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*Plenary sitting*

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**A9-0061/2022**

23.3.2022

# REPORT

on discharge in respect of the implementation of the general budget of the European Union for the financial year 2020, Section V – Court of Auditors (2021/2110(DEC))

Committee on Budgetary Control

Rapporteur: Isabel García Muñoz

## CONTENTS

|  | <b>Page</b> |
|--|-------------|
| 1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION.....    | 3           |
| 2. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....    | 5           |
| INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE.....  | 21          |
| FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE ..... | 22          |

## 1. PROPOSAL FOR A EUROPEAN PARLIAMENT DECISION

**on discharge in respect of the implementation of the general budget of the European Union for the financial year 2020, Section V – Court of Auditors (2021/2110(DEC))**

*The European Parliament,*

- having regard to the general budget of the European Union for the financial year 2020<sup>1</sup>,
  - having regard to the consolidated annual accounts of the European Union for the financial year 2020 (COM(2021)/0381 – C9-0259/2021)<sup>2</sup>,
  - having regard to the Court of Auditors' annual report to the discharge authority on internal audits carried out in 2020,
  - having regard to the Court of Auditors' annual report on the implementation of the budget concerning the financial year 2020, together with the institutions' replies<sup>3</sup>,
  - having regard to the statement of assurance<sup>4</sup> as to the reliability of the accounts and the legality and regularity of the underlying transactions provided by the Court of Auditors for the financial year 2020, pursuant to Article 287 of the Treaty on the Functioning of the European Union,
  - having regard to Article 314(10) and Articles 317, 318 and 319 of the Treaty on the Functioning of the European Union,
  - having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012<sup>5</sup>, and in particular Articles 59, 118, 260, 261 and 262 thereof,
  - having regard to Rule 100 of and Annex V to its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A9-0061/2022),
1. Postpones its decision on granting the Secretary-General of the Court of Auditors discharge in respect of the implementation of the budget of the Court of Auditors for the financial year 2020;

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<sup>1</sup> OJ L 57, 27.2.2020.

<sup>2</sup> OJ C 436, 28.10.2021, p. 1.

<sup>3</sup> OJ C 430, 25.10.2021, p. 7.

<sup>4</sup> OJ C 436, 28.10.2021, p. 207.

<sup>5</sup> OJ L 193, 30.7.2018, p. 1.

2. Sets out its observations in the resolution below;
3. Instructs its President to forward this decision and the resolution forming an integral part of it to the Council, the Commission and the Court of Auditors, and to arrange for their publication in the *Official Journal of the European Union* (L series).

## 2. MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2020, Section V – Court of Auditors (2021/2110(DEC))**

*The European Parliament,*

- having regard to its decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2020, Section V – Court of Auditors,
  - having regard to Rule 100 of and Annex V to its Rules of Procedure,
  - having regard to the report of the Committee on Budgetary Control (A9-0061/2022),
- A. whereas the mission of the Court of Auditors (the ‘Court’) is centred on enhancing citizens’ trust and responding effectively to current and future challenges facing the Union by carrying out independent, professional and impactful audit work, assessing the economy, effectiveness, efficiency, legality and regularity of Union action in order to improve accountability, transparency and financial management;
- B. whereas, without prejudice to the provisions of Article 287 and 319 of the Treaty on the Functioning of the European Union (TFEU), since the close of the financial year 1987 the Court has had its revenue and expenditure accounts audited by an independent external auditor every year and, since the report on the financial year 1992, the external auditor’s reports have been published in the *Official Journal of the European Union*;
- C. whereas management accountability towards the budgetary authorities is provided via the annual activity report of the Secretary-General of the Court the purpose of which, in accordance with Article 74(9) of the Financial Regulation, is to provide information about the management of resources, including the systems, and about the efficiency and effectiveness of the Court’s internal control systems;
- D. whereas in the context of the discharge procedure, the discharge authority wishes to stress the particular importance of further strengthening the democratic legitimacy of Union institutions by improving transparency and accountability, and implementing the concept of performance-based budgeting and good governance of human resources;
1. Is aware that the annual accounts of the Court are audited by an independent external auditor in order to apply the same principles of transparency and accountability that the Court applies to its auditees; notes with satisfaction the independent external auditor’s opinion that the financial statements give a true and fair view of the Court’s financial position;
  2. Notes that the Court’s follow-up to the 2019 discharge resolutions provided only general responses to Parliament’s remarks; reiterates that appropriate and comprehensible follow-up is essential to enable Parliament’s Committee on Budgetary Control to determine

whether the Court has taken Parliament's recommendations into due consideration; asks the Court to simplify the structure of its next follow-up report and include all necessary responses while providing detailed and concrete explanations of the implementation of Parliament's recommendations, making explicit reference to each paragraph of this discharge resolution;

3. Notes that the Court is governed by Articles 285, 286 and 287 TFEU which provide that the Court shall draw up its own Rules of Procedure which shall require the approval of the Council, and that the Council shall determine the conditions of employment of the members of the Court and in particular their salaries, allowances and pensions; notes that the Court's competence to adopt rules on working methods is part of its internal organisation and that the Court's decision-making procedure is laid out in its rules of procedure; calls on the Court to keep the discharge authority informed on the ongoing and future amendments of its internal rules; notes that the Court's code of conduct<sup>1</sup> emphasises the core ethical values of the Court and its members and sets out various procedural obligations;

