted by the Commission which shall ensure the running administration of the panel.*

8. *The following procedure shall apply before the panel:*
  - (a) *the requesting contracting authority shall refer the case to the panel with the necessary information referred to in paragraph 3, the facts and findings referred to in Article 106(2) and the alleged situation of exclusion;*
  - (b) *the panel shall notify the economic operator without delay of the facts in question and their preliminary classification in law, which may qualify as a situation of exclusion listed in points (c), (d), (e) and (f) of Article 106(1) and/or may lead to the imposition of a financial penalty; at the same time, the panel shall make the same notification to the other contracting authorities;*

- (c) *before adopting any recommendation*, the panel shall give the economic operator *and the notified contracting authorities* the opportunity to submit observations; *the economic operator and the notified contracting authorities shall have at least 15 days to submit their observations;*
- (d) in the cases set out in points (d) and (f) of Article 106(1) the notification referred to in point (b) *of this paragraph* and the opportunity referred to in point (c) *of this paragraph* may be exceptionally deferred, where there are compelling legitimate grounds to preserve the confidentiality of an investigation or of national judicial proceedings, *until such compelling legitimate grounds to preserve the confidentiality cease to exist;*
- (e) where the request of the *contracting authority* is based, inter alia, on the information provided by OLAF, *that* Office shall cooperate with the panel in accordance with Regulation (EU, Euratom) No 883/2013, *with due regard to the respect of procedural and fundamental rights, and to the protection of whistle-blowers;*
- (f) *the panel shall adopt its recommendation within 45 days from the receipt of the request by the contracting authority. Where the panel requests additional information from the economic operator, that period shall be extended by up to 15 days. In exceptional and duly justified cases, the panel may further extend the period to adopt its recommendation by up to one month. Where the economic operator fails to submit its observations or supply requested information within the time limit specified, the panel may proceed with the adoption of its recommendation.*

**9. The recommendation of the panel to exclude and/or impose a financial penalty shall contain, where applicable, the following elements:**

- (a) the facts or findings as referred to in Article 106(2) and their preliminary classification in law;**
- (b) an assessment of the need to impose a financial penalty and its amount;**
- (c) an assessment of the need to exclude the economic operator concerned and, in that case, the suggested duration of such an exclusion;**
- (d) an assessment of the need to publish the information related to the economic operator who is excluded or subject to a financial penalty;**
- (e) an assessment of remedial measures taken by the economic operator, if any.**

**Where the contracting authority envisages taking a more severe decision than recommended by the panel, it shall ensure that such decision is taken in due respect of the right to be heard and of the rules of personal data protection.**

**10. The panel shall revise its recommendation during the exclusion period on request from the contracting authority in the cases referred to in Article 106(9) or following the notification of a final judgement or a final administrative decision establishing the grounds for exclusion in the cases where such judgment or decision does not fix the duration of the exclusion, as referred to in second subparagraph of Article 106(2).**

**The panel shall notify the requesting contracting authority without delay of its revised recommendation, following which the contracting authority shall review its decision.**

**11. The Court of Justice shall have unlimited jurisdiction to review a decision whereby the contracting authority excludes an economic operator and/or imposes on it a financial penalty, including reducing or increasing the duration of the exclusion and/or cancelling, reducing or increasing the financial penalty imposed.**

12. *All entities participating in the implementation of the budget in accordance with Article 58 shall be granted access by the Commission to the information on exclusion decisions pursuant to Article 106 to enable them to verify whether there is an exclusion in the system with a view to taking this information into account, as appropriate and on their own responsibility, when awarding contracts in the implementation of the Union budget.*
13. *As part of the annual report of the Commission to the European Parliament and the Council as referred to in Article 325(5) of the TFEU, the Commission shall provide aggregate information on the decisions taken by the contracting authorities under Articles 105a to 108. That report shall also give further information on any decisions taken by the contracting authorities pursuant to point (b) of Article 106(7) and Article 106(17) and on decisions by the contracting authority to deviate from the recommendation of the panel pursuant to the third subparagraph of Article 105a(2).  
  
