

Legal mechanisms linking the financial controller in the area of financial control of public procurement

CHAFI Mohamed Abdelbasset ¹, Dr. HAFDI Souad², DOUAER Afaf³

¹ Mediterranean Laboratory of Legal Studies, University of Abou Bakr Belkaid-Tlemcen (Algeria)
mohamedabdelbasset.chafi@univ-tlemcen.dz

² Mediterranean Laboratory of Legal Studies, University of Abou Bakr Belkaid-Tlemcen (Algeria)
hafdi.souad@yahoo.fr

³ Law and Humanitarian Security Laboratory, University of Hassiba Ben Bouali-Chlef (Algeria)
a.douaer@univ-chlef.dz

Received: 15/04/2022

Accepted: 26/02/2023

Published: 15/03/2023

Abstract:

This study aims to highlight the legal mechanisms authorized by the legislator to circumvent the controller's control over public procurement with the perspective of the mandatory power imposed on the controller, by shedding the light on the control over the extent to which the compliance file conforms to the applicable laws and regulations in order to hand over the visa, as well as the mandatory visa decision of the competent transaction committees, the decision to bypass and the decision to overlook the controller to hand over the visa, by highlighting the control of the extent to which the decision violates legislative provisions as restrictions on the effectiveness of this control over public procurement as the basis of protection of public money.

Keywords: Public procurement, financial controller's, Visa decision, Decision to bypass, Decision to overlook.

1. INTRODUCTION:

The financial controller's control over public procurement is one of the most effective control mechanisms, as it is designed to prevent transgression before it occurs, as it is a tribal financial control before contracting with the economic broker and giving it a launch order. Works on the one hand, and on the other hand, it has a dual nature, as it is divided into two parts of the control. Apart from financial control services according to the role of the financial controller in the specialized procurement commissions as a representative of the Minister of Finance, and the second, depending on his functional role within the Financial Supervisory Authority and in both parties together, the financial controller, in carrying out his duties, embodies the best external control over the legality of the procurement procedures and adherence to public procurement within the limits. Legality and compliance with applicable regulations and laws.

The financial controller's control of legitimacy in the field of public procurement is interrupted by mandatory restrictions which make it a formal check during which he complies to surrender his visa according to the conditions that must be met, provided that he informs the competent authorities, as the case may, of the circumstances of the issuance of his visa as well as the type of binding mechanism that was taken by the person who ordered the exchange. Or the competent procurement committee included in the commitment file for the public procurement project.

The objectives of the studies:

This study aims to highlight the legal mechanisms that require the financial controller to hand over his visa in the area of public procurement control through:

- To highlight the definition of the financial controller and define its powers, as well as the elements of its control.
- To define the concept of engagement in the public order and identify the components of its file
- Highlighting the role of the financial controller as responsible for the surrender of the previous screening visa on public procurement after an investigation into the legality of their procedures.
- To determine and evaluate the results of the implementation of the financial controller's supervision within its supervisory powers within the financial control services.
- To define the legal mechanisms that require the financial controller to surrender his visa to comply with the public transaction and its effects.

The problem statement:

What legal mechanisms have Parliament created as binding decisions for the financial controller to put its visa back on public procurement projects, and what is the extent of their restrictions on the supervisory model it exercises in accordance with its jurisdiction ?

In order to address this problem, we have proposed to divide this study into two axes, where we will discuss the legal framework of the supervision of the financial controller on public procurement (first axis), and then to review the legal mechanisms limiting the control of the financial controller. Public procurement (second axis).

Study approach:

The nature of the study requires using the descriptive and analytical approaches to understand the subject by collecting information and data and analyzing correspondence to meet the public procurement oversight role entrusted to the financial controller and evaluate its results.

2. Section one: The legal framework for auditor control of public procurement

The financial controller is considered as an auxiliary of the former financial control, as it was defined as an employee of the Department of Finance (Executive Decree 381-11, 21/11/2011) at the central and state level as an employee of the Department of Finance at the central and state level, as well as Executive Decree 92-414 relating to the prior control of the expenditures incurred by the Department of Finance (Executive Decree 414-92, 14/11/2009). The municipality appoints him and his deputies in accordance with a decision of the Minister of Finance, and his expenditure control is considered a legitimate control for appropriate control. Under this appointment, he is responsible for the pre-screening of expenses incurred, which represent the most significant aspects of public procurement.

