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Report on the follow-up to the discharge

for the 2019 financial year

#EUBUDGET

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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the follow-up to the discharge for the 2019 financial year (Summary)

REPORT ON THE FOLLOW-UP TO THE REQUESTS MADE BY THE EUROPEAN PARLIAMENT IN ITS DISCHARGE RESOLUTIONS AND THE COUNCIL IN ITS DISCHARGE RECOMMENDATION FOR THE FINANCIAL YEAR 2019

1. INTRODUCTION

On 27 April 2021, the European Parliament, based on a recommendation from the Council, **granted the Commission discharge** for the financial year 2019 by a clear majority, thereby acknowledging that the EU budget was overall spent well and in a proper manner.

The 2019 discharge procedure took place in the context of the **persistence of the COVID-19 pandemic** and in parallel with the negotiations and subsequent adoption of the **2021-2027 Multiannual Financial Framework (MFF)** and **NextGenerationEU**. Making sure that every euro contributed by EU taxpayers is well spent in the interest of all EU citizens continued to be at the forefront of the Commission's action in these unprecedented circumstances.

In this context, the **Commission shares the main objectives** expressed by the European Parliament and the Council in the 2019 discharge procedure:

- Pursuing a high standard of **transparency and accountability** on the way the EU budget is managed, through a robust management and control framework.
- **Protecting the EU budget**: the **Commission is following up on allegations or suspicions of misuse or mismanagement of EU funds**, and takes all necessary measures to protect the Union budget, including where appropriate through suspension of payments, financial corrections, and other measures, such as the new general regime of conditionality for the EU budget.
- **Putting performance at the heart of budget implementation**: it is equally important that money spent actually addresses the challenges and delivers the expected results on the ground, bringing about tangible results and positive changes in the lives of citizens and beneficiaries.
- **Overall, striking the right balance** between a low level of errors, fast payments, reasonable costs and burden of controls for public authorities and beneficiaries and value added of EU spending.

This report on the follow-up to the 2019 discharge procedure provides, as part of the Integrated Financial and Accountability Reporting (IFAR), a summary of actions taken by the Commission in response to the main requests made by the European Parliament and the Council in the 2019 procedure. When the 2020 discharge procedure begins later in the year, the Commission will provide more detailed and updated information on its follow-up actions.

2. TRANSPARENCY AND ACCOUNTABILITY

The presentation by the Commission of the Integrated Financial and Accountability Reporting (IFAR) package for the year 2019 **provided the starting point of the 2019 discharge procedure.** This was followed by the presentation of the European Court of Auditors' (ECA) **2019 Annual report**, with a 'clean' opinion on the EU Annual Accounts for the 13th year in a row, as well as a clean opinion on the revenue side of the EU budget. The ECA issued however an adverse opinion on legality and regularity of expenditure underlying the accounts, rather than a qualified opinion as in the previous three years. One of the main drivers was the increased share of high-risk expenditure, often subject to complex rules and mainly reimbursement-based.

While the ECA provides an annual audit opinion, **as manager of the EU budget, the Commission put in place multiannual control strategies** designed to prevent, detect and correct errors even in subsequent years after the year of the payment. The Commission continues to take actions to reduce complexity and ensure that errors are better prevented and detected over time for all programmes. The Commission's 2019 estimated levels of error were in the ECA's range. As a result of the efforts of the Commission, and its implementing partners, the financial management of the EU budget has improved over time and the error levels have decreased to ranges close to the 2% materiality threshold in recent years, except in some specific policy areas.

The control systems in place provide the Commission with **a very granular and detailed knowledge** of how systems function, including at the level of national and regional authorities under shared management, identifying areas where improvements are still needed and taking action where appropriate. Taking into account **the Commission's qualitative assessment of the effective functioning of these control systems**, together with the multi-annual corrective capacity which led to an amount at risk at closure (0.7% in 2019) below the 2% materiality threshold, the Commission considers that the errors are not widespread and not permeating across the whole of the EU budget.

This year, the ECA also presented, alongside the Annual Report that includes the annual Statement of Assurance, a **specific part of the Annual Report dedicated to the performance of the EU budget**. While the ECA finds that the Commission has solid procedures for producing performance reports and that the reports continue to improve and become more balanced, it highlights certain areas for further improvement, which the Commission will address to better assess and measure the achievement of Union priorities, policies and programmes.

