



Brussels, 18.9.2019

Detailed replies to the specific requests made by the Council complementing the report from the Commission on the follow-up to the discharge for the 2017 financial year, COM(2019)334 final.

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INTRODUCTION

This document complements the Report from the Commission to the European Parliament and the Council on the follow-up to the discharge for the financial year 2017¹, which formed part of the Integrated Financial and Accountability Reporting 2018. It presents in detail the answers to 82 specific requests made by the Council in the comments accompanying its recommendation on the discharge for the financial year 2017.

¹ COM(2019)334 final

Council Recommendation on the 2017 discharge

Chapter 1 - The statement of assurance and supporting information

1. (Nr 2 - 2017/COU/0224) The Council commends the efforts made by the Member States and the Commission to improve their management and control systems so as to ensure the legality, regularity and transparency in spending European taxpayers' money and invites the Member States and the Commission to intensify these efforts.

Commission's response:

The Commission considers that the current assurance model under the 2014-2020 programming period proved to function well, as demonstrated by the global trend of decreasing error rate reported by the ECA. It underlines in that respect the obligation for audit authorities to ensure that there is no remaining material error in the annual expenditure before it is declared to the Commission. For the CAP, the estimated final amount at risk (after recoveries by Member States and financial corrections applied by the Commission) is far below the materiality threshold.

Efforts will be continued with the Member States to further improve the functioning of the management and control systems, in particular through continuous administrative and audit capacity building initiatives: targeted training, seminars, guidance, advice, expert and peer support, help to develop improved tools such as joint control and audit checklists, exchange of good practices.

In addition, the Commissions' proposal for 2021-2027 cohesion policy includes significant simplification measures for management and control systems such as fewer layers of control and fewer but more efficient verifications, while keeping the same objective of a high level of assurance with reported annual accounts free from material level of errors.

As regards the CAP, the Commissions' legislative proposals for 2021-2027 introduce a New Delivery Model (NDM). In the NDM, the existing well-functioning governance systems are maintained and the focus is shifted from a compliance based to a performance based assurance model.

Chapter 2 - Budgetary and financial management

2. (Nr 1 - 2017/COU/0225) The Council urges the Commission to continuously improve both payment estimates and monitoring mechanisms in order to manage this risk [available payment appropriations will be insufficient to settle all payment claims], to anticipate an orderly disbursement of payments and to ensure predictability of national contributions.

Commission's response:

The Commission presents three times a year to Council and Parliament the Active Monitoring and Forecast of Budget Implementation (AMFBI) information note. This report follows from the experience of abnormal backlog in the years 2014 and 2015, where the levels of payments in the budget were insufficient to cover Member States' claims. The note produced in March gives an overview of the previous year's final implementation. Two other notes are produced throughout the course of the budgetary year, in summer (July) and in autumn (October), with a view to following the implementation rates of budget appropriations.

In addition to the AMFBI notes, the Commission has annually produced and presented the payments forecasts to the Budgetary Authority based on the latest available information on the EU budget implementation and the latest forecast of the Member States on the ESI funds since 2015. In October 2018 the Commission presented first time the Report on the Long-term forecast of future inflows and outflows of the EU budget for 2019-2023 based on the Article 247(1)(c) of the Financial Regulation (ref. COM (2018)687).

Starting from 2019 the Commission will present the annual Long-term forecast of future inflows and outflows report following in accordance with the Article 247(c) and 247(2) Financial Regulation.

3. (Nr 2 - 2017/COU/0226) The Council notes with concern that using available resources from the European Structural and Investment (ESI) Funds is lower than anticipated in 2017. The Council urges the Member States and the Commission to intensify their efforts to accelerate implementation.

Commission's response:

In 2018, the level of project selection by the Member States has further improved, with a further acceleration compared to the level of project selection registered at the end of 2017, and augurs well for a sustained pace of implementation in the second half of the programming period. As regards all ESI Funds (ERDF, CF, ESF, YEI, EAFRD and EMFF), the level of project selection by Member States improved from 53.5% in January 2018 to 74.8% in January 2019.

The absorption rate (interim payment claims submitted/decided) has continued to increase throughout the year. As regards all ESI Funds, the amount of cumulative payments including advances reached 27.3% end 2018.

The selection of projects and the subsequent fund absorption are necessary conditions for the delivery of planned objectives through the effective use of the Funds. In order to ensure that, the Commission implemented targeted actions throughout 2018 aimed at addressing country-specific difficulties and at enabling

programme authorities to consolidate their implementation of the 2014-2020 programmes.

At REGIO level, the close monitoring arrangements put in place for programmes at risk allowed identifying and acting upon the most serious bottlenecks hindering implementation. A comprehensive and active monitoring strategy was put in place: desks' direct advice and assistance to the national and regional authorities, close monitoring of the implementation on the ground, timely contribution to identifying and removing bottlenecks, participation in monitoring committees, annual review meetings, thorough examination of Annual Implementation Reports (AIRs), cross-comparisons of programmes' performance based on scorecards, and corresponding follow-up.

At EMPL level, close monitoring arrangements and pro-active actions have also been put in place:

- info sessions on Annual Implementation Reports and assessment of performance are organised yearly for geographical units,*
- geographical units closely monitor implementation on the ground, actively participate in monitoring committees and annual review meetings,*
- AIRs are thoroughly reviewed and scorecards are used for cross-comparison of programmes' performance,*
- Art. 50(8) letters on issues that significantly affect the performance of the programmes were sent out,*
- Programmes with low performance were identified in the Annual Activity Report.*

For the second year in a row, full implementation of the voted budget for ESIF was achieved in 2018 but this time without an amending budget.

Also at AGRI level, close monitoring arrangements and pro-active actions are put in place to ensure timely and effective implementation of the Rural Development Programmes under EAFRD:

- Regular participation of Geographical Units in Monitoring Committees (1-2 times per year);*
- Regular presentation of the state of play of RDP implementation in the Rural Development Committees (RDC) with all Member States (several meetings each year);*
- Thorough examination of Annual Implementation Reports (AIRs), including observations sent to the Managing Authorities;*
- Annual Review Meetings;*
- Follow-up of the implementation by MS of the Performance Framework including milestones for 2018 and targets for 2023 and Observation Letters pursuant to Article 50(8) of Regulation (EU) No 1303/2013;*
- Amendments of Rural Development Programmes to solve implementation weaknesses and reallocate indicative budgets when duly justified.*

The latest information available confirms a steady acceleration of the spending levels of rural development programmes (RDPs) compared to the first years of implementation. This situation has permitted to catch up the initial delays linked to the relatively late starting of the 2014-2020 RDPs. In January 2019, spending levels reached 66 % of total EAFRD resources.

4. (Nr 3 - 2017/COU/0227) The Council is also concerned about the significant financial exposure of the EU budget, both in relation to outstanding commitments and contingent liabilities and calls on the Commission to follow the Court's recommendation to provide an overview of the total value of contingent liabilities, together with an analysis of their possible impact on the budget and of the way risk-exposure can be mitigated.

Commission's response:

The Commission provides regularly an overview and a more detailed information on the EU contingent liabilities in full compliance with existing reporting obligations. In particular:

- In the context of the annual accounts for the EU, due by 31 July each year, the Commission provides detailed information on the EU contingent liabilities and the EU financial risk management.

- Under point 16 of the Interinstitutional Agreement on budgetary discipline, the Commission prepares an annual report bringing together available and non-confidential information relating to, inter alia, the assets and liabilities of the Union, including those arising from borrowing and lending operations.

- In accordance with Article 149 of Regulation 966/2012 ('old Financial Regulation') the Commission produces an annual report on budget guarantees and corresponding risks.

As of 2021, the Commission will provide information on the EU contingent liabilities in a working document attached to the Draft Budget pursuant to Article 41(5)(j) and Article 250 of Regulation 2018/1046 ('new Financial Regulation').

5. (Nr 3 - 2017/COU/0228) The Council expects the Commission to provide more information about the situation of financial instruments for the 2007-2013 programming period.

Commission's response:

In line with the accepted recommendation 2 of the Special Report 04/2017 on protecting the EU budget, the Commission reports on the final outcome of closure for the 2007-2013 programming period, including on financial instruments, in the context of the annual activity report of the respective Directorates-General.

This report will include by operational programme the amount eligible at closure, including for financial instruments where available. It will also include information on recoveries by operational programme, if any.

Chapter 3 - Getting results from the EU budget

6. (Nr 2 - 2017/COU/0229) The Council welcomes the increased focus on performance in the internal culture of the Commission and calls on it to disseminate knowledge and guidance about performance management and exchanging good practice in using performance information both within the Commission and with the Member States.

Commission's response:

The Commission will assess how best to ensure that the extensive guidance that already exists within the Commission on performance management is available to all managers, including through awareness-raising and training activities as necessary. The Commission will also consider whether there are gaps in the current offer within the Commission. It will also look for opportunities for exchanging best practices on the use of performance information with Member States.

7. (Nr 3 - 2017/COU/0230) The Council takes note of the wealth of performance-relevant information available to the Commission and invites it to improve the timeliness of its use.

Commission's response:

The Annual Activity Reports and Programme Statements provide every year the latest available performance information for all performance indicators for the EU budget. The Annual Management and Performance Report for the EU budget is a summary report with references to other more detailed performance reports. The Commission has presented up-to-date performance information in the Annual Management and Performance Report, as adopted on 25 June 2019. In addition, the Commission has provided comprehensive performance information for each programme in the Programmes' Performance Overview, which was published on 5 June 2019, for the first time together with the draft budget 2020. This information is intended to be used to inform the budgetary decision-making process, in a timely manner.

Chapter 4 - Revenue

8. (Nr 2 - 2017/COU/0231) On the verification of the VAT-based own resource, the Commission should improve, by the end of 2019, the existing control framework and better document its application on the verification of Member States' calculations of the Weighted Average Rate.

Commission's response:

The Commission is in the process of reviewing the existing control framework related to the Weighted Average Rate (WAR) calculation. For that purpose, the Commission will further harmonise its work documentation and implement a harmonised VAT WAR verification checklist. The Commission will also review on a case by case basis the impact of a GNI reservation to the VAT base and update the VAT reservations according to the result of this review.

Chapter 5 - Competitiveness for growth and jobs

9. (Nr 1 - 2017/COU/0232) The Council regrets that the estimated level of error remains significantly above 2 % and urges the Commission to continue its efforts to reach an error rate below the materiality threshold.

Commission's response:

The Commission is taking the following actions on a continuous basis:

- a substantial audit campaign, together with recovery action as appropriate;*
- development and improvement of its risk based ex-ante controls;*
- a number of communication actions, aimed at beneficiaries and their auditors;*
- pilot actions for lump sum funding;*
- clarification of rules and their interpretation.*

10. (Nr 3 - 2017/COU/0233) The Council reiterates its appeal to the Commission to continue its efforts to address the causes of error with a particular focus on the programmes subject to persistently high error levels and to strengthen its efforts to fully implement the measures already taken in this respect.

Commission's response:

The Commission's Annual Activity Reports extensively explain all the measures put in place under the Commission's control for the sound management of the programmes.

The error rate reported by the Court is mainly based on errors detected on transactions audited related to 7th Framework Programme. Less than the half-audited transaction were of Horizon 2020. In this respect, Horizon 2020 is simpler than its predecessor in several aspects, which makes this program less prone to error. In addition, as example, European Research Council and Marie Skłodowska-Curie grants are straightforward; the MSCA funding, for example, is based on unit costs. This limits the scope for misinterpretation, and error rates are below 2 % for these schemes.

Furthermore, the Commission makes available to all the participants guidance material related to the project implementation for them understand better all the rules that are applicable to their contracts, to their grants. Additionally, beneficiaries have access to the Commission services to consult all the aspects they may require.

11. (Regularity of transactions, management and control systems, reliability of the Commission's annual activity reports, Nr 6 - 2017/COU/0234) The Council supports the Court's recommendation as regards CEF and invites the Commission to reinforce communication and intensify its efforts towards providing beneficiaries with proper guidance on eligibility issues.

Commission's response:

The Commission agreed to the corresponding ECA recommendation and implemented it. Updated guidelines were published on INEA's website on 9

January 2019. The current version is available at https://ec.europa.eu/inea/sites/inea/files/wifi4eu/model_grant_agreement/version_for_applicants_and_beneficiaries-final_v0.pdf

12. *(Regularity of transactions, management and control systems, reliability of the Commission's annual activity reports, Nr 7 - 2017/COU/0235)* The Council supports the Court's recommendation and calls on the Commission to swiftly finalise its actions to address the weaknesses identified by its Internal Audit Service (IAS) in the Education, Audiovisual and Culture Executive Agency's (EACEA) Erasmus+ grant management procedure, [...] and closing of overdue audit recommendations.

Commission's response:

Appropriate follow-up was ensured on the side of both EACEA and its parent DGs to ensure the swift implementation of all measures included in the Action Plan endorsed by the Agency and approved by the IAS following phase I of the IAS audit on Grant Management.

This resulted in the IAS progressively downgrading recommendations and closing them. All of the weaknesses identified in the audit report have, therefore, been addressed.

13. *(Regularity of transactions, management and control systems, reliability of the Commission's annual activity reports, Nr 7 - 2017/COU/0236)* The Council supports the Court's recommendation and calls on the Commission to swiftly finalise its actions to address the weaknesses identified by its Internal Audit Service (IAS) [...] in the monitoring of research and innovation projects and closing of overdue audit recommendations.

