

CONDUCT THAT CONSTITUTES GROSS PROFESSIONAL MISCONDUCT

(Ref. art. 169, paragraph 1, of the Legislative Decree 36/2023)

Pursuant to and for the purposes of the provisions referred to in art. 169, paragraph 1 of the Legislative Decree 36/2023, the Terna Group hereby presents the causes of exclusion in the context of tender procedures that constitute grave professional misconduct for the purposes of Articles 95, paragraph 1(e) and 98.

Given that serious professional misconduct is only relevant if committed by the economic operator bidding for the contract, except as provided for in letter g) below, the exclusion of an economic operator pursuant to Article 95, paragraph 1(e) of Legislative Decree no. 36/2023 or, more precisely, pursuant to the aforementioned Article 98, paragraph 2 is ordered and communicated by the contracting authority when all the following conditions are met:

- i. sufficient elements to constitute the serious professional misconduct referred to herein;
- ii. suitability of the serious professional misconduct to affect the reliability and integrity of the economic operator;
- iii. adequate means of proof pursuant to art. 98, paragraph 6 of Legislative Decree 36/2023.

Professional misconduct may be inferred upon the occurrence of at least one of the following elements:

- a) an enforceable sanction imposed by the Competition and Market Authority or by another authority in the sector, which is relevant both in relation to the specific subject-matter of the contract put out to tender and to the reference market, in respect of which the time-limits for challenging the decision have expired or a final judgement has been handed down;
- b) conduct of the economic operator which has attempted to unduly influence the decision-making process of the contracting authority or to obtain confidential information for its own benefit or which has provided, even negligently, false or misleading information likely to influence decisions on the exclusion, selection or award of the specific tender concerned;
- c) conduct of the economic operator which has shown significant or persistent deficiencies in the performance of a prior contract that is relevant both to the specific subject matter of the contract being tendered for and to the relevant market, which has led to its termination for non-performance or an order for damages or other comparable sanctions, resulting from particularly serious shortcomings or the repetition of which is indicative of persistent professional misconduct;
- d) conduct of the economic operator which has committed serious misconduct vis-à-vis one or more subcontractors in the performance of a previous contract that is relevant both to the specific subject matter of the contract put out to tender and to the reference market;
- e) conduct of the economic operator that has infringed the prohibition of fiduciary registration laid down in *article 17 of Law No. 55 of 19 March 1990*, where the infringement has not been remedied;
- f) failure by the offended economic operator to report to the judicial authority the offences provided for and punished by articles 317 “Malfeasance” and 629 “Extortion” of the Criminal Code, aggravated pursuant to article 416-bis.1 of the same Code, unless the cases provided for in *article 4, paragraph 1 of Law No. 689 of 24 November 1981* apply;
- g) contested commission by the economic operator, or by the persons referred to in paragraph 3 of article 94, of any of the offences committed or attempted referred to in paragraph 1 of the same

article 94, provided that they fall within the scope of the market of reference of the contract put out to tender;

- h) alleged or ascertained commission by the persons referred to in article 94, paragraph 3 of any of the following offences committed, provided that they fall within the scope of the reference market of the contract put out to tender:
- 1) abusive exercise of a profession, pursuant to article 348 of the Criminal Code;
 - 2) simple bankruptcy, fraudulent bankruptcy, failure to declare assets to be included in the bankruptcy inventory or abusive use of credit, as referred to in *articles 216, 217, 218 and 220 of Royal Decree No 267 of 16 March 1942*;
 - 3) the urban planning offences referred to in *article 44, paragraph 1(b) and (c) of the Consolidated Text of Legislative and Regulatory Provisions on Construction, referred to in Presidential Decree No. 380 of 6 June 2001*, with reference to contracts relating to works or architectural and engineering services;
- i) contested or ascertained commission by the economic operator of the offences provided for in *Legislative Decree No. 231 of 8 June 2001*, provided that they fall within the scope of the reference market of the contract put out to tender;
- l) mendacious statements and breach of international sanctions commitments provided for and regulated under Annex 1 International Sanctions with the effects provided for therein.
- m) to be subject to any decision of exclusion or temporary suspension under the Exclusion Policy, by which is meant the “European Investment Bank Exclusion Policy” as published on the website of the “European Investment Bank”, based in Luxembourg, 100 Boulevard Konrad Adenauer, L-2950 Luxembourg.