2.1 The scope of the financial controller visa as part of the legality of the commitment

The Executive Decree 414-92 required that any project commitment to public spending, including transactions, which are subject to the supervision of the financial controller in order to obtain his visa, making it an indispensable condition for the completion of the process of implementing public expenditure, and as part of this, we will review these expenses which are mandatory subjects to the Financial Controller Visa (First Branch) as well as the concept of commitment and the components of the public procurement commitment file (second branch).

2.1.1 Expenses that are required to be subject to the financial controller's visa:

Draft decisions with an expense commitment are subject to the financial controller's visa prior to their signing. That is provided by the executive decree on the prior control of expenses incurred: (Executive Decree 381-11, p. art 10)

- Draft decisions, appoint and confirm employees.
- Nominal calendars prepared before the end of each fiscal year.
- Approval of the management and equipment budget budget.
- Any commitment supported by a sight bond or a pro-forma invoice, unless it exceeds the amount specified in the Public Procurement Act.
- Original calendars that are prepared each year, or that occur during the year.
- Public procurement projects and related annexes.
- Because the latter (public procurement) that represent the lion's share of public spending, the legislature has surrounded them with special tribal control measures in all their early stages, perhaps the most important step of commitment to them by the control services.

2.1.2 Commitment to the public transaction project with the financial controller

Public procurement engagement is considered to be the first step in the effective implementation of the purpose of the transaction, so that its total amount is committed to the financial controller after presenting the commitment file, and before knowing the components of the public procurement commitment file, the concept of commitment must be discussed first.

2.1.2.1 The concept of engagement:

The Algerian legislator defines the obligation of the Article 19 of Law 90-21 relating to public accounting as the procedure by which the origin of the debt is proven (Public Accounting Act 90-21, 15-08-1990). However, in reality, the engagement process takes place in two procedures:

The first procedure: which is called the accounting commitment, only those who ordered the disbursement or their delegates would undertake this type of commitment by issuing a commitment card (Masaie, 2003, p. 77), which leads to the allocation of a part of this open credit corresponding to the potential amount of the expenditure (the transaction), which is transmitted to the financial controller, whose task is limited to the control of the legality of the support project, and accordingly the declaration of commitment is prepared by the person who ordered the disbursement, and in it the amount of the credit that covers the support subject to the legal obligation is recorded, which means that the accounting obligation is to allocate a portion of the appropriations opened to cover a certain expenditure (Boulrouah, 2004, p. 21), thus, that it is in three copies. It is sent to the visa controller, which keeps a copy after the granting of its visa, and the second is kept in the project file with the interests of the person who ordered the exchange, and the last one continues on its way to the accountant to complete the implementation process in its accounting phase.

The designated financial controller issues his visa when he confirms the legality of the proposed support in accordance with the provisions of Executive Decree 92-414 relating to the prior control of the expenses on which the amendment and the supplement are committed.

The second procedure: which is called the legal obligation of alimony after obtaining the visa of the financial controller, the person who ordered the disbursement can then fulfill the commitment by making a unilateral decision or by contract. Always respecting the ceiling of appropriations opened in the budget. It should be noted that this type of obligation is not met by the commander solely for spending, however, may be the application of legal and legislative provisions such as subsidies and employee salaries.

2.1.2.2 The supporting documents that make up the public procurement commitment file

The article 10 of Executive Decree 92/414 on the prior control of expenses incurred stipulates that the control of expenses incurred is either in accordance with the articles mentioned in the article 9 of the same decree or non-compliant. When the exchange order sends the following supporting documents to the financial controller with the public transaction commitment card: (DGB, 2007)

- Draft agreement
- The visa of the relevant procurement committee.

- The People's Council deliberates on the agreement
- Presentation report
- The analytical note
- Permission to run
- Statement of Integrity
- Message offer
- The subscription declaration
- Unit price table
- Quantitative detection

In the case of the public contract annex, the spending order must attach the following supporting documents to the commitment card:(DGB, 2007, p. 213)

- Appendix to the project.
- The visa of the relevant procurement committee.
- The People's Council deliberated on the supplement
- Table of suggestion rates if necessary
- An order to start and stop work

In order to prevent the financial controller from ruling on the expense commitment sheets sent to him, which is arbitrary on his part, the Executive Decree 09-374 set a specific time limit for the financial controller to implement its control and show the results, provided that it must study and review the expenditure commitment files sent by the disbursement order within 10 days. It should be noted that this section had specified, prior to the amendment, the possibility of extending this period to 20 days, when files because of their complexity require further study. (Executive Decree 09-374, 19-11-2009)

2.2 Supervision of the financial controller on public procurement

The supervision of the financial controller is based on any commitment of public expenditure in general and public procurement in particular on the availability of a set of elements (the first branch) and as a result its control separates its results (the second branch) either in the form of a subsidy from its visa or a refusal based on the extent to which the content of the undertaking file is consistent with the legality embodied by the availability of the elements of its control.

