

Annex 5.2: Terms of reference – Annex 2

Annex 2

ASSESSMENT QUESTIONNAIRE AND CRITERIA

PILLAR 1 — INTERNAL CONTROL	
Level 1 (Financial Regulation). Has the entity set up and ensured the functioning in all material respects of an effective, efficient and economical internal control system based on international best practices and in line with the criteria set by the European Commission?	YES/NO
Level 2 criteria/questions (5 components for internal control)	SCORE (0 – 10)
1. Control environment Does the entity's control environment provide an adequate basis for carrying out internal control across the organisation?	../10
2. Risk assessment Does the entity identify risks to the achievement of its objectives across the entity, including assessing the potential for fraud, and are risks analysed as a basis for determining how they should be managed?	../10
3. Control activities Does the entity deploy effective and efficient control activities , including preventing, detecting and correcting irregularities and fraud?	../10
4. Information and communication Does the entity have controls and procedures in place which ensure reliable reporting — both internal and external (inbound and outbound) — in line with applicable requirements and standards?	../10
5. Monitoring Does the entity monitor internal controls regularly and effectively?	../10

Total score	../50
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SCORE

Answer to level 1 question is YES if the total score for all 5 components is at least 70 % and the score for each individual component is at least 2/10 or 20 %.

Answer to level 1 question is NO if the total score is less than 70 % or the score for one individual component is lower than 2/10 or 20 %.

PILLAR 2 — ACCOUNTING

Level 1 (Financial Regulation). Does the entity use an accounting system that provides in all material respects accurate, complete and reliable information in a timely manner, based on international accounting standards and in line with the criteria set by the European Commission?	YES/NO
Level 2 criteria/questions (3 components for accounting)	SCORE
	(0 – 10)
1. Accounting system and policies	../10
Does the entity use an adequate accounting system , and does it have clear and written accounting policies?	
2. Budgeting	../10
Does the entity have a budget system and procedures which result in transparent and reliable budgets for its operations and activities?	
3. Accounting and budgeting for specific projects, activities, (trust) funds and financial instruments ⁽¹⁾, where relevant	../10
Does the entity have: (i) accounting and budgeting procedures which enable adequate and timely reporting to donors/fund providers (including the European Commission) on the use of funds provided by them for projects, activities, (trust) funds and financial instruments; and (ii) the capacity and processes in place to produce financial statements ⁽²⁾ ?	
Total score	../30

SCORE

Answer to level 1 question is YES if the total score for all 3 components is at least 70 % and the score for each individual component is at least 2/10 or 20 %.

Answer to level 1 question is NO if the total score is less than 70 % or the score for one individual component is lower than 2/10 or 20 %.

(1) Reference to 'financial instruments' is deemed to also include budgetary guarantees.

(2) Cf. Article 209(4) of the 2018 EU Financial Regulation (FR).

PILLAR 3 — INDEPENDENT EXTERNAL AUDIT	
Level 1 (Financial Regulation). Is the entity subject to an independent external audit, required to be performed in all material respects in accordance with internationally accepted auditing standards by an audit service that is functionally independent of the entity, and in accordance with the criteria set by the European Commission?	YES/NO
Level 2 criteria/questions (3 components for independent external audit)	SCORE (0 – 10)
1. Legal and regulatory framework Does the entity have a clear regulatory framework for external audit?	../10

PILLAR 3 — INDEPENDENT EXTERNAL AUDIT

2. Principles Three possible situations can be distinguished depending on the applicable regulatory framework and the standards on auditing. Key question (level 2) — Applies if the external audit is performed by an <u>independent professional external audit firm (private sector)</u> in accordance with standards equivalent to international standards on auditing. Is the entity subject to an external audit which is: — performed by a professional external audit firm which is independent from the entity and which complies with the fundamental principles of professional ethics, which include: integrity, objectivity, professional competence and due care, confidentiality and professional behaviour? — performed in accordance with auditing standards equivalent to the international standards on auditing ('ISAs') issued by the International Auditing and Assurance Standards Board (IAASB)? Key question (level 2) — Applies if the external audit is performed by a <u>national audit institution (public sector)</u> in accordance with standards equivalent to international standards on auditing. Is the entity subject to an external audit which is: — performed by a national audit institution or a supreme audit institution (e.g. a national court of auditors or equivalent body) which is independent from the entity and which complies with the fundamental principles of professional ethics, which include: integrity, objectivity, professional competence and due care, confidentiality and professional behaviour? — performed in accordance with auditing standards equivalent to principles, standards and guidance issued by the International Organisation of Supreme Audit Institutions (INTOSAI)? Key question (level 2) — Applies if the external audit is performed by an <u>external audit or oversight body which operates under a specific regulatory or institutionalised framework</u> (e.g. external auditor of the UN) and which is independent from the entity in accordance with standards equivalent to international standards on auditing. Is the entity subject to an external audit which is: — performed by an external audit or oversight body which is independent from the entity and which complies with the fundamental principles of professional ethics, which include: integrity, objectivity, professional competence and due care, confidentiality and professional behaviour? — performed in accordance with auditing standards equivalent to the international standards on auditing ('ISAs') or INTOSAI standards?	../10
3. External audit procedures Is the entity subject to appropriate external audit procedures?	../10
Total score	../30

