

Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012

## PART ONE

### FINANCIAL REGULATION

#### TITLE V

#### COMMON RULES

#### CHAPTER 2

#### *Rules applicable to direct and indirect management*

##### *Section 1*

#### *Rules on procedures and management*

##### *Article 130*

#### **Financial framework partnerships**

1 The Commission may establish financial framework partnership agreements for a long-term cooperation with persons and entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or with beneficiaries. Without prejudice to point (c) of paragraph 4 of this Article, financial framework partnership agreements shall be reviewed at least once during the term of every multiannual financial framework. Contribution agreements or grant agreements may be signed under such agreements.

2 The purpose of a financial framework partnership agreement shall be to facilitate the achievement of policy objectives of the Union by stabilising the contractual terms of the cooperation. The financial framework partnership agreement shall specify the forms of financial cooperation and shall include an obligation to set out, in the specific agreements signed under the financial framework partnership agreement, arrangements for monitoring the achievement of specific objectives. Those agreements shall also, on the basis of the results of an *ex ante* assessment, indicate whether the Commission may rely on the systems and the procedures of the persons or entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or of beneficiaries, including audit procedures.

3 With a view to optimising costs and benefits of audits and facilitate coordination, audit or verification agreements may be concluded with persons and entities implementing Union

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funds pursuant to point (c) of the first subparagraph of Article 62(1) or with beneficiaries. Such agreements shall be without prejudice to Articles 127 and 129.

- 4 In the case of financial framework partnerships implemented through specific grants:
- a the financial framework partnership agreement shall, in addition to paragraph 2, specify:
    - (i) the nature of the actions or work programmes foreseen;
    - (ii) the procedure for awarding specific grants, in compliance with the principles and procedural rules in Title VIII;
  - b the financial framework partnership agreement and the specific grant agreement taken as a whole shall comply with the requirements of Article 201;
  - c the duration of the financial framework partnership shall not exceed four years save in duly justified cases which are clearly indicated in the annual activity report referred to in Article 74(9);
  - d the financial framework partnership shall be implemented in compliance with the principles of transparency and equal treatment of applicants;
  - e the financial framework partnership shall be treated as a grant with regard to programming, *ex ante* publication and award;
  - f specific grants based on the financial framework partnership shall be subject to the *ex post* publication procedures set out in Article 38.

5 A financial framework partnership agreement implemented through specific grants may provide for the reliance on the systems and the procedures of the beneficiary in accordance with paragraph 2 of this Article, where those systems and procedures have been assessed in accordance with Article 154(2), (3) and (4). In such a case, point (d) of Article 196(1) shall not apply. Where the procedures of the beneficiary for providing financing to third parties referred to in point (d) of the first subparagraph of Article 154(4) were positively assessed by the Commission, Articles 204 and 205 shall not apply.

6 In the case of financial framework partnership agreement implemented through specific grants the verification of the financial and operational capacity referred to in Article 198 shall be performed before signature of the financial framework partnership agreement. The Commission may rely on an equivalent verification of the financial and operational capacity carried out by other donors.

7 In the case of financial framework partnerships implemented through contribution agreements, the financial framework partnership agreement and the contribution agreement taken as a whole shall comply with Article 129 and Article 155(6).

### *Article 131*

#### **Suspension, termination and reduction**

1 Where an award procedure has been subject to irregularities or fraud, the authorising officer responsible shall suspend the procedure and may take any necessary measures, including the cancellation of the procedure. The authorising officer responsible shall inform OLAF immediately of suspected cases of fraud.

2 Where, after the award, the award procedure proves to have been subject to irregularities or fraud, the authorising officer responsible may:

- a refuse to enter into the legal commitment or cancel the award of a prize;
- b suspend payments;

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- c suspend the implementation of the legal commitment;
- d where appropriate, terminate the legal commitment in whole or with regard to one or more recipients.

3 The authorising officer responsible may suspend payments or the implementation of the legal commitment where:

- a the implementation of the legal commitment proves to have been subject to irregularities, fraud or breach of obligations;
- b it is necessary to verify whether presumed irregularities, fraud or breach of obligations have actually occurred;
- c irregularities, fraud or breach of obligations call into question the reliability or effectiveness of the internal control systems of a person or entity implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or the legality and regularity of the underlying transactions.

Where the presumed irregularities, fraud or breach of obligations referred to in point (b) of the first subparagraph are not confirmed, the implementation or payments shall resume as soon as possible.

The authorising officer responsible may terminate the legal commitment in whole or with regard to one or more recipients in the cases referred to in points (a) and (c) of the first subparagraph.

4 In addition to measures referred to in paragraph 2 or 3, the authorising officer responsible may reduce the grant, the prize, the contribution under the contribution agreement or the price due under a contract in proportion to the seriousness of the irregularities, fraud or of the breach of obligations, including where the activities concerned were not implemented or were implemented poorly, partially or late.