2.2.1 Elements of the financial controller's control over public operations

The article 9 of Executive Decree No. 92/414 clarifies the elements that are subject to the supervision of the financial controller, and is defined exclusively as follows: (Executive Decree 414-92, p. art 09)

– **The legal status of the ordering:** it is verified here whether the person who ordered the exchange that carries out the support commitment is legally qualified to carry out this operation. (Bourtala, 2013/2014, p. 111)

– **Compliance with applicable laws and regulations:** Here, the financial controller ensures the legality of the procedures related to the conclusion of the public transaction in

accordance with the applicable regulations, as well as the formalities of the commitment card specified by a decision of the Minister of Finance which takes up the data mentioned in it.

– **The availability of funds and financial positions** : It is to verify the existence of financial funds that cover the amount of the public transaction that is the subject of the obligation.

– **Legal allowance for alimony**: the financial controller ensures that each public expenditure is incurred in the article or position legally allocated to him in the budget, without an open financial allowance to cover a certain expenditure in order to cover another expense. (DGB, 2007, p. 125)

– **Matching the amount of the commitment with the items listed in the attachments**: when the financial controller assertively ensures the extent to which the amount of the expense included in the supporting documents corresponds to the amount of the commitment card, in an accounting manner, and it is mandatory that the amount contained in the attached documents be equal to the amount of the commitment card.

– **Existence of visas and advance notices**: The financial controller here ensures that the previous notices or visas stipulated in the law exist before placing his visa on the commitment card, depending on the type and nature of the expenditure.

2.3 Supervision of the financial controller on public procurement:

The supervision of the financial controller is based on any commitment of public expenditure in general and public procurement in particular on the availability of a set of elements (the first branch) and as a result its control separates its results (the second branch) either in the form of a subsidy from its visa or a refusal based on the extent to which the content of the undertaking file is consistent with the legality embodied by the availability of the elements of its control.

2.3.1 Elements of the financial controller's control over public operations

The article 9 of Executive Decree No. 92/414 clarifies the elements that are subject to the supervision of the financial controller, and is defined exclusively as follows:

– **The legal status of the ordering**: it is verified here whether the person who ordered the exchange that carries out the support commitment is legally qualified to carry out this operation.

– **Compliance with applicable laws and regulations**: Here, the financial controller ensures the legality of the procedures related to the conclusion of the public transaction in accordance with the applicable regulations, as well as the formalities of the commitment card specified by a decision of the Minister of Finance which takes up the data mentioned in it.

– **The availability of funds and financial positions**: It is to verify the existence of financial funds that cover the amount of the public transaction that is the subject of the obligation.

– **Legal allowance for alimony**: the financial controller ensures that each public expenditure is incurred in the article or position legally allocated to him in the budget, without an open financial allowance to cover a certain expenditure in order to cover another expense.

– **Matching the amount of the commitment with the items listed in the attachments**: when the financial controller assertively ensures the extent to which the amount of the expense included in the supporting documents corresponds to the amount of the commitment card, in an accounting manner, and it is mandatory that the amount contained in the attached documents be

equal to the amount of the commitment card.

– **Existence of visas and advance notices:** The financial controller here ensures that the previous notices or visas stipulated in the law exist before placing his visa on the commitment card, depending on the type and nature of the expenditure.

2.3.2 The results of the audit of public procurement by the financial controller

The article 05 of Executive Decree No. 09-374 affirmed the need for draft decisions to be submitted and include a spending commitment to be submitted to the financial controller's visa before signing them, including the draft public contract and annexes, and the legislature has made this visa a necessary condition for the final conclusion of the agreement, and thus the financial controller, according to him, is subject to his personal responsibility by handing over his prior visa on the draft commitment related to the operation or by refusing to do. Thus, the financial controller's documentary control under this role concludes with two conclusions, either in accordance with the record of compliance with the legal and regulatory conditions, or non-compliant with them and consequently, the result of his control crystallizes, either as an acceptance to surrender his visa or as a refusal to surrender it. After reviewing the elements subject to control in the support undertaking issued to him by the person who ordered the disbursement, he approves support that meets the legal requirements by granting a visa, or refuses to approve support if the obligations do not comply with the laws and regulations in force as stipulated in Article 10 of Executive Decree 92-414 amended and completed.

