



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Budgetary Control

2014/0180(COD)

27.1.2015

OPINION

of the Committee on Budgetary Control

for the Committee on Budgets

on the proposal for a regulation of the European Parliament and of the Council
amending Regulation (EU, Euratom) No 966/2012 on the financial rules
applicable to the general budget of the Union
(COM(2014)0358 – C8-0029/2014 – 2014/0180(COD))

Rapporteur: Tamás Deutsch

PA_Legam

AMENDMENTS

The Committee on Budgetary Control calls on the Committee on Budgets, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) Public procurement should serve to ensure that Union funds are used in an effective, transparent, and appropriate manner: that being the case, procurement procedures should be moved into cyberspace, as this would save a great deal of money compared with conventional public procurement procedures, as well as making such procedures more accessible for small and medium-sized enterprises.

Amendment 2

Proposal for a regulation Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) It is appropriate to identify and treat distinctly different cases usually referred to as situations of "conflict of interest". The notion of "conflict of interest" should be solely used for cases where an official or agent of an EU institution is in such situation. If an economic operator attempts to unduly influence a procedure or to obtain confidential information, this is to be treated as "grave professional misconduct". Finally, economic operators may be in a situation where they cannot

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.

Amendment 3

Proposal for a regulation Recital 29 a (new)

Text proposed by the Commission

Amendment

(29a) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular Articles 47 to 50 thereof, from which it can be derived that the legality and proportionality of offences and penalties must be ensured, and that everyone has the right to an effective remedy and to a fair trial, the right of defence and the right not to be tried or punished twice in a proceeding for the same offence.

Amendment 4

Proposal for a regulation Article 1 – point 1 a (new) Regulation (EU, Euratom) No 966/2012 Article 60 – paragraph 7

Present text

Amendment

'7. Paragraphs 5 and 6 shall not apply to the contribution of the Union to entities which are subject to a separate discharge procedure under **Article** 208.

(1a) Article 60(7) is replaced by the following:

'7. Paragraphs 5 and 6 shall not apply to the contribution of the Union to entities which are subject to a separate discharge procedure under **Articles** 208 *and* 209.'

Justification

It is appropriate to modify the Financial Regulation in order to take on board the Joint Statement made by the European Parliament, the Council, and the Commission on the separate discharge for Joint Undertakings under Article 209 of the Financial Regulation (29.5.2014).

Amendment 5

Proposal for a regulation

Article 1 – point 1 b (new)

Regulation (EU, Euratom) No 966/2012

Article 99 – paragraph 5

Present text

5. Each year the institution shall **forward a** report to the European Parliament and the Council **containing a summary of the number and type of** internal audits carried out, the recommendations made and the action taken on those recommendations.

Amendment

(1b) Article 99(5) is replaced by the following:

'5. Each year the institution shall report to the European Parliament and the Council, **at Parliament's request, on** internal audits carried out, **providing information on the number and type of those audits,** the recommendations made and the action taken on those recommendations.'

Justification

In accordance with article 319(2) last sentence of the Treaty on the Functioning of the European Union: "The Commission shall submit any necessary information to the European Parliament at the latter's request". The Financial Regulation should be phrased in a way that it would not hamper the implementation of this Treaty provision.

Amendment 6

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 106 – paragraph 1 – point d

Text proposed by the Commission

(d) fraud, corruption, participation in a criminal organisation, money laundering, terrorist financing, terrorist-related

Amendment

(d) fraud, **tax fraud, tax evasion, including via untaxed offshore structures, misuse of corporate assets, embezzlement of public**

offences, child labour or other forms of trafficking in human beings on the basis of evidence established by the panel referred to in Article 108 or as established by a final judgement;

funds, corruption, participation in a criminal organisation, money laundering, terrorist financing, terrorist-related offences, child labour or other forms of trafficking in human beings on the basis of evidence established by the panel referred to in Article 108 or as established by a final judgement;

Justification

One of the main principles and aims of the Financial Regulation is the protection of the Union financial interests. The EU has expressed its intentions several times to fight against tax fraud and tax evasion. Statistical data show that the size of the shadow economy in the EU is nearly one fifth of GDP. Also, tens of billions of euro remain offshore, often unreported and untaxed. Stepping up the fight against tax fraud and evasion is not only an issue of revenue, but also of fairness. The protection of the Union financial interests can be further reinforced by including tax evasion as an exclusion ground in the public procurement procedures of the Union institutions.

