

Democratic accountability of Council's budget - Council executive powers

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Democratic accountability of Council's budget - Council executive powers

IN-DEPTH ANALYSIS

Abstract

This in-depth analysis introduces the challenges that have been faced in delivering a discharge of the Council's budget over the last decade, with particular regard to the Council's executive activities. It analyses the institutional and legal constraints, and it makes a number of recommendations for how to achieve more accountability regarding the Council's budget and executive expenditure without resorting to treaty reform.

This document was requested by the European Parliament's Committee on Budgetary Control. It designated Mr Bart Staes, MEP, to follow the in-depth Analysis.

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EXECUTIVE SUMMARY

For a number of years, the European Parliament and the Council have disagreed over the extent to which the Council's expenditure should be examined by the Parliament in the annual budgetary discharge procedure.

The current situation goes back to a period in which the Council had many fewer executive powers than it has today and in which many policies that are now financed by the EU budget were still intergovernmental and therefore paid by the Member States. In the 1990s, the Council's expenditure for the implementation of Common Foreign and Security Policy and Justice and Home Affairs was related to the intergovernmental structure that characterised the EU's second and third pillars from the Treaty of Maastricht. At that time, the implementation of the relevant policies was mostly (co-)financed by the Member States. Only the pure administrative costs at Council level had to be covered by the EU budget. This has changed since the Treaty of Lisbon entered into force in 2009.

The research undertaken for this briefing has not produced evidence that might prove any misuse of administrative expenditure for implementation tasks by the Council. However, the Council's administrative expenditure lacks transparency. As this expenditure only represents a small part of the total EU budget, the relevant expenditure has not been audited in detail by the European Court of Auditors (ECA) over the past few years. In 2015, only 6.2% of total EU expenditure was related to the administration of (all) EU institutions, and the Council and the European Council only used a small part of this (5.5% of total administrative expenditure, or EUR 500 million). As the Council has only published very limited data on its own expenditure thus far, the lack of transparency can trigger mistrust.

In the current framework, the separation between administrative expenditure and implementation costs – both financed from the EU budget – is not easy to manage and is of limited relevance. Part of the reasoning for the Council to defend its budgetary autonomy with only limited accountability in relation to the European Parliament in the annual discharge procedure is that the Council considers itself to be a legislature rather than an executive body. The role of the Council as co-legislator in the ordinary legislative procedure likely produces some of the administrative expenditure. Nevertheless, the Parliament's hypothesis that the implementation of administrative tasks financed from the EU budget might also be covered by those parts of the budget for which the Council refuses parliamentary scrutiny seems plausible.

The authors therefore recommend the following:

1. The European Court of Auditors is independent to select the areas to be included in its regularity and performance audits. However, from the Parliament's perspective, it would be most useful if the ECA provides a more thorough institution-specific annual audit of administrative expenditure, so that the Council can be properly monitored.
2. The ECA might reconsider its internal organisation in order to increase its capacity to audit the Council's use of the EU budget.
3. A new *modus vivendi* on discharge between the Parliament and Council, rather than a 'gentlemen's agreement', could be considered. Alternatively, an inter-institutional agreement on discharge could be proposed. Such an agreement should have a sunset clause in case either institution prefers to abandon it in the future. This could follow the same time periods as the multiannual financial framework. Renewal of the inter-institutional agreement for discharge would require consent of both the Council, by qualified majority, and the European Parliament.

The agreement could respect the principles of the gentlemen's agreement on Parliament and Council expenditure that is proven to be for legislative purposes. The Parliament would respond to Council queries on its expenditure for the preparation of the Council's recommendation. The Council would provide the same level of information for the discharge of its legislative activity by the Parliament. The agreement would specify the nature of access to financial documents concerned with executive policy in the Council.

4. Section II of the EU budget could be divided. Section II could apply only to the Council's legislative activities, while a new Section XI would cover the executive activities of the Council and the European Council, with separate discharges and levels of scrutiny applying to Sections II and XI.
5. A better conceptualisation of the issues addressed in the questionnaires sent by Parliament to the institutions during the annual discharge procedure could function as *ex ante* guidelines.
6. If the disagreement continues, the Parliament might consider further instruments such as parliamentary inquiries and the use of the powers of both its Civil Liberties, Justice and Home Affairs and its Foreign Affairs Committees to investigate the spending side within their policy areas.

1. INTRODUCTION

Over the last decade the European Parliament has withheld approval or discharge of the annual accounts and management of the Council of the European Union and the European Council (collectively referred to as the Council hereafter), although it has approved discharge for the EU's other institutions. Refusal of discharge is due to the Parliament's claims that the Council has provided insufficient information. In particular, the Parliament is concerned about the use of Council funds for pursuing executive rather than legislative activity.

The Council's position is that as a legislature it should not be accountable to another legislature for its internal affairs. This position has an historic foundation that dates from the 1970 Treaty of Luxembourg. At that time, the Parliament and the Council expected to amend the European Commission's executive budget but concluded an agreement that they would not amend each other's budgets. For the Council, this still holds and applies to discharge. Nevertheless, the Council and the Parliament have discussed a *modus vivendi* in recent years to overcome the disagreement, although resolution proved to be elusive.

1.1. QUESTIONNAIRES AND DECISIONS OF REJECTION

The European Parliament's Budgetary Control Committee sends a questionnaire on performance and financial management to each EU institution on an annual basis, which it uses, along with reports that it receives from the European Court of Auditors (ECA), to determine the discharge.

Table 1. Frequency of annual questions from the Parliament to the Council on executive tasks

	2009	2010	2011	2012	2013
How much co-financing with the Commission is there in external policy?	X				X
Number of staff posts for EU Special Representatives?	X	X			X
Allocation of EUSR staff posts between Council and EEAS?	X			X	X
For the High Representative, what is cost share between Council and Commission?	X				X
How did Council prepare its budget for the High Representative?	X				X
Expenditure in CFSP/CSDP for Council	X				X
Administrative expenditure for CSDP operations	X				X
Administration expenditure and number of posts for ATHENAE	X				X
How many staff still work in external actions?		X	X	X	X
Travel costs for EUSR staff		X			X
Which CFSP/CSDP costs are now transferred to EEAS?			X		X
Why was the creation of EEAS not taken into account in the 2011 budget?			X		X
Please provide more details on the CFSP/CSDP in the Council			X		X
How much of Council's budget is contributed to the EEAS?			X		X
Please answer unanswered questions since 2010					X

Source: Authors' elaboration.