Commission's response:

The very important weaknesses identified in the IAS recommendations were addressed by the end of 2018.

Chapter 6 - Economic, social and territorial cohesion

14. (Nr 3 - 2017/COU/0237) The Council notes that the Court refers to weaknesses related to the regularity of the expenditure declared by managing authorities and therefore calls for additional efforts from managing authorities and the Commission to tackle this problem.

Commission's response:

The main types of errors detected by the Court in 2017 were ineligible expenditure and projects, including in financial instruments.

Concerning eligibility issues with Value Added Tax (VAT), the Commission issued a Guidance note on VAT end of 2017 in order to clarify the conditions for eligibility under the 2014-2020 period. The Commission has also made proposals to radically simplify the eligibility criterion of VAT for the next programming period.

Regarding financial instruments, the Omnibus regulation, which entered into force in August 2017 addresses the audit gap of the 2014-2020 regulation for financial instruments managed by the EIB and other International Financial Institutions and clarifies the audit requirements to improve their accountability.

Further possibilities for simplified cost options, less error-prone as demonstrated by the ECA, have been further offered in the Omnibus regulation.

Robust management verifications by managing authorities continue to be key, especially for eligibility errors. The Commission has addressed updated guidance to Member States for the 2014-2020 programming period, which should contribute to further improving the quality of management verifications in the future. It has developed a joint typology of errors with audit authorities to analyse the root causes of errors and to report back to managing authorities so that they can better target their verifications to risks.

On the preventive side the Commission provides continuous and, where necessary, targeted support to the authorities through administrative and audit capacity building initiatives: : targeted training, seminars, guidance, advice, expert and peer support, help to develop improved tools such as joint control and audit checklists, exchange of good practices.

For instance, in 2018, in the framework of the ex-ante conditionality on Public procurement, the administrative capacity of central public procurement bodies was strengthened in Romania, Slovakia, Hungary, Czech Republic and Bulgaria. Extensive and targeted training programmes were set up in Greece, Italy and Romania for national and regional administrations, which continue to be rolled out. The Commission uses part of its own technical assistance funding under the ESIF for measures supporting institutional strengthening and administrative capacity building for the effective management of the funds.

Key actions implemented in 2018 included notably: the roll-out of the Public Procurement and State Aid action plans; the launch of 5 pilot projects on administrative capacity building; exchanges with Member States in the framework of the Structural Reform Support Programme (SRSP); the provision of specific

support through the Evaluation Helpdesk; the implementation of the TAIEX REGIO PEER TO PEER, supporting exchange of expertise between authorities managing the programmes.

Positive results were also registered in relation to the Competency Framework and its self-assessment tool for the management of the ERDF and CF, a tool set up to foster professionalization of all public institutions involved in managing the European Regional Development Fund and Cohesion Fund.

Finally, the Commission targets its audits to high risk programmes to verify the quality of management verifications and the reliability of reported error rates and audit opinions. It continues for the current programmes to apply a preventive approach linked to the request for corrective measures, where needed.

15. (Regularity of transactions Nr 4 - 2017/COU/0238) The Council invites the Commission to continue providing appropriate and consistent training and guidance, along with sharing good practices to assist beneficiaries and national authorities in the implementation of the programmes.

Commission's response:

The Commission continues to provide appropriate and consistent training and guidance, along with sharing good practices to assist beneficiaries and national authorities in the implementation of the programmes.

For instance, in 2018, in the framework of the ex-ante conditionality on Public procurement, the administrative capacity of central public procurement bodies was strengthened in Romania, Slovakia, Hungary, Czech Republic and Bulgaria. Extensive and targeted training programmes were set up in Greece, Italy and Romania for national and regional administrations, which continue to be rolled out.

The Commission uses part of its own technical assistance funding under the ESIF for measures supporting institutional strengthening and administrative capacity building for the effective management of the funds. Key actions implemented in 2018 included notably: the roll-out of the Public Procurement and State Aid action plans; the launch of 5 pilot projects on administrative capacity building; exchanges with Member States in the framework of the Structural Reform Support Programme (SRSP); the provision of specific support through the Evaluation Helpdesk; the implementation of the TAIEX REGIO PEER TO PEER, supporting exchange of expertise between authorities managing the programmes.

Positive results were also registered in relation to the Competency Framework and its self-assessment tool for the management of the ERDF and CF, a tool set up to foster professionalization of all public institutions involved in managing the European Regional Development Fund and Cohesion Fund.

Furthermore, the Commission published in 2018 a new study assessing measures and practices in the Member States in the field of prevention of fraud and corruption with EU funds. In order to improve communication and dissemination of good practice, a dedicated workshop was also organised, as part of the study. Several examples of processes and approaches adopted by their authorities in conducting their fraud risk assessments and types of IT tools used to detect fraud

were presented and information exchanged among the different stakeholders. This work is continuing throughout 2019 with series of specific professional trainings.

The 17 Integrity Pacts are being implemented and showing some first important results, like spotting and avoiding potential regularities, helping contracting authorities in handling public contracts and even identifying and signalling potentially harmful practices. The lessons learned so far and future scale-up of the role of civil society not only in monitoring but also in designing and implementing projects was discussed at the Integrity Pacts stakeholders' event in Brussels on 28 November 2018.

16. *(Regularity of transactions Nr 6 - 2017/COU/0239)* The Council urges the Commission to improve its annual activity reports and in this context also refers to the Court's observation on the necessity to have reliable residual error rates reported by audit authorities and information available that refers exclusively to eligible expenditure at closure (i.e. without advances).

Commission's response:

The Commission has taken on board the recommendation of the ECA to improve and simplify the reporting on the error rates in its AARs. In the 2018 AARs the Commission therefore clearly distinguishes between different types of error rates. The Commission refers in this respect to REGIO's 2018 AAR, and in particular its Annex 10 B.

Regarding the ECA observation on the necessity to have reliable residual error rates reported by audit authorities and information available that refers exclusively to eligible expenditure at closure (i.e. without advances), the Commission refers to its reply provided under § 6.58 of the ECA 2017 Annual report:

The Commission has indeed indicated that annual accounts aim at further legal certainty for Member States in a multiannual context under shared management by introducing the validation of 'annual blocks of eligible expenditure'. Such partial closure does not by definition cover advance payments made under financial instruments or State aid that should be further transformed into eligible expenditure in subsequent accounting years (cumulative reporting is therefore foreseen in annual accounts). In the AARs the Commission services already provide such information on residual error rates that refer only to eligible expenditure at closure (i.e. without advances from financial instruments) and will continue to do so.

Chapter 7 - Natural Resources

17. *(Market measures, rural development, environment, climate action and fisheries Nr 6 - 2017/COU/0240)* The Council notes that reducing the error rate for payments to beneficiaries below 2 % for rural development has to be balanced against the resulting costs and burdens, but encourages the Commission and the Member States to continue their efforts in this respect.

Commission's response:

The Commission considers that this recommendation has been implemented.

The Commission is committed to continuing to work, together with the Member States, to reduce the error rate for rural development through proportionate efforts, taking into account the need to balance legality and regularity with the achievements of policy objectives while bearing in mind the delivery costs. By promoting administrative simplifications such as the use of Simplified Cost Options (SCOs) and IT-based checks, the Commission has seen the error rate decrease at a steady pace in the last years, a trend which is expected to continue going forward.

The Commission notes that expenditure for market measures and rural development is more exposed to risk than direct payments under the EAGF. As such, it merits very close scrutiny. Furthermore, while the Commission supports the Member States, notably through guidance and on-the-spot audits, the Member States are ultimately responsible for the proper implementation of the respective rural development programmes and the concerned market measures in their territory. Nevertheless, as reported in DG AGRI's 2017 Annual Activity Report and the Director-General's Declaration of Assurance and reservations, the error rates have declined over recent years and, in 2017, reached 3.37% for rural development and an even lower 2.38% for market measures.

While the Commission acknowledges the impact of an error rate above materiality on the assurance regarding legality and regularity of the underlying transactions financed by the EAFRD for rural development and by the EAGF for market measures, due consideration must also be given to the corrective capacity of the net financial corrections applied to claw back undue expenditure to the EU budget, and to the recoveries by Member States. The ongoing conformity procedures in respect of the deficient management and control systems, which are subject to reservation ensure that the EU budget is ultimately sufficiently protected by the corrective capacity of Commission's net financial corrections.

Beyond the support to the Member States, supervision through on-the-spot audits and net financial corrections to recover ineligible expenditure, where necessary the Commission also interrupts payments until remedial actions have been implemented. Where action plans are required, the Commission closely monitors their implementation by the Member States; failure to implement an action plan is addressed, where appropriate, via suspension/reduction of payments.

It cannot be expected with any real certainty that an error rate below 2% would be attainable with reasonable efforts for rural development. However, when taking into account the corrective capacity, there is assurance that the residual risk to the

EU budget is below materiality. Indeed, for the overall CAP expenditure, the corrective capacity from net financial corrections by the Commission and recoveries by the Member States is estimated at 2.1% of 2017 expenditure. This provides sufficient assurance that, with the adjusted error rate for the CAP being at 2.22% according to DG AGRI's 2017 Annual Activity Report, the remaining overall financial risk to the EU budget, after all corrective action will have taken place, is significantly below materiality.

18. *(Performance Nr 9 - 2017/COU/0241)* The Council notes the Court's findings on the low use of simplified cost options (SCOs) when financing rural development projects. It underlines the need for clear rules to allow the Member States to check and assess SCOs and also to clarify and appropriately define the roles of paying agencies and certification bodies in this regard, and it invites the Commission to take this into account in its guidance on SCOs, as well as in its guidelines to Certification Bodies.

Commission's response:

The Commission considers that the recommendation has been implemented. The Certification Bodies currently provide an opinion on the internal control systems, as well as of the legality and regularity of expenditure, including compliance with applicable law as regards simplified cost options.

The guidelines are clear as to the audit work to be performed by the Certification Bodies for simplified cost options at Paying Agency level. As part of the review of the internal control system, the Certification Bodies are expected to check the procedures for simplified cost options in order to review the design of the process. In addition, they test some transactions against the list of key and ancillary controls to see if the Paying Agency's checks are properly designed and implemented. This is developed in the guidelines to the Certification Bodies to be applied mandatorily from Financial Year 2019 onwards, and voluntarily for Financial Year 2018.

Moreover, during the statistical substantive testing of files, the Certification Bodies should check in detail the payment claim, the Paying Agencies' controls (administrative and/or on-the-spot) and the payment calculation.

The Certification Bodies role in auditing simplified cost options was clarified in the specifically dedicated workshop on simplified cost options during the November 2017 Expert Group for Certification Bodies. It was further clarified in June 2018 Expert Group Meeting and it was underlined that although the responsible body for the simplified cost option methodology is the Managing Authority, processes not managed directly by the Paying Agencies (PAs) or bodies outside the Paying Agencies which have a direct impact on the legality and regularity of expenditure should be within the scope of the Certification Bodies' work.

Chapter 8 - Security and citizenship

19. (Nr 4 - 2017/COU/0242) The Council welcomes the Court's recommendations and calls on the Commission to provide guidance to the Member States with a view to improving reporting on the actual spending from AMIF and ISF and to carry out effective supervision.

Commission's response:

DG HOME is preparing a guidance note to Member States that will clarify how to mitigate the risk related to exceeding the co-financing rate when according to national rules VAT could represent part of a co-financing. The treatment of VAT at Member State level depends on the national legislation, therefore it is the responsibility of the Member States not to claim for undue payments. Regarding the actual spending from AMIF and ISF, DG HOME improved already the reporting framework. The breakdown between pre-financing and expenditure incurred was already implemented with the accounts submitted in February/March 2018 by the Member States. This is duly reflected in the 2018 AAR, section on Control System 1. Shared management (reporting on recoveries, pre-financing and expenditure actually incurred).

Chapter 9 - Global Europe

20. (Nr 4 - 2017/COU/0243) The Council welcomes the Court's recommendations, including on possible improvements to the Residual Error Rate studies, and calls on the Commission to swiftly implement them effectively.

Commission's response:

The methodology for the RER 2019 Study has been updated in order to include more precise guidelines on checking second-level procurement and more checks on direct management grants.

Limitations of the RER study has been disclosed in the 2018 AAR.

Chapter 10 - Administration

21. (Nr 3 - 2017/COU/0244) The Council takes note that, as in previous years, there is a small number of errors relating to staff costs and some weaknesses in the Office for Administration and Payment of individual entitlements' (PMO) management of family allowances. The Council calls on the Commission to improve its procedures to avoid errors related to staff expenditure.

Commission's response:

The Commission accepts the recommendation and it has already taken measures to further improve the management of family allowances and updates of personal situation:

- *Use of the IT tool SYSPER for easier and direct encoding by agents*
- *rights granted for a limited period or with a specific end date, allowing for regular controls*
- *Extended communication through dedicated channels and on exchanges of information on obligation of agents to update their information*

In addition, the Commission is carrying out an exercise to update all relevant files, to be concluded by the end of 2019.