Amendment 7

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 106 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Evidence that an economic operator is in one of the situations of exclusion listed in paragraph 1 may include:

(a) facts established in the context of audits or investigations carried out by the Court of Auditors, OLAF or internal audit, or any other check, audit or control made under the responsibility of the contracting authority;

(b) administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics, decisions of the ECB, the EIB, international organisations, or the

Commission relating to the infringement of the Union's competition rules or decisions of a national competent authority.

Justification

Art. 140(1) of the draft delegated act (RAP), as presented by the Commission during the first round of expert group meetings, contains some essential provisions which should consequently be integrated into the FR itself to clarify that the provision should apply to evidence for all exclusion grounds.

Amendment 8

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 106 – paragraph 3 – subparagraph 1

Text proposed by the Commission

3. Except for cases provided for in point (d) of paragraph 1, the ***contracting authority*** may decide not to exclude the economic operator concerned where it has taken remedial measures to demonstrate its reliability.

Amendment

3. Except for cases provided for in point (d) of paragraph 1, the ***panel referred to in Article 108*** may decide not to exclude the economic operator concerned where it has taken remedial measures to demonstrate its reliability.

Amendment 9

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 3 – introductory part

Text proposed by the Commission

3. For the situations referred to in points (b), (d), (e) and (f) of Article 106(1), a panel shall be set up by the Commission at the request of an authorising officer of the Commission or of an executive agency or a joint panel at the request of another institution, body or European office. The

Amendment

3. For the situations referred to in points (b), (d), (e) and (f) of Article 106(1), a ***neutral and politically independent*** panel shall be set up by the Commission at the request of an authorising officer of the Commission or of an executive agency, or a joint panel ***shall be set up by the***

panel, on behalf of the Commission and its executive agencies, other institutions, bodies or European offices, **shall** apply the following procedure:

Commission at the request of another institution, body or European office. The panel **or the joint panel shall appoint a standing high-level body and shall be composed of members with technical and legal competences. The Commission shall ensure that the panel or the joint panel work independently. The panel or the joint panel shall**, on behalf of the Commission and its executive agencies, other institutions, bodies or European offices, apply the following procedure:

Amendment 10

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 4 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The exclusion shall be permanent in the case of illegal activities in the context of organised crime.

Amendment 11

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 4 – subparagraph 3a (new)

Text proposed by the Commission

Amendment

The limitation period for excluding and/or imposing financial penalties on an economic operator shall be ten years calculated from any of the following dates:

(a) the date on which the wrongdoing is committed or, in the case of ongoing or repeated wrongdoings, the date on which the wrongdoing ceases, in the cases

referred to in points (b), (c), (d) and (e) of Article 106(1);

(b) the date of the final judgment of a national court or of the final administrative decision of a public authority or an international organisation in the cases referred to in points (b), (c) and (d) of Article 106(1).

The limitation period shall be interrupted by any act of the Commission or any other entity involved in the implementation of the Union budget which is notified to the economic operator and which relates to investigations or judicial proceedings. A new limitation period shall begin to run on the day following the interruption.

For the purpose of point (f) of Article 106(1) of this Regulation, the limitation period for excluding and/or imposing financial penalties on an economic operator provided for in Article 3 of Council Regulation (EC, Euratom) No 2988/95 shall apply.*

** Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ L 312, 23.12.1995, p. 1).*

Amendment 12

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. In order to determine the exclusion and its duration and/or the financial penalties in compliance with the principle of proportionality, the panel shall take into account in particular the seriousness of the situation, including the impact on the Union's financial interests and image,

the time which has elapsed since the wrongdoing, its duration and its recurrence, the intention or degree of negligence and the measures taken to remedy the situation or any other mitigating circumstances.