#### ***BUDGETARY AND FINANCIAL MANAGEMENT***

4. Notes that the Court's budget continues to grow and amounted to EUR 152 million in 2020 (compared to EUR 147 million in 2019) which represents less than 0,1 % of total Union spending and around 1,4 % of total Union spending on administration; notes that the Court's budget is mostly administrative, with the majority of it being used for expenditure related to human resources, buildings and furniture, equipment and miscellaneous operation costs;
5. Notes that the overall execution rate for 2020 was 96 % (compared to 98 % in 2019) with an execution rate of 95,7 % for commitments and 90,1 % for payments on appropriations; notes that payments in 2020 amounted to EUR 137 132 964 compared to EUR 137 799 512 in 2019;
6. Notes that following the COVID-19 outbreak some budget lines were underutilised, such as missions (by 15,75 %), publications (by 42,75 %), interpretation costs (by 30,77 %), energy consumption, meetings, representation expenses and salaries; notes that the savings in salaries were also due to fewer recruitments and a smaller-than-expected salary increase; notes that, in contrast to the savings, the increase of costs related to IT (amounting to 30,77 %), medical service (amounting to 214,29 %) and security (amounting to 288,10 %); further notes that in the course of 2020, the Court effected 22 budgetary transfers between the mentioned budget lines, amounting to EUR 4 051 000 in total;
7. Acknowledges that in spite of the budgetary transfers, some appropriations were cancelled at year-end, mainly related to missions (EUR 2 160 144), publications (EUR 198 808), representation expenses (EUR 179 992), interpretation costs (EUR 162 104), vehicles (EUR 151 084) and meetings (EUR 106 005);

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<sup>1</sup> Code of Conduct for the Members and former Members of the Court, OJ L 46, 25.2.2022, p. 145.

8. Understands that automatic carry-overs of appropriations from 2019 to 2020, a total of EUR 6 515 316, contributed to reaching a utilisation rate of 92,24 % (compared to 88,48 % in 2019);
9. Observes that in 2020, the Court awarded in total 18 contracts with a value greater than EUR 15 000, amounting to a total value of EUR 2 704 105, out of which four contracts, amounting to a total value of EUR 2 190 490, were above the relevant threshold in Article 4 of Directive 2014/24/EU<sup>2</sup>;

***INTERNAL MANAGEMENT, PERFORMANCE, INTERNAL CONTROL***

10. Notes that 2020 was the last year of implementing the Court's 2018-2020 strategy and welcomes the progress achieved in a number of areas, in particular more resources allocated to performance audits, increased productivity across all types of audits, and intensified stakeholder interest in and media uptake of the Court's reports; notes the publication of the peer review report on the implementation of the 2018-2020 strategy; appreciates the participative approach adopted to prepare the 2021-2025 strategy, adopted in January 2021, that involved all the Court's members, managers and other staff through workshops, webinars and surveys to collect and discuss inputs;
11. Underlines that the priorities reflected in the Court's work programme should take the focus areas suggested by the discharge authority into account; recalls the Joint statement by the Parliament and the Council on the reinforcement of the establishment plan of the Court of Auditors; recalls that both Parliament and the Council consider it essential that the Court allocates sufficient resources for the implementation of its core activities and invited the Court to provide, in future budgetary exercises, an overview of the allocation of staff in the previous year; reiterates Parliament's request for a specific independent annual report on the Union institutions;
12. Acknowledges that the Court applies a set of key performance indicators to provide institutional stakeholders with information on performance levels, to inform management about progress made towards achieving strategic goals and to support decision-making; observes that in 2020 a total of 69 publications were issued (33 annual and special reports, 11 opinions, 6 reviews, 14 audit previews and 5 other documents), compared to 67 publications in 2019; welcomes the fact that the Court published for the first time ever an annual report on the overall performance of the Union budget which contributes to give more prominence to the results achieved by a sample of Union spending programmes and evaluates to what extent recommendations from the Court's special reports have been implemented by the auditees; welcomes the Court's initiative to consult key stakeholders, including Parliament's Committee on Budgetary Control, on the future strategy regarding the annual performance report;
13. Observes the number of opinions issued (11) of which the large majority relates either to amendments of existing rules in the 2014-2020 Multiannual Financial Framework (MFF) in the context of the Union's response to the COVID-19 pandemic or to legislative proposals for the 2021-2027 MFF and the 'Next Generation EU' stimulus package; appreciates that the Court adapted its 2020 work programme to take account of changing

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<sup>2</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65),

circumstances and that the adoption included issuing two timely reviews of the Union's response to the COVID-19 pandemic;

14. Supports the Court's practice of monitoring the follow up to its recommendations; notes that in 2020 the Court measured the implementation of the recommendations made in its 2016 reports and registered a partial or full implementation of 97 % of the 29 recommendations made in the annual report and 91 % of the 360 recommendations made in the special reports (compared to 96 % and 94 %, respectively, for the 2015 recommendations);
15. Welcomes the analysis carried out on the impact and perception of the Court's work by its relevant stakeholders, including Union institutions, bodies, offices and agencies, national authorities, NGOs, academia and media, based on the feedback received as part of the anonymised electronic surveys; highlights the feedback received in 2020 with 84 % of the respondents finding that the Court's reports are useful for their work and 75 % indicating that the Court's work had an impact (compared to 88 % and 81 %, respectively, in 2019);
16. Notes that the installation allowance for the member of the Court, governed by Article 4 of Regulation (EU) 2016/300<sup>3</sup>, is granted on the condition that the member of the Court provides evidence that a change in the place of residence was necessary in order to take up duties and that person "shall reside either in the place where he is employed or at no greater distance therefrom as is compatible with the proper performance of his duties" as stated in Article 20 of the Staff Regulations; points out that, even if the mere declaration of an address has been accepted by the Paymaster Office of the Commission (PMO), a rental or purchase contract for a property should not be considered sufficient evidence in the meaning of Article 20 of the Staff Regulations, as such property may be destined for uses other than as a primary residence; is of the opinion that the mechanism for verifying the legal conditions of the installation allowance needs to be reviewed so that other documents can be requested as evidence, to the greatest extent possible with respect of the right to privacy;
17. Notes that members of the Court have provided either a rental or purchase contract for a property and a residence certificate issued by the Luxembourgish authorities; insists, however, that, since the entry into force of Regulation (EU) 2016/300, installation allowance should be paid only on production of evidence establishing the fact that members have "settled at the place where they are employed" as set out in Article 5(3) of Annex VII of the Staff Regulations; is of the view that collecting an installation allowance should be considered to entail an obligation for the members' to actually relocate their residence to Luxembourg on an effective and stable basis during their term of office and recalls, in this regard, that Article 5(4) of that Annex stipulates that "an official who is entitled to the household allowance and does not settle with his family at the place where he is employed shall receive only half of the allowance to which he would otherwise be entitled"; notes that the Court recently adopted a modified code of conduct setting out in Article 10(1) the obligation to reside where the Court has its seat and asks the Court to report on the entry into force of the modified code of conduct;
18. Notes that Article 5 of Regulation (EU) 2016/300 entitles EU high-level public office holders such as members of the Court to a residence allowance equal to 15 % of their

