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NOTE

From:	Budget Committee
To:	Permanent Representatives Committee/Council
Subject:	Council recommendation on the discharge to be given to the Commission in respect of the implementation of the general budget of the European Union for the financial year 2023

- *Adoption*
- *Approval of a letter*

COUNCIL RECOMMENDATION
on the discharge to be given to the Commission
in respect of the implementation of the general budget
of the European Union
for the financial year 2023

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Whereas:

(1) According to the revenue and expenditure account for the financial year 2023:

- revenue amounted to EUR 248 360 670 365.71
- expenditure disbursed from appropriations
amounted to EUR 236 738 815 235.83
- cancelled payment appropriations
carried over from year *n-1* amounted to EUR 4 224 049.58
- appropriations for payments carried over to year *n+1*
(including earmarked revenue) amounted to EUR 11 062 142 505.94
- EFTA payment appropriations carried over from year *n-1*
amounted to EUR 6 472 913.79
- the balance of exchange-rate differences amounted to EUR 77 627 504.57
- the positive budget balance amounted to EUR 635 091 265.30

- (2) EUR 2 447 374 972.12 (99.83 %) of the EUR 2 451 599 021.70 in appropriations for payments carried over to year 2023 have been used;
- (3) The observations in the report by the Court of Auditors for the financial year 2023 call for certain comments by the Council, which are ANNEXED hereto;
- (4) The Council attaches importance to its comments being followed up and assumes that the Commission will implement all of the recommendations in full, without delay;
- (5) The Council has approved conclusions concerning special reports drawn up by the Court in 2023 and 2024 in the context of the discharge procedure¹;
- (6) Following the examination referred to above, implementation by the Commission of the budget for the financial year 2023, taken as a whole, on the basis of the observations made by the Court of Auditors, is such as to allow a discharge to be given in respect of such implementation,

HEREBY RECOMMENDS, in the light of these considerations, that the European Parliament grant discharge to the Commission in respect of the implementation of the budget of the European Union for the financial year 2023.

Done at Brussels,

For the Council
The President

¹ Docs. 6755/24, 7014/24, 8871/24, 9639/24, 10358/24, 11235/1/24 REV 1, 11367/24, 11521/24, 11944/24, 12260/24, 12261/24, 14849/24, 15152/24, 15924/24, 16902/24, 16981/24, 16985/24, 16991/24 and 17000/24.

INTRODUCTION

1. The Council welcomes the European Court of Auditors' annual report, the Statement of Assurance on the implementation of the EU budget, as well as the audit findings and conclusions provided. The Council attaches great importance to the independent audit work carried out by the Court in line with the provisions of Article 287 TFEU, and specifically to the primary task of providing a Statement of Assurance on the reliability of the accounts and examining the legality and regularity of revenue and expenditure.
2. The Council also welcomes the Court's finding that the EU accounts present a true and fair view of the EU's financial position, as well as the clean opinion on the reliability of the 2023 accounts for the seventeenth year in a row. The Council also welcomes that the revenue for 2023 was found to be legal, regular, and free from material error.
3. However, the Council regrets the concerning increase of the estimated level of error reported by the Court in EU budget spending and that, for the fifth consecutive year, an adverse opinion on the legality and regularity of expenditure was issued. The Council takes note that on the 2023 Recovery and Resilience Facility (RRF) expenditure the Court issued a qualified opinion.
4. The Council acknowledges the findings of the Court, supports most of its recommendations, and invites the Commission to take them, as well as the Council's recommendations, into account.
5. The Council calls on both the Court and the Commission to continue the assessment of the performance of the EU budget, which is a measure of the true value delivered to EU citizens, and therefore an important element of the annual evaluation of the sound financial management of EU funds. Specifically, the Council calls on the Commission, where applicable, to increase the focus on result-based performance indicators that can be directly linked to the EU actions.

