Discharge procedure for the EU Budget

Political scrutiny of budgetary implementation

SUMMARY

The European Commission is ultimately responsible for the execution of the European Union’s budget. However, the process also involves a range of other players, including Member States, to which the Commission delegates implementing tasks relating to a significant share of the budget.

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

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

The discharge procedure has proved to be a powerful tool, which has had an impact on the evolution of the EU’s budgetary system, while helping to increase the Parliament’s political leverage. Recent years have shown a trend towards a greater focus on results and performance, strongly supported and promoted by the European Parliament. For example, the 2018 version of the EU’s Financial Regulation simplified the rules for budgetary implementation and introduced the ‘single audit’ approach to shared management. Another noteworthy issue is the question of how to ensure EU-level democratic scrutiny of financial tools set up to respond to crises either outside the EU’s institutional framework (e.g. the European Stability Mechanism) or at least partially outside the EU budget (e.g. EU trust funds).

This Briefing updates a previous edition of April 2016.

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Context

EU budget: Various methods of implementation

In 2018, the implemented EU budget amounted to €173.1 billion in commitment appropriations and €156.7 billion in payment appropriations. In other words, the EU budget accounted for around 1% of EU gross national income. Member States implement some 80% of total expenditure under 'shared management' with the European Commission (e.g. in policy areas such as cohesion and agriculture) and collect traditional own resources on behalf of the Union. Therefore, while the Commission is ultimately responsible for the correct implementation of the budget, it relies on Member States' cooperation to meet this goal (Article 317 of the Treaty on the Functioning of the European Union, TFEU). The use of other implementation methods for the remaining 20% of EU expenditure makes things even more complex: under 'direct management' the Commission can not only carry out tasks itself but also delegate them to EU executive agencies; and, under 'indirect management', implementing tasks are entrusted to other entities such as third-country authorities, international organisations, EU decentralised agencies and the European Investment Bank (EIB).

Control and audit mechanisms

Designed to ensure the correct and effective use of EU resources, the EU's Financial Regulation (FR) details the key principles that the European Commission and other parties entrusted with budget implementation must uphold. In the current version of the FR, adopted in 2018, the key principles include control and audit obligations for the various types of implementing method. Examples of safeguards include external audit activities and internal control systems.

Internal control systems and checks of their effectiveness have to be designed and implemented at all levels of management, taking into account the specificities of each implementing method. These control systems involve various players, to whom different roles are assigned in the implementation of the EU budget. At EU level, for example, each institution or body has authorising officers, accountants and internal auditors. At Member State level, notably in areas under shared management, relevant players include national managing, certifying and audit authorities.

When it comes to external audit, Articles 285-287 TFEU assign the crucial role of the EU's independent external auditor to the European Court of Auditors (ECA). Established in 1977, the ECA has seen its mandate grow over time. Its checks focus mainly on three aspects: 1) the reliability of the EU's accounts; 2) the regularity and legality of its transactions; and 3) soundness of financial management. Article 287 TFEU notes the need for cooperation between the ECA and national audit bodies, and the essential nature of their respective independence.

In recent years, starting with a pilot exercise in cohesion spending, the ECA has been modifying its approach to gathering evidence for the assessment of the regularity and legality of transactions, by giving greater consideration to the functioning of internal control systems and making better use of other auditors’ work. The ECA expects this modified approach to produce more informative results for its stakeholders, in a cost-effective manner.

Parliamentary oversight

At political level, oversight of EU budget implementation is a key responsibility of the European Parliament, which has a Budgets Committee (BUDG) and a specific Budgetary Control Committee (CONT). While Parliament regularly monitors the implementation of the current year’s budget, one of its strongest tools in this area is a form of ex-post control, the ‘discharge procedure’. Initially given by the Treaty of Rome (1957) to the Council, and then shared by Council and Parliament for a few years (Luxembourg Treaty of 1970), the power to grant discharge was assigned by the Treaty of Brussels (1975) to the European Parliament. This helped to increase Parliament's political leverage. The ECA, also established by the Treaty of Brussels, is a key interlocutor in the discharge procedure.
The Treaty of Lisbon confirmed the European Parliament’s key role in the discharge procedure. Parliamentary scrutiny and approval of accounts, and of how public resources have been spent, is common practice in the vast majority of EU Member States. A 2012 study carried out for the CONT committee³ compared approaches in this field across the EU.