Justification

Article 144.1 of the Commission Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 is moved up as new Article 108.4a of the Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union, on the circumstances to be taken into account when imposing exclusion and its duration and/or financial penalties.

Amendment 13

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 5 – subparagraph 2a (new)

Text proposed by the Commission

Amendment

Where the budget is implemented in indirect management with third countries, the Commission may take an exclusion decision or impose a financial penalty in accordance with the procedure referred to in paragraph 3, following the failure of the third country entrusted pursuant to point (c) of Article 58(1) to do so. This does not affect the responsibility, under Article 60(3), of the third country to prevent, detect and correct irregularities and fraud.

Justification

Alignment with EDF practice to ensure that the Commission can take exclusion decisions if the delegatee fails to do so.

Amendment 14

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 110 – paragraph 1 – point c

Text proposed by the Commission

(c) the candidate or tenderer meets the selection criteria specified in the procurement documents.

Amendment

(c) the candidate or tenderer meets the selection criteria specified in the procurement documents ***and is not subject to conflicting interests which may negatively affect the performance of the contract.***

Amendment 15

Proposal for a regulation

Article 1 – point 11 a (new)

Regulation (EU, Euratom) No 966/2012

Article 162 – paragraph 1

Present text

1. The Court of Auditors shall transmit to the Commission and the institutions concerned, by 30 June, any observations which are, in its opinion, such that they should appear in the annual report. Those observations shall remain confidential and shall be subject to an adversarial procedure. Each institution shall address its reply to the Court of Auditors by 15 October. The replies of institutions other than the Commission shall be sent to the Commission at the same time.

Amendment

(11a) Article 162(1) is replaced by the following:

'1. The Court of Auditors shall transmit to the Commission and the institutions concerned, by 30 June, any observations which are, in its opinion, such that they should appear in the annual report. Those observations shall remain confidential and shall be subject to an adversarial procedure. ***They shall nevertheless be made available to the European Parliament on request, if appropriate on a confidential basis.*** Each institution shall address its reply to the Court of Auditors by 15 October. The replies of institutions other than the Commission shall be sent to the Commission at the same time.'

Amendment 16

Proposal for a regulation

Article 1 – point 11 a (new)

Regulation (EU, Euratom) No 966/2012

Article 164

Present text

1. The European Parliament, upon a recommendation from the Council acting by qualified majority, shall, before 15 May of year $n + 2$, give a discharge **to the Commission** in respect of the implementation of the budget for year n .

2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the **Commission** of the reasons for the postponement.

3. If the European Parliament postpones the decision giving a discharge, the **Commission** shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

Amendment

(11a) Article 164 is replaced by the following:

'1. The European Parliament, upon a recommendation from the Council acting by qualified majority, shall, before 15 May of year $n + 2$, give a discharge in respect of the implementation of the budget for year n **to the Union institutions and the bodies referred to in Articles 208 and 209.**

2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the **institutions and bodies concerned** of the reasons for the postponement.

3. If the European Parliament postpones the decision giving a discharge, the **institutions and bodies concerned** shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.'

Amendment 17

Proposal for a regulation

Article 1 – point 11 a (new)

Regulation (EU, Euratom) No 966/2012

Article 165 – paragraph 3

Present text

3. The **Commission** shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge

Amendment

(11a) Article 165(3) is replaced by the following:

'3. The **Union institutions and bodies** shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge

procedure for the financial year concerned,
in accordance with Article 319 TFEU.

procedure for the financial year concerned,
in accordance with Article 319 TFEU.'

Amendment 18

Proposal for a regulation

Article 1 – point 11 a (new)

Regulation (EU, Euratom) No 966/2012

Article 166

Present text

1. In accordance with Article 319 TFEU and Article 106a of the Euratom Treaty, the Commission and the other institutions shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.

2. At the request of the European Parliament or the Council, the institutions shall report on the measures taken in the light of those observations and comments, and, in particular, on the instructions they have given to any of their departments which are responsible for the implementation of the budget. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on those observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions shall also be transmitted to the Court of Auditors.

Amendment

(11a) Article 166 is replaced by the following:

'1. In accordance with Article 319 TFEU and Article 106a of the Euratom Treaty, the Commission and the other institutions ***and bodies*** shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.