SCORE

Answer to level 1 question is YES if the total score for all 3 components is at least 70 % and the score for each individual component is at least 2/10 or 20 %.

Answer to level 1 question is NO if the total score is less than 70 % or the score for one individual component is lower than 2/10 or 20 %.

PILLAR 4 — GRANTS

Level 1 (Financial Regulation). Does the entity apply appropriate rules and procedures for providing financing from EU funds through grants and in accordance with the criteria set by the European Commission?	YES/NO
Level 2 criteria/questions (3 components for grants)	SCORE (0 – 10)
1. Legal and regulatory framework Does the entity have a clear legal and regulatory framework for providing grants?	../10
2. Principles Are the following principles integrated in the procedures, rules and criteria of the entity's grant award system: transparency, equal treatment, eligibility criteria, avoiding double funding, conflicts of interest? These principles must be integrated in the procedures, rules and criteria of the entity's grant award system in accordance with the overarching principle of proportionality . Principles are not absolute and a limited number of exceptions can be allowed provided that such exceptions are clearly stated, reasonable and justified.	../10
3. Grants procedures Does the entity apply appropriate rules and procedures for providing financing from EU funds through grants and in accordance with the criteria set by the European Commission?	../10
Total score	../30

SCORE

Answer to level 1 question is YES if the total score for all 3 components is at least 70 % and the score for each individual component is at least 2/10 or 20 %.

Answer to level 1 question is NO if the total score is less than 70 % or the score for one individual component is lower than 2/10 or 20 %.

PILLAR 5 — PROCUREMENT

Level 1 (Financial Regulation). Does the entity apply appropriate rules and procedures in all material respects for providing financing from EU funds through procurement and in accordance with the criteria set by the European Commission?	YES/NO
Level 2 criteria/questions (3 components for procurement)	SCORE (0 – 10)
1. Legal and regulatory framework Does the entity have a clear legal and regulatory framework for procurement?	../10

PILLAR 5 — PROCUREMENT

2. Principles Are the following principles integrated in the procedures, rules and criteria of the entity's procurement system: transparency, equal treatment, public access to procurement information, conflicts of interest and use of competitive tendering procedures and best value for money? These principles must be integrated in the procedures, rules and criteria of the entity's procurement system in accordance with the overarching principle of proportionality . Principles are not absolute and a limited number of exceptions can be allowed provided that such exceptions are clearly stated, reasonable and justified.	../10
3. Procurement procedures Does the entity apply appropriate rules and procedures for procurement?	../10
Total score	../30

SCORE

Answer to level 1 question is YES if the total score for all 3 components is at least 70 % and the score for each individual component is at least 2/10 or 20 %.

Answer to level 1 question is NO if the total score is less than 70 % or the score for one individual component is lower than 2/10 or 20 %.

PILLAR 6 — FINANCIAL INSTRUMENTS ⁽¹⁾

Level 1 (Financial Regulation). Does the entity apply appropriate rules and procedures in all material respects for providing financing from EU funds/budgetary guarantees through financial instruments/budgetary guarantees, and in accordance with the criteria set by the European Commission?	YES/NO
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Level 2 criteria/questions (3 components for financial instruments)	SCORE (0 – 10)
1. Legal and regulatory framework Does the entity have a clear legal and regulatory framework for the use and implementation of financial instruments/budgetary guarantees?	../10
2. Principles Are the following principles and conditions integrated in the procedures, rules and criteria of the entity's financial instruments/budgetary guarantees? <u>Basic principles (Article 209(1) FR).</u> Sound financial management, transparency, proportionality, non-discrimination, equal treatment and subsidiarity. <u>Selection of financial intermediaries (Article 216(3) FR).</u> Financial intermediaries must be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interest. <u>Conditions for financial instruments and budgetary guarantees (Article 209(2) FR).</u> Financial instruments and budgetary guarantees must comply with the following basic conditions: address market failures or sub-optimal investment situations, additionality, leverage effect and alignment of interest, as well as, where applicable, non-distortion of competition in the internal market and consistency with State aid rules.	../10
PILLAR 6 — FINANCIAL INSTRUMENTS ⁽¹⁾	
3. Financial instruments/budgetary guarantees procedures Does the entity apply appropriate rules and procedures for the use of financial instruments/budgetary guarantees?	../10
Total score	../30

SCORE

Answer to level 1 question is YES if the total score for all 3 components is at least 70 % and the score for each individual component is at least 2/10 or 20 %.