Main features of the discharge procedure

Legal basis, rules and functions

Under Article 319 TFEU, the European Parliament, acting on a recommendation of the Council (the other arm of the EU budgetary authority), decides whether to grant discharge to the Commission as regards the implementation of the EU’s annual budget. Further details, for example on the timeframe of the procedure and its application to the European External Action Service (EEAS), are provided by the FR, and notably its Articles 260 to 263. In addition, Parliament has defined internal organisational and operational rules concerning the discharge procedure in its Rules of Procedure (RoP) Nos 99, 100 and 104(3), complemented by Annex V.

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

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

Institutions and bodies other than the European Commission

Although Article 319 TFEU mentions only the discharge to the Commission, Parliament also grants separate discharge to the other EU institutions for their respective sections of the EU general budget,⁴ and to decentralised EU agencies⁵ and joint undertakings for their budgets. The objective of separate discharge is to ensure transparency and democratic scrutiny of how public funds have been spent. The CONT committee, therefore, prepares individual discharge reports for consideration in plenary (Annex V of Parliament’s Rules of Procedure). These also include a report for specific discharge of the Commission concerning the European Development Funds (EDFs), since the EDFs are not part of the EU budget.⁶

On EU agencies and joint undertakings, Article 70 FR states that bodies established under the TFEU and the Euratom Treaty are subject to a discharge decision on the implementation of their budgets, taken by the European Parliament on the Council’s recommendation. With regard to institutions other than the European Commission, the practice of granting separate discharge emerged in the 1990s, but scrutiny of the Council’s section of the EU budget has proved to be a source of interinstitutional friction between Parliament and Council (see below).

Timeframe and documents

The key deadlines and documents in the discharge procedure for **financial year n** are as follows:

- **By 31 July of year n+1**, the European Commission must adopt the final consolidated accounts of the EU and its own final accounts and send them to Parliament, Council and the ECA (Article 318 TFEU and Article 246(5) FR) as part of an integrated set of financial and accountability reports. Known as integrated financial and accountability reporting, this set of documents includes the annual management and performance report, according to which the Commission takes overall political responsibility for management of the EU budget, based on the declarations of assurance of its authorising officers by delegation.

- **By 15 November of year n+1**, the final consolidated accounts are published in the Official Journal of the EU with the **statement of assurance** (also known as the DAS),⁷ which is the ECA’s
official opinion, based on its audit work, of their reliability and of the legality and regularity of the transactions (Article 287 TFEU, Article 106a of the Euratom Treaty and Article 246(6) FR). By the same date, the ECA must transmit its annual report on the implementation of the EU budget (with replies from the institution or body concerned to its observations) to the discharge authorities and the other institutions. This report contains both the DAS and an assessment of soundness of financial management (Article 258 FR). The ECA produces separate reports on the annual EDFs.

In general, between the publication of the ECA annual report and January of year n+2, the CONT committee holds hearings of European Commissioners and senior officials of EU institutions, agencies and joint undertakings. This enables the European Parliament to obtain further information and clarification on spending and management of EU resources.

In February of year n+2, acting by qualified majority in its Ecofin configuration, the Council usually adopts its recommendation to Parliament on whether or not to grant discharge to the European Commission.

Before 15 May of year n+2, taking into account the Council’s recommendation, the plenary of the European Parliament considers the discharge reports prepared by its CONT committee and decides either to grant or postpone discharge (Article 260 FR and Annex V of Parliament’s Rules of Procedure). If the deadline cannot be met, Parliament or Council must inform the Commission of the reasons why. On the basis of Parliament’s Rules of Procedure, the vote on discharge usually takes place in the April part-session.

If discharge is postponed, in October of year n+2, Parliament considers new reports prepared by its CONT committee taking into account any additional elements addressing the reasons for the postponement and possibly removing the obstacles to granting discharge. At this stage, plenary decides either to grant or refuse discharge. If discharge is refused, a subsequent part-session will consider a formal proposal to close the accounts for year n, with the European Commission invited to make a statement (Annex V of Parliament’s RoP).

