

COMMISSION DECISION (EU) 2018/1220**of 6 September 2018****on the rules of procedure of the panel referred to in Article 143 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 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⁾, and in particular Article 143(4) thereof,

Whereas:

- (1) Regulation (EU, Euratom) 2018/1046 has replaced Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽²⁾ which established a panel for assessing centrally certain situations of exclusion of economic operators and adopting appropriate recommendations ('the Panel').
- (2) Regulation (EU, Euratom) 2018/1046 extends the powers of the Panel to issuing opinions and recommendations to determine whether a financial irregularity has occurred, and it is appropriate for the exercise of this power to be regulated in its rules of procedure.
- (3) Article 143 of Regulation (EU, Euratom) 2018/1046 establishes the composition of the Panel, the procedure for appointing its Chair and the management of conflicts of interests. It provides for the Panel's rules of procedure to be adopted by the Commission and for the Panel to be assisted by a permanent secretariat, provided by the Commission.
- (4) To ensure the Panel's continuity and proper functioning, it is appropriate to specify the procedure for the appointment and dismissal of the Chair and to lay down provisions on deputising for him/her where he/she is absent or prevented from attending to his/her duties.
- (5) To ensure the Panel's continuity and proper functioning, it is also necessary to lay down detailed rules on its composition in any given case, in particular those relating to the designation of the two permanent members, their deputies and the additional member representing the authorising officer responsible;
- (6) It is necessary to specify that observers will participate in the Panel's meetings to ensure that it is fully and adequately informed.
- (7) In the interests of proper administration, it is appropriate to specify the support functions to be provided to the Panel by the permanent secretariat in the framework of its proceedings.
- (8) The procedure for referring a case to the Panel must be clarified, in particular as regards the minimum content of the referral.
- (9) For the benefit of economic operators, it is necessary to establish the procedure for ensuring that their right to be heard is respected.
- (10) It is appropriate to specify the practical arrangements for close cooperation between the Panel and the European Anti-Fraud Office (OLAF) in the light of the administrative arrangements on cooperation and timely exchange of information between the Commission and OLAF.

⁽¹⁾ OJ L 193, 30.7.2018, p. 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).

- (11) It is appropriate to clarify the rules for the adoption of the Panel's recommendations and opinions.
- (12) Since the Panel replaces that referred to in Article 73(6) of Regulation (EU, Euratom) No 966/2012 and succeeds that referred to in Article 108(4) thereof, it is appropriate to repeal the two Commission Decisions C(2011) 6109 final and (EU) 2015/2463 ⁽¹⁾ on the rules of procedure of those panels.
- (13) Any processing of personal data by the Panel and its permanent secretariat should be carried out in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽²⁾.
- (14) Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽³⁾ applies to the recommendations adopted by the Panel,

HAS ADOPTED THIS DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Decision lays down the rules of procedure of the Panel referred to in Article 143 of Regulation (EU, Euratom) 2018/1046.

Article 2

Appointment, termination of appointment and dismissal of the Chair and of his/her deputy

1. The Chair of the Panel shall be appointed by the Commission for a non-renewable term of five years, following a call for expressions of interest. His/her term of office shall begin on the date fixed for that purpose in the decision on the appointment. This Decision shall be published in the C series of the *Official Journal of the European Union*.
2. The Chair shall be appointed as a special adviser of the Commission within the meaning of Article 5 of the Conditions of Employment of Other Servants of the European Union. His/her contract as special adviser shall fully respect his/her independence and shall not affect the duration of his/her term of office.
3. If the Chair no longer fulfils the conditions required for the performance of his/her duties, he/she may be dismissed by the Commission.
4. The rules applicable to the appointment, termination of appointment and dismissal of the Chair shall also apply to his/her deputy. The provisions laid down in paragraphs 1 to 3 of this Article and in Article 143 of Regulation (EU, Euratom) 2018/1046 shall also apply to the Chair's deputy.

Article 3

Deputising for the Chair

1. If the Chair is prevented from attending to his/her duties, they shall be carried out by his/her deputy.
2. Should the office of Chair fall vacant, his/her duties shall be carried out by his/her deputy until a new Chair is appointed.
3. Where both the Chair and his/her deputy are prevented from attending to their duties, the most senior permanent member representing the Commission shall deputise.