In the case of financing referred to in point (a) of the first subparagraph of Article 125(1) the authorising officer responsible may reduce the contribution proportionally if the results have been achieved poorly, partially or late or the conditions have not been fulfilled.

5 Points (b), (c) and (d) of paragraph 2 and paragraph 3 shall not apply to applicants in a contest for prizes.

### *Article 132*

#### **Record-keeping**

1 Recipients shall keep records and supporting documents, including statistical records and other records pertaining to the funding, as well as records and documents in an electronic format, for five years following the payment of the balance or, in the absence of such payment, the transaction. This period shall be three years where the funding is of an amount lower than or equal to EUR 60 000.

2 Records and documents pertaining to audits, appeals, litigation, the pursuit of claims relating to legal commitments or pertaining to OLAF investigations shall be retained until such audits, appeals, litigation, pursuit of claims or investigations have been closed. For records and documents pertaining to OLAF investigations, the obligation to retain shall apply once those investigations have been notified to the recipient.

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3 Records and documents shall be kept either in the form of the originals, or certified true copies of the originals, or on commonly accepted data carriers including electronic versions of original documents or documents existing in electronic version only. Where electronic versions exist, no originals shall be required where such documents meet the applicable legal requirements in order to be considered as equivalent to originals and to be relied on for audit purposes.

### *Article 133*

#### **Adversarial procedure and means of redress**

1 Before adopting any measure adversely affecting the rights of a participant or a recipient the authorising officer responsible shall ensure that the participant or the recipient has been given the opportunity to submit observations.

2 Where a measure of an authorising officer adversely affects the rights of a participant or a recipient, the act establishing that measure shall contain an indication of the available means of administrative and/or judicial redress for challenging it.

### *Article 134*

#### **Interest rate rebates and guarantee fee subsidies**

1 Interest rate rebates and guarantee fee subsidies shall be provided in accordance with Title X where they are combined in a single measure with financial instruments.

2 Where interest rate rebates and guarantee fee subsidies are not combined in a single measure with financial instruments they may be provided in accordance with Title VI or VIII.

### *Section 2*

#### ***Early-detection and exclusion system***

### *Article 135*

#### **Protection of the financial interests of the Union by means of detection of risks, exclusion and imposition of financial penalties**

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

The purpose of such a system shall be to facilitate:

- a the early detection of persons or entities referred to in paragraph 2, which pose a risk to the financial interests of the Union;
- b the exclusion of persons or entities referred to in paragraph 2, which are in one of the exclusion situations referred to in Article 136(1);
- c the imposition of a financial penalty on a recipient pursuant to Article 138.

2 The early-detection and exclusion system shall apply to:

- a participants and recipients;

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- b entities on whose capacity the candidate or tenderer intends to rely or subcontractors of a contractor;
- c any person or entity receiving Union funds where the budget is implemented pursuant to point (c) of the first subparagraph of Article 62(1) and to Article 154(4) on the basis of information notified in accordance with Article 155(6);
- d any person or entity receiving Union funds under financial instruments exceptionally implemented in accordance with point (a) of the first subparagraph of Article 62(1);
- e participants or recipients on which entities implementing the budget in accordance with Article 63 have provided information, as transmitted by Member States in accordance with sector-specific rules, in accordance with point (d) of Article 142(2);
- f sponsors as referred to in Article 26.

3 The decision to register information concerning an early detection of the risks referred to in point (a) of the second subparagraph of paragraph 1 of this Article, to exclude persons or entities referred to in paragraph 2 and/or to impose a financial penalty on a recipient shall be taken by the authorising officer responsible. Information related to such decisions shall be registered in the database referred to in Article 142(1). Where such decisions are taken on the basis of Article 136(4), the information registered in the database shall include the information concerning the persons referred to in that paragraph.

4 The decision to exclude persons or entities referred to in paragraph 2 of this Article or to impose financial penalties on a recipient shall be based on a final judgment or, in the exclusion situations referred to in Article 136(1), on a final administrative decision, or on a preliminary classification in law by the panel referred to in Article 143 in the situations referred to in Article 136(2) in order to ensure a centralised assessment of those situations. In the cases referred to in Article 141(1), the authorising officer responsible shall reject a participant from a given award procedure.

Without prejudice to Article 136(5), the authorising officer responsible may take a decision to exclude a participant or recipient and/or to impose a financial penalty on a recipient and a decision to publish the related information, on the basis of a preliminary classification as referred to in Article 136(2), only after having obtained a recommendation of the panel referred to in Article 143.