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<sup>3</sup> Council Regulation (EU) 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders (OJ L 58, 4.3.2016, p. 1).



basic salary during their term of office; is aware of the fact that the said Regulation does not contain any condition for the disbursement of the residence allowance, but that it is based solely on the recipient being the holder of a high-level public office; acknowledges that such an approach follows the wording of that Regulation and understands that only the Council is competent to amend Regulation (EU) 2016/300; believes, nevertheless, that the residence allowance must be consistent with the installation allowance and, therefore, that logic dictates the same correlation with Article 20 of the Staff Regulations while respecting the distinct purpose of each allowance; stresses, in this regard, that the residence allowance must be interpreted in light of Article 10 of the Court's revised code of conduct on commitment and loyalty and Article 14 of Protocol No 3 on the Statute of the Court of Justice of the European Union, annexed to the Treaty on European Union and the TFEU, that provides that Judges shall reside at the place where the Court of Justice has its seat;

19. Understands that the Court has no role in defining the rules and conditions for granting the installation and residence allowances and that the responsibility for the verification of the fulfilment of the legal conditions for the installation allowance and the payment authorisation of both installation and residence allowances stays with the PMO on the basis of a service-level agreement; notes that, upon the Court's request, the PMO in 2021 carried out an *ex post* control of the installation allowance and reported the results to the Court; observes that no irregularity was reported in 2021; regrets that some member of the Court fail to recognise that the residence allowance implies the effective residence at the place of employment, especially in cases where the installation allowance has been paid;
20. Appreciates that in accordance with Article 10(1) of its revised code of conduct the Court introduced an express legal obligation for its members to reside at the place where the Court has its seat, reflecting Article 14 of Protocol No 3 on the Statute of the Court of Justice of the European Union, and that the members shall provide the Secretary-General (in addition to the PMO) with proof of residence in Luxembourg upon taking up office and every three years thereafter, which is in line with the interpretation expressed by Parliament, the principle of sound financial management and the ethical standards expected of the Court; deems that the revision of the code of conduct might substantiate the Court's recognition of the residence allowance being consistent with effective residence in Luxembourg, allowing the proper performance of the member's duties;
21. Notes the Court's Decision No 30-2019 on the management and use of its car fleet; is aware that the car fleet is leased from a supplier using an interinstitutional framework contract and that, in addition to the rental charge, the Court bears the costs related to the use of the cars (i.e. tolls, parking, fuel, electric charges, cleaning and other expenses) in connection with journeys covered by a travel order; notes that journeys without travel orders are also allowed when they are related to the performance of the duties of the members of the Court;
22. Observes that the Court allows its members to make private use of the car fleet without drivers for journeys not covered by mission orders in exchange for a contribution of EUR 100 per month; is concerned that the EUR 100 contribution system, designed to allow private use of the car fleet, could facilitate potential misuses of the car fleet and damage the reputation of the Court; notes the recent Court Decision No 10-2022 that reviews the management and use of the car fleet; is of the opinion that the EUR 100 contribution does not reflect the full cost of such use and that the new system introduced

by the that decision is not reasonable or administratively efficient; calls on the Court to rationalise all uses of the car fleet that are reasonably necessary for the performance of the duties of its members and include those uses in the travel orders; reiterates its opinion expressed in previous discharge resolutions that the use of the car fleet outside of the strict performance of the duties of the members of the Court should not take place under any circumstance;

23. Notes that the Court offers its members language training in the interest of the Court, either through the interinstitutional framework shared with other Union institutions located in Luxembourg or directly from professional suppliers of language training; notes the Court's statement that for the period 2017-2021, members have followed intensive language courses outside the interinstitutional framework only for French, German and English; points out that conditions seem to apply only to the characteristics of the language training (i.e. two weeks per year, at least four hours per day), not to the language selected by the requesting member; notes the Court's recent decision providing that members may follow language courses covering primarily the working languages of the Court (English and French) but also other official languages of the Union in the interest of the service;
24. Notes that it took until 2018 for a register of attendance to be set up to record the presence or absence of the members at all formal meetings of the Court and its chambers and committees; notes that for the first time, the Court's 2020 annual activity report includes information on attendance; is aware that such meetings constitute only a part of the members' activities, which also includes audit missions and promoting the work of the Court in the Member States, and agrees that the independence required of the members necessarily encompasses a certain degree of autonomy in organising their work; reminds, however, that the members have an obligation to devote themselves fully to the fulfilment of their mandate as enshrined in Article 10 of the Court's code of conduct and, therefore, calls on the Court to use the attendance register as a tool to proactively prevent potential cases of absenteeism; proposes that the register of attendance be extended to working days, missions, periods of leave and justified absences in order to represent an accurate mapping of the work carried out by the members; requests the Court to provide the discharge authority with annual updates of the register of attendance so it can be considered during the discharge procedure;
25. Notes that missions, which are essential to fulfil the role of the Court (i.e. to audit national bodies on the spot or to present the annual report to national parliaments), are limited by the annual budget and have to undergo comprehensive *ex ante* and *ex post* controls carried out on monthly samples; welcomes that Court Decision No 59-2017 delegated the role of authorising officer for all missions and expenses of members of the Court to the Secretary-General of the Court, while Court Decision No 61-2017 clarified the rules governing missions, in particular the obligation to demonstrate how the mission relates to the Court's work, and emphasises that missions must be clearly and unambiguously declared as such; notes that members of the Court also serve as contact points for national audit institutions and for providing information to citizens about the use of Union funds; notes with concern, however, that no limitation or condition applies to the duration or place of missions which potentially creates risks of inefficient time management; believes that particular attention should be paid to missions to third countries with regard to duration, added value and costs; calls on the Court to set appropriate rules to prevent any possible misuse of mission orders which may call into question the integrity,