The Commission **reports in detail** on all these issues in its **Integrated Financial and Accountability Reporting** (IFAR), which describes how EU tax payers' money was spent in 2020 and the steps that were taken to ensure that the EU budget was managed according to the highest standards. It demonstrates the shared commitment of the EU institutions along with the Member States to get the most out of every euro invested through the EU budget.

3. RULE OF LAW AND FUNDAMENTAL VALUES

For the first time, the Union has a specific tool to protect its budget from breaches of the principles of the rule of law through the new regulation on a general regime of conditionality for the protection of the Union budget[1]

This Regulation **covers the whole MFF 2021-2027 and NextGenerationEU**, including the Recovery and Resilience Facility. The regulation has been applicable since 1 January 2021 and is enforceable from that date. All relevant breaches affecting the sound financial management of the Union budget and the financial interests of the Union after that date will be covered. The Commission will use the conditionality when it considers that other instruments are not more effective to protect the EU budget.

The Commission is currently preparing guidelines for its application. At the same time, the Commission is actively assessing information from sources cited in the regulation to identify possible breaches of the principles of the rule of law that would be relevant pursuant to its provisions. When concerns arise, discussions with Member States will commence without undue delay.

[1] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

Regarding the setting up of an effective control system in relation to **alleged cases of land grabbing under the Common Agricultural Policy (CAP)**, in shared management it is first and foremost for the relevant Member States authorities to deal with complaints from individual beneficiaries. Therefore, in the new CAP Regulations, a provision requiring Member States to set up proper systems to manage complaints about the implementation of the Funds has been agreed by the co-legislators. In addition, any breach of the fundamental rights or general principles of Union law after approval of the CAP Plan, could be addressed by the Commission through the existing EU Pilot or infringement proceedings.

The Commission is monitoring allegations of land grabbing and request Member States to take action if needed (for example, improving the land registry in Slovakia). However, when it comes to activities criminal in nature, the main competence remains with the police forces and the national prosecutors. If there are allegations of fraud, the relevant information is transmitted to the European Anti-Fraud Office (OLAF) for follow-up in line with its mandate. Since 1 June 2021 there is also the possibility to involve the European Public Prosecutor Office (EPPO).

Finally, as far as the respect of the **rule of law in external aid** is concerned, the Commission is firmly committed to the fundamental values of human rights, democracy and rule of law, which are essential elements of all the EU’s partnerships and cooperation agreements with third countries. Cooperation with most countries includes support to a number of key sectors such as financial investigators and criminal investigators, prosecutors, lawyers and barristers, ombudsmen, criminal courts, supreme courts, courts of auditors and substantial support to democratic governance.

In several countries, the EU has been supporting the justice administration in its efforts towards increased efficiency and inclusiveness (Central African Republic, Mali, Niger and Mauritania). The EU has also contributed to strengthening the whole chain from police and gendarmerie investigators up to prosecutors and judges to fight criminal action (Democratic Republic of Congo, Guinea-Bissau). Finally, the EU also supports Civil Society Organisations in their watch-dog role that fosters transparency and accountability as well as their role as a social actor, able to provide legal assistance to disenfranchised or vulnerable people (Democratic Republic of Congo, Central African Republic, Fiji).

4. INFORMATION ON BENEFICIARIES OF EU FUNDS AND ESTABLISHMENT OF AN INTEROPERABLE IT MONITORING AND REPORTING SYSTEM

Important progress was achieved in the legislative frameworks for the Common Provisions Regulation (CPR), the Common Agricultural Policy (CAP), the European Globalisation Adjustment Fund (EGF) and the Recovery and Resilience Facility (RRF) **on the type of information to be collected and stored by Member States** on recipients of EU funds, including beneficial owners of legal entities being beneficiaries, and final recipients of EU funds. Such data should allow **to strengthen the control and audit processes**, notably as regards fraud and conflict of interest.

