

Guideline of the Public Procurement Authority

on the certificates, statements, records and data to be submitted in contract award procedures by the economic operators established in the European Union and in the European Economic Area, in relation to the grounds for exclusion

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Pursuant to Article 13(1) of the *Government Decree 310/2011 (23 December) on the way of certification of suitability and verification of the non-existence of the grounds for exclusion as well as the definition of public procurement technical specifications in contract award procedures*, the Public Procurement Authority advises in this guideline the participants of contract award procedures of the ways of verification of the non-existence of the grounds for exclusion as defined in Article 56 and 57 of the Act CVIII of 2011 on Public Procurement, ***applicable in the European Union and the European Economic Area.***

We hereby would like to point out that the published data are solely based on the authentic translation of the information sent by the Member States to the European Commission. Considering that the European Commission itself takes no responsibility for the contents thereof, the Public Procurement Authority could not verify their suitability either.

The request of information made by the European Commission is based on the grounds for exclusion pursuant to Article 45 of the Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (Article 54(4) of Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors refers to the same rules in the case of entities operating in the utilities sector).

The grounds for exclusion referred to above:

[1. Any candidate or tenderer who has been the subject of a conviction by final judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:]

- (a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA;
- (b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/742/JHA respectively;
- (c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities;

(d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering

[2. Any economic operator may be excluded from participation in a contract where that economic operator:]

(a) is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

(b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;

(c) has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;

(e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;

(f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority; Article 45(2)(d) and (g) of the directive concerned are not included in the questionnaire, because the non-existence of those grounds for exclusion may not be verified, considering the fact that the contracting authority shall be able to prove their non-existence or the given ground for exclusion may occur in the course of the procedure.

For the sake of clarity, the European Commission requested the data from the Member States in a questionnaire having the form of a table, with a standard content, thus helping the work of the entities acting as contracting authority in public procurements. Accordingly, the Public Procurement Authority makes available the tables concerning each Member State.

To the present, besides Hungary, the following countries (in alphabetical order) have made available the information concerning the national rules pertaining to the verification of the non-existence of the grounds for exclusion, in the form of the abovementioned table:

Among the Member States of the European Union:

Austria, Cyprus, Czech Republic, Denmark, United Kingdom, Estonia, Finland, Greece, Netherlands, Ireland, Poland, Lithuania, Luxemburg, Malta, Germany, Italy, Sweden, Spain, Slovakia, Slovenia

Among the EEA members:

Norway

In order to be able to provide the necessary information for Hungarian contracting authorities, the information given on the basis of the former Community directives, concerning the Member States which have not made available yet the table summarizing the way of verification of the non-existence of the grounds for exclusion in the form and with the contents requested under the new directives, will be republished on a temporary basis, at the end of the guideline. (Those data are still useful, as the scope of the grounds for exclusion under the new directives has only been slightly modified.)

The Member States in question (in alphabetical order) are the following:

Belgium, France, and Portugal

Furthermore, we would like to highlight eCertis, the online information system, available on the website of the European Commission, that helps identify the certificates requested in procurement procedures – not only in relation to the grounds for exclusion – across the 27 Member States, the Candidate Countries (Croatia and Turkey) and in the EEA countries. eCertis is also available on the website of the European Commission (<http://ec.europa.eu/markt/ecertis/login.do>).

eCertis not only helps tenderers who intend to participate in contract award procedures in foreign countries, but *also provide information for contracting authorities, in case* they have to evaluate the tenders of tenderers established in the abovementioned countries. As regards the information included in the database, it is also important to underline that those pieces of information are based on data provided by the Member States, and their publication does not qualify a legal service on the part of the European Commission, and the Commission takes no responsibility for such data.

Since the supply of data in the form of a table, used earlier, is not made available anymore by the European Commission on its website, we suggest the entities concerned to gather information on the ways of certification applicable in each Member State principally from eCertis. However, the Public Procurement Authority continues to publish the information based on the data supplied previously, in the form of a table, in the Annex to this Guideline, because the authentic Hungarian translations may help to find the necessary information in eCertis. In case of any discrepancy between the data included in the Annex and the contents of eCertis, the latter shall prevail.

The Public Procurement Authority had the accuracy of the translation of the border caption of tables prepared by the European Commission for the data supply of Member States improved. As this border caption may help to interpret the country sheets (included in Annex II) – for which the Authority had the translation made before – that version is also made available in Annex I of this Guideline¹.

¹ It shall be noted that the information pertaining to Sweden are published in the table with the corrected text version.

The Annexes which form part of the Guideline, according to the above²:

- I. The proofread heading of the table concerning the verification of the non-existence of grounds for exclusion
- II. The way of verification of the non-existence of grounds for exclusion in EU Member States (the countries are arranged in alphabetical order)
- III. The way of verification of the non-existence of grounds for exclusion in EEA countries
- IV. A briefing on the way of verification of the non-existence of grounds for exclusion in case of EU Member States which have not yet provided the information compiled according to the new directives (the countries are arranged in alphabetical order)

² If, in the table of contents of the Annexes, you push the CTRL button and you click at the same time, it leads you to the relevant country sheet.