Table 1 illustrates a series of unanswered and often repeated questions posed by the Parliament. For the 2009 discharge, during the transition to the European External Action Service (EEAS), there was a series of questions on focused cost. The financing of EU Special Representatives had for years been

contentious as the ECA had itself noted: “The question of defining administrative expenses compared to operational expenses has not been resolved. Although a budgetary line has been introduced since 1998...to cover preparatory expenses (previously considered as administrative), the Council decided that the expenses linked to the Special Representatives of the EU (EUSR) had to be from here on considered as administrative and, to that end, financed through the budget of the Council’s Secretariat-General” (Cour des Comptes, 2001: 6).

The questionnaires after 2013 omitted specific reference to executive activities.

Table 2 illustrates the reasons why Parliament chose to reject discharge on an annual basis: an alleged lack of accountability and openness, the refusal of the Council to comply with the Parliament’s questionnaire (which all other institutions accepted), the Council failing to supply documentation, and, in later years, the Council failing to supply equalities data on its staff or to adopt whistleblowing and integrity/conflict of interest policies. Although none of the reasons includes a lack of response on executive matters, it can be implied from the demands for openness and indicators in matters like travel. Tables 1 and 2 demonstrate considerable parliamentary dissatisfaction.

Table 2. Reasons given in the Parliament’s annual resolutions to reject discharge to the Council

	2009	2010	2011	2012	2013	2014
Council should be scrutinised like all other institutions	X	X		X	X	X
Council fails to meet CONT or rapporteur	X					
EP opposes new inter-institutional agreement on discharge	X					
Non-response by Council to questionnaire	X	X	X	X		X
Lack of budgetary documentation	X		X	X	X	X
Ramassage: Buildings		X	X	X	X	
Procurement			X	X		
Separate Council and European Council budgets			X			
Need for performance indicators in travel, logistics, interpretation			X			
No Council reply to ECA report				X		
No analysis of demography of Council staff					X	X
No integrity rules						X

Source: Authors’ elaboration.

1.2. A WAY FORWARD?

Upon recognition of the political costs of non-agreement, informal contacts between the Council and the Parliament on the discharge started in 2010. After several exchanges of views, a proposal was received by the Secretary General of the European Parliament from the Secretary General of the Council, regarding organisation of relations between the two institutions on the respective budgets. Over the years that followed, the Council proposed that the Parliament make available to the Council the exact same set of documents and respond in writing to possible Council questions related to the remarks made by the ECA in its annual report, so that the Council could generate a recommendation for the Parliament’s own discharge. The Parliament did not accept this. New contacts between the two institutions tried to establish a *modus vivendi* to establish which documents were required by each

institution in order to grant discharge. This resulted in a 'non-paper' prepared by the Rapporteur during the 2010 discharge exercise. It was not accepted by the majority of the political groups in the Parliament and only a small part of it was inserted in the discharge report adopted in October 2012.

In 2013, during the 2011 discharge exercise, the Council drew attention to the fact that no reply had been received from Parliament to the approaches for resolution made by the Council. In the meantime, the Council continued not to provide replies to the Parliament's annual questionnaires. Since then, inter-institutional contacts were resumed at the start of 2016 to focus on common interests and positions in finding a resolution.

This indicates that, despite very real disagreement on respective institutional roles, the Parliament and Council are keen to conclude cooperation on managing the discharge process. This briefing covers the complexity of those issues. The second section analyses the institutional powers over the budget and discharge that concern the Council. Part of the challenge is that, while the European Union has developed more responsibility since the Treaty of Luxembourg in 1970, it is the Council whose executive powers have been most enhanced and regularly changed. Its status and power mean that there is more to scrutinise than was in the 1970s when the discharge procedure was last modified. The third section provides a detailed analysis of the Council's budget at present, which is officially administrative only. It also analyses areas of missing information where executive politics could be relevant. Finally, the conclusion summarises the discussion and recommends how to proceed without the need for treaty reform.

2. COUNCIL'S POWERS

2.1. BUDGETS AND INSTITUTIONAL POWERS

The 1970 Treaty of Luxembourg introduced a number of important changes to the structure and rules of the then European Community's budget. First, it introduced financing based on real own resources composed of an external tariff and a call for value added tax (VAT) to replace direct national contributions. Second, it allowed the European Parliament to impose amendments in the then 6% of expenditure that was deemed non-compulsory (Official Journal of the European Communities, 1971). Third, it led to a 'gentlemen's agreement' between the Council and the Parliament that neither of these two institutions would touch each other's small administrative budgets. Fourth, the Council and Parliament would share a power to grant annual discharge to the Community's budget. Previously, the Council alone exercised the power of discharge but had to communicate its decisions to the European Parliament (European Parliament, 2012: 16).

A subsequent Treaty of Brussels came into effect in 1977. First, it provided the Parliament with powers of rejection over the whole budget. Second, it also replaced a Control Committee with the new ECA that had the status of a full institution. Member States were to nominate their respective members of the Court, giving indirect power to the Council, but subject to a consultative vote of the European Parliament. Third, Parliament gained the exclusive right of discharge subject only to a recommendation by the Council (European Parliament, 2012: 16).

Later changes to the European Union's Own Resources gave Member States represented in the Council full control of the financing of the budget. As the external tariff and VAT failed to provide sufficient funds, a decision to rely on a residual based on each Member State's gross national income (GNI) in 1988 effectively reintroduced national contributions, and reinforced national sovereignty in the budget. The agreement on the UK rebate in 1984 had already sent the budget in the direction of national sovereignty considerations. The 1988 reform also allowed for multiannual spending programmes to be introduced subject to a unanimous agreement by the Member States and a vote of approval by the Parliament.

The 2009 Lisbon Treaty incorporates the multiannual budgeting process into the treaty as Article 312, and makes changes to the rules for the annual budget in Articles 314-5. These rules unify the procedure for compulsory and non-compulsory expenditure. An annual budget now must obtain the consent of both the Council and the Parliament in order to pass. If it does not pass, the previous year's budget may roll over, in which case only the Council may vary its expenditure, while the Parliament is limited to preventing increases only (Benedetto, 2013, 2017).

Although the Parliament has some important powers over the budget, the Council has the upper hand. The Parliament's role in agenda-setting and seeking accountability in the implementation of the budget has import through the *post hoc* power of the discharge.