2. At the request of the European Parliament or the Council, the ***other*** institutions ***and bodies*** shall report on the measures taken in the light of those observations and comments, and, in particular, on the instructions they have given to any of their departments which are responsible for the implementation of the budget. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on those observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions ***and bodies*** shall also be transmitted to the Court of Auditors.'

Amendment 19

Proposal for a regulation

Article 1 – point 14 a (new)

Text proposed by the Commission

Amendment

(14a) In Article 208 the following paragraph is inserted:

'3a. Union bodies that are fully self-financed and to which the financial rules laid down in the framework financial regulation referred to in paragraph 1 do not apply should establish, for the sake of consistency, similar rules, where appropriate. Furthermore, it is necessary to ensure that the fees of those bodies are set at an appropriate level to cover the costs of providing their services and to avoid significant surpluses. In case of surpluses, the money should be assigned to the Union budget.'

Amendment 20

Proposal for a regulation

Article 1 – point 14 a (new)

Regulation (EU, Euratom) No 966/2012
Article 209

Present text

Amendment

(14a) Article 209 is replaced by the following:

Article 209

'Article 209

Model Financial Regulation for public-private partnership bodies

Model Financial Regulation for public-private partnership bodies

The bodies having legal personality set up by a basic act and entrusted with the implementation of a public-private partnership shall adopt their financial rules.

1. The bodies having legal personality set up by a basic act and entrusted with the implementation of a public-private partnership shall adopt their financial rules.

Those rules shall include a set of principles necessary to ensure sound financial management of Union funds.

Those rules shall include a set of principles necessary to ensure sound financial management of Union funds.

The Commission shall be empowered to adopt a model financial regulation by means of a delegated act in accordance

The Commission shall be empowered to adopt a model Financial Regulation by means of a delegated act in accordance

with Article 210 which shall lay down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 60.

The financial rules of those bodies shall not depart from the model financial regulation except where their specific needs so require and with the Commission's prior consent.

with Article 210 which shall lay down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 60.

The financial rules of those bodies shall not depart from the model Financial Regulation except where their specific needs so require and with the Commission's prior consent.

2. Discharge for the implementation of the budget of the bodies referred to in paragraph 1 shall be given by the European Parliament on the recommendation of the Council. Those bodies shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies.

3. An independent external auditor shall verify that the annual accounts of the bodies referred to in paragraph 1 properly present the income, expenditure and financial position of the relevant body prior to the consolidation in the Commission's final accounts or by the date set in the financial rules of the relevant body. Unless otherwise provided for in the basic act referred to in the first subparagraph of paragraph 1, the Court of Auditors shall prepare a specific annual report for each body, in accordance with Article 287(1) TFEU. When preparing this report, the Court of Auditors shall take in consideration the work performed by the independent external auditor and the action taken in response to the auditor's findings.'

Justification

This justification applies also to Article 60 - paragraph 7.

PROCEDURE

Title	Financial rules applicable to the general budget of the Union
References	COM(2014)0358 – C8-0029/2014 – 2014/0180(COD)
Committee responsible Date announced in plenary	BUDG 3.7.2014
Opinion by Date announced in plenary	CONT 3.7.2014
Rapporteur Date appointed	Tamás Deutsch 30.9.2014
Discussed in committee	8.1.2015
Date adopted	27.1.2015
Result of final vote	+: 22 –: 2 0: 0
Members present for the final vote	Nedzhmi Ali, Louis Aliot, Jonathan Arnott, Inés Ayala Sender, Zigmantas Balčytis, Ryszard Czarnecki, Dennis de Jong, Tamás Deutsch, Jens Geier, Ingeborg Gräble, Bernd Kölmel, Bogusław Liberadzki, Verónica Lope Fontagné, Dan Nica, Gilles Pargneaux, Georgi Pirinski, Claudia Schmidt, Igor Šoltes, Michael Theurer, Derek Vaughan, Anders Primdahl Vistisen, Tomáš Zdechovský
Substitutes present for the final vote	Brian Hayes, Andrey Novakov, Julia Pitera