Basic information

2014/0180(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Financial rules applicable to the general budget of the Union: procurement procedure Amending Regulation (EU, Euratom) No 966/2012 2010/0395(COD) **Subject** 2.10.02 Public procurement 8.70.02 Financial regulations	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
BUDG Budgets	GRÄSSLE Ingeborg (PPE)	24/09/2014
	Shadow rapporteur NEGRESCU Victor (S&D) KÖLMEL Bernd (ECR) ALI Nedzhmi (ALDE) NÍ RIADA Liadh (GUE/NGL) TARAND Indrek (Verts/ALE) VALLI Marco (EFDD)	

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	EHLER Christian (PPE)	22/09/2014
INTA International Trade	The committee decided not to give an opinion.	
CONT Budgetary Control	DEUTSCH Tamás (PPE)	30/09/2014
ECON Economic and Monetary Affairs	The committee decided not to give an opinion.	
EMPL Employment and Social Affairs	The committee decided not to give an opinion.	

ENVI	Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
ITRE	Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO	Internal Market and Consumer Protection	The committee decided not to give an opinion.	
TRAN	Transport and Tourism	The committee decided not to give an opinion.	
REGI	Regional Development	The committee decided not to give an opinion.	
CULT	Culture and Education	The committee decided not to give an opinion.	
JURI	Legal Affairs	The committee decided not to give an opinion.	
LIBE	Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	

Council of the European Union

Council configuration	Meetings	Date
Agriculture and Fisheries	3418	2015-10-22

European Commission

Commission DG	Commissioner
Budget	GEORGIEVA Kristalina

European Court of Auditors

Key events

Date	Event	Reference	Summary
18/06/2014	Legislative proposal published	COM(2014)0358	Summary
03/07/2014	Committee referral announced in Parliament, 1st reading		
26/02/2015	Vote in committee, 1st reading		
26/02/2015	Committee decision to open interinstitutional negotiations with report adopted in committee		

12/03/2015	Committee report tabled for plenary, 1st reading	A8-0049/2015	Summary
16/07/2015	Approval in committee of the text agreed at 1st reading interinstitutional negotiations		
07/10/2015	Decision by Parliament, 1st reading	T8-0341/2015	Summary
07/10/2015	Results of vote in Parliament		
22/10/2015	Act adopted by Council after Parliament's 1st reading		
22/10/2015	End of procedure in Parliament		
28/10/2015	Final act signed		
30/10/2015	Final act published in Official Journal		

Technical information

Procedure reference	2014/0180(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EU, Euratom) No 966/2012 2010/0395(COD)
Legal basis	Euratom Treaty A 106a-pa Treaty on the Functioning of the European Union TFEU 322-p1
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Court of Auditors
Stage reached in procedure	Procedure completed
Committee dossier	BUDG/8/00619

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE544.201	01/12/2014	
Amendments tabled in committee		PE546.617	19/01/2015	
Committee opinion	CONT	PE539.750	27/01/2015	
Committee opinion	AFET	PE541.620	27/01/2015	
Committee report tabled for plenary, 1st reading/single reading		A8-0049/2015	12/03/2015	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0341/2015	07/10/2015	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00043/2015/LEX	28/10/2015	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2014)0358	18/06/2014	Summary
Commission response to text adopted in plenary	SP(2015)750	10/12/2015	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
CofA	Court of Auditors: opinion, report	N8-0022/2015 OJ C 052 13.02.2015, p. 0001	15/01/2015	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Regulation 2015/1929
OJ L 286 30.10.2015, p. 0001 Summary

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

2014/0180(COD) - 18/06/2014 - Legislative proposal

PURPOSE: to amend the Financial Regulation (FR) to take account of the new directives on public procurement and on the award of concession contracts awarded by the European institutions on their own account.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council lays down the rules for the establishment and the implementation of the general budget of the European Union. In particular, it also contains rules on public procurement.

Following the adoption of Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive 2004/18 /EC and of Directive 2014/23/EU of the European Parliament and of the Council on the award of concession contracts, provision should be made for the rules contained in these Directives to apply to contracts awarded by the European institutions on their own account.

CONTENT: the proposal aims to **amend Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union** in order to take account of the new directives on public procurement and on the award of concession contracts awarded by the European institutions on their own account.

The modifications brought about to the text of the Financial Regulation (FR) can be classified into three main groups.