### *Article 136*

#### **Exclusion criteria and decisions on exclusions**

1 The authorising officer responsible shall exclude a person or entity referred to in Article 135(2) from participating in award procedures governed by this Regulation or from being selected for implementing Union funds where that person or entity is in one or more of the following exclusion situations:

- a the person or entity is bankrupt, subject to insolvency or winding-up procedures, its assets are being administered by a liquidator or by a court, it is in an arrangement with creditors, its business activities are suspended, or it is in any analogous situation arising from a similar procedure provided for under Union or national law;
- b it has been established by a final judgment or a final administrative decision that the person or entity is in breach of its obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c it has been established by a final judgment or a final administrative decision that the person or entity is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person

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or entity belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:

- (i) fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of eligibility or selection criteria or in the implementation of the legal commitment;
  - (ii) entering into agreement with other persons or entities with the aim of distorting competition;
  - (iii) violating intellectual property rights;
  - (iv) attempting to influence the decision-making of the authorising officer responsible during the award procedure;
  - (v) attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;
- d it has been established by a final judgment that the person or entity is guilty of any of the following:
- (i) fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 of the European Parliament and of the Council<sup>(1)</sup> and 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>(2)</sup>;
  - (ii) corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 or active corruption within the meaning of 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, drawn up by the Council Act of 26 May 1997<sup>(3)</sup>, or conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA<sup>(4)</sup>, or corruption as defined in other applicable laws;
  - (iii) conduct related to a criminal organisation as referred to in Article 2 of Council Framework Decision 2008/841/JHA<sup>(5)</sup>;
  - (iv) money laundering or terrorist financing within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council<sup>(6)</sup>;
  - (v) terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA<sup>(7)</sup>, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;
  - (vi) child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council<sup>(8)</sup>;
- e the person or entity has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment financed by the budget which has:
- (i) led to the early termination of a legal commitment;
  - (ii) led to the application of liquidated damages or other contractual penalties; or

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- (iii) been discovered by an authorising officer, OLAF or the Court of Auditors following checks, audits or investigations;
- f it has been established by a final judgment or final administrative decision that the person or entity has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95<sup>(9)</sup>;
- g it has been established by a final judgment or final administrative decision that the person or entity has created an entity in a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations in the jurisdiction of its registered office, central administration or principal place of business;
- h it has been established by a final judgment or final administrative decision that an entity has been created with the intent referred to in point (g).

2 In the absence of a final judgment or, where applicable, a final administrative decision in the cases referred to in points (c), (d), (f), (g) and (h) of paragraph 1 of this Article, or in the case referred to in point (e) of paragraph 1 of this Article, the authorising officer responsible shall exclude a person or entity referred to in Article 135(2) on the basis of a preliminary classification in law of a conduct as referred to in those points, having regard to established facts or other findings contained in the recommendation of the panel referred to in Article 143.

The preliminary classification referred to in the first subparagraph of this paragraph does not prejudice the assessment of the conduct of the person or entity referred to in Article 135(2) concerned by the competent authorities of Member States under national law. The authorising officer responsible shall review his or her decision to exclude the person or entity referred to in Article 135(2) and/or to impose a financial penalty on a recipient without delay following the notification of a final judgment or a final administrative decision. In cases where the final judgment or the final administrative decision does not set the duration of the exclusion, the authorising officer responsible shall set that duration on the basis of established facts and findings and having regard to the recommendation of the panel referred to in Article 143.

Where such final judgment or final administrative decision holds that the person or entity referred to in Article 135(2) is not guilty of the conduct subject to a preliminary classification in law, on the basis of which that person or entity has been excluded, the authorising officer responsible 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 shall include, in particular:

- a facts established in the context of audits or investigations carried out by EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, the Court of Auditors, OLAF or the internal auditor, or any other check, audit or control performed 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 facts referred to in decisions of persons and entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1);
- d information transmitted in accordance with point (d) of Article 142(2) by entities implementing Union funds pursuant to point (b) of the first subparagraph of Article 62(1);
- e decisions of the Commission relating to the infringement of Union competition law or of a national competent authority relating to the infringement of Union or national competition law.

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3 Any decision of the authorising officer responsible taken under Articles 135 to 142 or, where applicable, any recommendation of the panel referred to in Article 143, shall be made in compliance with the principle of proportionality, in particular taking into account:

- a the seriousness of the situation, including the impact on the financial interests and image of the Union;
- b the time which has elapsed since the relevant conduct;
- c the duration of the conduct and its recurrence;
- d whether the conduct was intentional or the degree of negligence shown;
- e in the cases referred to in point (b) of paragraph 1, whether a limited amount is at stake;
- f any other mitigating circumstances, such as:
  - (i) the degree of collaboration of the person or entity referred to in Article 135(2) concerned with the relevant competent authority and the contribution of that person or entity to the investigation as recognised by the authorising officer responsible; or
  - (ii) the disclosure of the exclusion situation by means of a declaration as referred to in Article 137(1).

4 The authorising officer responsible shall exclude a person or entity referred to in Article 135(2) where:

- a a natural or legal person who is a member of the administrative, management or supervisory body of the person or entity referred to in Article 135(2), or who has powers of representation, decision or control with regard to that person or entity, is in one or more of the situations referred to in points (c) to (h) of paragraph 1 of this Article;
- b a natural or legal person that assumes unlimited liability for the debts of the person or entity referred to in Article 135(2) is in one or more of the situations referred to in point (a) or (b) of paragraph 1 of this Article;
- c a natural person who is essential for the award or for the implementation of the legal commitment is in one or more of the situations referred to in points (c) to (h) of paragraph 1.