independence and objectivity of its members; points out in particular that members' missions must in general start or end in Luxembourg in accordance with the explicit residence obligation, except in cases of occasional and justified exceptions; expects that the members of the Court actively take part in audit missions and that their tasks and responsibilities must be specified to avoid any form of potential misconduct;

26. Notes that, under Court Decision No 60-2017, each of its members has an annual budgetary allocation to use for representation expenses, subject to *ex ante* controls and with reimbursements being made upon presentation of supporting documents; is surprised by the fact that Article 9 of that Decision provides that part of this allocation can be used, even in a limited manner, to cover invitations by the members to close collaborators (i.e. the member's private office, an audit team, chamber staff or staff of the same nationality as the member in question) without external participants, to promote team-building or to celebrate the achievement of a key working objective; recalls that in Article 1 of that Decision the Court defines 'representation' as professional interaction by members of the Court with external persons and that the current use is not in line with that definition; calls on the Court to rationalise and clarify the rules governing the use, conditions and ceilings of budgetary lines for representation, team-building and internal celebration purposes in order to respect the principles of sound financial management and transparency; notes the Court's recent decision providing that events without external participation will not be covered any longer by representation expenses; asks the Court to provide Parliament's Committee on Budgetary Control with annual overviews on the use of the budgetary allocation for representation;
27. Notes that in 2020 the Court's internal audit service reviewed the Court's risk management policy, issued reports or finalised the main audit work for a number of tasks and did not identify any shortcomings affecting the overall reliability of the internal control systems put in place to ensure the legality and regularity of the Court's financial operations in 2020; notes the assurance report by the Court's independent external auditor from December 2021 which concluded that the resources assigned to language courses, missions and representation have been used for their intended purposes and that the control procedures in place provide the necessary guarantees to ensure regulatory compliance; encourages the Court's internal and independent external auditors to include in their audit plan topics related to ethics;
28. Understands that during most of 2020, the travel restrictions and sanitary measures caused by the COVID-19 pandemic limited the possibilities of the Court to carry out audit fieldwork on the ground; notes that in 2020 the auditors of the Court spent a total of 1 190 days in the field (compared to 3 605 days in 2019) and 627 days at the Union institutions, bodies, offices and agencies, international organisations and private audit firms (compared to 2 504 days in 2019); observes with interest the increased use of remote auditing, using communication and information technology such as secure data and document sharing; hopes that those working procedures will be consolidated by the Court in its ordinary audit procedure;

#### ***ETHICAL FRAMEWORK AND TRANSPARENCY***

29. Fully acknowledges the value of serious and fact-based investigative journalism to provide the necessary checks and balances for the proper financial and ethical functioning of Union institutions; is concerned by the findings in the media coverage of a number of

ethical and financial management issues at the Court relating to its members; emphasises that the Court's audit work has never been called into question and that the Court is subject to several layers of control by its internal and independent external auditors and the discharge authority; is concerned, however, about the damage caused to the reputation and integrity of the Court which should be a model for the correct implementation of the Union budget and for the highest ethical standards; asks the Court to entrust a newly elected ethics committee, not appointed on a proposal by the Court's president, to examine the areas reported and assess the ethical adequacy of the existing rules, including the new system related to Article 73 of the Financial Regulation; trusts that the discharge procedure will, in close cooperation with the Court, identify areas for improvement and lead to the necessary reforms being undertaken, in particular of the Court's code of conduct; recalls the Court's role as the Union's independent external auditor and guardian of its finances and, thus, strongly reaffirms its belief that any unethical behaviour by the members of the Court has a huge impact on the reputation of both the Court and the Union as a whole, raising the question of who is watching over the Union's watchdog;

30. Deeply regrets that, following the coverage of a number of ethically and financially questionable practices, the Court declined to fully cooperate and engage equally with the members of Parliament's Committee on Budgetary Control with respect to the disclosure of key information and documents, even under conditions of confidentiality and data protection; believes that access to that information and those documents is essential to assess the allegations made in the media and enable members of Parliament to make an informed decision on granting discharge to the Court;
31. Is deeply concerned about allegations regarding subletting by members of the Court of an apartment to members of staff of the Court, also in the context of a potential breach of the provisions of the relevant rental contract and the creation of an unethical set-up in the context of residential allowance; regrets that the Court refused to provide all the shadow rapporteurs in Parliament's Committee on Budgetary Control with information on the landlord, the amount of rent paid by the member of the Court renting the apartment and the amount of rent paid to that member by the subtenants employed by the Court;
32. Notes with concern that the total cost of the irregularities committed by Karel Pinxten, a former Member of the Court, as identified in the relevant report by the European Anti-Fraud Office (OLAF) is EUR 570 824; regrets that, following the Court's legal analysis, the Court could only request Karel Pinxten to reimburse EUR 153 408 on the grounds that there is no legal basis to recover his salary for days of 'unjustified absences'; stresses the reputational prejudice to the Court and to the Union as a whole caused by this kind of behaviour which, as indicated by the Court of Justice in its judgement of 30 September 2021<sup>4</sup>, was favoured by the vagueness of the internal rules and allowed by the shortcomings of the controls put in place; notes the Court's follow-up to this case during the OLAF investigation, which includes waiving immunity and a successful conclusion of the procedure under Article 286(6) TFEU, as well as the measures taken as a result;
33. Is aware that the Court and its internal auditor, as a consequence of the procedures involving Karel Pinxten, undertook a review of its control procedures from 2016 to 2019 and that no indication of similar cases was found; notes that the Court is of the opinion

