



Brussels, 9 February 2022  
(OR. fr)

5711/22

ACP 18  
FIN 77  
PTOM 5  
PE-L 2

**'I/A' ITEM NOTE**

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	EDF discharge procedure: financial year 2020 Council Recommendations on the discharge to be given to the Commission in respect of the implementation of operations under the 8th, 9th, 10th and 11th European Development Funds for the financial year 2020 - Adoption

1. Article 11(7) of the Internal Agreement applicable to the 11th European Development Fund (EDF) states that the discharge for the financial management of the Fund shall be given by the European Parliament on the recommendation of the Council, which shall act by the qualified majority laid down in Article 8(3) of the Internal Agreement (see OJ L 210, 6.8.2013, p.1)<sup>1</sup>.
2. The ACP Working Party examined the Annual Report of the Court of Auditors on the European Development Funds for the financial year 2020, together with the Commission's replies to the Court's observations (see OJ C 430, 25.10.2021, p. 7), in the presence of a representative of the Court of Auditors.

<sup>1</sup> A similar provision is included in the Internal Agreements governing the 8th, 9th and 10th EDFs.

3. At the end of its discussions, the Working Party agreed at its level on the comments in Annex I regarding its examination of the Court's report and on the text of the draft recommendations for a discharge.
4. It is therefore suggested that, subject to confirmation by Coreper, the Council should:
  - endorse the comments by the Council on the Court of Auditors Annual Report on the activities funded by the 8th, 9th, 10th and 11th European Development Funds (EDFs) for the financial year 2020, as set out in Annex I;
  - adopt the recommendations regarding the discharge to be given by the European Parliament to the Commission in respect of the implementation of operations under the 8th, 9th, 10th and 11th EDFs for the financial year 2020, as set out, after finalisation of the texts by the legal/linguistic experts, in 5553/22, 5554/22, 5555/22 and 5557/22;
  - arrange for the recommendations, accompanied by the comments in Annex I, to be forwarded to the European Parliament and approve the draft letter in Annex II to that effect.

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**Comments by the Council**  
**on the Court of Auditors Annual Report<sup>1</sup>**  
**on the activities funded by the 8th, 9th, 10th and 11th**  
**European Development Funds (EDFs) for the financial year 2020**

1. The Council welcomes the fact that, in the opinion of the European Court of Auditors (ECA), the EDFs' accounts for the 2020 financial year present fairly, in all material respects, their financial position, the results of their operations, their cash flows and the changes in net assets, in accordance with the provisions of the Financial Regulation and the accounting rules adopted by the accounting officer.
2. The Council takes note of the ECA's conclusions that:
  - the revenue of the EDFs was not affected by a material level of error;
  - EDF payment transactions were affected by a material level of error.
3. The Council notes that the ECA's report on EDF activities for the financial year 2020 shows that the estimated level of error has increased by 0.3 percentage points compared with the error level estimated in 2019 and has not yet gone below the materiality threshold of 2 %.
4. The Council is concerned that EDF payments underlying the accounts for the financial year 2020 are materially affected by error, with the estimated level of error being 3.8 %. The Council welcomes the fact that the relative share of the error type 'serious failure to respect public procurement rules' was significantly lower in 2020 than in 2019. However, it notes with concern that the error categories 'absence of essential supporting documents' and 'ineligible expenditure' account for more than 75 % of the estimated level of error.

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<sup>1</sup> OJ C 430, 25.10.2021, p. 7.

5. The Council takes note of the fact that the Commission and its implementing partners committed more errors in transactions relating to grants and to contribution and delegation agreements with international organisations, with 40.3 % of examined transactions containing quantifiable errors, accounting for 94.2 % of the total estimated level of error.
6. The Council remains concerned by the ECA's findings that in a number of cases the Commission had sufficient information to prevent, or detect and correct, the error before accepting the expenditure, and that should the Commission have used all the information at its disposal it could have lowered the estimated level of error by 1.19 percentage points. The Council is also concerned that, as in previous years, the frequency of errors points to weaknesses in the ex-ante checks and expenditure verification reports. The Council calls on the Commission to step up its efforts to prevent, detect and correct errors, pay more attention to ex-ante checks, and take measures to address existing weaknesses.
7. The Council takes note of the fact that in three areas, namely budget support, administrative expenditure and transactions where the 'notional approach' has been applied, no errors were detected.
8. The Council highlights the importance of ensuring that the ECA has access to all documents needed for its work and agrees with the ECA's recommendation in this respect. The Council calls on the Commission to make sure that the related provisions of the contribution and delegation agreements with international organisations are duly implemented.
9. The Council welcomes the fact that the Commission adopted an action plan in 2020 to address weaknesses in the implementation of its internal control system, transferring five actions from previous years and adding two new actions, namely reducing the excess clearing of pre-financing and conducting an evaluation of the use of the new terms of reference for expenditure verifications.

