



EUROPEAN PARLIAMENT

2014 - 2019

Committee on Budgetary Control

2014/0180(COD)

21.11.2014

DRAFT 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 29 a (new)

Text proposed by the Commission

Amendment

(29a) This Regulation respects the fundamental rights and observes the principles enshrined in 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.

Or. en

Amendment 2

Proposal for a regulation

Article 1 – point 1 a (new)

Regulation (EU, Euratom) No 966/2012

Article 60 – paragraph 7

Present text

Amendment

'7. Paragraph 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.

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

'7. Paragraph 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.**'

Or. en

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 3

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 **on** internal audits carried out, the recommendations made and the action taken on those recommendations.'

Or. en

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 4

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

Amendment

(d) fraud, **tax fraud, tax evasion** –

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;

including tax evasion via untaxed offshore structures –, 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;

Or. en

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 5

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 106 – paragraph 1 – point f

Text proposed by the Commission

(f) irregularity on the basis of evidence established by a decision of the panel referred to in Article 108 or by a final judgement or administrative decision.

Amendment

(f) irregularity on the basis of evidence established by a decision of the panel referred to in Article 108 or by a final judgement or administrative decision.

Evidence may consist in:

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

(b) an administrative decision 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, of the EIB, of an international organisation, of the Commission relating to the infringement of the Union competition rules or of national competent authority.

Or. en

Justification

It would be appropriate to move up the level of details of the definition of grave professional misconduct from Article 140(1).

Amendment 6

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

Amendment

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

Or. en

Amendment 7

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 4 – subparagraph 3

Text proposed by the Commission

The first subparagraph of this paragraph shall not apply where the exclusion is communicated by authorities and entities referred to in paragraph 5 that are not subject to Directive 2014/24/EU of the European Parliament and of the Council**.

Amendment

The first subparagraph of this paragraph shall not apply where the exclusion is communicated by authorities and entities referred to in paragraph 5 that are not subject to Directive 2014/24/EU of the European Parliament and of the Council**.

The limitation period to exclude and/or impose financial penalties on an economic operator shall be five years calculated from any of the following dates:

(a) from the date on which the wrongdoing is committed or, in the case of continuing 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) of this Regulation.

(b) from the date of the final judgment of a national jurisdiction or of the final administrative decision of a public authority or of an international organisation in the cases referred to in points (b), (c) and (d) of Article 106(1) of this Regulation. The limitation period shall be interrupted by any act of the Commission or of any other entity involved in the implementation of the Union budget, notified to the economic operator and relating 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 to exclude and/or impose financial penalties on an economic operator provided for in Article 3 of Council Regulation (EC,

Euratom) No 2988/95 shall apply.

Or. en

Justification

Article 144 Commission Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 is moved up to Art. 108.4 of the Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union, on the limitation period to exclude and/or impose financial penalties.

Amendment 8

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 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.

Or. en

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 9

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 5 – subparagraph 2

Text proposed by the Commission

As part of the measures referred to under point (c) of Article 60(1), the Commission may also exclude an economic operator and/or impose financial penalties under the conditions laid down in paragraph 3 of this Article.

Amendment

As part of the measures referred to under point (c) of Article 60(1), the Commission may also exclude an economic operator and/or impose financial penalties under the conditions laid down in paragraph 3 of this Article. ***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 of this Article, following the failure of the entity or person entrusted pursuant to point (c) of Article 58(1) to do so. This does not affect the responsibility of the entity or person entrusted pursuant to point (c) of Article 58(1) under Article 60(3) to prevent, detect and correct irregularities and fraud.***

Or. en

Justification

Provision added in line with the EDF practice to ensure that the Commission can take exclusion decisions instead of delegates failing to do so to better protect the EU budget.

Amendment 10

Proposal for a regulation

Article 1 – point 11 a (new)

Regulation (EU, Euratom) No 966/2012

Article 162 – paragraph 1

Present text

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. 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.

'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. ***They shall nevertheless be published in the end of the adversarial procedure.***'

Or. en

Justification

While the adversarial procedure is one of the international audit standards (The International Standards of Supreme Audit Institutions - ISSAI 400) it is a matter of principle that the discharge authority should dispose in full transparency of all the remarks and observations made by the Court.

Amendment 11

Proposal for a regulation

Article 1 – point 11 b (new)

Regulation (EU, Euratom) No 966/2012

Article 163 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

(11b) in Article 163(1) the second subparagraph is deleted;

Or. en

Amendment 12

Proposal for a regulation

Article 1 – point 11 c (new)

Regulation (EU, Euratom) No 966/2012

Article 163 – paragraph 1 – subparagraph 3

Present text

Amendment

The Court of Auditors shall adopt the definitive version of the special report ***the month following receipt of the replies made by the institution or body concerned.***

(11c) in Article 163(1) the third subparagraph is replaced by the following:

'The Court of Auditors shall adopt the definitive version of the special report within two and a half months of transmission of those observations and after having received the replies of the institution or the body concerned that fully and precisely address those observations.'

Or. en

Justification

The Commission should not use the adversarial procedure for dilatory purposes. Its replies should fully and precisely address the observations made by the Court. This justification applies also to Article 163 - paragraph 1 - subparagraph 2.

Amendment 13

Proposal for a regulation

Article 1 – point 11 d (new)

Regulation (EU, Euratom) No 966/2012

Article 167

Present text

Amendment

The EEAS shall be subject to the procedures provided for in Article 319 TFEU and in Articles 164, 165 and 166 of this Regulation. The EEAS 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.

(11d) Article 167 is replaced by the following:

'The EEAS as all the institutions and bodies of the European Union shall be subject to the procedures provided for in Article 319 TFEU and in Articles 164, 165 and 166 of this Regulation. The EEAS 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.'

Justification

It is a matter of democracy that the implementation of the budget of all institutions and bodies of the European Union, the Council included, are submitted to the budgetary control of the European Parliament the only directly elected EU institution.

Amendment 14**Proposal for a regulation****Article 1 – point 14 a (new)**

Regulation (EU, Euratom) No 966/2012

Article 209

Present text

Article 209

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.

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 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.

Amendment

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

'Article 209

Model Financial Regulation for public-private partnership bodies

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.

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.

2. Discharge for the implementation of the budgets of the bodies referred to in paragraph 1, shall be given by the

European Parliament on the recommendation of the Council. The bodies referred to in paragraph 1 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 each 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 bodies. Unless otherwise provided in the basic act referred to in paragraph 1, the Court of Auditors shall prepare a Specific Annual Report on each body in line with the requirements of Article 287(1) TFEU. In preparing this report, the Court shall consider the audit work performed by the independent external auditor and the action taken in response to the auditor's findings.'

Or. en

Justification

This justification applies also to Article 60 - paragraph 7.