2.3.2.1 Visa grant:

If the undertaking file complies with legal and regulatory conditions, and here, after the financial controller has confirmed that the obligation to spend on the applicable conditions, he expresses his approval of support by placing his visa on the commitment card and supporting documents, where he finds his legal basis in the text of the article 09 of the Executive Decree 92-414 express his visa on the validity and security of the agreement. In this case, the person who ordered the exchange, after receiving the commitment card indicated by the financial controller, can give the order to perform the work or services to the client to whom the transaction is assigned, and complete the payment process by submitting the payment order or payment transfer to the accountant. (Boutoura, 2018, p. 108)

2.3.2.2 Refusal to grant a visa:

In the event that the undertaking does not comply with legal and regulatory conditions, if it appears through the auditor's examination of the undertaking file that there is a violation of one of the control elements leading to illegality, then he refuses to mark the commitment card, and the non-approval of the support is either a provisional refusal or a definitive refusal depending on the case according to the second paragraph of Article 07 of Executive Decree 09-374.

2.3.2.3 Temporary rejection:

According to the text of the article 13 of the Executive Decree 92-414, in the event that the financial controller inspects a non-essential defect of the commitment card, it can be amended, so that the commitment card is returned with the rejection note containing all the necessary notes causing the visa failure to grant the visa with the reasoning based on the legal texts, in order to correct them, and the provisional rejection under the article 11 of the same decree is justified by one of the following reasons:

- The case of proposing a spending obligation but which is tainted by violations of the applicable regulations, but it can be corrected.
- Inadequate or lack of legal documentation proving commitment to child support.
- Forget one of the important data from the documents attached to the commitment.

In addition, the temporary refusal reported by the financial controller who ordered the exchange should not be repeated for the same reason. (Abdellali, 2012/2013, p. 536)

2.3.2.4 Definitive rejection:

The rejection is final in the case where the commitment card contains non-compliance with one of the basic and essential elements not amendable, and this refusal is specific to all the legal reasons that lead to it and is justified under the article 12 of the same Executive Decree 92-414 by one of the following reasons:

- The proposal does not comply with existing laws and regulations.
- Unavailability of funds or necessary financial positions.
- Failure of the one who ordered to spend the notes on the refusal note.

These cases are considered among the basic and fundamental procedures that the disbursement order cannot correct and therefore cannot correct the obligation to spend. However, it also obliges the financial controller to justify his definitive refusal to grant the visa so that it is not arbitrary in his control jurisdiction.

In the event of a final rejection, the financial controller must send a copy of the file attached to a detailed report to the Minister of Finance, and the Minister of Finance may review the final rejection issued by the financial controller when he considers that the elements on which the rejection is based are not established in accordance with the article 13 of the Executive Decree 09-374.

It should be noted here, that the financial controller, while exercising financial control over the public transaction, is independent of his opinion on the draft agreement he had made during his supervision of the latter as a member of the Committee on Public Procurement, because his refusal to grant the visa to the rapporteur in the Committee could not be followed by a refusal to put his visa back on a project. The commitment, since the text of the article 07 of Executive Decree 09-374, as well as the text of the article 196 of the Presidential Decree 15-247, made the relevant business committee visa binding on the financial controller, unless the draft agreement violates a statutory provision.

3. Section three: Legal mechanisms limiting the supervision of the financial controller on public procurement

Although the financial controller's previous control over public expenditure in general and public procurement projects in particular is a mandatory step during their implementation, which is reflected in the requirement of his visa on employment files within the limits of his legitimacy control exercise, as it is considered to be a documentary control based on the compliance of supporting documents with procedures The subject of the agreement. However, the control of the financial controller remains limited by binding mechanisms and court decisions set by the legislator through the law of public procurement and guardianship decrees related to the previous control of public expenditure.

3.1 The binding decisions of the financial controller

The Public Procurement Act No. 247-15, as well as the Executive Decree No. 414-92, set out a set of decisions that impose their authority and binding force on the supervision of the financial controller in the field of public procurement, represented in the decision of the Public Procurement Committee visa, the decision to override and finally the decision to ignore.

3.1.1 The visa decision of the Public Procurement Committee

The visa decision is considered to be an administrative act issued by the relevant external control committees, which confers legitimacy on draft specifications, public contracts and annexes under consideration, however, it does not increase to the status of administrative decision in terms of characteristics as it does not affect the legal positions of establishment, modification or cancellation, and has no executive character (Baali, 2004, p. 65). When it is considered, a document issued by a specialized supervisory committee that allows the adjudicator to complete the remainder of the conclusion steps and present the proposed public contract to the appropriate financial controller.

