



Council of the
European Union

Brussels, 9 February 2018
(OR. en)

5940/18
ADD 1

FIN 91
PE-L 6

NOTE

From:	Budget Committee
To:	Permanent Representatives Committee/Council
Subject:	Council recommendation on the discharge to be given to the Commission in respect of the implementation of the general budget of the European Union for the financial year 2016 – <i>Adoption</i>

COUNCIL RECOMMENDATION
of
on the discharge to be given to the Commission
in respect of the implementation of the general budget
of the European Union
for the financial year 2016

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 319 thereof,

Having carried out the examination provided for in Article 319(1) TFEU,

Whereas:

(1) According to the revenue and expenditure account for the financial year 2016:

- | | |
|--|------------------------|
| - revenue amounted to | EUR 144 716 765 816.23 |
| - expenditure disbursed from appropriations amounted to | EUR 135 180 335 947.92 |
| - cancelled payment appropriations (including earmarked revenue) carried over from year <i>n-1</i> amounted to | EUR 1 304 221 566.46 |
| - appropriations for payments carried over to year <i>n+1</i> amounted to | EUR 1 651 142 565.23 |
| - EFTA payment appropriations carried over from year <i>n-1</i> amounted to | EUR 3 838 251.04 |
| - the balance of exchange-rate differences amounted to | -EUR 172 659 489.32 |
| - the positive budget balance amounted to | EUR 6 404 567 996.26 |

- (2) Cancelled payment appropriations for the financial year amounted to EUR 62 856 186.60;
- (3) EUR 1 236 042 148.87 (95.16 %) of the EUR 1 298 898 335.47 in appropriations for payments carried over to year *n* have been used;
- (4) The observations in the report by the Court of Auditors for the financial year 2016 call for certain comments by the Council, which are ANNEXED hereto;
- (5) The Council attaches importance to its comments being followed-up and assumes that the Commission will implement all of the recommendations in full, without delay;
- (6) The Council has adopted conclusions concerning special reports published by the Court in 2016 and 2017¹;
- (7) Following the examination referred to above, implementation by the Commission of the budget for the financial year 2016 taken as a whole, on the basis of the observations made by the Court of Auditors, is such as to allow a discharge to be given in respect of such implementation,

HEREBY RECOMMENDS the European Parliament, in the light of these considerations, to give a discharge to the Commission in respect of the implementation of the budget of the European Union for the financial year 2016.

Done at Brussels,

For the Council
The President

¹ Docs. 6558/17, 6594/17, 6693/17, 6904/17, 7495/17, 8096/17 + COR 1, 8453/17, 8491/17, 9265/17, 9645/17, 10132/17, 10189/17, 10379/17, 10466/17, 10467/17, 10614/17, 11205/17, 12352/17, 12552/17, 13323/17, 14658/17, 14833/17, 15131/17, 15499/17, 15569/17 and 5584/18.

INTRODUCTION

1. The Council welcomes the European Court of Auditors' annual report and Statement of Assurance on the implementation of the EU budget and the analysis of the audit findings and conclusions provided. It stresses the importance of the independent audit work carried out by the Court, as defined in Article 287 TFEU.
 2. The Council considers that an assessment of the results achieved by the EU budget is a key element of the annual evaluation of sound financial management of EU funds and supports the further extension of a performance analysis. The Council welcomes the findings of the Court, as specified in its annual report and its various special reports, and invites the Commission to take the Council conclusions into consideration.
 3. The Council welcomes the stability in the structure of the Court's annual report and encourages the Court to build upon the progress made so far in ensuring a high level of transparency and detail per spending area, while emphasising the need to ensure continuity and comparability between years and policy areas also in the future. In this context, and as in the previous year, the Council encourages the Court to provide a deeper and more detailed analysis of the expenditure under heading 3 (*Security and Citizenship*) in line with the increasing importance of this spending area.
-

