

Commission Delegated Regulation (EU) 2019/887 of 13 March 2019 on the model financial regulation for public-private partnership bodies referred to in Article 71 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council

COMMISSION DELEGATED REGULATION (EU) 2019/887

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on the model financial regulation for public-private partnership bodies referred to in Article 71 of 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 regards 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⁾, and in particular the third paragraph of Article 71 thereof,

Whereas:

- (1) By Delegated Regulation (EU) No 110/2014⁽²⁾, the Commission adopted a the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁽³⁾.
- (2) Regulation (EU, Euratom) No 966/2012 has been repealed and replaced by Regulation (EU, Euratom) 2018/1046. It is therefore necessary to adopt a model financial regulation for public-private partnership bodies referred to in Article 71 of Regulation (EU, Euratom) 2018/1046 (hereafter ‘PPP bodies’).
- (3) In order to adopt rules ensuring sound financial management of Union funds and to enable PPP bodies to adopt their own financial rules, it is necessary to adopt a model financial regulation for those bodies. The PPP bodies' financial rules may not depart from this Regulation except where their specific needs so require, and with the Commission's prior consent.
- (4) The model financial regulation for PPP bodies should be consistent with the provisions of Regulation (EU, Euratom) 2018/1046 and should allow for additional simplification and clarification to take into account the experience gained in their application.
- (5) Following the adoption of Regulation (EU, Euratom) 2015/1929⁽⁴⁾ of the European Parliament and of the Council, Commission Regulation (EU) 2015/2461⁽⁵⁾ amended Delegated Regulation (EU) No 110/2014 on the model financial regulation for public-private partnership bodies to align the rules on discharge, reporting and external audit on those applicable to the bodies referred to in Article 70 of Regulation (EU, Euratom)

Changes to legislation: There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2019/887. (See end of Document for details)

2018/1046. Rules on governance, internal audit and accountability applicable to PPP bodies should be made consistent with the corresponding provisions of Commission Delegated Regulation (EU) 2019/715⁽⁶⁾ applicable to the bodies referred to in Article 70 of Regulation (EU, Euratom) 2018/1046.

- (6) Given that Commission Delegated Regulation (EU) No 1268/2012⁽⁷⁾ has been repealed, the obligation for the PPP bodies to adopt their own implementing rules should also be removed.
- (7) PPP bodies should establish and implement their budget in accordance with the budgetary principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification and sound financial management, which requires transparency and effective and efficient internal control.
- (8) To ensure continuity of operation and in order to allow for the commitment of routine administrative expenditure at the end of a financial year, PPP bodies should be able under specific conditions to commit such expenditure in advance against the appropriations provided for the following financial.
- (9) Taking into account their specificities, PPP bodies should not be able to use corporate sponsoring.
- (10) The concept of performance as regards the budget should be clarified. Performance should be linked to the principle of sound financial management. The principle of sound financial management should be defined. A link should be established between, on the one hand, the objectives set and performance indicators and, on the other hand, the results and the economy, efficiency and effectiveness in the use of appropriations.
- (11) In order to ensure the overall implementation of the tasks and activities of a PPP body, it should be able to enter the unused appropriations for a given year in the estimate of revenue and expenditure of the following three financial years.
- (12) It is necessary to specify the powers and responsibilities of the accounting officer and of the authorising officer, taking into account the public-private nature of PPP bodies. The authorising officers should be fully responsible for all revenue and expenditure operations executed under their authority and should be held accountable for their actions, including, where necessary, through disciplinary proceedings. In order to prevent errors and irregularities, authorising officers should set up a multiannual control strategy which should be based on risk-based and cost-effectiveness considerations.
- (13) In order to guarantee that each PPP body is accountable for the implementation of its budget and adheres to the objectives assigned to it at its establishment, PPP bodies should be allowed, where necessary, to employ external private sector bodies for the performance of the tasks entrusted to them, where necessary, unless those tasks involve a public service mission or any use of discretionary powers of judgement.
- (14) In order to facilitate the implementation of their appropriations and in compliance with the principle of sound financial management, PPP bodies should have the possibility to conclude service-level agreements in accordance with Article 59(3) of Regulation

(EU, Euratom) 2018/1046, in particular with the Union institutions and other Union bodies. Appropriate reporting on those service-level agreements should be ensured.

