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2014 - 2019

Committee on Budgets

2014/0180(COD)

01.12.2014

*****I**

DRAFT REPORT

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))

Committee on Budgets

Rapporteur: Ingeborg Gräßle

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ■ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2014)0358),
 - having regard to Article 294(2) and Article 322 of the Treaty on the Functioning of the European Union and Article 106a of the Treaty establishing the European Atomic Energy Community, pursuant to which the Commission submitted the proposal to Parliament (C8-0029/2014),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Court of Auditors of ... 2014¹,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgets and the opinions of the Committee on Foreign Affairs and the Committee on Budgetary Control (A8-0000/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission, the European Court of Auditors and the national parliaments

Amendment 1

Proposal for a regulation Recital 22 a (new)

Text proposed by the Commission

Amendment

(22a) For framework contracts with reopening of competition, it is appropriate

¹ [OJ C 0, 0.0.0000, p. 0. / Not yet published in the Official Journal].

to waive the obligation to provide the characteristics and relative advantages of the successful tender to an unsuccessful contractor, on the basis that the receipt of such information by parties to the same framework contract each time a competition is reopened might prejudice fair competition between them.

Or. en

Justification

The aim of the recital is to clarify the reasoning behind the provisions of Art. 113(3).

Amendment 2

Proposal for a regulation

Article 1 – point -1 (new)

Regulation (EU, Euratom) No 966/2012

Article 58 – paragraph 8

Text proposed by the Commission

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the methods of implementation of the budget, including direct management, the exercise of powers delegated to executive agencies, and specific provisions for indirect management with international organisations, with bodies referred to in Articles 208 and 209, with public law bodies or bodies governed by private law with a public service mission, with bodies governed by the private law of a Member State and entrusted with the implementation of a public-private partnership and with persons entrusted with the implementation of specific actions in the CFSP.

Amendment

(-1) Article 58(8) is replaced by the following:

"8. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the methods of implementation of the budget, including direct management, the exercise of powers delegated to executive agencies, and specific provisions for indirect management with international organisations, with bodies referred to in Articles 208 and 209, with public law bodies or bodies governed by private law with a public service mission, with bodies governed by the private law of a Member State and entrusted with the implementation of a public-private partnership and with persons entrusted with the implementation of specific actions in the CFSP. **These provisions shall include criteria to assess the status of international organisation set up by**

intergovernmental agreements, and the procedure and criteria for assimilating a non-profit organisation to an international organisation."

Or. en

Justification

The provisions concerning the assessment of international organisations, and the procedure and criteria for assimilating a non-profit organisation to an international organisation, which is at present done by way of Commission decisions, are moved up to the level of the delegated act.

Amendment 3

Proposal for a regulation

Article 1 – point 1 a (new)

Regulation (EU, Euratom) No 966/2012

Article 60 – paragraph 7

Text proposed by the Commission

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

The amendment implements 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), as confirmed by all stakeholders at the Round Table of 13 November 2014 on audit and discharge for JUs.

Amendment 4

Proposal for a regulation

Article 1 – point 1 b (new)

Regulation (EU, Euratom) No 966/2012

Article 99 – paragraph 5

Text proposed by the Commission

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

The last sentence of Art. 319(2) of the TFEU states that the "Commission shall submit any necessary information to the European Parliament at the latter's request". The Financial Regulation should be phrased accordingly.

Amendment 5

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 101 – paragraph 1

Text proposed by the Commission

1. 'Procurement' means the acquisition by means of a contract of **buildings**, works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities.

Amendment

1. 'Procurement' means the acquisition by means of a contract of works, supplies or services, **and the acquisition or rental of land, existing buildings or other immovable property**, by one or more contracting authorities from economic operators chosen by those contracting authorities.

Or. en

Justification

Alignment with Art. 10(a) of the procurement directive 2014/24/EU.

Amendment 6

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 102 – paragraph 2

Text proposed by the Commission

2. All contracts shall be put out to competition on the broadest possible basis, except when use is made of the negotiated procedure referred to in point (d) of Article 104(1).

Contracting authorities shall not use framework contracts improperly or in such a way that their purpose or effect is to prevent, restrict or distort competition.

Amendment

2. All contracts shall be put out to competition on the broadest possible basis, except when use is made of the negotiated procedure referred to in point (d) of Article 104(1).

The estimated value of a contract may not be determined with a view to circumventing the applicable rules, nor may a contract be split up for that purpose.

3. Contracting authorities shall not use framework contracts improperly or in such a way that their purpose or effect is to prevent, restrict or distort competition.