CHAPTER 1
THE STATEMENT OF ASSURANCE AND SUPPORTING INFORMATION

1. The Council welcomes the gradual reduction of the overall estimated level of error reported by the Court (from 4.4 % in 2014 and 3.8 % in 2015 to 3.1 % in 2016) affecting all the policy areas that have been audited. The Council regrets that the estimated level of error reported by the Court for payments is still above the materiality threshold. The Council takes note, however, that about half of the 2016 expenditure is free from material error.
2. The Council welcomes the fact that for the first time since the Court started providing a statement of assurance in 1994, the Court gives a qualified opinion, rather than an adverse one, on the legality and regularity of payments underlying the accounts based on the material but not pervasive estimated level of error.
3. The Council takes note that, although the payments made on an entitlement basis are free from material error (1.3 %), the payments made on a reimbursement basis are still affected by material error (4.8 %). The Council acknowledges that the estimated level of error is not causally linked to the management mode but that there is a strong correlation between expenditure types.

The Council considers that financial corrections and recoveries are important instruments and takes into account their multiannual character while assessing their impact on the protection of the EU budget. The Council calls on the Commission to continue, where appropriate, the implementation of all available corrective measures.

4. The Council welcomes the clean opinion given by the Court on the reliability of the annual accounts of the European Union (hereinafter "the accounts") for the financial year 2016. It notes with satisfaction the Court's statement that the accounts present fairly, in all material respects, the financial position of the Union as at 31 December 2016 and the results of its operations and cash flows and changes in net assets for the year then ended, in accordance with the provisions of the Financial Regulation and in line with the accounting rules based on internationally accepted standards for the public sector.

5. The Council also welcomes the fact that the revenue underlying the accounts is legal and regular in all material aspects and that the underlying transactions tested were found to be free from error.
6. The Council encourages the Court and the Commission to continue working together in order to converge their approaches in the evaluation of the impact of financial correction on the estimated amount at risk at closure and to provide comparable data.
7. The Council recalls that the Court's estimated level of error is not a result of a measure of fraud, inefficiency or waste of funds per se. It takes note of the reporting to OLAF by the Court of all the suspected fraud cases found during the audits and of the fact that the number of cases reported has decreased in comparison with 2015.
8. The Council appreciates the efforts and actions undertaken by the Commission and Member States to implement the Court's recommendations and notes with satisfaction that they have started to pay off. It encourages Member States to continue the cooperation with the Commission, which should provide appropriate and consistent guidance to national managing and audit authorities. The Council welcomes further simplification measures and expects that these will lead to an additional reduction of the estimated level of error in the near future.
9. Furthermore, the Council welcomes the communication² submitted by the Commission providing the budgetary authority with a comprehensive analysis on the areas where the estimated level of error is persistently high, its root causes and the corrective actions. The Council encourages the Commission to continue providing this kind of analysis.

² Doc. 6978/17 (COM(2017) 124 final), Communication from the Commission to the Council and the European Parliament: Root causes of errors and actions taken (Article 32(5) of the Financial Regulation).

CHAPTER 2
BUDGETARY AND FINANCIAL MANAGEMENT

1. The Council underlines that it attaches great value to a stable and predictable budget. Therefore the Council calls on the Commission to continue improving its capacity to anticipate and predict expected needs thereby limiting, when possible, the recourse to amending budgets or the mobilisation of special instruments in full compliance with the legal framework.
2. The Council takes note of the level of implementation of payment appropriations in 2016 which is mostly due to the lower than expected submission of claims for European Structural and Investment Funds by the authorities of the Member States, that has led to a higher gap than previous years between adopted and used payment appropriations. The Council acknowledges that the pressure on payments can be expected to increase in the future years as observed by the Court. Therefore, it calls on the Commission to anticipate an orderly disbursement of payments in order to avoid any shortage of appropriations.
3. The Council is concerned about the Court's observation that the outstanding commitments (RAL) are increasing and calls on the Commission to continue the monitoring of this matter and the presentation of a long-term and transparent forecast, including needs and potential decommitments, and to ensure an orderly balance between commitment and payment appropriations.
4. The Council takes note of the Court's observation on the increasing financial exposure of the EU budget due to long-term liabilities, guarantees and legal obligations. The Council calls on the Commission to closely monitor their development and the associated financial risk.
5. In line with the Court's conclusions, the Council invites the Commission to establish a comprehensive reporting structure on the use of funds tackling the refugee and migration crisis.