5 In the cases referred to in paragraph 2 of this Article, the authorising officer responsible may exclude a person or entity referred to in Article 135(2) provisionally without the prior recommendation of the panel referred to in Article 143, where their participation in an award procedure or their selection for implementing Union funds would constitute a serious and imminent threat to the financial interests of the Union. In such cases, the authorising officer responsible shall immediately refer the case to the panel referred to in Article 143 and shall take a final decision no later than 14 days after having received the recommendation of the panel.

6 The authorising officer responsible, having regard, where applicable, to the recommendation of the panel referred to in Article 143, shall not exclude a person or entity referred to in Article 135(2) from participating in an award procedure or from being selected for implementing Union funds where:

- a the person or entity has taken remedial measures as specified in paragraph 7 of this Article, to an extent that is sufficient to demonstrate its reliability. This point shall not apply in the case referred to in point (d) of paragraph 1 of this Article;
- b it is indispensable to ensure the continuity of service, for a limited duration and pending the adoption of remedial measures specified in paragraph 7 of this Article;
- c such an exclusion would be disproportionate on the basis of the criteria referred to in paragraph 3 of this Article.



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In addition, point (a) of paragraph 1 of this Article 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 Union or national law.

In the cases of non-exclusion referred to in the first and second subparagraphs of this paragraph, the authorising officer responsible shall specify the reasons for not excluding the person or entity referred to in Article 135(2) and inform the panel referred to in Article 143 of those reasons.

7 The remedial measures referred to in point (a) of the first subparagraph of paragraph 6 shall 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 relevant business or activity area of the person or entity referred to in Article 135(2), appropriate to correct the conduct and prevent its further occurrence;
- b proof that the person or entity referred to in Article 135(2) has undertaken measures to compensate or redress the damage or harm caused to the financial interests of the Union by the underlying facts giving rise to the exclusion situation;
- c proof that the person or entity referred to in Article 135(2) has paid or secured the payment of any fine imposed by the competent authority or of any taxes or social security contributions referred to in point (b) of paragraph 1 of this Article.

8 The authorising officer responsible, having regard, where applicable, to the revised recommendation of the panel referred to in Article 143, shall, without delay, revise its decision to exclude a person or entity referred to in Article 135(2) *ex officio* or on request from that person or entity, where the latter has taken remedial measures sufficient to demonstrate its reliability or has provided new elements demonstrating that the exclusion situation referred to in paragraph 1 of this Article no longer exists.

9 In the case referred to in point (b) of Article 135(2), the authorising officer responsible shall require that the candidate or tenderer replaces an entity or a subcontractor on whose capacity it intends to rely, which is in an exclusion situation referred to in paragraph 1 of this Article.

### *Article 137*

#### **Declaration and evidence of absence of an exclusion situation**

1 A participant shall declare whether it is in one of the situations referred to in Articles 136(1) and 141(1), and, where applicable, whether it has taken any remedial measures referred to in point (a) of the first subparagraph of Article 136(6).

A participant shall also declare whether the following persons or entities are in one of the exclusion situations referred to in points (c) to (h) of Article 136(1):

- a natural or legal persons that are members of the administrative, management or supervisory body of the participant or that have powers of representation, decision or control with regard to that participant;
- b beneficial owners, as defined in point (6) of Article 3 of Directive (EU) 2015/849, of the participant.

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The participant or the recipient shall without delay inform the authorising officer responsible of any changes in the situations as declared.

Where appropriate, the candidate or tenderer shall provide the same declarations referred to in the first and second subparagraphs signed by a subcontractor or by any other entity on whose capacity it intends to rely, as the case may be.

The authorising officer responsible shall not request the declarations referred to in the first and second subparagraph when such declarations have already been submitted for the purposes of another award procedure, provided that the situation has not changed, and that the time that has elapsed since the issuing date of the declarations does not exceed one year.

The authorising officer responsible may waive the requirements under the first and second subparagraphs for very low value contracts the value of which does not exceed the amount referred to in point 14.4 of Annex I.

2 Whenever requested by the authorising officer responsible and where this is necessary to ensure the proper conduct of the procedure, the participant, the subcontractor or the entity on whose capacity a candidate or tenderer intends to rely shall provide:

- a appropriate evidence that it is not in one of the exclusion situations referred to in Article 136(1);
- b information on natural or legal persons that are members of the administrative, management or supervisory body of the participant or that have powers of representation, decision or control with regard to that participant, including persons and entities within the ownership and control structure and beneficial owners, and appropriate evidence that none of those persons are in one of the exclusion situations referred to in points (c) to (f) of Article 136(1).
- c appropriate evidence that natural or legal persons that assume unlimited liability for the debts of that participant are not in an exclusion situation referred to in point (a) or (b) of Article 136(1).