Alignment with the Directive: new provisions are introduced, such as market consultation, the new innovation partnership as a procedure, the introduction of compliance with environmental, social and labour law as a key requirement, evaluation of criteria in no particular order, award methodology based on the most economically advantageous tender.

In addition, concessions for works and services are introduced for the first time in the FR and are subject to the same types of procedures as public contracts.

Provisions on exclusion: the grounds for exclusion are clarified and aligned with the Directive as well as the possibility for the economic operator concerned to take remedial measures. Exclusion is clearly separated from the rejection from a given procedure to avoid confusion.

A single system is set up for increasing the protection of the Union financial interests which takes into account the existing Central Exclusion Database. The aim of the system is to ensure the early detection and prevention of risk as well as the publication of information related to excluded economic operators. An exclusion panel is set up to take exclusion decisions after the analysis of the case and it guarantees the right of defence of economic operators.

Clarifications of the text and simplifications: these concern publicity measures above and below thresholds, requirements for opening and evaluation, rejection of non-compliant tenders, bank guarantees for works and complex services contracts, the fact that Union institutions are considered central contracting authorities according to the Directive, the reference to applicable Directive thresholds, electronic procedures and the opening up of procurement by institutions to international organisations.

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

2014/0180(COD) - 07/10/2015 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 645 votes to 16, with 27 abstentions, a 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.

The European Parliament's position adopted in first reading following the ordinary legislative procedure amend the Commission proposal. The main amendments adopted in plenary concerning the following issues:

Public procurement: it is stipulated that the term "procurement" shall mean 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.

Obligations in the areas of environmental, social and labour law: minimum requirements shall include compliance with applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the applicable international social and environmental conventions listed in Annex X to Directive 2014/24/EU.

It has been clarified how the contracting authorities can contribute to the protection of the environment and the promotion of sustainable development, while ensuring that they can obtain the best value for money for their contracts, in particular through requiring specific labels and/or through the use of appropriate award methods.

Single early detection system: the Commission should set up and operate a single early detection and exclusion system. The purpose of such a system shall be to facilitate: (i) the early detection of risks threatening the Union's financial interests; (ii) the exclusion of an economic operator which is in one of the exclusion situations; (iii) the imposition of a financial penalty on an economic operator.

Information exchanged within the early detection system shall be **centralised in a database** set up by the Commission and shall be managed in full compliance with the right to privacy and other rights.

The decision to exclude and/or to impose a financial penalty shall be taken by the contracting authority. Such a decision shall be **based on a final judgment** or on a final administrative decision.

In the absence of a final judgment or final administrative decision and in cases related to a serious breach of contract, the contracting authority should take its decision having regard to the recommendation of a panel on the basis of a preliminary classification in law of the conduct of the economic operator concerned. The role of the panel should be to **ensure the coherent operation of the exclusion system**. The panel should be composed of a standing chair, representatives of the Commission and a representative of the relevant contracting authority. The panel should also assess the duration of an exclusion in the cases where the duration has not been set by the final judgment or the final administrative decision.

Criteria for exclusion: an economic operator should be excluded by the contracting authority when a final judgment or a final administrative decision has been taken in the case of: (i) grave professional misconduct, (ii) non-compliance, whether intentional or not, with the obligations related to the payment of social security contributions or the payment of taxes, (iii) fraud affecting the general budget of the Union, (iv) corruption, (v) participation in a criminal organisation, (vi) money laundering, terrorist financing, terrorist related offences, (vii) child labour or other forms of trafficking in human beings or irregularity. It should also be excluded in the case of a **serious breach of contract or bankruptcy**.

The contracting authority should also be able to exclude an economic operator **where a natural or legal person assuming unlimited liability for the debts of that economic operator is bankrupt** or in a similar situation of insolvency or where that natural or legal person fails to comply with its obligations to pay social security contributions or taxes, where such situations impact the financial situation of the economic operator.

An economic operator should not be subject to a decision of exclusion when it has taken **remedial measures**, thus demonstrating its reliability.

Conflict of interest and grave professional misconduct: the amended Regulation makes a distinction between different cases usually referred to as situations of conflict of interest. The notion of a "conflict of interest" should be solely used for cases where an official or an agent of a Union institution is in such a situation.

On the other hand, **grave professional misconduct** includes, in particular, any of the following:

- fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract;
- entering into agreement with other economic operators with the aim of distorting competition;
- violating intellectual property rights;
- **attempting to influence the decision-making process** of the contracting authority and attempting to obtain confidential information that may confer upon it undue advantages in the procurement procedure.