Or. en

Justification

Art. 169 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.

Amendment 7

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 103 – paragraph 2

Text proposed by the Commission

2. Procedures with a value below the thresholds set out in Article 118 or Article 190 shall be advertised by appropriate means.

Amendment

2. Procedures with a value below the thresholds set out in Article 118(I) or Article 190 shall be advertised by appropriate means.

Or. en

Justification

Clarification.

Amendment 8

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 of grave professional misconduct may include:

(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) 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.

Or. en

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.

Amendment 9

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 106 – paragraph 7

Text proposed by the Commission

7. The contracting authority may also ***verify whether*** a subcontractor ***is not in a situation of exclusion listed in paragraph 1 of this Article or is in one of the cases referred to in paragraph 3 of this Article.***

Amendment

7. The contracting authority may also ***apply paragraphs 1 to 3 to*** a subcontractor ***of the economic operator.***

Or. en

Justification

Clarification – it must be possible to exclude subcontractors after checking their situation in order to prevent tenderers from circumventing the rules by contracting at subcontractor level.

Amendment 10

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 107 – paragraph 1 – introductory part

Text proposed by the Commission

1. A contract ***shall not be awarded*** for a given procedure to an economic operator

Amendment

1. ***The contracting authority shall not award the*** contract for a given procedure to

who:

an economic operator who:

Or. en

Justification

Clarification.

Amendment 11

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 107 – paragraph 1 – point ba (new)

Text proposed by the Commission

Amendment

(ba) is subject to a conflict of interests;

Or. en

Justification

Provision reinserted (see also the Transparency International position on the Commission proposal).

Amendment 12

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

The information referred to in points (a), (b) and (c) of the first subparagraph shall be transmitted without delay through the accounting system of the Commission to the authorising officers of the Commission and of its executive agencies, all other institutions, bodies and European offices in order to allow them to take preventive ***temporary and conservatory*** measures in the implementation of the budget. Those

The information referred to in points (a), (b) and (c) of the first subparagraph shall be transmitted without delay through the accounting system of the Commission to the authorising officers of the Commission and of its executive agencies, all other institutions, bodies and European offices in order to allow them to take preventive measures in the implementation of the budget. Those measures shall not go

measures shall not go beyond what is foreseen in the terms and conditions of the procurement documents.

beyond what is foreseen in the terms and conditions of the procurement documents.

Or. en

Justification

Clarification.

Amendment 13

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 3 – subparagraph 3

Text proposed by the Commission

In exceptional cases, including where natural persons are concerned or where it is necessary to preserve the confidentiality of the investigation or of a national judicial proceeding, the panel may decide not to publish the exclusion or financial penalty as set out in point (h) of the first subparagraph of this paragraph with due consideration to the right to privacy and with due observance of the rights provided for in Regulation (EC) No 45/2001.

Amendment

In exceptional cases, including where natural persons are concerned or where it is necessary to preserve the confidentiality of the investigation or of a national judicial proceeding, the panel may decide not to publish the exclusion or financial penalty as set out in point (h) of the first subparagraph of this paragraph with due consideration to the right to privacy and with due observance of the rights provided for in Regulation (EC) No 45/2001.

Notwithstanding the foregoing, the Commission shall regularly inform the European Parliament and the Council of those decisions, using appropriate measures to ensure confidentiality.

The contracting authority shall adopt the measures necessary to implement the decision of the panel.

Or. en

Justification

In cases where a publication of the panel's decision is not possible, the Commission should at least inform the Parliament and the Council about it. Furthermore, a new subparagraph is

inserted to clarify the link between the decision taken by the panel and its implementation by authorising officers.

Amendment 14

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(b) five years for the case referred to in point (d) of Article 106(1);

deleted

Or. en

Justification

For the cases referred to in Art. 106(1)(d) – corruption, terrorist financing, human trafficking, etc. – the panel should have the possibility to permanently exclude the economic operator.

Amendment 15

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. The limitation period to exclude or impose financial penalties on an economic operator shall be five years calculated from either 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) of this Regulation; or

(b) the date of the final judgment of a national jurisdiction or 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) of this Regulation.

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 to exclude 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

Art. 144(2) of the draft delegated act (RAP), as presented by the Commission during the first round of expert group meetings, contains essential provisions and should therefore be integrated into the FR itself.

Amendment 16

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. In order to determine the exclusion and its duration 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

Art. 144(1) of the draft delegated act (RAP), as presented by the Commission during the first round of expert group meetings, contains essential provisions and should therefore be integrated into the FR itself.

