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EXECUTIVE VICE-PRESIDENT OF THE EUROPEAN COMMISSION

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Dear Mr Ehrmann,

Thank you for your letter of 29 April to President von der Leyen, Executive Vice-President Timmermans, and myself concerning the award of a study to BlackRock on the integration of environmental, social, and governance (ESG) factors into the EU banking prudential framework and into banks. The President has asked me to reply to you.

First of all, I would like to reconfirm the Commission's commitment to the European Green Deal, to the implementation of the European Green Deal Investment Plan and to turning Europe climate-neutral by 2050. The recently adopted proposal for an ambitious Multiannual Financial Framework (MFF) and the recovery strategy are fully aligned with the green transition. The post-crisis recovery should be used to set our economies on a path that is climate and environment-friendly, and this is also reflected in the Country Specific Recommendations we presented on 20 May.

This occasion gives me the opportunity to remind you of my personal commitment to the sustainable finance agenda. It is my strong conviction that the green transition cannot happen without the full participation of the private sector, as public investments will simply not be enough. This is the reason why I have championed the sustainable finance agenda since 2016, when I asked the Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) to establish a first high-level group on sustainable finance – long before it became mainstream. Thanks to our first-mover advantage, we have helped to make the European Union a global frontrunner in this field and we intend to continue to drive this agenda forward.

I would like to acknowledge the high merits of civil society organisations such as yours in promoting the sustainable finance agenda and supporting the adoption of cornerstone laws, such as the taxonomy, just to give one example.

Our work however is not over. Let me underline the importance of continued support by civil society organisations.

Our aim is to move forward fast but also in a credible manner. We want our policies to be underpinned by solid scientific work and studies. In this context, and as a result of a procurement procedure run by DG FISMA, Blackrock has been selected to perform one among many reports that the Commission has commissioned to inform the next steps of its policy on sustainable finance.

I would like to assure you that the Commission takes the concerns expressed in your letter about a possible conflict of interest seriously. Let me reassure you that the procedure used when awarding the contract to BlackRock followed scrupulously the rules of the Financial Regulation.¹ Please see more details in the Annex herewith attached.

Let me however stress that procurement awards should never be political decisions. Procedures for awarding contracts must be carried out in full and strict compliance with the applicable EU procurement rules, including on eligibility of tenderers and on the prevention of any potential conflict of interest.

Yours sincerely,



Valdis Dombrovskis

Annex: response of the Commission's services

¹ 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.

ANNEX FROM COMMISSION SERVICES

I. Procedure followed

The procedure used when awarding the contract to BlackRock followed the rules of the Financial Regulation³ for an open tender procedure. Procurement by the Commission does not follow the rules of Directive 2014/24 EU on public procurement, mentioned in the MEPs' letter, as Directives are addressed only to Members States. However, the Financial Regulation's rules on public procurement are closely aligned to those of that Directive.

In line with the applicable rules, an open tender procedure was used because the estimated value of the study (EUR 550 000 based upon the maximum budget set by the European Parliament) was above the set threshold (currently EUR 139 000). In addition, an open tender procedure was used so that any interested party could decide whether it would want to submit an offer.

The tender documents were published online (Website Tenders Electronic Daily – Supplement to the Official Journal) on 30 July 2019⁴.

By the deadline for submission of offers (9 October 2019), nine offers were received which were opened on 11 October at a session to which all those who had made an offer could attend.

The offers were opened by a committee of three members from two different units of DG FISMA. No offers were rejected for non-compliance with the requirements for tender submission.

The contract award criterion was the most economically advantageous tender based on the 'price-quality ratio' (with the technical quality of the offers accounting for 70% of the overall score and price 30%).

³ 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.

⁴ Ref: 2019/S 145-355938, OJ S145 30-07-2019, <https://ted.europa.eu/udl?uri=TED:NOTICE:355938-2019:TEXT:EN:HTML>.

