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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

on the follow-up to the discharge for the 2013 financial year (Summary)

{SWD(2015) 194 final}
{SWD(2015) 195 final}

REPORT ON THE FOLLOW-UP TO THE REQUESTS MADE BY THE EUROPEAN PARLIAMENT IN ITS DISCHARGE RESOLUTIONS AND THE COUNCIL IN ITS DISCHARGE RECOMMENDATION FOR BUDGETARY YEAR 2013

PRELIMINARY COMMENTS

This is the Commission's report to the European Parliament (EP) and the Council on the follow-up to the EP discharge resolutions¹ and the Council Recommendation² for the 2013 financial year, pursuant to Article 319(3) of the Treaty on the Functioning of the European Union (TFEU), Article 166 of the Financial Regulation (FR), and Article 119(5) of the 9th European Development Funds (EDF) Financial Regulation and Article 144 of the 10th EDF Financial Regulation.

It is the first report presented by the Commission which took up office on 1.11.2014. The new Commission is pursuing a more focused agenda according to the political priorities set out by President Juncker and attaches particular importance to the principle of sound financial management.

The Commission has thoroughly examined the concerns expressed by the EP and Council in the 2013 discharge.

In the EP general discharge resolution, a certain number of issues such as necessary improvements in shared management, simplification, performance as well as other specific points are highlighted. These requests have been extensively discussed during the discharge procedure, in particular with the rapporteur and the Members of the Budgetary Control Committee (CONT). In the letter by Vice-President Georgieva³, evidence was given of the Commission's formal commitment to implement fully and timely a series of actions and measures related to the issues identified.

The Council recommendation also contains important issues related to the need of improvements in shared management, simplification and performance.

The present communication takes into account this commitment whilst updating, where necessary, the situation as far as further actions have been taken so far. It is accompanied by two Commission Staff Working Documents (CSWD) containing replies to 319 EP and 75 Council specific discharge requests.

The Commission agrees to start new actions on 139 requests (115 from the EP and 24 from the Council). It considers that for 218 requests (168 from the EP and 50 from the Council), the required action has already been taken or is on-going, though in some cases the results of the actions will need to be assessed. Finally, for reasons related to the existing legal and budgetary framework or its institutional role or prerogatives, the Commission cannot accept

¹ 2013 General Budget Discharge, ECA' Special Reports in the context of the Commission Discharge, EDF Discharge, Agencies Discharge. Document references P8_TA-PROV(2015)0118, P8_TA-PROV(2015)0119, P8_TA-PROV(2015)0120 and P8_TA-PROV(2015)0130 respectively available at the following Web address:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=20150429&secondRef=TOC&language=en>

² Document references 5303/15 ADD 1, 5303//1/15 REV 1, 5304/15, 5305/15, 5305/15 ADD1, 5306/15, 5306/15 ADD 1, 5549/15 published on:

<http://www.europarl.europa.eu/committees/en/cont/discharge-2013.html>

³ Ares(2015)971353, 4.3.2015.

37 requests (36 from the EP⁴ and 1 from the Council⁵). A detailed justification is provided in the two attached CSWD.

1. IMPROVEMENTS IN SHARED MANAGEMENT

1.1. Reservations qualifying the Directors-General "statement of assurance" on agriculture and rural development, regional policy and employment and social affairs (§§ 1-4)

The Commission considers that reservations confirm the well-functioning of the control procedures put in place in the Commission and Member States (MS). The number of reservations in the Annual Activity Reports (AARs) [21 in 2013], is the result of an enhanced and more targeted approach of the Commission, inter alia as a result of the ongoing strict policy of interruption and suspension of payments and not due to a deterioration of the control systems or a lack of accountability. Reservations are generally linked to action plans that are closely supervised by the Commission.

The fact that the Commission systematically identifies deficiencies and risks, takes action and reports on progress made allows the EP to monitor on a permanent basis the situation and evolution of the quality of financial management.

The preventive, detective and corrective measures implemented by the Commission on the basis of the multi-annual supervisory and control systems offer reasonable assurance that the EU budget is adequately protected from expenditure in breach of law and risks arising from deficiencies in MS' management and control systems.