Eighth, ninth, tenth and eleventh European Development Funds

22. (*Annex I, Nr 3 - 2017/COU/0245*) The Working Party is concerned that the Court's Annual Report on EDF activities for the financial year 2017 shows that, despite numerous efforts undertaken by the Commission, the estimated level of error has significantly increased compared to the previous years. It urges therefore the Commission to continue working towards reaching the agreed target of 2 % error rate.

Commission's response:

The Residual Error Rate (RER) for 2017 was 1.18%, i.e. well below the materiality level and the final RER for 2018 is expect to be even lower. In terms of assurance the RER is used as it refers to closed contracts, whereas the ECA's error rate refers to payments made during the reporting year relating to contracts for which corrections can still be applied at a later stage.

23. (*Annex I, Nr 6 - 2017/COU/0246*) The Working Party notes that, as far as the reduction of old expired contracts is concerned, the set target was reached for the general budget, however, further actions are needed for the EDFs. In this respect, the Working Party urges the Commission to take the necessary measures.

Commission's response:

DEVCO has launched Data Quality actions and campaigns to reduce the amount of expired contracts and in particular the 8th and 9th EDF contracts. In 2018, DEVCO closed 13 out of the 28 remaining 8th EDF contracts (a reduction of 46%) and 94 out of the remaining 321 9th EDF contracts (a reduction of 29%). The closure of all 8th EDF contracts should be finalised by end 2019. The closure of all 9th EDF contracts should be finalised by end 2020.

24. (*Annex I, Nr 7 - 2017/COU/0247*) The Working Party calls on the Commission to continue monitoring the ageing of the advance contributions made to trust funds and to with clarity reflect the results of such monitoring in its annual reports, including those for the trust funds. The Working Party takes note of the Court's recommendation No. 5 and calls for the Commission to consider its implementation.

Commission's response:

The Commission accepts the recommendation to continue monitoring the ageing of the contribution and present it in the annual accounts.

In accordance with the accounting rules, EDF contributions to the EU Trust Funds are presented in the EDF annual accounts published each year by the end of July. They are monitored and controlled on a yearly basis. Furthermore, the RAL absorption period of the EU Trust Funds which directly impacts the ageing of those contributions is monitored in real time through KPI 4 (RAL absorptions capacity). The Commission considers therefore that the ageing of EDF contributions to EU Trust Funds is duly monitored and that the creation of an additional KPI is not necessary.

25. (*Annex I, Nr 10 - 2017/COU/0248*) The Working Party urges the Commission to fully execute the 2017 Action Plan and awaits its assessment by the Court in the next

year's annual report. Moreover, the Working Party looks forward to an update from the Commission on the implementation of this Action Plan at the end of the first half of 2019, including an update on the implementation of the recommendations in the Court's report from 2017.

Commission's response:

The Commission is taking the requested action. The implementation of the recommendations in the Court's annual report from 2017 is ongoing. DG DEVCO closely monitors the Action Plan adopted in July 2018 as a result of the reservation concerning the error rate in the 2017 AAR, and will produce a report on the progress in the implementation of the actions one year after its launch. This report will be shared with all relevant audit and control stakeholders.

26. (Annex I, Nr 12 - 2017/COU/0249) The Working Party calls on the Commission to further improve the monitoring of the work carried out by the RER contractor in order to follow-up more closely the number of full reliance cases, thereby avoiding such a situation in the future [in an unusual high number of cases, full reliance was placed on previous control work].

Commission's response:

The Commission further improved its monitoring in order to follow up closely on more specific aspects, by addressing them during the regular monitoring meetings or video/teleconferences with the RER contractor.

27. (Annex I, Nr 13 - 2017/COU/0250) The ACP Working Party notes that, in its 2017 Annual Activity Report (AAR), the Commission did not specify the limitations of the RER study. It is concerned about the fact that the changes in the approach of the 2017 RER study also affected the 2017 declaration of assurance which, this time, includes only grants under direct management and calls on the Commission to revert to the more prudent approach used in previous years.

Commission's response:

The limitations of the RER study is to be disclosed in a footnote in the 2018 AAR and future AARs, according to the recommendation.

28. (Annex I, Nr 17 - 2017/COU/0251) The ACP Working Party welcomes the fact that the Commission is implementing the Court's previous recommendations made in its Annual Report of 2014, noting however that the Court's review of progress in addressing these previous recommendations reveals that one recommendation is not yet fully implemented. The ACP Working Party therefore urges the Commission to fully apply the new RER methodology and manual in order to address the remaining issues raised by the Court.

Commission's response:

Following discussions with the contractor in charge of the RER study on the recommendations in the 2014 Annual Report, new versions of the RER methodology and manual have been issued that address the points raised by the European Court of Auditors. The Commission further improved its monitoring in

order to follow-up closely on more specific aspects, by addressing them during the regular monitoring meetings or video/teleconferences with the contractor.

SR No 9/2017 "EU support to fight human trafficking in South/South-East Asia"

29. (*Annex, Nr 5 - 2017/COU/0252*) The Council invites the Commission and the EEAS to implement the recommendations of the Special Report and welcomes the actions already undertaken or under way. In particular, the Council welcomes the adoption by the Commission of the Communication entitled "Reporting on the follow-up to the EU Strategy towards the Eradication of trafficking in human beings and identifying further concrete actions" [COM(2017) 728 final] as a basis for developing further practical measures in external relations and assistance areas towards implementing the full scope of the recommendations made in the Special Report.

Commission's response:

The implementation of the recommendations of the Special Report is ongoing. Recommendation 1 has been partially implemented with regard to the list of priorities and the availability of data. The Commission and EEAS continue to work on other parts of the recommendation, in particular with regard to developing objectives and targets for the fight against human trafficking, translating them into operational guidance and evaluating and reporting on the use of the various tools. Recommendation 2 has been largely implemented, with the work ongoing to ensure that the design of the projects includes SMART objectives and RACER indicators.

SR No 15/2017 "Ex ante conditionalities and performance reserve in Cohesion: innovative but not yet effective instruments"

30. (*Annex, Nr 7 - 2017/COU/0253*) The Council reiterates its call on the Commission from November 2016 [Cf. Council conclusions on Results and New Elements of Cohesion Policy and the European Structural and Investment Funds of 16 November 2016 (doc.14542/16, p. 7)] to consider using new elements of the ESI Funds as an example for other EU policies financed from the EU budget.

Commission's response:

The lessons learned from the implementation of the current European Structural and Investment Funds were used as part of the Commission's comprehensive Spending Review to inform the design of the proposals for the future financial programmes. In particular, the results of the mid-term and interim evaluations of the current funds were used to prepare the proposals for the common provisions applicable to seven shared management funds, including for the first time the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument. Building on the experience of the current period, the Commission has sought to further simplify funding rules for managers and beneficiaries, to increase the focus on performance, and to strengthen the link with the European Semester. Insights from cohesion policy have also been relevant for the design of the new delivery model for the Common Agricultural Policy.

31. (*Annex, Ex ante conditionalities, Nr 15 - 2017/COU/0254*) The Council calls on the Member States concerned and the Commission to make best efforts to ensure that the few remaining unfulfilled ex ante conditionalities are fulfilled without delay.

Commission's response:

As of 1 February 2019, 99 % of action plans relating to the fulfillment of ex-ante conditionalities (ExAC) have been completed. The non-completed ExAC action plans concern Spain, Italy, Romania and Cyprus.

Spain

One suspension decision letter has been adopted so far, which concerns the non-completion of ExAC transport for Extremadura OP (Spain). This ExAC is now considered fulfilled and the procedure to adopt the decision repealing the suspension has been launched.

In October 2018, it was decided to prepare a suspension decision linked to water sector in Canary Islands (Spain – Canary Islands and Multiregional OPs). However if DG ENV assesses positively the plan for Gran Canaria, there is no need for this suspension decision.

Italy

On 5 July 2018, the ExAC Suspension Committee took a decision to launch an Inter-Service Consultation for the suspension decision for Sicily (Italy) ERDF programme. The suspension decision is now under the decision procedure.

Romania

A pre-suspension letter was sent in April 2018 for the waste sector in Romania. The Commission does not consider this ExAC as fulfilled until implementation of further measures. Confirmation that these measures have been taken is awaited from the national authorities.

There is also an outstanding action plan for ExAC on Institutional Capacity in Romania. In November 2018, the Constitutional Court of Romania declared the draft administrative Code (the key component for the assessment of this ExAC), as not constitutional, arguing that the Parliament has not followed the correct procedure. The Government is waiting for the reasoned opinion before tabling a new proposal for the Administrative Code to the Parliament.

Cyprus

The ExAC Suspension Committee decided not to suspend, since suspension would delay implementation of projects contributing to achievement of the municipal waste re-use and recycling target by 2020.

SR No 16/2017 “Rural Development Programming: less complexity and more focus on results needed”

32. (*Annex, Nr 3, first indent - 2017/COU/0255*) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's rural development programming, which should be addressed in the next reform of the CAP, including:

- adoption, programming and implementation of RDPs, which should be simplified by avoiding overlaps with other programming documents such as current partnership agreements and the administrative burden on administrations and farmers and other beneficiaries should be reduced.

Commission's response:

On 1 June 2018, the Commission adopted a legislative proposal for a CAP Strategic Plan Regulation. The proposals put under a single strategic framework the first and second pillar, governed by one CAP Plan. They also extend further the subsidiarity of the Member States; Member States will design and decide themselves the number of interventions they consider as appropriate to address their local needs, while making effective distribution and use of the funds in their national context. The proposal simplifies and reduces significantly the requirements regulated under the EU framework and only includes the most necessary elements which will be common across all EU Member States, and which aim to ensure a consistent and harmonised implementation and monitoring of the policy. This is evident from the underlying content of the proposals, which are limited to the EU basic requirements, and which include a list of common indicators for the proper monitoring of the policy. It will also reduce the burden on administrations and in particular final beneficiaries.

33. (*Annex, Nr 3, second indent - 2017/COU/0256*) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's rural development programming, which should be addressed in the next reform of the CAP, including:

- the legislative proposals for rural development policy post-2020 should be prepared on time.

Commission's response:

On 1 June 2018, the Commission adopted a legislative proposal for a CAP Strategic Plan Regulation. This proposal aims to make the CAP more responsive to current and future challenges of the agricultural sector and to shift the policy from compliance towards performance based. The proposal is currently under discussion with the Council and the Parliament.

34. (*Annex, Nr 3, third indent - 2017/COU/0257*) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's rural development programming, which should be addressed in the next reform of the CAP, including:

- the start of RDPs soon after the approval of the legislative framework should be accompanied with few but appropriate implementing regulations.

Commission's response:

On 1 June 2018, the Commission adopted a legislative proposal for a CAP Strategic Plan Regulation establishing rules on support financed by the EAFRD and EAGF. The CAP Strategic Plans will put together the interventions from both CAP pillars under a single strategic framework (which means that there will not be separate RDPs). The legislative proposal provides for empowerment to adopt implementing acts in areas where uniform conditions for implementation are needed in order to ensure a consistent and harmonised implementation and monitoring of the policy. The proposal is currently under discussion with the Council and the Parliament.

35. (Annex, Nr 3, fourth indent - 2017/COU/0258) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's rural development programming, which should be addressed in the next reform of the CAP, including:

- evaluation should be done on the basis of quantifiable, measurable and simple indicators and results.

Commission's response:

The evaluations in the Commission follow the Better Regulation Guidelines. Adequate qualitative and quantitative data analysis should be the basis of evaluations to create information suitable for decision-making.

On 1 June 2018, the Commission adopted a legislative proposal for a CAP Strategic Plan Regulation, with a strong performance orientation in terms of delivering on the CAP objectives.

In its proposal, the Commission has included a set of common output, result and impact indicators, which will be used as the basis for monitoring and evaluation (see: Annex I of the proposal COM(2018)392). The list was prepared incorporating the lessons learned and taking into account data availability in order to minimize the administrative burden and improve quality and completeness of collected data.

SR No 18/2017 "Single European Sky: a changed culture but not a single sky"

36. (*Annex, Nr 6 - 2017/COU/0259*) The Council stresses that the SES High Level Goals have a political aspirational nature and depend mainly on the evolution of air traffic over the long term. Therefore the Commission, in consultation with the Member States, should ensure that they are reviewed in the light of experience, are evidence based as far as possible, are based on achievable and sustainable objectives and are reflected in the updates of the ATM Master Plan.

Commission's response:

The Commission agrees that the SES High Level Goals have an aspirational nature and that their review needs to take into account experience by stakeholders.

The Commission has engaged in three essential processes to prepare a new vision for the Single European Sky (SES): a Wise persons group (WPG) on the future of the SES (WPG); an airspace architecture study based on a Pilot Project initiated by the EP, and the update of the European ATM Master Plan. The WPG will collect the views of all major ATM stakeholder groups (airspace users, ANSPs/staff, manufacturers, airports), consider the airspace architecture study, the Challenges of Growth report of Eurocontrol and the European Court of Auditors' report and subsequently agree recommendations on the direction that ATM in Europe should take.

The recommendations resulting from these initiatives are expected to converge into a new vision for the future SES, including initial orientations for reviewing the SES goals, no earlier than the end of 2019 when a new Commission mandate will start. These results will eventually be integrated into the European ATM Master Plan.

37. (*Annex, Nr 15 - 2017/COU/0260*) The Council invites the Commission to reflect on the achievements of the SESAR project; and notes that SESAR project aims to offer opportunities for consolidation and rationalisation of the existing ATM infrastructure in a coordinated manner at European level, as well as further modernisation and harmonisation of the ATM system based on digital and satellite technologies.