[PURSUANT TO ART. 95, PARAGRAPH 3 OF THE LEGISLATIVE DECREE 36/2023, THE EXCLUSION IS NOT ORDERED AND THE PROHIBITION TO AWARD DOES NOT APPLY WHEN:

- (A) THE OFFENCE HAS BEEN DECRIMINALISED;
- (B) REHABILITATION HAS TAKEN PLACE;
- (C) IN CASES OF CONVICTION OF A PERPETUAL ACCESSORY PENALTY, IT HAS BEEN DECLARED EXTINGUISHED PURSUANT TO ARTICLE 179, PARAGRAPH 7 OF THE PENAL CODE;
- (D) THE OFFENCE WAS DECLARED EXTINGUISHED AFTER CONVICTION;
- (E) THE CONVICTION HAS BEEN OVERTURNED.]

The assessment of severity takes into account:

- of the legal good and the extent of the injury inflicted by the conduct comprising one of the elements referred to in subparagraphs (a) to (l) above;
- in the sole cases referred to in points (b) and (c), of the time which has elapsed from the said infringement to the date on which the invitation to tender was issued where that time is less than three years, and of any changes which have occurred in the undertaking’s organisation in the meantime and which are relevant as dissociative conduct with respect to the infringement.

Any omitted or untrue declarations made in the same invitation to tender other than those referred to in point (b) above may be used to support the assessment of seriousness referred to in points (a) to (l) above.

Means of proof

They constitute adequate evidence in relation to the preceding subparagraph:

- (a) enforceable sanctions imposed by the competition authority or another authority in the sector, in respect of which the time limits for appeal have expired or a final judgement has been passed;
- (b) the presence of documented serious, precise and concordant evidence showing the occurrence of the exclusionary situation;
- (c) termination for non-performance or an order to pay damages or other comparable consequences;
- (d) the issuance of definitively established court orders;
- (e) the final determination of the infringement;
- (f) the final conviction or irrevocable criminal decree;
- (g), the documents referred to in article 407-bis, paragraph 1 of the Code of Criminal Procedure, the decree ordering trial pursuant to article 429 of the Code of Criminal Procedure, or any real or personal precautionary measures issued by the criminal court, the non-definitive conviction sentence, the non-revocable conviction decree, the non-revocable sentence of application of the penalty on request pursuant to article 444 of the Code of Criminal Procedure;
- (h) and (i), the final conviction, the irrevocable criminal decree of conviction, and the real or personal precautionary measures, if issued by the criminal court.

The contracting authority shall evaluate the above-mentioned sanctioning and jurisdictional measures, giving reasons for their suitability to affect the reliability and integrity of the tenderer; any challenge to them shall be considered as part of the assessment aimed at verifying the existence of the ground for exclusion.

The exclusion measure will be motivated in relation to all three conditions set out in Romans i, ii and iii above.

Annex 1 “International Sanctions”

The following shall constitute non-automatic grounds for exclusion from the tender procedures and, in the event of award, an impediment to the signing of the contract: the economic operator being subject to international sanctions and the violation of the declarations and commitments set out below.

