

**DECISION (EU) 2016/956 OF THE EUROPEAN CENTRAL BANK****of 7 June 2016****amending Decision (EU) 2016/245 (ECB/2016/2) laying down the rules on procurement (ECB/2016/17)**

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 11.6 thereof,

Having regard to Decision ECB/2004/2 of 19 February 2004 adopting the Rules of Procedure of the European Central Bank <sup>(1)</sup>, and in particular Article 19 thereof,

Whereas:

- (1) For the sake of clarity, some of the rules laid down in Decision (EU) 2016/245 of the European Central Bank (ECB/2016/2) <sup>(2)</sup> need to be refined further.
- (2) Therefore, Decision (EU) 2016/245 (ECB/2016/2) should be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

**Amendments**

Decision (EU) 2016/245 (ECB/2016/2) is amended as follows:

1. in Article 8, paragraph 2 is replaced by the following:

‘2. The ECB may order from the initial contractor additional products, services or works, irrespective of their value, provided that the necessary amendments to the initial contract are not substantial.

Amendments shall be considered substantial if they change the overall nature of the contract, in particular where one or more of the following conditions are met:

- (a) the amendment introduces conditions which, had they been part of the initial procurement procedure, would have allowed for the admission of candidates other than those initially selected, or for the acceptance of a tender other than that originally accepted or would have attracted additional participants in the procurement procedure;
- (b) the amendment changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the initial contract;
- (c) the amendment extends the scope of the contract considerably;
- (d) a new contractor replaces the one to which the initial contract was awarded in cases other than those provided for in paragraph 4.

Amendments shall be considered not to be substantial in any circumstances if their cumulative value remains below (a) the relevant threshold set out in Article 4(3), and (b) 10 % of the initial contract value for supply and service contracts or 15 % of the initial contract value for works contracts.;

2. in Article 11, the last sentence of paragraph 3 is deleted;
3. in Article 12, the last sentence of paragraph 4 is deleted;
4. in Article 24, paragraph 1 is deleted;

<sup>(1)</sup> OJ L 80, 18.3.2004, p. 33.

<sup>(2)</sup> Decision (EU) 2016/245 of the European Central Bank of 9 February 2016 laying down the rules on procurement (ECB/2016/2) (OJ L 45, 20.2.2016, p. 15).

5. in Article 30, paragraph 7 is replaced by the following:

‘7. Where a candidate or tenderer, or an undertaking related to a candidate or tenderer, has been involved in the preparation of a procurement procedure, for example by advising on the procurement strategy or developing specifications, the ECB shall take appropriate measures to ensure that competition is not distorted by the participation of that candidate or tenderer. The ECB may exclude the candidate or tenderer concerned from the procedure, if this is necessary for that purpose. Prior to exclusion, the candidate or tenderer shall be given the opportunity to prove that their previous involvement does not distort competition.’;

6. in Article 35, point 3 is replaced by the following:

‘3. The ECB shall select the suppliers invited to participate in the tender procedure either from among the tenderers admitted to a dynamic purchasing system or, where no such system is in place, from a list of suitable suppliers drawn up following a call for expression of interest. Where no such list is established, the ECB shall select the suppliers to be invited at its own discretion, on the basis of a proper market analysis, taking account of any possible cross-border interest, confirming the suppliers’ suitability and their interest in participating in the procedure. The market analysis may include a publication of the contract opportunity in an electronic procurement system. Alternatively, the ECB may publish a contract notice on its website or using other appropriate media. In that case, the suppliers invited to participate in the tender procedure shall be selected on the basis of the responses received. Other suppliers that meet the same criteria may also be invited to participate in the tender procedure.’;

7. in Article 35, point 4 is replaced by the following:

‘4. If the value of a service contract referred to in Article 6(2) net of VAT exceeds or is equal to EUR 750 000, the ECB shall publish a contract notice in the Official Journal. The suppliers invited to participate in the tender procedure shall be selected on the basis of the responses received. Other suppliers that meet the same criteria may also be invited to participate in the tender procedure.’;

8. in Article 41, the first sentence of paragraph 2 is replaced by the following:

‘Tender procedures that were started before the entry into force of this Decision shall be completed in accordance with Decision ECB/2007/5.’.

## *Article 2*

### **Entry into force**

This Decision shall enter into force on 1 July 2016.

Done at Frankfurt am Main, 7 June 2016.

*The President of the ECB*  
Mario DRAGHI

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