The information referred to in the first subparagraph shall be given with due regard to confidentiality requirements and shall, in particular, not allow for the identification of the economic operator concerned.*
14. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the Union's system for the protection of the Union's financial interests, including its *database and its* standardised procedures **■**, the organisation *and composition* of the panel, the *appointment and the independence of the Chair, and the prevention and management of conflicts of interest of the Chair and of the members of the panel.*

*[Article 109: deleted]*

Article 110

Award of contracts

1. Contracts shall be awarded on the basis of award criteria provided that the contracting authority has verified the following cumulative conditions:
  - (a) the tender complies with the minimum requirements specified in the procurement documents;
  - (b) the candidate or tenderer is not excluded under Article 106 or rejected under Article 107;
  - (c) the candidate or tenderer meets the selection criteria specified in the procurement documents *and is not subject to conflicting interests which may negatively affect the performance of the contract.*
- 1a. The contracting authority shall apply the selection criteria to evaluate the capacity of the candidate or tenderer. Selection criteria may only relate to the legal and regulatory capacity to pursue the professional activity, the economic and financial capacity and the technical and professional capacity.*
- 1b. The contracting authority shall apply the award criteria to evaluate the tender.*
2. The contracting authority shall base the award of contracts on the most economically advantageous tender, *which shall consist in one of three award methods: lowest price, lowest cost or best price-quality ratio.*

*For the lowest cost method, the contracting authority shall use a cost-effectiveness approach including life-cycle costing.*

*For the best price-quality ratio, the contracting authority shall take into account the price or cost and other quality criteria linked to the subject matter of the contract.*

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning details on the selection criteria, the award criteria, ***including quality criteria*** and the most economically advantageous tender ***as well as the methods used to assess the life cycle costs of the purchase***. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the documents that give evidence of legal capacity, economic and financial capacity and the evidence of technical and professional capacity and detailed rules on electronic auctions and abnormally low tenders.

#### *Article 111*

##### *Submission, electronic communication and evaluation*

1. The arrangements for submitting tenders shall be such as to ensure that there is genuine competition and that the contents of tenders remain confidential until they are all opened simultaneously.
2. The Commission shall ensure by appropriate means and in application of Article 95 that tenderers may enter the contents of the tenders and any supporting evidence in an electronic format ("e-procurement"), ***except in duly justified cases specified in the delegated acts adopted in accordance with Article 210. Any electronic communication system used to support communications and information exchanges shall be non-discriminatory, generally available and inter-operable with information and communication technology (ICT) products in general use and shall not restrict economic operators' access to the procurement procedure.***

The Commission shall report regularly to the European Parliament and the Council on the progress of the implementation of this provision.

3. If deemed appropriate and proportionate, the contracting authority may require tenderers to submit a guarantee in advance to make sure that the tenders submitted will not be withdrawn. ***The required guarantee should be proportionate to the estimated value of the contract and should be set at an appropriate level in order to prevent discrimination against diverse economic operators.***
4. The contracting authority shall open all requests to participate and tenders. ***However, it shall reject:***
  - (a) requests to participate ***and tenders*** which do not comply with the time-limit for receipt ***without opening them;***
  - (b) tenders ■ received already open ***without examining their content.***
5. The contracting authority shall evaluate all requests to participate or tenders not rejected during the opening phase laid down in paragraph 4 on the basis of the criteria specified in the procurement documents with a view to ***awarding*** the contract or to ***proceeding*** with an electronic auction.
  - 5a. ***Requests to participate and tenders which do not comply with all the minimum requirements set out in the procurement documents shall be rejected.***

***Except in duly justified cases, the evaluation committee or the contracting authority shall ask candidates or tenderers to provide additional material or missing documents, to clarify the documents supporting exclusion and selection criteria, or to explain an abnormally low tender, within the time limit it specifies.***

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the time limits for receipt of tenders and requests to participate, access to procurement documents, the time limits to provide additional information, the time limits in urgent cases, as well as on the *means of communication* for *the* submission of tenders and electronic catalogues, *detailed rules on the technical and legal requirements for electronic exchange systems and on the exception from the use of electronic submission of tenders in duly justified cases*. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning *detailed rules on* the possibility of requesting a tender guarantee *and the conditions for call in and release of the guarantee*, the opening and evaluation of tenders and requests to participate and the establishment *and composition* of opening and evaluation committees.

