



# REPLIES OF THE EUROPEAN COMMISSION

TO THE EUROPEAN COURT OF  
AUDITORS' SPECIAL REPORT

External consultants at the European Commission  
Scope for reform

# Contents

I. GENERAL INTRODUCTION TO THE COMMISSION REPLIES .....	2
II. COMMISSION REPLIES TO ECA RECOMMENDATIONS .....	2
Recommendation 1 - Complete the existing framework governing the use of external consultants' services.....	2
Recommendation 2 - Improve monitoring and mitigation of risks arising from using external consultants' services.....	3
Recommendation 3 - Make better use of the results of external consultants' services .....	4
Recommendation 4 - Improve reporting on the use of external consultants' services.....	5

This document presents the replies of the European Commission to observations of a Special Report of the European Court of Auditors, in line with Article 259 of the [Financial Regulation](#) and to be published together with the Special Report.

# I. GENERAL INTRODUCTION TO THE COMMISSION REPLIES

External consultancy services are procured by the Commission with the view to obtaining specialist expertise and knowledge, complementing in house know-how. The decision to resort to consultancy services is taken by the heads of the Commission's departments, based on their needs and assessments of risks and available resources. This helps to ensure an efficient use of resources in a context both of increasing demands on the Commission and tight budgetary constraints.

While external consultancy services may provide the Commission with important technical input, it remains fully responsible for the conduct of its own tasks as defined in the Treaties, including policy development. Consultants, as external resources, are not integrated as such into the Commission's internal staff policy, and they are not a substitute for the core workforce.

The Commission's use of external consultancy services is subject to a set of rules which, as the report states<sup>1</sup>, are followed by the Commission services in accordance with the Commission's decentralised model of financial accountability. While the Commission considers that the audit findings do not make a case for a fundamental reform of the use of external consultancy services, it welcomes the Court's report and the conclusions outlined therein, with the view to further strengthening the existing framework.

The Commission accepts all recommendations.

## II. COMMISSION REPLIES TO ECA RECOMMENDATIONS

### **Recommendation 1 - Complete the existing framework governing the use of external consultants' services**

**(ECA's target implementation date: December 2023)**

The Commission accepts the recommendation:

- a) to define the different forms of support the external consultants can provide;**
- b) to include guidance on how to carry out needs assessments, including methods to assess the need to outsource work instead of using internal staff;**
- c) to provide criteria applicable to activities and processes that should remain within the Commission and not be outsourced.**

To implement the recommendation, the Commission will put in place dedicated guidance. It will do so by building on the extensive set of rules and guidelines currently in place. These include the legal framework provided by the financial regulation and public procurement rules, the better regulation

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<sup>1</sup> See ECA observation 35.

framework on the guidance for the use of external consultancy for evaluations and studies, the corporate guidance on external service providers working from Commission premises and the financial reporting framework (ABAC).

When implementing this recommendation, the Commission will ensure optimal resource management and a balance between the need to mitigate the risks identified by the ECA<sup>2</sup> and the need to guarantee sufficiently flexible access to consultancy services. This should allow the Commission to deliver on its goals and policy priorities, while always respecting the principle of sound financial management. The Commission appreciates the references to good practices implemented by the Commission services and mentioned in the audit report<sup>3</sup>, for example regarding the guidance provided by the better regulation guidelines and toolbox for planning and justifying the use of external consultancy services for evaluations and will use these as benchmarks.

## **Recommendation 2 - Improve monitoring and mitigation of risks arising from using external consultants' services**

**(ECA's target implementation date: December 2023)**

The Commission accepts this recommendation.

### **a) to periodically analyse the risks of concentration and overdependence at the level of directorates-general and the Commission;**

As indicated by the ECA in the report<sup>4</sup>, certain types of corporate risks related to external consultancy services may not be visible at the level of individual DGs. Such risks will be analysed periodically by central services, based on the information received from the DGs in the risk assessment process as well as based on any other sources of information, including the complete and accurate data from the Financial Transparency System (FTS) (see also Commission's reply to Recommendation 4). Complementary guidance will be given to services, as necessary.

### **b) To clarify the processes in place related to competitive advantages obtained by external providers with long-term EU experience;**

According to the Financial Regulation, general procurement rules apply to any type of procurement contracts, including those in relation to consultancy services. The Commission will further clarify the processes in place.