Commission's response:

The Commission regularly monitors and evaluates the progress of all phases of the SESAR project.

The deployment results are reported regularly by the SESAR Deployment Manager through Execution Progress Reports and the SESAR Deployment Programme Monitoring View, in accordance with Reg. (EU) 409/2013. The SESAR Joint Undertaking also follows the implementation of SESAR solutions through the reporting on the European ATM Master Plan (The European Single Sky implementation Plan).

As far as infrastructure rationalisation is concerned, the on-going implementation of the Commission Implementing Regulation (EU) No 1207/2011 is geared to facilitate a rationalization of the surveillance infrastructure in terms of cost, ease

of maintenance, increased harmonization and availability of more advanced ATM functions.

SR No 19/2017 "Import Procedures: Shortcomings in the Legal Framework and an Ineffective Implementation Impact the Financial Interests of the EU"

38. (*Annex, Nr 7 - 2017/COU/0261*) The Council takes into account the need to eliminate financial disincentives for national customs administrations resulting from the obligation to carry out the necessary customs controls, and invites the Commission and the Member States to examine this issue, and find appropriate solutions without prejudice to the current legal principles and requirements governing the collection of traditional own resources.

Commission's response:

The Commission does not accept the recommendation, while it recognizes the importance of customs controls. Therefore, since 2005 it has been established by the legislation (the Customs Code) that controls are performed within a Common Risk Management Framework (CRMF) that addresses all types of risks and establishes the common risk criteria and standards, the conditions for exchanging risk information and foresees the possibility of carrying out coordinated joint controls for a determined period of time. This framework is based on the prerequisite that controls are risk-based: they are defined according to the risks at stake, and include random checks. To address weaknesses in the area of financial risks, on 31 May 2018, the Commission and the Member States adopted the Commission Implementing Decision on financial risk criteria (FRC) and standards to ensure that risk-based customs controls will be determined on the basis of an EU-wide, common approach. In terms of implementation, FRC amount to a set of rules to identify systematically or "electronically flag" in Member States' customs declaration systems the transactions considered as posing financial risks and requiring further scrutiny and/or control action. FRC address the customs control aspects of, inter alia: undervaluation, antidumping, misclassification, incorrect origin, abuse of quotas or suspensions, simplified procedures and customs procedure 42. The Commission closely cooperates with Member States regarding the implementation of this legislation.

The responsibility for collecting the traditional own resources (customs duties) belongs primarily to the Member States. The Commission supervises the own resources' system and inspects the way in which the Member States collect and make traditional resources available. This way it sees to a consistent application of the EU customs legislation across the Member States and ensures that the financial interests of the Union are protected. The fact that Member States are rewarded for collecting customs duties (20% of collected duties) puts a high responsibility on them to perform proper risk-based customs controls. Consequently, the more duties collected due to effective controls, the higher the incentive, as the 20% retention rate is considerably higher than the actual collection costs. At the same time, proper customs controls safeguard other national income such as VAT and excise duties collected at import whose volume is considerably higher than that of customs duties. When the Commission finds that the Member States' controls are not effective or not performed and lead to losses of traditional own resources, the Member States are made liable for those losses, as could be observed recently in the undervaluation case of imports of textiles and footwear in the United Kingdom. If this individual liability would not

apply, then all Member States would have to contribute via higher gross national income (GNI) contributions for the negligence of some customs administrations. This would be a real financial disincentive for those national customs administrations performing controls diligently.

39. (Annex, Nr 14 - 2017/COU/0262) The Council invites the Commission to continue their effort in being more precise in the requests contained in a Mutual Assistance Communication.

Commission's response:

Since the finalisation of the SR 19/2017, OLAF has increased the precision of its requests contained in a Mutual Assistance communication.

40. (Annex, Nr 15 - 2017/COU/0263) The Council invites the Commission and the Member States to continue to address the challenges for the protection of the EU financial interests presented by mis-description of origin and misclassification, as well as undervaluation, including an assessment and report on the feasibility to introduce an EU-wide valuation decision system.

Commission's response:

The Commission accepts that the challenges for the protection of the EU financial interests presented by mis-description of origin and misclassification, as well as undervaluation are to be addressed. This happens through the implementation of the Financial Risk Criteria (FRC) decision adopted on 31 May 2018 to ensure that risk-based customs controls would be determined on the basis of an EU-wide common approach. FRC amount to a set of rules to identify systematically or "electronically flag" in Member States' customs declaration systems the transactions considered as posing financial risks and requiring further scrutiny and/or control action. The decision must be implemented using electronic data processing techniques as from 1 June 2019. The Commission is giving priority to the ongoing work with Member States on ensuring a correct and coherent implementation. It will, however, take some time before the Commission will be able to assess the results of the implementation of the decision. In 2019, the Commission will continue working with Member States and stakeholders on the feasibility of an EU system of binding valuation information (BVI) decisions, with a view to taking a decision whether legal acts shall be prepared to introduce such a system. The European Anti-Fraud Office (OLAF) will continue to investigate customs fraud cases and cooperate with Member States and non-EU countries to prevent customs-related fraud.

SR No 21/2017 "Greening: a more complex income support scheme, not yet environmentally effective"

41. (*Annex, Nr 4, first indent - 2017/COU/0264*) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's current greening architecture, which should be addressed in the next reform of the CAP, including:

- focusing on targeted measures in order to achieve both an effective policy and simplification.

Commission's response:

On 1 June 2018 the Commission adopted the following legal proposals for a post-2020 Common Agricultural Policy (CAP): COM(2018) 392 final, COM(2018) 393 final and COM(2018) 394 final/2. These proposals are now under discussion by the Council and the European Parliament.

Within its proposals, the Commission has put forward a coherent system and a number of further individual elements designed to address environment- and climate-related objectives.

The main relevant elements are as follows.

- *Every Member State will draw up a CAP strategic plan. This will be the main instrument through which the Member State plans its use of most of the tools of both CAP pillars – with associated quantified targets - on the basis of sound analysis. These plans will be subject to approval by the Commission.*
- *A system of “conditionality” will provide linkage between farmers’ area- and animal-based CAP payments and a range of obligations – many of which concern the environment and climate. The system will draw on the current mechanisms of “cross-compliance” and “greening” but will combine the two and make substantial improvements. In particular, the new approach will avoid the excessively detailed and rigid prescriptions of the greening system. Each Member State will have substantial power of choice over how to implement the obligations of conditionality – but will set out its proposed approach to doing so within its CAP strategic plan, explaining how the approach will help meet the relevant objectives. Member States will therefore have scope to implement conditionality in ways which are well tailored to the various circumstances of their farmers.*
- *Member States will have to make provision for Pillar I “eco-schemes” – schemes funded from their direct payments budgets and serving environment-/climate-related objectives. Eco-schemes are a novel tool providing Member States with a further means to encourage an ecological transition. The content of the schemes (which will be voluntary for farmers) will be up to Member States but will have to fit into the logic of their CAP strategic plans. Eco-schemes may operate as a payment additional to basic income support or as an explicit compensation for the costs incurred and income foregone as a result of commitments made by the beneficiary.*
- *The range of area-based payments currently available in CAP Pillar II will remain available. These include (very importantly) payments for environmental,*

climate and other management commitments, as well as payments related to disadvantages arising from natural constraints or from certain items of legislation (the Water Framework Directive and the Natura Directives). Beyond area-based payments, continued Pillar II support for investments, knowledge-building, innovation and co-operation will also help achieve environment- and climate-related objectives.

- *Member States will have to aim to make, through their CAP Strategic Plans, a greater overall contribution to the achievement of the specific environment- and climate-related objectives in comparison to the overall contribution made during the CAP in 2014-2020.*

- *They will also have to ensure that environmental authorities are effectively involved in the preparation of the environment- and climate-related aspects of the CAP Strategic Plan.*

- *Overall, fewer and less detailed rules will be laid down in EU legislation than at present. This is true, inter alia, of the system of conditionality and of many of the CAP's available "interventions".*

This proposed overall architecture responds to the above-mentioned Council's request in essentially the following way:

The focus on results (associated with quantified targets) – including the reduction in the number and level of detail of EU rules - will provide Member States with the necessary flexibility to tailor and target their use of the CAP in ways appropriate to the particular features of their farmers and territories.

If Member States use this flexibility well, the policy will be more effective and will be experienced as simpler by beneficiaries.

42. (Annex, Nr 4, second indent - 2017/COU/0265) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's current greening architecture, which should be addressed in the next reform of the CAP, including:

- reducing the administrative burden in the achievement of environmental and climate-related CAP objectives.

Commission's response:

On 1 June 2018 the Commission adopted the following legal proposals for a post-2020 Common Agricultural Policy (CAP): COM(2018) 392 final, COM(2018) 393 final and COM(2018) 394 final/2. These proposals are now under discussion by the Council and the European Parliament.

Within its proposals, the Commission has put forward a coherent system and a number of further individual elements designed to address environment- and climate-related objectives.

The main relevant elements are as follows.

- *Every Member State will draw up a CAP strategic plan. This will be the main instrument through which the Member State plans its use of most of the tools of*

both CAP pillars – with associated quantified targets - on the basis of sound analysis. These plans will be subject to approval by the Commission.

- *A system of “conditionality” will provide linkage between farmers’ area- and animal-based CAP payments and a range of obligations – many of which concern the environment and climate. The system will draw on the current mechanisms of “cross-compliance” and “greening” but will combine the two and make substantial improvements. In particular, the new approach will avoid the excessively detailed and rigid prescriptions of the greening system. Each Member State will have substantial power of choice over how to implement the obligations of conditionality – but will set out its proposed approach to doing so within its CAP strategic plan, explaining how the approach will help meet the relevant objectives. Member States will therefore have scope to implement conditionality in ways, which are well tailored to the various circumstances of their farmers.*

- *Member States will have to make provision for Pillar I “eco-schemes” – schemes funded from their direct payments budgets and serving environment-/climate-related objectives. Eco-schemes are a novel tool providing Member States with a further means to encourage an ecological transition. The content of the schemes (which will be voluntary for farmers) will be up to Member States but will have to fit into the logic of their CAP strategic plans. Eco-schemes may operate as a payment additional to basic income support or as an explicit compensation for the costs incurred and income foregone as a result of commitments made by the beneficiary.*

- *The range of area-based payments currently available in CAP Pillar II will remain available. These include (very importantly) payments for environmental, climate and other management commitments, as well as payments related to disadvantages arising from natural constraints or from certain items of legislation (the Water Framework Directive and the Natura Directives). Beyond area-based payments, continued Pillar II support for investments, knowledge-building, innovation and co-operation will also help achieve environment- and climate-related objectives.*

- *Member States will have to aim to make, through their CAP Strategic Plans, a greater overall contribution to the achievement of the specific environment- and climate-related objectives in comparison to the overall contribution made during the CAP in 2014-2020.*

- *They will also have to ensure that environmental authorities are effectively involved in the preparation of the environment- and climate-related aspects of the CAP Strategic Plan.*

- *Overall, fewer and less detailed rules will be laid down in EU legislation than at present. This is true, inter alia, of the system of conditionality and of many of the CAP’s available “interventions”.*

This proposed overall architecture responds to the above-mentioned Council’s request in essentially the following way:

The reduction in the number and level of detail of EU rules will substantially lighten the administrative burden associated with the CAP.

Potential for a further such reduction lies in the greater use of technology (e.g. remote sensing, automatic pre-completion of CAP support application forms) within systems of administration and controls.

43. (Annex, Nr 4, third indent - 2017/COU/0266) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's current greening architecture, which should be addressed in the next reform of the CAP, including:

- streamlining of, and avoiding overlaps between, the future requirements in relation to the green architecture.

Commission's response:

On 1 June 2018 the Commission adopted the following legal proposals for a post-2020 Common Agricultural Policy (CAP): COM(2018) 392 final, COM(2018) 393 final and COM(2018) 394 final/2. These proposals are now under discussion by the Council and the European Parliament.

Within its proposals, the Commission has put forward a coherent system and a number of further individual elements designed to address environment- and climate-related objectives.

The main relevant elements are as follows.

- Every Member State will draw up a CAP strategic plan. This will be the main instrument through which the Member State plans its use of most of the tools of both CAP pillars – with associated quantified targets - on the basis of sound analysis. These plans will be subject to approval by the Commission.*
- A system of “conditionality” will provide linkage between farmers’ area- and animal-based CAP payments and a range of obligations – many of which concern the environment and climate. The system will draw on the current mechanisms of “cross-compliance” and “greening” but will combine the two and make substantial improvements. In particular, the new approach will avoid the excessively detailed and rigid prescriptions of the greening system. Each Member State will have substantial power of choice over how to implement the obligations of conditionality – but will set out its proposed approach to doing so within its CAP strategic plan, explaining how the approach will help meet the relevant objectives. Member States will therefore have scope to implement conditionality in ways, which are well tailored to the various circumstances of their farmers.*
- Member States will have to make provision for Pillar I “eco-schemes” – schemes funded from their direct payments budgets and serving environment-/climate-related objectives. Eco-schemes are a novel tool providing Member States with a further means to encourage an ecological transition . The content of the schemes (which will be voluntary for farmers) will be up to Member States but will have to fit into the logic of their CAP strategic plans. Eco-schemes may operate as a payment additional to basic income support or as an explicit compensation for the costs incurred and income foregone as a result of commitments made by the beneficiary. • The range of area-based payments currently available in CAP Pillar II will remain available. These include (very importantly) payments for environmental, climate and other management commitments, as well as payments*

related to disadvantages arising from natural constraints or from certain items of legislation (the Water Framework Directive and the Natura Directives). Beyond area-based payments, continued Pillar II support for investments, knowledge-building, innovation and co-operation will also help achieve environment- and climate-related objectives.