#### Article 112

##### *Contacts during the procedure*

1. While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers shall satisfy conditions ensuring transparency, equal treatment *and good administration as set out in Article 96*. After the time limit for receipt of tenders, *the contracting authority shall contact the tenderer in order to correct an obvious clerical error or require confirmation of a specific or technical element, except in duly justified cases*. *The aforementioned contacts as well as any other* contacts shall not lead to changes to the procurement documents or to substantial changes to the terms of the submitted tender, except where a procedure set out in Article 104(1) specifically allows for these possibilities.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning contacts that are allowed *and contacts which are required* between the contracting authority and candidates or tenderers during the procurement procedure.



## Article 113

### Award decision and information of candidates **or** tenderers

1. The authorising officer responsible shall decide to whom the contract is to be awarded, in compliance with the selection and award criteria specified in the procurement documents.
2. The contracting authority shall notify all candidates or tenderers whose requests to participate or tenders are rejected of the grounds on which the decision was taken, as well as the duration of the standstill period referred to in Article 118(2).

For the award of specific contracts under a framework contract with reopening of competition, the contracting authority shall inform the tenderers of the result of the evaluation.

3. The contracting authority shall inform each tenderer who is not in a situation of exclusion, whose tender is compliant with the procurement documents and who makes a request in writing, of any of the following:
  - (a) ■ the name of the tenderer, **or tenderers in case of a framework contract**, to whom the contract is awarded **and**, except in the case of a specific contract under a framework contract with reopening of competition, **the characteristics and relative advantages of the successful tender, the price paid or contract value, whichever is appropriate**;
  - (b) the progress of negotiation and dialogue with tenderers.

However, the contracting authority may decide to withhold certain information where its release would impede law enforcement, would be contrary to the public interest or would prejudice the legitimate commercial interests of economic operators or might **distort** fair competition between them.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the *requirements for and content of the* evaluation report *and* the award decision, and *on* information of candidates and tenderers.

#### *Article 114*

##### *Cancellation of the procurement procedure*

The contracting authority may, before the contract is signed, cancel the procedure without the candidates or tenderers being entitled to claim any compensation.

The decision shall be justified and be brought to the attention of the candidates or tenderers as soon as possible. █ "

- (9) In Chapter 1 of Title V of Part One, Section 4 is replaced by the following:

"Section 4

Performance of the contract, guarantees and corrective actions

#### *Article 114a*

##### *Performance and modifications of the contract*

1. Performance of the contract may not start before the contract is signed.
2. The contracting authority may modify a contract or framework contract █ without a procurement procedure only in *the* cases provided for in *paragraph 2a* and provided the █ modification does not alter the subject matter of the contract or framework contract.

**2a. A contract or a specific contract may be modified without a new procurement procedure in any of the following cases:**

- (a) for additional works, supplies or services by the original contractor that have become necessary and that were not included in the initial procurement where all the following conditions are met:**
  - (i) a change of contractor cannot be made for technical reasons linked to interchangeability or interoperability requirements with existing equipment, services or installations;**
  - (ii) a change of contractor would cause substantial duplication of costs for the contracting authority;**
  - (iii) any increase in price, including the net cumulative value of successive modifications, does not exceed 50 % of the initial contract value;**
- (b) where all of the following conditions are fulfilled:**
  - (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not foresee;**
  - (ii) any increase in price does not exceed 50 % of the initial contract value;**
- (c) where the value of the modification is below both of the following values:**
  - (i) the thresholds set out in Article 118(1) and the delegated acts adopted pursuant to Article 190(2) in the field of external actions applicable at the time of the modification; and**
  - (ii) 10 % of the initial contract value for service and supply contracts and concession contracts (works or services) and 15 % of the initial contract value for works contracts;**