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<sup>4</sup> Judgment of the Court (Full Court) of 30 September 2021, *European Court of Auditors v Karel Pinxten*, C-130/19, ECLI:EU:C:2021:782.

that it has dealt with the weaknesses detected in the audit; acknowledges that delegating the duties of authorising officer within the meaning of Article 73 of the Financial Regulation exclusively to the Secretary-General of the Court and no longer to each of its members has been instrumental in delivering on the principle of sound financial management; observes that the Court considers the system now in place to be fully viable and reliable;

34. Highlights the findings of the 2019 peer review of the Court's ethics framework, indicating that ethics should receive a prominent place in the Court's strategic documents, advising greater consistency and clarity in the rules as well as appropriate training, that awareness-raising activities should be strengthened, and that the Court's ethics control system should be further improved; notes that the peer review concluded that the Court's ethical standards are generally compliant with the code of ethics of the International Organization of Supreme Audit Institutions but that further improvement is needed; emphasises in that regard that supreme audit institutions like the Court are held to high expectations and, therefore, must act as model organisations and inspire confidence and credibility to which end the leadership must set the tone by its actions; notes that the Court is currently reviewing its ethics framework, including an assessment of the ethics-related risks by an external provider, which will evaluate the maturity level of the Court's ethics framework and assess the Court's ethics-related risks; points out that the conclusions of that review will serve to update the Court's ethic framework in early 2022 and asks the Court to keep the discharge authority informed without undue delay;
35. Welcomes the adoption of the new Code of Conduct for the Members and former Members of the Court of Auditors on 14 December 2020<sup>5</sup> which is considerably more detailed and explicit than the Code of Conduct for the Members of the Court of 8 February 2012; notes that Members are now under obligation to submit an annual 'Declaration of Interests' but is concerned by the Court's lack of examination capacities, which is key in order to avoid conflicts of interest, and therefore invites the Court to reinforce the current system; emphasises the obligation for the Members of the Court to observe the highest standards of ethical conduct and the ethical values and principles that shall be observed, such as integrity, independence, objectivity, professional behaviour, dignity, commitment and loyalty;
36. Welcomes that the Court's code of conduct elaborates procedural rules for the obligations of the members of the Court regarding external activities and occupations after ceasing to hold office; agrees that Members should not engage in any external activity that is incompatible with their duties and, therefore, is alarmed that Article 12 of the code of conduct explicitly allows for Members to hold honorary, unremunerated offices in organisations in the political sphere; stresses that the values of independence and objectivity are specifically and seriously compromised the moment a member, during his or her term of office, maintains any concrete relationship with a political party, as clearly declared by the Court of Justice in its judgment of 30 September 2021; asks, therefore, the Court to update and clarify its code of conduct to explicitly forbid Members to hold honorary offices in political organisations in order to maintain its independence;
37. Stresses that the president of the Court must be a model in avoiding any real or perceived conflicts of interest that could undermine the Court's impartiality and, therefore,

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<sup>5</sup> OJ L 30, 28.1.2021, p. 10.



condemns his missions carried out with a clear political purpose which are not in line with the ethical standards and principles expected from the Court; recalls, in this regard, Article 7(2) of the Court's code of conduct which states that "Members of the Court shall be mindful of the importance of their duties and responsibilities; they shall, leading by example, take into account the public nature of their duties and shall conduct themselves in a way that maintains and promotes the public's trust in the Court";

38. Highlights that Article 6(2) of the ethical guidelines of the Court acknowledges that close relationships can make it difficult to adhere to the equal treatment principle, while Article 3(5) of its code of conduct prohibits spouses, partners and direct family from being part of the cabinets of the relevant member; is of the view that, beyond personal perception, the fact that the president of the Court shares an apartment with two full-time officials of his cabinet denotes a close relationship clearly comparable to the prohibited situations that can generate the impression of a potential conflict of interest or a violation of the principle of equal treatment, even if the Court's Secretary-General is its appointing authority and the grading of the staff of members' cabinets is based on the years of experience; welcomes the Court's intention to further specify the principles governing the living arrangements of its members; regrets the infringement of the right to privacy of the members of staff concerned caused by the publication of their names in the press;
39. Welcomes that the code of conduct also provides for an organisational framework for its application, namely an ethics committee that shall consider any ethics matter it deems relevant to the standards laid down in the code of conduct and to its reputation; welcomes that the ethics committee is assisted by the legal service of the Court as that measure will help to avoid any legal risks related to its decisions; notes that according to the current rules of procedure of the Court, the members of the ethics committee are appointed by the Court on the basis of a proposal from the President; urgently calls on the Court to reconsider the rules for appointment and composition of the ethics committee and suggests that the ethics committee no longer be appointed on a proposal from the president of the court;
40. Notes that the Court publishes its Members' missions on its website's transparency portal but only for the current year; asks the Court to publish and keep the information on all Members' missions carried out during the full duration of their mandate; encourages the Court to join the Union Transparency Register on the basis of a service level agreement; encourages the Court to publish its members' agendas of public and professional engagements;
41. Notes that in 2020, the one OLAF case opened and the one complaint received by the European Ombudsman were both dismissed by the respective authorities; observes that in 2020 there was no whistleblowing case;
42. Calls on the Court to clarify the role of its ethics advisors as no reports on their activity is available; believes that, following the findings of the 2019 peer review, it would be beneficial to keep a record of the number and type of issues addressed and the advice given; notes that the ethics advisers are now required to report annually on their activities to the Court's Secretary-General, in accordance with the rules of confidentiality;

