

Financial rules applicable to the general budget of the Union: procurement procedure

2014/0180(COD) - 15/01/2015 - Court of Auditors: opinion, report

OPINION No 1/2015 of the COURT OF AUDITORS concerning 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.

Following the requests addressed by the European Parliament (23 July 2014) and by the Council (18 July 2014), the Court of Auditors made the following remarks on the proposal.

1) Purpose of the proposal for a Regulation

The Court of Auditors **approved of the goal of alignment** of the financial rules applicable to the general budget of the Union contained in Directive 2014/24/EU and in Directive 2014/23/EU on the award of concession contracts.

Since the provisions of the Financial Regulation and the rules of implementation are closely linked, the Court of Auditors considers that it should be informed about the amendments which the Commission proposes to the rules of application before the legislator adopts the rules amending the Financial Regulation.

The proposal should therefore also have **Article 325 of the TFEU** as its legal basis given it also involves a considerable number of rules aimed at reinforcing the protection of the EU's financial interests.

2) Infringement of the rules on decision-making; impediment to the objective of clarification

The Court of Auditors considered that dividing the topic of public procurement between, on the one hand, the Financial Regulation and, on the other, the rules of application infringes the rules on and procedures for decision-making.

The Court of Auditors therefore is of the opinion that the **legislator cannot delegate to the Commission, under Article 290 of the TFEU**, the power to determine the essential elements relating to public procurement — as would be done through the current proposal for a Regulation.

Moreover, given that the proposal would probably place most key notions and concepts of public procurement in the regulation containing the rules of application, the Court of Auditors is unable to appraise whether this revision would fully achieve the objective of clarifying the public procurement rules.

The Court of Auditors recommended that priority be given to compliance with the decision-making process and to the objective of clarification. In the Court's view, that objective would be met by codifying all the public procurement rules applicable to the institutions in a separate regulation, which would make the rules easier to comprehend and consult.

3) Financial rules not fully aligned with the objectives of the directives revising and modernising the public procurement rules

The Court of Auditors recommended that there be a clear reminder of the objectives in the recitals to the proposed regulation. These are: (i) to increase the efficiency of public spending, facilitating in particular

the participation of SMEs in public procurement, and; (ii) to enable procurers to make better use of public procurement in support of **common societal goals**.

According to the Court, the aim of making better use of public procurement in support of common societal goals should be clearly expressed, but with the proviso that using public procurement in this way cannot be allowed to detract from the sound financial management of the EU budget.

Moreover, the obligation to **comply with environmental, social and labour law** should be reiterated among the general principles that are applicable to procurement and accompanied by explicit sanctions against non-compliant tenderers or contractors.

4) Unsuitability of the proposed mechanisms to protect the financial interests of the European Union

The Court of Auditors considered that the Commission should continue to be the only institution entrusted with managing the **central exclusion database**, using timely information sent by the other institutions and bodies of the EU. A system of this kind could remove those institutions' and bodies' control over their own procurement procedures and the management of their own contracts and generate conflicting responsibilities among the authorities and panels charged with the protection of financial interests — and with OLAF in particular.

The Court of Auditors considers that the system envisaged by the proposal for a Regulation should be revised in the light of the principles that penalties must be defined by law and be proportionate and that the right of defence must be respected.