The Commission also put forward **proposals for the mandatory use of a single data-mining and risk-scoring tool** (for control and audit purposes) for the CPR, CAP, RRF, the Brexit Adjustment Reserve (BAR) and EGF. The co-legislator did however not take this proposal forward for the CPR, the RRF, BAR and the EGF and the use of such data-mining and risk-scoring tool by Member States therefore remains voluntary. For the CAP, the final political agreement reached by the co-legislators is a voluntary use of the tool with a review clause in 2025 with possible legislative proposals, to be based on a Commission report assessing the use of the single data mining tool and its interoperability. The Commission shall make the tool available to the Member States from 1 January 2023 in order to assist them in ensuring an effective protection of the financial interests of the Union. Moreover, information for all CAP funds on the groups which beneficiaries belong to would be collected by the Member States (and also published for transparency reasons).

The Commission will continue to make available to Member States a data-mining and risk-scoring tool for control and audit purposes and, in the absence of a legal obligation for the Member States to use it, **will strongly encourage** them to use it.

The Commission is reflecting on how **to further enhance the quality and interoperability of the data** on beneficiaries and final recipients of EU funding including with the use of a single data mining and risk-scoring tool. It considers that any provisions in this respect should first be assessed in the context of the up-coming revision of the Financial Regulation as the overarching regulation for the implementation and control of the EU budget.

As far as the **distribution of CAP funding** is concerned, the Commission has consistently proposed capping of direct payments and degressivity along with a complementary redistributive income support and the application of a genuine/active farmer concept in order to ensure a fairer distribution of direct payments. The co-legislators agreed on possible capping of direct payments, as well as on mandatory redistributive payments for at least 10% of the Member States' direct payment envelopes unless they can demonstrate that achieve a better targeting of direct payments with other means. The concept of active farmer in the CAP was also agreed by the co-legislators.

5. THE EARLY DETECTION AND EXCLUSION SYSTEM (EDES)

EDES is still a recent system and is continuing to develop. Initially, from 2016, EDES only covered direct management and very partially indirect management. As part of the last revision of the Financial Regulation, EDES has been extended to all indirect management and its scope extended.

The number of exclusions must also be seen against the level of protection of entities and persons which is high, in accordance with in particular the EU Charter of Fundamental Rights and the principle of legality and proportionality of criminal offences and penalties. Also, the co-legislator decided to impose restrictive conditions on the possibility to publish administrative sanctions by reserving this possibility to the most serious cases, in order to reinforce the deterrent effect of the sanctions, while respecting the protection of personal data, the confidentiality of investigations or of national judicial proceedings and the principle of proportionality.

Overall, **EDES achieves a positive balance between the need to protect the EU financial interests and the need to ensure the right of defence**, by requiring a minimum of substantiated evidence (established facts) checked through the exercise of the right to be heard, and respects the implications of the rule of law principle.

Until now, cases involving more than 90 entities have been referred to the EDES Panel. Overall, 42 entities have been sanctioned and 13 are still under exclusion.

As far as improvements to the exclusion system are concerned, the Commission will examine, in the context of a forthcoming revision of the Financial Regulation and in light of the first 5 years of the functioning of the system, the possibility of extending its scope and, where possible, enhancing the procedure.

6. GUIDANCE ON AVOIDANCE OF CONFLICT OF INTEREST

The Commission is also taking action in this domain. **Article 61 of the Financial Regulation**, as amended in 2018, **applies equally to all EU funds at all levels**, where the impartial and objective exercise of the functions of a financial actor or other person involved in budget implementation is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

The Commission has committed to accompany and guide the Member States in applying the new rules on conflict of interest. The Commission has published in April 2021 a guidance document on avoidance and management of conflicts of interest. This guidance is addressed both to Member States and EU institutions. It **promotes a uniform interpretation of the rules** set out in the Financial Regulation across all management modes and contains practical examples and measures that could be put in place to avoid and manage situations of conflict of interest. Before completion, the document was shared with the European Parliament in August 2020 and presented to and consulted with Member States' authorities. The Commission has and will continue to present the document in the context of targeted promotion actions towards Member States, through Member State authorities' and respective expert networks during 2021 and beyond.