2.2. EXECUTIVE EVOLUTION OF THE COUNCIL

In its responses to the Parliament on the question of discharge, the Council claims that it is a legislative institution and should not be accountable to another institution as to how it administers its internal expenditure. Professor Matthias Rossi shared this view in the evidence given during the 2012 workshop on the Council's discharge (European Parliament, 2012). Further, the Council has cited the 1970

gentlemen's agreement that exists between it and the Parliament and which requires mutual respect of each other's budgets.

However, the powers and responsibilities of the Council and the Parliament have developed significantly since 1970. The 1970 Treaty and the gentlemen's agreement took effect in a European Community with limited competences, where the Council exercised a legislative role. Institutional meetings of the European Council were not held regularly, and the Community had no formal role in foreign, security, justice or home affairs policies. The Council was therefore unable to operate any executive policies. Although informally the Community developed a foreign relations policy and cooperation on police matters through the Trevi Group after 1975, it was not until the Treaty on European Union took effect in 1993 that there was competence in these areas.

The 1999 Amsterdam Treaty further increased the executive competences of the Council. It established the office of the High Representative of the Common Foreign and Security Policy and the Schengen Secretariat, both within the Council. In 2009, the Lisbon Treaty allowed for the creation of the European External Action Service outside the Council and the transfer of personnel and the High Representative to the new institution with a separate budget in Section X. This loss of some executive competence was replaced by new competence in the office of the President of the European Council and increased EU powers in police and judicial cooperation and in counterterrorism, coordinated by the Council's administration.

All of this explains why executive policy responsibility on the part of the Council has become controversial since 1993, meaning that the Council is no longer purely a legislative institution.

2.3. DESCRIPTION OF DISCHARGE PROCEDURE FOR THE COUNCIL AND THE LEGAL BASE

While the Council has been reluctant to release its financial documents to the Parliament and to respond to queries in all policy areas, Parliament is particularly concerned about the use of Council finances for executive activities in foreign policy and justice and internal affairs. This is mixed up with a Council practice of not cooperating with the Parliament's discharge enquiries. The legal opinion offered at the previous workshop on the granting of parliamentary discharge to the Council (European Parliament, 2012) was divided on the question of the Council's obligation to comply with the Parliament's questions. Favouring Parliament's right to access Council documentation and to grant or refuse a discharge to the Council, Florence Chaltiel emphasised that Council is not one-half of a legislature (European Parliament, 2012: 21) but is also an executive. Parliaments should have democratic control over executives. For this reason, the 1970 gentlemen's agreement not to touch each other's budget is not valid with regard to the Council's executive expenditure or to discharge (De Feo, 2017).

The primary law of the European Union is the Lisbon Treaty – the Treaty on the Functioning of the European (TFEU) – which does not prohibit parliamentary discharge to institutions other than the Commission. Article 287.3(2) assumes that the Council and other institutions will forward information to the ECA, while Article 316(3) requires the expenditure of different institutions to be set out in different parts of budget. Although Article 317(1) declares that the Commission implements the budget with the Member States "on its own responsibility", the next paragraph specifies that regulations may assign responsibilities to each institution. It follows that there may be a logic for a discharge to each institution whether or not it exercises legislative or executive powers. However, Article 319(1) refers to the granting of a discharge to the Commission, not to the other institutions.

Carlino Antpöhler noted this ambiguity in the 2012 workshop: “Under the legislation, Parliament grants discharge to the Commission for the entire budget. There is no explicit provision on the discharge to the Council. Whether that rules out a separate discharge to the Council is not specified. The legislation does not say that Parliament only grants to the Commission” (European Parliament, 2012: 23).

Concerning the Financial Regulation (2012: Article 162), the ECA annual report refers to each institution which will have supplied documentation. Parliamentary discharge is decided on the basis of that annual report. The Council has consented to the Financial Regulation under the ordinary legislative procedure on the basis of Article 322.1(a) TFEU, suggesting that the Parliament has the right to consider discharge to the Council.

Box 1. Description of the discharge procedure

The procedure for the discharge is clear from the Financial Regulation (2012) and the Parliament’s Rules of Procedure. In Financial Regulation Article 161.1(1), all institutions of the EU, including the Council, provide access to the ECA, whose annual report contains a section for each institution (Article 162.3), to which those concerned may respond prior to publication. The ECA communicates any reasons that may justify the launching of a special report to the institutions concerned. Article 166 (Financial Regulation, 2012) requires EU institutions (not just the Commission) to cooperate with the discharge process. In terms of timetable, the discharge is granted by the month of May, 17 months after the end of the financial year in question, based on a recommendation by the Council (Financial Regulation, 2012: Article 164.1), though delays are possible, in which case the Commission facilitates access to information.

The European Parliament has set its own agendas for discharge via Rules 93-94 and Annex IV in its Rules of Procedure. Article 94 assumes a separate discharge for each institution. Annex IV lists the stages in the procedure. The Parliament’s budgetary control committee will consider the balance sheets presented by the European Commission, the reports by the ECA and responses from each institution, and the recommendation of the Council. Parliament will decide on discharge by the end of April, which is 16 months after the end of the respective financial year. Parliament may grant discharge and closure of the accounts, or it may delay, in either case inserting its comments on future implementation of expenditure. If it chooses to delay, it will state the reasons for doing so and specify other documents it expects to see. If there is a delay, the discharge is reconsidered within six months, when it will be either granted or refused, with reasons. Concerning the discharge for the Commission and for EU agencies, if these are refused, the accounts will be closed at a later session when the Commission will give a statement.

2.4. REMAINING CHALLENGES

The rules on discharge set out in Article 319 TFEU require that the Council makes a recommendation before the European Parliament decides. The Council does this only with regard to the discharges for the Commission and the EU agencies that are financed through the Commission’s budget (Section III). The Council resists accounting to the Parliament for its expenditure on the grounds of the gentlemen’s agreement of 1970 not to interfere with each other’s budgets and the notion of reciprocity between these two notionally legislative institutions. In previous discussions, the Council had raised the idea of examining the Parliament’s accounts more carefully as a precondition for releasing its own documentation to the Parliament. Interviews with members of the Parliament revealed that the Council