1.2. Single Audit chain and responsibility of the Commission and MS (§§ 44, 47)

The Commission has been working towards an effective "single audit chain" which is a leitmotiv of a large part of the resolution.

In this context the main sources for the assurance of the Commission that resources have been used in accordance with the legal framework and principles of sound financial management are the results of its own audit work, audits of the European Court of Auditors (ECA) and reports provided by OLAF, as well as information presented by national authorities, in particular the audit opinions and control statistics on error rates transmitted as part of the annual control reports and the national system audits provided throughout the year.

One important aspect of the single audit is the management declaration which introduces a reinforced mandatory reporting for MS, signed by the Directors / heads of the agencies or bodies. This declaration will be accompanied by a report containing a summary of all control and audit results carried out as well as corrective actions taken or planned. However, the issuance of a national declaration (Article 59(1) FR) could constitute another important element of the single audit.

On the request to submit a recommendation to promote the use of such national declarations the Commission, whilst endorsing the recommendations of the Interinstitutional Working Group⁶, would like to stress that other actions constitute a more appropriate way to promote

⁴ See §§ 2, 10, 12, 26-27, 34-35, 40, 44-45, 58, 91, 94, 103, 110, 137-138, 141, 143-144, 148, 152, 156, 169, 218, 222, 224, 268-269, 271, 282-283, 290, 294-295, 297 of the CSWD on the EP resolutions..

⁵ See § 50 of the CSWD on the Council Recommendation;

⁶ COM(2014)688 final.

their use, like including information in public documents such as the AARs of the Commission, collection of best practices, information sessions in the relevant fora or promotion of the national declarations vis-à-vis the Ministers of Finance, National Parliaments and Supreme Audit Institutions.

As for the EP request to publish national declarations, annual summaries and management declarations, the Commission underlines that it has not the right to publish such documents.

1.3. Reliability of the information provided by MS (§§ 24-25, 49-50)

The Commission is of the opinion that the credibility of AARs is not undermined by the lack of reliability of some of the first level checks performed by MS. It has indeed a good overview and builds its assurance based on a robust and solid process encompassing several levels of controls:

- the first level controls performing verifications on all expenditure before it is declared to the Commission;
- the second level control of the certifying authority (the accountant) before submitting the accounts to the Commission;
- the third level of control comprising audits of the projects and of the procedures in place;
- and the own controls of the Commission targeting either the national bodies for implementation and control or directly the projects which are based on the assessment of 15 key requirements.

For its assurance the Commission takes into account the results from the work of all these levels of control as well as the results from the ECA audit work and the OLAF investigations.

The controls are furthermore spread in time with some controls taking place after the certification of expenditure to the Commission. In particular, the final assessment of the residual risk and therefore the success of implementation will be performed at the time of closure.

It considers that the information provided in the AARs, in the Synthesis Report, in the Communication on the protection of the EU budget and in the annual accounts provides an adequate basis for assessing the corrective capacity of systems put in place.

The prudent approach adopted in the Communication on the Protection of the EU budget⁷, should not be understood as meaning that MS reported unreliable information. The Commission's comment refers to the practice of some certifying authorities to report as Financial Corrections (FC) a figure that includes FC made by the MS and by the Commission. Therefore, the Commission systematically subtracts from the figures reported by MS an amount that equals the Commission's corrections in order to avoid the risk of double counting.

DG REGIO and DG EMPL are taking measures to ensure the reliability of the information reported by MS on FC. The measures consist in:

- the performance of an annual risk assessment on data reported by MS,
- contacts with the certifying authorities to clarify the reported data when inconsistencies are found,
- the performance of on-the-spot audits to verify the accounting system of the certifying authorities and the reliability of data reported on FC based on the risk assessment

⁷ COM(2014)618 final.

results; coverage of such audits was increased in 2014 to obtain additional assurance.

On the request to put in place procedures linking corrective measures to the original year of payment, the Commission points out that under the 2007-2013 programming period, it is first the responsibility of MS to put in place sound procedures to confirm the timing, the origin and the amount of corrective measures.

The Commission has always stated that linking corrections to the original year of payment is not feasible.