The offers were evaluated by a committee of five members, three of whom were from two different Directorates of DG FISMA and one each was from DG ENV and DG CLIMA. The evaluation consisted of:

- Checking that the bidders complied with the rules on access to procurement, namely that they were established in a Member state or a third country that has an agreement with the EU in the field of procurement (e.g. in this case, those countries that are members of the Government Procurement Agreement (GPA) of the World Trade Organisation);
- Checking whether any of the bidders were excluded from EU public procurement procedures (e.g. if they were insolvent, non-payment of taxes, grave misconduct, fraud, etc.);
- Assessing whether the bidders had the necessary Economic and Financial Capacity and Technical and Professional Capacity (the selection criteria);
- Evaluating the technical quality of the offers received against the criteria pre-established and set out in the tender documents (80 points for the quality and relevance of the proposed methodology; 10 points for organisation of the work; 10 points for quality control measures).

In recommending the award of the contract to BlackRock, the evaluation committee has been particularly sensitive to possible professional conflicting interests in this case and has scrupulously applied the relevant provisions of the Financial Regulation (in particular, Article 167(1)(c) of the Financial Regulation).

Recital 104 of the Financial Regulation notes that there are two different concepts of conflict of interests:

1. The notion of a 'conflict of interests' is solely for situations where the impartial and objective exercise of the functions of a person or entity responsible for budget implementation in the contracting authority (in this case the Commission) is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest. Article 61 of the Financial Regulation on conflict of interests requires those persons or entities:
 - to refrain from any action which may bring their own interests into conflict with those of the Union;
 - to take appropriate measures to prevent a conflict of interests from arising in the functions under their responsibility;
 - to address situations which may objectively be perceived as a conflict of interests;
 - to refer any situation which risks a conflict of interest to his/her hierarchical superior (for Commission staff it would normally be the Director-General).

If a conflict of interests was found to exist, the appointing authority should ensure that the person in question ceases all activity on the matter.

The Commission services have not been made aware of any allegation of such a conflict of interest.

2. A situation where an economic operator should not be selected to implement a contract because of a 'professional conflicting interest'. For instance, a company should not evaluate a project in which it has participated or an auditor should not be in a position to audit accounts it has previously certified. Article 167(1)(c) of the Financial Regulation requires the Commission to verify that a tenderer is not subject to conflicts of interest which may negatively affect the performance of the contract.

It has to be recognised that potentially any contractor may be subject to professional conflicting interests, whether immediately apparent or not. In order to determine whether a tenderer has professional conflicting interests it is necessary to verify the nature of the services to be provided under the contract.

In this respect the contract notice stated the following:

"The successful tenderer will have to carry out the following tasks:

- I. Identification and stocktaking of best practices/principles for the integration of ESG risks into EU banks' risk management processes;
- II. Identification and stocktaking of best practices/principles for the integration of ESG risks into EU prudential supervision;
- III. Analysis of the impediments to the development of a well-functioning EU market for green finance and sustainable investment and the identification of appropriate instruments and strategies to promote the scaling-up of green finance and of the market for sustainable financial products".⁵

It is the role of the Commission to develop tools and mechanisms for the integration of ESG factors into the EU banking prudential framework and into banks business strategies and investment policies, after consultation of all stakeholders. The purpose of this study is to identify what the current situation and difficulties are, which is the first step in the development of the future tools and mechanisms. Point II below gives an overview of other selected sources of input, in particular studies and consultations, from which the Commission will draw its conclusions.

⁵ Point II.2.4 of the contract notice: <https://ted.europa.eu/udl?uri=TED:NOTICE:355938-2019:TEXT:EN:HTML>.

In the light of the task to be implemented, the evaluation committee did not see any professional conflicting interests between the contractor's task and its current investment practices.