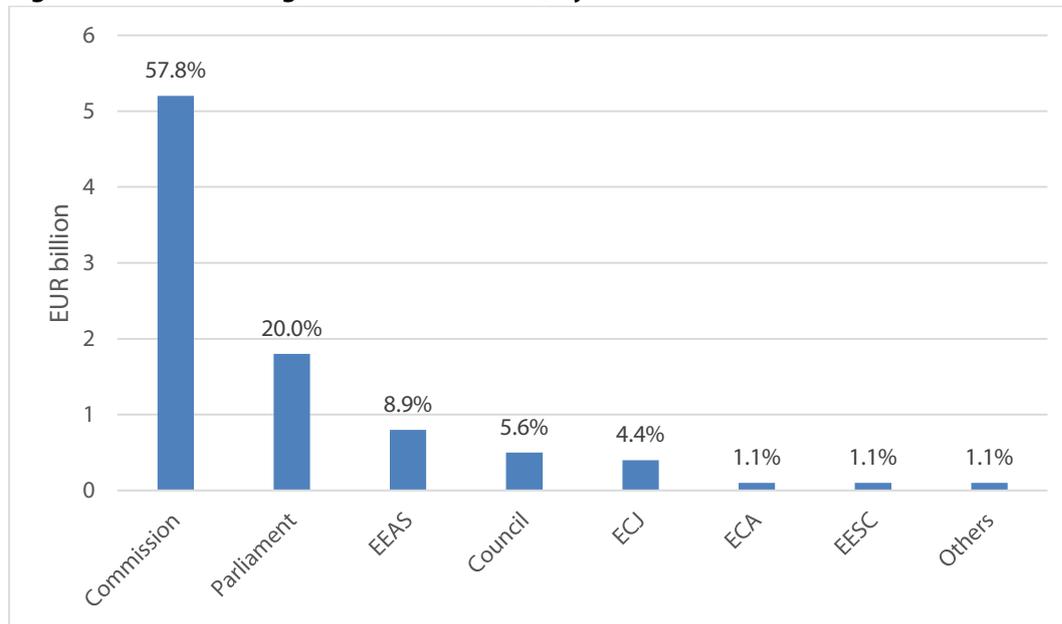
had never specified which parliamentary documents it sought, and that the Council had never made any recommendation for the discharges to institutions other than the Commission.

The view of some parliamentary respondents is that this type of reciprocity may be possible if the Council specifies what it wants and engages in the formulation of recommendations as part of the discharge process. The Parliament's preferred model for discharge to the Council is the reality that exists between it and other institutions, e.g. the Court of Justice or the Committee of the Regions, which respond to parliamentary questionnaires and queries, and for which the Parliament grants discharges.

3. COUNCIL'S BUDGET

Over time, the share of the EU budget for the administration of the Union has remained rather stable, at around 6%. In recent years, the peak was in 2010 and 2011 at 6.5%. For 2015, when the budget for heading 5 on administration was 6.2% of the annual budget, the total commitments amounted to EUR 9.2 billion. About EUR 500 million per year cover the administration of the European Council and the Council. As highlighted in Figure 1, with respect to EU spending for administration, the combined weight of the European Council and Council is about 5.5%.

Figure 1. The 2015 budget for administration, by institution



Source: ECA (2016). *Note:* The ECA mandate does not include financial audit to the ECB, and EU agencies are reported separately. "Others" includes the Committee of the Regions (CoR), the European Ombudsman and the European Data Protection Supervisor.

The management of the Council's administrative expenditure is a responsibility of the Secretary-General of the Council, who, as delegated authorising officer, ensures budget implementation on behalf of both the Council and the European Council. Regarding the annual budget, current practice does not foresee a distinction of the respective costs of each institution and administrative costs are accounted for indistinctively.

Another missing distinction is that between expenditure related to the legislative and executive functions. As stressed by Chaltiel (2012) and Antpöhler (2012), the debate on the discharge should take into account that the Council has taken up substantial executive powers. Distinguishing between expenses linked to the Council's legislative and executive functions would be of particular relevance given that the 1970 gentlemen's agreement should not apply to the latter. Parliamentary oversight of the executive is a general well-established practice that ensures democratic legitimacy.

The distinction between administrative expenditure and expenditure for implementation goes back to the EU's pillar architecture in the 1990s, when the expenditure for the implementation of second- and third-pillar policies had to be carried in principle by the Member States. Already at that time, this distinction revealed itself to be practically difficult to handle (cf. Monar, 1997, for a critique). Under the Treaty of Lisbon, the necessity of this distinction seems even more questionable.

The ECA scrutinises the budget by policy area or heading, e.g. administrative expenditure in the whole budget (heading 5) is examined by Chamber V, external actions, justice and home affairs (headings 3 and 4) are examined by Chamber III.

The discharge, however, is granted for each institution and not to policies or headings. This is a fundamental mismatch that needs to be addressed. A restructuring of Chamber V to examine only Commission administration could be considered, while a new Chamber VI could examine administrative expenditure in all other institutions. This would be in line not only with how the discharges but also the annual budgets work, the latter of which in the European Parliament have two rapporteurs: one for the Commission (Section III) and the other for all other institutions.

Box 2. Council allocated budget for 2017

EUR 561.6 million budgeted for 2017.

- 8.6% for IT systems, equipment and furniture
- 10.3% for buildings and infrastructure
- 18.3% on direct costs relating to official meetings, including interpreting and travel
- 59.8% for over 3,000 staff members

Source: Council website.

3.1. ADMINISTRATIVE EXPENDITURE

On paper, the discharge by the Parliament should be confined to the Council's executive activity (Antpöhler, 2012); but drawing a line between what is executive and what is legislative expenditure is not an easy task. To accommodate this, the planning, accounting and monitoring of the Council's budget should change substantially.

As the powers of the Council increased in areas of foreign policy and security, the Parliament feared that to a certain extent some expenditure connected to executive initiatives could end up misreported as administrative expenditure, *de facto* bypassing oversight and proper accountability.

As shown in Box 1 and Table 3, Section II of the budget accounting for Council expenditure only includes administrative expenditure; in other words, there is no evidence of misreporting. Moreover, ECA officials have confirmed that no funds under Section II contribute to mixed financing in the external sphere. Nonetheless, the crucial matter here is not whether such expenses are 'administrative', as they actually are, but whether such administrative costs are incurred to support the Council's legislative or executive activities.

