



2016/0282(COD)

12.4.2017

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Budgets and the Committee on Budgetary Control

on the proposal for a regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Regulation (EC) No 2012/2002, Regulations (EU) No 1296/2013, (EU) 1301/2013, (EU) No 1303/2013, EU No 1304/2013, (EU) No 1305/2013, (EU) No 1306/2013, (EU) No 1307/2013, (EU) No 1308/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, (EU) No 652/2014 of the European Parliament and of the Council and Decision No 541/2014/EU of the European Parliament and of the Council (COM(2016)0605 – C8-0372/2016– 2016/0282(COD))

Rapporteur: Daniele Viotti

PA_Legam

SHORT JUSTIFICATION

The proposal of the Commission to revise the Financial Regulations is welcomed as it adds considerable flexibility and simplicity, however it can be further improved from a LIBE perspective:

1. The revised financial regulation should provide for dedicated budget lines to track the commitments and payments corresponding to different main objectives or priorities of the same Union fund.
2. With the objective of increasing transparency at Union agencies, the members of boards and steering committees of decentralised and executive agencies should systematically publish a “declaration of interests” on the web-site of their agencies.
3. The revised financial regulation extends the use of Union trust funds for actions within the Union. However, Union trust funds are a controversial financing instrument. They should be used only in limited circumstances and for external actions.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Budgets and the Committee on Budgetary Control, as the committees responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation

Recital 80

Text proposed by the Commission

(80) It is important to be able to reinforce the deterrent effect achieved by the exclusion and the financial penalty. In that regard, the deterrent effect should be reinforced by the possibility to publish the information related to the exclusion and/or to the financial penalty, with full respect for the data protection requirements set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council (6) and in *Directive 95/46/EC* of the European Parliament and of the Council (7). This should contribute to ensuring that the same conduct is not repeated. For reasons of legal certainty and in accordance with the principle of proportionality it should be specified in which situations a publication should not take place. In its assessment, the authorising officer responsible should have regard to any recommendation of the panel. As far as natural persons are concerned, personal data should only be published in exceptional cases justified by the seriousness of the conduct or its impact on the Union's financial interests.

Amendment

(80) It is important to be able to reinforce the deterrent effect achieved by the exclusion and the financial penalty. In that regard, the deterrent effect should be reinforced by the possibility to publish the information related to the exclusion and/or to the financial penalty, with full respect for the data protection requirements set out in Regulation (EC) No 45/2001 of the European Parliament and of the Council (6) and in ***Regulation (EU) 2016/679*** of the European Parliament and of the Council^{1a}. This should contribute to ensuring that the same conduct is not repeated. For reasons of legal certainty and in accordance with the principle of proportionality it should be specified in which situations a publication should not take place. In its assessment, the authorising officer responsible should have regard to any recommendation of the panel. As far as natural persons are concerned, personal data should only be published in exceptional cases justified by the seriousness of the conduct or its impact on the Union's financial interests.

^{1a} ***Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119,***

Amendment 2

Proposal for a regulation Recital 105

Text proposed by the Commission

(105) It is appropriate that different cases usually referred to as situations of conflict of interest be identified and treated distinctly. The notion of a ‘conflict of interest’ should be ***solely*** used for cases where an entity or person with responsibilities for budget implementation, audit or control or an official or an agent of a Union institution is in such a situation. In cases where an economic operator attempts to unduly influence a procedure or obtain confidential information, this should be treated as grave professional misconduct. In addition, economic operators may be in a situation where they 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.

Amendment

(105) It is appropriate that different cases usually referred to as situations of conflict of interest be identified and treated distinctly. The notion of a ‘conflict of interest’ should be used for cases where an entity or person with responsibilities for budget implementation, audit or control or an official or an agent of a Union institution is in such a situation. ***All persons and entities potentially subject to a conflict of interest should publish a declaration of interest instead of a declaration of absence of interest. A self-evaluation of a conflict of interest is a conflict of interest in itself. Therefore, the evaluation of a conflict of interest should be carried out by an independent third party.*** In cases where an economic operator attempts to unduly influence a procedure or obtain confidential information, this should be treated as grave professional misconduct. In addition, economic operators may be in a situation where they 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. ***There should be regular publication of a track record of all cases of conflict of interest and revolving door identified by the Union institutions.***

Amendment 3

Proposal for a regulation Recital 108

Text proposed by the Commission

(108) Union public procurement should ensure that Union funds are used in an effective, transparent, and appropriate way. In that regard, electronic procurement should contribute to the better use of Union funds and enhance access to contracts for all economic operators.

