

Annex II. - Legal references

I. Financial Regulation

- **Article 57(2)** (ex Article 52(2)): Conflict of interest

For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.

- **Article 106** (ex Article 93): Exclusion criteria applicable for participation

1. Candidates or tenderers shall be excluded from participation in procurement procedures if:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- (b) they or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of res judicata;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify including by decisions of the EIB and international organisations;
- (d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they or persons having powers of representation, decision making or control over them have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;
- (f) they are subject to an administrative penalty referred to in Article 109(1).

Points (a) to (d) of the first subparagraph shall not apply in the case of the purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

Points (b) and (e) of the first subparagraph shall not apply where the candidates or tenderers can demonstrate that adequate measures have been adopted against the

persons having powers of representation, decision making or control over them, who are subject to a judgement as referred to in points (b) or (e) of the first subparagraph.

2. In the case of a negotiated procedure where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator, the institution may decide not to exclude the economic operator concerned on the grounds referred to in points (a), (c) and (d) of the first subparagraph of paragraph 1, if it is indispensable to do so in order to ensure the continuity of service of the institution. In such cases, the institution shall duly justify its decision.

3. Candidates or tenderers shall certify that they are not in one of the situations listed in paragraph 1. However, the contracting authority may refrain from requiring such certification for very low value contracts.

For the purpose of the correct application of paragraph 1, the candidate or tenderer, whenever requested by the contracting authority, shall:

(a) where the candidate or tenderer is a legal person, provide information on the ownership or on the management, control and power of representation of the legal person and certify that they are not in one of the situations referred to in paragraph 1;

(b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on:

(a) the exclusion criteria applicable for participation in calls for tenders, including rules on illegal activities giving rise to exclusion;

(b) what evidence may be satisfactory to show that an exclusion situation does not exist;

(c) the duration of an exclusion. Such exclusion shall not exceed 10 years.

- **Article 107** (ex Article 94): Exclusion criteria applicable to awards

1. A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for that contract:

(a) are subject to a conflict of interests;

(b) are guilty of misrepresenting the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply that information;

(c) find themselves in one of the situations of exclusion, referred to in Article 106(1), for the procurement procedure.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the exclusion criteria applicable during the procurement procedure, and the establishment of what evidence may be considered satisfactory to show that an exclusion situation does not exist. Furthermore, the

Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the duration of an exclusion.

(...)

- **Article 110** (ex Article 97): Award criteria for contracts

1. Contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under Articles 106, 107 and point (a) of Article 109(2) has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders.

2. Contracts shall be awarded by the automatic award procedure or by the best-value-for-money procedure.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the specification of the selection criteria and the award criteria. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the documents that give proof of economic and financial capacity and the evidence of technical and professional capacity and detailed rules on electronic auctions and abnormally low tenders.

(...)

- **Article 112** (ex Article 99): Principles of equal treatment and transparency

1. While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers shall satisfy conditions ensuring transparency and equal treatment. They shall not lead to amendment of the conditions of the contract or the terms of the original tender.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the principles of equal treatment and transparency. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the contact that is allowed between contracting authorities and tenderers during the contract award procedure, the minimum requirements of the written record of an evaluation and the minimum details of the decision taken by the contracting authority.

(...)

- **Article 131** (ex Article 114): Applications for grants

1. Grant applications shall be submitted in writing, including, where appropriate, in a secure electronic format.

The Commission shall provide, where it deems it feasible, the possibility of making online grant applications.

2. Grant applications shall be eligible if submitted by the following:

(a) legal persons; or

- (b) natural persons, in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant.

For the purposes of point (a) of the first subparagraph, grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on behalf of the entity and offer guarantees for the protection of the Union's financial interests equivalent to those offered by legal persons.

3. The application shall state the legal status of the applicant and demonstrate his or her financial and operational capacity to carry out the proposed action or work program.

For that purpose the applicant shall submit a declaration on his or her honour and, unless the grant is a low value grant, any supporting documents requested, on the basis of a risk assessment, by the authorising officer responsible. The prerequisite documents shall be indicated in the call for proposals.

The verification of financial capacity shall not apply to natural persons in receipt of scholarships, to natural persons most in need and in receipt of direct support, to public bodies or international organisations. The authorising officer responsible may, depending on a risk assessment, waive the obligation to verify the operational capacity of public bodies or international organisations.