*(d) where the minimum requirements of the initial procurement procedure are not altered; any ensuing modification of value shall comply with the conditions set under point (c), unless it results from the strict application of the procurement documents or contractual provisions.*

*Points (a), (c) and (d) of the first subparagraph may also apply to framework contracts.*

*The initial contract value shall not take price revisions into account.*

*The net cumulative value of several successive modifications under point (c) of the first subparagraph shall not exceed any threshold laid down therein.*

*The contracting authority shall apply the ex-post publicity measures foreseen in Article 103(1).*

#### Article 115

##### Guarantees

1. Other than in the case of low value contracts, the contracting authority may, if it deems it appropriate and proportionate on a case-by-case basis and subject to a risk-analysis, require contractors to submit a guarantee in order to do any of the following:
  - (a) limit the financial risks connected with payment of pre- financing;
  - (b) ensure compliance with substantial contractual obligations in the case of works, supplies or complex services;
  - (c) ensure full performance of the contract *during the contract liability period*.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules, *on the types of guarantees that may be required from contractors*, including criteria for risk analysis, *and on the maximum amount of each type of guarantee as a percentage of the total value of the contract*.

## Article 116

### *Substantial errors, irregularities or fraud*

1. Where the procedure proves to have been subject to substantial errors, irregularities or fraud, the contracting authority shall suspend it and may take whatever measures necessary, including its cancellation.

**1a. For the purposes of this Article, a "substantial error" means any infringement of a provision of a contract resulting from an act or an omission, which causes or might cause a loss to the Union budget.**

2. Where, after the signature of the contract, the procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the contracting authority may suspend performance of the contract or, where appropriate, terminate it.

Performance of contracts may also be suspended in order to verify whether presumed substantial errors, irregularities or fraud have occurred.

Where substantial errors, irregularities or fraud are attributable to the contractor, the contracting authority may, in addition, refuse to make payments or recover amounts unduly paid, in proportion to the seriousness of the substantial errors, irregularities or fraud.

3. OLAF shall exercise the power conferred on the Commission by Council Regulation (Euratom, EC) No 2185/96<sup>1</sup> to carry out on-the-spot inspections and checks in the Member States and, in accordance with the cooperation and mutual assistance agreements in force, in third countries and on the premises of international organisations.

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<sup>1</sup> 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*).

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the suspension of a contract in the event of substantial errors, irregularities or fraud █."

█

(10) Articles 117 and 118 are *replaced by the following*:

*"Article 117*

*The contracting authority*

1. *Union institutions in the sense of Article 2, executive agencies and bodies in the sense of Article 208 and 209 shall be deemed to be █ contracting authorities █ in the case of contracts awarded on their own account, except where they purchase from a central purchasing body. Departments of Union institutions shall not be deemed to be contracting authorities where they conclude administrative arrangements amongst themselves.*

*The institutions shall delegate, in accordance with Article 65, the necessary powers for the exercise of the function of contracting authority.*

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the delegation of the function of contracting authority *and on central purchasing bodies.*

## Article 118

### *Thresholds applicable and standstill period*

1. To award public and concession contracts, the contracting authority shall **respect** the thresholds laid down in points (a) and (b) of Article 4 of Directive 2014/24/EU when selecting a procedure set out in Article 104(1) of this Regulation. These thresholds shall determine the publication arrangements set out in paragraphs (1) and (2) of Article 103 of this Regulation.
2. Subject to exceptions and conditions to be specified in the delegated acts adopted pursuant to this Regulation, in the case of contracts above the thresholds set out in paragraph 1, the contracting authority shall not sign the contract or framework contract with the successful tenderer until a standstill period has elapsed.
  - 2a. ***The standstill period shall have a duration of 10 days when using electronic means of communication, and otherwise 15 days.***
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on separate contracts and contracts with lots, estimating the value of public and concession contracts and the standstill period before the signature of the contract."