6. Finally, the Council calls on the Commission to improve the transparency, simplicity and accountability of all the EU budgetary instruments.
-

CHAPTER 3

GETTING RESULTS FROM THE EU BUDGET

1. The Council acknowledges that setting a solid performance framework within the EU institutions and Member States contributes to the sound financial management of EU funds and to the reliable evaluation of the functioning of the programmes under the current MFF.
2. The Council welcomes the Court's assessment of the performance of programmes and projects in the policy areas "*Competitiveness for growth and jobs*" (Chapter 5), "*Economic, Social and Territorial cooperation*" (Chapter 6) and "*Natural Resources*" (Chapter 7). It invites the Court to further extend such reviews across all MFF headings.
3. The Council aligns with the Court's recommendation on the need to streamline performance reporting, notably by ensuring the coherence of objectives and indicators included in the programme statements and the activities reported by the different Directorate-Generals in the Commission.
4. The Council underlines that the building up of the performance framework should respect the balance between the cost and benefits of getting the performance information, and that the number of necessary indicators should be set as to provide relevant data while avoiding creating additional administrative burden. The number of objectives and indicators need to be rationalized and eventually reduced.
5. The Council encourages the Commission to continuously improve its reporting capacity on performance by ensuring the quality of information and by increasing transparency, readability and user-friendliness. The Council considers that more balanced reporting, by also clearly presenting information on the main challenges to achieving results, on pitfalls and on failures, can contribute to a better assessment of past performance.

CHAPTER 4

REVENUE

1. The Council notes with satisfaction that in 2016 the revenue part of the budget was not affected by material error, that the underlying transactions tested were found to be free from error and that the examined GNI- and VAT-based own resources systems were assessed as being effective whilst the systems for traditional own resources were assessed as being overall effective. However, the Council takes note that the key internal controls in certain Member States were only partially effective as far as traditional own resources are concerned.
 2. The Council recalls that accurate GNI figures are essential for a fair distribution of the contributions between Member States. In that respect it supports the Court's recommendations made to the Commission on the additional work needed to analyse the potential implications of multinational activities on the estimation of GNI and to provide guidance for its compilation by Member States, and on the verification that research and development assets are correctly captured in the Member States' national accounts.
-

CHAPTER 5

COMPETITIVENESS FOR GROWTH AND JOBS

The Council welcomes the fact that the estimated level of error reported by the Court for payments in the "*Competitiveness for growth and jobs*" policy area steadily decreased in the last years (5.6 % in 2014, 4.4 % in 2015 and 4.1 % in 2016). However, the Council regrets that the estimated level of error remains well above the materiality threshold of 2 %.

The Council notes with regret that, according to the Court's findings, the estimated level of error would have been 1.2 percentage points lower if the Commission or independent auditors had made better use of all available information to prevent or detect and correct errors before accepting the expenditure.

The Council reiterates its appeal to the Commission to continue its efforts to address the causes of error with a particular focus on the programmes that are subject to persistently high error levels and to strengthen its efforts to fully implement the findings already made.

1. Regularity of transactions, management and control systems, reliability of the Commission's annual activity reports

The Council notes that, as in previous years, the main risk identified by the Court relates to beneficiaries declaring ineligible costs, which are neither detected nor corrected before reimbursement by the Commission.

The Council takes note of the Court's analysis that the root causes for most errors are the misinterpretation of complex eligibility rules, in particular, under the Seventh Research Framework Programme. In that regard, while recognising that Horizon 2020 was set up with simpler funding rules and that considerable efforts have been made by the Commission in reducing administrative complexity, the Council supports the Court's recommendation for the Commission to further streamline the Horizon 2020 rules and procedures by extending the use of simplified cost options. The Council encourages the Commission to consistently apply the simplifications introduced for the Horizon 2020 programme and to implement effective checks in the context of an appropriate balance between trust and control, with a view to further reducing the estimated level of error for the programming period 2014-2020.

The Council welcomes the Court's finding that the Commission's annual activity reports in this policy area provide a fair assessment of financial management in relation to the regularity of transactions and corroborate the Court's findings and conclusions in most respects. The Council notes that the Commission accepted the Court's recommendation to ensure that its services take a consistent approach towards the calculation of error rates and overall amounts at risk.

