

*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 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>;

(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).

- (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>(1)</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>(2)</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>(3)</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
  - (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>(4)</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).

(1) 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).

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

(3) 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).

(4) 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).