3 Where applicable and in accordance with national law, the authorising officer responsible may accept as appropriate evidence that a participant or an entity referred to in paragraph 2 is not in one of the exclusion situations referred to in points (a), (c), (d), (f), (g) and (h) of Article 136(1), a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in its country of establishment showing that those requirements are satisfied.

The authorising officer responsible may accept as appropriate evidence that a participant or an entity referred to in paragraph 2 is not in one of the exclusion situations referred to in points (a) and (b) of Article 136(1), a recent certificate issued by the competent authority of the country of establishment. Where such types of certificates are not issued in the country of establishment, the participant may provide a sworn statement made before a judicial authority or notary or, failing that, a solemn statement made before an administrative authority or a qualified professional body in its country of establishment.

4 The authorising officer responsible shall waive the obligation of a participant or an entity referred to in paragraph 2 to submit the documentary evidence referred to in paragraphs 2 and 3:

- a if he or she can access such evidence on a national database free of charge;
- b if such evidence has already been submitted for the purposes of another procedure and provided that any submitted documents are still valid and that the time that has elapsed since the issuing date of the documents does not exceed one year;

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c if he or she recognises that there is a material impossibility to provide such evidence.

5 Paragraphs 1 to 4 of this Article shall not apply to persons and entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) or to Union bodies referred to in Articles 70 and 71.

For financial instruments and in the absence of rules and procedures fully equivalent to those referred to in point (d) of the first subparagraph of Article 154(4), final recipients and intermediaries shall provide the person or entity implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1) with a signed declaration on honour confirming that they are not in one of the situations referred to in points (a) to (d), (g) and (h) of Article 136(1) or points (b) and (c) of the first subparagraph of Article 141(1) or in a situation deemed equivalent following the assessment carried out in accordance with Article 154(4).

Where, exceptionally, financial instruments are implemented pursuant to point (a) of the first subparagraph of Article 62(1), final recipients shall provide financial intermediaries with a signed declaration on honour confirming that they are not in one of the situations referred to in points (a) to (d), (g) and (h) of Article 136(1) or points (b) and (c) of the first subparagraph of Article 141(1).

#### *Article 138*

##### **Financial penalties**

1 In order to ensure a deterrent effect, the authorising officer responsible may, having regard, where applicable, to the recommendation of the panel referred to in Article 143, impose a financial penalty on a recipient with whom a legal commitment has been entered into and who is in an exclusion situation referred to in point (c), (d), (e) or (f) of Article 136(1).

Regarding the exclusion situations referred to in points (c) to (f) of Article 136(1), the financial penalty may be imposed as an alternative to a decision to exclude a recipient, where such an exclusion would be disproportionate on the basis of the criteria referred to in Article 136(3).

Regarding the exclusion situations referred to in points (c), (d) and (e) of Article 136(1), the financial penalty may be imposed in addition to an exclusion where this is necessary to protect the financial interests of the Union, due to the systemic and recurrent conduct engaged in by the recipient with the intention to unduly obtain Union funds.

Notwithstanding the first, second and third subparagraphs of this paragraph, a financial penalty shall not be imposed on a recipient who in accordance with Article 137 has disclosed that it is in an exclusion situation.

2 The amount of the financial penalty shall not exceed 10 % of the total value of the legal commitment. In the event of a grant agreement signed with a number of beneficiaries the financial penalty shall not exceed 10 % of the grant amount the beneficiary concerned is entitled to in accordance with the grant agreement.

#### *Article 139*

##### **Duration of exclusion and limitation period**

1 The duration of exclusion shall not exceed any of the following:

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- a the duration, if any, set by the final judgement or the final administrative decision of a Member State;
- b in the absence of a final judgment or a final administrative decision:
  - (i) five years for the cases referred to in point (d) of Article 136(1);
  - (ii) three years for the cases referred to in points (c) and (e) to (h) of Article 136(1).

A person or entity referred to in Article 135(2) shall be excluded as long as it is in one of the exclusion situations referred to in points (a) and (b) of Article 136(1).

2 The limitation period for excluding and/or imposing financial penalties on a person or entity referred to Article 135(2) shall be five years calculated from any of the following:

- a the date of the conduct giving rise to exclusion or, in the case of continued or repeated acts, the date on which the conduct ceases, in the cases referred to in points (b) to (e) and (g) and (h) of Article 136(1);
- b the date of the final judgment of a national jurisdiction or of the final administrative decision in the cases referred to in points (b), (c), (d), (g) and (h) of Article 136(1).

The limitation period shall be interrupted by an act of a national authority, of the Commission, of OLAF, of EPPO in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, of the panel referred to in Article 143 of this Regulation or of any entity involved in budget implementation, if such an act is notified to the person or entity referred to in Article 135(2) of this Regulation and is 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 Article 136(1) of this Regulation, the limitation period to exclude a person or entity referred to in Article 135(2) of this Regulation and/or impose financial penalties on a recipient provided for in Article 3 of Regulation (EC, Euratom) No 2988/95 shall apply.