Amendment

(108) Union public procurement should ensure that Union funds are used in an effective, transparent, and appropriate way. In that regard, electronic procurement should contribute to the better use of Union funds and enhance access to contracts for all economic operators. ***All Union institutions conducting public procurement should publish clear rules on their websites regarding acquisition, expenditure and monitoring, as well as all contracts awarded, including the value thereof.***

Amendment 4

Proposal for a regulation

Recital 113

Text proposed by the Commission

(113) A contracting authority should be able to cancel a procurement procedure before the contract is signed, without the candidates or tenderers being entitled to claim compensation. This should be without prejudice to situations where the contracting authority has acted in such a way that it may be held liable for damages in accordance with the general principles of Union law.

Amendment

(113) A contracting authority should be able to cancel a procurement procedure before the contract is signed, ***including on grounds of suspicion of conflict of interest, revolving doors or grave professional misconduct***, without the candidates or tenderers being entitled to claim compensation. This should be without prejudice to situations where the contracting authority has acted in such a way that it may be held liable for damages in accordance with the general principles of Union law.

Amendment 5

Proposal for a regulation

Recital 131

Text proposed by the Commission

(131) In order to facilitate the participation of small organisations in the implementation of the EU policies in an

Amendment

(131) In order to facilitate the participation of small organisations in the implementation of the EU policies in an

environment of limited availability of resources, it is necessary to recognise the value of the work provided by volunteers as eligible costs. As a result, such organisations may rely to a greater extent on volunteers' work for sake of providing co-financing to the action. Without prejudice to the maximum co-financing rate specified in the basic act, in such cases, the Union grant needs to be limited to the estimated eligible costs other than those covering volunteers' work. As volunteers work is a work provided by third parties without a remuneration being paid to them by the beneficiary, the limitation avoids reimbursing costs which the beneficiary did not incur.

environment of limited availability of resources, it is necessary to recognise the value of the work provided by volunteers as eligible costs. As a result, such organisations may rely to a greater extent on volunteers' work for sake of providing co-financing to the action. ***Only genuine volunteer work, namely that where there are no apparent issues of exploitation or vulnerability, should be covered. In order to address the risk of for-profit businesses hiring a disproportionate amount of volunteers to reduce personnel costs, it should only be possible for non-profit beneficiaries to declare personnel costs for the work carried out by volunteers.*** Without prejudice to the maximum co-financing rate specified in the basic act, in such cases, the Union grant needs to be limited to the estimated eligible costs other than those covering volunteers' work. As volunteers work is a work provided by third parties without a remuneration being paid to them by the beneficiary, the limitation avoids reimbursing costs which the beneficiary did not incur.

Justification

Declaring costs for volunteer work is very helpful for small NGOs in the field of migration or asylum, for example. This amendment makes sure that only "genuine volunteer work" is declared, i.e. that in which there are no apparent issues of exploitation or vulnerability. It also limits this paragraph to the non-profit sector, in order to avoid that businesses abuse EU funding by hiring unpaid workers.

Amendment 6

Proposal for a regulation

Recital 164

Text proposed by the Commission

(164) The Commission should be authorised to create and manage Union trust funds for emergency, post-emergency or thematic actions ***not*** only in external actions ***but also in EU-internal actions. Recent events in the European Union show the need for increased flexibility for***

Amendment

(164) The Commission should be authorised to create and manage Union trust funds for emergency, post-emergency or thematic actions only in external actions. It is necessary to specify the principles applicable to the contributions to Union Trust Funds, to clarify the responsibilities

funding within the EU. As the boundaries between external and internal policies are increasingly blurred, this would also provide a tool for replying to cross-border challenges. It is necessary to specify the principles applicable to the contributions to Union Trust Funds, to clarify the responsibilities of the financial actors and of the Board of the Trust Fund. It is also necessary to define rules ensuring a fair representation of the participating donors in the Board of the Trust Fund and a mandatory positive vote of the Commission for the use of the funds.

of the financial actors and of the Board of the Trust Fund. It is also necessary to define rules ensuring a fair representation of the participating donors in the Board of the Trust Fund and a mandatory positive vote of the Commission for the use of the funds.