Financial penalties: the contracting authority may impose a financial penalty on an economic operator who has attempted to obtain access to Union funds by participating or requesting to participate in a procurement procedure while being, without having declared it, in one of the exclusion situations. The amount of the financial penalty shall represent b**etween 2% and 10% of the total value of the contract**.

The decision of exclusion of an economic operator from participation in procurement procedures or the imposition of a financial penalty and the decision to **publish the related information** should be taken by the relevant contracting authority, in view of its autonomy in administrative matters.

Rejection of a procurement procedure: before taking a decision to reject an economic operator from a given procurement procedure, the contracting authority shall give the economic operator the opportunity to submit its observations, unless the rejection has been justified by an exclusion decision taken with regard to the economic operator, following an examination of its observations.

Presentation and evaluation of offers: according to the Regulation, the contracting authority may require tenderers to submit a guarantee in advance to make sure that the tenders submitted are not withdrawn. The required guarantee shall be **proportionate to the estimated value of the contract** and shall be set at an appropriate level in order to prevent discrimination against diverse economic operators.

Parliament also lays down the cases in which a contract or a specific contract under a framework contract may be modified without a new procurement procedure.

Electronic procurement: in order to ensure that Union funds are used in an effective, transparent, and appropriate way, an amendment stressed that electronic procurement should contribute to a better use of Union funds and enhance access to contracts for all economic operators.

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

2014/0180(COD) - 28/10/2015 - Final act

PURPOSE: to align the Financial Regulation to new procurement rules.

LEGISLATIVE ACT: Regulation (EU, Euratom) 2015/1929 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.

CONTENT: the Regulation **amends the financial rules applicable to the general budget of the Union**. The aim of the new Regulation is to align the procurement procedures used by the EU institutions for awarding contracts to the new procurement rules applicable to member states, set out in directives 2014/24/EU and 2014/23.

In addition, **concessions for works and services** are introduced for the first time in the Financial Regulation and are subject to the same types of procedures as public contracts.

The revised Financial Regulation provides for the following:

Respect for environmental, social and labour law obligations: the Regulation stipulated that the contracting authorities may contribute to the **protection of the environment and the promotion of sustainable development**, while ensuring that they can obtain the best value for money for their contracts, in particular through requiring **specific labels** and/or through the use of appropriate award methods.

Economic operators shall comply with the applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the applicable international social and environmental conventions listed in Annex X to Directive 2014/24/EU.

Such obligations should be part of the **minimum requirements defined by the contracting authority** and should be integrated in the contracts signed by the contracting authority.

Single early detection system: in order to protect the Union's financial interests, a single early detection and exclusion system should be set up by the Commission, and the rules for exclusion from participation in procurement procedures should be improved in order to strengthen the protection of those interests. Information exchanged within the early detection system shall be **centralised in a database** set up by the Commission and shall be managed in full compliance with the right to privacy and other rights.

Exclusion of economic operators: the decision of exclusion of an economic operator from participation in procurement procedures or the imposition of a financial penalty and the decision to publish the related information should be taken by the relevant contracting authority, in view of its autonomy in administrative matters.

In the absence of a final judgment or final administrative decision and in cases related to a serious breach of contract, the contracting authority should take its decision having regard to the recommendation of a panel on the basis of a preliminary classification in law of the conduct of the economic operator concerned. The panel should also assess the duration of an **exclusion** in cases where the duration has not been set by the final judgment or the final administrative decision.

Reasons for exclusion: the Regulation provides that an economic operator should be excluded by the contracting authority when a final judgment or a final administrative decision has been taken in the case of grave professional misconduct, non-compliance, whether intentional or not, with the obligations related to the payment of social security contributions or the payment of taxes, fraud affecting the general budget of the Union, corruption, participation in a criminal organisation, money laundering, terrorist financing, terrorist related offences, child labour or other forms of trafficking in human beings or irregularity. It should also be excluded in the case of a serious breach of contract or bankruptcy.

An economic operator should not be subject to a decision of exclusion **when it has taken remedial measures**, thus demonstrating its reliability.

The information related to an exclusion or a financial penalty should only be **published in the case of grave professional misconduct, fraud, a significant deficiency** in complying with the main obligations of a contract financed by the budget or an irregularity.

Conflicts of interest and grave professional misconduct: the new Regulation states that it is appropriate that different cases usually referred to as situations of conflict of interest are identified and treated distinctly. The notion of a ‘conflict of interest’ should be solely used for cases where 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.

