

Discharge procedure for the EU budget

Political scrutiny of budget implementation

SUMMARY

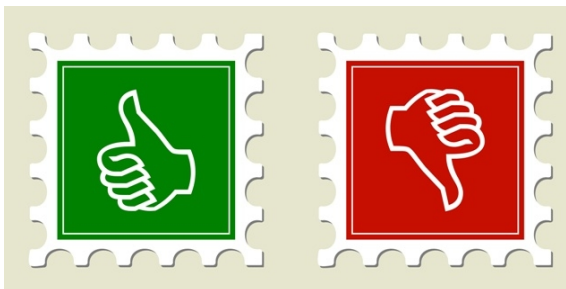
The European Commission is ultimately responsible for the execution of the European Union's budget. However, this involves a range of actors, including Member States, to which the Commission delegates implementing tasks related to a significant share of the budget.

Each year, the discharge procedure ensures ex-post democratic oversight at political level of how the EU's annual budget has been used. It aims to verify whether implementation was in accordance with relevant rules (compliance), including the principles of sound financial management (performance).

The decision on whether to grant discharge for the execution of the EU budget is made by the European Parliament, which acts on a non-binding recommendation by the Council, the other arm of the EU budgetary authority. Another key institution is the European Court of Auditors, the EU's independent external auditor, whose reports are a fundamental part of the procedure.

The discharge procedure has proved to be a powerful tool, which has had an impact on the evolution of the EU's budgetary system, while contributing to increasing the Parliament's political leverage. The Treaty of Lisbon has provided the procedure with a new tool – an evaluation report on the results achieved with the EU's finances, also known as the 'Article 318 Report' – which could increase the focus on monitoring the achievement of policy objectives. Another development in focus concerns how to ensure democratic scrutiny of the financial tools to respond to crises. Some of these have been created outside the EU's institutional framework (e.g. the European Stability Mechanism), while according to the EP, others are neither inside nor outside the EU budget, (e.g. Facility for Refugees in Turkey).

This briefing updates an [earlier one](#) of March 2014.



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Context

EU budget: various implementing methods

In 2014, total EU executed expenditure was over [€142 billion](#) or around 1% of EU gross national income. Member States implement some 80% of this in '**shared management**' (e.g. in policy areas such as cohesion and agriculture) with the European Commission and collect traditional [own resources](#) on behalf of the Union. Therefore, while the Commission is ultimately responsible for the correct implementation of the budget, it needs to rely on Member States' cooperation to meet this goal ([Article 317 TFEU](#)). And while the budget concerned is lower than that under shared management, complexity is further increased with the use of other implementing methods:¹ under '**direct management**' the Commission can not only carry out tasks itself but also delegate them to EU executive agencies; and, under '**indirect management**', implementing tasks are entrusted to other entities such as third-country authorities, international organisations, EU decentralised agencies and the European Investment Bank (EIB).

Control and audit mechanisms

With the aim of ensuring correct and effective use of EU resources, the new [Financial Regulation](#) (FR) and its [Rules of Application](#) (RA), adopted in 2012 and more recently amended in 2015, detail key principles that the European Commission and other parties entrusted with budget implementation must respect. These include control and audit obligations for the various types of implementing methods. Examples of safeguards are internal control systems and external audit activities.

Internal control systems and checks of their effectiveness involve different actors, including Member States' national audit bodies, notably in areas under shared management. In [special report No 16/2013](#) on the auditing systems for cohesion spending, for instance, the [European Court of Auditors \(ECA\)](#) noted progress in cooperation between the Commission and Member States' authorities since 2007, while identifying outstanding weaknesses to be addressed.

For **external audit**, Articles 285-287 TFEU assign the ECA the crucial role of the EU's independent external auditor. Established in 1977, the ECA has seen its mandate grow over time. Its checks mainly concern three aspects: 1) the reliability of the EU's accounts; 2) the regularity and legality of its transactions; and 3) the soundness of financial management.² Article 287 TFEU notes the need for cooperation between the ECA and national audit bodies, as well as for their respective independence to be maintained.