In case the Commission considers, based on its assessments and analysis, that data from MS are not correct, this will be clearly disclosed in the respective AAR of its services.

On the request that the Directors-General report in their AARs on the error rates notified by the MS and on the corrections made by the Commission, it recalls that this information is currently provided by the DGs for all operational programmes under reservation. As from 2014 this has been extended to all operational programmes on an ad-hoc basis.

1.4. The Synthesis Report and the AAR (§§ 26-27, 217-218)

In response to the request of the EP, the Commission has clarified the calculation of the amount at risk in the 2014 Synthesis report⁸, presenting also the estimated impact of corrective actions.

On the request to issue in the Synthesis report a proper "Statement of assurance", the Commission stresses that, in line with the need to reinforce financial control as one of the key priorities of its administrative reform and reinforcement actions since 2000, the governance framework (in particular Article 66(9) FR) fully empowered Directors-General, making them personally accountable for financial management. Therefore the managerial responsibility assumed by the Directors-General ensures the necessary continuity and sustainability of the accountability structure.

The Commission recalls that the College takes political responsibility on the basis of Article 317 of the TFEU by adopting annually the Synthesis Report which constitutes a summary of the AARs of the preceding year (Article 66(9) FR). It considers that the combination of AARs and the synthesis report fulfils the internal and external accountability objectives.

Concerning the EP request for clarifications of the standard instructions for the AARs (possible adverse opinion, sanction mechanism), the Commission underlines that the present instructions already allow the Authorising Officers by Delegation (AOD) to conclude that he/she has no reasonable assurance that the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

On the sanction mechanism, both the FR and the Staff Regulations (SR) currently already foresee that the AOD is liable to disciplinary procedures and has pecuniary responsibility in the event of illegal activity, fraud or corruption.

2. SIMPLIFICATION

The legal framework for 2014-2020 provides a basis for further simplification by introducing measures like the reduced number of programmes, the alignment of the provisions between European Structural Investment Funds and other EU instruments, the reinforcement of simplified cost options (SCO) or the introduction of Joint Action Plans and the reduction of audit burden in line with the principle of proportionality.

In the area of Agriculture and Rural Development, the new legal framework includes

⁸ COM(2015)279 final.

simplification elements such as the small farmers' scheme or standard costs and lump sum payments in rural development. Since, however, many of these elements are voluntary for MS, their effects on the ground depend on national implementation choices. Moreover, some of the elements introduced by the co-legislators in the course of the legislative procedure have added complexity to the Commission's initial proposals. The Commission has moreover started a screening exercise on simplification, the results of which will be communicated soon to the relevant stakeholders.

As far as Cohesion Policy is concerned, wide ranges of simplification opportunities have been offered to MS which they must now take up while avoiding 'gold-plating'. In the same vein public procurement and State aid rules have also been recently simplified through improved legislation, which should contribute to error reduction once fully in force. The Commission has moreover taken the political initiative to set up a group of experts to carry out an independent assessment on the take up of simplification by MS and the identification of further possibilities to simplify rules. On 10 July 2015, the Commission adopted the decision setting up the High Level Group of Independent Experts on Monitoring Simplification for Beneficiaries of the European Structural and Investment Funds, which was announced by Commissioner for Regional Policy Corina Crețu on 9 June 2015. The group's purpose is to assess the uptake by the MS of simplification opportunities to access and use the Funds, in order to reduce the administrative burden for beneficiaries.

Starting from 2016, the electronic administration of cohesion policy will come into operation. The regulatory framework for the 2014-2020 strengthens the possibility to use SCO and sets out new simplified instruments, such as the Joint Action Plans, which are entirely defined in terms of outputs and results to be achieved and implemented through SCO. Furthermore, concerning Employment, the Commission conducts simplification seminars in MS. The Commission intends to present a simplification survey report on the state of play to the EP and to Council by the end of 2015.

SCO and harmonisation of rules between funds reduce the administrative burden for beneficiaries and risk of error. Therefore, simplification helps focus effort on achieving projects and programs results.

The Commission will monitor the implementation of the simplification elements in each policy area and streamline these separate initiatives through an Administrative Simplification Scoreboard by end 2015.