- *Member States will have to aim to make, through their CAP Strategic Plans, a greater overall contribution to the achievement of the specific environment- and climate-related objectives in comparison to the overall contribution made during the CAP in 2014-2020.*

- *They will also have to ensure that environmental authorities are effectively involved in the preparation of the environment- and climate-related aspects of the CAP Strategic Plan.*

- *Overall, fewer and less detailed rules will be laid down in EU legislation than at present. This is true, inter alia, of the system of conditionality and of many of the CAP's available "interventions".*

This proposed overall architecture responds to the above-mentioned Council's request in essentially the following way:

The Commission's proposal involves combining the current "cross-compliance" and "greening" – each of which has its own system of rules with distinct provisions on controls, penalties etc. – into one system ("conditionality"). This is a major instance of streamlining.

It will be up to Member States to avoid overlaps between the various elements of the future green architecture. As they will enjoy considerable flexibility in designing the detail of these various elements, this task should not present substantial difficulties.

44. (Annex, Nr 4, fourth indent - 2017/COU/0267) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's current greening architecture, which should be addressed in the next reform of the CAP, including:

- ensuring more subsidiarity and flexibility to take account of national and regional specificities when designing interventions while a common level of ambition on environmental objectives should be set at EU level to ensure a level playing field.

Commission's response:

On 1 June 2018 the Commission adopted the following legal proposals for a post-2020 Common Agricultural Policy (CAP): COM(2018) 392 final, COM(2018) 393 final and COM(2018) 394 final/2. These proposals are now under discussion by the Council and the European Parliament.

Within its proposals, the Commission has put forward a coherent system and a number of further individual elements designed to address environment- and climate-related objectives.

The main relevant elements are as follows.

- *Every Member State will draw up a CAP strategic plan. This will be the main instrument through which the Member State plans its use of most of the tools of both CAP pillars – with associated quantified targets - on the basis of sound analysis. These plans will be subject to approval by the Commission.*
 - *A system of “conditionality” will provide linkage between farmers’ area- and animal-based CAP payments and a range of obligations – many of which concern the environment and climate. The system will draw on the current mechanisms of “cross-compliance” and “greening” but will combine the two and make substantial improvements. In particular, the new approach will avoid the excessively detailed and rigid prescriptions of the greening system. Each Member State will have substantial power of choice over how to implement the obligations of conditionality – but will set out its proposed approach to doing so within its CAP strategic plan, explaining how the approach will help meet the relevant objectives. Member States will therefore have scope to implement conditionality in ways, which are well tailored to the various circumstances of their farmers.*
 - *Member States will have to make provision for Pillar I “eco-schemes” – schemes funded from their direct payments budgets and serving environment-/climate-related objectives. Eco-schemes are a novel tool providing Member States with a further means to encourage an ecological transition. The content of the schemes (which will be voluntary for farmers) will be up to Member States but will have to fit into the logic of their CAP strategic plans. Eco-schemes may operate as a payment additional to basic income support or as an explicit compensation for the costs incurred and income foregone as a result of commitments made by the beneficiary.*
 - *The range of area-based payments currently available in CAP Pillar II will remain available. These include (very importantly) payments for environmental, climate and other management commitments, as well as payments related to disadvantages arising from natural constraints or from certain items of legislation (the Water Framework Directive and the Natura Directives). Beyond area-based payments, continued Pillar II support for investments, knowledge-building, innovation and co-operation will also help achieve environment- and climate-related objectives.*
 - *Member States will have to aim to make, through their CAP Strategic Plans, a greater overall contribution to the achievement of the specific environment- and climate-related objectives in comparison to the overall contribution made during the CAP in 2014-2020.*
 - *They will also have to ensure that environmental authorities are effectively involved in the preparation of the environment- and climate-related aspects of the CAP Strategic Plan.*
 - *Overall, fewer and less detailed rules will be laid down in EU legislation than at present. This is true, inter alia, of the system of conditionality and of many of the CAP’s available “interventions”.*
- This proposed overall architecture responds to the above-mentioned Council’s request in essentially the following way:*

The focus on results – including the reduction in the number and level of detail of EU rules – offers Member States a considerable increase in flexibility and thereby lays stronger emphasis on the principle of subsidiarity.

At the same time, Member States' respective levels of ambition over the environment and climate will remain within an acceptable common band, because: (a) all Member States must respect essentially common obligations stemming from conditionality and from environment- and climate-related EU legislation – even if the detail of these obligations will necessarily vary from one territory to another; and (b) the Commission will work to ensure an adequate level of common ambition when assessing Member States' CAP strategic plans.

45. (Annex, Nr 4, fifth indent - 2017/COU/0268) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's current greening architecture, which should be addressed in the next reform of the CAP, including:

- acknowledging the important role of farmers in delivering environmental and climate protection as public goods, which justifies adequate remuneration for agricultural practices beneficial for the climate and the environment.

Commission's response:

On 1 June 2018 the Commission adopted the following legal proposals for a post-2020 Common Agricultural Policy (CAP): COM(2018) 392 final, COM(2018) 393 final and COM(2018) 394 final/2. These proposals are now under discussion by the Council and the European Parliament.

Within its proposals, the Commission has put forward a coherent system and a number of further individual elements designed to address environment- and climate-related objectives.

The main relevant elements are as follows.

- Every Member State will draw up a CAP strategic plan. This will be the main instrument through which the Member State plans its use of most of the tools of both CAP pillars – with associated quantified targets - on the basis of sound analysis. These plans will be subject to approval by the Commission.*
- A system of “conditionality” will provide linkage between farmers’ area- and animal-based CAP payments and a range of obligations – many of which concern the environment and climate. The system will draw on the current mechanisms of “cross-compliance” and “greening” but will combine the two and make substantial improvements. In particular, the new approach will avoid the excessively detailed and rigid prescriptions of the greening system. Each Member State will have substantial power of choice over how to implement the obligations of conditionality – but will set out its proposed approach to doing so within its CAP strategic plan, explaining how the approach will help meet the relevant objectives. Member States will therefore have scope to implement conditionality in ways which are well tailored to the various circumstances of their farmers.*
- Member States will have to make provision for Pillar I “eco-schemes” – schemes funded from their direct payments budgets and serving environment-/climate-*

related objectives. The content of the schemes (which will be voluntary for farmers) will be up to Member States but will have to fit into the logic of their CAP strategic plans. Two essential types of eco-scheme will be available. One type will operate as a “payment additional to...basic income support” – i.e. essentially as a “decoupled” payment. The other type will operate as explicit compensation for the costs incurred and income foregone as a result of commitments made by the beneficiary.

- The range of area-based payments currently available in CAP Pillar II will remain available. These include (very importantly) payments for environmental, climate and other management commitments, as well as payments related to disadvantages arising from natural constraints or from certain items of legislation (the Water Framework Directive and the Natura Directives). Beyond area-based payments, continued Pillar II support for investments, knowledge-building, innovation and co-operation will also help achieve environment- and climate-related objectives.*

- Overall, fewer and less detailed rules will be laid down in EU legislation than at present. This is true, inter alia, of the system of conditionality and of many of the CAP’s available “interventions”.*

This proposed overall architecture responds to the above-mentioned Council’s request in essentially the following way:

Within the proposed future CAP, there will be various ways of ensuring that farmers receive adequate remuneration for practices beneficial for the environment and climate.

Through Pillar I eco-schemes which are implemented as “payment[s] additional to the basic income support”, Member States will be able to offer payments the value of which is not explicitly determined by the level of effort (or income loss) involved in the environmental practices giving rise to the payments.

Even in the case of types of support the payment value of which is based on a calculation of the related additional costs incurred and income foregone (i.e. Pillar I eco-schemes paid explicitly as “compensation”, as well as payments for Pillar II management commitments), payment rates are set at “regional” level and in such a way as to ensure a certain level of uptake in that region, within the constraints of the relevant World Trade Organisation Rules. Where farmers participate in a given intervention this implies that it offers them remuneration which they consider “adequate”.

Finally, the future CAP’s approach to supporting care for the environment and climate will continue to go beyond offering payments for ongoing “practices”: the role of support for environment- and climate-relevant investments, knowledge-building, innovation and co-operation will remain important.

46. (Annex, Nr 4, sixth indent - 2017/COU/0269) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's current greening architecture, which should be addressed in the next reform of the CAP, including:

- providing effective incentives to farmers to engage in further environmental and climate practices than required.

Commission's response:

On 1 June 2018 the Commission adopted the following legal proposals for a post-2020 Common Agricultural Policy (CAP): COM(2018) 392 final, COM(2018) 393 final and COM(2018) 394 final/2. These proposals are now under discussion by the Council and the European Parliament.

Within its proposals, the Commission has put forward a coherent system and a number of further individual elements designed to address environment- and climate-related objectives.

The main relevant elements are as follows.

- *Every Member State will draw up a CAP strategic plan. This will be the main instrument through which the Member State plans its use of most of the tools of both CAP pillars – with associated quantified targets - on the basis of sound analysis. These plans will be subject to approval by the Commission.*
- *A system of “conditionality” will provide linkage between farmers’ area- and animal-based CAP payments and a range of obligations – many of which concern the environment and climate. The system will draw on the current mechanisms of “cross-compliance” and “greening” but will combine the two and make substantial improvements. In particular, the new approach will avoid the excessively detailed and rigid prescriptions of the greening system. Each Member State will have substantial power of choice over how to implement the obligations of conditionality – but will set out its proposed approach to doing so within its CAP strategic plan, explaining how the approach will help meet the relevant objectives. Member States will therefore have scope to implement conditionality in ways, which are well tailored to the various circumstances of their farmers.*
- *Member States will have to make provision for Pillar I “eco-schemes” – schemes funded from their direct payments budgets and serving environment-/climate-related objectives. The content of the schemes (which will be voluntary for farmers) will be up to Member States but will have to fit into the logic of their CAP strategic plans. Two essential types of eco-scheme will be available. One type will operate as a “payment additional to...basic income support” – i.e. essentially as a “decoupled” payment. The other type will operate as explicit compensation for the costs incurred and income foregone as a result of commitments made by the beneficiary.*
- *The range of area-based payments currently available in CAP Pillar II will remain available. These include (very importantly) payments for environmental, climate and other management commitments, as well as payments related to disadvantages arising from natural constraints or from certain items of legislation (the Water Framework Directive and the Natura Directives). Beyond area-based payments, continued Pillar II support for investments, knowledge-building, innovation and co-operation will also help achieve environment- and climate-related objectives.*

• *Overall, fewer and less detailed rules will be laid down in EU legislation than at present. This is true, inter alia, of the system of conditionality and of many of the CAP's available "interventions".*

This proposed overall architecture responds to the above-mentioned Council's request in essentially the following way:

Within the proposed future CAP, there will be various ways of ensuring that farmers receive adequate remuneration for practices beneficial for the environment and climate.

Through Pillar I eco-schemes, which are implemented as "payment[s] additional to the basic income support. Member States will be able to offer payments the value of which is not explicitly determined by the level of effort (or income loss) involved in the environmental practices giving rise to the payments.

Even in the case of types of support the payment value of which is based on a calculation of the related additional costs incurred and income foregone (i.e. Pillar I eco-schemes paid explicitly as "compensation", as well as payments for Pillar II management commitments), payment rates are set at "regional" level and in such a way as to ensure a certain level of uptake in that region, within the constraints of the relevant World Trade Organisation Rules. Where farmers participate in a given intervention this implies that it offers them remuneration which they consider "adequate".

Finally, the future CAP's approach to supporting care for the environment and climate will continue to go beyond offering payments for ongoing "practices": the role of support for environment- and climate-relevant investments, knowledge-building, innovation and co-operation will remain important.

47. (Annex, Nr 4, seventh indent - 2017/COU/0270) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's current greening architecture, which should be addressed in the next reform of the CAP, including:

- ensuring that the programmed action based on the achievement of performance targets should be simple, realistic, easily quantifiable, controllable and applicable to local realities.

Commission's response:

On 1 June 2018 the Commission adopted the following legal proposals for a post-2020 Common Agricultural Policy (CAP): COM(2018) 392 final, COM(2018) 393 final and COM(2018) 394 final/2. These proposals are now under discussion by the Council and the European Parliament.

Within its proposals, the Commission has put forward a coherent system and a number of further individual elements designed to address environment- and climate-related objectives.

The main relevant elements are as follows.

• *Every Member State will draw up a CAP strategic plan. This will be the main instrument through which the Member State plans its use of most of the tools of*

both CAP pillars – with associated quantified targets - on the basis of sound analysis. These plans will be subject to approval by the Commission.