(11) **Articles** 119 and 120 are replaced by the following:

### *"Article 119*

#### *Rules on access to procurement*

Participation in procurement procedures shall be open on equal terms to all natural and legal persons within the scope of the Treaties and to all natural and legal persons established in a third country which has a special agreement with the Union in the field of public procurement under the conditions laid down in that agreement. It shall also be open to international organisations.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the evidence to be provided in relation to access to procurement.

*Article 120*

*Procurement rules of the World Trade Organisation*

Where the Plurilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the procurement procedure shall also be open to economic operators established in the states which have ratified that agreement, under the conditions laid down therein."

(12) In Article 131, paragraph 4 is replaced by the following:

**"4. Article 105a, paragraphs 1 to 4, 6, 7 except point (b) of the first subparagraph and the second subparagraph, 8, 9, 11 and 13 to 17 of Article 106 and Article 108 shall apply to grant applicants and beneficiaries. Article 107 shall also apply to applicants.**

Applicants shall declare *whether* they are in one of the situations referred to in Article 106(1) *or* Article 107 *and, where applicable, whether they have taken remedial measures as* referred to in point (a) of Article 106(7).

***When carrying out the necessary verification in respect of its ongoing grant procedures and existing agreements in accordance with Article 108(4), the authorising officer shall ensure that the applicant or beneficiary has been given the opportunity to present its observations before adopting any measure adversely affecting its rights."***

(13) In Article 131, paragraph 5 is deleted.

(14) In Article 131, paragraph 6 is replaced by the following:

"6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the arrangements for grant applications, evidence of not falling within an exclusion situation, applicants without legal personality, legal persons forming one applicant, eligibility criteria and low value grants."



(15) *In Article 138(2), the third subparagraph is replaced by the following:*

*"The rules of the contest shall at least lay down the conditions for participation including the exclusion criteria ■, the award criteria, the amount of the prize and the payment arrangements. Article 105a, paragraphs 1 to 4, 6, 7 except point (b) of the first subparagraph and the second subparagraph, 8, 9, 11 and 13 to 17 of Article 106 and Article 108 shall apply to participants and winners. Article 107 shall also apply to participants."*

(16) *In Article 139, the following paragraph ■ is inserted:*

*"5a. Article 105a, paragraph 1 except points (e) and (f), paragraphs 2 to 4, 6 to 9 and 13 to 17 of Article 106, and Articles 107 and 108 shall apply to dedicated investment vehicles or to financial intermediaries ■. Final recipients shall provide financial intermediaries with a signed declaration of honour confirming that they are not in one of the situations referred to in points (a), (b), (c) and (d) of Article 106(1) or points (b) and (c) of Article 107(1)."*

(17) *Article 163(1) is replaced by the following:*

*"1. The Court of Auditors shall transmit to the institution or the body concerned any observations which are, in its opinion, such that they should appear in a special report. Those observations shall remain confidential and shall be subject to an adversarial procedure.*

*The institution or the body concerned shall inform the Court of Auditors, in general, within six weeks of transmission of those observations, of any replies it wishes to make in relation to those observations. That period shall be suspended, in duly justified cases, in particular where, during the adversarial procedure, it is necessary for the institution or body concerned to obtain feedback from Member States in order to finalize its reply.*

*The replies of the institution or the body concerned shall directly and exclusively address the observations of the Court of Auditors.*

*The Court of Auditors shall ensure that special reports are drawn up and adopted within an appropriate period of time, which shall, in general, not exceed 13 months.*

*The special reports, together with the replies of the institutions or bodies concerned, shall be transmitted without delay to the European Parliament and the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.*

*The Court of Auditors shall take all necessary steps to ensure that the replies to its observations from each institution or body concerned, as well as the timeline for the drawing up of the special report, are published together with the special report."*

