COMMISSION DECISION

of 17.4.2019

on establishing new terms of reference for the pillar assessment methodology to be used under Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[[1]](#footnote-1), and in particular Article 154(3) and (4) thereof. Whereas:

(1) Article 154(3) of Regulation (EU, Euratom) 2018/1046 (‘the Financial Regulation’) requires the Commission to carry out an assessment of the systems, rules and procedures of persons or entities implementing Union funds under indirect management, if it intends to rely on such systems, rules and procedures for the implementation of the action. The assessment is to ensure a level of protection of the financial interests of the Union equivalent to the one that is provided for when the Commission implements the budget under direct management.

(2) In addition, Article 154(4) of the Financial Regulation requires the Commission to assess that persons or entities implementing Union funds under indirect management have a number of specific systems, rules and procedures in place relating to, for example, internal controls, accounting and data management. The Commission can also assess other rules and procedures of the person or entity in question, if they so agree.

(3) The assessments to be carried out under Article 154(3) and (4) of the Financial Regulation are usually carried out by external auditors, on the basis of a set of terms of reference established by the Commission.

(4) Given the additional requirements stemming from the Financial Regulation, including the rules on budgetary guarantees, and given recent Union policies on tax avoidance, money laundering and terrorism financing, it is necessary to revise the existing terms of reference and their methodology to be used for carrying out the assessments.

(5) Having regard to Article 154(4) of the Financial Regulation, the terms of reference should cover nine different areas (or pillars) some of which are compulsory for all persons and entities (namely internal control, accounting, external audit) and some of which are determined according to the activities which the person or entity is going to be undertaking (namely, grants, procurement and financial instruments and within those, exclusion from access to funding, publication of information on recipients and protection of personal data). For all of the applicable pillars, the terms of reference should ensure that the Commission obtains evidence that the level of protection of the financial interests of the Union is equivalent to the one that is provided for when the Commission implements the funds in direct management, taking into account possible supervisory measures taken by the Commission in accordance with Article 154(5) of the Financial Regulation. Moreover, Article 154(6)(c) of the Financial Regulation states that the Commission may decide not to require an ex ante assessment as referred to in paragraphs (3) and (4), for those procedures specifically required by the Commission, including its own and those specified in basic acts.

(6) Taking into account the principle of proportionality, the terms of reference should not impose any requirement for a specific organisational structure or a certain number of specialist staff, as this would be disproportionate for small entities. However, for implementation of the principles set out in the terms of reference, it is not appropriate to create exceptions for new and/or small entities as it is important to ensure a high standard of management.

(7) Article 279(3) of the Financial Regulation provides that existing pillar assessments carried out under Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council[[2]](#footnote-2) will continue to apply and must be reviewed as appropriate. Insofar as the terms of reference established by this Decision contain requirements that were not contained in the previous terms of reference, persons and entities assessed under the previous terms of reference will have to undergo a supplemental assessment with respect to those requirements.

HAS DECIDED AS FOLLOWS:

Sole Article

The terms of reference to be used for carrying out assessments under Article 154(3) and (4) of Regulation (EU, Euratom) 2018/1046 are set out in the Annex to this Decision.

Done at Brussels, 17.4.2019

 For the Commission

 Günther H. OETTINGER
 Member of the Commission

1. OJ L 193, 30.7.2018, p.1. [↑](#footnote-ref-1)
2. Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1). [↑](#footnote-ref-2)