Where the conduct of a person or entity referred to in Article 135(2) of this Regulation concerned qualifies under several of the grounds listed in Article 136(1) of this Regulation, the limitation period applicable to the most serious of those grounds shall apply.

#### *Article 140*

#### **Publication of exclusion and financial penalties**

1 In order to, where necessary, reinforce the deterrent effect of the exclusion and/or financial penalty, the Commission shall, subject to a decision of the authorising officer responsible, publish on its website the following information related to the exclusion and, where applicable, the financial penalty in the cases referred to in points (c) to (h) of Article 136(1):

- a the name of the person or entity referred to in Article 135(2) concerned;
- b the exclusion situation;
- 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 Article 136(2), the publication shall indicate that there is no final judgment or, where applicable, final administrative decision. In such cases, information about any appeals, their status and their outcome, as well as any revised decision of the authorising officer responsible shall be published

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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 shall be taken by the authorising officer responsible either following the relevant final judgment or, where applicable, final administrative decision, or following the recommendation of the panel referred to in Article 143, as the case may be. That decision shall take effect three months after its notification to the person or entity concerned, as referred to in Article 135(2).

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 that penalty.

Where personal data are concerned, the authorising officer responsible shall in accordance with Regulation (EC) No 45/2001 inform the person or entity concerned, as referred to in Article 135(2) of this Regulation, of their rights under the applicable data protection rules and of the procedures available for exercising those rights.

2 The information referred to in paragraph 1 of this Article shall not be published in any of the following circumstances:

- a where it is necessary to preserve the confidentiality of an investigation or of national judicial proceedings;
- b where publication would cause disproportionate damage to the person or entity referred to in Article 135(2) concerned or would otherwise be disproportionate on the basis of the proportionality criteria set out in Article 136(3) and having regard to the amount of the financial penalty;
- c where a natural person is concerned, unless the publication of personal data is justified by exceptional circumstances, inter alia, by the seriousness of the conduct or its impact on the financial interests of the Union. In such cases, the decision to publish the information shall duly take into consideration the right to privacy and other rights provided for in Regulation (EC) No 45/2001.

#### *Article 141*

### **Rejection from an award procedure**

1 The authorising officer responsible shall reject from an award procedure a participant who:

- a is in an exclusion situation established in accordance with Article 136;
- 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 documents used in the award procedure where this entails a breach of the principle of equality of treatment, including distortion of competition, that cannot be remedied otherwise.

The authorising officer responsible shall communicate to the other participants in the award procedure the relevant information exchanged in the context of or resulting from the involvement of the participant in the preparation of the award procedure as referred to in point (c) of the first subparagraph. Prior to any such rejection the participant shall be given the opportunity to prove that its involvement in preparing the award procedure does not breach the principle of equality of treatment.

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2 Article 133(1) shall apply unless the rejection has been justified in accordance with point (a) of the first subparagraph of paragraph 1 of this Article by a decision concerning exclusion taken with regard to the participant, following an examination of its observations.

## Article 142

### The early-detection and exclusion system

1 Information exchanged within the early-detection and exclusion system referred to in Article 135 shall be centralised in a database set up by the Commission ('the database') and shall be managed in accordance with the right to privacy and other rights provided for in Regulation (EC) No 45/2001.

Information on cases of early detection, exclusion and/or financial penalties shall be entered in the database by the authorising officer responsible after notifying the person or entity concerned, as referred to in Article 135(2). Such notification may be deferred in exceptional circumstances, 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, the Commission shall upon request inform the person or entity subject to the early-detection and exclusion system, as referred to in Article 135(2), of the data stored in the database relating to that person or entity.

The information contained in the database shall be updated, where appropriate, following a rectification, an erasure or any modification of data. It shall only be published in accordance with Article 140.

2 The early-detection and exclusion system shall be based on facts and findings as referred to in the fourth subparagraph of Article 136(2) and on the transmission of information to the Commission, in particular, by:

- a EPPA in respect of those Member States participating in enhanced cooperation pursuant to Regulation (EU) 2017/1939, or OLAF in accordance with Regulation (EU, Euratom) No 883/2013 where an investigation completed or in progress shows that it might be appropriate to take precautionary measures or actions 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;
- c a Union institution, a European office, an agency other than those referred to in point (b) of this paragraph, or a body or a person entrusted with implementation of CFSP actions;
- d entities implementing the budget in accordance with Article 63, in cases of detected fraud and/or irregularity and their follow up, where the transmission of information is required by sector-specific rules;
- e persons or entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1), in cases of detected fraud and/or irregularity and their follow up.

3 Except where information is to be submitted in accordance with sector-specific rules, the information to be transmitted pursuant to paragraph 2 of this Article shall include:

- a the identification of the entity or person concerned;
- b a summary of the risks detected or the facts in question;

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- c information that could assist the authorising officer in carrying out the verification referred to in paragraph 4 of this Article or in taking a decision on exclusion as referred to in Article 136(1) or (2), or a decision to impose a financial penalty as referred to in Article 138;
- d where applicable, information on 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 without delay transmit the information referred to in paragraph 3 to its authorising officers and those of its executive agencies, all other Union institutions, Union bodies, European offices and agencies through the database referred to in paragraph 1 in order to allow them to carry out the necessary verification in respect of their ongoing award procedures and existing legal commitments.

