# ANNEX 3. GROUNDS FOR EXCLUSION OF SUPPLIERS

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| **Item No** | **Requirement** | **Documents proving compliance** | **Entity that must meet the requirement** |
| 1. | A supplier shall be excluded from the procurement procedure if (Article 46(1) of LPP (ESPD Part III, A1-A6 and D1)):  The supplier or the supplier’s officer referred to in Article 46(2)(2) of LPP was convicted of any of the following criminal acts:  1) participating in, organising or leading a criminal organisation;  2) bribery, influence peddling, corruption;  3) fraud, misappropriation of assets, squandering of assets, fraudulent statement on legal entity‘s activities, use of a credit, loan or target support not according to its intended purpose, failure to present a tax return or report or presentation of false, incorrect or incomplete statements or documents, fraudulent account keeping where such criminal acts represent an encroachment upon financial interests of the European Communities as defined in Article 1 of the Convention on the protection of the European Communities' financial interests;  4) criminal bankruptcy;  5) terrorist offences or offences linked to terrorist activities;  6) legalisation of criminal proceeds;  7) trafficking in human beings, selling or buying a child;  8) an offence committed by a foreign supplier as defined in the legal acts of other states that implement the EU legal acts listed in Article 57(1) of Directive 2014/24/EU.  It shall be deemed that the supplier or his officer was convicted of a criminal act referred to above if:  1) with respect to the supplier – a natural person, a conviction was handed down by a court and has taken effect, during the past 5 years, and the criminal record of such person has not expired and has not been quashed;  2) a conviction was handed down by a court and has taken effect, during the past 5 years, with respect to the head or a member of a management/supervisory body of the supplier which is a legal person, another organisation or a division thereof, or another person having the right to represent or control the supplier, to adopt decisions on his behalf, to conclude a transaction, or a person/persons having the right to draw up and sign the supplier‘s accounting documents, and the criminal record of such individual has not expired and has not been quashed;  3) a conviction was handed down by a court and has taken effect, during the past 5 years, with respect to the supplier which is a legal person, another organisation or a division thereof, or, in the case of Article 46(3) of LPP – a final administrative decision, if such decision is taken according to the law of the supplier‘s country.  Where a term of these grounds for exclusion has been set for a supplier by a court order that has entered into effect, the Contracting Authority shall exclude the supplier from the Procurement during the period specified in the court order. | An entity registered in Lithuania must present:   * An extract from a court decision or * A certificate issued by the Informatics and Communications Department under the Ministry of the Interior or * A document issued by VĮ Registrų centras (Centre of Registers) according to a procedure prescribed by the Government of the Republic of Lithuania evidencing the aggregate data processed by competent authorities.   An entity registered in a country other than Lithuania must present: - a relevant document issued by a foreign authority.  If the supplier is unable to provide the specified documents proving absence of the exclusion grounds stated in Article 46 (1), (3) and subpara. 2 of (6) of LPP because such documents are not issued in the relevant country, or documents issued in that country do not cover all the matters referred to in Article 46 (1), (3) and subpara. 2 of (6) of LPP, they may be replaced with:  a) an affidavit;  b) an official supplier’s declaration if no affidavits are used in the country. The official declaration must be certified by a competent legal or administrative body, a notary or a competent professional of trade organisation of the Member State or the supplier‘s country of origin or registration.  The said documents must be issued no earlier than 180 days prior to the date when the potential winner will have to submit, at the Contracting Authority‘s request, the documents proving absence of the grounds for exclusion.   If the document was issued earlier but the term of validity specified therein is longer than the time limit for the submission of the documents proving the absence of exclusion grounds according to the ESPD, such document shall be acceptable during the term of its validity. | The supplier, each member of the group of suppliers and each economic operator whose capacities the supplier is relying on. |