In addition, BlackRock committed in its offer to taking measures to mitigate conflict of interests risks through a number of technical and procedural safeguards. In particular, BlackRock indicated that it would ensure physical segregation of the project activities from BlackRock's Investments group and that information related to the study does not flow to other parts of BlackRock's business. Taking into account the measures that BlackRock specified in its offer to guard against conflicts of interest (which were considered to be a strength of BlackRock's offer in comparison to others) the evaluation committee determined that BlackRock was not in a situation of professional conflicting interest. As the contract is based on the offer of the successful tenderer, the commitments contained in the offer became part of the contract.

In addition, the General Conditions of the signed contract contain standard provisions concerning professional conflicting interests (Article II.7 'Conflict of Interest and Professional Conflicting Interests'). Contractors of the Commission are required to take all the necessary measures to prevent any conflicts of interest from arising. They must notify the Commission in writing as soon as possible of any situation that could constitute a conflict of interest during the performance of the contract and must immediately take action to rectify the situation. The Commission services are very vigilant in relation to conflicts of interest in all their studies and would terminate the contract with BlackRock should it not adhere scrupulously to the provisions of the contract. In line with standard practice, the Commission will follow the progress of the study closely through interim reporting, meetings, and other contacts with BlackRock. The final report will only be accepted by the Commission if it conforms with the terms and conditions of the contract. Once finalised it will be published and can be subject to public scrutiny.

The price offer of BlackRock (280,000 €) was indeed below the price offers of the other eight tenderers and of the maximum value of the study set by the Commission (550,000 €). In line with the Financial Regulation (Point 23 of Annex 1), the Commission services asked BlackRock for additional information concerning their price offer to make sure that the low price would not result in BlackRock not being able to deliver the technical quality of the service that it had offered in its tender. As a result of the explanations given, the authorising officer did not see any element which could lead to considering BlackRock's offer as abnormally low.

Moreover, given the technical quality of BlackRock's offer, it would have been the most economically advantageous offer even had the price offered been much higher.

In accordance with the recommendation of the Evaluation Committee, the contract was awarded to BlackRock on 6 February 2020⁶ and all unsuccessful bidders were simultaneously informed.

The contract was then signed by DG FISMA on 2 March 2020 following the expiry of the ‘standstill period’ (during which the signature of the contract could have been suspended if additional examination was justified by requests or comments made by unsuccessful or aggrieved tenderers or by any other relevant information received). The Commission confirms however that none of the non-selected candidates challenged the award decision, including for reasons of abnormally low offers.

It should finally be underlined that, unless there were some other justifiable reason to cancel a tender (like irregularity or fraud in the tender procedure), when a company complies with all the exclusion, selection and award criteria of a tender, there is no legal basis in the Financial Regulation on the basis of which the Commission could refuse signing the contract with the winning tenderer. The Commission can therefore not terminate the contract with Blackrock as requested by the Members of Parliament.

II. Other selected studies, consultations and reports

Information received from a Member of the European Parliament suggesting that BlackRock would have professional conflicts of interest in implementing the contract was assessed. It was determined that, in light of the specific nature of the services to be provided, the factors identified would not negatively affect performance of the contract.

The Commission points out that the study “Development of tools and mechanisms for the integration of ESG factors into EU banking prudential framework and into Banks Business Strategies and investment policies” to be carried out by Blackrock is only one of many reports, consultations and studies that the Commission has carried out and will be carrying out in the area of sustainable finance in full transparency:

1. SELECTED REPORTS (including specific consultations/calls for feedback which prepared those reports)

The reports below include reports issued by a High-level Expert Group on sustainable (HLEG) and by a Technical expert group on sustainable finance (TEG). Both groups have been established by the Commission to provide advice on:

- (i) general considerations for including sustainability and environmental, social and governance factors (ESG) in the financial sector, and

⁶ <https://ted.europa.eu/udl?uri=TED:NOTICE:165869-2020:TEXT:EN:HTML&src=0>

(ii) including ESG factors in specific areas/market segments.