Parliamentary oversight

At political level, oversight of EU budget implementation is a key responsibility of the European Parliament (EP), which has a Budgets Committee (BUDG) and a specific Budgetary Control Committee (CONT). While the EP regularly monitors the implementation of the current year's budget, one of its strongest tools in this area is a form of *ex-post* control, the '**discharge procedure**'. Initially given by the Treaty of Rome (1957) to the Council, and then shared by Council and EP for a few years (Luxembourg Treaty of 1970), the power to grant discharge was assigned by the Treaty of Brussels (1975) to the EP. This contributed to increasing the political leverage of the Parliament. The ECA, also introduced by the Treaty of Brussels, is a key interlocutor in the discharge procedure.

Parliamentary scrutiny and approval of accounts, and of how public resources have been spent, are common practice in the vast majority of Member States. A 2012 EP study³ compares the approaches in this field across the EU.

Main features of the discharge procedure

Legal basis, rules and functions

[Article 319 TFEU](#) establishes that the EP, acting on a recommendation of the Council (the other arm of the budgetary authority), decides on whether to grant discharge to the Commission as regards the implementation of the annual budget of the EU. Further details, for example on the timeframe of the procedure and its application to the European External Action Service (EEAS), are provided by the [FR](#), and notably its Articles 164-167. In addition, the EP has defined internal organisational and operational rules concerning the discharge procedure in its Rules of Procedure (RoP) No [93](#), [94](#) and [98\(3\)](#), complemented by [Annex V](#).

The procedure, which covers the accounts of EU revenue and expenditure, their balance as well as the assets and liabilities of the Union detailed in the balance sheet, performs a two-fold function:

- **Politically**, it represents the assessment by the democratically elected institution of how the Commission has performed its task of implementing the budget.
- **Technically**, it allows the accounts of a given year to be closed, which brings the relevant budgetary cycle to an end.

Institutions and bodies other than the European Commission

Although Article 319 TFEU only mentions the discharge to the Commission, Parliament also grants separate discharge to the other EU institutions (for their respective sections of the EU general budget) on the one hand, and to EU agencies and joint undertakings on the other. The objective of separate discharge is to ensure transparency and democratic scrutiny of how public funds have been spent. Therefore, the CONT Committee prepares individual discharge reports for consideration in plenary ([Annex V](#) of the EP's Rules of Procedure). These also include a report for specific discharge of the Commission concerning the European Development Funds (EDFs), since the EDFs are not part of the EU budget.⁴

As for EU agencies and joint undertakings, Article 208 FR sets out that bodies established under the TFEU and the Euratom Treaty are subject to a discharge decision on the implementation of their budgets, taken by the EP on the Council's recommendation. With regard to institutions other than the European Commission, the practice of granting separate discharge emerged in the 1990s, but the scrutiny of the Council's section of the EU budget has proved to be a source of interinstitutional friction between the EP and the Council (see below).

Timeframe and documents

As regards the discharge procedure for **financial year n**, key deadlines and documents include:

- By **31 July of year n+1**, the European Commission must adopt the final [consolidated accounts of the EU](#) and [its own final accounts](#) and send them to the EP, the Council and the ECA (Article 318 TFEU and Article 148 FR). Financial statements and reports on budget implementation are included. In addition, by adopting a [synthesis report](#) on its management achievements, the Commission takes overall political

responsibility for management of the EU budget.