Amendment 7

Proposal for a regulation Article 5 – paragraph 1

Text proposed by the Commission

Personal data collected pursuant to this Regulation shall be processed in accordance with **Directive 95/46/EC** ⁽²⁸⁾ and Regulation (EC) No 45/2001. A candidate or tenderer in a procurement procedure, an applicant in a grant award procedure, an expert in a procedure for the selection of experts, an applicant in a contest for prizes or an entity or person participating in a procedure for implementing Union funds in accordance with point (c) of Article 61(1) as well as a beneficiary, a contractor, a remunerated external expert or any person or entity that receives prizes or implements Union funds pursuant to point (c) of Article 61(1) shall be informed accordingly.

²⁸ *OJ L 281, 23.11.1995, p. 31.*

Amendment 8

Proposal for a regulation Article 32 – paragraph 1 a (new)

Amendment

Personal data collected pursuant to this Regulation shall be processed in accordance with **Regulation (EU) 2016/679** and Regulation (EC) No 45/2001. A candidate or tenderer in a procurement procedure, an applicant in a grant award procedure, an expert in a procedure for the selection of experts, an applicant in a contest for prizes or an entity or person participating in a procedure for implementing Union funds in accordance with point (c) of Article 61(1) as well as a beneficiary, a contractor, a remunerated external expert or any person or entity that receives prizes or implements Union funds pursuant to point (c) of Article 61(1) shall be informed accordingly.

1a. *Result indicators and measurable targets based on the activities undertaken shall be defined at policy and project levels. Qualitative and quantitative indicators shall be established. Such indicators shall be stable over time and be comparable in order to measure the impact of Union funds and the achievement of their objectives. Quantified data shall be systematically collected.*

Amendment 9

Proposal for a regulation Article 32 – paragraph 3

Text proposed by the Commission

3. Retrospective evaluations shall assess the performance of the programme or activity, including aspects such as effectiveness, efficiency, coherence, relevance and EU added value. They shall be undertaken periodically and in sufficient time for the findings to be taken into account in ex-ante evaluations which support the preparation of related programmes and activities.

Amendment

3. **Ongoing and** retrospective evaluations shall assess the performance of the programme or activity, including aspects such as effectiveness, efficiency, coherence, relevance and EU added value. They shall be undertaken periodically and in sufficient time for the findings to be taken into account in ex-ante evaluations which support the preparation of related programmes and activities.

Amendment 10

Proposal for a regulation Article 45 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. *For optimal transparency and clarity, the dedicated budget lines of the draft budget shall reflect individual key objectives or priorities of Union funding, or both. A given budget line in the Union budget shall never correspond to the financing of more than one main objective or priority in the same Union trust fund.*

Justification

In order for the committees of the European Parliament to effectively carry out budgetary scrutiny and oversight in their respective policy areas, they must be in a position to track the use of funds in the Union budget which correspond to the main policy objectives and priorities within a given Union fund or a given Union trust fund partially financed by the Union budget.

Amendment 11

Proposal for a regulation Article 54 – paragraph 3

Text proposed by the Commission

3. Citizens may be consulted on the implementation of the Union budget by the Commission, Member States or any other entity implementing the Union budget.

Amendment

3. Citizens may be consulted on the implementation of the Union budget by the Commission, Member States or any other entity implementing the Union budget.
Effective partnership principles for civil society organisations shall be established, securing the involvement of such organisations in the preparation, planning, monitoring, implementation and evaluation of funding at both national and Union level.

Amendment 12

Proposal for a regulation Article 68 – title

Text proposed by the Commission

Executive agencies

Amendment

Executive ***and decentralised*** agencies

Justification

The title should cover both decentralised and executive agencies given the content of amendment 3.

Amendment 13

Proposal for a regulation Article 68 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. All members of steering committees and boards of executive or

decentralised Union agencies shall publish annually a declaration of interests on the website of their agency. To ensure clarity with regard to such declarations, the Commission shall provide a template for such declarations of interests, which may be adapted to the specificities of each agency.

Justification

The “declaration of conflict of interests” should be made compulsory in the revised financial regulation for all the members of management boards and steering committees of decentralised and executive agencies. Declarations of interest should be standardised but still be adapted to the specificities of each agency.

Amendment 14

Proposal for a regulation

Article 131 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In order to have an efficient early detection and exclusion system, clear rules shall be put in place for a real protection of whistle-blowers. Regular reports on whistle-blower cases handled and finalised shall be published by relevant bodies.

Amendment 15

Proposal for a regulation

Article 165 – paragraph 1

Text proposed by the Commission

Amendment

The contracting authority may, before the contract is signed, cancel the procurement procedure without the candidates or tenderers being entitled to claim any compensation.