4. Article 106(1) and Articles 107, 108 and 109 shall also apply to grant applicants. Applicants shall certify that they are not in one of the situations referred to in those Articles. However, the authorising officer responsible shall not require such certification in the following cases:

(a) low value grants;

(b) when such certification has recently been provided in another award procedure.

5. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer responsible, in accordance with Article 109.

Those penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer responsible or fail to supply that information.

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, financial and administrative penalties, eligibility criteria and low value grants.

- **Article 132** (ex Article 115): Selection and award criteria

1. The selection criteria announced in advance in the call for proposals shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work program.

2. The award criteria announced in advance in the call for proposals shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on selection and award criteria.

- **Article 133** (ex Article 116): Evaluation procedure

1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed.

2. The authorising officer responsible shall, on the basis of the evaluation provided for in paragraph 1, draw up the list of beneficiaries and the amounts approved.

3. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the institution concerned shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the evaluation and award of grants and information to applicants.

(...)

- **Article 204** (ex Article 179a): Remunerated external experts

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on remunerated external experts, including a specific procedure for the selection of natural persons as remunerated external experts, for assisting the institutions in the evaluation of grant applications, projects and tenders, and for providing opinions and advice in specific cases.

Such experts shall be remunerated on the basis of a fixed amount announced in advance and shall be chosen on the basis of their professional capacity. The selection shall be done on the basis of selection criteria respecting the principles of non-discrimination, equal treatment and absence of conflict of interests.

II. Rules of Application

- Article 48 (ex Article 49): Keeping of supporting documents by authorising officers

The authorising officer shall set up paper based or electronic systems for the keeping of original supporting documents relating to and subsequent to budget implementation and budget implementation measures. The systems shall provide for:

- (a) such documents to be numbered;
- (b) such documents to be dated;
- (c) registers, which may be computerised, to be kept identifying the exact location of such documents;
- (d) such documents to be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate;
- (e) keeping of documents relating to pre-financing guarantees for the institution and of a log to enable such guarantees to be adequately monitored.

Documents relating to operations not definitively closed shall be kept for longer than provided for in point (d) of the first paragraph, that is to say, until the end of the year following that in which the operations are closed.

Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. Article 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

(...)

- Article 141 (ex Article 133): Illegal activities giving rise to exclusion

The cases referred to in Article 106(1)(e) of the Financial Regulation shall include all illegal activities detrimental to the Union's financial interests and in particular the following:

- (a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995;
- (b) cases of corruption as referred to 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, drawn up by the Council Act of 26 May 1997;
- (c) cases of participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;
- (d) cases of money laundering as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;

(e) cases of terrorist offences, offences linked to terrorist activities, and inciting, aiding, abetting or attempting to commit such offences, as defined in Articles 1, 3 and 4 of Council Framework Decision 2002/475/JHA.

(...)

- **Article 143** (ex Article 134): Evidence

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation.

However, in case of restricted procedure, competitive dialogue and negotiated procedure after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.

Depending on its risk assessment, the contracting authority may refrain from requiring the declaration referred to in the first subparagraph for contracts referred to in Article 137(2). However, for contracts referred to in Articles 265(1), 267(1), and 269(1), the contracting authority may refrain from requiring that declaration for contracts with a value less than or equal to EUR 20000.

2. The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3 of this Article, confirming the declaration referred to in paragraph 1 of this Article in the following cases:

(a) for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 170(1);

(b) for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in Article 265(1)(a), Article 267(1)(a), or Article 269(1)(a).

For contracts with a value less than the thresholds referred to in points (a) and (b) of the first subparagraph of this paragraph, the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.

3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in points (a), (b) or (e) of Article 106(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (a) or (d) of Article 106(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in paragraph 1 of this Article is not issued in the country concerned and for the other cases of exclusion referred to in Article 106 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative

authority, a notary or a qualified professional body in his country of origin or provenance.

4. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraphs 1 and 3 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.

5. Where they have doubts as to whether candidates or tenderers are in one of the situation of exclusion, contracting authorities may themselves apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.

6. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 3 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the issuing date of the documents does not exceed one year and that they are still valid.

In such a case, the candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

7. When requested by the contracting authority, the candidate or tenderer shall submit a declaration on honour from the intended subcontractor that he is not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation.

In case of doubt on this declaration on the honour, the contracting authority shall request the evidence referred to in paragraphs 3 and 4. Paragraph 5 shall apply, where appropriate.