The Council notes with satisfaction that the Common Audit Service has obtained good results in reaching the strategic annual targets for the number of audits closed. Nevertheless, while acknowledging the actions already set up, the Council supports the Court's recommendation to the Commission to promptly address the weaknesses in its ex-post audits identified by the Internal Audit Service (IAS), by reducing the time taken to close ex-post audits and improving internal processes for planning, monitoring and reporting of audits.

2. Performance issues in research and innovation projects

The Council welcomes the Court's specific performance assessment for research and innovation projects. It notes with satisfaction that most projects achieved their expected output and results, and that some projects were exceptionally successful. However, the Council notes with concern that some projects were affected by issues that detracted from their performance and that the Court observed increased difficulties in management and coordination in projects with a higher number of participants.

CHAPTER 6

ECONOMIC, SOCIAL AND TERRITORIAL COHESION

The Council welcomes the fact that the estimated level of error reported by the Court for payments in the "*Economic, Social and Territorial cohesion*" policy area steadily decreased in the last years (5.7 % in 2014, 5.2 % in 2015 and 4.8 % in 2016). However, the Council regrets that the estimated level of error remains significantly above the materiality threshold of 2 %.

While acknowledging the positive impact of the corrective measures taken by Member States, the Council calls on the Commission and Member States' authorities to make additional efforts to achieve a significant reduction of the estimated error rate. The Council underlines that simplification of state aid rules, broader use of simplified cost options, improvement of use of public procurement rules and modifications of the design of the 2014-2020 programmes should lead to a further decrease of error rates in coming years.

At the same time, the Council acknowledges that the estimated level of error relating to the 2007-2013 programming period was significantly lower than the estimated level of error reported for the previous 2000-2006 programming period.

The Council is concerned about the Court's findings that the estimated level of error would have been 3.7 percentage points lower, if national authorities had made proper use of all available information to prevent, or detect and correct, errors before declaring the expenditure to the Commission.

While acknowledging the complex spending structure and the multiannual character of the instruments in this policy area, as well as the multiple EU and national regulations to be taken into account by the beneficiaries, the Council calls on the Commission and Member States' authorities to make additional efforts to ensure the regularity and sound financial management of EU funds, to take full advantage of all possibilities of simplification and to avoid unnecessary layers of complexity or administrative burden that do not add value to the results set to be achieved.

1. Regularity of transactions, management and control systems, reliability of the Commission's annual activity reports

The Council welcomes the considerable reduction of the impact on the estimated level of error emanating from state aid rules observed by the Court relative to previous years. It notes that in 2016, inclusion of ineligible expenditure in beneficiaries' cost declarations, infringements of public procurement rules and selection of ineligible projects, activities or beneficiaries are the main sources of error in this policy area.

The Council urges the Commission to follow up on the cases of errors identified by the Court, to set up an integrated monitoring system covering both preventive and corrective measures taking into account the principle of proportionality, and to strengthen cooperation within the Commission, as well as with Member States. It invites the Commission to continue providing appropriate and consistent training and guidance, along with sharing good practices to assist beneficiaries and national authorities in the implementation of the programmes.

The Council notes the Court's observation that simplified cost options are less error-prone than reimbursements of actual costs. The Council underlines the importance of further simplification of legal frameworks and of avoiding unnecessarily complex rules that increase administrative burden. It calls on the Commission to continue actively promoting the use of simplified cost options, in particular for those areas which the Court confirmed to be more prone to error.

The Council welcomes the Court's observation that the Commission made adequate arrangements for Member States to close their cohesion operational programmes and made effective use of the measures at its disposal to protect the EU budget from irregular expenditure on the financial corrections implemented by the Commission under cohesion during the 2007-2013 programming period. Therefore, the Council supports the Court's recommendation for the Commission to pay particular attention, when closing 2007-2013 programmes, to areas in which there is a high risk of ineligible expenditure. It invites the Commission and Member States to intensify their efforts and take into account all available information and supporting documentation, and to strictly follow up management verifications to prevent irregularities.