To this end:

1.1 The economic operator¹ for the purpose of participating in the tender procedure and, in the event of award, in the subsequent signing of the contract, declares and guarantees for itself as well as for the persons referred to in article 94, paragraph 3 of Legislative Decree. 36/2023 to the following:

- (i) carry out its activities, comply with the legislation applicable to it regarding international sanctions, meaning any law, regulation, decree, list of names or other restrictive measures relating to any commercial, economic or financial sanction, embargo or restriction adopted, issued, administered, implemented or imposed, from time to time, by or in:
 - a) the United States of America;
 - b) the United Kingdom of Great Britain and Northern Ireland;
 - c) the United Nations Organisation;
 - d) the European Union
 - e) any Member State of the European Union; or

any body, agency or authority belonging to or acting by or on behalf of any of the jurisdictions/entities referred to in letters a) to e) above

(the '**International Sanctions**');

- (ii) not to be subject, directly or indirectly, to International Sanctions;
- (iii) not being owned, directly or indirectly, 50% or more, individually or in the aggregate, or controlled by one or more persons or entities subject to International Sanctions and/or not acting, directly or indirectly, on behalf of one or more persons or entities subject to International Sanctions; and
- (iv) not to be based in, or resident in, or operating from any country or territory subject to International Sanctions which, by their nature and broad and general scope at a national or territorial level, are such as to give rise to a situation of general embargo on imports/exports/financial/investments which, as of the date hereof, are: Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the

¹ Declarations, guarantees and commitments must be issued with reference to each company that participates in the tender procedure in any Temporary Grouping of Competitors, Temporary Consortium or Stable Consortium or in any other company form pursuant to article 48 of the Tender Code.

areas of Zaporizhzhia and Kherson not under state control, the Donetsk People's Republic and the Luhansk People's Republic (the "**Embargoed Jurisdictions**").

1.2 The economic operator undertakes not to engage, in the course of the tender procedure, in any conduct that may be in breach of International Sanctions or that may reasonably be expected to result in the Contracting Authority being in breach of International Sanctions, including in particular

- (i) comply in the performance of its activities with the regulations applicable to it with regard to International Sanctions;
- (ii) not being established, organised or resident in or operating from any Embargoed Jurisdiction;
- (iii) not to perform business, transactions or activities with or involving any Embargoed Country or person or entity subject to International Sanctions during the tender process;
- (iv) comply in the conduct of the tender procedure with the regulations on International Sanctions also with reference to the subcontractors, sub-suppliers and auxiliary companies involved, and to the goods and supplies to be supplied, for the purposes and in the context of the tender procedure.

1.3 The economic operator expressly acknowledges and accepts that the Contracting Authority may exclude the economic operator from participating in the tender procedure and from being awarded the contract in the event one of the following occurs:

- a) the economic operator is subject to International Sanctions;
- (b) the economic operator becomes, directly or indirectly, 50% or more owned, individually or in aggregate, or otherwise controlled by one or more persons or entities subject to International Sanctions;
- (c) the economic operator, at any time during the tendering procedure, can no longer confirm the declarations and/or fulfil the commitments referred to in Articles 1.1 and 1.2 above;
- (d) the provisional security provided in performance of the obligations under the tender procedure is revoked or becomes inoperable for reasons related to International Sanctions.

Circumstances entailing one of the effects referred to in this article must be communicated immediately by the economic operator to the Contracting Authority, with the undertaking by the operator to promptly take and prove all appropriate measures to avoid such exclusion.

1.4 In the event that:

- the declarations and guarantees provided by the economic operator pursuant to Article 1.1 above are, in whole or in part, false or
- the economic operator has violated the commitments referred to in Article 1.2 above, or

- the economic operator has infringed the obligation of timely communication referred to in Article 1.3 above, or
- the economic operator has not taken or has been unable to take appropriate corrective measures, verified as sufficient by the Contracting Authority

the Contracting Authority shall have the right to exclude the economic operator from the tender procedure on the understanding that:

- (i) the Contracting Authority shall be entitled to compensation for any loss/damage/cost/expense suffered as a result of the aforementioned circumstances;
- (ii) In the cases referred to in articles 1.3 and 1.4 above, the economic operator, in any case, hereby undertakes to indemnify and hold harmless the Contracting Authority from any consequence and/or damage, as well as from any type of claim, action and/or reason, also of a compensatory nature, that third parties may make against the Contracting Authority and its Group.