(...)

- **Article 146** (ex Article 135): Selection criteria

1. The contracting authorities shall draw up clear and non-discriminatory selection criteria.

2. The selection criteria shall be applied in every procurement procedure for the purposes of assessing the financial, economic, technical and professional capacity of the candidate or the tenderer.

The contracting authority may lay down minimum capacity levels below which candidates may not be selected.

3. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the value added tax (hereinafter "VAT") register.

4. The contracting authorities shall specify in the contract notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.

5. The information requested by the contracting authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer and the minimum capacity levels required in accordance with paragraph 2 may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

6. The contracting authority may, depending on his assessment of risks, decide not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers in the case of the following contracts:

(a) contracts awarded by the institutions on their own account, with a value not exceeding the value referred to in Article 137(1);

(b) contracts awarded in the field of external actions, with a value below the thresholds referred to in Article 265(1)(a), Article 267(1)(a) or Article 269(1)(a).

Where the contracting authority decides not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers, no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided.

- **Article 147** (ex Article 136): Economic and financial capacity

1. Proof of economic and financial capacity may in particular be furnished by one or more of the following documents:

(a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;

(b) financial statements for at most the last three years for which accounts have been closed;

(c) a statement of overall turnover and turnover concerning the works, supplies or services covered by the contract during a period which may be no more than the last three financial years available.

2. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 1 if such evidence has already been submitted to it for the purposes of another procurement procedure and still complies with paragraph 1.

If, for some exceptional reason which the contracting authority considers justified, the tenderer or candidate is unable to provide the references requested by the contracting authority, he may prove his economic and financial capacity by any other means which the contracting authority considers appropriate.

3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

The contracting authority may require that the economic operator and the entities referred to in the first subparagraph are jointly liable for the execution of the contract.

Under the same conditions, a consortium of economic operators as referred to in Article 121(5) may rely on the capacities of members of the consortium or of other entities.

- **Article 148** (ex Article 137): Technical and professional capacity

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraphs 2 and 3. In procurement procedures for supplies requiring sitting or installation operations, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.

2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of one or more of the following documents:

- (a) the educational and professional qualifications of the service provider or work contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;
- (b) a list:
 - (i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;
 - (ii) of the works carried out in the last five years, with the sums, dates and place;
- (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
- (d) a description of the technical equipment and the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
- (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- (f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- (g) a statement of the average annual manpower and the number of managerial staff of the service provider or work contractor in the last three years;
- (h) an indication of the proportion of the contract which the service provider may intend to subcontract;
- (i) for public works contracts and public service contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

Where the services or supplies referred to in point (b)(i) of the first subparagraph are provided to contracting authorities, evidence of performance shall be in the form of certificates issued or countersigned by the competent authority.

For the purposes of point (b)(ii) of the first subparagraph the list of the most important works shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed.

3. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.

4. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. However, contracting authorities shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.

5. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme or to other environmental management schemes as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council [18] or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

6. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium of economic operators as referred to in Article 121(5) may rely on the capacities of members of the consortium or of other entities.

7. In the case of works contracts, service contracts and sitting and installation operations in the context of a supply contract, the contracting authority may require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a consortium of economic operators as referred to in Article 121(6), a participant in the consortium.

8. Contracting authorities may conclude that economic operators will not perform the contract to an appropriate quality standard where the contracting authority establishes that they have conflicting interests which may negatively affect the performance of the contract.

(...)

- **Article 160** (ex Article 148): Contacts between contracting authorities and tenderers

1. Contact between the contracting authority and tenderers during the contract award procedure may take place, by way of exception, under the conditions set out in paragraphs 2 and 3.

2. Before the closing date for the submission of tenders, in respect of the additional documents and information referred to in Article 153, the contracting authority may:

(a) at the instance of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract, such information to be communicated on the same date to all tenderers who have asked for the specifications;

(b) at its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the contract notice, invitation to tender or specifications, inform the persons concerned on the same date and in a manner identical with that applicable in respect of the original invitation to tender.

3. If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the tender must be corrected, the contracting authority may contact the tenderer, although such contact may not lead to any alteration of the terms of the tender.

4. In every case where contact has been made, and in the duly justified cases where contact has not been made as referred to in Article 96 of the Financial Regulation, a record shall be kept in the procurement file.

(...)