As regards the **specific situation in the Czech Republic**, the relevant Commission services carried out coordinated audits which, among other issues, also relate to conflict of interests. The Commission kept the European Parliament Committee on Budgetary Control regularly informed of the state of play. Considering the public interest in these audits, including a request from the European Parliament to make the final audit report public, as reflected in the discharge resolution, and a European Ombudsman recommendation along the same line, the final audit report related to the European Regional Development Fund, the Cohesion Fund and the European Social Fund was made publicly available after deletion of personal data, commercial secrets and other information subject to non-disclosure requirements. This was also justified by the completion of all legally required steps and respective deadlines in the contradictory procedure, which respected fully the auditee's right of defence and which did not bear any changes to the findings of the audit report except for clarifications of some findings.

7. OUTSTANDING BUDGETARY COMMITMENTS - RAL

The European Parliament and the Council expressed concern over the level of outstanding commitments (the Reste à Liquider - RAL). The **level of the outstanding commitments** (RAL) at the end of 2020 further increased and reached **EUR 302.6 billion**. The increase in the level of RAL over the past years is mainly explained by the de-commitment rule in cohesion policy (so-called "N+3 rule"), the impact of inflation and the increase in the size of the EU budget as well as the interrelated gap between commitments and payments .

For the 2021-2027 period, the **Commission proposed a series of simplification measures to facilitate and accelerate the implementation of cohesion policy**. While most of those have been retained in the political agreement reached between the co-legislators, the Commission regrets that the return to the N+2 decommitment rule has not been approved. At this early stage of the new budgetary cycle, the Commission considers that the effects of keeping the N+3 decommitment rule, in combination with the late agreement on the legislation governing most of the funds in shared management, and the focus of national authorities on the implementation of NextGenerationEU in the next years given its more limited time frame, could lead to maintaining the trend of nominally growing RAL during the 2021-2027 MFF.

The Commission actively monitors budget implementation and the evolution of the RAL, and keeps the European Parliament and the Council regularly informed, notably in the long-term forecast of future inflows and outflows of the EU budget report. The Commission prepares its forecast based on a wide range of available data (previous years' budget execution, level of implementation and latest developments of the current budget, future needs as presented in the following years' draft budget). In addition, the Commission takes into account Member States' forecasts for the implementation of the European Structural and Investment funds - the main driver behind the overall payment estimates.

The adoption of the budget lies within the remit of the budgetary authority, which involves the granting of a sufficient level of payment appropriations, and the implementation of funds under shared management is managed by national authorities, and largely depends on the rules set by the co-legislators in the relevant basic acts. In this context, the Commission will continue to cooperate closely with the European Parliament and the Council, as well as with national authorities in the Member States to continue supporting them in speeding up the implementation of their programmes.

8. CONTROL SYSTEM FOR THE RECOVERY AND RESILIENCE FACILITY (RFF)

The Commission has set up the Recovery and Resilience Facility (RRF) in record time, with a dedicated governance structure and internal processes and control strategies tailored to the fact that the RRF is a performance-based instrument. Apart from an initial pre-financing, payments to the Member States are made upon the fulfilment of pre-defined milestones and targets. Payments will therefore not be subject to the costs actually incurred by the Member States. Unlike in shared management, the Member States are the beneficiaries of the EU funds, which, once paid, become fungible in the national budgets.

Article 22 (1) of the RRF Regulation imposes on Member States an obligation to "*take all appropriate measures to protect the financial interests of the Union and to ensure that the use of funds in relation to measures supported by the Facility complies with applicable Union and national law, in particular regarding the prevention, detection and correction of fraud, corruption and conflicts of interests*", and to provide an effective and efficient internal control system.

In order to build its assurance, the Commission will rely on the Member States' controls and complement them with its own controls as necessary. This control framework is based on the following elements:

Assessment of the plans: The Commission is responsible for the assessment of the Recovery and Resilience Plans submitted by Member States as regards their relevance, effectiveness, efficiency and coherence. One of the criteria to be applied by the Commission is whether the arrangements proposed by the Member State are expected to prevent, detect and correct corruption, fraud and conflicts of interests when using the funds provided under the Facility, taking into account, among other elements, whether the control system is based on robust processes and structures. This criterion can only be assessed as either adequate or insufficient. In the latter case, the Commission must conclude that the plan does not comply satisfactorily with the assessment criteria. However, should the Commission detect weaknesses in the control systems, which can be addressed, it will propose to add measures necessary for complying with Article 22 of the RRF Regulation that need to be attained before the first regular payment can be made. This Commission assessment is subject to the approval by the Council.