#### ***HUMAN RESOURCES, EQUALITY, STAFF WELL-BEING***

43. Notes that, at the end of 2020, the Court employed in total 925 members of staff, consisting of 669 officials, 158 temporary agents, 83 contractual agents and 15 seconded national experts (SNEs); observes that the average occupation rate in 2020 was 97,2 %; appreciates the continued good level of recruitment actions in 2020 with 62 new employees recruited, consisting of 18 officials, 21 temporary agents, 20 contractual agents and 3 SNEs (compared to 77 in 2019);
44. Echoes the difficulties encountered by the Union institutions installed in Luxembourg to recruit staff according to their needs; points out the indexation of salaries in Luxembourg as one of the main factors; encourages the relevant institutions to have a coordinated and single approach towards the Commission;
45. Welcomes that, overall, the Court employed equal proportions of women and men in the workforce in 2020, with 475 women and 435 men out of 910 employees; notes that women made up 51,63 % of the overall workforce including members of the Court and SNEs; observes an increase in the share of women in management, 34,82 % in 2020 compared to 30,43 % in 2019; observes that about a third of principal managers (17 out of 47) and directors (3 out of 10) are women;
46. Regrets that in 2020 the Court had only 8 female members compared to 18 male members, although appreciates that the share of women increased from 25,93 % in 2019 to 30,77 % in 2020; finds it unacceptable, however, that the Court has had only 16 female members out of a total of 112 members since its establishment in 1977 (85,7% male, 14,3% female); recalls that the Council appoints the members of the Court after consultation with Parliament and understands that the nomination procedure for the members of the Court is a complex framework that constitutes a challenge for achieving gender balance because national nomination is solely the responsibility of the Member State in question and only one candidate can be nominated at a time; notes that according to Article 286(2) TFEU, the Council adopts the list of members of the Court following proposals from Member States and after consulting Parliament; calls on the Court, however, to analyse the overall composition of the Court in order to inform the Council and the Member States involved so that gender balance in particular is considered in the nomination decisions;
47. Regrets that the Council repeatedly proceeds to nominate members to the Court despite a negative opinion by Parliament; is of the opinion that the nomination procedure of the members of the Court in Article 286(2) TFEU should be reformed and aligned to that of the judges of the Court of Justice established in Article 255 TFEU, where a panel gives an opinion on candidates' suitability; emphasises that Parliament should have a binding role in assessing the suitability of candidates for the Court;
48. Remarks that the Court pursues geographical balance, that all the Member States are represented on the staff and that 21 Member States are represented in management positions; underlines in this regard that the Court has joined the Working Group on Diversity and Inclusion set up by EPSO which has put forward specific actions to increase the attractiveness of Luxembourg as a working place, including the programme to introduce a job for spouses, a housing allowance, a single common communication strategy and collaboration with European universities;
49. Notes with satisfaction the wide and varied range of activities carried out in 2020 to further equal opportunities (EO), namely a staff survey and five participatory workshops

on the Court's EO policy and performance, the use of statistical analysis of EO data to examine how the working conditions affect different segments of staff, communication and awareness-raising activities, compulsory training for managers on non-discrimination and EO, training on unconscious bias for selection panellists, a revision of the vacancy notices and an *ex post* analysis of the annual promotion procedure to ensure there was no bias because of maternity or parental leave; welcomes the positive impact of the EO-oriented activities in 2020, for instance with respect to promotions with 50 % of eligible women and 46 % of eligible men being promoted and 51 % of promoted women and 45 % of promoted men taking parental leave; is aware of the Court's diversity and inclusion policy and action plan for 2021-2025;

50. Observes that the Court offers various flexible working arrangements to facilitate work-life balance, including, in particular, parental leave for parents with children up to 12 years of age, various types of special leave and arrangements for breastfeeding time; notes, likewise, the limited number of core hours during which all members of staff have to be reachable and the possibility to spread non-core hours over the working day, at the discretion of the member of staff, to accommodate business and private needs; acknowledges that the flexible arrangements available in 2020 were frequently communicated and updated to all members of staff; notes the continued lack of balance for some working arrangements as 83 % of members of staff requesting part time were women; believes that more intense communication is needed on the viability and benefits of those arrangements and on that fact that making use of the available working arrangements will not penalise in any way the career progress of the employees concerned;
51. Notes that teleworking was the default work regime in 2020; welcomes that, on that basis, the possibility of teleworking from outside the place of employment was provided, within a limit of five days per month, that additionally exceptional authorisations for full time telework outside the place of employment were granted on the basis of specific family and health circumstances, and that members of staff are currently still allowed a maximum of 30 days of teleworking per year from outside the place of employment (with a maximum of 10 consecutive days); welcomes the adoption in 2020 of specific measures to help staff to cope with the peculiar situation caused by the COVID-19 pandemic, namely up to two hours per day for childcare arrangements (used by 284 auditors out of which 160 men) and an extended maternity leave for the mothers who were heading to reinstatement during the full lockdown period;
52. Notes that three case of burnout were reported in 2020; supports the measures adopted to facilitate the access to psychological counselling for members of staff in need thereof; notes, further, that the Court paid attention to communication campaigns on the right to disconnect, including mandatory training, workshops on mindfulness, stress reduction and resilience building; recommends the Court, however, to go beyond self-awareness activities and to implement, through specific actions, the right to disconnect of members of staff; appreciates the establishment of a well-being team and the launch of surveys to monitor the satisfaction of the members of staff of the Court;
53. Notes that two cases of alleged psychological harassment were reported, but that the administrative investigations did not establish psychological harassment had occurred; notes, therefore, that in 2020 the Court reported no confirmed case of psychological or sexual harassment; appreciates that the Court has strengthened the number of contact