- *A system of “conditionality” will provide linkage between farmers’ area- and animal-based CAP payments and a range of obligations – many of which concern the environment and climate. The system will draw on the current mechanisms of “cross-compliance” and “greening” but will combine the two and make substantial improvements. In particular, the new approach will avoid the excessively detailed and rigid prescriptions of the greening system. Each Member State will have substantial power of choice over how to implement the obligations of conditionality – but will set out its proposed approach to doing so within its CAP strategic plan, explaining how the approach will help meet the relevant objectives. Member States will therefore have scope to implement conditionality in ways, which are well tailored to the various circumstances of their farmers.*

- *Member States will have to make provision for Pillar I “eco-schemes” – schemes funded from their direct payments budgets and serving environment-/climate-related objectives. The content of the schemes (which will be voluntary for farmers) will be up to Member States but will have to fit into the logic of their CAP strategic plans. Two essential types of eco-scheme will be available. One type will operate as a “payment additional to...basic income support” – i.e. essentially as a “decoupled” payment. The other type will operate as explicit compensation for the costs incurred and income foregone as a result of commitments made by the beneficiary.*

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- *Overall, fewer and less detailed rules will be laid down in EU legislation than at present. This is true, inter alia, of the system of conditionality and of many of the CAP’s available “interventions”.*

This proposed overall architecture responds to above-mentioned Council’s request in essentially the following way:

In respect of “programmed action”, the Commission’s proposal is based on (among other things): (a) a selection of indicators expressing context, outputs, results and impacts; (b) broad types of intervention which Member States adapt to their particular needs. This framework will allow Member States to design “programmed action” which is indeed “simple, realistic, quantifiable, controllable and applicable to local realities”.

48. (Annex, Nr 4, eight indent - 2017/COU/0271) The Council calls upon the Commission to address the Member States' specific concerns with regard to the CAP's current greening architecture, which should be addressed in the next reform of the CAP, including:

- avoiding any delays and disruption in the disbursement of payments to farmers.

Commission's response:

On 1 June 2018 the Commission adopted the following legal proposals for a post-2020 Common Agricultural Policy (CAP): COM(2018) 392 final, COM(2018) 393 final and COM(2018) 394 final/2. These proposals are now under discussion by the Council and the European Parliament.

Within its proposals, the Commission has put forward a coherent system and a number of further individual elements designed to address environment- and climate-related objectives.

The main relevant elements are as follows.

- Every Member State will draw up a CAP strategic plan. This will be the main instrument through which the Member State plans its use of most of the tools of both CAP pillars – with associated quantified targets - on the basis of sound analysis. These plans will be subject to approval by the Commission.*
- A system of “conditionality” will provide linkage between farmers’ area- and animal-based CAP payments and a range of obligations – many of which concern the environment and climate. The system will draw on the current mechanisms of “cross-compliance” and “greening” but will combine the two and make substantial improvements. In particular, the new approach will avoid the excessively detailed and rigid prescriptions of the greening system. Each Member State will have substantial power of choice over how to implement the obligations of conditionality – but will set out its proposed approach to doing so within its CAP strategic plan, explaining how the approach will help meet the relevant objectives. Member States will therefore have scope to implement conditionality in ways, which are well tailored to the various circumstances of their farmers.*
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• Overall, fewer and less detailed rules will be laid down in EU legislation than at present. This is true, inter alia, of the system of conditionality and of many of the CAP's available "interventions".

This proposed overall architecture responds to the above-mentioned Council's request in essentially the following way:

The reduction in the number and level of detail of EU rules – e.g. in the case of "conditionality" in comparison with the current "greening" system – will help to avoid delays and disruption in the disbursement of payments to farmers.

SR No 1/2018 "Joint Assistance to Support Projects in European Regions (JASPERS) - time for better targeting"

49. (*Annex, Nr 8, (a) - 2017/COU/0272*) The Council, without prejudice to the outcome of the negotiations on the next EU Multi-annual Financial Framework, calls on the Commission to:

(a) strengthen its coordination and controlling role over JASPERS while clarifying the roles and responsibilities of the main stakeholders to strengthen transparency and accountability.

Commission's response:

JASPERS has defined the roles of its main counterparts as regards the new process for County Action Plans. JASPERS Coordinating Bodies in the Member States were appropriately informed on those clarifications.

A short description of roles, responsibilities and obligations for JASPERS main counterparts will be uploaded on the JASPERS website in Q1 2019.

50. (*Annex, Nr 8, (b) - 2017/COU/0273*) The Council, without prejudice to the outcome of the negotiations on the next EU Multi-annual Financial Framework, calls on the Commission to:

(b) adjust its overall strategic planning of JASPERS operations based on the particular needs of Member States and in line with EU cohesion policy objectives.

Commission's response:

JASPERS High-level Strategy Map was reviewed and approved by JASPERS Steering Committee on 6 June 2018. JASPERS objectives and intervention logic are now better aligned with Framework Partnership Agreement objectives.

First proposal for Key Performance Indicators (KPIs) to support the revised strategy have been defined. JASPERS will further work on adjusting KPIs methodology during 2019.

The process of creation, management and monitoring of Country Action Plans has been reviewed. Action Plans are regularly discussed (tripartite meetings). They are regularly updated and strategic decisions linked to those documents are discussed at the JASPERS Steering Committee.

Under the new procedure, the Commission is consulted on all assignment requests from MS before it is accepted by JASPERS. This allows the Commission to monitor the priority of new requests for JASPERS support and their link to the Action Plans. The Commission is also informed on the average time needed to complete each type of assignment. The implementation of the new process is closely monitored by JASPERS Quality Management Unit.

51. (*Annex, Nr 8, (c) - 2017/COU/0274*) The Council, without prejudice to the outcome of the negotiations on the next EU Multi-annual Financial Framework, calls on the Commission to:

(c) continue the efforts to ensure and maintain independence between the IQR processes and advisory functions performed by JASPERS.

Commission's response:

The following changes of the JASPERS internal procedures were introduced:

- *Only the Head of JASPERS IQR Division and the Task coordinator/manager sign the IQR and PSA reports. The Quality Manual, which foresees no role for the Head of JASPERS in this activity, states that IQR division prepares its reports in an independent manner by the IQR division without interference from other parts of JASPERS. JASPERS IQR can draw on resources from other parts of JASPERS while respecting the rule that no expert involved in preparation of a project may be involved in the IQR process for the same project. The IQR division finalises its reports following peer view. Names of all experts who appraised the project and drafted the IQR and PSA reports are included on the cover page.*
- *An additional disclaimer was introduced for both reports, whereby the experts declare they had not been involved in preparation of the project.*

52. (Annex, Nr 8, (d) - 2017/COU/0275) The Council, without prejudice to the outcome of the negotiations on the next EU Multi-annual Financial Framework, calls on the Commission to:

(d) introduce comprehensive monitoring and evaluation systems over JASPERS's activities and objectives.

Commission's response:

The comprehensive mid-term evaluation of JASPERS activities in the current financial perspective was launched in September 2018. By autumn 2019, it will provide recommendations for the remaining years under the current mandate and some reflections on the future of JASPERS. It will inter alia investigate on criteria and potential consequences of phasing out JASPERS assistance.

The evaluation follows Better Regulation requirements and is subject to monitoring by the Regulatory Scrutiny Board.

53. (Annex, Nr 8, (e) - 2017/COU/0276) The Council, without prejudice to the outcome of the negotiations on the next EU Multi-annual Financial Framework, calls on the Commission to:

(e) take action to optimise JASPERS's focus, efficiency and effectiveness, while ensuring that JASPERS's costs are reasonable, these reflect the actual costs incurred and are compared with the achieved outputs and results.

Commission's response:

JASPERS has defined a KPI "Weighted average completions per expert" which supports a first analysis of JASPERS efficiency and effectiveness. Systemic reporting providing general overview of time allocation and information on hours per assignment was put in place.

JASPERS efficiency and effectiveness is also included in the scope of the mid-term evaluation.

JASPERS costs are determined through the Framework Administrative and Financial Agreement until the end of the 2014-2020 programming period. The

Commission will consider all elements of the ECA report on JASPERS (SR I/2018) when reviewing Technical Assistance arrangements between the Commission and the EIB and discussing new FAFA rates for the post-2020 period.

54. (Annex, Nr 8, (f) - 2017/COU/0277) The Council, without prejudice to the outcome of the negotiations on the next EU Multi-annual Financial Framework, calls on the Commission to:

(f) examine the take up of JASPERS's assistance in other thematic areas or sectors in line with the particular needs of Member States while maintaining the focus on large-scale projects.

Commission's response:

JASPERS High-level Strategy Map was reviewed and approved by JASPERS Steering Committee on 6 June 2018. JASPERS objectives and intervention logic are now better aligned with Framework Partnership Agreement objectives.

The process of creation, management and monitoring of Country Action Plans has been reviewed. Action Plans are regularly discussed (tripartite meetings). They are regularly updated and strategic decisions linked to those documents are discussed at the JASPERS Steering Committee.

Under the new procedure, the Commission is consulted on all assignment requests from MS before it is accepted by JASPERS. This allows the Commission to monitor the priority of new requests for JASPERS support and their link to the Action Plans. The Commission is also informed on the average time needed to complete each type of assignment. The implementation of the new process is closely monitored by JASPERS Quality Management Unit.

As confirmed by JASPERS Operational Plan 2018-2020, major projects continue to be the focus of JASPERS activity. As also confirmed by this document, JASPERS will continue to provide support to non-major projects, to pilot projects and for projects that are priorities for cohesion policy and horizontal assignments.

This is also taken on board in the revised process related to the Country Action Plans.

55. (Annex, Nr 8, (g) - 2017/COU/0278) The Council, without prejudice to the outcome of the negotiations on the next EU Multi-annual Financial Framework, calls on the Commission to:

(g) explore mechanisms to increase the transfer of know-how from JASPERS to the concerned national and regional administrations and thus contributing to the development of administrative capacity at Member State and regional level.

Commission's response:

JASPERS has provided first set of Key Performance Indicators (KPIs) that endeavour to capture the output and results of capacity building activities, including considering the capturing capacity building within project assignments. The work on appropriate KPIs will continue in 2019, building also on results of mid-term evaluation of JASPERS.

JASPERS follows-up the training-the-trainers approach to capacity building measures to maximize their impact.

SR No 3/2018 "Audit of the Macroeconomic Imbalance Procedure (MIP)"

56. (*Annex, Nr 10 - 2017/COU/0279*) The Council welcomes that the Commission accepts most of the Court of Auditors' recommendations and invites the Commission to report back to the Council within the context of forthcoming review of the MIP in 2019 on how it responded to these recommendations.

Commission's response:

The Commission will gladly follow the Council's invitation to report back to them on the Commission's implementation of the recommendations.

SR No 4/2018 "EU Assistance to Myanmar/Burma"

57. (*Annex, Nr 4 - 2017/COU/0280*) The Council notes the view of the Court that there is a need to better focus the areas of support in order to increase the impact of EU external assistance to Myanmar/Burma. In this regard, the Council stresses that the Commission should give more attention to domestic revenue mobilisation.

Commission's response:

The Commission accepts the recommendation and will address it during the programming phase of the next MIP. The Commission intends to step up its support to domestic revenue mobilisation under the next MIP. In the meantime, the Commission will support DRM directly through planned support for Public Finance Management reforms and indirectly through continued support for processes like EITI and FLEGT.

58. (*Annex, Nr 5 - 2017/COU/0281*) The Council calls upon the Commission to ensure enhanced coordination between its services with the aim to strengthen synergies between humanitarian assistance and development cooperation, as well as to engage with Member States and to provide them with information about the programmes to be implemented in a regular and timely manner.

Commission's response:

The Commission accepts the recommendation. The on-going process of operationalisation of the humanitarian-development nexus, for which Myanmar/Burma has been selected by the Council as one of six pilot countries, resulted in an action plan completed in mid-2018. In addition, DG DEVCO and DG ECHO are developing a joint analysis on resilience and a comprehensive strategy for addressing LRRD issues for the protracted crises in Myanmar/Burma. A development humanitarian nexus profile has been developed, with concrete action proposed for Kachin State.

As also recommended by the evaluation of the joint programming process, the Commission will involve DG ECHO more closely, and seek to include Member States' humanitarian interventions, in the drafting of the new joint programming document, particularly in areas of protracted crisis.

59. (*Annex, Nr 7 - 2017/COU/0282*) The Council welcomes the positive achievements of the joint programming process in Myanmar/Burma. It urges the Commission and the EEAS to better justify and document the allocation of funding to focal sectors as well as to individual actions.

Commission's response:

Joint programming principles are applied in Myanmar. EU and Member States have agreed to work together on concrete topics, including the development and humanitarian nexus. The programming exercise for 2021-27 will be launched in 2019, and the EEAS and the Commission will associate EU Member States in view of a potential Joint Programme. Careful selection and justification of focal sectors will be an essential part of the programming exercise.

60. (*Annex, Nr 8 - 2017/COU/0283*) The Council calls on the Commission Services and the EEAS to ensure better visibility of EU external assistance in Myanmar/Burma, including by working together with EU Member States.

Commission's response:

The recommendation has been implemented by establishing structural measures to reinforce visibility. Special efforts have been made regarding social media (Facebook, Instagram, and Twitter) whilst other elements of the visibility guidelines are being respected. The EU Delegation has appointed a dedicated Communication Correspondent going through visibility/communication plans and organising info sessions for contractors and partners. EU visibility at joint funds to which Commission contributes (such as the Livelihoods and Food Security Trust Fund (LIFT) and Joint Peace Fund) has been strengthened as well. The Commission will continue to insist that the provisions concerning the visibility of EU actions are applied, on a continuous basis.