In carrying out that verification, the authorising officer responsible shall exercise his or her powers as set out in Article 74 and shall not go beyond what is foreseen in the terms and conditions of the award procedure and legal commitments.

The retention period for the information related to the early detection transmitted in accordance with paragraph 3 of this Article shall not exceed one year. If, during that period, the authorising officer responsible requests the panel to issue a recommendation in a case concerning exclusion or financial penalties, the retention period may be extended until such time as the authorising officer responsible has taken a decision.

5 All persons and entities involved in budget implementation in accordance with Article 62 shall be granted access by the Commission to the information on decisions on exclusion pursuant to Article 136 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 budget implementation.

6 As part of the annual report of the Commission to the European Parliament and to the Council pursuant to Article 325(5) TFEU, the Commission shall provide aggregate information on the decisions taken by the authorising officers under Articles 135 to 142 of this Regulation. That report shall also provide further information on any decisions taken by the authorising officers pursuant to point (b) of the first subparagraph of Article 136(6) of this Regulation and Article 140(2) of this Regulation and on any decisions by the authorising officers to deviate from the recommendation of the panel pursuant to the third subparagraph of Article 143(6) of this Regulation.

The information referred to in the first subparagraph of this paragraph shall be provided with due regard to confidentiality requirements and shall, in particular, not allow for the identification of the person or entity concerned, as referred to in Article 135(2).

### *Article 143*

#### **Panel**

1 A panel shall be convened at the request of an authorising officer of any Union institution, Union body, European office or body or person entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU.

2 The panel shall be composed of:

- a a standing high-level independent chair appointed by the Commission;

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- b two permanent representatives of the Commission as the owner of the early-detection and exclusion system, who shall express a joint position; and
- c one representative of the requesting authorising officer.

The composition of the panel shall ensure the appropriate legal and technical expertise. The panel shall be assisted by a permanent secretariat, provided by the Commission, which shall ensure the continuous administration of the panel.

3 The Chair shall be chosen from among former members of the Court of Justice of the European Union, the Court of Auditors or former officials who have had at least the rank of Director-General in a Union institution other than the Commission. He or she shall be selected on the basis of his or her personal and professional qualities, extensive experience in legal and financial matters and proven competence, independence and integrity. The term of office shall be five years and shall not be renewable. The Chair shall be appointed as special adviser within the meaning of Article 5 of the Conditions of Employment of Other Servants of the European Union. The Chair shall preside all sessions of the panel. He or she shall be independent in the performance of his or her duties. He or she shall not have a conflict of interests between his or her duties as Chair and any other official duties.

4 The rules of procedure of the panel shall be adopted by the Commission.

5 The panel shall uphold the right of the person or entity concerned, as referred to in Article 135(2), to submit observations on the facts or findings referred to in Article 136(2) and on the preliminary classification in law before adopting its recommendations. The right to submit observations may be deferred in exceptional circumstances where there are compelling legitimate grounds to preserve the confidentiality of an investigation or of national judicial proceedings, until such legitimate grounds cease to exist.

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

- a the facts or findings referred to in Article 136(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 person or entity referred to in Article 135(2) and, in that case, the suggested duration of such an exclusion;
- d an assessment of the need to publish the information related to the person or entity referred to in Article 135(2) who is excluded and/or subject to a financial penalty;
- e an assessment of remedial measures taken by the person or entity referred to Article 135(2), if any.

Where the authorising officer responsible envisages taking a more severe decision than what has been recommended by the panel, he or she shall ensure that such a decision is taken with due respect for the right to be heard and for the rules of personal data protection.

Where the authorising officer responsible decides to deviate from the recommendation of the panel, he or she shall justify such decision to the panel.

7 The panel shall revise its recommendation during the exclusion period on request from the authorising officer responsible in the cases referred to in Article 136(8) or following the notification of a final judgment or a final administrative decision establishing the grounds for exclusion where such a judgment or decision does not set the duration of the exclusion, as referred to in the second subparagraph of Article 136(2).



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8 The panel shall notify the requesting authorising officer without delay of its revised recommendation, following which the authorising officer shall review his or her decision.

9 The Court of Justice of the European Union shall have unlimited jurisdiction to review a decision whereby the authorising officer excludes a person or entity referred to in Article 135(2) and/or imposes a financial penalty on a recipient, including annulling the exclusion, reducing or increasing its duration and/or annulling, reducing or increasing the financial penalty imposed. Article 22(1) of Regulation (EC) No 58/2003 shall not apply when the decision of the authorising officer to exclude or impose a financial penalty is taken on the basis of a recommendation of the panel.