Article 4

Responsibilities of the Chair

1. The Chair shall represent the Panel.
2. He/she shall chair the Panel's meetings and organise its work.

⁽¹⁾ Commission Decision (EU) 2015/2463 of 18 December 2015 on the rules of procedure of the panel referred to in Article 108 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 342, 29.12.2015, p. 57).

⁽²⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽³⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

3. He/she shall be assisted to this end by the permanent secretariat referred to in Article 7.
4. He/she may delegate to each of the permanent members representing the Commission the power to sign on his/her behalf, at his/her direction, documents relating to a particular case or to administrative matters.
5. He/she shall set the schedule of the Panel's meetings, after consulting the permanent members.
6. He/she shall exercise the other powers conferred on him/her by this decision.

Article 5

Designation of the other Panel members and their deputies

1. The Director of the Central Financial Service in the Directorate-General for Budget shall be one of the two permanent members of the Panel representing the Commission, pursuant to Article 143(2)(b) of Regulation (EU, Euratom) 2018/1046. The Director-General for Budget shall designate an official of grade AD11 or above to deputise for this permanent member.

The Director-General for Budget shall designate the second permanent member representing the Commission and his/her deputy *ad personam* among Commission officials of at least grade AD14 and AD11 respectively.

2. The member representing the competent authorising officer ('the referring authority') and his/her deputy shall be officials or temporary staff members designated in accordance with the rules of procedure and the internal administrative rules of the institution, office, body or agency concerned, as referred to in Article 73(3) of Regulation (EU, Euratom) 2018/1046. They shall perform at least the functions of head of unit or head of delegation.

Article 6

Observers

1. Observers shall participate in the Panel's deliberations without taking part in the adoption of recommendations.
2. The Commission's Legal Service shall be fully entitled to observer status for each matter submitted to the Panel and shall provide comments on its own initiative or at the request of the Chair. To this end, one of its members shall attend all the Panel's deliberations. The Legal Service shall be informed of all written procedures.
3. In matters where the request of the referring authority is based, inter alia, on information transmitted by the European Anti-Fraud Office (OLAF), OLAF's representative shall attend the Panel's meetings and participate in oral and written procedures. He/she may provide comments on his/her own initiative or at the request of the Chair.
4. In other cases, OLAF may be invited to provide information or advice, at the request of the Chair.
5. Authorising officers (other than the referring authority) of the Commission, of a European office set up by the Commission, of an executive agency, of another institution, or of another European office, body or agency who are concerned by the case referred to the Panel shall have observer status. These authorising officers may attend the Panel's deliberations, shall be informed of written procedures and shall provide oral and written comments at the request of the Chair.
6. The Chair, after consulting the permanent members of the Panel, may invite other observers to attend the Panel's deliberations and call on them to provide oral and written comments.

Article 7

Permanent secretariat

1. The Panel's permanent secretariat shall be provided by officials or staff members of the Directorate-General for Budget and shall be attached administratively to that Directorate-General.

2. Under the Chair's authority, the permanent secretariat shall:
 - (a) verify the capacity of the referring authorities, of their designated representatives and of the observers;
 - (b) verify that referrals are complete and contain all the necessary documents and information, in particular the information sheet;
 - (c) identify any other authorising officers concerned by the case who may be proposed as possible observers;
 - (d) organise the necessary dealings and contacts with the referring authority, the Commission's Legal Service and other bodies that are or may be associated with the case in question in order to obtain updates on the information contained in the referrals;
 - (e) draw up the drafts to be submitted to the Panel for examination and send them to the Chair, the other members and the observers who are to participate in settling a case;
 - (f) propose to the Chair the draft schedule of the Panel's meetings;
 - (g) draw up the draft agenda for the Panel's meetings and send it to the members and participants;
 - (h) verify the presence of the persons and documents required to ensure that the Panel's deliberations are conducted properly;
 - (i) attend the deliberations of the Panel and ensure that they are followed up;
 - (j) draw up summary minutes of each meeting for the file and send them to the members;
 - (k) notify the economic operators;
 - (l) notify the referring authority of the recommendation adopted by the Panel;
 - (m) ensure that all correspondence addressed to the Panel or relating to its activities is followed up;
 - (n) keep the register of the recommendations adopted by the Panel and the decisions taken by the authorising officer responsible;
 - (o) ensure publication of the decisions on exclusion and financial penalties referred to in Article 140 of Regulation (EU, Euratom) 2018/1046.