The contracting authority may, before the contract is signed, cancel the procurement procedure, **including on grounds of suspicion of conflict of interest, revolving doors or grave professional misconduct**, without the candidates or tenderers being entitled to claim any compensation.

Amendment 16

Proposal for a regulation

Article 174 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Direct grants shall not preclude smaller structures, especially NGOs, from accessing Union funding. The Commission and Member States shall maintain a balance between large-scale and small-scale projects.

Amendment 17

Proposal for a regulation

Article 183 – paragraph 2

Text proposed by the Commission

Amendment

2. All grants awarded in the course of a financial year shall be published in accordance with paragraphs 1 to 4 of Article 36.

2. All grants awarded in the course of a financial year shall be published in accordance with paragraphs 1 to 4 of Article 36. ***In addition, all Union institutions conducting public procurement shall publish on their websites clear rules regarding acquisition, expenditure and monitoring, as well as all contracts awarded, including the value thereof.***

Amendment 18

Proposal for a regulation

Article 227 – title

Text proposed by the Commission

Amendment

Trust Funds

Trust Funds ***for external actions***

Justification

The revised financial regulation extends the use of Union trust funds for actions within the Union. However, Union trust funds are a controversial financing instrument. The European Court of Auditors, in its opinion No 1/2017, considers that extending the use of Trust Funds to internal actions in the Union is "premature" and "raises issues of administration, costs and accountability." This amendment proposes to keep Trust Funds for external actions only until a proper assessment has been made of their efficiency.

Amendment 19

Proposal for a regulation Article 227 – paragraph 1

Text proposed by the Commission

1. For emergency, post-emergency or thematic actions, the Commission may create, after informing the European Parliament and the Council, trust funds under an agreement concluded with other donors. The constitutive act of each trust fund shall define the objectives of the trust fund. The Commission decision establishing the trust fund shall include a description of the fund's objectives, the justification for its creation in accordance with paragraph 3, an indication of its duration and the preliminary agreements with other donors.

Amendment 20

Proposal for a regulation Article 227 – paragraph 2

Text proposed by the Commission

2. The Commission shall submit its draft decisions concerning the establishment, the extension and the liquidation of *a Union trust* fund to the competent committee where provided for in the basic act under which the Union contribution to *the Union trust* fund is provided.

Amendment 21

Proposal for a regulation Article 227 – paragraph 3 – point b a (new)

Text proposed by the Commission

Amendment

1. For emergency, post-emergency or thematic *external* actions, the Commission may create, after informing the European Parliament and the Council, trust funds under an agreement concluded with other donors. The constitutive act of each trust fund shall define the objectives of the trust fund. The Commission decision establishing the trust fund shall include a description of the fund's objectives, the justification for its creation in accordance with paragraph 3, an indication of its duration and the preliminary agreements with other donors.

Amendment

2. The Commission shall *consult the European Parliament before establishing a Union trust fund and later* submit its draft decisions concerning the establishment, the extension and the liquidation of *such* fund to the competent committee where provided for in the basic act under which the Union contribution to *that* fund is provided.

(ba) the use of Union trust funds shall

be limited and such funds shall not be a standard financial instrument at Union level. In any event, a Union trust fund shall be established only when it is indispensable to conduct the actions targeted.

Amendment 22

Proposal for a regulation Article 250 – paragraph 1

Text proposed by the Commission

1. The Court of Auditors shall transmit to the Commission and the institutions concerned, by **15 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

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 **to enable the institution concerned to comment upon them**. Those observations shall remain confidential. 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.

Justification

Based on the comments by the European Court of Auditors in their Opinion No 1/2017 - the deadline of 15 June is too short to ensure their independent work. Also, "adversarial procedure" is unclear - it is better to state clearly that the institution concerned may comment on the Court's observations.

Amendment 23

Proposal for a regulation Article 251 – paragraph 1 – subparagraph 1

Text proposed by the Commission

The Court of Auditors shall transmit to the institution or the body concerned any observations which are, in its opinion, such that they should appear in a special report. Those observations shall remain confidential **and shall be subject to an adversarial procedure**.

Amendment

The Court of Auditors shall transmit to the institution or the body concerned any observations which are, in its opinion, such that they should appear in a special report **to enable the institution concerned to comment upon them**. Those observations shall remain confidential.