As a reference, the Public Procurement Committee has all the powers to issue or refuse its visas, provided that they are both justified and justified (presidential decree 15-247, p. art 195)

3.1.1.1 The granting of the visa:

It is the act by which the competent procurement committee grants the legal status of the draft public offer submitted to it for consideration, and that results from its work of verifying the response of the file studied to all the formalities and procedures stipulated in the law, through which its legitimacy is embodied, as well as its compliance with the laws and regulations.

3.1.1.2 Refusal to grant visa:

The legislator has left it to the relevant Public Procurement Committee to refuse the reasoned and justified visa, either by examining any deficiencies in the purpose of the transaction or its essential data, or by a violation or violation of the law and/or regulations in force which lead to non-compliance with the principle of legality (Baali, 2004, p. 68), that the Committee expresses its decision to refuse the granting of its visa after studying the draft public operation

presented to it in the session follows the discovery of defects and transgressions affecting the legitimacy of the procedures and their non-compliance with the provisions governing the field of public procurement, whether organizational or legislative, committed by the co-contractor, or the existence of a glaring lack of data, information, terms and key elements of the transaction that would deviate from the purpose of the transaction or not guarantee the completion of the purpose of its conclusion.

In the case of the visa, it is necessary not to conclude the contract and therefore the absence of any contractual link between the contracting interest and the economic trader against whom an announcement of the temporary grant of the project has been issued, since the agreement does not become final and enforceable on the ground and can only be concluded after obtaining the visa of the relevant external control committees and then the previous financial control visa for the financial observer and finally the approval of the competent authorities to conclude according to this sequence of control procedures.

3.1.2 The decision to go beyond the rejection of the public procurement committee's visa:

The regulation of public procurement has allowed the decision to override as a mechanism for continuing the concluding procedures in the event that the competent Public Procurement Committee refuses to grant its visa or misuses its powers to conclude public contracts under its control, and has surrounded it with a model of law that should be respected under certain conditions and procedures, which we will explain as follows:

3.1.2.1 The concept and procedures for making the decision to exceed :

The decision to deviate is considered to be an administrative act issued by the official of the adjudicating authority in the event that the competent procurement committees refuse to grant their visas on the conditional books, the contract proposals or the annexes presented to them, the official of the adjudicating authority being fully responsible to the guardianship and subsequent supervisory bodies, in order to complete the closing stages of the operation. The article 200 of the Presidential Decree No. 247-15 defined the competent authorities legally entitled to take it exclusively, represented by the minister or official of the relevant public body, the governor, the president of the Municipal People's Assembly, following the following procedures:

- The overspend decision must be made on the basis of an adjudicative power report.
- The need to explain the decision to exceed under the conditions of the law.
- The need to make a circumvention decision by the competent authority (the minister, the governor, the president of the Municipal People's Assembly).
- The obligation to inform the bodies covered by the article 200 of the annulment decision in all cases, by sending a copy to the Board of Auditors, the Minister responsible for finance (public procurement supervisory authority and General Inspectorate of Finance), to the relevant procurement committee (BOULIFA, 2004, p. 123)

3.1.2.2 Legal Conditions for Overspending Decision

The appeal of the adjudicator power to the decision to exceed must meet the conditions that make it a legal form defined by Presidential Decree No. 15-247, as it cannot be taken in the event

of rejection of the visa based on the violation of a legislative decision, whereas it can be made in the event of rejection of the visa based on the violation of a regulatory decision within 90 days of notification of the refusal mandatory to impose it on the designated financial controller and the accountant(Presidential Decree No: 15-247, 2015, p. art 202)

3.1.3 Overlook as a mechanism to override the final rejection of the granting of a visa

Non-compliance is a procedure that allows the person who is ordered to spend in the event of a definitive rejection of the obligation to spend by assuming full responsibility for the payment of support without being bound by the financial controller's visa, provided that the non-compliance is linked to the rejection of the obligations specified in the text of Articles 06 and 07 of The Presidential Decree 92-414 , and in this case the order is to spend Forgotten by a reasoned decision and informs the minister in charge of the budget. (Executive Decree 414-92, 14/11/2009, p. art 18)

Whoever ordered the dismissal cannot execute the non-compliance in cases where the final refusal is based on the following reasons: (Executive Decree 414-92, 14/11/2009, p. art 19)

- The order status of the exchange.
- Lack or unavailability of funds.
- No visas or advance notices stipulated in the organization.
- No supporting documentation related to the commitment.
- The illegal allocation of the commitment with the aim of concealing either a surplus of funds, a modification of these credits, or a surplus of financial aid in the budget.