Article 8

Prevention and management of conflicts of interests

1. Where the Chair or his/her deputy, any other member or that member's deputy, the officials and staff members making up the Panel's secretariat, and any other person who participates in the Panel's meetings or is aware of the documents relating to a case finds himself/herself in a situation that might give rise to a risk of conflict of interest, he/she shall immediately inform the other members and the secretariat. The same applies where they find themselves in a situation that might objectively be perceived as a conflict of interest.
2. None of the persons referred to in paragraph 1 shall participate in the deliberations or in the adoption of the recommendation. A note recording the way in which the risk of a conflict of interests has been dealt with shall be included in the file.

Article 9

Cooperation between the Panel and OLAF

1. OLAF shall cooperate closely with the Panel in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁽¹⁾, with due regard for the respect of procedural and fundamental rights and for the protection of whistle-blowers.

⁽¹⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Ant-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

2. Where the request of the referring authority is based on information transmitted by OLAF, the Panel shall consult OLAF before sending notification to the economic operator in order not to breach the confidentiality of the judicial proceedings and investigations conducted or coordinated by OLAF, including the protection of whistle-blowers, and of national investigations or judicial proceedings, where known.

3. Disclosure to economic operators or their agents of information stemming from, or relating to, investigations conducted or coordinated by OLAF shall require OLAF's agreement.

Article 10

Referral of cases to the Panel

1. A request for a recommendation shall be referred to the Panel by any authorising officer of the Commission, of another institution, of a European office set up by the Commission, of an executive agency, or of another European office, body or agency.

Where the referral is made by an authority that does not come under the Commission, the necessary contacts shall be established immediately by the permanent secretariat in order to make sure that both sides ensure the confidentiality of the exchanges on the case in question.

2. The request shall be emailed in confidential form to the secretariat at the following email address: Panel-secretariat-BUDG@ec.europa.eu.

3. Where the referring authority becomes aware of the information referred to in Articles 136 of Regulation (EU, Euratom) 2018/1046, it shall inform the Panel thereof as soon as possible after this information has been brought to its knowledge, except in duly justified cases.

4. The request for a recommendation shall contain the information required in Article 142(3) of Regulation (EU, Euratom) 2018/1046. It shall also contain the other relevant information referred to in Article 136 of the aforementioned Regulation, including, where applicable, OLAF reports. It shall include a duly completed information sheet.

Article 11

Convening the Panel

A meeting of the Panel shall be convened by the Chair for the purpose of:

- (a) establishing the preliminary classification in law, pursuant to Article 136(2) of Regulation (EU, Euratom) 2018/1046 with a view to notifying the economic operator concerned thereof;
- (b) adopting a recommendation as referred to in Article 143(6) of Regulation (EU, Euratom) 2018/1046.
- (c) dealing with any questions relating to the Panel's functioning.

Article 12

Written procedure

On the initiative of the Chair or at the request of another member of the Panel, the facts and the preliminary classification in law may be established, and the recommendation may be adopted, by written procedure. Any member of the Panel may object to the use of the written procedure. Observers shall be associated with this procedure.

Article 13

The economic operator's right to be heard

1. Except where there are compelling legitimate grounds to preserve the confidentiality of the investigation or of national judicial proceedings, the economic operator shall have the right to submit observations pursuant to Article 143(5) of Regulation (EU, Euratom) 2018/1046.

2. A letter disclosing the facts and their preliminary classification in law, in which the Panel shall have regard only to documents which the economic operator has been able to examine, shall be sent to the economic operator subject to the provisions of Article 143(5) of Regulation (EU, Euratom) 2018/1046. In principal, this letter shall be sent by email.
3. The economic operator shall submit observations to the secretariat in writing by email to the following address: Panel-secretariat-BUDG@ec.europa.eu or to the email address given in the letter indicating the facts, together with any annexes, as an ordinary electronic file produced using word-processing software.
4. The written observations shall be no more than ten pages in length excluding annexes, except in duly justified cases involving complex legal or factual issues.
5. As a general rule, the economic operator shall be granted a period of three weeks to submit observations. This period shall start on the day following the letter disclosing the facts and their preliminary classification in law. Where the economic operator has agreed contractually to communicate with the authorising officer responsible electronically, the letter notifying the operator of the facts shall be sent electronically.
6. By way of an exception, following a reasoned request by the economic operator, a deadline may be extended, by no more than half the period initially granted.
7. On the expiry of the deadline set, if there has been no duly reasoned request for an extension, or on the expiry of the extended deadline, the adversarial procedure shall be terminated.
8. Where the Chair finds that the economic operator has not submitted observations by the prescribed deadline, the procedure shall continue and the Chair shall convene the Panel in order to adopt the recommendation.