Justification

Based on the comments by the European Court of Auditors in their Opinion No 1/2017. "Adversarial procedure" is unclear - it is better to state clearly that the institution concerned may comment on the Court's observations.

Amendment 24

Proposal for a regulation

Article 251 – paragraph 1 – subparagraph 6

Text proposed by the Commission

The Court of Auditors shall take all necessary steps to ensure that the replies to its observations from each institution or body concerned are published ***next to or after each observation to which they relate, and publish the timeline for the drawing up of*** the special report.

Amendment

The Court of Auditors shall take all necessary steps to ensure that the replies to its observations from each institution or body concerned are published ***together with*** the special report.

Justification

Based on the comments by the European Court of Auditors in their Opinion No 1/2017. The proposal would oblige the Court to present its reports in a certain way and threatens its independence. The Court should have the power to decide how to present its reports in accordance with international standards on auditing.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Financial rules applicable to the general budget of the Union	
References	COM(2016)0605 – C8-0372/2016 – 2016/0282(COD)	
Committees responsible Date announced in plenary	BUDG 21.11.2016	CONT 21.11.2016
Opinion by Date announced in plenary	LIBE 21.11.2016	
Rapporteur Date appointed	Daniele Viotti 14.11.2016	
Rule 55 – Joint committee procedure Date announced in plenary	19.1.2017	
Discussed in committee	9.3.2017	11.4.2017
Date adopted	11.4.2017	
Result of final vote	+: 45 -: 5 0: 3	
Members present for the final vote	Jan Philipp Albrecht, Michał Boni, Caterina Chinnici, Daniel Dalton, Agustín Díaz de Mera García Consuegra, Frank Engel, Tanja Fajon, Raymond Finch, Monika Flašíková Beňová, Lorenzo Fontana, Mariya Gabriel, Kinga Gál, Ana Gomes, Nathalie Griesbeck, Sylvie Guillaume, Jussi Halla-aho, Monika Hohlmeier, Filiz Hyusmenova, Sophia in 't Veld, Dietmar Köster, Barbara Kudrycka, Cécile Kashetu Kyenge, Marju Lauristin, Juan Fernando López Aguilar, Roberta Metsola, Claude Moraes, Alessandra Mussolini, Soraya Post, Birgit Sippel, Branislav Škripek, Csaba Sógor, Helga Stevens, Traian Ungureanu, Marie-Christine Vergiat, Harald Vilimsky, Udo Voigt, Josef Weidenholzer, Kristina Winberg, Tomáš Zdechovský, Auke Zijlstra	
Substitutes present for the final vote	Carlos Coelho, Anna Maria Corazza Bildt, Gérard Deprez, Cătălin Sorin Ivan, Jean Lambert, Ulrike Lunacek, Artis Pabriks, Morten Helveg Petersen, Emil Radev, Elly Schlein, Barbara Spinelli, Anders Primdahl Vistisen, Axel Voss	

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

45	+
ALDE	Gérard Deprez, Nathalie Griesbeck, Filiz Hyusmenova, Morten Helveg Petersen, Sophia in 't Veld
ECR	Daniel Dalton, Jussi Halla-aho, Branislav Škripek
GUE/NGL	Barbara Spinelli, Marie-Christine Vergiat
PPE	Michal Boni, Carlos Coelho, Anna Maria Corazza Bildt, Agustín Díaz de Mera García Consuegra, Frank Engel, Mariya Gabriel, Kinga Gál, Monika Hohlmeier, Barbara Kudrycka, Roberta Metsola, Alessandra Mussolini, Artis Pabriks, Emil Radev, Csaba Sógor, Traian Ungureanu, Axel Voss, Tomáš Zdechovský
S&D	Caterina Chinnici, Tanja Fajon, Monika Flašíková Beňová, Ana Gomes, Sylvie Guillaume, Cătălin Sorin Ivan, Cécile Kashetu Kyenge, Dietmar Köster, Marju Lauristin, Juan Fernando López Aguilar, Claude Moraes, Soraya Post, Elly Schlein, Birgit Sippel, Josef Weidenholzer,
VERTS/ALE	Jan Philipp Albrecht, Jean Lambert, Ulrike Lunacek

5	-
ECR	Helga Stevens
ENF	Lorenzo Fontana, Harald Vilimsky, Auke Zijlstra
NI	Udo Voigt

3	0
ECR	Anders Primdahl Vistisen
EFDD	Raymond Finch, Kristina Winberg

Key to symbols:

+ : in favour

- : against

0 : abstention