The Commission will take into account the results of this monitoring and coordination activity in the mid-term review of the MFF (which is due end of 2016) and the next revision of the FR.

3. PERFORMANCE (§§ 303-310)

The new generation of spending programmes for the MFF 2014-2020 will contribute to the Europe 2020 strategy objectives as it is more performance-oriented, as described in detail in the letter of Vice-President Georgieva mentioned earlier.

Following the EP resolution of 3.12.2013 on the "Integrated internal control framework" (item 40)⁹, the Commission has undertaken the necessary steps to establish the Inter-Institutional Working Group on Performance-Based Budgeting in the course of 2015.

The EP requests that the Management Plan of the Directors-General should have a limited number of targets on which they report in their AAR. The Commission underlines that the

⁹ Available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0319&language=EN&ring=A7-2013-0189>

2013 AARs contained the progress in achieving milestones and long-term targets defined in the 2013 management plans and also included a summary of evaluations and performance audits carried out.

The resolution asks for two analysis to be included in the next evaluation report both concerning the efficiency, the effectiveness and the results achieved in terms of growth and jobs respectively by the Investment Plan¹⁰ and by the Growth and Jobs plan.

As for the first one, and following the agreement reached between the EP and the Council (5.6.2015), the Commission will submit: (a) an evaluation on the use and functioning of the EU guarantee, accompanied by an opinion of the ECA, and (b) a report containing an independent evaluation of the application of the Regulation.

On the second one, the Commission points out that the evaluation report is providing data on the Growth and Jobs plan adopted by the European Council in June 2012 in as far as actions have been financed by the EU budget.

Two further requests concern coordination in the internal organisation of the Commission. In its new working methods, the Commission sets out how it ensures that its work falls within the key areas of the Political Guidelines across the Commission services and aims to develop a stronger performance culture in relation to the EU budget. Furthermore EU policies are managed and co-ordinated taking account of the cross cutting nature of DGs activities.

In this context, a network of Commissioners has been established focussing on a EU budget for results.

4. SPECIFIC ISSUES

4.1 Conflict of interest (COI) (§56)

As regards the EP request to examine the current situation of the legislation in MS in this domain, the Commission recalls that, in general terms, the avoidance of conflict of interest at national level falls under the competence of MS, also when the possible COI refers to the management of funds from the Union budget.

As far as the call to present recommendations or legally binding solutions is concerned, the Commission recalls that legal provisions¹¹ are already in place for avoiding COI when implementing EU budget in shared management.

In particular as far as the provisions of the FR are concerned, it is up to MS to take the necessary measures to avoid COI both in management and control activity.

Moreover the Common Provisions Regulation provides that the operational programme shall ensure adequate separation of functions when the managing authority is also a beneficiary.

In the same vein, the procurement rules foresee that MS shall ensure that contracting authorities take appropriate measures to effectively prevent, identify and remedy COI arising in the conduct of procurement procedures so as to avoid any distortion of competition and to ensure equal treatment of all economic operators.

4.2. Pre-Accession pre-financing (§ 215)

¹⁰ COM (2015)10 final.

¹¹ Articles 32(3) and 59(1) FR, Article 125(7) CPR, Article 24 of Directive 2014/24/EU of the European Parliament and of the Council on procurement procedures.

Concerning the clearance of nine transactions relating to the national programmes for pre-accession, the Commission stresses that these were only affected by a temporary accounting procedural error. The Commission has consistently maintained that this error had neither an impact on the reliability of accounts, nor on the legality and regularity of the transactions involved.

Moreover the paragraph concerned only partially reflects the conclusions drawn by ECA and the related replies of the Commission in the 2013 ECA's annual report.

As far as the accordance of DG Enlargement practice with Article 88 FR and Article 100 of its rules of application (RAP), the Commission underlines that these provisions refer specifically to the validation of expenditure, which did not occur in any of these transactions. Hence the Commission does not agree that the article was not complied with: at no stage was there any communication on these transactions with the beneficiary country indicating that the Commission has validated related expenditure.