Article 14

Adoption of letters and recommendations

The Chair and the other members shall endeavour to reach a consensus on the content of the letter notifying the economic operator concerned of the alleged facts and their preliminary classification in law and, subsequently, on the recommendation.

In the absence of a consensus, the matter shall be put to a majority vote in which:

- (a) the Chair has one vote;
- (b) the two permanent members together have one vote;
- (c) the member representing the referring authority has one vote.

Article 15

Notification of the recommendation

The Panel shall notify its recommendation to the referring authority and the observers.

Article 16

Time limits for the settlement of a case

1. Once the secretariat has verified the referral and examined the case as provided for in the applicable provisions of Article 7, it shall send it to the Chair and the members of the Panel. The Chair shall verify the preparation of the file, after requesting additional measures of verification or examination, where applicable.
2. The duration of the procedure, which shall start when the Chair verifies the preparation of the file and terminate when an opinion and, if applicable, a recommendation is notified to the referring authority, shall, in principle, be no more than three months. This period may be extended by the Chair in order, *inter alia*, to ensure that the right to be heard is respected.

*Article 17***Confidentiality of the proceedings and deliberations**

Without prejudice to the application of Article 8(1) of Regulation (EU, Euratom) No 883/2013 and Article 22a of the Staff Regulations ⁽¹⁾, the members of the Panel and of its secretariat, as well as any persons who, in any capacity, have participated in the proceedings or meetings of the Panel or have been involved in preparing the documents, opinions or positions issued by it, shall comply with the strictest confidentiality in this respect, in accordance with their possible administrative or contractual liability or liability under the Staff Regulations. The same applies to the Chair and his/her deputy.

*Article 18***Handling of requests for access to documents and protection of personal data**

Regulation (EC) No 1049/2001 and Regulation (EC) No 45/2001 shall apply to the proceedings of the Panel.

CHAPTER II

SPECIFIC PROVISIONS ON THE EXERCISE OF THE CONSULTATIVE POWERS REFERRED TO IN ARTICLE 93 OF THE FINANCIAL REGULATION*Article 19***Principles**

1. The provisions of Articles 1 to 4, 8, 12, 13, 17 and 18 in Chapter I of these Rules of Procedure shall apply to the Panel's exercise of the consultative powers conferred on it by Article 93 of Regulation (EU, Euratom) 2018/1046.
2. The provisions of the other articles in Chapter I of these Rules of Procedure shall also apply to the Panel's exercise of the powers referred to in paragraph 1, unless specifically provided for in this Chapter.

*Article 20***Additional members of the Panel and their deputies**

1. When issuing the opinion referred to in Article 93(1) of Regulation (EU, Euratom) 2018/1046, the Panel shall be composed of the members referred to in Article 143(2) of Regulation (EU, Euratom) 2018/1046 and the following three additional members:
 - (a) a representative of the appointing authority in charge of disciplinary matters of the institution or body concerned;
 - (b) a member designated by the staff committee of the institution or body concerned;
 - (c) a member of the legal service of the institution, European office set up by the Commission, executive agency or other European office, body or agency of the staff member concerned.
2. Each of these three members shall have a deputy designated, as appropriate, by:
 - (a) the appointing authority concerned;
 - (b) the staff committee concerned;
 - (c) the legal service concerned.

*Article 21***Designation of the observers**

1. The Commission's Legal Service shall designate an observer when the staff member concerned does not belong to the Commission.
2. The authorising officer responsible or, where appropriate, the Head of a Union Delegation acting as authorising officer by subdelegation, or their representatives, shall have observer status.
3. OLAF shall designate an observer when the information relating to the alleged breach of a provision of Regulation (EU, Euratom) 2018/1046 or of any other provision relating to financial management or control of transactions results from information transmitted by OLAF.

⁽¹⁾ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

4. The disciplinary office of the institution or body concerned shall designate an observer in cases where a case is referred to the Panel by the appointing authority. In other cases, it may be invited by the Chair to designate an observer.
5. After consulting the members, the Chair may invite other observers.