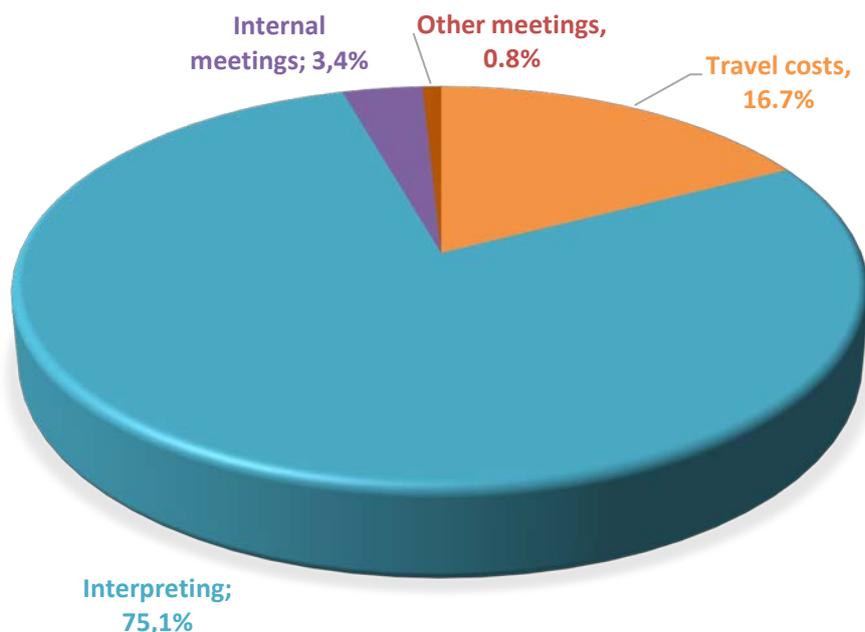
Table 3. Administrative expenditure of the Council and European Council, 2016

	EUR	%
Persons working for the Institutions	323,302,000	59%
Members	1,302,000	0.24%
Officials and temporary staff	299,452,000	55%
Other staff and outsourced services	13,306,000	2.44%
Other expenditure related to persons	9,242,000	1.7%
Mission expenses of the Sec-Gen	2,980,000	0.55%
Travel expenses of staff related to European Council	600,000	0.11%
Buildings, equipment and operating costs	219,752,000	40%
Buildings and associated costs	55,768,000	10%
ICT and furniture	46,204,000	8%
Operating expenditure	117,780,000	22%
Travel	18,267,000	3.35%
Interpreting	82,739,000	15.18%
Internal meetings	5,462,000	1%
Other meetings and conferences	275,000	0.05%
Other Expenditure	2,000,000	0.37%
TOTAL	545,054,000	100%

Source: 2016 ECA Annual Report.

For certain types of expenditure, such as buildings and associated costs, or ICT and furniture, determining which shares of the expense should be charged to executive and legislative affairs, respectively might prove problematic, but by means of proper guidelines and methodology, it should be feasible. For other headings – meetings, interpreting, salaries, travels – the identification of the objective of the action should be rather straightforward and it is rather a matter of implementation.

At first glance it may seem that discerning whether a meeting plays a legislative or executive function is rather redundant given the slight weight of meetings in the total budget: 1.05% of total administrative costs and 4.2% of the operating costs (see Figure 2). Nonetheless, identifying whether a meeting targets one or the other objective also determines the allocation of interpreting costs, which amount to over EUR 80 million a year, or over 15% of the total budget, and 75% of the operating costs.

Figure 2. Council's operating expenditure

Source: Authors' elaboration based on European Commission data. *Note:* In terms of share of operating expenditures, cross-year variability is not substantial. The figure reports averages for 2012-16 appropriations.

As presented in Box 3, among the administrative costs reported in Section II are expenses incurred for meetings vast in number and wide-ranging in type. The EU-CELAC Summit, with 61 participating delegations, and the Valletta Summit on migration, with 87 participating delegations, are among the meetings under consideration. It is ascertained that their circumstances involved perhaps more executive powers than strictly legislative ones. Protocol events and Coreper II on foreign policy may also involve core executive competencies.

Box 3. Meeting at the Council, 2015

5,973 meetings organised by the Directorate for Conferences and Protocol (DGA 2A)

- 8 European summits
- 3 Euro summits
- 1 multilateral summit in Brussels, the EU-Community of Latin American and Caribbean States (EU-CELAC)
- 20 Eurogroup meetings
- 78 Council meetings (or equivalent)
- 138 Coreper meetings
- 3,471 working party meetings
- Over 1,300 other protocol events

Source: Council (2016).

Technically, this would also imply that a share of the time of DGA 2A staff members who actually set and organise the meetings also has to be accounted for as executive-related and therefore should be included in discharge. Council (2016a) further explains that the Directorate for Building and Logistics (DGA 2B) was also involved in such high-level summits and that it “provided significant logistical services” but does not translate the level of significance into a monetary value.

3.2. MISSING INFORMATION

The chief means to control and monitor the Council’s spending is the ECA Annual Report on the implementation of the EU budget. Chapter 9 presents the results of an audit on the whole EU administrative budget. The report’s main aim is to provide a statement of assurance on the reliability of the consolidated accounts of the EU. The report focuses on the legality and regularity of transactions and does not address matters of performance-based budgeting concerning administrative expenditure. It verifies the application of financial regulations and the principles of the EU budget but does not check the efficiency and effectiveness of administrative expenditure.

For several reasons, administrative spending receives limited attention: i) it is marginal in size with respect to other headings; ii) within the MFF, it is generally considered to be a low-risk area; and iii) institutional deference motivated by a desire to avoid inter-institutional frictions.

Whether it is understandable that priority is given to auditing other headings, there are ample margins to provide more thorough and systematic revision of administrative budgets. An ECA audit is based on two main methodologies:

- **Sampling transactions:** The control is performed on a representative sample of transactions, and the share of incorrect transactions is used to estimate the level of error. Regarding ‘administration’, the number of transactions directly audited is rather limited; Table 4 provides an account of the number of transactions controlled by the ECA in recent years for the annual report. Various types of transactions are included: payments of salaries and pensions, staff allowances, other staff costs, payments for buildings, and often recruitment and procurement procedures.
- **A rotational approach,** applied since 2012 and completed only in 2015, consisting of a systems audit that covers two or three institutions per year. That implies that the Council was subject to the analysis in 2012, whilst its transactions have not been audited during subsequent years.¹

Table 4. Sample transactions and administrative spending audit results

	2010	2011	2012	2013	2014	2015
Number of transactions audited	58	56	151	153	129	151
Share of transactions with error	7%	7%	1%	10%	15.5%	14.6%
Error Rate	0.4%	0.1%	0.0%	1.1%	0.5%	0.6%

Source: 2012-15 ECA Annual Reports.