Article 319 TFEU details the documents that, in turn, the Council and the European Parliament examine in the framework of the discharge procedure. In addition to the accounts and financial statement produced by the Commission, and the annual report and DAS of the Court of Auditors, these include any ECA special reports that provide the results of audits of specific sectors/policies or budgetary/management issues, and are related to the financial year in question. Another relevant document, introduced by the Treaty of Lisbon (Article 318 TFEU), is an annual evaluation to be produced by the Commission on the results achieved with the EU’s finances. The 2018 FR incorporated this evaluation, which was produced as a separate document for a few years, in the annual management and performance report for the EU budget (see above). This development ties in with efforts to streamline financial and accountability reporting (Article 247 FR, see above).

**Impact of the European Parliament decision on discharge**

An important tool

In practice, the power to grant discharge has proved a significant tool allowing Parliament to increase its influence on the way the Commission operates. This is true not only in the exceptional case of refusal to grant discharge, but also when discharge is granted. In addition, should the relevant decision be postponed, Article 260 FR calls for the Commission to take all measures necessary to remove the obstacles to granting discharge promptly.
Political significance

Although Article 319 TFEU does not mention refusal of discharge explicitly, this has been considered an implicit power. Therefore, Parliament's RoP (Annex V) detail relevant procedures for such cases, including those allowing the necessary technical closure of the accounts. While refusing the European Commission discharge does not imply immediate legal consequences, it does have major political consequences. It is not a censure motion as such (Article 234 TFEU), but its exceptional nature and symbolic significance can lead to such a motion.

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

Obligation to act on observations

One integral part of the discharge decision is a Parliament resolution with observations on implementation of the budget. Parliament carries out a thorough analysis of relevant information. For example, for Section III of the EU budget (Commission and executive agencies), the resolution for financial year 2017 covered 270 points.

On the basis of Article 319 TFEU and Article 262 FR, the Commission and the other institutions have an obligation to take all appropriate measures to address Parliament's observations on the execution of expenditure, and also Council's comments in its recommendation on discharge. Failure to act can be a reason for refusing discharge in subsequent years. In addition, it can trigger an action before the Court of Justice of the European Union (Article 265 TFEU), as noted in Parliament's RoP. An amendment introduced since the 2015 version of the FR specifies that the obligation to take all appropriate measures to address discharge observations and comments also concerns bodies such as EU agencies and joint undertakings.

Reporting

Article 319 TFEU provides for the Commission to report to Parliament and Council on measures taken in relation to discharge observations and comments. For instance, in its report on follow-up to the discharge for financial year 2017, part of integrated financial and accountability reporting (see above), the European Commission replied to the main discharge requests, categorising them as follows: 1) performance of programmes and policies; 2) accountability reporting, including the methodology for calculating error rates; 3) absorption of European funding; and 4) other specific issues, such as conflicts of interest. This follow-up report is examined by Parliament and Council in the framework of the subsequent discharge procedure together with more detailed replies published at a later stage. Under Article 262(2) FR, Parliament or Council may ask not only the Commission but also other institutions and relevant bodies to report on the measures they have taken to address discharge observations and comments.

Some aspects in focus

In general, analysts consider that the discharge procedure has marked the evolution of the EU's budgetary system significantly and that Parliament has been able to use the potential embedded in the right to grant discharge to boost its role in the EU's institutional framework. The aspects discussed below have been relevant to the discharge procedure in recent years and/or may influence its future development.
2018 Financial Regulation: Simplification and focus on results

One fundamental aspect of discharge is verification of **compliance**, i.e. checking whether resources have been used according to relevant rules, and that the accounts reflect income and expenditure accurately. Another key element is **performance**, with the discharge authority taking due account, for example, of ECA special reports on soundness of financial management in specific areas. In recent years, **Parliament** has regularly supported and promoted moves to strengthen tools that focus on performance, results and their achievement. Agreed by Parliament and Council, the latest version of the FR, which entered into force on 2 August 2018, includes various modifications to previous financial rules that aim to strengthen further the effectiveness of EU resources and their capacity to add European value, addressing both EU institutions’ agreed priorities and demands expressed in the context of a EU-wide public consultation.

The **2018 reform** simplified and reduced the number of financial rules, while increasing transparency in implementation and control, and focusing more on results. Changes included the introduction of the **'single audit' approach**, with a view to streamlining checks and controls (but making them tougher where the risk is higher), avoiding duplication of audits, and reducing the overall cost of checks. In addition, the 2018 reform promoted greater use of simplified types of grant such as lump-sum, flat-rate, and unit-cost payments that link disbursements to outputs and results.