| 2. | A supplier shall be excluded from the procurement procedure if ((ESPD Part III, B1 and B2):  The supplier was convicted of non-performance of his liabilities related to the payment of taxes and social security contributions according to the legal acts of the country of the supplier‘s registration or the country of the Contracting Authority as defined in subpara. 1 and 3 of Article 46(2) of LPP, or the Contracting Authority has other evidence of non-performance of such obligations.   It shall be deemed that the supplier or his officer was convicted of a criminal act referred to above if:  1) with respect to the supplier – a natural person, a conviction was handed down by a court and has taken effect, during the past 5 years, and the criminal record of such person has not expired and has not been quashed;  2) a conviction was handed down by a court and has taken effect, during the past 5 years, with respect to the supplier which is a legal person, another organisation or a division thereof, or, in the case of paragraph 3 of this Article – a final administrative decision, if such decision is taken according to the law of the supplier‘s country.  This provision shall not be applied, however, if:  1) the supplier has undertaken to pay taxes and social security contributions and, therefore, it is deemed that the obligations have been fulfilled;  2) the amount owed does not exceed EUR 50; 3) the supplier was informed about the exact amount of his debt at a time when it was impossible, by the end of the term for the submission of tenders, to pay the taxes and social security contributions, to conclude a tax loan agreement or another similar agreement on the payment of the debt, or to take other steps to comply with p. 1. The supplier shall not be excluded from the procurement if, on receipt of the Contracting Authority‘s request to provide relevant documents under Article 50(6) of the Law on Public Procurement, he proves that he is deemed to have performed the obligations to pay taxes and social security contributions. | 1) Regarding performance of tax liabilities, an entity registered in Lithuania must submit:  - An extract from a court decision (if any) or a document issued by the State Inspectorate under the Ministry of Finance of the Republic of Lithuania, or  - A document issued by VĮ Registrų centras (Centre of Registers) according to a procedure prescribed by the Government of the Republic of Lithuania evidencing the aggregate data processed by competent authorities.  An entity registered in a country other than Lithuania must submit:  - a relevant document issued by a foreign authority.  If the supplier is unable to provide the specified documents proving absence of the exclusion grounds stated in Article 46 (1), (3) and subpara. 2 of (6) of LPP because such documents are not issued in the relevant country, or documents issued in that country do not cover all the matters referred to in Article 46 (1), (3) and subpara. 2 of (6) of LPP, they may be replaced with:  a) an affidavit;  b) an official supplier’s declaration if no affidavits are used in the country. The official declaration must be certified by a competent legal or administrative body, a notary or a competent professional of trade organisation of the Member State or the supplier‘s country of origin or registration.  The said documents must be issued no earlier than 120 days prior to the date when the potential winner will have to submit, at the Contracting Authority’s request, the documents proving absence of the grounds for exclusion.   If the document was issued earlier but the term of validity specified therein is longer than the time limit for the submission of the documents proving the absence of exclusion grounds according to the ESPD, such document shall be acceptable during the term of its validity.  2) Regarding performance of social security payment obligations, an entity registered in Lithuania must submit: 2.1) If the supplieris a legal person registered in the Republic of Lithuania, no documentary evidence is required. The Contracting Authority will check the data in the national database at http://draudejai.sodra.lt/draudeju\_viesi\_duomenys/.  In the case if the Contracting Authority has no access for checking the data on the supplier (a legal person) due to technical issues of the Information System of the State Social Security Fund Board (SoDra), the Commission shall request such person to provide an extract from a court decision (if any) or a document proving compliance, issued by SoDra according to a prescribed procedure. The supplier may also submit a document issued by VĮ Registrų centras (Centre of Registers) according to a procedure prescribed by the Government of the Republic of Lithuania evidencing the aggregate data processed by competent authorities.  2.2) A supplier – natural person registered in the Republic of Lithuania shall submit an extract from a court decision (if any) or a document proving compliance issued by SoDra, or a document issued by VĮ Registrų centras according to a procedure prescribed by the Government of the Republic of Lithuania evidencing the aggregate data processed by competent authorities.  An entity registered in a country other than Lithuania must present:  - a relevant document issued by a foreign authority.  If the supplier is unable to provide the specified documents proving absence of the exclusion grounds stated in Article 46 (1), (3) and subpara. 