Answer to level 1 question is NO if the total score is less than 70 % or the score for one individual component is lower than 2/10 or 20 %.

⁽¹⁾ Reference to 'financial instruments' and 'EU funds' is deemed to also include budgetary guarantees.

PILLAR 6 — FINANCIAL INSTRUMENTS — additional Section 6A (additional questions for budgetary guarantees ⁽¹⁾)	
Level 2 criteria/questions (four additional components for budgetary guarantees) Does the entity have a credit risk management system and utilise an internal risk rating system appropriate to the nature, size and complexity of its activities?	YES/NO

1. Risk policy/strategic framework	../10
Does the entity have a sound policy and strategy in place to identify, manage, measure and control risk (focus on credit risk)?	
2. Risk governance	../10
Does the entity have an appropriate organisational framework to enable effective credit risk management, measurement and control, with sufficient qualitative and quantitative human and technical resources to carry out the required tasks?	
3. Credit risk identification, analysis and monitoring system	../10
Does the entity have a well-functioning system of credit risk identification, analysis and monitoring?	
4. Internal risk rating system (IRRS)	../10
Does the entity utilise an internal risk rating system (IRRS) appropriate to the nature, size and complexity of its activities?	
Total score	../40

SCORE

Answer to level 2 question is YES if the total score for all 4 components is at least 70 % and the scores for each component are at least 2/10 or 20 %.

Answer to level 2 question is NO if the total score is less than 70 % or the score for one component is lower than 2/10 or 20 %

(¹) Only applicable if the entity plans to request a budgetary guarantee from the EU.

PILLAR 6 – FINANCIAL INSTRUMENTS — additional sections 6B and 6C (optional (¹))

Level 1. Does the Entity implement in the selection/implementation of financial instruments/budgetary guarantees supported by Union funds, standards equivalent to applicable Union legislation and agreed international and Union standards, and therefore: a) does not support actions that contribute to tax avoidance and b) does not enter into operations with entities incorporated or established in non-cooperative jurisdictions for tax purposes?	YES/NO
Level 2 criteria/questions (2 components for controls related to tax avoidance and noncooperative jurisdictions)	SCORE (0 – 10)

Controls related to Tax avoidance and Non-Cooperative Jurisdictions (NCJs) Does the Entity implement in the selection/implementation of financial instruments/budgetary guarantees supported by Union funds, standards equivalent to applicable Union legislation and agreed international and Union standards ⁽²⁾ and therefore: 1) does not support actions that contribute to tax avoidance and 2) does not enter into operations with entities incorporated or established in non-cooperative jurisdictions for tax purposes,	../10
Level 1. Does the Entity implement in the selection/implementation of financial instruments/budgetary guarantees, standards equivalent to applicable Union legislation and agreed international and Union standards, and therefore: c) does not support actions contributing to money laundering and terrorism financing and d) does not enter into new or renewed operations with entities incorporated or established in jurisdictions identified as high risk third countries?	YES/NO
Level 2 criteria/questions (2 components for controls related to anti-money laundering and countering terrorism financing)	SCORE (0 – 10)
Anti-Money Laundering (AML) and Countering Terrorism Financing (CTF) Does the Entity implement in the selection/implementation of Financial Instruments/Budgetary Guarantees, standards equivalent to applicable Union legislation and agreed international and Union standards that provide reasonably effective safeguards and therefore: 1) does not support actions contributing to money laundering and terrorism financing and 2) does not enter into new or renewed operations with entities incorporated or established in jurisdictions identified as high risk third countries ⁽³⁾	../10
PILLAR 6 – FINANCIAL INSTRUMENTS — additional sections 6B and 6C (optional ⁽¹⁾)	

Answer to level 1 question is YES if the total score for the relevant section is at least 70 %.

Answer to level 1 question is NO if the total score for the relevant section is less than 70 %.