3.1.3.1 Procedures for obtaining an overlook:

Non-compliance is obtained by referring the disbursement to the financial liability controller accompanied by a reasoned decision called a decision to be neglected, in order to put the visa of consideration in reference to the number and date of the overlook.

3.1.3.2 Effects of condescension:

If the conditions of forgiveness are met, this leads to the following results: (Executive Decree 414-92, pp. art 20,21,22)

- The financial controller marks the commitment file taking into account the visa.
- The financial controller sends a copy of the dossier to the Minister responsible for the budget for information, attached to a detailed report.
- The Minister of Finance sends a copy of the commitment file subject to mandatory monitoring to institutions specializing in the control of public expenditure.

Whoever ordered the continuing disbursement in the procedures for the performance of the support that is the subject of his responsibility, and the responsibility of the financial controller for that support is cleared

As a result, the financial controller is required to issue a visa to be issued, in reference to the date and number of non-compliance, when the financial controller transfers a copy of the commitment file to the Minister of Finance via the administrative scale(Saleh Baloul, 2020, p. 89).

On the part of the financial controller, a waiver of his responsibilities and a discharge of responsibility for this support and its consequences, as well as the procedures for the performance of support will continue under the full responsibility of the person who ordered the exchange.

3.2 The legal implications of binding decisions on the supervision of the financial controller:

Decisions binding the financial controller are court decisions granted by the legislature to those legally qualified for the regular and regular operation of the public facility, which have legal effects on either the decision maker or the financial controller, which will be dealt with successively depending on the type of decision and the nature of the committee or the person making it.

3.2.1 The mandatory visa power of specialized procurement commissions

The article 10 of the Executive Decree 09-374 amending and completing the Executive Decree 92-414 on the prior screening of expenditure stipulated the compulsory visa granted by the competent procurement commissions under the previous review of public procurement projects on the financial controller. These are compulsory visas that abstain from the financial controller's control because he has not made the financial controller's visa in this case a pro forma visa, which means that the financial controller is obliged to put his visa back on the public contract commitment file once he has reviewed the visa decision of the public procurement committee concerned. (Executive Decree 09-374, p. art 07)

This latter removes from its contents the control exercised by the financial controller on the public procurement and makes it insufficient to achieve and achieve the objective of its creation.

The publication of the Presidential Decree 247-15 on the organization of public procurement and public utility authorizations once again highlighted the mandatory power of the public procurement committee's visa to the financial controller and included it with a condition that it must fulfil in order to give it its compulsory status. The article 196 of the Committee stipulates that the overall visa received by the Public Procurement Committee is imposed on the person concerned, the financial controller and the responsible accountant, unless the visa rapporteur violates a statutory provision (Ben Ahmed Houria, Administrative and Judicial Control of Public Transactions, PhD, Faculty of Law and Political Science, Abou Bakr Belkaid University, Tlemcen, 2017/2018, page 154), according to which the visa of the Public Procurement Committee remains binding for the financial controller if he violates a regulatory provision. The competent person who can withdraw his visa after being notified, regardless of the question, before notifying the selected contractor of the transaction. If the contracting interest changes after the conclusion of one of the public contracts that has been the subject of a visa, it must inform the competent public procurement committee, the latter which has the ability to withdraw its visa before notifying the contracting person tested after informing the financial controller of the existence of violations of the law, and it is obliged to do so, as required by the rules and principles of legitimacy (Abbas, 2017, p. 127).

It should be noted in this regard that the regulation of the public procurement 15-247 granted to the financial controller a shield was not created by Executive Decree 09-374 amending and completing Executive Decree 92-414 relating to the previous control of expenses incurred

and which is the constitution of the financial control carried out by the financial controller, which made the visa The formalities it carries out on the public contract commitment file , subject to its non-violation of the legislation and only, i.e. that it has the right to refuse to surrender the visa as soon as it finds a violation of a legislative decision, unlike the financial control body that imposed the visa and then the notification, on the one hand (Article 7 of E.D No: 09-374 and Article 196 of P.D No: 15-247). On the other hand, we note that the regulation of financial control required the financial controller to be notified in the event that he found deficiencies after identifying the public contract commitment file, expanding the circle of bodies to be notified, while the organization of public procurement was limited to the financial controller and the accountant in the event that they were examined for violations of legislation, the competent public procurement committee, and only, while leaving the committee with a margin of freedom to withdraw or not to withdraw its visa.