The Council encourages the Commission to continue concentrating its available audit resources on the most risk-prone areas, at the level of the programme, while ensuring an appropriate degree of proportionality between the costs and benefits of controls.

As in previous years, the Council underlines the fact that information provided by national audit authorities is crucial for the Commission to be able to obtain assurance on the functioning of control systems, the regularity of payments to beneficiaries and, where necessary, the stringent implementation of financial corrections.

Despite the progress made, the Council acknowledges the Court's observation that several Member States may be unable to make full use of their financial instrument endowment for the 2007-2013 programming period. In this context, the Council notes with satisfaction that for the 2014-2020 programming period, the payments in tranches into financial instruments, subject to the actual level of disbursement to final recipients, will limit the risk of under-utilisation of financial instruments and of creating outstanding endowments during the implementation.

With regard to errors, weaknesses and inaccuracies in the information on the implementation of financial instruments reported by Member States, the Council calls on the Commission, in cooperation with Member States, to further improve the completeness and accuracy of data pertaining to implementation in particular to address the risk of an artificial increase of the declared amount of eligible expenditure at closure in the case of guarantees.

2. Assessment of project performance

The Council welcomes the Court's assessment of relevant aspects of performance system design and of project performance. The Council notes the Court's conclusion that, despite this not being obligatory under 2007-2013, one third of the projects examined had a performance measurement system with output and result indicators linked to the operational programmes objectives and that the majority of the projects met their output objectives at least partially.

CHAPTER 7

NATURAL RESOURCES

The Council welcomes the fact that the estimated level of error reported by the Court for payments in the "*Natural Resources*" policy area steadily decreased in the last years (3.6 % in 2014, 2.9 % in 2015 and 2.5 % in 2016). However, the Council regrets that the estimated level of error remains above the materiality threshold of 2 %.

1. EAGF - Market and direct support

The Council notes with satisfaction the fact that the market and direct support expenditure, which represents 77 % of all the expenditure under heading 2, was not affected by material error in 2016 (1.7 %).

The Council takes note of the Court's findings that the estimated level of error would have been 0.5 percentage points lower if national authorities had made better use of all available information to prevent or detect and correct errors before declaring the expenditure to the Commission. Therefore, the Council encourages the Commission to continue its support to Member States to take all necessary actions to prevent, detect and correct errors.

The Council notes that the Court and the Commission acknowledge the improvements on the Land Parcel Identification System (LPIS) as the biggest factor for the reduction of the error levels. It calls upon Member States to continuously update the information contained in the LPIS databases, while keeping an appropriate balance between the administrative costs and the benefit resulting from the controls.

The Council notes the Court's findings on the implementation of the new greening payment. It expresses its concerns on the complexity and possible overlapping of the rules that could lead to an increase of the error rate. It supports the Court's recommendation to the Commission to review the approach taken by paying agencies to classify and update land categories in their LPISs and to perform the required cross-checks in order to reduce the risk of error in the greening payment.

2. Rural development, environment, climate action and fisheries

The Council welcomes the fact that the estimated level of error for this policy area steadily decreased in the last years (6.2 % in 2014, 5.3 % in 2015 and 4.9 % in 2016). However, the Council regrets that the estimated level of error for payments under this policy area, still stood significantly above the materiality threshold of 2 %.

The Council notes with regret the Court's findings that the estimated level of error would have been 1.5 percentage points lower if national authorities had made better use of all available information to prevent or detect and correct errors before declaring the expenditure to the Commission. It calls on the Commission to continue its support to Member States to take all necessary actions to prevent, detect and correct errors, while keeping an appropriate balance between the administrative costs and the benefit resulting from the controls.

The Council takes note that three of the largest eligibility errors relate to links between beneficiaries. It welcomes the Court's recommendation to provide guidance and disseminate best practices among national authorities to ensure that their checks identify links between applicants and other stakeholders involved in the supported projects.

3. Assessment of project performance

The Council notes the Court's findings on the performance of rural development investment projects. It takes note that the main shortcoming reported by the Court is the insufficient evidence that costs were reasonable. It also notes the Court's observation that the use of simplified cost options, when set at the right level, effectively limits the risks of excessive prices.