- By **15 November of year n+1**, the final consolidated accounts are published in the Official Journal of the EU with the [statement of assurance](#) (also known as DAS),⁵ which is the official opinion, based on its audit work, that the ECA gives on their reliability as well as on the legality and regularity of the transactions (Article 287 TFEU and Article 148 FR). By the same date, the ECA transmits its [annual report on the management of the EU budget](#)⁶ (with replies by the institution or body concerned to its observations) to the discharge authorities and the other institutions. This report contains both the DAS and an assessment of the soundness of financial management (Article 162 FR). The ECA produces a [separate annual report on the EDFs](#).
- In general, between the publication of the ECA annual report and **January of year n+2**, hearings of European Commissioners and senior officials of EU institutions, agencies and joint undertakings take place before the CONT Committee. This enables the EP to obtain further information and clarification on spending and management of EU resources.
- By **28 February of year n+2**, the ECA, the EP and the Council receive from the Commission a summary of the replies provided by Member States on the details of the ECA's annual report related to their management of EU funds (Article 162 FR).
- In **February of year n+2**, acting by qualified majority in its ECOFIN configuration, the Council usually adopts its recommendation to the EP on whether to grant discharge to the European Commission.
- Before **15 May of year n+2**, taking into account the Council's recommendation, the plenary of the EP considers the discharge reports prepared by its CONT Committee and decides either to grant or postpone discharge (Article 164 FR and [Annex V](#) of EP Rules of Procedure). On the basis of the EP Rules of Procedure, this vote usually takes place in April.
- If discharge is postponed,⁷ in **October of year n+2**, the EP considers new reports prepared by its CONT Committee taking into account any additional elements addressing the reasons for postponement and possibly removing the obstacles to granting discharge. At this stage, the plenary decides either to grant or refuse discharge. If discharge is refused, a subsequent part-session will consider a formal proposal to close the accounts for year n, with the European Commission invited to make a statement (Annex V of EP Rules of Procedure).

The Council position is particular, since at the same time it is one arm of the budgetary authority and prepares the non-binding recommendation on discharge, while Member States implement around 80% of the EU budget in shared management.

Article 319 TFEU details the documents that, in turn, the Council and the EP examine in the framework of the discharge procedure. In addition to the accounts and financial statement produced by the Commission, and the annual report and DAS of the Court of Auditors, these include any [ECA special reports](#)⁸ relating to soundness of management in specific sectors/policies and relevant to the financial year in question. Following an EP request in the context of the 2011 discharge procedure, the Commission also publishes an annual [report on the functioning of the preventive and corrective mechanisms](#) set in legislation, and the actions taken by its departments to protect the EU budget from illegal or irregular expenditure. Furthermore, the Treaty of Lisbon has created a new tool, an annual [evaluation report](#) to be produced by the Commission on the results achieved with the EU's finances. This evaluation report is also called the 'Article 318 Report', due to the TFEU article that contains this requirement.

Impact of EP decision on discharge

An important tool

In practice, the power to grant discharge has proved to be a significant tool allowing the EP to increase its **influence** on the way the European Commission operates. This is true not only in the exceptional case of refusal to grant discharge, but also when discharge is granted. In addition, should the relevant decision be postponed, Article 164 FR calls for the Commission to take promptly all measures necessary to remove the obstacles to granting discharge.

Political significance

Although Article 319 TFEU does not explicitly mention refusal of discharge, this has been considered an implicit power of the EP. Therefore, Parliament's RoP ([Annex V](#)) detail relevant procedures in such a case, including those allowing the necessary technical closure of the accounts.

While refusal of discharge to the European Commission does not imply immediate **legal consequences**, it is seen to have major **political consequences**. It does not represent a censure motion⁹ proper (Article 234 TFEU), but its exceptional character and symbolic significance could eventually lead to such a motion.

Up to now, the EP has twice refused to grant discharge to the European Commission. In 1984 (for financial year 1982), the Commission, which was very close to the end of its term in office, did not resign. In contrast, resignation did take place a few months after the 1998 discharge refusal (for financial year 1996), following publication of the report of a committee of independent experts (called for in an EP resolution on improving the financial management of the European Commission). Reaction to the content of this report raised the prospect of Parliament adopting a censure motion, but on 15 March 1999 the entire European Commission under President Jacques Santer resigned before this could take place.

Obligation to act on observations

An EP resolution with observations on the implementation of the budget is an integral part of the discharge decision. Parliament carries out a thorough analysis of relevant information. For example, for section III of the EU budget (Commission and executive agencies), the [resolution for financial year 2013](#) covered more than 300 points.

On the basis of Article 319 TFEU and Article 166 FR, the Commission and the other institutions have a **legal obligation** to take all appropriate measures to address the EP's observations on the execution of expenditure, as well as the Council's comments in its recommendation on discharge. Failure to act can trigger an action before the Court of Justice of the European Union (Article 265 TFEU), as recalled in Parliament's RoP. One of the amendments to the FR introduced in 2015 specifies that the obligation to take all appropriate measures to address discharge observations and comments also concerns bodies such as EU agencies and joint undertakings.