6. Despite the repeated calls from the Council, and the increased political importance of several expenditure headings, the Court once again did not present a level of error for each chapter, making no change in this respect compared to the previous reports related to the multiannual financial framework (MFF) 2014-2020. In this regard, the Council emphasizes the importance of ensuring comparability between years within each policy area, welcomes the Court's commitment to present a level of error for the "Neighbourhood and the World" policy area for the year 2024 and onwards, and invites the Court to provide representative error rates for all headings.
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CHAPTER 1
THE STATEMENT OF ASSURANCE AND SUPPORTING INFORMATION

- 1.1. The Council welcomes the clean opinion given by the Court on the reliability of the annual accounts of the European Union (hereinafter "the accounts") for the financial year 2023, and welcomes the Court's statement that the accounts present fairly, in all material respects the EU's financial position as of 31 December 2023, and the results of its operations, its cash flow and the changes in its net assets for the year then ended, in accordance with the Financial Regulation and with accounting rules based on internationally accepted accounting standards for the public sector.
- 1.2. Furthermore, the Council welcomes the fact that the revenue underlying the accounts for 2023 is legal and regular in all material respects, as in previous years.
- 1.3. However, the Council is concerned that, for the fifth year in a row, the Court has issued an adverse opinion on the legality and regularity of expenditure, acknowledges the deterioration in the level of error in some of the expenditure headings, and stresses that a low estimated level of error supports preserving the EU citizens' trust in the European institutions.
- 1.4. The Council regrets that the estimated level of error reported by the Court in 2023 has increased to 5.6 % from 4.2 % in 2022, further deviating from the materiality threshold of 2 %. Moreover, the Council regrets the increase of the estimated level of error in high-risk expenditure from 6.0 % in 2022 to 7.9 % in 2023. The Council notes that a substantial proportion of the expenditure audited by the Court, 64.4 %, mainly reimbursement-based expenditure, is materially affected by error. The Council also takes note that the risk at payment estimated by the Commission remains at the 1.9 % unaltered rate from previous years for what concerns mostly MFF 2014-2020 programmes, while the risk at closure, after considering the corrective capacity of the Commission, is estimated at 0.9 %. The Council notes that the Court observed limitations in the Commission's ex-post checks which affect the robustness of the Commission's risk assessment.

- 1.5. The Council recalls that the Court's estimated level of error is not a measure of fraud, inefficiency, or waste of funds per se, but of payments which were not made in accordance with the applicable rules and regulations. The Council notes that in 2023, the Court reported to OLAF 20 cases of suspected fraud.
- 1.6. While acknowledging the work carried out by audit bodies in detecting errors and mismanagement of EU funds, as well as the continuous efforts and actions undertaken by the Commission and the member states to implement the Court's recommendations, the Council recognises the shortcomings identified by the Court in the work of some audit authorities. Based on the findings of the Court, the Council encourages the stakeholders involved in the management and control of the EU budget implementation to further improve their work.
- 1.7. The Council stresses that, in order to achieve a reduction in error rates and ensure the effective and correct management of EU funds, simpler, more transparent and more predictable legislation including relevant implementing measures should remain a top priority. The Council, therefore, calls on the Commission and programme authorities where relevant to identify, assess and simplify unnecessarily complex rules and procedures, both for national authorities and beneficiaries, while preserving the essential standards and requirements needed for accountability, sound financial management and legality and regularity of spending.
- 1.8. Although the Council recognizes that the Court and the Commission have different mandates and therefore different approaches in estimating errors, the Council is concerned about the degree of differences of the two institutions in interpretation of the same standards, legislation, facts and rules. The Council invites the institutions to continue the dialogue, and calls on the Commission to actively engage national audit authorities as well, with a view of reinforcing their work, exchange best practices and address shortcomings.

1.9. Considering that the spending programmes and related control systems, as well as the management cycles cover multiple years, the Council notes that the financial corrections and recoveries applied by the Commission could result in bringing the level of error below materiality. The Council also notes the Commission's consideration that, the indicator representing best all the actions taken by both the member states and its services is the risk at closure, which measures the level of error remaining once all ex-post controls and additional corrections will have been made, while the Court's approach, in line with its mandate, focuses on a given moment in time. The Council is concerned that the difference in error rates of the Court (5.6 %) and the Commission (1.9 %) has been increasing each year.