¹ Via the rotational approach, the Commission and the EJC were audited in 2013; the EESC, CoR and the European Ombudsman in 2014; and the EEAS and the European Data Protection Supervisor in 2015. Due to the rotational approach, there is no direct follow up or monitoring of the implementation of the 2012 recommendation to the Council (ECA, 2016: 287).

Notably, the simultaneous exercise of these two audit methodologies – designed to audit administrative expenditure as a whole – can hardly provide a good framework for control systems of administrative expenditure of a single institution.

As a consequence, if there is no specific concern raised by the ECA with respect to the Council's administrative spending, it does not necessarily mean that the budgetary procedure has been respected. Rather, there may not be enough elements to properly assess respect of regulations.

Interestingly, when the ECA Annual Report addressed the Council directly, that is, for 2011 and 2012, it did find some – although little – evidence of irregularities in procurement procedures. For 2012, the audit of the European Council and the Council was performed on 15 recruitment procedures – none of which was found erroneous – and 15 procurement procedures, some of which were affected by errors underpinning the ECA's recommendation to the Council on enhancing the design, coordination and performance of procurement procedures.² For 2011, only five procurement procedures were audited, two of which did not comply with guidelines and regulation (see ECA, 2012: 211).

As mentioned, on top of the limited size of the audit exercise, its scope is inadequate to ensure the transparency, effectiveness and efficiency of the Council's administrative spending, because:

- it is not in the mandate of the ECA to distinguish administrative expenditure that serves legislative purposes *vis-à-vis* executive purposes, or to distinguish administratively between the European Council and Council;
- the audit does not systematically consider the value-for-money provided by the administrative budget, whether by the Council or any other institution. The annual report remains based on the regularity of transactions, *de facto* avoiding establishing any link between the budget and (expected) results.

In other words, the ECA's annual audit of the Council's expenses, in the framework of all EU administrative expenditure, can only in part, i.e. in some years, be useful for assessing accounting procedures but is of very little use in managing the administrative budget.

One key example is the financing of the 'Residence Palace' building, which raised questions in the audit review (see ECA, 2011: 196) due to the abundant employment of the "*ramassage*", i.e. an accounting technique that can generate advance payments, made available by budget transfers. A practice that due to the reallocation of budget is subject to the approval of the budget authority, even though the evidence is clear that it allows for a lower cost of capital, i.e. it is an effective management practice that can be considered an incorrect accounting procedure. The opposite instance, correct accounting procedures leading to mismanagement, might also be possible, and even though there is no evidence for this at the moment, the annual audit procedure is simply not capable of controlling for it. As a matter of fact, the 'errors' pointed out via audit in the annual reports mainly relate to i) payments not covered by contracts or agreements, ii) ineligible or incorrectly calculated staff allowances or benefits, and iii) other expenses without justification.

At times, "Special Reports" close this gap and address specific issues of performance-based budgeting linked to administrative expenditure, often with a cross-institutional approach. That is the case, for

² Recommendation 2 (European Council and Council): Procurement, "The Council should ensure that authorising officers improve the design, coordination and performance of procurement procedures through appropriate checks and better guidance" (ECA, 2013).

instance, of a Special Report on facilitating procurement (ECA, 2016b), and another on diminishing greenhouse gas emissions in EU institutions (ECA, 2014b). Out of the 36 Special Reports for 2016, *only* three included an analysis encompassing the performance and transparency of administrative spending.³

A brief analysis of these Special Reports, interviews and the revision of the questionnaires addressed by the Parliament to the Council from 2010 onward highlight areas on which additional information could bring transparency and allow for an evaluation of value for money in the Council's administrative spending. We can sum it up as follows:

- **Methodologies, consistency and commitment for internal audit**

ECA analyses of the administration of EU bodies and institutions, as well as European Parliament questionnaires submitted to the Council, attribute great relevance to setting up first-rate internal control systems. An overhauling audit, financial management and control are the basis for efficient use of resources, strengthened accountability for the stewardship of resources, and improved organisational leadership, management and oversight (see CIPFA, 2014: 6). A sound internal audit procedure should ensure financial management and control and check its consistency with best practice and the needs of the institution.

The Council's annual activity report covering 2015 (Council, 2016a, 2016b) was a step in this direction; if such an exercise is repeated consistently over time and strengthened in its methods, it has the potential to ensure a transparent approach to internal audits. The Parliament noted on more than one occasion that the frequent changes in format and practices undermine internal audit's validity. In 2015, the Council implemented new arrangements aimed at introducing new Multiannual Activity and Budget Planning, setting up a Project Evaluation Committee, and revising the Internal Rules on Finance and Procurement; the activity report for 2016 will perhaps clarify whether such changes delivered the expected results or further adaptations will be needed. Particularly in the absence of a well-established practice of internal auditing, which appears to be still in the making, an external audit may prove useful.

- **Operational expenditure for foreign policy actions**

As highlighted in the previous session, there is, at the moment, no distinction between administrative expenditure incurred during legislative or executive functions. Lack of information on foreign and security policy activity in the Council lies at the core of the Parliament's concerns as expressed by the questionnaires in Table 1. The 2015 annual activity report of the Council (2016a) also alluded to some grey areas of administrative expenditure in foreign actions, with respect to both translation services⁴ and travel costs⁵. The questionnaires by the Parliament are primarily concerned on understanding which share of Council's staff (and budget) is assigned to foreign policy issues, with specific reference

³ On top of ECA (2016b), a Special Report addressed the buildings of the EEAS outside the EU (ECA, 2016c) and a third, more general one addressed the Commission's governance and internal audit practices (ECA, 2016d).

⁴ "Supplementary services for the translation service with 200.000 euro appropriation in 2016 and same for 2017 covers expenditure related to translation services provided by external translation agencies to absorb the occasional excessive workload of the Council Language Service, on the one hand, and to verify the translations of agreements, treaties and other arrangements with third countries in non-EU languages, on the other hand. This appropriation is also intended to cover the Council's development projects in the field of translation." (Council, 2016a)

⁵ "Miscellaneous travel expenses, appropriation is intended to cover travel and subsistence allowances for experts invited to meetings or sent on mission by the Secretary-General of the Council or by the President of the European Council." (Council, 2016a)

to the European Union Special Representatives and the working groups in the field of Common Foreign and Security Policy.

According to the ECA (2014a: 25), “the EEAS should propose to the Council a review of the existing framework applicable to the EU special representatives to ensure their smooth integration with the work of the EEAS, including clarifying the conditions for their appointment, the characteristics of their mandate, the mechanisms to evaluate their performance, and proposing changes to their administrative position including staffing and financial aspects.”