Reporting

Article 319 TFEU provides for the European Commission to report to Parliament and Council on the measures taken in relation to discharge observations and comments. For instance, in its report on the [follow-up to the discharge for financial year 2013](#), the European Commission accepted to start new actions on 139 requests but rejected 37 requests. It also considered that in the remaining 218 cases relevant measures had already been taken or were ongoing. This follow-up report is examined by the EP and

the Council in the framework of the subsequent discharge procedure. Article 166 FR specifies that the EP or the Council may request not only the Commission but also other institutions and relevant bodies to report on the measures they have taken to address discharge observations and comments.

Evolution and some aspects in focus

In general, analysts consider that the discharge procedure has significantly influenced the evolution of the EU's budgetary system¹⁰ and that the EP has been able to use the potential embedded in the right to grant discharge,¹¹ contributing to a strengthening of Parliament's role in the EU institutional framework. A number of aspects discussed below may have an impact on future developments in the discharge procedure.

Relations between Parliament and Council

The EP's decision to scrutinise the Council's section of the budget as of 2003 (for financial year 2001) has created growing friction between the two institutions, proving to be politically sensitive. For financial year 2008, the CONT Committee unanimously [proposed](#) that the discharge decision concerning the Council's budget be postponed. However, the plenary rejected that recommendation, granting discharge to the Council, but addressing a series of [observations](#) to it. These included points on a 'gentlemen's agreement' of 1970, which the Council interpreted in the sense that the two institutions would refrain from scrutinising each other's budget. Parliament deemed this interpretation too wide, since the gentlemen's agreement referred only to the preparation of the budget and not to the ex-post scrutiny of its implementation, and added that the document was non-binding.

Regretting a lack of cooperation from the Council (often as far as the provision of information is concerned), the EP [refused](#) to grant discharge for the implementation of the Council's budget in financial years 2009, 2010, 2011, 2012 and 2013. At a [2012 Workshop](#) on the European Parliament's right to grant discharge to the Council, legal experts had different opinions on the topic. However, to a great extent, they agreed on the EP's right to obtain information (at least indirectly through the European Commission).

Responsibility for the implementation of the EU budget

The debate on discharge is also linked to where responsibility lies for the implementation of the EU budget. On the basis of Article 317 TFEU, the European Commission is ultimately responsible for the correct implementation of the EU budget, but this is complicated by the existence of different implementing methods (see above section on context). As regards the implementation of sections of the EU budget managed by EU institutions other than the Commission, the EP draws attention to Article 335 TFEU ('the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation') in conjunction with Article 55 FR ('The Commission shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them'), concluding that each institution is responsible for the implementation of its own budget.

Responsibilities in shared management

In shared management, the European Commission delegates implementing tasks to Member States. Their respective responsibilities in this implementing method, which is by far the main one for the EU budget, have long been the subject of debate. The new FR (Article 59) has introduced the requirement for Member States' management authorities in charge of implementing EU funds to provide the Commission each year with a set of documents, which include: their accounts together with a management

declaration; a summary of their final audit report and of controls; and an opinion from an independent audit body. The EP has [welcomed](#) this evolution, while formulating a series of observations for the effective implementation of these provisions. In its [resolution on discharge](#) of 29 April 2015, the EP supported an ECA recommendation that Member States' management declarations should contain an explicit confirmation on the effectiveness of the first-level checks carried out by their managing and certifying authorities.

An increasing focus on results

A fundamental aspect of discharge is verification of **compliance**. This involves checking whether resources have been used according to relevant rules, and that the accounts accurately reflect income and expenditure. Another key element is assessing **performance**, with the discharge authority taking into due account, for example, ECA special reports on the soundness of financial management in specific areas.¹²

Following the Lisbon Treaty (see above), the new Commission evaluation report on the EU's finances in relation to the results achieved should allow a further increase in the focus on performance. In its [resolution on discharge](#) of 17 April 2013, the EP welcomed progress in the way the Commission presented this report, but asked for further improvements. Point 29 of the [new interinstitutional agreement](#) (IIA) between the EP, the Council and the Commission on budgetary matters incorporates Parliament's requests that the evaluation report differentiate between internal policies (with a focus on the Europe 2020 Strategy) and external policies, while increasing the use of performance information (e.g. results of [performance audits](#)).