- (15) In order to improve cost-efficiency, PPP bodies should have the possibility of sharing services or transferring them to another body or the Commission, in particular by allowing the accounting officer of the Commission to be entrusted with all or part of the tasks of the accounting officer of a PPP body.
- (16) To identify and correctly manage risk of actual or perceived conflict of interests, PPP bodies should be required to adopt rules on the prevention and management of conflict of interests. Such rules should take into account guidance provided by the Commission.
- (17) The principles to be followed as to the revenue and expenditure operations of each PPP body should be laid down.
- (18) In line with the specific nature of the PPP bodies, their members should bear the costs of their contribution to the administrative costs of the PPP body. Non-member beneficiaries of funding provided by a PPP body should not contribute to such costs directly or indirectly and in any form, and they should not be invited or requested to contribute to the administrative costs of the PPP body when participating to projects co-financed by that body.
- (19) PPP bodies shall adopt its annual work programme for a particular year by the end of the previous year. This annual work programme should contain a description of the activities to be financed and an indication of the amounts allocated to each of them, information on the overall strategy for the implementation of the programme entrusted to the PPP body, as well as the strategy for achieving efficiency gains and synergies. The annual work programme should also contain a strategy for organisational management and internal control systems, including an anti-fraud strategy and an indication of measures to prevent recurrence of cases of conflict of interests, irregularities and fraud, in particular where weaknesses have led to critical recommendations
- (20) In addition to the forms of Union contribution already well established (reimbursement of the eligible costs actually incurred, unit cost, lump sums and flat-rate financing), it is appropriate to allow PPP bodies to provide support through financing not linked to the costs of the relevant operations. This additional form of financing should be based on the fulfilment of certain conditions *ex ante* or on the achievement of results measured by reference to previously set milestones or through performance indicators.
- (21) In order to protect the financial interests of the Union, the rules on a single early-detection and exclusion system set up by Regulation (EU, Euratom) 2018/1046 should apply to PPP bodies.
- (22) In order to strengthen the governance of PPP bodies, they should report cases of fraud, financial irregularities and investigations to the Commission without delay.
- (23) Given the public-private nature of PPP bodies and in particular the private sector contribution to the budget of a PPP body, flexible procedures for the award of procurement contracts should be provided for. These procedures should respect the principles of transparency, proportionality, equality of treatment and non-discrimination

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and can depart from the relevant provisions laid down in Regulation (EU, Euratom) 2018/1046. Reinforced cooperation among the members of PPP bodies is expected to contribute to better and cheaper supply of goods and services, as well as the avoidance of excessive costs in managing procurement procedures. For the supply of products, provision of services or performance of work that those members provide directly and without having recourse to third parties, PPP bodies should therefore have the possibility to conclude contracts without having recourse to a procurement procedure with their members other than the Union.

- (24) PPP bodies should be able to use external experts for the evaluation of grant applications, projects and tenders and for providing opinions and advice in specific cases. These experts should be selected in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.
- (25) As regards the award of grants and prizes, in order to ensure a coherent implementation with the actions directly managed by the Commission, the relevant provisions of Regulation (EU, Euratom) 2018/1046 should apply, subject to specific provisions of the constituent act of the PPP body or of the basic act of the programme the implementation of which is entrusted to the PPP body.
- (26) Pursuant to Article 8(1) of Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁽⁸⁾, PPP bodies shall transmit to the European Anti-Fraud Office without delay any information relating to possible cases of fraud, corruption or any other illegal activity affecting the financial interests of the Union. Pursuant to Article 24(1) of Council Regulation (EU) 2017/1939⁽⁹⁾, PPP bodies shall without undue delay report to the European Public Prosecutor's Office any criminal conduct in respect of which it could exercise its competence in accordance with that regulation. In order to strengthen the governance of PPP bodies, they should also report cases of fraud, financial irregularities, as well as investigations, to the Commission without delay. The Commission and the PPP bodies should put procedures in place that duly protect personal data and ensure the respect of the need-to-know principle in any transmission of information related to presumed fraud and other irregularities and on-going or completed investigations.
- (27) Delegated Regulation (EU) No 110/2014 should be repealed. The reference to the repealed regulation should be construed as references to this Regulation.
- (28) In order to allow for the timely adoption of the revised financial regulations by the PPP bodies as of 1 September 2019 and so that the PPP bodies may benefit from the simplification and alignment with Regulation (EU, Euratom) 2018/1046, this Regulation should enter into force as a matter of urgency.

HAS ADOPTED THIS REGULATION:

CHAPTER 1

SCOPE

Article 1

Subject Matter

This Regulation lays down the essential principles on the basis of which the public-private partnership bodies referred to in Article 71 of Regulation (EU, Euratom) 2018/1046 ('PPP bodies') shall adopt their own financial rules. The financial rules of the PPP body shall not depart from this Regulation except where its specific needs so require and with the Commission's prior consent in accordance with the fourth subparagraph of Article 71 of Regulation (EU, Euratom) 2018/1046. The PPP body shall publish its financial rules on its website.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'governing board' means the main internal body of the PPP body that is responsible for taking decisions on financial and budgetary matters, irrespective of the name given to it in the constituent act of the PPP body,
- (2) 'director' means the person responsible for implementing the decisions of the governing board and the PPP body's budget as authorising officer, irrespective of the title given to him in the constituent act of the PPP body,
- (3) 'member' means a member of the PPP body in accordance with its constituent act,
- (4) 'constituent act' means the instrument of Union law governing the main aspects of the creation and operation of the PPP body,

Article 2 of Regulation (EU, Euratom) 2018/1046 shall apply *mutatis mutandis*.

Article 3

Scope of the budget

For each financial year, the budget of the PPP body shall forecast and authorize all revenue and expenditure considered necessary for the PPP body. It shall consist of:

- (a) the revenue of the PPP body, comprising:
 - (i) its members' financial contribution to the administrative costs;
 - (ii) its members' financial contribution to the operational costs;
 - (iii) revenue assigned to specific items of expenditure;
 - (iv) any revenue generated by the PPP body;
- (b) the expenditure of the PPP body, including administrative expenditure.