A related matter pertains to administrative expenditure in support of military operations. Council (2016a) also points out that the Directorate for Finance (DGA 4) manages the Athena mechanism, thus “ensuring the proper financing and support of six EU military operations”.

Lastly, Council (2016a) stresses that some “budget lines with low outturn rates reflect the difficulty of budgeting accurately for high-level events, including multilateral summits”. This may be due to the difficulty of mixed/joint financing within Member States; for relevant summits, certain expenditures are covered by national treasuries, in accordance with the ‘costs lie where they fall’ principle (Sanchez-Barrueco & Stephenson, 2017).

4. CONCLUSIONS AND RECOMMENDATIONS

4.1. CONCLUDING REMARKS

Disagreement over the right of the European Parliament to examine the Council's documents and to grant a discharge to the Council has affected inter-institutional relations over the last decade. Reasons that are both political and legal explain the origins of this disruption. At the time of a very different European Community in the 1970s, the Parliament and the Council agreed not to interfere with each other's budgets, both of which were intended to fund the administration of law-making institutions rather than of executives. Since then, the European Union has acquired substantial powers that have led to an increase in law-making capacity for the Parliament and the Council, and the introduction of executive responsibilities for the Council.

Part of the reasoning for the Council to defend its budgetary autonomy – including with regards to scrutiny – is that the Council considers itself to be a legislature rather than an executive, a notion challenged by the Parliament. As one respondent in the European Parliament remarked, in a Member State it would be unthinkable for a parliament not to be empowered to scrutinise the expenditure of the government, and the Council shares 'government' powers with the Commission. Yet the Council also cites security concerns reserved for heads of state and government (an executive rationale) for evading scrutiny.

For its annual reports, the ECA scrutinises about 150 randomly selected transactions involving administrative expenditure incurred by EU institutions. This sampling methodology, together with the rotational approach and the relatively low weight of the Council's administrative accounts (about 6% of administration expenditure), means that the ECA annual scrutiny of the Council's administrative transactions is extremely limited. As such scrutiny is also uniquely focused on the respect of legal requirements and is unlikely to detect direct executive usage for such expenditure. In addition, files concerned with, for example, the salaries of Council employees are unlikely to distinguish those working in purely legislative fields from those whose work has a more executive orientation. The ECA nevertheless has the autonomy to launch special *ad hoc* reports, for example on all EU budgetary spending in the Common Foreign and Security Policy, for which scrutiny may extend to Council files.

There is also an asymmetry in how the budget is determined and then discharged. The annual budget allocates funds to policy areas and to institutions. Nearly all of the budgets for institutions outside the Commission and the European External Action Service are administrative but share the administrative heading with the costs of the Commission's internal administration. In the European Parliament, one rapporteur is responsible for Commission expenditure – including nearly all the non-administrative expenditure – and another rapporteur is responsible for all other institutions. When considering the accounts, the ECA, however, is divided into chambers, which investigate expenditure not by institution but by policy, including the multi-institutional policy of administration. Finally, the Parliament decides on the discharge on the basis of institutions and not policies.

4.2. RECOMMENDATIONS

The following recommendations apply to each institution, while respecting the operational autonomy of the Court of Auditors (ECA) in particular.

The Court of Auditors

1. The ECA could provide a more thorough institution-specific annual audit of administrative expenditure, so that the Council can be properly monitored. As the Council spends 6% of the EU's total administrative budget, the Council feels that the ECA audits make up only 6% of the total.
2. Chamber V (Financing and Administering the Union) in the ECA could be divided. One part would scrutinise the administrative expenditure of the European Commission and the other part would focus on the expenditure of the other EU institutions, thus increasing the breadth of the audit of the Council. This would resolve the mismatch whereby the discharge is granted for institutions and not for policy areas or headings, while the ECA examines only expenditure by policy area. This would be an operational decision taken by the ECA in compliance with its own autonomy.
3. Chamber III (External Action, Security and Justice) of the ECA could explicitly audit Council files that may pertain to external actions.
4. The ECA could audit administrative expenditure systematically in its Special Reports so that performance budgeting is ensured with specific respect to buildings.
5. The ECA could launch a Special Report into the Council due to its multiple formations (Council of the EU, Coreper I and II, special committees, European Council), tasks, and changes to those tasks and formations in recent years.

Parliament-Council relations

1. A new *modus vivendi* on discharge between the Parliament and Council rather than a gentlemen's agreement could be considered.
2. Alternatively, an inter-institutional agreement on discharge could be proposed. Such an agreement should have a sunset clause in case either institution prefers to abandon it in the future. This could cover the same time periods as the multiannual financial framework. Renewal of the inter-institutional agreement for discharge would require consent of both the Council, by qualified majority, and the European Parliament. The agreement could respect the principles of the gentlemen's agreement on Parliament and Council expenditure that is proven to be for legislative purposes. The Parliament would respond to Council queries on its expenditure for the preparation of the Council's recommendation. The Council would provide the same level of information for the discharge of its legislative activity by the Parliament. The agreement would specify the nature of access to financial documents concerned with executive policy in the Council.

Internal to the Council

Section II of the EU budget could be divided. Section II could apply only to the Council's legislative activities, while a new Section XI would cover the executive activities of the Council and the European Council, with separate discharges and levels of scrutiny applying to each of Sections II and XI. This would be more accountable but entail a division of the Council's core administration that Carlino

Antpöhler defined as impractical (European Parliament, 2012: 26). While meetings that occur in public are easy to define as legislative, matters are less simple when it comes to employees or buildings, unless their time or use can be apportioned to legislative or executive activity.

A simpler alternative would be for all administrative expenditure to be categorised as legislative or executive. Employees, activities and buildings whose tasks fall into both categories would be assigned differing percentages of their formal time or use to each side.

Internal to the European Parliament

1. Better conceptualisation of the issues addressed in the questionnaires sent to the institutions for them to become *ex ante* guidelines.
2. The Parliament could allow the Council oversight of Parliament expenditure for the purpose of a Recommendation only, which can be part of new *modus vivendi* or inter-institutional agreement.
3. An article could be inserted into Annex IV of the Parliament's Rules of Procedure that automatically requires a parliamentary rejection of discharge for any institution not presenting its accounts to the Parliament or not completing the Parliament's questionnaire.