At payment stage: Member States may submit up to twice a year, upon completion of the relevant agreed milestones and targets, a duly justified request for payment of the financial contribution and, where relevant, of the loan. According to Article 22(2) of the RRF Regulation, the Member State has to accompany the payment request by a management declaration and a summary of audits. In the management declaration, the Member State confirms that the funds were used for the intended purpose, that they were managed in accordance with all applicable rules and that the information is complete, accurate and reliable. The summary of audits also includes the weaknesses identified and the remedial actions taken.

The Commission assesses for each payment request, whether **milestones and targets are satisfactorily fulfilled.** The Commission's audits and controls are targeted to prevent, detect and correct errors and irregularities in the evidence that is provided to establish that the milestones and targets have been satisfactorily completed. The Commission may ask for additional information and may decide to carry out additional checks in order to obtain the necessary complementary assurance on the achievement of the milestones and targets before making the payment.

If some milestones and targets have not been satisfactorily fulfilled, the Commission may partially or fully suspend, as per article 24(6) of the RRF Regulation, and then proportionately reduce payments, as per article 24(8) of the RRF Regulation *"where the Member State concerned has not taken the necessary measures within a period of six months from the suspension"*.

Sound financial management: The Commission will conduct systems audits of the Member States' internal control set-up during the lifetime of the instrument in order to check whether the Member State complies with its obligations under Article 22 of the RRF Regulation, notably in terms of prevention, detection and correction of serious irregularities (i.e. fraud, corruption or conflicts of interest) and avoidance of double funding, or serious breaches of obligations resulting from the loan and financing agreements. Furthermore, during the implementation of the plan the Commission will perform risk-based controls and audits in cases of suspicion of serious irregularities not corrected by the Member States (i.e. fraud, corruption or conflicts of interest) or serious breaches of obligations of the financing agreement or the loan agreement.

Based on Article 22(5) of the RRF Regulation, the Commission will have the rights to reduce proportionately and recover amounts of the non-repayable support or ask for early repayment of loans, in cases of fraud, corruption, conflict of interest and/or serious breaches of obligations laid down in the financing and/or loan agreement (which include double funding). Except in the case of serious breach of contractual obligations, the Commission can only recover/reduce/ask for early repayment in case the Member States would not have corrected these serious irregularities itself.

9. MEASURING PERFORMANCE OF EU SPENDING PROGRAMMES

The Commission firmly believes that ensuring that its spending programmes are working effectively is a key part of the successful implementation of the budget. Measuring the extent to which spending programmes achieve their stated goals and thus advance Union priorities, - i.e. their performance - is challenging, but essential to identify emerging issues in a timely manner, and take corrective actions, as needed. Moreover, reliable performance information can be useful when new priorities require reallocating resources mid-course (of course, within the limits envisaged by the legal framework).

The EU budget already has an advanced framework for measuring and evaluating performance, as recognised for example by the OECD. This relies on a solid intervention logic, with clearly specified objectives, and associated indicators with ambitious yet realistic targets.

The Commission has adopted a Communication on the performance framework of the EU budget under the 2021-2027 MFF (COM(2021)366 final) detailing its commitment to improve further. Thus, in the run-up to the 2021-2027 MFF, the Commission has streamlined the set of indicators (to focus on the most relevant ones), rendering the framework more accessible and minimising its administrative burden. The key indicators have also been included in the legal bases of the various spending programmes.

In a first, the Commission has also published summary fiches for all the spending programmes in the 2021-2027 MFF (available at: https://europa.eu/!MQcbUC), describing the way programmes are designed to work and summarising both the indicator-based performance framework for each programme, and the methodologies that the Commission plans to use to set baselines, milestones and targets for the relevant performance indicators.

As was done already in 2020, the Commission has published, as an annex to the Annual Management and Performance Report, Programme and Performance Overviews for all programmes, featuring inter alia a specific section on performance assessment, including an assessment of performance indicators as well of the influence on performance exerted by relevant external factors. **For these efforts to continue and prosper, it is essential that Member States and other partners do their utmost to provide high-quality and timely performance information**.