- (1) In order to implement Union funds through financial instruments, the entity will need to comply with the relevant requirements under the Financial Regulation covered in the additional sections 6B and 6C through appropriate contractual arrangements, even if opting not to undergo the pillar assessment of these sections.
- (2) The EU tax policy and regulatory framework includes, in particular and subject to further developments: Code of Conduct for business taxation, 1.12.1997 (OJ C 2, 6.1.1998); Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8); Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest on royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49); Commission Recommendation 2012/772/EU of 6 December 2012 on aggressive tax planning (OJ L 338, 12.12.2012, p. 41); Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1); Commission AntiTax Avoidance Package: Next steps towards delivering effective taxation and greater tax transparency in the EU (COM/2016/23), Commission Recommendation (EU) 2016/136 of 28 January 2016 on the implementation of measures against tax treaty abuse (OJ L 25, 2.2.2016, p. 67); Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1); ECOFIN Council conclusions of 12 February, 8 March, 25 May, 17 June, 8 November and 5 December 2016, 5 December 2017, 23 January and 13 March 2018.
- (3) Taking into account Directive (EU) 2015/849.

PILLAR 7 — EXCLUSION FROM ACCESS TO FUNDING

	YES/NO
Level 1 (Financial Regulation). Does the entity apply appropriate rules and procedures for excluding third parties from access to funding through procurement, grants and/or financial instruments ⁽¹⁾?	
Level 2 criteria/questions (3 components for exclusion from access to funding)	SCORE
	(0 – 10)
1. Legal and regulatory framework	../10
Does the entity have a clear legal and regulatory framework regarding exclusion from funding?	
2. Exclusion criteria	../10
Are exclusion criteria integrated in the procedures and rules for the award of procurement contracts, grants and/or financial instruments?	
3. Exclusion procedures	../10
Does the entity effectively apply rules and procedures for exclusion referred to under 2?	

Total score	../30
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PILLAR 7 — EXCLUSION FROM ACCESS TO FUNDING**SCORE**

Answer to level 1 question is YES if the total score for all 3 components is at least 70 % and the score for individual components 1 or 3 is at least 2/10 or 20 % or the score for individual component 2 is at least 5/10 or 50 %.

Answer to level 1 question is NO if the total score is less than 70 % or the score for individual components 1 or 3 is lower than 2/10 or 20 % or the score for individual component 2 is lower than 5/10 or 50 %.

(¹) The exclusion of third parties must be assessed for grants, procurement and/or financial instruments when the respective pillar (grants, procurement and financial instruments) has been assessed. Reference to 'financial instruments' and 'EU funds' is deemed to also include budgetary guarantees.

PILLAR 8 — PUBLICATION OF INFORMATION ON RECIPIENTS AND OTHER INFORMATION

Level 1 (Financial Regulation) Does the entity make public information on the recipients of funds in an appropriate and timely manner (¹)?	YES/NO
Level 2 criteria/questions (3 components for publication of recipients)	SCORE (0 – 10)
1. Legal and regulatory framework Does the entity have a clear legal and regulatory framework on publication of recipients, covering (1) the publication of appropriate information on fund beneficiaries; (2) a reference to a common international standard ensuring protection of fundamental rights and of commercial interests; and (3) regular publication updates?	../10
2. Requirements If the regulatory framework is implemented by an additional set of procedures for publication, do the latter integrate its requirements ?	../10

3. Publication procedures	../10
Does the entity effectively apply rules and procedures for publication based on the requirements mentioned under 2?	
Total score	../30

SCORE

Answer to level 1 question is YES if the total score for all 3 components is at least 70 % and the score for each individual component is at least 2/10 or 20 %.

Answer to level 1 question is NO if the total score is less than 70 % or the score for one individual component is lower than 2/10 or 20 %.

(¹) The publication of information on recipients must be assessed for grants, procurement and/or financial instruments once the corresponding pillar (grants, procurement and financial instruments) has been assessed.

PILLAR 9 — PROTECTION OF PERSONAL DATA

Level 1 (Financial Regulation) Does the entity ensure protection of personal data equivalent to that referred to in Article 5 of the FR (¹)?	YES/NO
Level 2 criteria/questions (3 components for protection of personal data)	SCORE
	(0 – 10)
1. Legal and regulatory framework	../10
Does the entity have a clear legal and regulatory framework regarding protection of personal data?	
2. Requirements	../10
Are requirements integrated in the procedures and rules for the protection of personal data?	
3. Procedures	../10
Does the entity effectively apply rules and procedures (e.g. appropriate technical and organisational measures) for protection of personal data (in the provision of grants/procurement/ financial instruments, as appropriate) based on the requirements mentioned under 2?	
Total score	../30

SCORE

Answer to level 1 question is YES if the total score for all 3 components is at least 70 % and the score for each individual component is at least 2/10 or 20 %.

Answer to level 1 question is NO if the total score is less than 70 % or the score for one individual component is lower than 2/10 or 20 %.

(¹) In line with Regulations (EU) 2018/1725 and (EU) 2016/679.