#### *Article 144*

### **Functioning of the database for the early-detection and exclusion system**

1 Information requested from the entities referred to in point (d) of Article 142(2) shall be transmitted only through the automated information system established by the Commission currently in use for reporting of fraud and irregularities ('the Irregularity Management System'), in accordance with sector-specific rules.

2 The use of the data received through the Irregularity Management System shall take into consideration the status of the national procedure that existed at the time when the information was submitted. Such use shall be preceded by a consultation of the Member State that has submitted the relevant data through the Irregularity Management System.

#### *Article 145*

### **Exception applicable to the Joint Research Centre**

Articles 135 to 144 shall not apply to the JRC.

#### *Section 3*

### ***IT systems and e-government***

#### *Article 146*

### **Electronic management of operations**

1 Where revenue and expenditure operations or document exchanges are managed by means of computer systems, documents may be signed by a computerised or electronic procedure providing authentication of the signatory. Such computer systems shall include a full and up-to-date description of the system defining the content of all data fields, describing how each individual operation is treated and explaining in detail how the computer system guarantees the existence of a complete audit trail for each operation.

2 Subject to the prior agreement of the Union institutions and Member States concerned, any transmission of documents between them may be done by electronic means.

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## Article 147

### e-Government

1 Union institutions, the executive agencies and the Union bodies referred to in Articles 70 and 71 shall establish and apply uniform standards for the electronic exchange of information with participants. In particular, they shall, to the greatest possible extent, design and implement solutions for the submission, storage and processing of data submitted in award procedures, and to that end, put in place a single ‘electronic data interchange area’ for participants. The Commission shall report regularly to the European Parliament and to the Council on the progress made in that regard.

2 Under shared management, all official exchanges of information between Member States and the Commission shall be carried out by means indicated in sector-specific rules. Those rules shall provide for interoperability of data gathered or received, and transmitted in the management of the budget.

## Article 148

### Electronic exchange systems

1 All exchanges with recipients, including the entering into legal commitments and any amendments thereto, may be done through electronic exchange systems.

2 Electronic exchange systems shall satisfy the following conditions:

- a only authorised persons may have access to the system and to documents transmitted through it;
- b only authorised persons may electronically sign or transmit a document through the system;
- c authorised persons are identified through the system by established means;
- d the time and date of the electronic transaction are determined precisely;
- e the integrity of documents is preserved;
- f the availability of documents is preserved;
- g where appropriate, the confidentiality of documents is preserved;
- h the protection of personal data in accordance with Regulation (EC) No 45/2001 is ensured.

3 Data sent or received through such a system shall enjoy legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed original and shall enjoy legal presumption of its authenticity and integrity, provided that the document does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of paragraph 2 shall have a legal effect equivalent to handwritten signatures.

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## Article 149

### Submission of application documents

1 The arrangements for the submission of application documents shall be determined by the authorising officer responsible who may choose an exclusive method of submission.

The means of communication chosen shall be such as to ensure that there is genuine competition and that the following conditions are satisfied:

- a each submission contains all the information required for its evaluation;
- b the integrity of data is preserved;
- c the confidentiality of application documents is preserved;
- d the protection of personal data in accordance with Regulation (EC) No 45/2001 is ensured.

2 The Commission shall ensure by appropriate means and in accordance with Article 147(1) that participants may submit the application documents and any supporting evidence in an electronic format. Any electronic communication system used to support communications and information exchanges shall be non-discriminatory, generally available and interoperable with information and communication technology products in general use and shall not restrict participants' access to the award procedure.

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

3 Devices for the electronic receipt of application documents shall guarantee, through technical means and appropriate procedures, that:

- a the participant can be authenticated with certainty;
- b the exact time and date of the receipt of application documents can be determined precisely;
- c only authorised persons have access to the data transmitted and may set or change the dates for opening the application documents;
- d during the different stages of the award procedure only authorised persons have access to all data submitted and may give access to the data as needed for the procedure;
- e it is reasonably ensured that any attempt to infringe any of the conditions set out in points (a) to (d) can be detected.

The first subparagraph shall not apply to contracts below the thresholds referred to in Article 175(1).

4 Where the authorising officer responsible authorises submission of application documents by electronic means, the electronic documents submitted by means of such systems shall be deemed to be the originals.

5 Where submission is by letter, participants may choose to submit application documents:

- a either by post or by courier service, in which case the evidence shall be constituted by the postmark or the date of the deposit slip;
- b by hand-delivery to the premises of the authorising officer responsible by the participant in person or by an agent, in which case the evidence shall be constituted by the acknowledgement of receipt.

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6 By submitting application documents, participants accept to receive notification of the outcome of the procedure by electronic means.

7 Paragraphs 1 to 6 of this Article shall not apply to the selection of persons or entities implementing Union funds pursuant to point (c) of the first subparagraph of Article 62(1).

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- (1) Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).
- (2) OJ C 316, 27.11.1995, p. 48.
- (3) OJ C 195, 25.6.1997, p. 1.
- (4) 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).
- (5) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).
- (6) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).
- (7) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p. 3).
- (8) 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).
- (9) 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).

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