The Commission notes that the temporary accounting procedure had only been in place for two years, and was cancelled in the third. The Directorate General has now put in place a system with the relevant beneficiary countries to ensure that the recognition of cost in the accounting records is fully compliant with the FR.

4.3. IMG (§§ 234-235)

The resolution asks for the reasons concerning the leak of the OLAF final report on IMG as well as to take a decision on the legal status of this organisation. Within the limits of confidentiality, the Commission will inform the EP about the results of its investigations on the circumstances of the alleged unauthorised leak.

As far as the legal status of IMG is concerned, the Commission has already made clear that, in view of the new factual elements contained in the OLAF final report, it will not sign further agreements with IMG under the special procedure applicable to international organisations until IMG has clarified its status.

The Commission would like to recall that the FR and its RAP provide a clear legal framework for the award of grants without a call for proposals and for the award of procurement contracts under a negotiated procedure without prior publication (in direct management). The legal bases provide the specific situations where these direct awards can be used, such as humanitarian aid, civil protection or crisis management aid, emergencies, monopoly situations, bodies identified in the basic act by the legislator or specific actions requiring a particular type of beneficiary in terms of its technical competence, high degree of specialisation or special administrative power mostly. In the case of procurement, the number of ensuing negotiated procedures used during one year is reported, according to Article 53 RAP in each AAR (Annex 3, Tables 11 and 12).

It is important to note that there is no link between these specific situations and the legal status of the beneficiary or contractor. Whether an entity is an international organisation or not is irrelevant in these particular cases: the supposed privilege that an entity could obtain by being classified as such is not to be found in direct management but rather by gaining access as well to the previous joint management, now indirect management.

The resolution also requires to inform EP about the OLAF enquiry opened in 2011 and to provide it with a list enumerating all the organisations, companies, other bodies or persons, detailing their legal status, which have received contracts from the Commission without a call for proposals.

On the first request, the Commission has regularly kept informed the CONT Chair and its Members. In particular it recalls that on 17.6.2015, CONT Chair and its Members were informed, during an "in camera" meeting, about the thrust of the follow-up given by the Commission to OLAF on IMG. The Commission would refer to that information

Concerning the second request, the Commission considers that it would be a disproportionate workload to provide the list of recipients of contracts awarded by negotiated procedure or directly awarded grants and link them to their legal status, as such data are not readily available from central databases. Besides, the cases for direct award are clearly listed in the AARs, as already mentioned above.

4.4. OLAF (§§ 280-287)

Parliament's requests in this domain mainly concern the relations between OLAF and its Supervisory Committee (SC). The Commission can assure the EP that these are duly considered.

In particular, as regards the independence of the SC, in line with Regulation 883/2013, OLAF has undertaken, to the extent possible, measures to guarantee the independent functioning and the financial autonomy of the SC and its budget. The Commission is exploring the possibility of further strengthen it, especially in its human resources and budget management within the existing legal framework. The EP will be informed in due course. In the same vein, regarding the request to consult the SC prior to modifying instructions to staff on investigation procedures and prior to setting investigation policy priorities, OLAF has already consulted the SC on its guidelines to staff on investigation procedures and on its investigation policy priorities in line with Regulation 883/2013 and the Working Arrangements between OLAF and the SC, and is committed to do so also in the future.

As far as the implementation of the SC's recommendations is concerned, the Commission can assure the EP that all SC recommendations have been carefully considered by OLAF and considerable resources are invested to implement a number them. 2014 was the first year in which the SC followed-up on the recommendations it had issued over the preceding years. A procedure on how to carry out such follow-up in the future is currently being set up. Both OLAF and the SC are working together to achieve a good cooperation in this respect. The legality of the investigations opened by OLAF in the context of its reorganisation on 1.2.2012 was considered in the SC Report 3/2014 of 20.1.2015. OLAF provided its comments to the SC Report on 9.2.2015 and these were attached to the SC Report sent to the institutions on 12.2.2015. The statistics on the duration of the investigations are covered by OLAF in its annual reports. Furthermore, the Director-General of OLAF has requested the SC to issue a comprehensive Opinion on OLAF's statistics; the SC included this Opinion in its 2015 work programme.

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