Commission Delegated Regulation (EU) 2015/2461 of 30 October 2015 amending Delegated Regulation (EU) No 110/2014 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council

COMMISSION DELEGATED REGULATION (EU) 2015/2461

of 30 October 2015

amending Delegated Regulation (EU) No 110/2014 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 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) 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[(1)], and in particular Article 209 thereof,

Whereas:

(1) Regulation (EU, Euratom) No 547/2014 of the European Parliament and of the Council[(2)] was accompanied by a joint statement on the separate discharge for joint undertakings under Article 209 of the Regulation (EU, Euratom) No 966/2012. In accordance with that statement, Regulation (EU, Euratom) 2015/1929 of the European Parliament and of the Council[(3)] aligned the rules on external audit and discharge applicable to the public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 (hereinafter 'PPP bodies') with those applicable to the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012. It also extended the non-application of the provisions laid down in paragraphs 5 and 6 of Article 60 of Regulation (EU, Euratom) No 966/2012 to the PPP bodies.

(2) Since the discharge for the implementation of the budget of each PPP body is to be given by the European Parliament, upon recommendation of the Council, to the director of the PPP body, the provisions of Commission Delegated Regulation (EU) No 110/2014[(4)] which relate to the reporting obligations of the PPP bodies and to the discharge procedure should be made consistent with the corresponding provisions of Commission Delegated Regulation (EU) No 1271/2013[(5)]. In particular, it is necessary to introduce the obligation for each PPP body to provide a consolidated annual activity report which includes comprehensive information on the implementation of its work programme, budget, staff establishment plan, its management and internal control systems. Furthermore, the procedure for drawing up the provisional accounts and approving the final account of the PPP bodies should be aligned to the one laid down in Delegated Regulation (EU) No 1271/2013.

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/2461. (See end of Document for details)*

(3) In line with the new obligation introduced in Article 209(2) of Regulation (EU, Euratom) No 966/2012, which requires that an independent external auditor verify the annual accounts of the PPP body, the provisions in Delegated Regulation (EU) No 110/2014 should be aligned with the corresponding provisions in Delegated Regulation (EU) No 1271/2013.

(4) In the award of contracts, the relevant provisions of Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012[(6)] should apply, subject to any specific provision of the constituent instrument of the PPP body or of the basic act of the programme the implementation of which is entrusted to the PPP body in order to ensure a coherent implementation with actions directly managed by the Commission.

(5) This Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union* in order to allow for the timely adoption of the revised financial rules of the PPP bodies in view of their entry into force as of 1 January 2016, and thus to ensure the effective application of the new external audit requirements to the audits of the annual accounts of the PPP bodies for 2016,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 110/2014 is amended as follows:

(1) in Article 1, the first paragraph is replaced by the following:

> This Regulation lays down the essential principles on the basis of which the Public-Private Partnership body (hereinafter "PPP body") shall adopt its own financial rules. The financial rules of the PPP body shall not depart from this Regulation except where its specific needs so require and with the Commission's prior consent in accordance with the fourth subparagraph of Article 209(1) of Regulation (EU, Euratom) No 966/2012.;

(2) in Article 17, paragraph 4 is replaced by the following:

4. The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget of the PPP body for the year concerned. Personal data contained in the supporting documents shall be deleted where possible when those data are not necessary for control and audit purposes. In any event, as regards the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply.;

(3) Article 20 is replaced by the following:

Article 20

Annual reporting

1 The authorising officer shall report annually to the governing board on the performance of his or her duties in the form of a consolidated annual activity report containing:

***Changes to legislation:** There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/2461. (See end of Document for details)*

a information on:

(i) the implementation of the PPP body's annual work programme, budget and staff resources;

(ii) management and internal control systems including the summary of number and type of internal audits carried out by the internal auditor, the internal audit capabilities, the recommendations made and the action taken on those recommendations and on the recommendations of previous years, as referred to in Articles 26 and 28;

(iii) any observations of the Court of Auditors and the actions taken on those observations;

(iv) the accounts and the report on budgetary and financial management without prejudice to Articles 39, 41 and 42;

b a declaration of the authorising officer stating whether he or she has a reasonable assurance that unless otherwise specified in any reservations related to defined areas of revenue and expenditure:

(i) the information contained in the report presents a true and fair view;

(ii) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;

(iii) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The consolidated annual activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with the operations, the use made of the resources provided and the efficiency and effectiveness of the internal control systems, including an overall assessment of the costs and benefits of controls.

The consolidated annual report shall be submitted to the governing board for assessment.

2 No later than 1 July each year, the governing board shall send the consolidated annual activity report together with its assessment of it to the Court of Auditors, the Commission, the European Parliament and the Council.

3 Additional reporting requirements may be laid down in the constituent instrument in duly justified cases, in particular when it is required by the nature of the field in which the body operates.;

(4) in Article 33, paragraph 1 is replaced by the following:

1. As regards procurement, Title V of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraphs 3 to 6 of this Article and any specific provisions of the constituent instrument or the basic act of the programme the implementation of which is entrusted to the PPP body.;

(5) Article 35 is replaced by the following:

Changes to legislation: *There are currently no known outstanding effects for the Commission Delegated Regulation (EU) 2015/2461. (See end of Document for details)*

Article 35

Grants

As regards grants, Title VI of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to any specific provisions of the constituent instrument or of the basic act of the programme the implementation of which is entrusted to the PPP body.;

(6) in Article 39, the third paragraph is replaced by the following:

Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the PPP body shall send the report on budgetary and financial management to the European Parliament, the Council, the Commission and the Court of Auditors by 31 March of the following financial year.;

(7) Article 43 is replaced by the following:

Article 43

Provisional accounts and approval of the final accounts

1 Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the PPP body shall send the provisional accounts to the accounting officer of the Commission and to the Court of Auditors by 1 March of the following year.

In the case referred to in the first subparagraph, the accounting officer of the PPP body shall also send by 1 March of the following year a reporting package to the accounting officer of the Commission, in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

2 The Court of Auditors shall, by 1 June of the following year at the latest, make its observations on the provisional accounts of the PPP body.

On receiving the Court of Auditor's observations on the provisional accounts, the accounting officer shall draw up the final accounts of the PPP body. The director shall send the final accounts to the governing board which shall issue an opinion on them.

Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting officer shall send the final accounts and the opinion of the governing board to the accounting officer of the Commission, the Court of Auditors, the European Parliament and the Council, by 1 July of the following financial year. In such case the accounting officer of the PPP body shall also send by 1 July a reporting package to the accounting officer of the Commission in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the PPP body shall also send to the Court of