The Council, while recalling that the principle of sound financial management shall be respected when implementing the Union's budget, invites the Commission to continue its guidance to Member States, focussing on better targeting and selection of projects and a more thorough assessment of the reasonableness of costs.

CHAPTER 8
SECURITY AND CITIZENSHIP

1. The Council welcomes the fact that for the first time the Court has included in its annual report a separate chapter on the "*Security and Citizenship*" policies, following up from last year's partial chapter. It encourages the Court to consider increasing its audit scope in this policy area to a representative sample in order to provide an error rate, recommendations and performance information for next years.
 2. The Council recalls that the spending in this area, specifically as regards the Asylum, Migration and Integration Fund and the Internal Security Fund, has increased in the past years. It considers, therefore, that the time is ripe to increase the audit intensity accordingly.
 3. Finally, the Council calls upon the Commission and Member States to tackle the weaknesses identified by the Court when applying their control systems in the area of migration and security.
-

CHAPTER 9
GLOBAL EUROPE

1. The Council welcomes the fact that the estimated level of error reported by the Court for payments in the "*Global Europe*" policy area decreased by 0.7 percentage points to 2.1 % in 2016. The Council takes note that the estimated level of error remains very close to the materiality threshold of 2 %.

The Council takes note of the Court's finding that the estimated level of error would have been 0.7 percentage points lower if the Commission had made better use of all available information to prevent or detect and correct errors before accepting the expenditure.

2. The Council notes that the Court detected some control weaknesses in the Commission's systems at the Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) and at the Directorate-General for International Development and Cooperation (DG DEVCO) which led to the acceptance of ineligible costs. The Council welcomes the Court's recommendations and calls on the Commission to implement them effectively.

CHAPTER 10

ADMINISTRATION

1. The Council notes with satisfaction that the estimated level of error reported by the Court for payments in the "*Administration*" policy area further decreased by 0.6 percentage points to 0.2 % in 2016, well below the materiality threshold of 2 %.

The Council notes with satisfaction that no serious weaknesses were identified by the Court in the supervisory and control systems and in the examined annual activity reports.

2. The Council underlines the need to respect the principles of annuality and of sound financial management. The carry-over of appropriations should always be compliant with the rules of the Financial Regulation and be motivated with factual and genuine reasons, therefore avoiding their use as a means of maximizing the budgetary execution at year-end.
3. The Council also regrets the Court's observation in relation to the management of funds within the European Parliament and more particularly to the control of allocations for political groups. The Council underlines that respect of the principle of transparency is instrumental to the Union's accountability towards its citizens. It therefore underlines the importance of strengthening the control framework and providing better guidance to the political groups through reinforced monitoring of the application of the rules of the Financial Regulation, in line with the Court's recommendation.
4. The Council takes note of the Court's rapid case review³ which presents the results of how the European Union institutions, bodies and agencies implemented the commitment made in the Interinstitutional Agreement of 2 December 2013 to progressively render 5 % of the posts in their establishment plans during the period 2013-2017.

³ European Court of Auditors "Rapid case review on the implementation of the 5 % reduction of staff posts": <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=44567>.

The Council regrets that not all the EU institutions, bodies and agencies have achieved the 5 % reduction of posts in the establishment plan by the end of 2017 and urges these institutions, bodies and agencies to carry out the remaining reduction as soon as possible in order to achieve this target fully.

The Council takes note of the Court's findings that this reduction target was pursued by eliminating posts in the establishment plan that were vacant and by not replacing staff that left, effectively reducing the vacancy rate with a smaller impact on the total number of occupied posts.

The Council also notes the Court's findings that the total number of staff posts in the establishment plans decreased by 1.1 % between 2012 and 2017, the number of posts actually occupied by staff increased by 0.4 % over the period from 1 January 2013 to 1 January 2017, and the actual payments for salaries for permanent officials and temporary agents increased by 9.2 % between 2012 and 2016.

While recognising that during the period 2013-2017 some EU institutions, bodies and agencies were tasked with new responsibilities and equipped with new resources, the Council considers that the gap between the expectations and the outcome is significant. In this context, the Council acknowledges that by focusing solely on the headcount based on establishment plan posts, the methodology chosen was not suited to achieve the goal of reducing administrative expenditure.