persons in the network under the policy for maintaining a satisfactory working environment; supports the mandatory training for managers on the protection of staff against harassment and inappropriate behaviour, the workshop on conflict resolution with a focus on cyber-communication and the fact that the introductory sessions for newcomers includes modules about the internal policies on EO and anti-harassment;

54. Notes that the Court welcomed 44 trainees in 2020 (compared to 55 in 2019, with the decrease explained by the cancellation of the May session due to the COVID-19 pandemic); observes that 42 out of 44 traineeships were paid and calls on the Court to make sure that all of its trainees receive a decent remuneration in the future;

#### ***DIGITALISATION, CYBERSECURITY, DATA PROTECTION***

55. Notes that the total IT budget in 2020 was EUR 10 093 000 which is an increase of 25 % compared to 2019 where the IT budget was EUR 8 085 000; remarks that the most significant project, accounting for almost 50 % of the increase and financed by special transfers, was the replacement of the full IT storage infrastructure; observes that the Court has invested EUR 358 000 in end user IT equipment (laptops, screens, iPads, mobile phones and encrypted USB keys) which represents a 185 % increase compared to 2019; observes that EUR 6 390 000 was spent on IT services, mainly maintenance of applications, IT operations and services provided by other institutions; notes that several new IT projects were carried out in 2020 with an investment of EUR 1 603 000 (an increase of 23 % compared to 2019);
56. Observes with interest that following the COVID-19 outbreak, the whole audit lifecycle had to be performed digitally, including evidence gathering, adversarial procedures and interviews that were conducted via video call with interpretation, where needed, and that the outcome of the process was not affected as a result; welcomes the work carried out in 2020 by the ECALab interdisciplinary innovation laboratory team to explore technologies such as data mining, artificial intelligence and open data processing with the objective of further developing the digitalisation of the audit process; is aware that during 2020 the Court continued implementing the 'ECA audit goes digital' project, a cross-cutting project aimed at applying digital audit techniques for the financial audit of the Union agencies;
57. Notes that the voting procedure (including the secret vote), recruitment processes and procurement of goods and services were carried out digitally; understands that the adoption of an information classification policy, to be followed by implementing guidelines and a specific decision related to European Union classified information, and the set-up of a digital tool for dealing with sensitive documents contributed to facilitate the move towards full digitalisation; notes that the Court deployed a new security-monitoring and threat-hunting system, digital certificates issued by a public certification authority for email encryption to facilitate the exchange of sensitive files with external entities and threat protection software for corporate mobile devices;
58. Notes that, overall, the cybersecurity in place (covering the period 2018-2021) has been tested and is working effectively with more than 70 000 web threats blocked by the internet filter in 2020; observes that the Court also carried out several awareness initiatives to foster good practices when working remotely; welcomes that no serious security incident occurred during 2020; is aware that the Court is designing a new cyber-

security plan (covering the period 2022-2024), envisaging the gradual move towards a Zero Trust Architecture;

59. Observes that guidelines and updates on data protection topics were provided to staff via a bi-monthly newsletter; appreciates that the Court was considered ‘fully compliant’ following the European Data Protection Supervisor’s inspection of the register of the data protection officer of the Court;

#### ***BUILDINGS AND SECURITY***

60. Notes that in 2020 the Court adopted permanent changes to workspaces in order to improve energy efficiency, to integrate modern space patterns, to increase physical security and to factor in the new hybrid way of working (teleworking and *in situ* working);
61. Calls on the Court, in the implementation of the renovation projects, to consult the staff representatives at every step of the process, including monitoring the satisfaction and well-being of the staff in the future, and, in particular, to consider the need for improvements for people with reduced mobility or other disabilities and to identify in advance solutions to facilitate their access;

#### ***ENVIRONMENT AND SUSTAINABILITY***

62. Notes that the Court participates in the Eco-Management and Audit Scheme (EMAS), which aims to ensure compliance with green procurement recommendations when purchasing goods and services at every stage of the procedure; welcomes that the Court participates in Parliament’s Green Public Procurement, meaning that green criteria are part of the selection and eco-labels and fair trade labels are required, where appropriate, in addition to paying attention to human rights due diligence when assessing tenderers and contractors;
63. Notes that the total greenhouse gas output of the Court in 2020 was 14 % less than in 2014 when CO<sub>2</sub> emissions started to be measured; is aware that following the results of an external audit, the Court’s EMAS certification has been renewed for the 2020-2022 period; further encourages the Court to install solar panels on all buildings in order to increase the Court’s carbon efficiency;
64. Acknowledges that the Court is drafting its first sustainability report based on the Global Reporting Initiative standards and in line with the guidelines of the European Financial Reporting Advisory Group;
65. Understands that the working limitations caused by the COVID-19 pandemic resulted in electricity and water consumption falling considerably, by 30 % and 93 %, respectively, and that the average number of pages printed per staff at the Court’s premises was close to zero; encourages the Court to build on the experiences gained during the pandemic to improve its campaign to reduce paper consumption;