This is in line with a general trend, which the EP has repeatedly supported, towards strengthening tools which focus on results and their achievement. Articles 30(3) and 38(3) FR, for example, provide for the establishment of, and reporting on, specific, measurable, achievable, relevant and timed objectives for all sectors of activity covered by the budget. Operational programmes implementing the [2014-2020 Multiannual Financial Framework \(MFF\)](#) are required to apply these provisions. In January 2014, the CONT Committee (rapporteur: Michael Theurer, ALDE, Germany) adopted an [own-initiative report](#) on the Commission evaluation report based on Article 318 TFEU as a new tool for the improved discharge procedure. The plenary endorsed the Committee's report in a [February 2014 resolution](#), which reiterated a request that the EP had made in [July 2013](#), calling for the establishment of an interinstitutional working group tasked with examining the necessary measures to introduce performance-based budgeting. Against the backdrop of improved budgetary performance being an overarching objective of the Juncker Commission, the interinstitutional working group is [expected](#) to reach a common vision on how the performance orientation of the EU budget can be enhanced.

As regards the Article 318 Report in particular, in its [resolution on discharge](#) of 29 April 2015, the EP regretted that the fourth edition of the report produced by the Commission in 2014 was not yet a useful tool in the discharge procedure, despite some improvements in it noted by the ECA. In June 2015, the European Commission [analysed](#) the progress made in developing the Article 318 Report on the basis of the relevant action plan, while indicating that efforts to improve performance reporting would continue. In November 2015, the ECA [commented](#) on the fifth edition of the report, noting further improvements (e.g. more information on the Europe 2020 Strategy and references to individual programmes' contribution to it) and remaining challenges

(e.g. still incomplete picture of the EU budget's impact on the strategy, and possible issues in reporting the contribution of 2014-2020 European Structural and Investment Funds). The European Commission, which underlines the difficulty of singling out the contribution of the EU budget to a strategy that also relies on national budgets and external factors, expects better and more complete information on performance to be available as of financial year 2017, due to the design of the 2014-2020 financing period.

Democratic scrutiny of tools created to address crises

In the wake of the [euro crisis](#), Member States and EU institutions have taken several measures to strengthen economic governance. These included the creation of financial tools outside the EU institutional framework, notably the [European Stability Mechanism \(ESM\)](#), which was established by means of an [intergovernmental treaty](#) and is not subject to the discharge procedure. This has raised questions in relation to the democratic scrutiny of such tools, with Parliament expressing concern in this respect, and [calling for](#) the ESM to be discussed at least once a year in an EP plenary debate in the presence of the Council and the Commission. In 2014, the EP's Economic and Monetary Affairs Committee (ECON) [prepared](#) an enquiry report (rapporteurs: Othmar Karas, EPP, Austria, and Liem Hoang Ngoc, S&D, France) on the activities of the Troika (European Central Bank, European Commission and International Monetary Fund) with regard to the euro-area programme countries (Cyprus, Greece, Ireland and Portugal). The [resolution](#) adopted in plenary on 13 March 2014 made reference to the ESM, underlining that it should evolve towards the Community method and be made accountable before the EP. In its [opinion](#) to the ECON Committee on the draft, the CONT Committee (rapporteur: Michael Theurer, ALDE, Germany) supported this position, formulating suggestions to ensure full democratic accountability over the ESM. The EP has no formal role in the ESM Treaty, but [informal exchanges of views](#) with the ESM Chair and Managing Director take place regularly in the EP's ECON Committee.