2 of (6) of LPP because such documents are not issued in the relevant country, or documents issued in that country do not cover all the matters referred to in Article 46 (1), (3) and subpara. 2 of (6) of LPP, they may be replaced with:  a) an affidavit;  b) an official supplier’s declaration if no affidavits are used in the country. The official declaration must be certified by a competent legal or administrative body, a notary or a competent professional of trade organisation of the Member State or the supplier‘s country of origin or registration.  The said documents must be issued no earlier than 120 days prior to the date when the potential winner will have to submit, at the Contracting Authority’s request, the documents proving absence of the grounds for exclusion.  If the document was issued earlier but the term of validity specified therein is longer than the time limit for the submission of the documents proving the absence of exclusion grounds according to the ESPD, such document shall be acceptable during the term of its validity. | The supplier, each member of the group of suppliers and each economic operator whose capacities the supplier is relying on. |
| 3. | 1. A supplier shall be excluded from the procurement procedure if (Article 46(4)(1) of LPP (ESPD Part III, C10)):  The supplierhas entered into an arrangement with another supplier aimed at distorting competition in the Procurement, and the Contracting Authority has convincing evidence thereof.  2. A supplier shall be excluded from the procurement procedure if (Article 46(4)(2) of LPP (ESPD Part III, C12)):  The supplier has become involved in a conflict of interest during the procurement as defined in Article 21 of the Law on Public Procurement, and the situation cannot be rectified. It shall be deemed that a conflict of interest cannot be rectified if the persons involved in the conflict of interests have determined decisions taken by the Commission and changing of such decisions would contradict the Law on Public Procurement.  3. A supplier shall be excluded from the procurement procedure if (Article 46(4)(3) of LPP (ESPD Part III, C13):  Competition has been damaged as defined in Article 27 (3) and (4) of the Law on Public Procurement and the situation cannot be rectified.  4. A supplier shall be excluded from the procurement procedure if (Article 46(4)(4) of LPP (ESPD Part III, C15):  The supplier has concealed information during the Procurement or provided untrue information about compliance with Articles 46 and 47 of the Law on Public Procurement, and the Contracting Authority can prove this by any legitimate means, or the supplier is unable to justify the untrue information by submitting supporting documents according to Article 50 of the Law on Public Procurement.  The supplier shall also be excluded from the procurement if he had concealed information or provided untrue information during previous procurement procedures conducted in accordance with the LPP, the Law on Public Procurement Conducted in the Areas of Defence and Security, the Law on Procurement Conducted by Contracting Entities in the Water Management, Energy, Transport or Postal Service Sectors, or the Law on Concessions; or the supplier was unable to justify the untrue information by submitting supporting documents according to Article 50 of the Law on Public Procurement, as a result of which he was excluded from a procurement procedure or a concession granting procedure during the last year.  The suppliershall also be excluded from procurement on this ground if, pursuant to legal acts of a foreign state, he had concealed information or provided untrue information during previous procurement procedures or was unable to justify the untrue information by submitting supporting documents, as a result of which he was excluded from a procurement procedure or a concession granting procedure during the last year, or other similar sanctions are applied.  5. A supplier shall be excluded from the procurement procedure if (Article 46(4)(5) of LPP (ESPD Part III, C15):  The supplierhas performed unlawful actions during the procurement procedure in order to exert influence over decisions of the Contracting Authority or to obtain confidential information in order to gain unlawful advantage in the procurement, or provided misleading information which could have significant influence over the Contracting Authority‘s decisions on exclusion of suppliers, evaluation of their qualifications or award of contract, and the Contracting Authority can prove this by any legitimate means.  