#### ***COMMUNICATION AND MULTILINGUALISM***

66. Notes that in 2020 the Court recorded some 32 000 online articles and social media posts related to its publications or to the Court in general (compared to 51 000 in 2019), issued 68 press releases and held 22 press briefings (compared to 61 and 25, respectively, in

2019); understands that the identified decrease in media coverage for the Court's publications, other than audit reports, can be partially attributed to the reduced communication activities on social media channels from mid-March 2020 onwards;

67. Notes with satisfaction initiatives to reach stakeholders and citizens using the press and the media, such as virtual press briefings to expand the Court's presence in the national press and media landscape; highlights as a good practice the conference on Ethics and Integrity in Public Administration held in September 2020 as a follow up discussion to the Court's Special Report no 13/2019 on the 'Ethical frameworks of the audited EU institutions: scope for improvement';

#### ***INTERINSTITUTIONAL COOPERATION***

68. Notes the intense interinstitutional cooperation achieved by the Court in 2020 despite the challenging situation, including in total 156 presentations of the results of its work: 52 to Parliament's committees, 57 to the Council's preparatory bodies and 47 to national parliaments (compared to 264 in 2019);
69. Notes the EU Network Audit, intended to be a new type of audit cooperation on matters related to the COVID-19 pandemic, that aims to share knowledge and experience and increase the visibility and impact of the relevant audit work of supreme audit institutions;
70. Notes the progress in the negotiation for the tripartite agreement with the European Investment Bank (the 'EIB') and the Commission to review the 2016 agreement governing the Court's access to documents and information held by the EIB in order to carry out its audits of operations funded or guaranteed by the Union budget and managed by the EIB;
71. Welcomes the preparatory negotiations carried out in 2020 to sign a working arrangement with the European Public Prosecutor's Office (the 'EPPO') in order to provide a structured framework for cooperation between the Court and the EPPO, aimed at further strengthening the protection of the Union budget; is aware that the said working arrangement was signed in September 2021;
72. Notes that in 2020 the Court reported six cases of suspected fraud to OLAF that were identified in the course of the Court's audit work (compared to 10 cases in 2019), all of which resulted in the opening of an investigation; observes with satisfaction that the percentage of the opened investigations following the Court's transmission of relevant information has increased in later years as a result of the more intense dialogue and coordination between the Court and OLAF;

#### ***COVID-19 PANDEMIC***

73. Believes that the Court adopted and endorsed a number of measures necessary to safeguard staff during the COVID-19 pandemic and appreciates the monitoring of the situation via surveys concerning well-being at work, perception of the situation by staff and levels of satisfaction;
74. Notes that the activation of the business continuity plan allowed undertaking the necessary swift actions, in coordination with the Luxembourgish authorities and the other Union institutions based in Luxembourg and including the swift revision of the rules of

procedure of the Court when necessary; appreciates the effective coordination that occurred with other Union institutions, bodies, offices and agencies during the pandemic emergency, in particular the participation in the informal network of the business continuity managers of the Union institutions, bodies, offices and agencies and in the COVID-19 interinstitutional group that remains active;

75. Stresses that the Court swiftly amended its rules of procedure in order to enable the Court and its chambers and committees to adopt their decisions remotely in virtual or ‘hybrid’ meetings in exceptional circumstances constituting force majeure and to ensure the continuity of decision-making by the Court in such circumstances;
76. Is aware that as per 16 March 2020 a generalised home working regime was established and that that regime was constantly adapted, proving an effective management flexibility; encourages the Court to fully integrate in its internal management strategy the lessons drawn from the COVID-19 pandemic in terms of business continuity and crisis management approaches, IT responsiveness and resiliency of the organisation, duty of care towards its staff, effectiveness of internal communication and flexibility of the working processes;

## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

|   |  |
|---|--|
| <b>Date adopted</b>                           | 28.2.2022  |
| <b>Result of final vote</b>                   | +: 14<br>-: 14<br>0: 1   |
| <b>Members present for the final vote</b>     | Matteo Adinolfi, Gilles Boyer, Olivier Chastel, Caterina Chinnici, Lefteris Christoforou, Corina Crețu, Ryszard Czarnecki, José Manuel Fernandes, Luke Ming Flanagan, Daniel Freund, Isabel García Muñoz, Monika Hohlmeier, Jean-François Jalkh, Pierre Karleskind, Mislav Kolakušić, Joachim Kuhs, Claudiu Manda, Alin Mituța, Markus Pieper, Michèle Rivasi, Sándor Rónai, Petri Sarvamaa, Simone Schmiedtbauer, Angelika Winzig, Lara Wolters, Tomáš Zdechovský |
| <b>Substitutes present for the final vote</b> | Joachim Stanisław Brudziński, Mikuláš Peksa, Elżbieta Rafalska   |

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

| 14  | +  |
|-----|--|
| ECR | Joachim Stanisław Brudziński, Ryszard Czarnecki, Elżbieta Rafalska   |
| ID  | Matteo Adinolfi, Jean-François Jalkh, Joachim Kuhs   |
| PPE | Lefteris Christoforou, José Manuel Fernandes, Monika Hohlmeier, Markus Pieper, Petri Sarvamaa, Simone Schmiedtbauer, Angelika Winzig, Tomáš Zdechovský |

| 14        | -   |
|-----------|---|
| Renew     | Gilles Boyer, Olivier Chastel, Pierre Karleskind, Alin Mituța                                   |
| S&D       | Caterina Chinnici, Corina Crețu, Isabel García Muñoz, Claudiu Manda, Sándor Rónai, Lara Wolters |
| The Left  | Luke Ming Flanagan  |
| Verts/ALE | Daniel Freund, Mikuláš Peksa, Michèle Rivasi  |

| 1  | 0                |
|----|------------------|
| NI | Mislav Kolakušić |

Key to symbols:

+ : grants discharge

- : postpones discharge

0 : abstention