Parliament has helped to reinforce structures for the sound financial management of EU resources both in the Commission and in the Member States. It continues to promote further improvements in this area, including by means of the annual discharge procedure. For example, the **resolution for the 2017 discharge** for Section III of the EU budget (Commission and executive agencies) addresses a number of recommendations on performance reporting to the Commission and the ECA.

Relations between Parliament and Council

Parliament’s decision to scrutinise Council’s section of the EU budget as of 2003 (for financial year 2001) has led to growing friction between the two institutions, proving to be politically sensitive. For financial year 2008, the **CONT committee unanimously proposed** that the discharge decision concerning Council’s budget be postponed. However, plenary rejected the recommendation, granting Council discharge, but making a series of **observations**. These included points on a 1970 ‘gentlemen’s agreement’ that Council had interpreted as meaning that the two institutions would refrain from scrutinising each other’s budget. Parliament deemed this interpretation too broad, since the gentlemen’s agreement referred only to the preparation of the budget and not to the ex post scrutiny of its implementation, and added that the agreement was non-binding.

Regretting a lack of cooperation from Council (often regarding provision of information), **Parliament** has since refused to grant discharge for the implementation of the Council and European Council budgets nine consecutive times (financial years 2009 to 2017). Various attempts to break the deadlock have been unsuccessful. At a **2012 workshop** on the European Parliament’s right to grant Council discharge, legal experts had different opinions on the topic. However, to a great extent, they agreed on Parliament’s right to obtain information (at least indirectly through the European Commission). In 2017, a study commissioned by the CONT committee assessed the pros and cons of four possible solutions to break the deadlock. In March 2020, the **CONT committee** again recommended postponing the discharge decision for the Council and the European Council (for the 2018 budget), regretting a continued and complete lack of cooperation from Council. It reiterated Parliament’s request to separate the budget of the European Council and the Council into one budget for each institution, for the sake of transparency and accountability. In addition, CONT’s discharge report underlined the need for a memorandum of understanding between Council and Parliament to address their long-standing differences over the current practice of granting discharge.
Responsibility for the implementation of the EU budget

The debate on discharge is also linked to where responsibility lies for implementation of the EU budget. On the basis of Article 317 TFEU, the European Commission is ultimately responsible for the correct implementation of the EU budget, but this is complicated by the existence of different implementing methods (see above section on context). As regards the implementation of sections of the EU budget managed by EU institutions other than the Commission, Parliament draws attention to Article 335 TFEU (‘the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation’) in conjunction with Article 59 FR (‘The Commission shall confer on the other Union institutions the requisite powers for the implementation of the sections of the budget relating to them’), concluding that each institution is responsible for the implementation of its own budget.

Responsibilities in shared management

In shared management, the European Commission delegates implementing tasks to Member States. Their respective responsibilities in this implementing method, which is by far the main one for the EU budget, have long been the subject of debate. For example, Parliament has insisted on strengthening the responsibilities of national management and audit authorities for structural funds implementation.

The revised version of the FR has promoted greater transparency and synergies in this field through its Article 63 FR, which introduced the ‘single audit’ approach to shared management (see above). Under this article, whose inclusion in the FR was strongly supported by the European Parliament, bodies designated by Member States to manage and control EU funds must provide the European Commission by 15 February n+1 with a comprehensive set of documents. These documents include: their accounts together with a management declaration; a summary of their final audit reports and of controls; and an opinion from an independent audit body, drawn up in accordance with internationally accepted audit standards. In particular, by means of the management declaration, the managing authority must confirm that: ‘a) the information is properly presented, complete and accurate; b) the expenditure was used for its intended purpose, as defined in sector-specific rules; c) the control systems put in place ensure the legality and regularity of the underlying transactions’.

Democratic scrutiny at EU level of tools created to address crises

Over the past decade, a number of tools have been created partially or completely outside the EU budget with a view to addressing various crises. This has raised questions about the accountability and scrutiny of such tools at EU level. For example, in the wake of the euro crisis, Member States and EU institutions took several measures to strengthen economic and monetary union (EMU), including the establishment of the European Stability Mechanism (ESM). As the ESM Treaty is intergovernmental and outside the EU framework, the European Parliament has no formal role in it and the ESM is not subject to the discharge procedure. The ESM annual report is made available to national parliaments. As regards the European Parliament, the ESM chair and managing director have agreed to regular informal exchanges of views with its relevant committees. On various occasions (e.g. resolutions in 2013, 2014 and 2017), Parliament has demanded that the ESM evolve towards the Community method and be made accountable before Parliament.