(18) *Article 166 is replaced by the following:*

*"Article 166*

*Follow-up measures*

- 1. In accordance with Article 319 TFEU and Article 106a of the Euratom Treaty, the Commission and the other institutions and bodies referred to in Articles 208 and 209 shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.*
- 2. At the request of the European Parliament or the Council, the institutions and bodies referred to in paragraph 1 shall report on the measures taken in the light of those observations and comments, and, in particular, on the instructions they have given to any of their departments which are responsible for the implementation of the budget. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on those observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions shall also be transmitted to the Court of Auditors."*

(19) In Article 183(4), *the first subparagraph* is replaced by the following:

"4. When participating in grant or procurement procedures in accordance with paragraph 1 of this Article, the JRC shall not be subject to the conditions laid down in *Articles 105a*, 106, points (a) and (b) of Article 107(1), Article 108 and Article 131(4) regarding provisions on exclusion and penalties in relation to procurement and grants."

(20) Articles 190 and 191 are replaced by the following:

*"Article 190*

*External action procurement*

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on external action procurement.
2. The provisions of Chapter 1 of Title V of Part One relating to the general provisions on procurement shall be applicable to contracts covered by this Title subject to the special provisions relating to thresholds and the arrangements for awarding external contracts to be laid down in the delegated acts adopted pursuant to this Regulation. Articles 117 *and* 120 shall not be applicable to the procurement set out in this Chapter.

This Chapter shall apply to:

- (a) procurement where the Commission does not award contracts for its own account;
  - (b) procurement by entities or persons entrusted pursuant to point (c) of Article 58(1) where provided for in the financing agreement referred to in Article 189.
3. The procurement procedures shall be laid down in the financing agreements provided for in Article 189.
  4. This Chapter shall not apply to actions under sector-specific basic acts relating to humanitarian crisis management aid, to civil protection operations and to humanitarian aid operations.

## *Article 191*

### *Rules on access to procurement*

1. Participation in procurement procedures shall be open on equal terms to all persons within the scope of the Treaties and to any other natural or legal person in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned. It shall also be open to international organisations.
2. In the cases referred to in Article 54(2), it may be decided, under exceptional circumstances duly justified by the authorising officer responsible, to allow third-country nationals other than those referred to in paragraph 1 of this Article to tender for contracts.
3. Where an agreement on widening the market for procurement of goods or services to which the Union is party applies, the contracts for procurement financed by the budget shall also be open to natural and legal persons established in a third -country other than those referred to in paragraphs 1 and 2, under the conditions laid down in that agreement.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on access to procurement procedures."

(21) In Article 204 the following paragraph is added:

"Experts shall be subject to *Article 105a*, paragraphs 1 to 3, 7 *except point (b)* of the first subparagraph *and the second subparagraph, 8 to 10, 11 point (a) and 13 to 17 of Article 106*, and Articles 107 and 108."

(22) *Article 209 is replaced by the following:*

*"Article 209*

*Model Financial Regulation for public-private partnership bodies*

1. *The bodies having legal personality set up by a basic act and entrusted with the implementation of a public-private partnership shall adopt their financial rules.*

*Those rules shall include a set of principles necessary to ensure sound financial management of Union funds.*

*The Commission shall be empowered to adopt a model financial regulation by means of a delegated act in accordance with Article 210 which shall lay down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 60.*

*The financial rules of those bodies shall not depart from the model financial regulation except where their specific needs so require and with the Commission's prior consent.*

2. *Paragraphs 2 to 4 of Article 208 shall apply."*

(23) *Article 211 is replaced by the following:*

*"Article 211*

*Review*

*This Regulation shall be reviewed whenever it proves necessary to do so and in any case at the latest two years before the end of the first post-2013 multiannual financial framework.*

*Such review shall cover, inter alia, the implementation of the provisions in Title VIII of Part One and the deadlines set out in Article 163(1)."*

*Article 2*

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

***It shall apply from 1 January 2016.***

This Regulation shall be binding in its entirety and directly applicable in *the* Member States.

Done at ..., ...

*For the European Parliament*

*For the Council*

*The President*

*The President*

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