- **Article 196** (ex Article 173): Content of grant applications

1. Applications shall be made on the form established in accordance with the joint standards laid down pursuant to Article 192(a) and made available by the authorising officers responsible, and in accordance with the criteria laid down in the basic act and the call for proposals.

The supporting documents referred to in the second subparagraph of Article 131(3) of the Financial Regulation may consist in particular in the profit and loss account and the balance sheet for the last financial year for which the accounts were closed.

2. The estimated budget for the action or work program attached to the application shall have revenue and expenditure in balance, subject to provisions for contingencies or possible variations in exchange rates which may be authorised in duly justified cases, and shall indicate the estimated eligible costs of the action or work program.

3. Where the application concerns grants for an action for which the amount exceeds EUR 750000 or operating grants which exceed EUR 100000, an audit report

produced by an approved external auditor shall be submitted. That report shall certify the accounts for the last financial year available.

The first subparagraph of this paragraph shall apply only to the first application made by a beneficiary to an authorising officer responsible in any one financial year.

In the case of agreements between the Commission and a number of beneficiaries, the thresholds set in the first subparagraph shall apply to each beneficiary.

In case of partnerships referred to in Article 178, the audit report referred to in the first subparagraph of this paragraph, covering the last two financial years available must be produced before signature of the framework partnership agreement or notification of the framework partnership decision.

The authorising officer responsible may, depending on a risk assessment, waive the obligation of audit report referred to in the first subparagraph for education and training establishments and, in case of agreements with a number of beneficiaries, beneficiaries who have accepted joint and several liabilities or who do not bear any financial responsibility.

The first subparagraph of this paragraph shall not apply to public bodies and the international organisations referred to in Article 43.

4. The applicant shall indicate the sources and amounts of Union funding received or applied for the same action or part of the action or for its functioning during the same financial year as well as any other funding received or applied for the same action.

- **Article 197** (ex Article 174): Evidence of non-exclusion

Applicants shall declare on their honour that they are not in one of the situations listed in Articles 106(1) and 107 of the Financial Regulation, except in the cases provided for in points (a) and (b) of Article 131(4) of the Financial Regulation. The authorising officer responsible may, depending on a risk assessment, request that successful applicants provide the evidence referred to in Article 143. Where requested by the authorising officer responsible, successful applicants shall supply such evidence, unless there is a material impossibility recognised by the authorising officer responsible or such evidence has already been submitted for the purposes of another grant or procurement procedure, provided that the documents are not more than one year old counting from their date of issue and that they are still valid.

(...)

- **Article 201** (ex Article 175a): Eligibility criteria

1. The eligibility criteria shall be published in the call for proposals.
2. The eligibility criteria shall determine the conditions for participating in a call for proposals. Those criteria shall be established with due regard for the objectives of the action and shall comply with the principles of transparency and non-discrimination.

- **Article 202** (ex Article 176): Selection criteria

1. The selection criteria shall be published in the call for proposals and shall be such as to make it possible to assess the applicant's financial and operational capacity to complete the proposed action or work program.

2. The applicant must have stable and sufficient sources of funding to maintain his activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. The applicant must have the professional competencies and qualifications required to complete the proposed action or work program unless specifically provided otherwise in the basic act.

3. Financial and operational capacity shall be verified in particular on the basis of an analysis of any of the supporting documents referred to in Article 196 and requested by the authorising officer responsible in the call for proposals.

If no supporting documents were requested in the call for proposals and if the authorising officer responsible has doubts about the financial or operational capacity of applicants, he shall request them to provide any appropriate documents.

In the case of the partnerships referred to in Article 178, that verification shall be performed before signature of the framework partnership agreement or notification of the framework partnership decision.

- **Article 203** (ex Article 177): Award criteria

1. The award criteria shall be published in the call for proposals.

2. The award criteria shall be such as to enable grants to be awarded either to the actions which maximise the overall effectiveness of the Union program which they implement or to the bodies whose work program is designed to attain the same result. Those criteria shall be defined in such a way as to ensure also that the Union funds are properly managed.

The award criteria shall be applied in such a way as to enable the selection of planned actions or work programs which the Commission can be confident will comply with its objectives and priorities and guarantee the visibility of the Union financing.

3. The award criteria shall be defined in such a way that it will be possible subsequently to carry out an evaluation.

- **Article 204** (ex Article 178): Evaluation of applications and award

1. The authorising officer responsible shall appoint a committee to evaluate the proposals, unless the Commission decides otherwise in the framework of a specific sectoral program.