What if disagreement continues?

The Parliament has rejected discharge for the Council for every year since 2007. In the European Parliament (2012) workshop on discharge, Florence Chaltiel (2012: 93) concludes her contribution by outlining the strategies available to the Parliament if the inter-institutional conflict endures, and these remain valid:

1. The Council argues, on the basis of Article 319 TFEU, that discharge should be granted for the entirety of the budget, which is implemented only by the Commission. This being the case, the Parliament could use the vote of investiture in the Commission as a tool to obtain missing expenditure data from the Council.
2. For the same reason, although an extreme option, the Parliament has the power to pass censure of the Commission.
3. In plenary, parliamentarians can pose questions concerning the Council budget to the Commission, the Presidency the European Council and the Presidency of the Council of the European Union.
4. The European Parliament has the power to establish committees of enquiry, and could establish one on inter-institutional relations and financial accountability.

Besides the proposals of Chaltiel (2012), the Parliament could use the powers of its Civil Liberties, Justice and Home Affairs and its Foreign Affairs Committees to investigate the spending side within their policy areas. In addition, the Parliament also has the power of amendment over the annual budget to reduce expenditure in executive areas of foreign, security and internal policy where it believes the Council may be misusing administrative expenditure.

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ANNEX

Table 5. Council's expenditure – Section II, in EUR

	Budget	Appropriations				
	2017	2016	2015	2014	2013	2012
Persons working for the Institutions	340,324,000	323,302,000	321,768,000	316,207,539	323,802,000	318,287,000
Members	1,322,000	1,302,000	1,392,000	1,230,000	1,138,000	1,454,000
Officials and temporary staff	315,446,000	299,452,000	297,827,000	292,989,059	300,244,000	295,792,000
Other staff and outsourced services	14,149,000	13,306,000	13,144,000	13,039,000	13,763,000	11,801,000
Other expenditure related to persons	9,407,000	9,242,000	9,405,000	8,949,480	8,657,000	9,240,000
<i>Mission expenses of the Sec-Gen</i>	<i>2,980,000</i>	<i>2,980,000</i>	<i>3,165,000</i>	<i>3,191,000</i>	<i>3,191,000</i>	<i>3,216,000</i>
<i>Travel expenses of staff related to European Council</i>	<i>650,000</i>	<i>600,000</i>	<i>600,000</i>	<i>600,000</i>	<i>600,000</i>	<i>600,000</i>
Buildings, equipment and operating costs	219,252,000	219,752,000	219,023,500	215,294,761	209,709,300	213,633,000
Buildings and associated costs	57,789,000	55,768,000	52,207,500	46,237,800	44,933,000	43,503,000
ICT and furniture	48,449,000	46,204,000	46,421,000	42,921,887	42,209,000	42,689,000
Operating expenditure	113,014,000	117,780,000	120,395,000	126,835,074	122,567,300	127,441,000
<i>Delegation travel</i>	<i>18,272,000</i>	<i>18,267,000</i>	<i>18,206,000</i>	<i>20,758,000</i>	<i>20,417,000</i>	<i>25,095,000</i>
<i>Interpreting</i>	<i>79,816,000</i>	<i>82,739,000</i>	<i>83,900,000</i>	<i>86,991,444</i>	<i>83,962,300</i>	<i>86,723,000</i>
<i>Internal meetings</i>	<i>4,174,000</i>	<i>5,462,000</i>	<i>3,458,000</i>	<i>3,679,000</i>	<i>3,717,000</i>	<i>3,024,000</i>
<i>Other meetings and conferences</i>	<i>190,000</i>	<i>275,000</i>	<i>511,000</i>	<i>1,588,010</i>	<i>1,320,000</i>	<i>800,000</i>
Other expenditure	2,000,000	2,000,000	1,000,000	2,700,000	2,000,000	2,000,000
TOTAL	561,576,000	545,054,000	541,791,500	534,202,300	535,511,300	533,920,000

Source: 2012-16 ECA Annual Reports.

Table 6. Council's expenditure – Section II, % of annual budget

	Budget	Appropriations				
	2017	2016	2015	2014	2013	2012
Persons working for the Institutions	61%	59%	59%	59%	60%	60%
Members	0.24%	0.24%	0.26%	0.23%	0.21%	0.27%
Officials and temporary staff	56%	55%	55%	55%	56%	55%
Other staff and outsourced services	2.52%	2.44%	2.43%	2.44%	2.57%	2.21%
Other expenditure related to persons	1.68%	1.70%	1.74%	1.68%	1.62%	1.73%
<i>Mission expenses of the Sec-Gen</i>	<i>0.53%</i>	<i>0.55%</i>	<i>0.58%</i>	<i>0.60%</i>	<i>0.60%</i>	<i>0.60%</i>
<i>Travel expenses of staff related to European Council</i>	<i>0.12%</i>	<i>0.11%</i>	<i>0.11%</i>	<i>0.11%</i>	<i>0.11%</i>	<i>0.11%</i>
Buildings, equipment and operating costs	39%	40%	40%	40%	39%	40%
Buildings and associated costs	10%	10%	10%	9%	8%	8%
ICT and furniture	9%	8%	9%	8%	8%	8%
Operating expenditure	20%	22%	22%	24%	23%	24%
<i>Delegation travel</i>	<i>3.25%</i>	<i>3.35%</i>	<i>3.36%</i>	<i>3.89%</i>	<i>3.81%</i>	<i>4.70%</i>
<i>Interpreting</i>	<i>14.21%</i>	<i>15.18%</i>	<i>15.49%</i>	<i>16.28%</i>	<i>15.68%</i>	<i>16.24%</i>
<i>Internal meetings</i>	<i>0.74%</i>	<i>1.00%</i>	<i>0.64%</i>	<i>0.69%</i>	<i>0.69%</i>	<i>0.57%</i>
<i>Other meetings and conferences</i>	<i>0.03%</i>	<i>0.05%</i>	<i>0.09%</i>	<i>0.30%</i>	<i>0.25%</i>	<i>0.15%</i>
Other expenditure	0.36%	0.37%	0.18%	0.51%	0.37%	0.37%

Source: 2012-16 ECA Annual Reports.

This in-depth analysis introduces the challenges that have been faced in delivering a discharge of the Council's budget over the last decade, with particular regard to the Council's executive activities. It analyses the institutional and legal constraints, and it makes a number of recommendations for how to achieve more accountability regarding the Council's budget and executive expenditure without resorting to treaty reform.

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