



Council of the
European Union

Brussels, 1 February 2022
(OR. en)

5844/22

COH 6
FIN 90
SOC 53
CADREFIN 9

NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Draft Council conclusions on Special Report No 26/2021 entitled
"Regularity of spending in EU Cohesion policy: Commission discloses
annually a minimum estimated level of error that is not final"

Delegations will find attached the Draft Council Conclusions on the European Court of Auditors' Special Report No 26/2021, as prepared and agreed by the Structural Measures and Outermost Regions Working Party on 27 January 2022.

DRAFT

**Council conclusions on Special Report No 26/2021 by the European Court of Auditors:
Regularity of spending in EU Cohesion policy: Commission discloses annually a minimum
estimated level of error that is not final**

THE COUNCIL OF THE EUROPEAN UNION:

- (1) WELCOMES the Special Report No 26/2021 by the European Court of Auditors (hereafter referred to as "the Court") and the replies of the Commission to the Report which provide useful clarifications on the audit work in the field of cohesion policy;
- (2) NOTES that the Court's audit examined the Commission's processes and procedures in the field of cohesion policy for the acceptance of the accounts and for its assessment of the regularity of the expenditure. The Court also examined the way the Commission prepares and presents regularity information in the annual activity reports and the annual management and performance report;
- (3) ACKNOWLEDGES that the audit work covered the 2014-2020 control and assurance framework that aimed to allow the Commission to report an annual residual risk of error for each accounting year and that the Court's audit covered the accounting years 2016-2017 and 2017-2018, the ones for which the Commission had completed its assessment on the regularity of the expenditure underlying the annual accounts;
- (4) EMPHASISES that, given the fact that cohesion policy is a long-term investment policy implemented under shared management, EU funded projects are multiannual and the related control systems and management cycles must cover multiple years; also, POINTS OUT to the fact that the audit system for cohesion policy addresses a different framework than the one for direct management programmes;

- (5) CONSIDERS that the audit system put in place by the Commission provides, in principle, a robust basis to obtain reasonable assurance on the legality and regularity of underlying expenditure in each accounting year;
- (6) RECOGNISES some of the findings of the Report, in particular that:
- Deviations from the audit plan are not sufficiently justified in a documented manner;
 - The content and structure of the annual management and performance report are not clear enough;
 - Inconsistencies were found in the application of the risk assessment methodology;
- (7) TAKES NOTE of the recommendations given by the Court, in particular:
- Improving the audit documentation and review process;
 - Strengthening the main elements of the regularity information provided in the annual activity reports;
- (8) SUPPORTS the replies of the Commission to the findings and recommendations included in the Court's Report, in particular that:
- Proposing at this stage a legislative change in the 2021-2027 regulatory framework regarding the payment retention is premature; the changes introduced in the rules governing the management and control system for the 2021-2027 programming period already aim at further safeguarding the EU budget;
 - Errors identified through compliance audits in some programmes and Member States cannot be extended to other non-audited programmes and Member States;
 - A good balance needs to be found between improving the audit trail and an efficient use of audit resources;

- (9) ENCOURAGES the Commission to continue its endeavour to further streamlining the audit process as started with the creation of the new Joint audit service for Cohesion. In that sense, INVITES the Commission to:
- Improve the audit documentation, where relevant, and ensure that all auditors follow the requirements in place;
 - Continue strengthening the audit trail for establishing the audit plan, including clear links to results of risk assessment as well as to other relevant criteria;
 - Facilitate readers' understanding of this technical and complex matter;
- (10) CONSIDERS that it is important to further reflect on the impact of using a statistical method for the audit work, also on the acceptable level of error, and on how to best address errors, especially the recurring ones, in order to correct and more importantly to help preventing these errors in the future;
- (11) IS OF THE VIEW that the contradictory phase between the Commission and the Member State is an important moment to share all the findings available regarding a contentious operation, and that this discussion should not be undermined; if complementary evidence is provided during the follow-up phase proving the regularity of some parts of the expenditure, it is logical that in this case the amounts of the correction applied by the Commission can be adjusted. Audit is a dynamic process, and error rates can be modified over time until they become definitive in a final audit report;
- (12) CONSIDERS that the follow-up phase after the contradictory dialogue between the Commission and the Member States should not take longer than necessary, in order to avoid delays in closing an audit procedure on an operation.
- (13) INVITES the Court, after consulting with the Member States, to make suggestions on how to implement the single audit principle in the field of cohesion policy, in order to streamline and increase the efficiency of the audit work at all levels.
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