Article 22

Permanent secretariat of the Panel

1. The provisions of Article 7, except for those in paragraph 2(k) thereof, shall apply.
2. In particular, the secretariat shall:
 - (a) where the Panel is directly informed of a case by a staff member, ensure that the file is sent to the appointing authority and shall notify this to the staff member who transmitted the information, as specified in Article 23(2);
 - (b) where a case is referred to the Panel, verify the capacity of the referring authority and of its designated representatives;
 - (c) identify, in agreement with the Chair, the three additional members of the Panel and the observers and verify their capacity;
 - (d) verify that the files are complete and contain all the necessary documents and information, in particular the information sheet, a description of the facts and the alleged irregularity, and the supporting documents, including the investigation reports;
 - (e) verify that the staff member concerned has been properly heard by the appointing authority or the authorising officer responsible, as appropriate;
 - (f) draw up the draft opinions to be submitted for examination by the Panel for a decision and send them to the Chair, to the other members and to the observers who have been called upon to participate in settling a case;
 - (g) send the recommendations referred to in Article 93(3) of Regulation (EU, Euratom) 2018/1046 to the authorising officer responsible and the internal audit service responsible;
 - (h) where the Panel considers that the case is a matter for OLAF, transmit the file to the appointing authority without delay and inform OLAF.

Article 23

Referral of cases to the Panel

1. In accordance with Article 93(1) of Regulation (EU, Euratom) 2018/1046, the panel shall be convened at the request of any appointing authority responsible for disciplinary matters or of an authorising officer responsible, including a head of a Union delegation or his/her deputy acting as the authorising officer by subdelegation, hereinafter 'referring authorities'.
2. Where the Panel is directly informed by a staff member, it shall send the file to the competent appointing authority or, as appropriate, to the authority empowered to conclude contracts and inform that staff member. If the competent appointing authority decides to refer the case to the Panel, it shall inform the staff member. If it decides not to refer the case to the Panel, it shall inform the Panel and the staff member.

In order to ensure that whistle-blowers are effectively protected, as provided for in Article 22a(3) of the Staff Regulations, the Panel may decide, by way of derogation from the preceding subparagraph, not to inform the competent appointing officer and to inform OLAF.

Article 24

Written procedure

At the initiative of the Chair or at the request of a member of the Panel, the opinion may be established by written procedure. Any member of the Panel or, if appropriate, the Chair may object to the use of the written procedure. In that case, the Chair shall convene a meeting within a reasonable time. The same rule shall apply as regards the recommendation referred to in Article 93(3) of Regulation (EU, Euratom) 2018/1046.

*Article 25***Adoption of the opinion and the recommendation**

1. The Panel shall seek to reach consensus on whether a financial irregularity has occurred and on the reasoning underlying the opinion or recommendation.
2. In the absence of a consensus, the matter shall be put to a vote in which:
 - (a) the Chair has one vote;
 - (b) the two permanent members representing the Commission together have one vote;
 - (c) the member representing the referring authority has one vote;
 - (d) the three additional members have one vote each.

In the event of a tied vote, the Chair shall have the casting vote.

3. Paragraphs 1 and 2 shall apply *mutatis mutandis* to the adoption of the recommendations. The consensus or the vote shall concern in particular the systemic nature of the financial irregularity.

*Article 26***Notification of the opinion and the recommendation**

The Panel shall notify the opinion without delay to the referring authority, the authorising officer responsible and the observers.

*Article 27***The staff member's right to be heard**

In accordance with Article 93(2) second subparagraph of Regulation (EU, Euratom) 2018/1046, before referring a case to the Panel, the appointing authority or, as applicable, the authorising officer responsible shall give the staff member the opportunity to present his/her observations on the facts concerning him/her. In accordance with Article 22(2)(e), after the referral of the case the permanent secretariat shall verify that the interested party has been properly heard.

CHAPTER III

FINAL PROVISIONS

*Article 29***Review**

This Decision shall be reviewed at the latest at the date determined by the Commission in accordance with Article 120(2), second and third subparagraphs, of Council Regulation (EU, Euratom) 2017/1939 ⁽¹⁾.

*Article 30***Repeal**

1. Decision C(2013) 6109 final is repealed.
2. Decision (EU, Euratom) 2015/2463 is repealed.

⁽¹⁾ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), (OJ L 283, 31.10.2017, p. 1).

*Article 31***Entry into force and application**

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from the date of entry into force of Article 143(4) of Regulation (EU, Euratom) 2018/1046.

Done at Brussels, 6 September 2018.

For the Commission

The President

Jean-Claude JUNCKER