10. The Council welcomes the fact that the Commission, in its 2020 residual error rate (RER) study, estimated the RER to be below the 2 % materiality threshold for the fifth year in a row. However, it is concerned by the ECA's finding that the 2020 RER study has limitations that may contribute to the underestimation of the RER, inter alia due to over-reliance on previous control work, too much focus on low-risk areas of the population and shortcomings in the RER estimation method. At the same time, the Council takes note of the Commission's replies in this regard.
11. The Council is concerned about the lack of a procedure requiring the RER contractor to report cases of suspected fraud to the Commission and agrees with the ECA's recommendation to establish such an obligation.
12. The Council takes note of the absence of reservations on the regularity of underlying transactions for the second year in a row since the 2019 Annual Activity Report (AAR). However, it is concerned by the ECA's finding that this absence is unjustified and due to the limitations of the RER study and the application of the de minimis rule, which introduces a double threshold for financial reservations, potentially resulting in a misleading view of the risks in the Commission's area of responsibility. At the same time, the Council takes note of the Commission's observation that the RER study is only one component of the Commission's internal control system and that cases for which the de minimis rule has been applied are duly reported in the AAR, even if no reservation is issued on them.
13. The Council welcomes the Commission's efforts to improve the quality of its own internal control system, in particular through the adoption of action plans and the continued implementation of the measures set out therein.
14. The Council acknowledges the satisfactory progress achieved in the implementation of the 2018 action plan and the fact that seven of the nine actions identified in the 2019 action plan were completed. The Council will await the ECA's next annual report and its assessment of the status of implementation of the Commission's 2020 action plan, in particular with regard to the four actions still in the process of being implemented.

15. The Council welcomes the efforts made by the Commission to reduce old pre-financing and unspent commitments and the number of expired contracts. It notes with satisfaction that, despite the difficulties related to the COVID-19 pandemic, the Commission met the target for the reduction of expired contracts and exceeded the target for the reduction of old pre-financing and unspent commitments.
16. The Council notes with satisfaction the ECA's follow-up review finding that the Commission implemented five of the six recommendations from 2017 in full and one in most respects. The Council takes note of the finding that two recommendations from 2018 were implemented in some respects and that the Commission continues to take action to address the issues identified by the ECA. Regarding Recommendation 2 from 2019, which was not accepted by the Commission and is repeated in the 2020 report, the Council calls on the Commission and the ECA to reach a common understanding on the application of the de minimis rule.
17. In agreement with the ECA, the Council acknowledges that improvements should be made in certain important areas, and supports the ECA's recommendations that the Commission:
  - a) take steps so that international organisations provide the ECA with complete, unlimited and timely access to documents necessary to carry out its task in accordance with the TFEU, and not just in read-only format (which the Commission has accepted),
  - b) issue reservations for all areas found to have a high level of risk, regardless of their share of total expenditure and their financial impact (which the Commission has not accepted), and
  - c) establish obligations for the RER study contractor to report to the Commission any suspected fraud against the EU budget detected during its work on the RER study (which the Commission has accepted).

18. While noting the ECA's conclusions and recommendations, the Council also takes note of the Commission's replies.
  19. Finally, the Council notes with satisfaction that the United Kingdom's withdrawal from the European Union had no financial impact on the 2020 EDF accounts, which correctly reflect the state of the withdrawal process as at 31 December 2020.
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**DRAFT LETTER**

To: President of the European Parliament

from: President of the Council

Madam President,

I am forwarding under separate cover the Council recommendations of 15 March 2022 on the discharge to be given to the Commission in respect of the implementation of operations under the 8th<sup>1</sup>, 9th<sup>2</sup>, 10th<sup>3</sup> and 11th<sup>4</sup> European Development Funds for the financial year 2020 accompanied by the comments of the Council<sup>5</sup> on the Court of Auditors Annual Report on the activities funded by the 8th, 9th, 10th and 11th European Development Funds (EDFs) for the financial year 2020.

[Complimentary close].

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- <sup>1</sup> 5553/22 ACP 10 FIN 41 PTOM 1.  
<sup>2</sup> 5554/22 ACP 11 FIN 42 PTOM 2.  
<sup>3</sup> 5555/22 ACP 12 FIN 43 PTOM 3.  
<sup>4</sup> 5557/22 ACP 13 FIN 44 PTOM 4.  
<sup>5</sup> 5711/22 ACP 18 FIN 77 PTOM 5 PE-L 2.