3.2.2 The impact of the decision to override the control of the financial controller

The article 202 of the Presidential Decree No. 247-15 clarifies the case of a decision to exceed based on a refusal based on the violation of the regulations, and its mandatory status for the financial controller and the designated accountant has a status equal to that imposed by the public procurement committee's visa, i.e. the decree of the Commissioner of Foreign Exchange when it makes the decision to deviate from the visa of the Committee of Control , the visa observer attached to the file. With the proposed draft agreement, it is often assumed by the elements of control it exercises within the limits of not violating the only legislative provisions, and it issues its visa of engagement as part of the mandatory restriction imposed by the overstay decision. (Abbas, 2017, p. 115)

This imposition or constraint presents itself as a serious deviation in the course of the legitimacy that the financial controller represents in its supervisory functions, such as the decision to override, and in revising its conditions, we have not noticed that it does not contradict and violate the regulations, but rather denies or is impossible to take in the event of a violation of the legislation and only , which raises a much question about the effectiveness of the control exercised by the public procurement commissions on the one hand, and the control exercised by the financial controller over public procurement on the other.

It is noted that this decision to override carries a double risk and a two-dimensional effect, contrary to the procurement committee's visa decision, as it is seen as a leap on two regulatory barriers and on legitimacy in itself at the same time. On the other hand, it is imposed on the financial controller who receives his visa as soon as he inspects the presence of the overspending decision without being able to refuse the rating, because the decision to exceed, as soon as it is made and issued by the contracting interest, meets the conditions on which it is based, i.e., it does not violate a statutory provision, and it is the only condition that the regulation authorizes for the committees and the financial controller to refuse. Comply with the overspend decision, and in this way, this decision nullifies two legal visas and is considered a major legal loophole in the control of public procurement.

3.2.3 Impact of the decision to overlook the control of the Financial Controller :

Similar to the "exception" granted to the Governor with respect to the possibility of exceeding the contracting committee visa, the law may include another exception, which is the possibility of circumventing the financial controller's visa by the "derogation decision".

While the decision to forget must only be taken if the draft obligation to pay the public expenditure is finally rejected, the person who receives the dismissal, when he receives the refusal and takes the decision to ignore it, sends it to the observer attached to the file concerned, with the intention of "taking it into account" and granting him a visa in this regard. The goal is to be able to track the volume of expenses and the remaining balances in the special accounting cards.

According to the above texts, the financial controller respects the administrative hierarchy to which he is subject and informs the guardians of everything he presents to him, including files submitted to oblivion, so that the minister in charge of the budget corresponds to the other bodies concerned with the control of public expenditure. (Bendaasse, 2013, p. 11)

The decision to neglect is considered a lesser degree, less dangerous when compared to other decisions that impose its obligation on the financial controller, since the use of this procedure is only after the presentation of the draft public transaction to the supervision of the specialized committees of public procurement and the obtaining of its visas, and then it is presented to the financial controller. It investigates the compliance of the commitment with the draft agreement with the procedures and regulations in accordance with the procedures and regulations in purely legitimate control force and builds its temporary refusal after one of its elements is diminished, then confirms its temporary rejection by a firm definitive rejection, which leads the latter to resort to the decision of dismissal to make a forgotten decision to which it is appropriate to respond and not incompatible with the expected cases. Section 19 of the Executive Decree 92-414.

If we observe the degree of sizing of the financial controller's control in this case, and find it formidable, especially since its preventive control is aimed at protecting public funds, since allowing the decision to forget makes the financial control of the financial controller on the test (RECCI, 2001, p. 108), despite the decision of the full responsibility of the director of the bank, the fact that the financial controller exercised all of his supervisory obligations and investigated the legitimacy of his visa provisions for issuing the denied decisions. Regulatory, unloaded and removed from liability.

It should remain to be noted that the decision to diss breathtaking in practice is a rare procedure used by those who order the exchange, particularly with their serious attempts to legitimacy the procurement processes, and this is a difficult means for those in charge of expenditure because of the responsibility they bear when confirming violations of its rights.

4. CONCLUSION:

As a conclusion of this study, we can say that the financial controller's implementation of his control over public procurement is based on legitimate oversight, which puts an end to his supervisory duties which he cannot bypass, while his control is limited in three ways that make him acquiesce and that he is ready to implement it whenever he fulfils the legal conditions provided.