61. (*Annex, § 3 - 2017/COU/0284*) The Council invites the Commission to fully implement the Court's specific recommendations to the Commission to improve the design and implementation of IPA in Turkey, by inter alia increasing the use of political and project conditionality, better targeting IPA funds under the objectives set, in particular in the areas of rule of law and fundamental rights, improving the sector approach assessments and improving the monitoring of project performance and reducing backlogs by applying indirect management selectively.

Commission's response:

- *When it comes to political and project conditionality, as regards political conditionality, in the context of the mid-term review of IPA assistance, the Commission has proposed in 2018 not to grant any performance reward to Turkey on account of the negative developments in the areas of rule of law, fundamental freedoms, public administration reform, and the deteriorating performance of implementation of IPA II funds (as evidenced by the increasing backlog under IPA II since 2015). Regarding project conditionality, the Commission also decided to suspend six projects in the judiciary domain. In particular, the Commission has halted the projects with the Council of Judges and Prosecutors (CJP), due to serious concerns regarding the independence of that body. In addition, the Commission has halted several projects in the criminal justice domain due to insufficient assurance that objectives and results could be met in the current context.*
- *In addition, as of the 2018 programming exercise, the Commission has fixed stricter upfront project conditionality. The implementation of the project addressing trafficking in human beings is being conditioned by the adoption of a strategy prepared in a consultative and open manner with all stakeholders. The implementation of the project on supporting the implementation of the action plan against the violation of the European Convention on Human Rights is conditioned upon the preparation and adoption of a new version of the action plan that is acceptable to the Commission.*
- *On targeting of EU funds, the Commission adopted the revised Indicative Strategy Paper (ISP) for Turkey in August 2018, which strengthens the focus on democracy and rule of law, as well as support to civil society and people-to-people contacts. In the revised ISP, the budget of the IPA assistance has been reduced by EUR 759 million for 2018-2020 due to low absorption capacity, lack of performance and backsliding on fundamentals/reforms in line with EU standards. The share of funding allocated to political (fundamentals) reforms rose from 38.4% of funds in 2014-2017 to 44.7% in 2018-2020. After the additional cut made on the 2019 budget, this share rose further to 45.2%.*
- *When it comes to sector assessment, the Commission has been providing technical support to all lead institutions and operating structures to assume their respective roles and responsibilities in terms of implementation of the performance assessment at sector level. The TK authorities were asked to develop key performance indicators at sector level. Lead Institutions were also requested to review the sector level indicators. As to sector budget analysis and performance*

assessment framework, the Commission has requested from the Turkish Authorities an update of the Sector Planning Documents (SPDs) especially for the fundamentals sectors, as a pre-condition to the programming exercise 2019-2020. The deadline of January 2019 in this regard has not been met and the revised SPDs were not received up until now. Before the finalisation of the 2019-2020 programming, the Commission will prepare fiches assessing the sector approach of the main areas of interventions envisaged under the revised ISP.

- When it comes to monitoring, as regards results oriented monitoring (ROM), a temporary arrangement for ROM missions in Turkey has been established on the basis of a contract managed by DG NEAR Headquarters, which started in November 2017, given the absence of a dedicated ROM contract for Turkey. In line with the Action Plan submitted in April 2017, the TK authorities organised ROM missions to 15 projects within their portfolio. Also, DG NEAR organised capacity building activities aiming at improving the quality of monitoring and evaluation systems, including the quality of project indicators. A new dedicated contract for ROM in Turkey has been signed by the EU Delegation in December 2018 and allows carrying out the planned ROM activities covering actions under both annual and multi-annual programmes. The contract also includes a capacity building element for relevant institutions in Turkey.*

- Finally, regarding centralised management, the Commission has recentralised the management of the programmes supporting civil society through the Civil Society Facility (CSF) window for Turkey since 2017. Corresponding funds amount to EUR 18 million in year 2017, EUR 12.4 million in year 2018 and EUR 31.6 million in year 2019. Likewise, for 2019 and 2020, the Commission will extend the direct management modality to other sectors, including Rule of Law, as well as to promote the use of blending and financial instruments with International Organisations in the socio-economic areas. A preliminary agreement has been found with the Turkish authorities at working level. In parallel, the system of the Indirect Management with Beneficiary Country (IMBC) with the Republic of Turkey is being carefully reviewed by the Commission. The Commission has identified a number of significant issues and has requested the Turkish authorities to take corrective measures. A DG NEAR mission has taken place at the end of January to discuss all the issues raised by the Commission in its correspondence with Turkey and the necessary follow up is taking place.*

62. (Annex, § 4 - 2017/COU/0285) The Council invites the Commission to regularly inform the IPA Management Committee on the issues raised by the Court of Auditors' Special Report and to ensure that they are addressed systematically, including through meetings under the Association Agreement, as appropriate.

Commission's response:

The Commission has been informing the IPA Management Committee on the issues raised by the Court of Auditors' Special Report and ensured that they are addressed systematically, including through meetings under the Association Agreement, as appropriate. Issues were raised in the following meetings:

- IPA Committee 15 November 2018: "In line with the recommendations of the European Court of Auditors, the Commission is using strong conditionality to*

ensure there is political willingness to implement actions that will facilitate the rapprochement of Turkey to EU values. By way of example, in the absence of such commitment in the judiciary and of concrete progress in the sector reform, the Commission has decided to cancel a number of IPA II funded programmes in this area."

- Association Committee 28 November 2018: "The EU recalled the European Court of Auditors' report of March 2018 on EU pre-accession assistance, which invited the Commission to put a stronger focus on conditionality, due to backsliding and limited results in the areas of rule of law, fundamental rights and civil society in Turkey."

- The Joint Monitoring Committee for IPA held on 12 November 2018 allowed for a thorough discussion of the recommendations from the European Court of Auditors report.

- Association Council 15 March 2019. The EU Common Position urges Turkey to improve further financial management and calls for a continuing centralisation of funds management.

SR No 8/2018 "EU support for productive investments in businesses - greater focus on durability needed"

63. (*Annex, Nr 7, (a) - 2017/COU/0286*) The Council calls on the Commission and Member States to take, at their respective management level, all necessary measures to ensure the fulfilment of the legal durability requirements for productive investments.

Commission's response:

During the approval process of programmes post-2020, the Commission will pay particular attention to how Member States address durability of outputs and results in order to promote the achievement of durable results from ERDF-financed productive investments, in particular through an ex-ante analysis in order to avoid deadweight loss.

SR No 10/2018 "Basic Payment Scheme for farmers – operationally on track, but limited impact on simplification, targeting and the convergence of aid levels"

64. (*Annex, Nr 4 - 2017/COU/0287*) The Council invites the Commission to take the Court's recommendations into account in the implementation of the current BPS scheme concerning:
- the implementation of paying agencies' key controls;
 - the role of certification bodies.

Commission's response:

With regard to the implementation of paying agencies' key controls (ensure the appropriate implementation of key controls by Member States and that Member States correct BPS entitlements where values are significantly affected by the non-application of the relevant rules or the absence of up-to-date land use information):

The Commission considers this request as addressed through the guidelines issued, monitoring done and the conformity audit procedures. For example in accordance with the current Multi Annual Work Programme of the audit directorate of DG AGRI (covering the period July 2018 - June 2021), 12 audits covering the issue of payment entitlements will be carried out in addition to the 10 similar audits that have been already carried out in 2016 and 2017. Thus, the allocation of payment entitlements in each of the 18 Member States implementing BPS is subject to at least one conformity procedure in a 5 years period, as indicated in DG AGRI's Audit Strategy. When errors and weaknesses are found in the functioning of key controls, the Commission is requesting the Member States to take corrective actions and monitors their implementation by the Member States.

Furthermore, where area aids audits reveal weaknesses in the quality of LPIS that effect on the payment entitlements calculation, the Commission is also requesting the Member States to take corrective actions.

In addition, the Commission provides guidelines and advice to the Member States on the correct implementation of these key controls.

With regard to the role of Certification Bodies (clarify the respective roles of the Commission and of the Certification Bodies in checking the existence of effective key controls and the central calculation of BPS entitlements):

In relation to the respective roles of the Commission and Certification Bodies, the Commission considers this requested as addressed. The requirements for the Certification Bodies' audit work on entitlements (review of the process of the first entitlements allocation and review of the entitlements' value calculations in the first year of allocations; and review of any new entitlements allocations, entitlements' cancellations, convergence, etc. in subsequent years) are clearly laid down in Guidelines 2 and 3 for Financial Year 2016 and onwards. The Commission reminded the Member States of this important aspect of the Certification Bodies' work in the framework of the discussion during the Expert group meeting that took place on 21-22 June 2018.

In accordance with internationally accepted audit standards, there should be room for professional judgement by Certification Bodies. The main framework is provided in the guidelines (i.e. that the procedures need to be tested together with the controls embedded in the process whilst using the list of key and ancillary controls, etc.) and the Certification Body then designs and performs its own audit tests on entitlements.

Where a Member State's institutional set up does not make it possible for the Certification Bodies to audit the procedures of allocation and calculation of entitlements, the work of Member State's bodies (Paying Agencies, Certification Bodies or another body responsible for the entitlements' calculations) is subject to conformity audits to assess whether the applicable legal framework and the relevant guidelines are applied.

65. (Annex, Nr 5 - 2017/COU/0288) The Council calls upon the Commission, in view of the next CAP programming period, to achieve concrete simplification in the provision of direct payments and to ensure the continued availability to all Member States of decoupled area-based payment schemes (such as the current BPS or the Single Area Payment Scheme), including the option not to use payment entitlements.

Commission's response:

On 1 June 2018, the Commission adopted a legislative proposal for a CAP Strategic Plan Regulation. The Commission proposal (COM(2018) 392 final) lays down a new delivery model for the post-2020 period in order to achieve a more performant, targeted and simpler policy through greater subsidiarity and result-based approach. Commission proposes to shift the policy focus from compliance to performance and to rebalance responsibilities between the EU and the Member State level. In this context, those Member States currently applying the Basic Payment Scheme (BPS) may continue to operate the decoupled area based payments without the system of payment entitlements.

In order to ensure the compliance with the Annex 2 to the WTO Agreement on Agriculture, and in particular that the basic income support for sustainability continue to be notified as 'Green Box' support, some common rules are set out. In case the Member State continues to operate the system of entitlements, the paragraph 6 of the Annex 2 to the WTO Agreement on Agriculture should be respected. This is also reflected in the Commission proposal.

In the Commission proposal, the type of intervention "basic income support for sustainability" is obligatory for all Member States to implement.

SR No 11/2018 "New options for financing rural development projects: simpler but not focused on results"

66. (*Annex, Nr 5 - 2017/COU/0289*) The Council underlines the need for clear rules to allow Member States to check and assess SCOs and also to clarify and appropriately define the roles of paying agencies and certification bodies in this regard and invites the Commission to take this into account in its Guidance on SCOs as well as in its Guidelines to Certification Bodies in the current programming period.

Commission's response:

The Certification Bodies currently provide an opinion on the internal control systems, as well as of the legality and regularity of expenditure, including compliance with applicable law as regards simplified cost options.

The guidelines are clear as to the audit work to be performed by the Certification Bodies for simplified cost options at Paying Agency level. As part of the review of the internal control system, the Certification Bodies are expected to check the procedures for simplified cost options in order to review the design of the process. In addition, they test some transactions against the list of key and ancillary controls to see if the Paying Agency's checks are properly designed and implemented. This is developed in the guidelines to the Certification Bodies to be applied mandatorily from Financial Year 2019 onwards (voluntarily for Financial Year 2018).

Moreover, during the statistical substantive testing of files, the Certification Bodies should check in detail the payment claim, the Paying Agencies' controls (administrative and/or on-the-spot) and the payment calculation.

The Certification Bodies role in auditing simplified cost options was clarified in the specifically dedicated workshop on simplified cost options during the November 2017 Expert Group for Certification Bodies. It was further clarified in June 2018 Expert Group Meeting and it was underlined that although the responsible body for the simplified cost option methodology is the Managing Authority, processes not managed directly by the Paying Agencies (PAs) or bodies outside the Paying Agencies which have a direct impact on the legality and regularity of expenditure should be within the scope of the Certification Bodies' work.

SR No 12/2018 "Broadband in the EU Member States: despite progress, not all the Europe 2020 targets will be met"

67. (Annex, Nr 6 - 2017/COU/0290) The Council encourages the Commission to further clarify the application of the State Aid Guidelines on broadband funding to measures supporting the gigabit targets of the Union in its forthcoming Guide on Broadband Investment and in future decisions in specific cases, particularly concerning rural areas.

Commission's response:

The Commission considers this recommendation partially implemented. The Commission already provides substantial guidance on the application of State aid rules. For instance, the Commission delivers various training sessions in the framework of the Broadband Competence Offices Network. DG COMP created a dedicated platform, eState aid Wiki where all Member States can ask questions on the application of the GBER and the State aid Grids. The Commission actively encourages pre-notification meetings in the context of the State aid control procedure, whereby guidance is given to the Member States.