CHAPTER 2
BUDGETARY AND FINANCIAL MANAGEMENT

- 2.1. The Council takes note of the almost full budget implementation of the available commitments and payments in 2023.
- 2.2. The Council is concerned by the new record high level of outstanding budgetary commitments in 2023, while taking note that the increase is partly due to the commitments related to the NextGenerationEU (NGEU) instrument.
- 2.3. The Council also takes note of the assessment of the Court regarding the increased exposure of the EU budget as a result of borrowing undertaken for additional needs in response to multiple crises. Therefore, the Council urges the Commission to closely monitor this risk, to limit the issuance of bonds and bills to the legally mandated amounts and at minimum interest rates, as well as keep member states closely and thoroughly informed about its estimations.
- 2.4. The Council notes the Court's observation that high inflation continued to affect the EU budget, takes note of recommendation 2.1 of the Court and invites the Commission to continue closely monitoring the budgetary implementation of shared management funds and to work with the member states in order to ensure smooth implementation.
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CHAPTER 3
GETTING RESULTS FROM THE EU BUDGET

- 3.1. The Council notes that for 2023 the Court's assessment of the performance of the budget covers an overview of the results and key messages of its 2023 special reports on performance, including related information from the Commission, the European Parliament and the Council. The Court has also assessed the implementation of the recommendations made in its 2020 report on the performance of the EU budget and in its special reports published in 2020.
- 3.2. The Council notes the Court's intent to examine how the Commission reported on performance in different MFF headings in rotation over the following years.
- 3.3. With regard to heading 4 “Migration and border management” analysed for the current year, the Council takes note of the Court’s conclusion on the improved performance reporting framework for the current MFF period, as well as good progress in achieving targets.
- 3.4. The Council acknowledges the findings of the Court's audits and welcomes the first actions taken by the Commission in response to the recommendations of the Court's 2023 special reports.
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CHAPTER 4

REVENUE

- 4.1. The Council welcomes that the revenue part of the budget was not affected by material error in 2023 and that the examined revenue-related systems were assessed as being generally effective.
- 4.2. However, some of the key internal controls of traditional own resources (TOR) in certain member states, some of the elements for the management of GNI and VAT reservations, TOR open points at the Commission, and the systems for ensuring the reliability and comparability of data for calculating the plastic-based own resource were assessed as being partially effective.
- 4.3. The Council notes the Court's observation that the Commission's verification work on GNI is affected by delays on the part of member states and takes note of the Court's relevant recommendation on application of late payment interest when GNI reservations are not fully addressed by the deadline. Regarding this recommendation, the Council acknowledges the Commission's view for the GNI reservations lifted in the year 2023 the calculation of late payment interest complies with regulations in force.
- 4.4. The Council also notes the delay in the implementation of some actions in the Commission's Customs Action Plan that were contributing to reducing the customs gap.
- 4.5. Being aware of the importance of a uniform application of TOR controls throughout the EU, the Council supports the Court's recommendation to the Commission to verify the progress made by the member states in implementing common financial risk criteria and standards framework (FRC), prioritize elements to be implemented, and support the member states in FRC application without delay.

4.6. The Council encourages the Commission again, in order to ensure predictability for member states, to continue to engage in dialogue with member states with open undervaluation cases in order to close them, and recalculate as soon as possible the final TOR losses attributable to the remaining member states, resulting from the UK Court of Justice of the European Union judgment of 8 March 2022.

CHAPTER 5
SINGLE MARKET, INNOVATION AND DIGITAL

- 5.1. The Council regrets that the estimated level of error reported by the Court has increased from 2.7 % in 2022 to 3.3 % in 2023, and thus remained above the materiality threshold. The Council also notes that the Commission estimated the risk at payment for the "Single market, innovation and digital" policy area at 1.4 % and the risk at closure at 1.0 %, below the materiality threshold.
- 5.2. The Council notes that the research and innovation expenditure is most affected by errors related to personnel costs and regrets their persistence. The Council urges the Commission to continue its efforts to reach an error rate below the materiality threshold. The Council also notes the Court's remark that a large part of the error rate is due to complex rules regarding personnel costs and that the calculation in some ways did not become simpler under Horizon Europe. The Council invites the Commission to address this issue.
- 5.3. The Council acknowledges the Court's observation related to SMEs and newcomers being more prone to errors than other beneficiaries and encourages the Commission to address this issue.
- 5.4. The Council supports the Court's recommendation to the Commission concerning Horizon Europe to further clarify the rules and methods for calculating daily rates for the personnel costs, which remains a major source of errors in the cost claims. The Council welcomes that the Commission has accepted this recommendation.
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CHAPTER 6