ENTRY INTO FORCE: 31.10.2015. The Regulation shall apply from 1.1.2016.

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.

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

2014/0180(COD) - 12/03/2015 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Budgets adopted the report by Ingeborg GRÄSSLE (EPP, DE) 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.

The proposal under consideration aimed at aligning the financial regulation with the new directives on public procurement and on the award of concession contracts awarded by the European institutions on their own account.

The committee recommended that the position of the European Parliament adopted in first reading following the ordinary legislative procedure should amend the commission proposal as follows:

Principles applicable to public procurement: 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. The contracting authority shall give reasons when it decides not to divide a contract into lots.

In accordance with the principle of sustainability, contracting authorities shall take suitable measures to ensure that, when executing contracts, economic operators comply with the **environmental, social and labour law** obligations established by Union or national legislation, collective agreements or the international environmental, social and labour conventions listed in Annex X to Directive 2014/24/EU.

Exclusion criteria: in order to protect the financial interests of the Union, Members proposed integrating tax fraud, tax evasion - including tax evasion via untaxed offshore structures - misuse of corporate assets, embezzlement of public funds in the criteria for exclusion from participation in procurement procedures of EU institutions.

Conflicts of interests and grave professional misconduct: the report aimed to distinguish different kinds of ‘conflict of interests’ and treat them differently. Accordingly, the term ‘conflict of interest’ should be solely used for cases where an official or agent of an EU institution is in such situation.

On the other hand, grave professional misconduct would mean:

- fraudulently or negligently misrepresenting information;
- entering into agreement with other economic operators with the aim of distorting competition or violating intellectual property rights;
- attempting to influence the decision-making process of the contracting authority during the procedure;
- attempting to obtain confidential information on the procedure.

Before taking a decision to reject an economic operator from a given procedure, the contracting authority should give the economic operator the **opportunity to submit its observations,** unless the rejection had been justified, by an exclusion decision taken with regard to the economic operator, following the examination of its observations.

The early detection and exclusion system: for cases of grave professional misconduct, fraud, corruption, participation in a criminal organisation, money laundering, terrorist financing, or serious breach of contract, a panel should be set up by the Commission at the request of an authorising officer of the Commission or of an executive agency.

- Where the request of the authorising officer was based, inter alia, on the information provided by OLAF, the Office should cooperate with the panel in accordance with Regulation (EU, Euratom) No 883/2013, with **due regard to the respect for procedural and fundamental rights, and to the protection of whistle-blowers.**

- The panel might take an exclusion decision including as regards the duration of the exclusion and/or may impose a financial penalty which should represent **between 2 % and 10 %** of the total value of the contract, without prejudice to the application of liquidated damages or other contractual penalties.
- In cases of corruption, terrorist financing, human trafficking, etc. – the panel would have the **option of permanently excluding the economic operator**.
- Where the exclusion or financial penalty was not published, the Commission should regularly inform the European Parliament and the Council of those decisions, using appropriate measures to ensure confidentiality.
- The limitation period for excluding or imposing financial penalties on an economic operator should be five years calculated from the date on which the wrongdoing was committed or the date of the final judgment of a national jurisdiction.
- Members introduced an additional **sanction mechanism for Member States** who failed to cooperate with the Commission on the early detection and exclusion system.

Submission and evaluation: the proposal stated that the contracting authority might require tenderers to submit a guarantee in advance to make sure that the tenders submitted would not be withdrawn. In such cases, Members considered that the **guarantee required should be proportionate** to the estimated value of the contract and be set at a very low level in order to prevent discrimination against diverse economic operators.

Members also set out the cases where a contract or a specific contract might be modified without a new procurement procedure.

Electronic procurement: the report stressed that Union public procurement should serve to ensure that Union funds are used in an effective, transparent, and appropriate way and, in that regard, electronic procurement should contribute to better use of public funds and enhance access to public contracts for all economic operators.

Framework contracts: for framework contracts with reopening of competition, Members felt that it was appropriate 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 was reopened might prejudice fair competition between them.

Separate discharge: Members introduced an amendment implementing the Joint Statement of 29 May 2014 made by the European Parliament, the Council and the Commission on the separate discharge for **Joint Undertakings** under Article 209 of the Financial Regulation, as confirmed by all stakeholders at the Round Table of 13 November 2014 on audit and discharge for Joint Undertakings.