The committee shall be made up of at least three persons representing at least two organisational entities of the institutions or bodies referred to in Articles 62 and 208 of the Financial Regulation with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 57 of the Financial Regulation.

In the representations and local units referred to in Article 72 of this Regulation and the delegated bodies referred to in Articles 62 and 208 of the Financial Regulation, if

there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

Outside experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 57 of the Financial Regulation.

2. The authorising officer responsible shall, where appropriate, divide the process into several procedural stages. The rules governing the process shall be announced in the call for proposals.

Where a call for proposals specifies a two-stage submission procedure, only those applicants whose proposals satisfy the evaluation criteria for the first stage shall be requested to submit a complete proposal in the second stage.

Where a call for proposals specifies a two-stage evaluation procedure, only those proposals that pass the first stage, based on the evaluation against a limited set of criteria, shall go forward for further evaluation.

The applicants whose proposals are rejected at any stage shall be informed in accordance with Article 133(3) of the Financial Regulation.

Each subsequent stage of the procedure must be clearly distinct from the previous one.

The same documents and information shall not be required to be provided more than once during the same procedure.

3. The evaluation committee or, where appropriate, the authorising officer responsible may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, provided that such information or clarification does not substantially change the proposal. In accordance with Article 96 of the Financial Regulation, in the case of obvious clerical errors, the evaluation committee or the authorising officer may refrain from doing so only in duly justified cases. The authorising officer shall keep appropriate records of contacts with applicants during the procedure.

4. Upon completion of its work, the members of the evaluation committee shall sign a record of all the proposals examined, containing an assessment of their quality and identifying those which may receive funding. Those records may be signed in an electronic system providing sufficient authentication of the signatory.

Where necessary that record shall rank the proposals examined, provide recommendations on the maximum amount to award and possible non-substantial adjustments to the grant application.

The record shall be kept for future reference.

5. The authorising officer responsible may invite an applicant to adjust its proposal in the light of the recommendations of the evaluation committee. The authorising officer responsible shall keep appropriate records of contacts with applicants during the procedure.

The authorising officer responsible shall, after evaluation, take his decision giving at least:

(a) the subject and the overall amount of the decision;

(b) the name of the successful applicants, the title of the actions, the amounts accepted and the reasons for that choice, including where it is inconsistent with the opinion of the evaluation committee;

(c) the names of any applicants rejected and the reasons for that rejection.

6. Paragraphs 1, 2 and 4 of this Article are not compulsory for the award of grants pursuant to Article 190 of this Regulation and to Article 125(7) of the Financial Regulation.

- **Article 287** (ex Article 265a): Remunerated external experts

1. For values below the thresholds laid down in Article 170(1), remunerated external experts may be selected on the basis of the procedure laid down in paragraph 2.

2. A call for expressions of interest shall be published in the Official Journal of the European Union or where it is necessary to provide publicity among potential candidates, on the internet site of the institution concerned.

The call for expressions of interest shall include a description of the tasks, their duration and the fixed conditions of remuneration. Those conditions may be based on unit prices.

A list of experts shall be drawn up following the call for expressions of interest. It shall be valid for no more than five years from its publication or for the duration of a multiannual program related to the tasks.

3. Any interested natural person may submit an application at any time during the period of its validity, with the exception of the last three months of that period. Remunerated external experts shall not be selected to perform the tasks referred to in Article 204 of the Financial Regulation if they are in one of the situations of exclusion referred to in Articles 106 and 107 of the Financial Regulation.

4. All exchanges with selected experts, including the conclusion of contracts and any amendments thereto, may be done through electronic exchange systems set up by the institution.

These systems shall meet the following requirements:

(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 must be identified through the system by established means;

(d) the time and date of the electronic transaction must be determined precisely;

(e) the integrity of documents must be preserved;

(f) the availability of documents must be preserved;

(g) where appropriate, the confidentiality of documents must be preserved;

(h) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 must be ensured.

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 to be the original of the document and shall enjoy legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of the second subparagraph shall have the equivalent legal effect of handwritten signatures.

5. The list of experts and the subject of the tasks shall be published annually. The remuneration shall be published where it exceeds EUR 15000 for the task performed.

6. Paragraph 5 shall not apply if such publication risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of experts.