More recently, to respond to the migration and refugee crisis, new instruments have been created such as **EU Trust Funds**,¹³ for which the Commission must submit annual reports on their activities as well as accounts to the EP and Council by 15 June each year. In addition to the Trust Funds, Member States decided to create yet another type of tool, the **Facility for Refugees in Turkey**, and [agreed](#) to finance this joint coordination mechanism with contributions from the EU budget (€1 billion) and national budgets (€2 billion).¹⁴ On 9 March 2016, in its [resolution](#) on the guidelines for the preparation of the 2017 EU budget, the EP urged Member States to deliver on their financial pledges for these tools, saying that further financial efforts will be needed. At the same time, Parliament stressed that accountability rules have to be followed for all EU measures. The EP deemed the trust funds and the Facility for Refugees to be 'neither inside nor outside the EU budget', and thus lacking the necessary accountability and democratic process, and expressed its intention to closely monitor their implementation. In the context of increasing challenges in the home-affairs policy area, and even before the current crisis, the EP has long and repeatedly called for an integrated EU approach to migration, asylum and external borders, endowed with sufficient resources as well as appropriate tools to handle emergency situations.¹⁵

Main references

European Union Public Finance (Fifth edition), European Commission, 2014.

Endnotes

- ¹ Further to the new [Financial Regulation](#) of the EU, which has sought to streamline implementing methods.
- ² On the basis of the Financial Regulation (Article 30), financial management is sound when it applies the principles of economy, efficiency and effectiveness.
- ³ [Parliamentary Control of Budget Implementation](#), Kanis A.M., European Parliament, Directorate-General for Internal Policies, Policy Department D - Budgetary Affairs, 2012.
- ⁴ For an overview of the EDF, see: ['European Development Fund - Joint development cooperation and the EU budget: out or in?'](#), A. D'Alfonso, European Parliament, EPRS, 2014.
- ⁵ The acronym comes from *Déclaration d'Assurance*, its French name.
- ⁶ Since the 2007 financial year, the ECA's assessment has always been that the accounts presented EU income and expenditure in an accurate and complete way. For 2014 (and for previous financial years), the ECA did not give an assurance of the legality and regularity of payments because of their estimated error rate, which was 4.4%. Weaknesses were detected both at Member State and European Commission level, with the same error rate (4.6%) for expenditure in shared management and the budget directly managed by the Commission. The benchmark used to assess whether errors are material plays an important role in the establishment of the ECA's opinion: in general, the Court uses a 2% error rate as materiality threshold for its DAS audits, but [indicates](#) that it might consider a different level (or differentiated levels for individual policy areas on the basis of their characteristics) to take into account requirements stemming from the discharge authorities. A [2008 Commission Communication](#) launched a debate on these aspects. In any case, the ECA [draws attention](#) to the fact that a simplistic interpretation of the error rate should be avoided and that errors do not necessarily mean fraud (for example, a complex implementation framework can contribute to errors).
- ⁷ Historically, practical examples of reasons for postponing discharge include requests for the European Commission to provide additional information (1990 discharge), to amend some documents on which the decision is to be based (1980 and 1985 discharges) or to meet certain conditions first (1996 discharge).
- ⁸ For an overview of special reports focusing on those relevant for the 2014 EU discharge procedure, please see: [Special Reports of the European Court of Auditors: A Rolling Check-List of recent findings](#), B. Tzarnoretcka and G. Zana, European Parliament, European Parliamentary Research Service, 2016.
- ⁹ A censure motion is a vote of no confidence. If the EP plenary supports a censure motion (by a majority of component Members and two-thirds of votes cast), the entire European Commission must resign.
- ¹⁰ See for example: [Understanding the EU budget](#), Patterson B., 2011, pp. 84-86.
- ¹¹ See for example: [Le budget de l'Union européenne](#), Saurel S., 2010, pp. 75-77.
- ¹² In September 2013, the CONT Committee of the Parliament organised a public hearing entitled ['European Court of Auditors: from legality and regularity audits to evaluation of efficiency and effectiveness of EU projects and programmes. The special reports as a useful instrument for the legislator'](#).
- ¹³ For an overview, see: ['EU Trust Funds for external action. First uses of a new tool'](#), A. D'Alfonso and B. Immenkamp, European Parliament, EPRS, 2015.
- ¹⁴ See [EU-Turkey Cooperation: Commission welcomes Member State agreement on Refugee Facility for Turkey](#), European Commission, IP/16/225, 3 February 2016. The name of the facility was subsequently changed, becoming 'Facility for Refugees in Turkey'.
- ¹⁵ See for example the [EP resolution](#) of 8 June 2011 on a new Multiannual Financial Framework.

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