Amendment 17

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 5 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where the authorities of the Member States fail to comply with these requirements, they shall be held liable for any damage caused to the Union's financial interests which is attributed to such failure.

Or. en

Justification

Introduction of an additional sanction mechanism for Member States who fail to cooperate with the Commission on the early detection and exclusion system.

Amendment 18

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 108 – paragraph 5 – subparagraph 2 a (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 entity or person entrusted pursuant to point (c) of Article 58(1) to do so. This does not affect the responsibility, under Article 60(3), of the entity or person entrusted pursuant to point (c) of Article 58(1) to prevent, detect and correct irregularities and fraud.

Or. en

Justification

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

Amendment 19

Proposal for a regulation

Article 1 – point 3

Regulation (EU, Euratom) No 966/2012

Article 112 – paragraph 1

Text proposed by the Commission

Amendment

1. While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers shall satisfy conditions ensuring transparency ***and*** equal treatment. After the time limit for receipt of tenders, these contacts shall not lead to changes to the procurement documents or to substantial

1. While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers shall satisfy conditions ensuring transparency, equal treatment ***and good administration as set out in Article 96.*** After the time limit for receipt of tenders, these contacts shall not lead to changes to

changes to the terms of the submitted tender, except where a procedure set out in Article 104(1) specifically allows for these possibilities.

the procurement documents or to substantial changes to the terms of the submitted tender, except where a procedure set out in Article 104(1) specifically allows for these possibilities.

Or. en

Amendment 20

Proposal for a regulation

Article 1 – point 4

Regulation (EU, Euratom) No 966/2012

Article 114a – paragraph 2

Text proposed by the Commission

2. The contracting authority may modify a contract or framework contract **substantially** without a procurement procedure only in cases provided for in the delegated acts adopted pursuant to this Regulation and provided the **substantial** modification does not alter the subject matter of the contract or framework contract.

Amendment

2. The contracting authority may modify a contract or framework contract without a procurement procedure only in cases provided for in the delegated acts adopted pursuant to this Regulation and provided the modification does not alter the subject matter of the contract or framework contract.

Or. en

Justification

The modifications allowed by the new procurement directive are not qualified as 'substantial'.

Amendment 21

Proposal for a regulation

Article 1 – point 11

Regulation (EU, Euratom) No 966/2012

Article 139 – paragraph 5 a

Text proposed by the Commission

5a. No financial support shall be granted to dedicated investment vehicles, to financial intermediaries and to final recipients which

Amendment

5a. No financial support shall be granted to dedicated investment vehicles, to financial intermediaries and to final recipients which

are in one of the situations referred to in points (a), (b) and (d) of Article 106(1) and points (b) and (c) of Article 107(1).

are in one of the situations referred to in points (a), (b), **(c)** and (d) of Article 106(1) and points (b), **(ba)** and (c) of Article 107(1).

Or. en

Justification

Social security fraud, tax fraud and conflicts of interest should also constitute exclusion criteria for financial instruments.

Amendment 22

Proposal for a regulation

Article 1 – point 11 a (new)

Regulation (EU, Euratom) No 966/2012

Article 163 – paragraph 1

Text proposed by the Commission

1. 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.

The institution or the body concerned shall **inform the Court of Auditors, within two and a half months of transmission of those observations, of any replies it wishes to make in relation to those observations.**

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.

The special reports, together with the replies of the institutions or bodies concerned, shall be transmitted without delay to the European Parliament and the Council, each of which shall decide, where

Amendment

(11a) Article 163(1) is replaced by the following:

"1. 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.

The **replies of the** institution or the body concerned shall **directly and exclusively address** those observations.

The Court of Auditors shall adopt the definitive version of the special report **within two and a half months of transmission of those observations to** the institution or body concerned.

The special reports, together with the replies of the institutions or bodies concerned, shall be transmitted without delay to the European Parliament and the Council, each of which shall decide, where

appropriate in conjunction with the Commission, what action is to be taken in response.

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.

appropriate in conjunction with the Commission, what action is to be taken in response.

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."

Or. en

Justification

The amendment aims at rationalising the adoption procedure for ECA special reports, as recommended in the latest International Peer Review Report of the Court (see pp. 29-31).

Amendment 23

Proposal for a regulation

Article 1 – point 14 a (new)

Regulation (EU, Euratom) No 966/2012

Article 209

Text proposed by the Commission

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

Amendment

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

"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.

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. The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as those exercised in respect of the Commission.

4. 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

The amendment implements 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), as confirmed by all stakeholders at the Round Table of 13 November 2014 on audit and discharge for JUs.