On the one hand, the financial controller is an independent financial supervisory body that establishes its rejection of the proposed commitments on the basis of legality. However, the person who ordered the disbursement can avoid and avoid its control under the tolerance procedure by meeting the conditions set out in the applicable regulation, as it has not been included in cases where it is not permissible to comply with the legislation and regulatory legislation.

On the other hand, the visa rapporteur of the competent public procurement committee imposes on the financial supervisor and requires him to make his visa on the proposed expenditure commitment (the agreement) mandatory unless the visa decision violates a legislative provision where the visa of the Public Procurement Committee remains binding on the financial controller if he violates a regulatory provision, which leads us to a contradiction. This is absolutely legal, because all procedures for concluding public transactions and supervising the supervision of the financial controller are governed by regulatory provisions, whether they concern presidential decrees, executive decrees or instructions.

Then, the preponderant decision prepared by the adjudicator authority imposes the aim of avoiding the refusal of the competent procurement committee to grant its visa to the draft transaction in its hands to the financial controller, and requires it to have its visa on the draft commitment to the public transaction become formal, unless the visa decision violates a legislative provision where the visa remains The Committee on Public Procurement is obliged to the financial controller breaches a regulatory provision, and this is what we are in the same case regarding the extent of the obligation of the competent transaction committee's decision to the financial controller in terms of the degree of seriousness of the procedure and the severity of its taking, as it is considered to be a leap on two consecutive controls carried out on public procurement, oversight of committees, then supervision of the financial controller, and finally oversight of the public accountant.

5. Bibliography List:

1. Books:

Mohamed Messaie, (2003), Public Accounting, Dar Al-Houda, Algeria.

Mohamed Al-Saghir Baali, (2004), Administrative Contracts, Dar Al-Ouloum for publishing and distribution, Annaba, Algeria.

Charles DEBBACH - Jean-Claude RECCI, (2001), Administrative Litigation, DALLOZ, France.

2. Theses:

Ben Ahmed Houria, Administrative and Judicial Supervision of Public Transactions, PhD thesis in Public Law, Faculty of Law and Political Science, Abou Bakr Belkaid University, Tlemcen, ALGERIA, 2017/2018.

Haha Abdelalli, Legal Mechanisms for Combating Administrative Corruption in Algeria, PhD thesis in Public Law, Faculty of Law and Political Science, Mohamed Khaider University, Biskra, ALGERIA, 2012/2013.

Bourtala Ali, Financial Controller in Algeria, Master degree thesis in Public Administration and Finance, Faculty of Law, Ben Aknoun University, Algiers 1, ALGERIA, 2013/2014.

Sadeki Abbas, Tribal Control of Local Community Transactions, Master Degree thesis in Profound Public Law, Faculty of Law and Political Science, Abou Bakr Belkaid University, Tlemcen, ALGERIA, 2016/2017.

3. Journal article :

Saleh Balloul and Al-Azhar Azza, (2020), "Tribal financial control mechanisms for public procurement - the municipality as a model." Algerian Journal of Economic Development. Number 01 (Volume 07), pages 83-96;

Boutoura Fadila, (2018), "The Financial Controller's Advance Control of Public Deals as a Mechanism to Prevent Corruption", Studies in Economics and Business Administration Journal, issue 01, pages (77-116);

4. Seminar article:

Siham Bendaasse, (2013), "The Effectiveness of the Public Transactions Law in the Protection of Public Funds", Intervention No. 34, Sixth National Forum on the Role of Public Transactions Law in the Protection of Public Fund, Faculty of Law, University of Dr. Yahia Fares Media, May 20, 2013, ALGERIA.

5. Reports:

Boularouah Mohamed, (2004), "The Role of the State Treasury in Execution Public Expenditures", TRA Report, National School of Administration, Algeria.

Boulifa Ibrahim, (2004), "Public Works Procurement Guide", Mentouri University, Constantine.

6. Censorship-related legal codes:

Ministry of Finance,(2007), Controlled Expenditure Manual, Algeria: General Budget Directorate.

7. Legal texts:

Public Accounting Act 90-21, (1990), Official Journal, No. 35, 1990;

Presidential Decree 15-247,(2015), containing the regulation of public procurement and utility mandates, Official Journal, No. 50, 2015;

Executive Decree 92-414, (1992), relating to the prior screening of expenses to which it is related, Official Journal No. 82.

Executive Decree 09-374,(2009), amending and completing Executive Order No. 92-414 of November 14, 1992, on the prior control of expenses to which it is held, Official Journal No. 67.

Executive Decree 11-381, (2011), relating to the interests of financial control, Official Journal, No. 64.