6. A supplier shall be excluded from the procurement procedure if (Article 46(4)(6) of LPP (ESPD Part III, C14):  The supplierhas failed to perform a procurement contract concluded under the LPP, the Law on Public Procurement Conducted in the Areas of Defence and Security, the Law on Procurement Conducted by Contracting Entities in the Water Management, Energy, Transport or Postal Service Sectors, or a concession contract; or has performed such contract improperly, which constituted a material breach of the contract according to Article 6.217 of the Civil Code (‘a material breach of contract’), as a result of which a procurement contract was terminated during the past 3 years, or a court decision was rendered and took effect, during the past 3 years, whereby the court satisfied a claim for damages filed by a contracting authority, a contracting entity or a granting authority due to losses incurred as a result of significant or constant deficiencies in the performance of an essential clause of the procurement contract by the supplier, or during the past 3 years a contracting authority took a decision to the effect that the supplier had performed an essential clause of the contract with significant or persistent deficiencies, as a result of which a sanction was imposed under the contract.  The suppliershall also be excluded from procurement if it has been established during the past 3 years, pursuant to legal acts of a foreign state, that he, while performing a previous procurement contract, a previous procurement contract with the contracting entity or a concession contract, performed an essential clause of the contract with significant or constant deficiencies, as a result of which the contract was terminated prior to the end of its term and payment of damages was claimed or similar sanctions were applied.  7. A supplier shall be excluded from the procurement procedure if (Article 46(4)(7)(a) of LPP (ESPD Part III, C11):  The supplieris guilty of serious professional misconduct, therefore, the Contracting Authority doubts the supplier’s good faith after he committed a violation of legal acts governing financial statements and audit, and the period that elapsed from the date of the violation is shorter than one year.  8. A supplier shall be excluded from the procurement procedure if (Article 46(4)(7)(b) of LPP (ESPD Part III, C11):  The supplieris guilty of serious professional misconduct, therefore, the Contracting Authority doubts the supplier’s good faith as the supplier does not meet the criteria for a reliable taxpayer set in Article 401(1) of the Republic of Lithuania Law on Tax Administration.  9. A supplier shall be excluded from the procurement procedure if (Article 46(4)(7)(c) of LPP (ESPD Part III, C11): The supplieris guilty of serious professional misconduct, therefore, the Contracting Authority doubts the supplier’s good faith as the supplier had violated the ban on prohibited arrangements established in the Republic of Lithuania Law on Competition or a similar legal acts, and the period elapsed since the date of the violation is shorter than 3 years.  Where a term of these grounds for exclusion has been set for a supplier by a court order that has entered into effect, the Contracting Authority shall exclude the supplier from the Procurement during the period specified in the court order.  The supplier shall be excluded from the Procurement on the basis of these grounds also when the Contracting Authority has convincing evidence of the supplier‘s establishment or of the supplier‘s participation in the Procurement instead of another person in order to avoid application of these grounds for exclusion. | No documentary proof is required from entities established in Lithuania; submission of the ESPD is sufficient.  In deciding on the supplier’s exclusion from the Procurement on the ground referred to in Article 46 (4)(4) of LPP, the Contracting Authority may take account, *inter alia*, of the information published according to Article 52 of LPP:  https://vpt.lrv.lt/melaginga-informacija-pateikusiu-tiekeju-sarasas-3  In deciding on the supplier’s exclusion from the Procurement on the ground referred to in Article 46(4)(6) of LPP, the Contracting Authority may take account, *inter alia*, of the information published according to Article 91 of LPP:  https://vpt.lrv.lt/lt/pasalinimo-pagrindai-1/nepatikimi-tiekejai-1  https://vpt.lrv.lt/lt/pasalinimo-pagrindai-1/nepatikimu-koncesininku-sarasas-1/nepatikimu-koncesininku-sarasas  In deciding on the supplier’s exclusion from the Procurement on the ground referred to in Article 46(4)(7)(a) of LPP, the Contracting Authority may take account, *inter alia*, of the information contained in the national database at:  https://www.registrucentras.lt/jar/p/index.php as well as information provided in the following publication: https://vpt.lrv.lt/lt/naujienos/finansiniu-ataskaitu-nepateikimas-gali-tapti-kliutimi-dalyvauti-viesuosiuose-pirkimuose   In deciding on the supplier’s exclusion from the Procurement on the ground referred to in Article 46(4)(7)(b) of LPP, the Contracting Authority may take account, *inter alia*, of the information contained in the national database at  https://www.vmi.lt/evmi/mokesciu-moketoju-informacija.  In deciding on the supplier’s exclusion from the Procurement on the ground referred to in Article 46(4)(7)(c) of LPP, the Contracting Authority may take account, *inter alia*, of the information contained in the national database at:  https://kt.gov.lt/lt/atviri-duomenys/diskvalifikavimas-is-viesuju-pirkimu. | The supplier, each member of the group of suppliers and each economic operator whose capacities the supplier is relying on. |