1.1.High-Level Expert Group on Sustainable Finance (HLEG)

The HLEG was established in December 2016 and comprised 20 senior experts from civil society, the finance sector, academia and observers from European and international institutions. The HLEG published the following reports:

- HLEG Interim report + call for feedback, 13 July 2017
https://ec.europa.eu/info/publications/170713-sustainable-finance-report_en
- HLEG Final report, 31 January 2018
https://ec.europa.eu/info/publications/180131-sustainable-finance-report_en

Recommendations issued by the High-level Expert Group on Sustainable finance (HLEG) established in 2016

https://ec.europa.eu/info/publications/180131-sustainable-finance-report_en

Interim report issued in July 2017

https://ec.europa.eu/info/publications/170713-sustainable-finance-report_en

1.2.Technical Expert Group on Sustainable Finance (TEG)

The TEG began work in July 2018 and comprises 35 members from civil society, academia, business and the finance sector. Its mandate was extended until 30 September 2020. The TEG published the following reports:

Report on an EU taxonomy

Final report on an EU taxonomy adopted on 9 March 2020

https://ec.europa.eu/info/files/200309-sustainable-finance-teg-final-report-taxonomy_en

The report is supplemented by a technical annex containing:

- Updated technical screening criteria for 70 climate change mitigation and 68 climate change adaptation activities, including criteria for do no significant harm to other environmental objectives.
- An updated methodology section to support the recommendations on the technical screening criteria.

This report builds on the work that the TEG published in June 2019 and the early feedback report published in December 2018. Both reports were subject to an open call for feedback to gather views from stakeholders. The TEG has also engaged with over

200 additional experts to develop their recommendations for the technical screening criteria.

https://ec.europa.eu/info/files/200309-sustainable-finance-teg-final-report-taxonomy-annexes_en

Interim Taxonomy Report + call for feedback, 18 June 2019

https://ec.europa.eu/info/files/190618-sustainable-finance-teg-report-taxonomy_en
800+ responses

Early Taxonomy Feedback Report + call for feedback, 7 December 2019

https://ec.europa.eu/info/publications/sustainable-finance-taxonomy_en#feedback
300+ responses

Technical Annex – EU Taxonomy, 9 March 2020

https://ec.europa.eu/info/files/200309-sustainable-finance-teg-final-report-taxonomy-annexes_en

The TEG has also engaged with over 200 additional experts to develop their recommendations for the technical screening criteria.

Report on climate-related disclosures

https://ec.europa.eu/info/publications/190110-sustainable-finance-teg-report-climate-related-disclosures_en

https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/190110-sustainable-finance-teg-report-climate-related-disclosures_en.pdf

2. SELECTED CONSULTATIONS

Currently there are two on-going consultations on sustainable finance:

1. A broad consultation on a renewed strategy on sustainable finance to support the financing needs of the Green Deal

This consultation is open until 15 July

https://ec.europa.eu/info/consultations/finance-2020-sustainable-finance-strategy_en

This consultation also includes specific questions about banks and a section on the integration of environmental, social and governance (ESG) factors into risk management.

2. A specific consultation on a review of the Non-Financial Reporting Directive in 2020 as part of the strategy to strengthen the foundations for sustainable investment. This is open until 11 June
<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12129-Revision-of-Non-Financial-Reporting-Directive/public-consultation>

A consultation on guidelines on climate related reporting accompanying the Non-financial Reporting Directive was open from 20 February 2019 to 20 March 2019:

https://ec.europa.eu/info/publications/non-financial-reporting-guidelines_en

https://ec.europa.eu/info/consultations/finance-2019-non-financial-reporting-guidelines_en

3. SELECTED EXTERNAL STUDIES AND GRANTS

- Study on the Non-Financial Reporting Directive
Currently being carried out by a consortium led by Economisti Associati under the Multiple Framework Contract (MFC) for the procurement of economic studies and analyses related to impact assessments and evaluations 2016/S 226-411199.
Prior information notice without call for competition, contract notice and contract award notice of the MFC:
<https://ted.europa.eu/udl?uri=TED:NOTICE:411199-2016:TEXT:EN:HTML&tabId=4>