A different example is provided by new instruments that have been created to respond more swiftly and flexibly to emergency situations and fast-evolving events, such as the 2015-2016 migration and refugee crisis. Including both the EU trust funds for external actions and a joint coordination mechanism such as the Facility for Refugees in Turkey, these instruments are financed by the EU budget and/or the EDF with additional contributions from other donors (mainly national budgets).17 In 2016, Parliament deemed these tools to be ‘neither inside nor outside the EU budget’, and thus lacking the necessary accountability and democratic process, and expressed its intention to monitor their implementation closely. Relevant information made available to Parliament and Council,
including in the context of the discharge procedure, has grown over time. In addition to the individual annual reports on the activities of each trust fund (Article 252 FR), the Commission must report monthly on the state of their multiannual implementation (Article 235(5) FR). Other examples are the ECA’s special reports on individual trust funds and the Facility as well as a working document that details ongoing and planned financing and operations under the trust funds, and has been produced with the draft general budget for the following year since 2017. Parliament includes observations on these tools in the resolution accompanying its discharge decision for Section III of the EU budget (Commission and executive agencies). Whereas Parliament acknowledges a number of advantages they have brought, such as flexibility and rapid reaction, it highlights the risks linked to the proliferation of different financial mechanisms to deliver EU policies alongside the EU budget, and calls on the Commission to consider the termination of trust funds in cases where they are unable to attract significant contributions from other donors or are not well justified.

MAIN REFERENCES


ENDNOTES

1 The Financial Regulation defines sound financial management in Article 2 (‘sound financial management means implementation of the budget in accordance with the principles of economy, efficiency and effectiveness’) and devotes its Chapter 7 (Articles 33 to 36) to the principle of sound financial management and performance.

2 European Court of Auditors, The ECA’s modified approach to the Statement of Assurance audits in Cohesion, Background paper, December 2017.


4 Currently, the EU budget has 10 sections: I) Parliament; II) European Council and Council; III) Commission; IV) Court of Justice; VI) Court of Auditors; VI) European Economic and Social Committee; VII) European Committee of the Regions; VIII) European Ombudsman; IX) European Data-Protection Supervisor; X) European External Action Service. The bulk of the EU budget (around 94 % of the total) is operational expenditure for policy areas such as cohesion, research and development, agriculture, space, education exchange programmes, etc., and is to be found in Section III (Commission) together with the Commission’s administrative expenditure. The remaining nine sections cover the administrative expenditure of the respective institutions.

5 Executive agencies are tackled under the discharge report on Section III of the EU budget (Commission).


7 The acronym comes from déclaration d’assurance, its French name.

8 Since the 2007 financial year, the ECA’s assessment has been that the accounts presented EU income and expenditure in an accurate and complete way. The assessment of the regularity of the financial transactions underlying the accounts has improved in recent years. The 2018 financial year was the third in a row for which the ECA issued a qualified opinion on the regularity of transactions, reflecting the fact that a significant part of EU annual expenditure was not materially affected by errors and that such errors were no longer pervasive across spending areas. According to the Court, improvements in its financial management allowed the EU to meet high standards of accountability and transparency in the implementation of public resources. At the same time, the 2018 annual report drew attention to persistent challenges in high-risk spending areas under shared management with Member States such as rural development and cohesion. In general, the Court uses a 2 % error rate as the materiality threshold for its DAS, noting that a simplistic interpretation of the error rate should be avoided and that errors do not necessarily mean fraud (for example, complex rules and eligibility criteria can contribute to errors).

9 Historically, practical examples of reasons for postponing discharge include requests for the European Commission to provide additional information (1990 discharge), to amend some documents on which the decision is to be based (1980 and 1985 discharges) or to meet certain conditions first (1996 discharge).
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11 A censure motion is a vote of no confidence. If Parliament’s plenary supports a motion of censure (by a majority of component Members and two thirds of votes cast) the entire European Commission must resign.


13 See for example: *Understanding the EU budget*, B. Patterson, 2011, pp. 84-86.


15 In September 2013, Parliament’s CONT committee organised a *public hearing* on the matter.


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