COHESION, RESILIENCE AND VALUES

- 6.1. The Council regrets the concerning increase of the estimated level of error reported by the Court for payments in the "Cohesion, resilience and values" policy area from 6.4 % in 2022, to 9.3 % in 2023, going further above the materiality threshold of 2 %. The Council notes that the Commission estimated the risk at payment for this policy area at 2.6 %, and the risk at closure at 1.2 %, below the materiality threshold. The Council urges the Commission and the programme authorities to take further steps to reduce the level of error in the future.
- 6.2. The Council recognizes that the Commission and the Court play different roles in the control chain of the EU budget, with different focus on checking expenditure. The Council notes that for a number of the quantifiable errors identified by the Court for the chapter, the Commission does not share the Court's assessment of the facts, or interpretation of the applicable national or programme-specific rules.
- 6.3. The Council notes that the control and assurance framework for cohesion programmes have both an annual and a multiannual character. While the current rules are built around a system based on the Commission's acceptance of annual accounts, the programmes cover multiple years. As a result, the Commission, as manager of the EU budget, puts in place multiannual control strategies designed to prevent errors and, where this is not possible, to detect them and apply corrections before the closure of the programmes. In this respect, the Council calls on the Commission to continue to carry out specific targeted checks in its 2014-2020 closure audits, to ensure that member states have applied the necessary financial correction for errors detected in a given accounting year, which also affect expenditure in other accounting years. The Council notes the Commission's position, that there is no regulatory deadline to continue protecting the EU budget and that corrections can still occur many years after the end of the programming period or the closure of a programme.

- 6.4. In 2023, several factors have put additional pressure on member states' administrations, including additional REACT-EU resources, and the end date of 31 December 2023 for the 2014-2020 cohesion eligibility period, which for the last few years overlaps with the eligibility period of the RRF, thus increasing the risk regarding their capacity to ensure that spending was regular and in line with the principles of sound financial management.
- 6.5. The Council acknowledges the Court's finding that the introduction of 100 % EU financing in cohesion policy priorities has allowed for a quick response to unforeseen circumstances. The Council takes note that 100 % EU financing transactions contributed to the error rate for this chapter by 5 % and notes that the likelihood of error in this types of transactions and its impact on the overall error rate requires more observation in the coming years.
- 6.6. While acknowledging the effort to simplify cohesion programmes, particularly for the 2021-2027 programming period, through an increased use of simplified cost options and financing not linked to costs, the Council urges the Commission and programme authorities to continue to address recurrent errors and to disseminate good practices with a view to reduce the occurrence and impact of irregular spending.
- 6.7. The Council also regrets that the Court still observes shortcomings in the work of some audit authorities. The Council notes that the proportion of expenditure covered by assurance packages with residual error rates of above 2 % has stabilized at 61 %. In this regard, recognising the efforts made by the Commission and the audit authorities and the improvements achieved so far, the Council invites the Commission, where possible, to take further steps to help mitigate the high risk of error and work together with the audit authorities to find the most appropriate methods for checking the reliability of self-declarations issued by beneficiaries.
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CHAPTER 7
NATURAL RESOURCES AND ENVIRONMENT

- 7.1. The Council notes that the estimated level of error reported by the Court for payments in the “Natural resources” policy area remained stable at 2.2 %, and regrets that the error level is above the materiality threshold. The Council also notes that the Commission reports a non-material risk at payment for this policy area, and that the risk at closure is estimated by the Commission at 0.5 %, below the materiality threshold.
- 7.2. The Council welcomes the fact that the corrective measures applied by the Commission and the member states reduced the estimated level of error by 0.5 percentage points, while noting that the level of error for this chapter could have been 1.0 percentage points lower had all available information been used. Thus, the Council encourages the Commission to continue and intensify its support to member states in taking all necessary actions to prevent, detect and correct errors, while respecting an appropriate cost-benefit ratio.
- 7.3. The Council welcomes the fact that direct payments, which account for 65 % under the MFF heading “Natural resources” were, for the ninth year in a row, free from material error.
- 7.4. The Council takes note of the Court’s observations that the eligibility conditions for most spending on rural development are more complex than for direct payments, and the risk of error is higher.
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CHAPTER 8