### **c) to complete the guidance on avoidance of conflicts of interest by integrating risks not yet covered.**

The Commission will further strengthen and clarify the rules related to the avoidance of professional conflicts of interest by developing further internal guidelines, in addition to the already existing in the Vade-mecum of Procurement. In addition, the Commission has proposed in the targeted amendment to the Financial Regulation, additional requirements and obligations enhancing the existing Financial Regulation provisions on professional conflicting interests.

### **d) to ensure that directorates-general identify and report critical risks, and that these risks are brought to the attention of the corporate management board, for it to coordinate and advise on the assessment and management of such risks;**

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<sup>2</sup> See ECA observations 37 to 54.

<sup>3</sup> See ECA observation 28.

<sup>4</sup> See ECA observation 56.

The Commission has a well-established risk assessment process, following which each Directorate-General assesses the risks to its activities on a regular basis and notifies the critical risks to the corporate services. These critical risks are and will continue to be brought to the attention of the Corporate Management Board. Complementary guidance on issues related to the use of external consultancy services will be given to services, as necessary.

## **Recommendation 3 - Make better use of the results of external consultants' services**

**(ECA's target implementation date: December 2023)**

The Commission accepts this recommendation:

The Commission welcomes the ECA's positive assessment regarding the better regulation framework, which provides guidance for the use and dissemination of external consultancy services, contributing to decision making<sup>5</sup>. It will further analyse how to optimise the Commission's internal information sharing on lessons learned regarding the whole scope of procured consultancy services, so as to make best use of the services procured and the information gathered from the corporate perspective.

### **a) systematic post-completion assessments to learn lessons;**

The Commission carries out post-completion assessments before the final payment to the contractor. This implies a review and validation of tasks/deliverables, in line with the contractual terms. Where the tasks/deliverables do not satisfy the requirements of the contract, a contradictory procedure is organised, with the view to applying contractual penalties. These can include reductions in price for low quality or liquidated damages for delays in delivery. Moreover, if the existence of risks to the Union's financial interests is established, on the basis of breaches such as, among others, grave professional misconduct, irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95, fraud, corruption or significant deficiencies in contract performance leading to its early termination or the imposition of contractual penalties, the contractor may be registered in the Early Detection and Exclusion Database. Such information is available to the authorising officers in all Commission departments.

In addition, the Commission will further clarify that the DGs need to perform lessons-learned assessments when contracts are completed.

### **b) systematic analysis of whether the transfer of knowledge from the consultants to Commission staff is needed;**

The Commission accepts this recommendation. The knowledge transfer from the consultants to Commission staff or to other consultants who follow up a specific task is necessary for the follow up of the contract performance and the handover. Therefore, the Commission will further clarify that the DGs need to analyse the need to transfer knowledge when contracts are concluded. Moreover, the Commission will explore if an optional contractual clause could be included in the contract models.

### **c) Corporate-level arrangements to disseminate lessons learnt and results, and identify good practices of external consultants' assignments.**

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<sup>5</sup> See ECA observation 66 and 71.

The Commission accepts this recommendation. It will explore how to further facilitate the sharing and dissemination of lessons learnt and results and the identification of good practices related to the use of consultancy services in its relevant professional Commission internal networks, with due regard to the applicable confidentiality and data protection requirements.

## **Recommendation 4 - Improve reporting on the use of external consultants' services**

**(ECA's target implementation date: December 2023)**

The Commission accepts the recommendation.

The Commission shares ECA's view that the quality of data on consultancy services can be further improved. It has already taken action to do so by introducing specific data quality rules for the recording of data on consultancy services (including the correct indication of the sub-type of service, hence study, evaluation etc.) by the Commission's departments in the financial information systems of the Commission. Consultancy data, including on the volume and types of acquired consultancy services, can now only be published provided said quality requirements are upheld.

Following such quality checks, the Commission will continue to report via the Financial Transparency System (FTS), a web portal open to the general public and updated on a yearly basis<sup>6</sup>. For example, 2021 contracts will become available by the end of June 2022, in line with the reporting requirements under Article 38 of the Financial Regulation.

The Commission will reflect on how to report regularly on the information that will be available in the FTS and consider additional reporting, as appropriate.

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<sup>6</sup> Link to FTS: <https://ec.europa.eu/budget/financial-transparency-system/index.html>