Moreover, State aid decisions are published on DG COMP's website. In December 2018, the Commission has adopted a landmark case approving under EU State aid rules a Bavarian project to deploy very high capacity networks in six municipalities. The new network will be capable of offering speeds of 200 Mbps for households and 1 Gbps for companies and public institutions. The Commission has examined the Bavarian gigabit project and found that the new networks will bring about a significant improvement - a 'step change' - in connectivity. The Bavarian gigabit project is in line with the strategic objectives of the Gigabit Communication, as it allows for public investment in areas where the new 2025 targets are not yet met and no sufficient infrastructure is to be provided by private investors within the next three years. This case provides substantial guidance for Member States for the applications of State aid rules in the context of the Gigabit targets and for the concept of a 'step change'.

In January 2019, the European Commission has approved under EU State aid rules a voucher scheme to support the take-up in Greece of broadband services with download speeds of at least 100 Megabit per second. The voucher scheme will help more consumers to use higher speed broadband services in areas where suitable infrastructure is available but insufficiently used. The Commission concluded that the scheme is in line with State aid rules and contributes to the EU strategic objectives set out in the Digital Agenda for Europe and in the Gigabit Communication. The measure will contribute to reducing the digital divide while limiting distortions of competition.

In addition, the forthcoming Guide on Broadband investment and State Aid will update the guidance provided on policy, regulatory, technology, business modelling, state aid, financing, procurement execution and monitoring of projects.

SR No 14/2018 "The EU Chemical, Biological, Radiological and Nuclear Centres of Excellence: more progress needed"

68. (Annex, Nr 6, first indent - 2017/COU/0291) The Council calls upon the Commission and the EEAS to implement the ECA recommendations, in particular to:

- prioritise activities on the basis of a systemic risk assessment.

Commission's response:

The Commission and the EEAS accept the recommendation. The EEAS and the Commission services are exploring the possibility to carry out such an analysis and integrate it in the EU Centres of Excellence on Chemical, Biological, Radiological and Nuclear Risk Mitigation (CBRN CoE) methodology (needs assessments, risks assessments, national and regional action plans). It is important to understand the degree of complexity of the task of linking EU internal and external action, as well as need to respect appropriate handling of classified information (EU Classified Information - EUCI).

Interactions with DG HOME and its CBRN Advisory Group involving the newly appointed CBRN coordinators from EU Member States will continue and will be reinforced where appropriate and where synergies might be found (e.g. mapping of existing CBRN training facilities and experts; participation in cross border table top and field exercises).

69. (Annex, Nr 6, second indent - 2017/COU/0292) The Council calls upon the Commission and the EEAS to implement the ECA recommendations, in particular to:

- strengthen the Initiative's regional dimension.

Commission's response:

The Commission and the EEAS accept the recommendation. Regional activities including field and table top exercises at regional and sub-regional level have already been implemented in several regions.

CoE Regional round table show a continuous increasing level of ownership and degree of initiatives for regional networking, cooperation and set up of activities as well as outreach towards international or regional organisations (African Union, ASEAN, ISTC, STCU, WHO, OPCW, OSCE, 1540 United Nations Security Council Resolution Committee, Biological and Toxin Weapons Convention, BACAC, etc.).

The possibility of organizing joint exercises and training with on-going programmes of disaster management managed by DG ECHO and DG NEAR will be further explored.

70. (Annex, Nr 6, third indent - 2017/COU/0293) The Council calls upon the Commission and the EEAS to implement the ECA recommendations, in particular to:

- further strengthen the EU Delegations' role in the Initiative.

Commission's response:

The Commission and the EEAS accept the recommendation. In 2018 CBRN responsibilities were assigned to designated focal points and/or IcSP long-term regional were assigned to cooperation officers in all the EU delegations. In addition, CBRN was included in the policy, security and political dialogue with third countries.

71. (Annex, Nr 6, fourth indent - 2017/COU/0294) The Council calls upon the Commission and the EEAS to implement the ECA recommendations, in particular to:

- identify potential synergies and other available funding sources.

Commission's response:

The Commission and the EEAS accept the recommendation. DG DEVCO has already started discussion with DG NEAR and its own relevant Geographic Directorates, as well as with DG ECHO on disaster management. Contacts have been developed and meetings organized/initiated with international actors engaged in the similar field of activities (NATO, US DoD and DoS, WHO ECEH, MFA FR and others).

72. (Annex, Nr 6, fifth indent - 2017/COU/0295) The Council calls upon the Commission and the EEAS to implement the ECA recommendations, in particular to:

- increase accountability and visibility of activities and results through improved monitoring and evaluation.

Commission's response:

The Commission and the EEAS accept the recommendation. The JRC and the DG DEVCO Results Oriented Monitoring external support team are providing support to DG DEVCO for the improvement and streamlining of the indicators and alignment between the Multiannual Indicative Programme, Annual Action Programmes and implemented projects.

73. (Annex, Nr 6, sixth indent - 2017/COU/0296) The Council calls upon the Commission and the EEAS to implement the ECA recommendations, in particular to:

- overhaul the web-based portal to allow easy access to all the information concerning the Initiative's activities.

Commission's response:

The currently active CoE Portal and public site are now being systematically updated with news, project information and other relevant documents. In the restricted part, more information is now accessible to address the needs of the users in terms of assessment of impact of the initiative and sharing of training material, including good practices and guidelines from projects activities, other EU initiatives and international organisations. Also the document repository is undergoing a reorganisation to increase its user-friendliness and usefulness. The EU Delegations present in the CoE partner countries have been invited to provide

CoE contact points, who have been equipped with access credentials, which may help to improve the synergies between the different EU instruments and policies, which are part of the work of the delegations.

The new portal prototype is under consultation with the users, including EC and EU services and partner countries. The governance documents for DG COMM authorization regarding GDPR, IPR and final Security verification have been drafted and are in the workflow.

74. (Annex, Nr 7 - 2017/COU/0297) The Council is looking forward to receiving further updates on the implementation and on the outcome of projects supported by the EU CBRN CoE Initiative.

Commission's response:

The Commission and the EEAS accept the recommendation. The Working Party on Non-Proliferation (CONOP) was regularly informed in 2018 and will continue to be kept informed at least twice a year through formal presentations. Other relevant Council groups will be also considered.

SR No 16/2018 "Ex-post review of EU legislation: a well-established system, but incomplete"

75. (*Annex, Nr 5 - 2017/COU/0298*) The Council calls on the Commission to define a set of minimum quality standards for ex-post reviews other than evaluations; to grant the Regulatory Scrutiny Board (RSB) the right to scrutinise ex-post reviews other than evaluations; and to incorporate in its minimum quality standards for ex-post reviews with an evaluative element the requirement to include a detailed outline of the methodology used, a justification of its choice, and the limitations.

Commission's response:

The Commission conducted a Better Regulation Stocktaking exercise, which covered inter alia the issues described in the recommendation. The stocktaking exercise was completed in April 2019. Taking into account the outcomes of this exercise, the Commission will clarify the scope of ex-post reviews and their expected outcome and will improve the guidance to include methodological reference in all ex-post reviews. In particular, it will clarify the difference between different types of reports (implementation, monitoring and transposition) and their timing. The guidance on the monitoring clauses will be reviewed.

76. (*Annex, Nr 6 - 2017/COU/0299*) The Council invites the Commission in particular to improve its ability to maximise the (re-)use of existing data required for producing sound evidence-based ex-post reviews in order to limit the burdens for citizens, businesses and administrations.

Commission's response:

As part of the Commission's Data Strategy Action Plan, an inventory of data assets accessible by various DGs of the Commission will be performed, starting in the second quarter of 2019 (Data Catalogue). The results of this inventory will feed into a report that will aim to respond to the recommendations put forward by both the European Court of Auditors and the Council. The inventory will aim to cover data considered relevant for EU policymaking processes, including data for ex-post impact evaluations. The outcome of this exercise will facilitate data discoverability and (re-)use across the organisation, with expected benefits for the consistency, transparency, and accountability of decisions taken.

77. (*Annex, Nr 7 - 2017/COU/0300*) The Council urges the Commission and the Regulatory Scrutiny Board to ensure the better implementation of the "evaluate first principle".

Commission's response:

The Commission is fully committed to applying the "evaluate first" principle as far as practicable. Better Regulation is a tool to provide the basis for timely and sound policy decisions, but it cannot replace political decisions. In certain circumstances, for example in urgent cases, the Commission may need to proceed without following all of the steps of the Better Regulation approach, in full compliance with its right of initiative. All exemptions requests to the principle of "evaluate first" are screened and duly justified. If granted, they are monitored and registered accordingly.

The Explanatory Memoranda of Commission proposals explain how Better Regulation is followed-up.

78. (Annex, Nr 8 - 2017/COU/0301) The Council calls on the Commission to clarify the REFIT concept and to improve the REFIT-Scoreboard in terms of user-friendliness and clarity.

Commission's response:

The Commission published the annual burden survey (https://ec.europa.eu/info/sites/info/files/2018-annual-burden-survey_en.pdf) explaining clearly the logic and rationale of the European Commission's Regulatory Fitness and Performance Programme (REFIT). It will continue its efforts to better communicate the Regulatory Fitness and Performance Programme both internally and externally.

SR No 18/2018 "Is the main objective of the preventive arm of the Stability and Growth Pact delivered?"

79. (*Annex, Nr 10 - 2017/COU/0302*) The Council agrees that the accuracy and transparency of the estimation of fiscal measures is of utmost importance and welcomes the Commission's continuous efforts in that regard; invites the Commission to propose any necessary changes to make further improvements in this area.

Commission's response:

The Commission presented a note on 18 January 2019 to the Alternates of the Economic and Financial Committee. With a view to addressing the ECA's recommendations, the Commission proposed that a new table be included in Member States' Stability and Convergence Programmes (SCPs) providing information on the annual impact of discretionary revenue and expenditure measures per ESA category. This would require an amendment to the Code of Conduct of the Stability and Growth Pact (SGP).

During their 24-25 January 2018 meeting, Alternates agreed to continue exchanging bilaterally information on discretionary revenue measures with the Commission, on a bi-annual and reciprocal basis, following the modalities used so far. In contrast, Alternates expressed strong reservations on their capacity to provide information on discretionary measures on the expenditure side. The Chair of the Committee, therefore, concluded that there was no consensus to move forward on the Commission's proposals for enhanced reporting on expenditure measures in the Stability and Convergence Programmes nor to amend the Code of Conduct at this stage, while the bilateral exchange of information on revenue measures would continue.

Furthermore, in response to the ECA's recommendations, the Commission has updated its internal guidance for the production of the technical notes assessing the SCPs for what concerns the assessment of the discretionary fiscal measures (revenue and expenditure) underpinning the SCPs, in order to provide a more comprehensive comparison between Member States' and the Commission's estimates of their impact. This is set to be in place for the spring 2019 fiscal assessment round. Moreover, in accordance with a related ECA recommendation, the Commission is set to explicitly highlight in its assessment of the SCPs when a Member State has not provided the information required by the Code of Conduct.

80. (*Annex, Nr 13 - 2017/COU/0303*) The Council invites the Commission to reflect on the findings and recommendations of the Court of Auditors report back to the Council within two years.

Commission's response:

The Commission accepts the invitation to reflect on the findings and recommendations of the Court of Auditors and to report back to the Council within two years, which is within the time-frame of the various deadlines agreed with the Court for implementing those recommendations accepted by the Commission.

SR No 23/2018 "Air pollution: Our health still insufficiently protected"

81. (*Annex, Nr 10 - 2017/COU/0304*) The Council invites the Commission therefore to consider a revision of the existing legal framework in due consideration of the results of the ongoing Fitness Check in order to enable a more efficient and effective implementation and enforcement of air quality provisions and advises to take the latest scientific evidence on human health impacts into account and to take the WHO guidelines into consideration.

Commission's response:

The Commission is currently carrying out a fitness check of the Ambient Air Quality Directives (2008/50/EC and 2004/107/EC). This is a backward looking exercise, with the aim to assess whether the legislative framework established by the Ambient Air Quality Directives has been fit for purpose. As all fitness checks do, it will look at the relevance, coherence, effectiveness, efficiency and EU value added of this legislative framework.

The findings of the fitness check will be used to inform further reflections on whether the Ambient Air Quality Directives continue to provide the appropriate legislative framework to ensure protection from adverse impacts on, and risks to, human health and the environment. We have initiated this fitness check in the second half of 2017 and look to complete it in the second half of 2019.

It would be premature at this stage to anticipate its outcomes, or the conclusions the Commission might draw from this fitness check. Whether a revision of the existing legal framework, and what the scope of such revision might be, will only be considered based on the results of the ongoing fitness check.

Bodies set up under the TFEU and the Euratom Treaty in respect of the implementation of the budget for the financial year 2017

82. *(European Environment Agency, Annex to ANNEX 4, last paragraph - 2017/COU/0305)* The Council agrees with the Court's observation, that timely pre-financing payments by the Commission are a requirement to allow the implementation of delegation agreements. Therefore, the Council calls on the Agency to observe this requirement in the future and it invites the Commission to enable necessary changes to delegation agreements in a timely manner.

Commission's response:

The Commission has amended the delegation agreement with EEA in 2017 with the necessary changes ensuring timely pre-financings in line with the Rules of Application of the EEA Financial Regulation. On this basis the Commission considers this recommendation closed.” If needed, reference to the ARES file can be included: Ares(2017)4464875.