MIGRATION AND BORDER MANAGEMENT, SECURITY AND DEFENCE

- 8.1. The Council notes that, as regards heading 4 “Migration and Border Management” and heading 5 “Security and Defence”, the Court's audit was again not representative of the expenditure under these two headings, despite the Council's previous recommendations. Consequently, the Court did not estimate error rates for these headings. In view of the increased political focus on these policy areas and their growing budget, the Council reiterates its request to the Court to include a representative sample in its audit scope and to provide an error rate for these two headings in future years.
- 8.2. The Council acknowledges the support provided by the Commission so far and supports the Court's recommendation for further guidance to the member state authorities responsible for implementing DG HOME funding via shared management.
- 8.3. The Council welcomes the Court’s conclusion that the establishment of the thematic facilities for the 2021-2027 MFF period and the implementation of the allocation methodologies was compliant with the requirement of the relevant regulations.
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CHAPTER 9
NEIGHBOURHOOD AND THE WORLD

- 9.1. The Council regrets that, despite reiterating its previous recommendations, the Court's examination was once again not representative of the spending under this heading, and that, consequently, the Court did not provide an estimated level of error for this chapter. Therefore, the Council welcomes the Court's commitment to cover a representative sample in this high-risk area and to provide an error rate for this heading in the following years, as of 2024.
- 9.2. The Council notes that the Court, according to the TFEU, is entitled to receive complete, unlimited, and timely access to the documents necessary for the performance of its task. The Council therefore regrets that difficulties persist in the audit of some international organisations, for which only limited access to documents was granted.
- 9.3. Considering the errors found in transactions related to contracts under indirect management with pillar-assessed organisations, the Council calls on the Commission to enhance checks and controls for EU funding in external actions.
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CHAPTER 10
EUROPEAN PUBLIC ADMINISTRATION

- 10.1. The Council welcomes the fact that the administrative and related expenditure of the EU institutions remained, as in previous years, free from material error. The Council also welcomes the fact that the annual activity reports reviewed by the Court did not identify material levels of error either.
- 10.2. The Council regrets the Court's observation of weaknesses in the management of appropriations of the European Parliament's political groups and persisting non-compliance of its procurement procedures with the Financial Regulation.
- 10.3. The Council notes the initiatives taken by the European Parliament to prevent and detect fraud and supports the Court's recommendation addressed to the European Parliament to develop an institution-wide anti-fraud strategy and to ensure its application throughout the organisation.
- 10.4. The Council acknowledges the errors identified by the Court in Commission's payments, including the failure to apply the EU tax abatement due to a flaw in the underlying IT systems and an overpayment for building works. The Council calls on the Commission to improve its procedures and systems to avoid such shortcomings in the future.
- 10.5. The Council acknowledges the Court's findings on weaknesses in the procurement procedures of EU Delegations. The Council calls on the European External Action Service to improve its procedures in order to avoid errors in the future.
- 10.6. The Council notes an increase by 12.7 % in a liability for pension and other employee benefits (from EUR 80.6 billion in 2022 to EUR 90.8 billion at the end of 2023).
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CHAPTER 11
RECOVERY AND RESILIENCE FACILITY

- 11.1. The Council is concerned that the Court has issued a qualified opinion on RRF expenditure in 2023, similar to 2022, based on the assessment of fulfilment of the milestones and targets, as defined in the Council Implementing Decision as condition for payment.
- 11.2. The Council takes note that 16 of the 325 milestones and 127 targets examined by the Court, concerning 7 out of 23 RRF grant payments, were considered affected by quantitative findings, notably related to the unsatisfactory fulfilment of milestones and targets, the substitution of recurring national budgetary expenditure and the eligibility start date.
- 11.3. The Council is concerned by the differences in interpretation of legislation between the Commission and the Court on all reported quantitative findings. The conditions of payment and eligibility are crucial issues for the implementation of the RRF. The Council points out the importance of institutional cooperation towards a common understanding of the legal framework to facilitate the RRF implementation, and thereby support to the achievement of the RRF objectives.
- 11.4. The Council cautions on interpretation of legislation in the course of implementation, which should not lead to new rules or more restrictive conditions imposed on member states ex-post.
- 11.5. The Council encourages the Commission to foster possible improvements, such as simplification and clarification of the regulations in cooperation with member states, but also maintain flexibility for changing national plans in line with the requirements of the RRF Regulation, and to increase its support to all member states in order to accelerate the RRF implementation in the coming years. In doing so, the Council calls on the Commission to consider administrative burden for the member states, by applying the principle of proportionality in issuing revised guidelines on implementation and calls on both institutions to take account of proportionality in the performance of controls.
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