Work is also continuing to integrate crosscutting policy objectives into the design and implementation of the EU budget, including to deliver on the Commission's undertakings under the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission accompanying the 2021-2027 MFF (available at: https://europa.eu/!mwRVHD). This policy mainstreaming involves, as far as spending programmes are concerned, the pursuit of crosscutting goals (e.g., fighting climate change, or advancing gender equality) alongside programme-specific (or sectoral) objectives.

The main crosscutting goals informing budget design and implementation include:

- Spending at least 30% of the 2021-2027 MFF and the NextGenerationEU on addressing the climate challenge, up from 20% in the previous period;
- Supporting biodiversity with 7.5% of annual spending in 2024 and 10% in 2026 and 2027, on the basis of an effective, transparent and comprehensive methodology;
- Supporting investments and reforms in the field of digital transformation with at least 20% of the total allocation of each national recovery and resilience plan dedicated to digital transition measures.

The Commission is developing and/or improving suitable methodologies to "track" the contribution - in terms of amount spent - of individual programmes to these goals, as well as to gender equality and the implementation of the UN Sustainable Development Goals, in line with its commitments under the Interinstitutional Agreement accompanying the 2021-2027 MFF.

10. OTHER ISSUES

10.1 REVENUE AND TRADITIONAL OWN RESOURCES (TOR) COLLECTION

The Commission is determined to avoid losses of customs duties. It acts as soon as irregularities are detected and meticulously follows up on inspection findings in order to ensure that Traditional Own Resources losses to the EU budget are recovered in full. However, the responsibility for collecting the customs duties is primarily that of the Member States, which are held financially liable to compensate TOR losses if non-recovery of customs duties is due to lack of diligence of their customs administrations. Therefore, the Commission developed a methodology to estimate potential TOR losses in case of undervaluation, considered as the main component in calculating the customs gap.

Pending the judgement of the European Court of Justice in the case filed by the Commission against the United-Kingdom (C-213/19), the Commission recently notified the Member States of their preliminary calculated share in total TOR losses. A similar enforcement strategy/methodology will be deployed for TOR losses caused by evasion of anti-dumping and countervailing duties on solar panels. The calculations thereto are completed and Member States will be soon informed of the TOR losses they will have to compensate.

Such enforcement on specific fraud topics will continue in the future based on monitoring trade flows and in-depth import data analysis. The Commission is currently elaborating on a detailed description of the tasks, the role, the business model and positioning of the EU Joint Analytics Capabilities in order to further strengthen the efficiency and create added value to the risk management strategy and customs controls. Pro-active actions such as monitoring trade flows and customs performance, assessment of risks focusing on TOR and targeted inspections of concerned Member States will significantly contribute to narrow down TOR losses due to fraud and other irregularities.The Commission will keep the discharge authority duly and timely informed.

10.2 Renewal of the Tripartite Agreement between the Commission, the ECA and the EIB and ECA auditing powers over the EIB

The European Commission is working together with the ECA and the European Investment Bank (EIB) on a renewed tripartite agreement. The purpose of the ongoing revision of the tripartite agreement is to renew the agreement concluded on 26 September 2016, which governs cooperation between the Commission, the ECA and the EIB with respect to the audits carried out by the ECA on the EIB's activity in managing Union expenditure and revenue.

The Commission notes that it is not the purpose of the Tripartite Agreement to define the mandate of the ECA as concerns the EIB, which is laid down in Article 287 (3) TFEU. The Tripartite Agreement governs the rights of access to information held by the EIB in respect of its activity in managing Union expenditure and revenue.

11. Looking ahead

The negotiations on the 2021-2027 MFF, NextGenerationEU and the majority of the underlying spending programmes are now concluded. Implementation will soon be starting on the ground. At the crossroads between programming periods, and building on the lessons learnt, it is of **utmost importance to have the necessary mechanisms in place for the future**, and that all institutions and stakeholders keep pushing in the same direction.

The Commission will therefore continue working with the other institutions and Member States to promote the sound financial management of the EU budget. It remains committed to implementing the discharge authority's requests and ECA's recommendations to improve further the EU financial management. The Commission will continue to uphold the highest standards of **transparency and accountability** so as to ensure that the Union budget is spent in line with the rules and with the highest standards with regard to performance and results.

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